

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 Third Request for Information (“Staff’s Third Request”) and the Attorney General’s Second Request for Information (“AG’s Second Request”) and the Attorney General’s Third Request for Information (“AG’s Third 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 Third Request on August 10, 2021.

3. The Attorney General issued AG's Second Request on August 11, 2021 and AG's Third Request (the supplemental question for AG1-197) on August 13, 2021.

4. As part of Columbia's responses to Staff's Third Request and AG's Second Request, Columbia is filing responses to information requests concerning sensitive contactor bidding information, customer/potential customer information, future benefit information obtained from a paid subscription and copyrighted, critical infrastructure budgeting, and forecasting information along with other confidential, and proprietary and sensitive information regarding the inner workings and business decision making strategies of Columbia. 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 Third Request Nos. 4, 25, and 28; AG's Second Request Nos. 34, 48, and 60; and the AG's Third, Supplemental Request No. 1.

4. Request No. 4 from the Staff's Third Request states as follows:

Refer Roy Testimony, page 56, concerning the benefit of modifying Line DE for In-line Inspection (ILI)

a. Provide the number of miles and locations for all high consequence area and medium consequence area segments identified on the Line DE ILI project route.

- b. Provide a copy of the technical analysis to show the evaluation of all options considered by Columbia Kentucky to support the use of ILI technology to meet the requirements of 49 C.F.R. 192.937(c) for the Line DE ILI project.
- c. Provide a copy of all studies indicating threat using ILI in lieu of other assessment methods available to meet the requirements of 49 C.F.R. 192.937(c) is most cost-effective.

5. In the response to Request No. 4, Columbia is providing KY PSC Case No. 2021-00183, Staff 3-04, Attachment B which is map indicating the Line DE ILI route. This is critical infrastructure information and should not be provided publicly.

6. Request No. 25 from Staff's Third Request states as follows:

Identify all parties to which Columbia Kentucky sent a request for a bid or a request for proposal to complete the proposed large in-line inspection project for Line DE; provide a copy of any such request for a bid or request for proposal; and provide any responses to such a request for a bid or proposal.

7. In the response to Request No. 25, Columbia is providing KY PSC Case No. 2021-00183, Staff 3-25, Attachments A, B set 1, and B set 2 which contains sensitive and personal information regarding contractors who placed bids on the large in-line inspection project for Line DE. It also includes the proposal along with the confidential bidding information that was provided by each contractor. This is sensitive information that could harm both Columbia and the contractors if this sensitive information was released. This information is only provided on a "need to know basis" and is not widely

disseminated within the Company and only provided to a select few people that need access for business reasons.

8. Request No. 28 from Staff's Third Request states as follows:

Refer to the Application, Tab 36. Provide explanation for how Columbia Kentucky projects its capital expenditure and include any supporting workpapers.

9. In the response to Request No. 28, Columbia is providing KY PSC Case No. 2021-00183, Staff 3-28, Attachment A which is an Excel spreadsheet containing sensitive future financial information, names of customers/potential customers, and other sensitive information such as load expectation for those entities. This attachment cannot be redacted and is being provided in Excel format so that cells and formulas stay intact. Therefore, Columbia is requesting confidential protection for the entire spreadsheet.

10. Request No. 34 from AG's Second Request states as follows:

Refer to the Cole Testimony, pages 13 and 14.

- a. Provide the initial budget documents submitted for management approval related to the field mobility initiative. These documents should provide the rationale for approving this project.
- b. Provide the monthly costs to date in developing the project.
- c. Identify the costs of this initiative included in the current filing.
- d. Identify the expected cost savings resulting from the project, including the anticipated date such savings will occur and how they were incorporated into this filing.

11. In the response to Request No. 34, Columbia is providing KY PSC Case No. 2021-00183, AG 3-34, Attachments A and B which contains sensitive information regarding a unique Company developed and forward-looking initiative. This 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 sensitive, proprietary, and constitutes a trade secret under Kentucky law. This information constitutes trade secret under Kentucky law.

