

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)
REVISIONS; ISSUANCE OF A CERTIFICATE OF)
PUBLIC CONVENIENCE AND NECESSITY; AND)
OTHER RELIEF)
)

Case No. 2021-00183

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 First Request for Information ("Staff's First Request") 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. Commission Staff issued Staff's First Request for Information on May 6, 2021. As part of Columbia's responses to Staff's First Request, Columbia is filing responses to information requests concerning its early retirement offerings, detailed compensation information and its cost of service study. Collectively this information and these documents are hereinafter referred to as the "Confidential Information."

3. Specifically, the Confidential Information is being provided in response to Staff's First Request Nos. 34, 39, 46a and 54.

4. Request No. 34 from the May 6th request for information states as follows:

Provide detailed descriptions of all early retirement plans or other staff reduction programs the utility has offered or intends to offer its employees during either the base period or the forecasted test period. Include all cost-benefit analyses associated with these programs.

5. In the response to Request No. 34, Columbia is providing information regarding the early retirement information of two employees of Columbia who elected to retire early under a NiSource early retirement plan in 2020 and two documents describing the early retirement offering. Confidential treatment is sought for the information concerning the two employees who elected to take advantage of the early retirement offering and the two documents that described this offering.

6. Request No. 39 of the May 6th request for information states as follows:

Provide, in the format provided in Schedule K, the following information for the utility's compensation and benefits, for the three most recent calendar years and the base period. Provide the information individually for each corporate

officer and by category for Directors, Managers, Supervisors, Exempt, Non-Exempt, Union, and Non-Union Hourly. Provide the amounts, in gross dollars, separately for total company operations and jurisdictional operations.

- a. Regular salary or wages.
- b. Overtime pay.
- c. Excess vacation payout.
- d. Standby/Dispatch pay.
- e. Bonus and incentive pay.
- f. Any other forms of incentives, including stock options or forms of deferred compensation (specify).
- g. Other amounts paid and reported on the employees' W-2 (specify).
- h. Healthcare benefit cost.
 - (1) Amount paid by the utility.
 - (2) Amount paid by the employee.
- i. Dental benefits cost.
 - (1) Amount paid by the utility.
 - (2) Amount paid by the employee.
- j. Vision benefits cost.
 - (1) Amount paid by the utility.
 - (2) Amount paid by the employee.
- k. Life insurance cost.
 - (1) Amount paid by the utility.
 - (2) Amount paid by the employee.
- l. Accidental death and disability benefits.
 - (1) Amount paid by the utility.
 - (2) Amount paid by the employee.
- m. Defined Benefit Retirement cost.
 - (1) Amount paid by the utility.
 - (2) Amount paid by the employee.
- n. Defined Contribution – 401(k) or similar plan cost. Provide the amount paid by the utility.
- o. Cost of any other benefit available to an employee, including fringe benefits (specify).

7. In the response to Request No. 39, Columbia is providing a spreadsheet that includes, among other things, detailed compensation figures for the executive officers of

Columbia and allocations for NiSource's senior managers who have portions of their compensation allocated to Columbia. Columbia is not seeking confidential treatment for the information regarding its executive officers. However, the information concerning allocations from NiSource's officers and senior managers should be kept confidential and that is the portion of the confidential attachment for which confidentiality is requested.

8. Request No. 46a of the May 6th request for information states as follows:

State whether the utility, through an outside consultant or otherwise, performed a study or survey to compare its wages, salaries, benefits, and other compensation to those of other utilities in the region, or to other local or regional enterprises.

a. If comparisons were performed, provide the results of the study or survey, including all workpapers and discuss the results of such comparisons. State whether any adjustments to wages, salaries, benefits, and other compensation in the rate application are consistent with the results of such comparisons.

9. In the response to Request No. 46a, Columbia is providing an Excel file that includes several tabs relating to employee wage data. Within the spreadsheet, a tab entitled "Raw Data" includes detailed compensation information for over 2,000 individuals, most of whom who are not actual employees of Columbia. Due to the pervasive nature of the compensation information in this tab and its integral relation to the rest of the spreadsheet, it is necessary for the entire Excel file to be deemed confidential.

