

**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

In the matter of:)
)
ELECTRONIC INVESTIGATION OF) Case No. 2018-00041
THE IMPACT OF THE TAX CUTS)
AND JOB ACT ON THE RATES OF)
COLUMBIA GAS OF KENTUCKY,
INC.)

**MOTION OF COLUMBIA GAS OF KENTUCKY, INC.
FOR CONFIDENTIAL TREATMENT OF RESPONSE TO
STAFF THIRD DATA REQUEST NO. 1**

Pursuant to KRS § 61.878(1)(c), KRS § 61.878 (1)(k) and 807 KAR 5:001 § 13, Columbia Gas of Kentucky, Inc., (“Columbia”) moves the Kentucky Public Service Commission (“Commission”) to grant confidential protection indefinitely to Attachment B provided by Columbia in response to Data Request No. 1 of the Commission Staff’s Third Request for Information (“Data Request No. 3-1”). The response references Data Request No. 23 of the Commission Staff’s First Request for Information, which specifically requests a copy of the NiSource Inc.’s (“NiSource”) letter requesting an Issue Resolution Agreement from the Internal Revenue Service (“IRS”). In support of this motion, Columbia states as follows:

1. Columbia is a wholly-owned subsidiary of NiSource Gas Distribution Group which is a wholly-owned subsidiary of NiSource Inc. ("NiSource"). NiSource is a registered holding company under the Public Utility Holding Company Act of 2005, whose principal office is located at 801 East 86th Avenue, Merrillville, IN 46410.

2. The Kentucky Open Records Act exempts from disclosure certain confidential or proprietary information.¹ To qualify for this exemption, and, therefore, maintain the confidentiality of the information, a party must establish that the item requested is "generally recognized as confidential or proprietary" and that "disclosure of the information would permit an unfair commercial advantage to competitors of the party seeking confidentiality."

3. Attachment B contained in response Data Request No. 3-1 is considered part of NiSource's 2017 federal tax return information. The letter requesting the Issue Resolution Agreement, contains commercial information that is confidential and proprietary. Disclosure could cause substantial competitive harm to Columbia and NiSource. The information contained in Attachment B is not publicly available and it would be difficult or impossible for someone to discover from other sources. Additionally, the letter requesting the Issue Resolution Agreement has not been generally disclosed to its non-management employees and it is protected internally by the Company as confidential information.

4. Further, the Kentucky Open Records Act also exempts from disclosure “all public records or information the disclosure of which is prohibited by federal law or regulation.”² Federal law prohibits state officials from publicly disclosing any federal income tax return or return information.³ “Return information” includes “any part of any written determination or background file document relating to such written determination...”⁴

5. Here, the letter contained in Attachment B in response to Data Request No. 3-1 is seeking a determination from the IRS in the form of an Issue Resolution Agreement, therefore, it is “return information” entitled to confidentiality.

6. Columbia requests that Attachment B contained in the response to Data Request No. 3-1 be held confidentially in perpetuity. Columbia cannot envision a period of time in which it would be appropriate for Columbia’s proprietary and confidential commercial information to be disclosed in the public realm.

7. The description of the responsive document above demonstrates that it merits 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 Com-

1 KRS § 61.878(1)(c).

2 KRS § 61.979(1)(K).

3 26 USC §6103(a)

4 26 USC § 6103(b)(2)(B)

mission will have a complete record to enable it to reach a decision with regard to this matter.⁵

8. 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. For Attachment B contained in the response to Data Request No. 3-1, in compliance with 807 KAR 5:001 section 13(2)(e), 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.

9. By granting this motion 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 confidentiality and proprietary interests identified in KRS § 61.878(1)(c) and § KRS 61.878(1)(k).

WHEREFORE, Columbia respectfully requests that the Commission issue an order granting the confidential treatment of Columbia's response to Data Request No. 3-1 in perpetuity, or in the alternative, schedule an evidentiary hearing on all factual issues

⁵ *Utility Regulatory Commission v. Kentucky Water Service Company, Inc.*, Ky. App. 642 S.W.2d 591, 592-594 (1982).

while maintaining the confidentiality of the information pending the outcome of the hearing.

Dated at Columbus, Ohio, this 20th day of April 2018.

Respectfully submitted,

COLUMBIA GAS OF KENTUCKY, INC

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CERTIFICATE OF SERVICE

This certifies that Columbia's electronic filing is a true and accurate copy of the documents to be filed in paper medium with the exception of documents for which confidential treatment is sought; that the electronic filing has been transmitted to the Commission on April 20, 2018; 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.



Brooke E. Wancheck

Attorney for

COLUMBIA GAS OF KENTUCKY, INC.