

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF DELTA)	
NATURAL GAS COMPANY, INC. FOR AN)	
ADJUSTMENT OF ITS RATES AND A)	
CERTIFICATE OF PUBLIC)	CASE NO. 2021-00185
CONVENIENCE AND NECESSITY)	

PETITION OF DELTA NATURAL GAS COMPANY, INC.
FOR CONFIDENTIAL PROTECTION

Delta Natural Gas Company, Inc. (“Delta” or the “Company”) hereby petitions the Kentucky Public Service Commission (“Commission”) pursuant to 807 KAR 5:001, Section 13 and KRS 61.878(1) to grant confidential protection for the items described herein, which Delta seeks to provide in response to Item Nos. 16, 37, 38, 39, and 54 of the Commission Staff’s First Request for Information.

Confidential Information Protected from Disclosure by Federal or State Law (KRS 61.878(1)(k) and (l))

1. Item No. 16 asks Delta to provide federal and state income tax returns for the most recent tax year, including supporting schedules. Tax related documents and information merit confidential protection. KRS 61.878(1)(k) exempts from disclosure “[a]ll public records or information the disclosure of which is prohibited by federal law or regulation.”¹ Under 26 U.S.C. § 6103(a), state officials are prohibited from publicly disclosing any federal income tax return or its contents. Therefore, federal income tax returns and their contents fall within the KRS 61.878(1)(k) exemption from public disclosure. The Kentucky Open Records Act also exempts from disclosure “[p]ublic records or information the disclosure of which is prohibited or restricted

¹ KRS 61.878(1)(k).

or otherwise made confidential by enactment of the General Assembly.”² KRS 131.190(1) requires all income tax information filed with the Kentucky Department of Revenue be treated in a confidential manner. Thus, state income tax returns are also confidential in nature and protected from disclosure by the Kentucky Open Records Act. In Delta’s last rate case, the Commission granted confidential protection to the Company’s federal and state income tax returns and supporting schedules.³

Confidential Personal Information – Compensation Information (KRS 61.878(1)(a))

2. The Kentucky Open Records Act exempts from disclosure certain private and personal information.⁴ 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.”⁵ The Kentucky Supreme Court has characterized “one’s income” as “intimate” information of a private nature.⁶

3. Item No. 37 requests the amount, percentage increase, and effective dates for general wage increases and merit increases for each employee group, including corporate officers. In response, Delta is providing a document with merit compensation for its President. Item No. 38 requests a schedule for the base period and 3 most recent calendar years showing, among other things, the percentage of annual increase, effective date of each increase, and salaries for the persons replaced for each employee elected to executive officer status since the test year in the utility’s most recent rate case. In response, Delta is providing a spreadsheet with the requested information. Item No. 39 requests detailed compensation and benefits information, such as regular

² KRS 61.878(1)(l).

³ *Application of Delta Natural Gas Company, Inc. for an Adjustment of Rates*, Case No. 2010-00116, PSC Letter dated June 16, 2010.

⁴ KRS 61.878(1)(a).

⁵ *Zink v. Department of Workers’ Claims, Labor Cabinet*, 902 S.W.2d 825, 828 (Ky. App. 1994).

⁶ *Cape Pub’ns, Inc. v. Univ. of Louisville Found., Inc.*, 260 S.W.3d 818, 822 (Ky. 2008).

salary or wages, overtime pay, bonus and incentive pay, and other incentives, for each corporate officer and for Directors, Managers, Supervisors, Exempt, Non-Exempt, Union, and Non-Union Hourly by category. In response, Delta is providing a spreadsheet with this information. Item No. 54 requests 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 fully accessible. In response, Delta is providing Excel spreadsheets that were prepared for Tab 60 of its Application and for which confidential protection was also sought in its May 28, 2021 Petition for Confidential Protection. These spreadsheets contain executive compensation.

