

**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 a portion of the Rebuttal Testimony of Jonathan Morphew, Exhibits JM-1, JM-2, and JM-3 of the Rebuttal Testimony of Jonathan Morphew, and Exhibit JB-4 of the Rebuttal Testimony of John B. Brown.

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

1. 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>1</sup>

2. The Rebuttal Testimony of Jonathan Morphew contains detailed cost estimate information, including the amount Delta anticipates spending on right of way acquisition, for the Nicholasville project. Delta is also providing the bids Delta received for the engineering work for the Nicholasville project as Exhibits JM-1, JM-2, and JM-3.

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

3. The public disclosure of the detailed cost estimates and bids may disadvantage Delta or its bidders. Disclosure of Delta's anticipated spend on right of way acquisition could disadvantage Delta in negotiations with landowners. Disclosure of the bids and detailed cost estimates derived from the winning bid may disadvantage Delta's bidders and may injure Delta's ability to receive future bids at advantageous prices. Delta is requesting confidential treatment for Exhibits JM-1, JM-2, and JM-3, and portions of the Rebuttal Testimony of Jonathan Morpew.

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

4. The Kentucky Open Records Act exempts from disclosure certain private and personal information.<sup>2</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>3</sup> The Kentucky Supreme Court has characterized “one’s income” as “intimate” information of a private nature.<sup>4</sup>

5. In Exhibit JB-4 of the Rebuttal Testimony of John B. Brown, Delta provides a detailed calculation of 2022 labor expense, which contains a list of salaries by position. 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).

6. 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

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<sup>2</sup> KRS 61.878(1)(a).

<sup>3</sup> *Zink v. Department of Workers' Claims, Labor Cabinet*, 902 S.W.2d 825, 828 (Ky. App. 1994).

<sup>4</sup> *Cape Pub'ns, Inc. v. Univ. of Louisville Found., Inc.*, 260 S.W.3d 818, 822 (Ky. 2008).

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>5</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 Records Act, namely exposing agency action to public scrutiny, then countervailing interests, such as privacy, must prevail.”<sup>6</sup>

7. 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>7</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>8</sup>

8. 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

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<sup>5</sup> 902 S.W.2d at 828-29 (Ky. App. 1994) (bold italics added).

<sup>6</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>7</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>8</sup> *Id.*

base rate calculations” and are “subject to public dissemination of regulatory filings,” the information should not be entitled to confidential protection.<sup>9</sup> Such reasoning, however, is not 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.<sup>10</sup>

9. 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).

#### **The Confidential Information Subject to this Petition**

10. The information for which Delta is seeking confidential treatment pursuant to KRS 61.878 is not known outside of the utility, is not disseminated within Delta except to those employees with a legitimate business need to know and act upon the information, and is generally recognized as confidential and proprietary information within the utility industry.

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<sup>9</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).

<sup>10</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).

11. Delta will disclose the confidential information (pursuant to a confidentiality agreement) to intervenors and others with a legitimate interest in this information and as required by the Commission.

12. If the Commission disagrees with this request for confidential protection, however, it must hold an evidentiary hearing (a) to protect Delta's due process rights and (b) to supply the Commission with a complete record to enable it to reach a decision with regard to this matter.<sup>11</sup>

13. In compliance with 807 KAR 5:001, Section 13(2)(e), Delta is filing with the Commission one copy that identifies the information for which confidential protection is sought and one copy with the same information obscured. Pursuant to 807 KAR 5:001, Section 13(2)(a)(3)(b), confidential treatment is sought for the entirety of Exhibits JM-1, JM-2, JM-3, and JB-4. For these documents, written notification that the entire document is confidential has been submitted with the document in lieu of highlighting in accordance with 807 KAR 5:001, Section 13(2)(b).

14. 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.

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<sup>11</sup> *Utility Regulatory Commission v. Kentucky Water Service Company, Inc.*, 642 S.W.2d 591, 592-94 (Ky. App. 1982).

Dated: November 5, 2021

Respectfully submitted,

*Monica H. Braun*

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Monica H. Braun  
Mary Ellen Wimberly  
monica.braun@skofirm.com  
maryellen.wimberly@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 November 5, 2021; and that there are currently no parties in this proceeding that the Commission has excused from participation by electronic means.

*Monica H. Braun*

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