

**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>CASE NO. 2024-00346</b>
<b>ADJUSTMENT OF RATES</b>	)	

**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 First Request for Information, Item Nos. 18, 37, and 54. In support of this Petition, Delta states as follows:

**Confidential Information Protected from Disclosure by Federal or State Law –**  
**KRS 61.878(1)(k) and (l)**

1. PSC 1-18 asks Delta to provide federal and state income tax returns for the most recent tax year, including supporting schedules. Tax related documents and information merit confidential protection. KRS 61.878(1)(k) exempts from disclosure “[a]ll public records or information the disclosure of which is prohibited by federal law or regulation.”<sup>1</sup> Under 26 U.S.C. § 6103(a), state officials are prohibited from publicly disclosing any federal income tax return or its contents. Therefore, federal income tax returns and their contents fall within the KRS 61.878(1)(k) exemption from public disclosure. The Kentucky Open Records Act also exempts from disclosure “[p]ublic records or information the disclosure of which is prohibited or restricted

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

or otherwise made confidential by enactment of the General Assembly.”<sup>2</sup> KRS 131.190(1) requires all income tax information filed with the Kentucky Department of Revenue be treated in a confidential manner. Thus, state income tax returns are also confidential in nature and protected from disclosure by the Kentucky Open Records Act.

2. In Delta’s last rate case, the Commission granted confidential protection to the Company’s federal and state income tax returns and supporting schedules.<sup>3</sup>

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

3. 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.<sup>4</sup> Public disclosure of the information identified herein would, in fact, prompt such a result for the reasons set forth below.

4. In response to PSC 1-37, Delta is providing a copy of its current collective bargaining agreement between Delta and its union employees. This confidential and proprietary information should be withheld from the public record because it reveals Delta’s internal strategy and business decision-making. The collective bargaining agreement is the result of a negotiation process in which Delta invested significant time and expense. If publicly disclosed, Delta’s competitors would be permitted an unfair commercial advantage because such competitors would benefit from Delta’s work without expending resources for same. In addition, public disclosure would allow Delta’s competitors unfair insight into the negotiated terms of the collective bargaining agreement, providing an opportunity for competitors to potentially hire away current

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

<sup>3</sup> *Electronic Application of Delta Natural Gas Company, Inc. for an Adjustment of its Rates and a Certificate of Public Convenience and Necessity*, Case No. 2021-00185, Order at 3 (Ky. PSC Dec. 8, 2021).

<sup>4</sup> KRS 61.878(1)(c)(1).

and future Delta employees. Because of the competitive harms related to public disclosure of the collective bargaining agreement, the attachment to PSC 1-37 should remain confidential.

5. The Commission has previously granted confidential protection for collective bargaining agreements.<sup>5</sup>

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

6. The Kentucky Open Records Act exempts from disclosure certain private and personal information.<sup>6</sup> In response to PSC 1-54, Delta is providing an Excel version of the information previously filed in Tab 55 of Delta’s application, which provides a jurisdictional rate base summary in compliance with 807 KAR 5:001, Section 16(8)(b) and provides documents containing customer-identifying information. Delta is also providing an Excel version of the information previously filed in Tab 66, which includes schedules containing revenue summaries in compliance with 807 KAR 5:001, Section 16(8)(m), where one of these schedules includes customer-identifying information. The identification of specific customers is personal information that should not be in the public domain. Because information in the Excel versions of 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.

7. Delta previously requested confidential protection of the personal information contained in Tabs 55 and 66.<sup>7</sup> The Commission has previously granted confidential protection to similar customer-identifying information.<sup>8</sup>

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<sup>5</sup> See, e.g., *Electronic Application of Cumberland Valley Electric, Inc. for a General Adjustment of Rates Pursuant to Streamlined Procedure Pilot Program Established in Case No. 2018-00407*, Case No. 2020-00264, Order at 3-4 (Ky. PSC Feb. 23, 2021).

<sup>6</sup> KRS 61.878(1)(a).