10. Request No. 54 of the May 6th request for information states as follows:

To the extent not already provided, provide a copy of each cost of service study, billing analysis, and all exhibits and schedules that were prepared in the utility's rate application in Excel spreadsheet format with all formulas, columns, and rows unprotected and accessible.

11. In response to Request No. 54, Columbia is providing an Excel file that includes the workpapers used to develop its cost of service model. The formulas and inputs for this file are all intact. The cost of service study represents the culmination of hundreds of hours of labor to develop an analytical model that is unique to Columbia and based upon information that is confidential and proprietary. The entirety of the Excel file is included within the scope of this request for confidential treatment.

12. 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.

13. Compensation and early retirement information is personal in nature and if disclosed could violate Columbia's employees' and retirees' reasonable expectations of personal privacy with regard to compensation.¹ While such information is useful to management in assuring that Columbia's compensation is properly oriented and in-line with the market, the data would be extremely valuable to competitors in the labor market

¹ See *Cape Pub'ns, Inc. v. Univ. of Louisville Found., Inc.*, 260 S.W.3d 818, 822 (Ky. 2008) (compensation information is private in nature); *Zink v. Department of Workers' Claims, Labor Cabinet*, 902 S.W.2d 825, 828 (Ky. Ct. App. 1994) ("information such as . . . wage rate . . . [is] generally accepted by society as [a] detail in which an individual has at least some expectation of privacy."); see also KRS 68.878(1)(a).

who could use the information to poach Columbia's workforce. If disclosed, the compensation data would allow others to know with precision how to approach Columbia's skilled workforce and target them for recruitment to other firms. This would, of course, lead to the diminution of Columbia's skilled workforce and the loss of millions of dollars in investment in human capital. The Commission has previously recognized that wage and compensation studies are confidential under the Kentucky Open Records Act.²

14. The Confidential Information also contains sensitive information that describes the proprietary cost of service model developed and maintained by Columbia. As set forth above, this work product is the result of hundreds of hours of investment and based upon confidential and proprietary inputs, formulas and assumptions. The cost of service workpapers would be extremely valuable to competitors and others in the market who would use the data to undercut Columbia's competitive position.

15. 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

² *See In the Matter of the Proposed Adjustment of the Wholesale Water Service Rates of the City of Augusta*, Order, Case No. 2015-00039 (Ky. P.S.C. Sept. 22, 2015).

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, particularly in regard to its human resources management responsibilities and the allocation of its costs of service to various customer classes, it satisfies both the statutory and common law standards for being afforded confidential treatment.

16. 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. However, as it is unknown who may or may not eventually intervene in the case, Columbia reserves the right to object to sharing the Confidential Information with any party that may have a mixed-motive for accessing the Confidential Information, that may be a competitor of Columbia in any market, who may have a commercial conflict of interest or for any other reason.

17. 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.

18. In accordance with the provisions of 807 KAR 5:001, Section 13(3), Columbia respectfully requests that the Confidential Information in Responses 34, 39 and 46a 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. For the Confidential Information in Response 54, Columbia respectfully requests that it be withheld on an indefinite basis as it describes the means and methods used to determine Columbia’s allocated cost of service. This information is unlikely to grow stale and therefore requires confidentiality on a much-longer term basis. 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 11th day of June, 2021.

Respectfully submitted,

David S. Samford

Mark David Goss

David S. Samford

L. Allyson Honaker

GOSS SAMFORD, PLLC

2365 Harrodsburg Road, Suite B-325

Lexington, KY 40504

(859) 368-7740

mdgoss@gosssamfordlaw.com

david@gosssamfordlaw.com

allyson@gosssamfordlaw.com

and

Joseph M. Clark

Assistant General Counsel

290 W. Nationwide Blvd.

Columbus, Ohio 43215

(614) 813-8685

josephclark@nisource.com

Counsel for Columbia Gas of Kentucky, Inc.

CERTIFICATE OF SERVICE

In accordance with 807 KAR 5:001, Section 8, this is to certify that the electronically filed document is a true and accurate copy of the same document being filed in paper medium; that the electronic filing has been transmitted to the Commission on June 11, 2021; that there are currently no parties in this proceeding that the Commission has excused from participation by electronic means; and that the original versions of the documents transmitted electronically will be filed with the Commission in paper medium within thirty days of the state of emergency being lifted.

David S. Sanford

Counsel for Columbia Gas of Kentucky, Inc.