

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PURCHASED GAS ADJUSTMENT FILING OF ) CASE NO.  
ATMOS ENERGY CORPORATION ) 2017-00478

ORDER

On December 22, 2017, Atmos Energy Corporation (Atmos) filed a petition, pursuant to KRS 61.878 and 807 KAR 5:001, Section 13, requesting that the Commission grant confidential protection for an indefinite period to information from which the actual price that Atmos pays for natural gas to its supplier can be determined, and the Weighted Average Cost of Gas (WACOG) schedule pertaining to prices projected to be paid by Atmos for purchase contracts.

As a basis for its request, Atmos states that the designated material contains sensitive, proprietary information that if disclosed, would impose serious adverse consequences to Atmos and its customers. Atmos argues that it has successfully negotiated an extremely advantageous gas supply contract, and if the detailed information concerning the contract, or the WACOG schedule, is made available to Atmos's competitors, it would place Atmos in an unfair commercial disadvantage in future negotiations. Atmos further asserts that as a matter of company policy it would not disclose any of the confidential information to any person or entity, except as required by law or pursuant to a court order or subpoena. Finally, Atmos states that the information sought to be protected constitutes a trade secret under the two-pronged test of KRS 365.880.

The Commission is a public agency subject to Kentucky's Open Records Act, which requires that all public records "be open for inspection by any person, except as otherwise provided by KRS 61.870 to 61.884."<sup>1</sup> The exceptions to the free and open examination of public records contained in KRS 61.878 should be strictly construed.<sup>2</sup> The party requesting that materials be treated confidentially has the burden of establishing that one of the exceptions is applicable.<sup>3</sup> In determining whether materials should be exempt from disclosure, the Commission must balance the potential harm from disclosure with "the effect of protecting a given document from scrutiny by the public and potential intervenors."<sup>4</sup>

Having considered the petition and the material at issue, the Commission finds that the information concerning the actual price being paid by Atmos for natural gas to its supplier, and the WACOG schedule pertaining to prices projected to be paid by Atmos for purchase contracts, are generally recognized as confidential or proprietary; it, therefore, meets the criteria for confidential treatment and is exempted from public disclosure pursuant to KRS 61.878(1)(c) and 807 KAR 5:001, Section 13.

IT IS THEREFORE ORDERED that:

1. Atmos's petition for confidential protection for the information concerning the actual price being paid by Atmos for natural gas to its supplier, and the WAGOG

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<sup>1</sup> KRS 61.872(1).

<sup>2</sup> See KRS § 61.871.

<sup>3</sup> 807 KAR 5:001, Section 13 (2)(c).

<sup>4</sup> *Southeastern United Medigroup, Inc. v. Hughes*, 952 S.W.2d 195, 199 (Ky. 1997), *abrogated on other grounds by Hoskins v. Maricle*, 150 S.W.3d 1 (Ky. 2004).

schedule pertaining to prices projected to be paid by Atmos for purchase contracts is granted.

2. The designated material contained in Atmos's Exhibit D, page 5 of 6, and the WACOG schedule in support of Exhibit C, page 2 of 2, shall not be placed in the public record or made available for public inspection until further Order of this Commission.

3. Use of the material in question in any Commission proceeding shall be in compliance with 807 KAR 5:001, Section 13(9).

4. Atmos shall inform the Commission if the material in question becomes publicly available or no longer qualifies for confidential treatment.

5. If a non-party to this proceeding requests to inspect the material granted confidential treatment by this Order and the period during which the material has been granted confidential treatment has not expired, Atmos shall have 20 days from receipt of written notice of the request to demonstrate that the material still falls within the exclusions from disclosure requirements established in KRS 61.878. If Atmos is unable to make such demonstration, the requested material shall be made available for inspection. Otherwise, the Commission shall deny the request for inspection.

6. The Commission shall not make the requested material available for inspection for 20 days following an Order finding that the material no longer qualifies for confidential treatment in order to allow Atmos to seek a remedy afforded by law.

By the Commission

ENTERED  
JUL 16 2018  
KENTUCKY PUBLIC  
SERVICE COMMISSION

ATTEST:



Executive Director

Case No. 2017-00478

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