

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”), 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 to comply with 807 KAR 5:001, Section 15(2)(d)(1), 807 KAR 5:001, Section 16(8)(b), 807 KAR 5:001, Section 16(8)(m), and 807 KAR 5:001, Section 16(8)(g).

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.”¹ In order to comply with 807 KAR 5:001, Section 15(2)(d)(1), Delta is providing as Exhibit JM-1 to Mr. Morphew’s testimony a map showing the proposed natural gas pipeline route for the Nicholasville pipeline. The map provided in Exhibit JM-1 requires confidential treatment because it contains information that, if disclosed, would create a competitive disadvantage for Delta. The map identifies a proposed pipeline route, for which Delta has not notified property owners, obtained easement

¹ KRS 61.878(1)(c)(1).

rights to, or requested survey rights. If the location of the proposed pipeline route was disclosed, which is only preliminary at this time, the land through which the pipeline crosses may increase in value, forcing Delta to spend more to construct the pipeline, to the detriment of Delta and its ratepayers.

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

2. The Kentucky Open Records Act exempts from disclosure certain private and personal information.² Tab 55 provides a jurisdictional rate base summary in compliance with 807 KAR 5:001, Section 16(8)(b) and provides documents containing customer-identifying information. Tab 66 provides schedules containing revenue summaries in compliance with 807 KAR 5:001, Section 16(8)(m) and two of these schedules include customer-identifying information. The identification of specific customers is personal information that should not be in the public domain. Because information in Tab 55 and Tab 66 identify specific customers, Delta requests through this petition that the Commission protect the confidential portions of the documents from public disclosure.

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

3. The Kentucky Open Records Act exempts from disclosure certain private and personal information.³ 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.”⁴ The Kentucky Supreme Court has characterized “one’s income” as “intimate” information of a private nature.⁵ At Tab 60 and in compliance with 807 KAR 5:001, Section 16(8)(g), Delta’s application provides the “executive compensation by title,” which reveals

² KRS 61.878(1)(a).

³ *Id.*

⁴ *Zink v. Department of Workers’ Claims, Labor Cabinet*, 902 S.W.2d 825, 828 (Ky. App. 1994).

⁵ *Cape Pub’ns, Inc. v. Univ. of Louisville Found., Inc.*, 260 S.W.3d 818, 822 (Ky. 2008).

the compensation of its president. Disclosure of this information would invade the privacy rights of the individual named. This personal and private information is not in the public realm. Delta's executive, therefore, 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).

4. Disclosure of the compensation information of Delta's president – a private citizen who is not a 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*.⁶

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."⁷

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

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

⁷ *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).

information as private outweighs the public interest in the information.”⁸ In the same order, the Commission concluded, “Thus, the salary paid to each individual within a classification is entitled to protection from public disclosure.”⁹

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.¹⁰ Such reasoning, however, is not applicable in the current request because the current salary or benefit information for Delta’s president has not been publicly disclosed. Delta’s request is also supported by a recent Commission precedent regarding salaries disclosed in regulatory filings.¹¹ Because Delta requests confidential protection only for the executive salary and benefits not otherwise publicly disclosed, granting confidential protection to this limited information accords with KRS 61.878(1)(a).

⁸ *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).

⁹ *Id.*

¹⁰ *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).

¹¹ *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).

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

Dated: May 28, 2021

Respectfully submitted,



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CERTIFICATE OF COMPLIANCE

This is to certify that this May 28, 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 May 28, 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.


