

July 9, 2009

VIA OVERNIGHT MAIL

Mr. Jeff Derouen
Executive Director
Public Service Commission
Commonwealth of Kentucky
211 Sower Boulevard
P. O. Box 615
Frankfort, KY 40602

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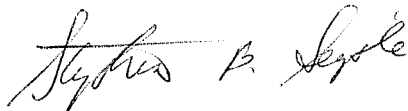
PUBLIC SERVICE
COMMISSION

RE: Case No. 2009-00141

Dear Mr. Derouen,

Enclosed for filing are the original and eleven (11) copies of Columbia Gas of Kentucky, Inc.'s Petition for Confidential Treatment of Data in the above case. The data for which such protection is being sought is Columbia's supplemental response to the Attorney General's first set of data requests number 189. Please docket the original under seal as well as the ten (10) redacted copies and return the extra copy to me in the self addressed stamped envelope enclosed. Should you have any questions about this filing, please contact me at 614-460-4648. Thank you.

Sincerely,



Stephen B. Seiple
Assistant General Counsel

Enclosures

cc: All Parties of Record
Hon. Richard S. Taylor

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:)
Application of Columbia Gas of Kentucky, Inc.) Case No. 2009-00141
for an Adjustment of Rates.)

**PETITION OF COLUMBIA GAS OF KENTUCKY, INC.
FOR CONFIDENTIAL TREATMENT OF DATA**

On June 2, 2009, the Attorney General served its first set of data requests upon Columbia Gas of Kentucky, Inc. (“Columbia”). On June 16, 2009, Columbia filed its responses with the Kentucky Public Service Commission (“Commission”) to these data requests. One of the Attorney General’s data requests (set 1, number 189) requested information that is highly sensitive, proprietary, and confidential regarding the rating of its debt securities. Specifically, Data Request No. 1-189 seeks all correspondence between NiSource, Columbia Energy Group, and/or Columbia and any of the three major bond rating agencies, Standard & Poor’s, Moody’s, and Fitch Ratings (collectively “Bond Rating Agencies”), from January 2, 2007, to the present.¹

Columbia originally objected to the data request, but after discussions with the Attorney General’s office has agreed to provide a partial response to the data request. This response contains confidential information. Pursuant to 807 KAR 5:001, Section 7, Columbia is requesting confidential treatment for the attached supplemental response to this specific data request. The Commission’s regulations require petitions for confidential treatment to set forth specific grounds pursuant to KRS § 61.870, *et seq.*, and be filed with an original clean copy of

¹ *In the Matter of Application of Columbia Gas of Kentucky, Inc. for an Adjustment of Rates for Gas Service*, PSC Case No. 2009-00141, Attorney General’s Initial Requests for Information (June 2, 2009) at 30.

the proposed confidential material with proprietary information highlighted.² Pursuant to 807 KAR 5:001, Section 7, Columbia's unredacted response is attached to the original copy of this Petition as Attachment A. However, because the entire document, consisting of over 500 pages, is confidential none of the document is highlighted. The Commission's regulation further requires the requesting party to serve the petition and a redacted copy of the material on all parties of record.³ All other copies of this Petition include, as Attachment A, the response with the confidential information eliminated. Columbia is also willing to enter into protective agreements with the parties to this case under which agreement Columbia will provide the parties with the confidential information.

In view of the foregoing considerations, and as required by 807 KAR 5:001, Section 7, the data should be classified as confidential, pursuant to KRS §§ 61.870 *et seq.*, on the following specific grounds:

- (1) Method and process of debt security valuation constitutes a trade secret, as defined by KRS § 365.880 and protected by KRS § 365.888, and is shielded from disclosure in Commission proceedings under KRS § 61.878(1)(l).
- (2) Method and process of debt security valuation "would permit an unfair commercial advantage to competitors" of Columbia and the Bond Rating Agencies if disclosed, and is generally recognized as confidential or proprietary under KRS § 61.878(1)(c)(1).
- (3) Preliminary recommendations and memoranda in which opinions are expressed, included in the correspondence between Columbia and Bond Rating Agencies, are exempted from disclosure under KRS § 61.878(1)(j).

² 807 KAR 5:001 § 7(2)(a).

