

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the matter of adjustment of rates of)
Columbia Gas of Kentucky, Inc.) Case No. 2016 - 00162

PETITION FOR CONFIDENTIAL PROTECTION

Columbia Gas of Kentucky, Inc. ("Columbia") moves the Kentucky Public Service Commission ("Commission") pursuant to 807 KAR 5:001, Section 13, and KRS 61.878 to grant confidential treatment to the information described herein that is being provided in response to Item No. 5 of Commission Staff's Third Request for Information and Item Nos. 3(b), 5(e)-(f), 23(d), 26, and 30(a) of the Attorney General's Supplemental Request for Information. In support of this Petition, Columbia states as follows:

On August 5, 2016, the Commission filed its Third Request for Information, which included Item No. 5 that requests a copy of the most recently completed Distribution Integrity Management Plan ("DIMP") evaluation. On August 5, 2016, the Attorney General also tendered its Supplemental Request for Information. These requests include Item No. 3(b) that seeks information regarding Columbia's federal taxable income and deductions; Item No. 5(e)-(f) that requests gas trading partners and projected storage quantities; Item No. 23(d) that asks contracts with companies providing customer service tasks; Item No. 26 that requests studies regarding the threat of by-pass by special contract customers; and Item No. 30(a) that requests further details

regarding the confidential information Columbia provided in response to Item No. 39 of the Attorney General's Initial Request for Information regarding compensation paid to its employees.

The Kentucky Open Records act exempts from public disclosure records that "have a reasonable likelihood of threatening the public safety by exposing a vulnerability in preventing, protecting against, mitigating, or responding to a terrorist act." KRS 61.878(1)(m)(1). Such records include vulnerability assessments, and infrastructure records that expose a vulnerability in the critical systems of a gas utility. KRS 61.878(1)(m)(1)(b), (f). Relatedly, "critical energy infrastructure information" is exempt from public disclosure pursuant to federal law, which includes vulnerability information regarding the production, generation, transmission, or distribution of energy. FERC Order 630, Final Rule (Feb. 21, 2003).¹

In response to Item No. 5 of the Commission Staff's Third Request for Information, Columbia is providing a copy of its most recently completed DIMP evaluation. As its name indicates, the report contains detailed information regarding distribution integrity in both Columbia's Kentucky and Ohio operations, and identifies, evaluates, and classifies risks. Detailed information is provided; including down to the street level in certain instances. The DIMP report merits confidential treatment because

¹ The Kentucky Open Records Act likewise exempts from disclosure "information the disclosure of which is prohibited by federal law or regulation." KRS 61.878(k).

it falls within the vulnerability assessments identified as exceptions to public disclosure under both Kentucky and federal law.

The Kentucky Open Records Act likewise exempts from disclosure “information the disclosure of which is prohibited by federal law or regulation.” KRS 61.878(k). In response to Item No. 3(b) of the AG’s Supplemental Request for Information, Columbia is providing it and its parent company’s federal taxable income, as well as the deductions involved in the calculations. This response involves information from Columbia’s and NiSource’s income tax filings. Under 26 U.S.C.A. § 6103(a), state officials are prohibited from publicly disclosing any federal income tax return or its contents. Therefore, these responses fall within the exemption provided by KRS 61.878(1)(k) and are exempt from disclosure. *See In the Matter of Application for Adjustment of Rates of Kentucky Power Company* (Case No. 91-066) (Ky. PSC July 23, 1991).

Also exempt from disclosure under the Kentucky Open Records Act are documents that are “recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors.” KRS 61.878(1)(c)(1). In response to Item No. 5(e)-(f) of the AG’s requests Columbia is providing information that would allow its trading partners to learn whom they are competing against, as well as Columbia’s projected storage quantities. If this information is publicly disclosed, Columbia’s negotiating position regarding its needs and vendors would be impaired, which can lead to higher costs for Columbia’s

customers and market manipulation. The Commission has granted confidential treatment to similar material. *See In the Matter of: An Examination of the Application of the Fuel Adjustment Clause of Duke Energy Kentucky, Inc. from November 1, 2010 through October 31, 2010* (Ky. PSC Aug. 27, 2013).

