

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

**In the Matter of:**

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

**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. 12 and 23 of the Commission Staff’s Third Request for Information and Item Nos. 9(h), 22, 23(b), 33(c), 43(b), and 45(a) of the Supplemental Data Requests of the Attorney General (“AG”).

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

1. The Kentucky Open Records Act exempts from disclosure certain private and personal information.<sup>1</sup> 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.”<sup>2</sup> The Kentucky Supreme Court has characterized “one’s income” as “intimate” information of a private nature.<sup>3</sup>

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<sup>1</sup> KRS 61.878(1)(a).

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

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

2. AG Item No. 22 requests updated headcount reports and annual payroll expense for positions hired in 2021. In response, Delta is providing an attachment that contains payroll costs by position and the hire month. AG Item No. 45(a) requests information about Delta’s process for evaluating employee compensation. In response to this request, Delta is providing an attachment containing analyses of compensation information, including base salary and incentive pay information.

3. Disclosure of this information would invade the privacy rights of the individuals named and provide insight into the Company’s salary calculations. This personal and private information is not in the public realm. Delta’s employees have a reasonable expectation that their compensation is personal and private information. Disclosure would constitute an unwarranted invasion of their personal privacy in contravention of KRS 61.878(1)(a).

4. Disclosure of the compensation information of Delta’s employees –private citizens who are not government officers or employees – 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*.<sup>4</sup>

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

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<sup>4</sup> 902 S.W.2d at 828-29 (Ky. App. 1994) (bold italics added).

Records Act, namely exposing agency action to public scrutiny, then countervailing interests, such as privacy, must prevail.”<sup>5</sup>

5. 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.”<sup>6</sup> In the same order, the Commission concluded, “Thus, the salary paid to each individual within a classification is entitled to protection from public disclosure.”<sup>7</sup>

6. 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.<sup>8</sup> Such reasoning, however, is not applicable in the current request because the current salary or benefit information for Delta’s

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<sup>5</sup> *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).

<sup>6</sup> *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).

<sup>7</sup> *Id.*

<sup>8</sup> *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).

executive has not been publicly disclosed. Delta's request is also supported by a recent Commission precedent regarding salaries disclosed in regulatory filings.<sup>9</sup>

7. Disclosure of this information would invade the privacy rights of the individuals named and provide insight into the Company's salary calculation. This personal and private information is not in the public realm. Delta's employees have a reasonable expectation that their compensation is personal and private information. Disclosure would constitute an unwarranted invasion of their personal privacy in contravention of KRS 61.878(1)(a).

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

8. 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."<sup>10</sup>

9. Commission Staff Item No. 12 requests Delta explain how close each industrial and transportation customer "is to the nearest competing pipeline in order to bypass Delta." In response, Delta identifies customers which represent potential by-pass threats. Delta is requesting confidential protection for this information because disclosure would identify customers who could potentially bypass Delta's system. Such customers may then analyze bypass, which would be to the Company's commercial disadvantage.

10. Commission Staff Item No. 23 requests Delta's succession planning document. Delta is requesting confidential protection for this document because it represents confidential

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<sup>9</sup> *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).

<sup>10</sup> KRS 61.878(1)(c)(1).

internal strategy. Disclosure would disadvantage the Company and reveal confidential employee information.

11. AG Item No. 9(h) requests copies of contracts with outside construction vendors. In response, Delta is providing contracts with outside vendors, invoices, and purchase orders. The public disclosure of this information would provide the Company's competitors a commercial advantage and would injure Delta's ability to negotiate future contracts at advantageous prices, causing Delta and its customers to pay a higher price for gas than they would have otherwise. Delta is requesting confidential treatment for these documents.

12. AG Item No. 23 requests information about Delta's non-recurring Customer Relationship and Billing System Conversion costs. In the narrative response to subpart (b), Delta describes a portion of its arrangement with a vendor that is being actively negotiated. Disclosure would disadvantage Delta's negotiating position.

13. AG Item No. 43(b) requests Delta explain how its short-term debt is determined. In response, Delta is providing an attachment that shows the calculation of the short-term debt cost rate. Delta is requesting confidential protection for this calculation as the inputs represent privately negotiated terms. Disclosure would be the Company's disadvantage as it negotiates short-term debt in the future. The Commission has held that information concerning future interest rate expense and associated fees is confidential.<sup>11</sup>

14. AG Item No. 33(c) references Delta's response to AG 1-41(a) and asks Delta to "[e]xplain or reconcile the differences in headcount or explain if all positions were not reviewed." In response, Delta is providing an attachment which includes each survey considered in

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<sup>11</sup> *Application of East Kentucky Power Cooperative, Inc. for Approval of the Authority to Issue up to \$300,000,000 of Secured Private Placement Debt and/or Secured Tax Exempt Bonds and for the Use of Interest Rate Management Instruments*, Order, Case No. 2018-000115 (Ky. PSC Dec. 10, 2018).

establishing compensation. Similarly, in response to AG Item No. 45(a), Delta is providing an attachment containing analyses of compensation information, including base salary and incentive pay information. Disclosure of these attachments would allow Delta's competitors to know how the Company compensates its employees, to the Company's disadvantage. Furthermore, disclosing this compensation information would invade the privacy rights of certain individuals. Individuals are not named in the report, but job titles and the ability to research national general industry compensation data would allow viewers to deduce the wage rate of individuals. Thus, Delta requests confidential protection for the entire documents provided as attachments in response to AG Item Nos. 33(c) and 45(a).

15. Delta respectfully requests the Commission grant confidential protection for the information described herein for at least five years.

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

Dated: September 8, 2021

Respectfully submitted,



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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**

In accordance with the Commission's Order of July 22, 2021 in Case No. 2020-00085 (Electronic Emergency Docket Related to the Novel Coronavirus COVID-19), this is to certify that the electronic filing has been transmitted to the Commission on September 8, 2021; and that there are currently no parties in this proceeding that the Commission has excused from participation by electronic means.

*Marcia H. Braun*

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