

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the matter of:)
)
THE ELECTRONIC APPLICATION OF)
COLUMBIA GAS OF KENTUCKY, INC. FOR AN)
ADJUSTMENT OF RATES; APPROVAL OF)
DEPRECIATION STUDY; APPROVAL OF TARIFF) Case No. 2021-00183
REVISIONS; ISSUANCE OF A CERTIFICATE OF)
PUBLIC CONVENIENCE AND NECESSITY; AND)
OTHER RELIEF)
)

COLUMBIA GAS OF KENTUCKY, INC.'S
MOTION FOR CONFIDENTIAL TREATMENT

Comes now Columbia Gas of Kentucky, Inc., (“Columbia”), by and through counsel, pursuant to KRS 61.878, 807 KAR 5:001, Section 13 and other applicable law, and for its Motion requesting that the Kentucky Public Service Commission (“Commission”) afford confidential treatment to certain information filed in its Responses to Commission Staff’s Post Hearing Request for Information (“Staff’s Post Hearing Request”) and in an errata to the Attorney General’s First Request for Information (“AG’s First Request”) requested by the Commission in the above-captioned proceeding, respectfully states as follows:

1. Columbia's Application in the above-styled proceeding was deemed filed on June 2, 2021.

2. On November 3, 2021, an evidentiary hearing was conducted to review the Application ("the Hearing"). During the cross examination of Witness Susan Taylor, the Witness indicated that Columbia's response to the AG's First Request contained errors. The Commission requested that this error be corrected in an errata sheet.

3. Commission Staff issued Staff's Post Hearing Request on November 5, 2021.

4. As part of Columbia's responses to Staff's Post Hearing Request and in the errata to the AG's First Request, Columbia is filing a response to an information request containing budgeting information that is confidential, proprietary, and sensitive information regarding the inner workings and business decision making strategies of Columbia. This information is hereinafter referred to as the "Confidential Information."

5. Specifically, the Confidential Information is being provided in response to Staff's Post Hearing Request No. 10 and in Columbia's Response to the AG's First Request No. 139.

6. Request No. 10 from the Staff's Post Hearing Request states as follows:

For all efficiencies related to O&M identified for the test-year, state whether the efficiency relates to costs that are allocated to Columbia Kentucky by NiSource or whether the efficiency relates to costs originating with Columbia Kentucky. For each identified efficiency, also state whether Columbia Kentucky expects it to be ongoing.

7. Request No. 139 from the AG's First Request states as follows:

Refer to the Taylor Testimony, page 14, lines 8 – 16, discussing adjustments to operating company budgets. With respect to the NSCS budget costs applicable to Columbia Kentucky, provide the amount of adjustments contained in the forecast period for i) specific allocation of one-time items, ii) future planned work, and iii) strategic initiatives.

8. Columbia's response to both of the items subject to this motion contain the same sensitive information (shown in two different ways) regarding a Company developed and forward-looking initiative. If released publicly, the information contained would provide Columbia's competitors with proprietary information regarding this initiative without having to spend the time and expense to develop it on their own. The information is intellectual property of Columbia and is highly sensitive, proprietary and constitutes a trade secret under Kentucky law. In the errata sheet, Columbia is providing information that goes into much further detail than what was originally provided in Columbia's response to the AG's First Request. The amount of detail provided here distinguishes this errata sheet from the original response, which did not contain enough detail to warrant confidential treatment.

9. The Confidential Information that is the subject of this Motion provides further details related to information that was previously provided in an attachment to Columbia's Response to the Attorney General's Second Request for Information, No. 48, which was titled "CONFIDENTIAL KY PSC Case No. 2021-00183, AG 2-48, Attachment A." On August 25, 2021, Columbia filed a Motion for Confidential Treatment to protect

the same Confidential Information that is the subject of this Motion. The Commission has not yet ruled on the previous Motion.

10. The information included in the responses listed above is, to the extent possible, being tendered in redacted form in the public version of Columbia's filing and in an unredacted form filed under seal herewith.

11. The Confidential Information also contains sensitive information that describes the proprietary information regarding NiSource Next initiative developed and implemented by Columbia. As set forth above, this work product is the result of hundreds of hours of investment and based upon confidential and proprietary information, ideas and processes. The documents outlining NiSource Next would be extremely valuable to competitors and others in the market who would use the data to undercut Columbia's competitive position.

12. KRS 61.878(1)(c)(1) protects "[r]ecords confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records" *See* KRS 61.878(1)(c)(1). Furthermore, in the Commission's October 4, 2021 Order in this proceeding, the Commission granted confidential treatment to the items submitted in response to Commission Staff's Second Request Item 128d, which were presentations regarding NiSource Next. These presentations contained similar information that is being submitted in response to this

request. The Commission found that the information was exempt because it constituted “records that meet the criteria for confidential treatment and are exempted from public disclosure pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:001, Section 13. The material at issue falls within this exception because the Commission required Columbia Kentucky to disclose to the Commission records that if publicly disclosed would permit an unfair commercial advantage to Columbia Kentucky’s competitors.”

13. The Kentucky Open Records Act exempts the Confidential Information from public disclosure. *See* KRS 61.878(1). Moreover, the Kentucky Supreme Court has stated, “information concerning the inner workings of a corporation is ‘generally accepted as confidential or proprietary.’” *Hoy v. Kentucky Industrial Revitalization Authority*, 907 S.W.2d 766, 768 (Ky. 1995). The Confidential Information is commercially sensitive and proprietary and constitutes a “trade secret” under KRS 365.880(4). Furthermore, the Confidential Information is retained by Columbia on a “need-to-know” basis and is not publicly available. Because the Confidential Information is critical to Columbia’s effective execution of business decisions and strategy, especially the NiSource Next initiative, it satisfies both the statutory and common law standards for being afforded confidential treatment.

14. Columbia does not object to limited disclosure of the Confidential Information, pursuant to an acceptable confidentiality and nondisclosure agreement, to

the Attorney General or any other intervenors with a legitimate interest in reviewing the same for the sole purpose of participating in this case.

15. In accordance with the provisions of 807 KAR 5:001, Section 13(2), Columbia is filing one copy of the Confidential Information separately under seal. The filing of the Confidential Information is noted in the public version of Columbia's responses, which include redacted copies of such information.

16. In accordance with the provisions of 807 KAR 5:001, Section 13(3), Columbia respectfully requests that the Confidential Information in the responses be withheld from public disclosure for a period of ten years. This will assure that the Confidential Information – if disclosed after that time – will be less likely to include information that continues to be commercially sensitive so as to impair the interests of Columbia if publicly disclosed. Columbia reserves the right to seek an extension of the grant of confidential treatment if it is necessary to do so in the future.

WHEREFORE, on the basis of the foregoing, Columbia respectfully requests the Commission to enter an Order granting this Motion for Confidential Treatment and to so afford such protection from public disclosure to the unredacted copies of Confidential Information, which is filed herewith under seal, for the periods set forth herein.

This 19th day of November, 2021.

Respectfully submitted,

/s/ Joseph M. Clark

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CERTIFICATE OF SERVICE

This is to certify that the electronic filing has been transmitted to the Commission on November 19, 2021 and that there are currently no parties in this proceeding that the Commission has excused from participation by electronic means. Pursuant to the Commission's July 22, 2021 Order in Case No. 2020-00085, no paper copies of this filing will be made.

/s/ Joseph M. Clark _____
Counsel for Columbia Gas of Kentucky, Inc.