

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF DELTA)	
NATURAL GAS COMPANY, INC. FOR AN)	CASE NO. 2024-00346
ADJUSTMENT OF RATES)	

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 certain information that Delta is providing in its responses to Commission Staff’s Second Request for Information, Item Nos. 6, 7, 23, 28, 40, and the Attorney General’s Initial Data Requests, Item Nos. 25, 57, 58, and 66(a). In support of this Petition, Delta states as follows:

Confidential Commercial Information – KRS 61.878(1)(c)(1)

1. The Kentucky Open Records Act exempts from disclosure certain records which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records.¹ Public disclosure of the information identified herein would, in fact, prompt such a result for the reasons set forth below.

2. In response to PSC 2-23 and PSC 2-28, Delta is providing information about customers at risk for bypass. 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.

¹ KRS 61.878(1)(c)(1).

The Commission has previously granted confidential protection for information about customers at risk for bypass.²

3. In response to AG 1-57, Delta is providing Actuarial Valuation Reports for Essential Utilities Inc.'s ("Essential") Pension Plan and Pension Expense Allocations prepared by Willis Towers Watson ("WTW"). Similarly, in response to AG 1-58, Delta is providing Essential's most recent Pension Expense Forecast prepared by WTW. The WTW Reports are based entirely on confidential and proprietary information. First, the Reports contain detailed information about Essential's Pension Plan. If competitors were able to access this information, competitors would have an unfair commercial advantage in hiring away current and future Essential and Delta employees. Second, as mentioned, WTW has assisted Delta and Essential in developing and assessing its compensation and benefits strategy and philosophy. These analyses, which are reflected in the Reports, are the product of the investment of extensive time and money. Allowing competitors to have access to these Reports and the assessments discussed therein would inure a competitive advantage to those competitors, who would benefit from Delta's, Essential's, and WTW's work without paying for same. The Commission has previously found that similar studies merit confidential protection.³ Because of the proprietary nature of the information at issue, Delta requests confidential protection for the entirety of the attachments provided in response to AG 1-57 and AG 1-58.

4. In response to PSC 2-40, Delta is providing three confidential attachments. All three attachments are confidential because they contain information resulting from Essential's and

² See, e.g., *Application of Atmos Energy Corporation for Approval and Confidential Treatment of a Special Contract and Cost Analysis Information*, Case No. 2020-00023, Order (Ky. PSC Aug. 19, 2020).

³ See, e.g., *In the Matter of: Application of Cumberland Valley Electric, Inc. for an Adjustment of Rates*, Case No. 2014-00159, (Order of May 7, 2015); *In the Matter of: Application of Columbia Gas of Kentucky, Inc. for an Adjustment of Rates for Gas Service*, Case No 2013-00167, (Order of October 29, 2013).

Delta’s research about compensation for employees. Delta is providing reports that detail 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 reports, but job titles and the ability to research national general industry compensation data would allow viewers to deduce the wage rate of individuals. Allowing competitors to have access to these reports and the assessments discussed therein would inure a competitive advantage to those competitors, who would benefit from Delta’s and Essential’s work without paying for same. The Commission granted confidential protection to similar materials in Delta’s last rate case, Case No. 2021-00185.⁴

5. In response to AG 1-66(a), Delta is providing information from Conner Strong & Buckelew, an insurance brokerage, employee benefits and risk management consulting firm. The information is the product of extensive time and money. Allowing competitors to have access to this information would inure a competitive advantage to those competitors, who would benefit from Delta’s, Essential’s, and Conner Strong & Buckelew’s work without paying for same.

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

6. The Kentucky Open Records Act exempts from disclosure certain private and personal information.⁵ 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

⁴ *In the Matter of: Electronic Application of Delta Natural Gas Company, Inc. for an Adjustment of Its Rates and a Certificate of Public Convenience and Necessity* (Ky. PSC Dec. 7, 2021)

⁵ KRS 61.878(1)(a).

expectation of privacy.”⁶ The Kentucky Supreme Court has characterized “one’s income” as “intimate” information of a private nature.⁷

7. In addition to the reasoning explained in Paragraph 4, Attachments 1 and 2 to PSC 2-40 are also confidential because they provide individual wage and salary information. Individuals are not named in the reports, but job titles and the ability to research national general industry compensation data would allow viewers to deduce the wage rate of individuals.

8. AG 1-25 requests, for each employee, (1) the job title; (2) the wages associated with the position, further split between regular time and any overtime, (3) short-term incentive compensation; and (4) long-term incentive compensation. The information Delta is providing in response to this question would permit viewers to deduce the wage rate of each individual Delta employee.