³ 807 KAR 5:001 § 7(2)(c).

The correspondence between Columbia and the Bond Rating Agencies, taken as whole, would divulge the method and process of debt valuation. This information constitutes a trade secret, as defined by Kentucky's Uniform Trade Secret Act, KRS § 365.880, *et seq.* Under the act, a trade secret means,

Information, including a formula, pattern, compilation, program, data, device, method, technique, or process, that:

- (a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and
- (b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.⁴

The Kentucky Statutes provide that the trade secrets' secrecy should be preserved by reasonable means, which may include granting protective orders.⁵ Under the Open Records Act, "public records or information the disclosure of which is prohibited or restricted or otherwise made confidential by enactment of the General Assembly," are excluded from public disclosure.⁶ The Trade Secrecy Act falls within the last catch-all category of exemptions from public disclosure.⁷

As applied to the data request at issue, the correspondence details a process by which Columbia and the Bond Rating Agencies used to determine the credit rating of Columbia's proposed debt securities. Columbia derives independent economic value, through the successful issuance of debt securities with advantageous terms and rates, from the secrecy of its debt security credit rating process. The Bond Rating Agencies also derive independent economic value from each agency's debt security rating methodology since each agency's primary business

⁴ KRS § 365.880(4).

⁵ KRS § 365.888.

⁶ KRS § 61.878(1)(I).

⁷ See 94-ORD-97, 1994 Ky. AG LEXIS 83 (August 5, 1994).

is to rate securities. Moreover, Columbia has taken every reasonable effort to ensure the correspondence regarding the debt security rating remains confidential. The information contained within the correspondence was not disseminated within Columbia, and is known only by those of Columbia's employees who have a legitimate business need to know and act upon that information. Therefore, the correspondence between Columbia and the Bond Rating Agencies, which taken as a whole contain the process and methodology of determining Columbia's bond ratings, is a trade secret and should not be disclosed to the public, as exempted under KRS § 61.878(1)(l).

Disclosure of the correspondence and credit rating methodology will also provide Columbia's competitors with unfair commercial advantage. The Open Records Act provides an exception for "records confidentially disclosed to an agency or required by an agency to be disclosed to it, general recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entities that disclosed the records."⁸ The Commission has interpreted this section to require utilities to show that the: (1) commercial documents are generally recognized as confidential or proprietary and that (2) disclosure would permit an unfair commercial advantage to competitors.⁹ The Kentucky Supreme Court held that to trigger the KRS § 61.878(1)(c)(1) exemption, disclosure to competitors should provide substantially more than a trivial unfair advantage.¹⁰

The correspondence between a company and a security rating agency is generally recognized as confidential. All documents requested, including letters, reports, presentations, e-mails, and telephone conversation notes regarding the determination of Columbia's debt

⁸ KRS § 61.878(1)(c)(1).

⁹ *In the Matter of Joint Petition for Arbitration of NewSouth Communications Corp., Nuvox Communications, Inc., KMC Telecom III LLC, and Xspedius Communications, LLC on behalf of its Operating Subsidiaries*, PSC Case No. 2004-00044, Order (June 2, 2006) at 7 (citing 93-ORD-43, 1993 Ky. AG LEXIS 73 (April 13, 1993)).

¹⁰ See *United Medigroup, Inc. v. Hon. John J. Hughes*, 952 S.W.2d 195 (Ky. 1997).

securities' rating, would provide any competitor of Columbia a competitive advantage regarding the rating of its own debt securities. Columbia's competitors, armed with this information, would be able to tailor their potential debt securities to have an equal or better credit rating than Columbia. To disclose this information would also damage the Bond Rating Agencies, which would be at a competitive disadvantage if their competitors were to publicly obtain the credit rating correspondence and adopt the Bond Rating Agencies' rating methodology. Therefore, the Commission should protect the correspondence as per KRS § 61.878(1)(c)(1), because permitting its disclosure would provide a significant unfair competitive advantage to Columbia and Bond Rating Agencies' competitors.