In response to Item No. 23(d), Columbia is providing a copy of the Master Services Agreement that NiSource has with a third party to provide information management, call/contact center support services, and related services. NiSource has agreed to keep the contract confidential, and disclosure of the terms would impair NiSource's negotiating position and could possibly lead to higher costs if the prices and terms at which NiSource is receiving the services were publicly disclosed. As such, it merits confidential protection pursuant to KRS 61.878(1)(c)(1). Columbia is in the process of providing notice to the third party as required by the contract. Columbia is filing the contract confidentially with the Commission contemporaneously with the filing of this motion, and will make a copy available for inspection to the intervenors that have signed a confidentiality agreement.

The Kentucky Open Records Act exempts from disclosure "information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy." KRS 61.878(a). In response to Item No. 26, Columbia is providing customer-specific information regarding the threat that these customers may bypass Columbia. Columbia does not publicly disclose such

information about its customers, and these customers have the right to expect that such customer-specific information would be treated confidentially by Columbia. The Commission has found that personal customer information warrants confidential protection. *See* May 29, 2008 Letter from Stephanie Stumbo to Mary Keyer in Case No. 2005-00455.

In response to Item No. 30(a), Columbia is providing additional information regarding the base compensation, salary increases, and incentive compensation paid to its employees. Such information is of a personal nature. The Kentucky Court of Appeals has stated, "information such as ... wage rate ... [is] generally accepted by society as [a] detail [] in which an individual has at least some expectation of privacy." *Zink v. Department of Workers' Claims, Labor Cabinet*, 902 S.W.2d 825, 828 (Ky. App. 1994). The Commission should therefore give confidential treatment to the information included in these responses because disclosing the contents thereof would invade the privacy rights of the affected employees.

The information for which Columbia is seeking confidential treatment is not known outside of Columbia, and it is not disseminated within Columbia except to those employees with a legitimate business need to know the information.

Columbia requests that the information be held confidentially in perpetuity. Columbia cannot envision a period of time in which it would be appropriate for this sensitive information to be disclosed in the public realm.

The description of the responsive documents above demonstrates that they merit confidential treatment. If the Commission disagrees, however, it must hold an evidentiary hearing to protect the due process rights of Columbia and so that the Commission will have a complete record to enable it to reach a decision with regard to this matter. *Utility Regulatory Commission v. Kentucky Water Service Company, Inc., Ky. App.*, 642 S.W.2d 591, 592-94 (1982).

Columbia does not object to the disclosure of the information at issue to the parties to this proceeding upon the execution of a confidentiality agreement.² Columbia is filing one paper copy under seal that identifies the information for which confidential protection is sought and one electronic copy with the same information obscured. Because the responses to AG Item No. 26 are provided in Excel format and the entire spreadsheets are confidential, no public version of the spreadsheets have been uploaded to the Commission's web portal.

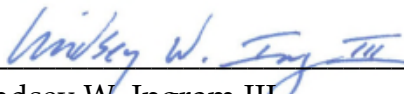
WHEREFORE, Columbia respectfully requests that the Commission grant confidential treatment for the information at issue, or in the alternative, schedule an evidentiary hearing on all factual issues while maintaining the confidentiality of the information pending the outcome of the hearing.

² As noted above, Columbia will make the attachment to Item No. 23(d) available to intervenors for inspection.

Dated August 19, 2016

Respectfully submitted,

**COLUMBIA GAS OF KENTUCKY,
INC.**

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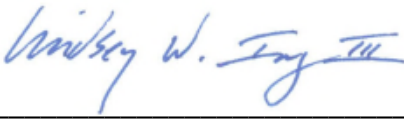
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CERTIFICATE

This certifies that Columbia Gas of Kentucky, Inc.'s electronic filing is a true and accurate copy of the documents to be filed in paper medium except for those for which confidentiality is sought; that the electronic filing has been transmitted to the Commission on August 19, 2016; that a paper copy of the filing will be delivered to the Commission within two business days of the electronic filing; and that no party has been excused from participation by electronic means.

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