

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF ATMOS)	
ENERGY CORPORATION FOR APPROVAL OF)	CASE NO.
SPECIAL CONTRACT PURSUANT TO ITS)	2022-00292
ECONOMIC DEVELOPMENT RIDER)	

ORDER

On August 29, 2022, Atmos Energy Corporation (Atmos) filed a petition, pursuant to 807 KAR 5:001E, Section 13, and KRS 61.878, requesting that the Commission grant confidential treatment for an indefinite period for Exhibit C to its application for approval of a special contract.

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."¹ Atmos sought application of KRS 61.878(1)(c)(1), which exempts records that are "[g]enerally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records." Exceptions to the free and open examination of public records contained in KRS 61.878 should be strictly construed.² The party requesting that materials be treated confidentially has the burden of establishing that one of the exceptions is applicable.³

¹ KRS 61.872(1).

² See KRS 61.871.

³ 807 KAR 5:001E, Section 13(2)(c).

Under 807 KAR 5:001E, Section 13(2)(a), a party seeking confidential treatment is required to file a motion that:

1. Establishes specific grounds pursuant to KRS 61.878 for classification of that material as confidential;
2. States the time period for the material to be treated as confidential and the reasons for this time period; and
3. Includes ten (10) copies of the material in paper medium with those portions redacted for which confidentiality is sought, and, in a separate sealed envelope marked confidential,⁴ one (1) copy of the material in paper medium which identifies by underscoring, highlighting with transparent ink, or other reasonable means only those portions that unless redacted would disclose confidential material.
 - a. Text pages or portions thereof that do not contain confidential material shall not be included in this identification.
 - b. If confidential treatment is sought for an entire document, written notification that the entire document is confidential may be filed with the document in lieu of the required highlighting.

Exhibit C to Atmos's application consists of a marginal cost study for the calculation of the margin generated as a result of the economic development rate being charged to the special contract industrial customer. Atmos argued that disclosure would give market participants insight into the prices at which it is willing to buy and sell natural gas and these market participants could use that information to manipulate the bidding process, leading to higher costs or lower revenues. Atmos did not publicly file a redacted copy of Exhibit C with its application. It confidentially filed a copy of Exhibit C with portions

⁴ See Case No. 2020-00085, *Electronic Emergency Docket Related to the Novel Coronavirus COVID-19* (Ky. PSC July 22, 2021), Order (in which the Commission ordered that for case filings made on and after March 16, 2020, filers are NOT required to file the original physical copies of the filings required by 807 KAR 5:001, Section 8).

highlighted. Atmos did not state in its application or petition for confidential treatment that the entire document should be confidential.

Having considered the petition and the material at issue, the Commission finds that Atmos's petition for confidential treatment should be denied. Atmos did not state that the entire document was intended to remain confidential under 807 KAR 5:001E, Section 13(2)(a)(3)(b). The Commission's review of this matter is limited to the highlighted portions of Exhibit C per 807 KAR 5:001E, Section 13(2)(a)(3). Certain highlighted portions of the confidentially filed Exhibit C are clearly not entitled to confidential treatment, including (1) rates and charges that are in Atmos's tariff,⁵ (2) figures that could be calculated using unhighlighted data, (3) the depreciation rate disclosed publicly in its 2021 rate case,⁶ (4) costs subject to disclosure for recovery via rates, and (5) the PSC assessment rate. Atmos did not supply sufficiently detailed reasons for keeping individual highlighted data confidential to meet its burden. Therefore, Exhibit C does not meet the criteria for confidential treatment and is not exempted from public disclosure pursuant to 807 KAR 5:001E, Section 13, and KRS 61.878(1)(c)(1).

IT IS THEREFORE ORDERED that:

1. Atmos's petition for confidential treatment is denied.
2. The designated material denied confidential treatment by this Order is not exempt from public disclosure and shall be placed in the public record and made available for public inspection.

⁵ TFS2015-00343, First Revised Sheet No. 40 (issued Nov. 23, 2015), effective Aug. 15, 2016.

⁶ Case No. 2021-00214, *Electronic Application of Atmos Energy Corporation for an Adjustment of Rates* (filed June 30, 2021), Direct Testimony of Dane A. Watson, Exhibit DAW-2 at 70.

3. If Atmos objects to the Commission's determination that the requested material not be granted confidential treatment, it must seek either rehearing pursuant to KRS 278.400 or judicial review of this Order pursuant to KRS 278.410. Failure to exercise either of these statutory rights will be deemed as agreement with the Commission's determination of which materials should be granted confidential treatment.

4. Within 30 days of the date of service of this Order, Atmos shall file a revised version of the designated material for which confidential treatment was denied, reflecting as unredacted the information that has been denied confidential treatment.

5. The designated material for which Atmos's request for confidential treatment has been denied shall neither be placed in the public record nor made available for inspection for 30 days from the date of service of this Order in order to allow Atmos's to seek a remedy afforded by law.

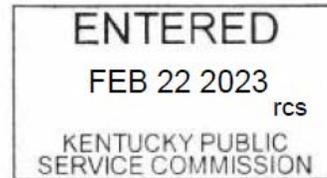
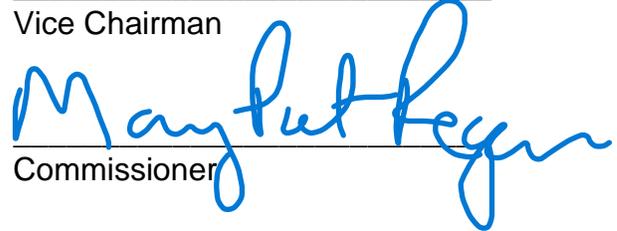
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