

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. 8(b), 14, 22(a), 75(a), 80(a), 80(b), 83(c), 90, and 95(c) of the Initial Data Requests of the Attorney General and Item Nos. 50(a) and 10(d), 10(e), and 10(f) of the Commission Staff’s Second Request for Information.

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

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

¹ KRS 61.878(1)(a).

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

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

2. Attorney General Item No. 80(a) requests “updated compensation information in the same format as Staff DR 1-39 for the Base Period August 31, 2021 on a periodic monthly basis, substituting actual information for the budgeted information in the Base Period of the original filing for these payroll costs.” Attorney General Item No. 80(b) requests “the same compensation and payroll information (in the same format) included in Delta’s response to Confidential Staff DR 1-39, for the additional calendar years of December 31, 2016 and December 31, 2017.” In response to these requests, Delta is providing spreadsheets containing analyses of compensation information, including regular wages, overtime, and incentive pay, among other types of compensation. Delta requested confidential protection for its response to Commission Staff’s First Data Request Item No. 39. Attorney General Item No. 14 requests missing Excel documents in response to various Commission Staff’s First Data Requests, including Commission Staff’s First Data Request Item No. 39.

3. 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).

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*.⁴

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.”⁵

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

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.⁸ Such reasoning, however, is not

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

⁵ *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).

⁶ *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).

⁷ *Id.*

⁸ *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.

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.⁹ 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).

7. 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).

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."¹⁰

9. Commission Staff Item No. 10(d) asks Delta to state the providers of natural gas and provide details concerning the sources of system gas supply and gas transportation arrangements, including contracts. Commission Staff Item No. 10(e) requests a "list of suppliers,

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).

⁹ *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).

¹⁰ KRS 61.878(1)(c)(1).

the expected rates, and 12 months of historical Mcf sales and purchase volume information for both systems for the 12 months ended period of June 30, 2021,” and Commission Staff Item No. 10(f) requests “any invoices received from the gas suppliers for each month following the acquisition, plus all other gas purchase invoices received by each of the systems in the remainder of the 12-month ended period of June 30, 2021.” Similarly, Attorney General Item No. 90 asks for the largest accrual expense entries made in the Base Period and related support.

10. In response, the Company is providing gas supply contracts in response to Commission Staff Item No. 10(d),¹¹ two spreadsheets in response to Commission Staff Item No. 10(e) with the requested information, and numerous invoices in response to Commission Staff No. 10(f). In response to Attorney General Item No. 90, Delta is providing four sets of invoices. 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. Delta is requesting confidential treatment for these documents.

11. Attorney General Item No. 22(a) asks for “the Strategic Business Plans for Delta, PKY, PNG, and Essential for each of the prior years 2011 through 2021, including all Strategic Business Plans that address future years.” Attorney General Item No. 8(b) requests the cost rate for short-term debt capital for the 13-month periods ending August 31 and December 31, 2021. In response to Attorney General Item No. 22(a), Delta is providing several documents, including Essential Board of Directors minutes and a presentation entitled “2021 Operating Budget Aqua and Peoples.” The Essential Board of Directors minutes contain information regarding potential

¹¹ In response to PSC 2-10(d), Delta is providing gas supply contracts for Delta and the former Peoples KY operations. Delta has previously provided its gas supply contracts publicly and is not requesting confidential protection for those contracts. Delta is requesting confidential protection for the Peoples KY contracts, which have not been produced publicly.

acquisition opportunities. The presentation includes detailed budget assumptions and budgeted revenue for the year 2021. In response to Attorney General Item No. 8(b), Delta is providing a spreadsheet with the requested information. Thus, these documents contain commercially sensitive information that would disadvantage Delta and its parent by providing insight into the Company's potential growth opportunities and insight into the Company's forecasting calculations.

12. Attorney General Item No. 83(c) asks Delta to provide a copy of the Willis Towers Watson actuary report that shows reductions in Pension Expense because of the freezing of pension plan benefits and a reconciliation of certain amounts of the actuary report to the reductions in Pension Expense. This document should be granted confidential protection because the analyses contained in the actuary report is proprietary to the vendor, Willis Towers Watson. The vendor derives revenue from developing and selling such information to customers.

13. Similarly, Attorney General Item No. 75(a) requests the names of the vendors for each of the SAP and GIS software, and a copy of the corresponding contracts, final approved purchase order, and the five largest invoices for each of the software. In response, Delta is providing several attachments containing the requested information.

14. For both Attorney General Item Nos. 83(c) and 75(a), public disclosure could harm the relationship between Delta and the vendors and others that provide similar analyses, reports, and services to Delta. If the documents are disclosed, vendors may be less willing to provide these types of services to Delta in the future to the detriment of Delta and its ratepayers. Delta requests confidential protection of the entire document provided in response to Attorney General Item No. 83(c) and the entirety of the documents provided in response to Attorney General Item No. 75(a).

15. Attorney General Item No. 95(c) requests “documentation from the compensation studies that Delta relies upon, to show the industry and market trend is to decrease the percent of compensation that is incentive (at risk) based. Explain if Delta agrees with this industry/market trend and why.” In response, Delta is providing a Competitive Market Report for the Kentucky market that was used during the initial assessment of the pay levels of the Delta employees. The report details each job title and its base salary compared to the 50th percentile base salary for that position, among other metrics. Disclosure of this information would allow Delta’s competitors to know how the Company compensates its employees. 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 document provided in response to Attorney General Item No. 95(c).

16. Commission Staff Item No. 50(a) asks Delta to provide the three Special Contracts referenced in Mr. Seelye’s testimony. Delta is requesting confidential protection for two of the three contracts. The Commission previously granted confidential protection to all three contracts in its March 21, 2001 Order in Case Nos. 98-380, 98-412, and 98-479, but the Meridian Brick (predecessor-in-interest Sipple Brick, Inc.) contract has been published on the Commission website for some time. The Novelis contract (predecessor-in-interest Alcan Aluminum contract on the Commission website) and AGC Glass North America contract (predecessor-in-interest AFG Industries, Inc.) should continue to be confidential pursuant to the March 21, 2001 Order because disclosure would permit an unfair commercial advantage to Delta’s competitors.

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

Dated: July 28, 2021

Respectfully submitted,

Monica H. Braun

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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 July 28, 2021; and that there are currently no parties in this proceeding that the Commission has excused from participation by electronic means.

Monica H. Braun