The correspondence between Columbia and the Bond Rating Agencies also contains preliminary recommendations and memoranda expressing opinions as to debt securities Columbia has yet to issue, and is protected from public disclosure under KRS § 61.878(1)(j). The Attorney General has interpreted preliminary, as used in KRS § 61.878(1)(j), as "obviously refer[ing] to recommendations made [and memoranda prepared] by a person prior to a final decision."¹¹ The Attorney General also opined that preliminary recommendations and preliminary memoranda are protected from disclosure "notwithstanding the fact that they are prepared for the agency by outside agencies or private consultants."¹² The preliminary recommendations and opinions contained within the correspondence between Columbia and the Bond Rating Agencies concerns some debt securities not yet publicly offered by Columbia. Because Columbia has not made a final decision as to the matter, whether to issue certain debt securities, disclosure of this preliminary information would hinder Columbia's ability to offer these securities at a future time in the public market. Therefore, because the correspondence

¹¹ OAG No. 00-ORD-139 at 14 (citing OAG No. 90-ORD-97 at 4) (alteration in original).

¹² OAG No. 00-ORD-139 at 16.

contains preliminary recommendations and preliminary memoranda expressing the opinions of Columbia and the Bond Rating Agencies as to the quality of some debt securities to be offered by Columbia, the correspondence should receive confidential treatment, as per KRS § 61.878(1)(j).

Finally, the correspondence between Columbia and the Bond Rating Agencies contains material, nonpublic information regarding the issuance of Columbia's debt securities. The selective public disclosure of such information would cause certain obligations to arise under the U.S. Securities and Exchange Commission's Regulation FD. Because the public disclosure of sensitive material information would trigger securities laws' obligations, the Commission should grant confidential treatment for the material, nonpublic information in the Columbia and Bond Rating Agency correspondence.

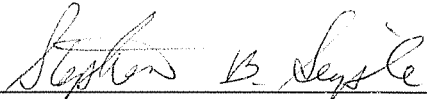
By granting this Petition and providing for confidential treatment of Columbia's response to this data request, the Commission and the parties can fully evaluate Columbia's proposed application for an adjustment in rates, while maintaining the general confidentiality of such data, thereby balancing the public interest with the personal privacy concerns identified in KRS § 61.878(1)(c)(1), (i), (j), and (l).

WHEREFORE, Columbia respectfully requests that the Commission issue an order authorizing the confidential treatment of Columbia's response to this data request in Attachment A hereto, pursuant to 807 KAR 5:001, Section 7, for the reasons stated herein.

Dated at Columbus, Ohio, this 10th day of July 2009.

Respectfully submitted,

COLUMBIA GAS OF KENTUCKY, INC.

By: 
Stephen B. Seiple (Counsel of Record)

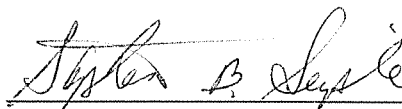
Stephen B. Seiple, Assistant General Counsel
200 Civic Center Drive
P.O. Box 117
Columbus, Ohio 43216-0117
Telephone: (614) 460-4648
Fax: (614) 460-6986
Email: sseiple@nisource.com

Richard S. Taylor
225 Capital Avenue
Frankfort, Kentucky 40601
Telephone: (502) 223-8967
Fax: (502): 226-6383

Attorneys for
COLUMBIA GAS OF KENTUCKY, INC.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply of Columbia Gas of Kentucky, Inc., was served upon all parties of record by regular U. S. mail this 10th day of July, 2009.



Stephen B. Seiple
Attorney for
COLUMBIA GAS OF KENTUCKY INC.

SERVICE LIST

Tom Fitzgerald
Liz D. Edmondson
Kentucky Resources Council, Inc.
P.O. Box 1070
Frankfort, Kentucky 40602-1070

Dennis G. Howard, II
Lawrence W. Cook
Office of the Attorney General
1024 Capitol Center Drive, Suite 200
Frankfort, Kentucky 40601-8204

Iris G. Skidmore
Bates & Skidmore
415 W. Main Street, Suite 2
Frankfort, Kentucky 40601

W. L. Wilson
Leslye M. Bowman
Lexington-Fayette Urban County Government
200 East Main Street
Lexington, Kentucky 40507

David F. Boehm
Boehm, Kurtz & Lowry
36 E. Seventh Street, Suit 1510
Cincinnati, Ohio 45202

ATTACHMENT A