4. Disclosure of this information would invade the privacy rights of the individual named and provide insight into the Company's base salary budget calculations. This personal and private information is not in the public realm. Delta's executive has a reasonable expectation that his compensation is personal and private information. Disclosure would constitute an unwarranted invasion of his personal privacy in contravention of KRS 61.878(1)(a).

5. Disclosure of the compensation information of Delta's president – a private citizen who is not government officer or employee – would not further the Act's purpose, which is to make government and its actions open to public scrutiny. Discussing the rationale for the Act, the Kentucky Court of Appeals has stated:

[T]he public's "right to know" under the Open Records Act is premised upon the public's right to expect *its agencies* properly to execute *their statutory functions*. In general, inspection of records may reveal whether *the public servants* are indeed serving the public, and the policy of disclosure provides impetus for *an agency* steadfastly to pursue the public good. At its most basic level, the purpose of disclosure focuses on the citizens' right to be informed as to *what their government is doing*.⁷

⁷ 902 S.W.2d at 828-29 (Ky. App. 1994) (bold italics added).

Relying upon this precedent, the Kentucky Office of the Attorney General (“AG”) has opined that “[i]f disclosure of the requested record would not advance the underlying purpose of the Open Records Act, namely exposing agency action to public scrutiny, then countervailing interests, such as privacy, must prevail.”⁸

6. The Commission has recognized a right to utility employee privacy. In an order approving a petition for confidential treatment in Case No. 89-374, the Commission found that salary information “should be available for customers to determine whether those salaries are reasonable,” but “the right of each individual employee within a job classification to protect such information as private outweighs the public interest in the information.”⁹ In the same order, the Commission concluded, “Thus, the salary paid to each individual within a classification is entitled to protection from public disclosure.”¹⁰

7. The Commission also has previously denied confidential protection to executive officer information and held that because executive officer “salaries are included as an expense in base rate calculations” and are “subject to public dissemination of regulatory filings,” the information should not be entitled to confidential protection.¹¹ Such reasoning, however, is not

⁸ *James L. Thomerson/Fayette County Schools*, KY OAG 96-ORD-232 (Nov. 1, 1996) (citing *Zink v. Department of Workers’ Claims, Labor Cabinet*, 902 S.W.2d 825 (Ky. App. 1994)) (emphasis added).

⁹ *Application of Louisville Gas and Electric Company for an Order Approving an Agreement and Plan of Exchange and to Carry Out Certain Transactions in Connection Therewith*, Case No. 89-374, Order at 2 (Ky. PSC Apr. 30, 1997).

¹⁰ *Id.*

¹¹ *Application of Kentucky Utilities Company for an Adjustment of its Electric Rates*, Case No. 2012-00222, Order Regarding Request for Confidential Treatment at 2 (Ky. PSC Sept. 11, 2013). See also *Application of Kentucky-American Water Company for an Adjustment of Rates*, Case No. 2015-00418, Order at 2 (Ky. PSC Aug. 31, 2016) (finding “that KAWC’s executive salaries are an expense in the rate base calculations” and holding that “such salary compensation is not entitled to confidential protection”); *Application of Kentucky Utilities Company for an Adjustment of its Electric Rates*, Case No. 2014-00371, Order Regarding Request for Confidential Treatment at 1-2 (Ky. PSC Jan. 20, 2016) (denying confidential protection for executive salary information for the same reasons as Case No. 2012-00222 and noting that “[m]ovant has not offered any argument to depart from this precedent”); *An Adjustment of Gas and Electric Rates of Louisville Gas and Electric Company*, Case No. 90-158, Order (Ky. PSC Sept. 7, 1990) (“Since LG&E seeks to recover through its rate structure the compensation in salaries paid to its executive employees, LG&E customers have a right to know whether the salaries and compensation paid to such employees are reasonable.”). See also Case No. 2018-00294, Order (Ky. PSC Oct. 8, 2019); Case No. 2018-00295, Order (Ky. PSC Oct. 8, 2019).

applicable in the current request because the current salary or benefit information for Delta's executive has not been publicly disclosed. Delta's request is also supported by a recent Commission precedent regarding salaries disclosed in regulatory filings.¹² Because Delta requests confidential protection only for the salary and benefits not otherwise publicly disclosed, granting confidential protection to this limited information accords with KRS 61.878(1)(a).