12. Request No. 48 of AG's Second Request states as follows:

Refer to Columbia Kentucky's response to the Attorney General's First Request, Item 28. Concerning this response provide the following:

- a. Based upon the estimated savings identified for 2021 and 2022, provide the estimated savings in allocated costs to Columbia Kentucky for these periods, along with an explanation of how such savings were computed. This response should be supplied in Excel format with cell references intact.
- b. Indicate whether such cost savings were incorporated into the forecast period budget costs allocated to Columbia Kentucky and if so, provide underlying support for this statement.

13. In the response to Request No. 48, Columbia is providing sensitive customer information regarding information for Columbia's internally developed initiative. This information is not widely disseminated within the Company and is only provided to the select few people that need access for business purposes. This

information is highly sensitive information regarding a Company developed, forward-looking initiative. It includes information regarding sensitive business options and decisions that could be prejudicial to Columbia if this information was publicly available. It could give competitors an advantage if they were able to gain access to the work and ideas developed by Columbia. As the intellectual property of Columbia, this information is highly sensitive, proprietary and constitutes a trade secret under Kentucky law.

14. Request No. 60 of AG's Second Request states as follows:

Refer to Columbia Kentucky's response to the Attorney General's First Request, Item 221. Provide all supporting workpapers and assumptions underlying Adjustment 2 related to forecasted employee benefit costs as contained in Schedule D-2.2 within the Confidential response to Staff request 1-54. This response should include the assumptions embedded within each forecasted employee benefit costs. This response should be supplied in Excel format with cell references intact.

15. In response to Request No 60, Columbia is providing KY PSC Case No. 2021-00183, AG 2-60, Attachment A which contains information regarding forecasted employee benefit costs. This information is provided to Columbia pursuant to a paid subscription and is only available to paid subscribers and could be competitively harmful to Columbia and the provider if released publicly.

16. Request AG 3-1 states as follows:

a. For each employee identified in this spreadsheet provide a breakdown of the Other Allowances compensation amount into their respective cost elements (annual incentive payout, vested stock, one-time payments, travel, financial planning, etc).

- b. Reconcile the adjustments identified within G-2 to adjustments identified in Schedule D-1.
- c. Reconcile the total salary of each listed position with the associated F.I.C.A. taxes allocated to the Company given the social security tax of 6.2% is capped at the first \$142,800 of compensation.

17. In response to AG 3-1, Columbia is providing KY PSC Case No. 2021-00183, AG 3-1, Attachment A. Columbia's confidential response to AG 3-1 provides information related to the confidential information in Columbia's confidential supplemental response to AG 1-197, which Columbia also filed under seal and asked for protective treatment. Like the supplemental response to AG 1-197, Attachment A to AG 3-1 contains forecasted compensation information. This information is not publicly available at this time and is highly sensitive and personal information.

18. 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.

19. Compensation and benefit information is personal in nature and if disclosed could violate Columbia's employees' 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

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).

market, the data would be extremely valuable to competitors in the labor market 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 potential loss of millions of dollars in investment in human capital.

20. 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.

21. KRS 61.878(1)(m)(1) protects "[p]ublic records the disclosure of which would have a reasonable likelihood of threatening public safety by exposing a vulnerability in preventing protecting against, mitigating, or responding to a terrorist act....," and specifically exempts from public disclosure certain records pertaining to public utility critical systems. *See* KRS 61.878(1)(m)(1)(f).

22. 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.

23. 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.

24. 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.

25. 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 except for the information

provided in Response 128. 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 128, Columbia respectfully requests that it be withheld on an indefinite basis as it describes the means and methods used to develop and implement Columbia’s NiSource Next initiative. 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 25th day of August, 2021.

Respectfully submitted,



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CERTIFICATE OF SERVICE

This is to certify that the electronic filing has been transmitted to the Commission on August 25, 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.



Counsel for Columbia Gas of Kentucky, Inc.