<sup>7</sup> *Electronic Application of Delta Natural Gas Company, Inc. for an Adjustment of Rates*, Case No. 2024-00346, Petition of Delta Natural Gas Company, Inc. for Confidential Protection (filed Nov. 25, 2024).

<sup>8</sup> See, e.g., *Electronic Application of Delta Natural Gas Company, Inc. for an Adjustment of its Rates and a Certificate of Public Convenience and Necessity*, Case No. 2021-00185, Order at 8 (Ky. PSC Mar. 16, 2022) (granting indefinite confidential protection to customer-identifying information contained in Tabs 55 and 66 of Delta’s application);

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

8. The Kentucky Open Records Act exempts from disclosure certain private and personal information.<sup>9</sup> The Kentucky Supreme Court has characterized “one’s income” as “intimate” information of a private nature.<sup>10</sup> In response to PSC 1-54, Delta is providing an Excel version of Tab 60, which was previously filed as part of Delta’s application. 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 the compensation of its president, including a portion of compensation that is not included as an expense in base rate calculations. Delta is not seeking confidential protection for the executive compensation included in rates. It is only requesting confidential treatment for the portion of compensation that pertains to non-regulated affiliates that is **not** included in rates. 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 to the extent that the compensation is not included in rates. Disclosure would constitute an unwarranted invasion of his personal privacy in contravention of KRS 61.878(1)(a).

9. The Commission has previously denied confidential protection to executive officer compensation information on the basis that “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>11</sup> Such reasoning, however, is not applicable in

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*Application of Kentucky Utilities Company for an Adjustment of its Electric Rates*, Case No. 2012-000221, Order at 1-2 (Ky. PSC July 25, 2013) (granting indefinite confidential protection to materials containing customer names, account numbers, and usage information for customers served under All Electric School rate schedule).

<sup>9</sup> KRS 61.878(1)(a).

<sup>10</sup> *Cape Pub’ns, Inc. v. Univ. of Louisville Found., Inc.*, 260 S.W.3d 818, 822 (Ky. 2008).

<sup>11</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

the current request because the salary or benefit information for Delta’s president for which protection is sought is not included in base rate calculations and is not subject to public disclosure.<sup>12</sup> Because Delta requests confidential protection only for the executive salary and benefits to the extent that they are not included in base rate calculations, granting confidential protection to this limited information accords with KRS 61.878(1)(a).

10. Delta previously requested confidential protection of the personal information contained in Tab 60.<sup>13</sup>

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

11. 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.

12. 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.

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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>12</sup> Delta acknowledges that the Commission denied its request for confidential treatment of executive compensation information in its prior rate case. See Case No. 2021-00185, Order at 6-7 (Ky. PSC Mar. 16, 2022). However, this request does not seek confidential protection of the same information; instead, it only seeks protection of executive compensation information to the extent that the information is not included in base rate calculations.

<sup>13</sup> *Electronic Application of Delta Natural Gas Company, Inc. for an Adjustment of Rates*, Case No. 2024-00346, Petition of Delta Natural Gas Company, Inc. for Confidential Protection (filed Nov. 25, 2024).

13. 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.<sup>14</sup>

14. In compliance with 807 KAR 5:001, Section 13, Delta is providing written notification that the attachments to PSC 1-18 and 1-37 are confidential in full.

15. For the Excel versions of Tabs 55, 60, and 66 provided in response to PSC 1-54, which are not entirely confidential, Delta is filing with the Commission one electronic copy that identifies with redactions the information for which 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 unredacted copies 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.

16. Delta requests that confidential protection for the attachments to PSC 1-18 be granted indefinitely because they are prohibited from release pursuant to 26 U.S.C. § 6103(a) and KRS 131.190(1). Due to the personal and sensitive nature of the confidential attachments to PSC 1-54, 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.

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<sup>14</sup> *Utility Regulatory Commission v. Kentucky Water Service Company, Inc.*, 642 S.W.2d 591, 592-94 (Ky. App. 1982).

Dated: December 9, 2024

Respectfully submitted,



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**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 December 9, 2024; and that there are currently no parties in this proceeding that the Commission has excused from participation by electronic means.



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*Counsel for Delta Natural Gas Company, Inc.*