Confidential Personal Information – Customer-Identifying Information (KRS 61.878(1)(a))

8. The Kentucky Open Records Act exempts from disclosure certain private and personal information.¹³ Item No. 54 requests 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 fully accessible. In response, Delta is providing Excel spreadsheets that were prepared for Tabs 55 and 66 of its Application. These spreadsheets contain customer-identifying information. The identification of specific customers is personal information that should not be in the public domain. Because information contained in the Excel spreadsheets that are responsive to Item No. 54 identify specific customers, Delta requests through this petition that the Commission protect the confidential portions of the document from public disclosure. Delta requested confidential protection for this same information submitted in response to Tabs 55 and 66 in its May 28, 2021 Petition for Confidential Protection.

Confidential or Proprietary Commercial Information (KRS 61.878(1)(c)(1))

¹² *Electronic Application of Kentucky Power Company for (1) A General Adjustment of Its Rates for Electric Service; (2) An Order Approving Its 2017 Environmental Compliance Plan; (3) An Order Approving Its Tariffs and Riders; (4) An Order Approving Accounting Practices to Establish Regulatory Assets and Liabilities; and (5) An Order Granting All Other Required Approvals and Relief*, Case No. 2017-00179, Order (Ky. PSC Aug. 23, 2017)(approving Kentucky Power Company's request to treat confidentially executive officer compensation information until the information is publicly disclosed in SEC filings).

¹³ KRS 61.878(1)(a).

9. The Kentucky Open Records Act exempts from disclosure information “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.”¹⁴ In order to comply with Item No. 54, Delta is providing the workpapers used to prepare Exhibit JM-2 in the Excel Spreadsheet labelled “JM-2 Nicholasville 8-inch Transmission Line Estimate.xls.” This spreadsheet requires confidential treatment because it contains information that, if disclosed, would damage Delta’s competitive position and business interests. This spreadsheet contains detailed cost component estimates for the Nicholasville Transmission 2nd Feed. If the Commission grants public access to the information contained in this spreadsheet, potential bidders on the Nicholasville 8-inch Transmission Line Project could manipulate the bid solicitation process to the detriment of Delta and its ratepayers by tailoring bids that comport with Delta’s pricing estimates rather than reflecting actual market conditions.

10. Similarly, in response to Item No. 54, Delta is providing the worksheets used to prepare Tab 29 of the Filing Requirements, which relate to the Company’s mix of gas supply. These worksheets contain detailed projections of pipeline purchases broken down by location. The public disclosure of this information would provide the Company’s competitors a commercial advantage and would injure Delta’s ability to negotiate future gas supply contracts at advantageous prices, causing Delta and its customers to pay a higher price for gas than they would have otherwise.

¹⁴ KRS 61.878(1)(c)(1).

WHEREFORE, Delta Natural Gas Company, Inc. respectfully requests the Kentucky Public Service Commission grant confidential protection for the information described herein.

Dated: June 11, 2021

Respectfully submitted,



Monica H. Braun
Mary Ellen Wimberly
Katelyn L. Brown
monica.braun@skofirm.com
maryellen.wimberly@skofirm.com
katelyn.brown@skofirm.com
Stoll Keenon Ogden PLLC
300 West Vine Street
Suite 2100
Lexington, KY 40507
Telephone: (859) 231-3000
Facsimile: (859) 259-3503
Counsel for Delta Natural Gas Company,
Inc.

CERTIFICATE OF COMPLIANCE

This is to certify that this June 11, 2021 electronic filing is a true and accurate copy of the same documents being filed in paper medium; that the electronic filing has been transmitted to the Commission 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 copy of this filing in paper medium will be filed by hand-delivery with the Commission in accordance with the Commission's emergency procedures.