9. 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).

10. 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

⁶ *Zink v. Department of Workers’ Claims, Labor Cabinet*, 902 S.W.2d 825, 828 (Ky. App. 1994).

⁷ *Cape Pub’ns, Inc. v. Univ. of Louisville Found., Inc.*, 260 S.W.3d 818, 822 (Ky. 2008).

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*.⁸

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.”⁹

11. 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.”¹⁰ In the same order, the Commission concluded, “Thus, the salary paid to each individual within a classification is entitled to protection from public disclosure.”¹¹

12. 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.¹² Such reasoning, however, is not

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

⁹ *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).

¹⁰ *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).

¹¹ *Id.*

¹² *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 Delta is not requesting protection for executive officer salary information.

13. 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).

Critical Energy Infrastructure Information (KRS 61.878(1)(m))

14. The Kentucky Open Records Act prohibits disclosure of records that, if publicly disclosed, would have a reasonable likelihood of threatening the public safety by exposing a vulnerability in preventing or protecting against a terrorist act.¹³ In response to PSC 2-6 and PSC 2-7, Delta is providing a copy of Delta's Distribution Integrity Management Plan ("DIMP") and Transmission Integrity Management Plan ("TIMP"), respectively. Both the DIMP and the TIMP contain information pertaining to Delta's critical infrastructure systems.

15. The TIMP and DIMP are required by 49 CFR Part 192, Subparts O and P. The TIMP and DIMP contain detailed information related to Delta's pipelines; specifically, threat evaluations on its transmission and distribution piping related to corrosion, natural forces, excavation damage, other outside force damage, material, weld or joint failure (including compression coupling), equipment malfunction, incorrect operation, and any other concerns that could threaten the integrity of the pipelines.

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).

¹³ KRS 61.878(1)(m).

16. The Commission has previously granted requests for confidential protection for DIMP information due to its connection to critical energy infrastructure information.¹⁴ Both the TIMP and DIMP should be treated confidentially because disclosure could threaten public safety.

Confidential Information Subject to this Petition

17. The information for which Delta is seeking confidential treatment is not known outside of Delta, its consultants with a need to know the information, and the Company's counsel, 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 in the utility industry.

18. Delta will disclose the confidential information, pursuant to a confidentiality agreement, to intervenors with a legitimate interest in this information and as required by the Commission.

19. If the Commission disagrees with this request for confidential protection, 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.¹⁵

20. In compliance with 807 KAR 5:001, Section 13, Delta is providing written notification that the attachments to PSC 2-6, PSC 2-7, PSC 2-23, PSC 2-40, AG 1-25, AG 1-57, AG 1-58, and AG 1-66(a) are confidential in full.

21. For the attachment to PSC 2-28, which is not entirely confidential, Delta is filing with the Commission one electronic copy that identifies with redactions the information for which

¹⁴ See, e.g., *In the Matter of: Electronic Application of Navitas KY NG, Johnson County Gas Company, and B&H Gas Company for Approval of Acquisition, Transfer of Ownership, and Control of Natural Gas Utility Systems* (Case No. 2020-00396) Apr. 28, 2021 ("However, the DIMP contains information pertaining to critical infrastructure systems. Therefore, the Commission finds that the designated material in Applicant's response to Staff's First Request, Item 11(a), is exempt from public disclosure under KRS 61.878(1)(m)...").

¹⁵ *Utility Regulatory Commission v. Kentucky Water Service Company, Inc.*, 642 S.W.2d 591, 592-94 (Ky. App. 1982).

confidential protection is sought. In accordance with the Commission's March 24, 2020 and July 22, 2021 Orders in Case No. 2020-00085, Delta will provide an unredacted copy noting the confidential information with highlighting to the Commission. Access to the confidential information will be provided to intervenors upon request pursuant to a confidentiality agreement.

22. Delta requests that confidential protection for the attachments to PSC 2-6 and PSC 2-7 be granted indefinitely because disclosure could threaten public safety. Due to the personal and sensitive nature of Attachments 1 and 2 to PSC 2-40 and the attachment to AG 1-25, Delta requests that this information remain confidential indefinitely. For all other requests for information, Delta requests that confidential protection be granted for five years due to the sensitive nature of the information at issue.

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

Dated: January 3, 2025

Respectfully submitted,



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 SERVICE

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 January 3, 2025; and that there are currently no parties in this proceeding that the Commission has excused from participation by electronic means.

Maura H. Braun

Counsel for Delta Natural Gas Company, Inc.