



Delta Natural Gas Company, Inc.



3617 Lexington Road
Winchester, Kentucky 40391-9797

PHONE: 859-744-6171

FAX: 859-744-3623

June 8, 2010

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JUN 08 2010

PUBLIC SERVICE
COMMISSION

Mr. Jeff Derouen
Executive Director
Kentucky Public Service Commission
211 Sower Blvd
Frankfort, KY 40602-0615

RE: Application of Delta Natural Gas Company, Inc. for
An Adjustment of Rates – Case No. 2010-00116

Dear Mr. Derouen:

Please find enclosed and accept for filing the original and ten (10) copies of the Response of Delta Natural Gas Company, Inc. to the Second Data Request of the Kentucky Public Service Commission Staff dated May 24, 2010 and the Attorney General's Initial Requests for Information dated May 24, 2010, in the above-referenced matter.

Also enclosed are an original and ten (10) copies of a Petition for Confidential Protection regarding certain information contained in the enclosed responses.

Should you have any questions regarding the enclosed, please contact me at your convenience.

Sincerely,

John B. Brown
Chief Financial Officer, Treasurer and Secretary

copy: Parties of Record

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

**APPLICATION OF DELTA NATURAL)
GAS COMPANY, INC. FOR) CASE NO. 2010-00116
AN ADJUSTMENT OF RATES)**

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* * * * *
**PETITION OF DELTA NATURAL GAS COMPANY, INC.
FOR CONFIDENTIAL PROTECTION**

Delta Natural Gas Company, Inc. (“Delta”) petitions the Kentucky Public Service Commission (“Commission”) pursuant to 807 KAR 5:001, Section 7 and KRS 61.878(1)(c), 61.878(1)(k), 61.878(1)(l), 131.190(1) and 26 U.S.C. § 6103(a) to grant confidential protection to certain information responsive to Items 2, 29, 31 and 47 of the Attorney General’s May 24, 2010 Requests for Information. In support of this Petition, Delta states as follows:

1. On March 15, 2010, Delta served notice of its intent to file a rate application for a general adjustment in rates with the Commission. On April 23, 2010, Delta filed its Notice and Application herein. On May 24, 2010, the Attorney General served its Requests for Information.

2. Item 2 of the Attorney General’s Requests seeks a copy of the Delta “Board of Directors minutes for 2007, 2008, 2009 and 2010 to date.” Item 29 of the Requests seeks Delta’s 2007, 2008, and 2009 “U.S. Corporation Income Tax Return, and the Kentucky Corporate Income Tax Return and all other Kentucky Tax Returns, with supporting schedules.” Item 31 of the Requests seeks “worksheets which reconcile book and tax

income and tax liability on the books and on the tax return for 2007, 2008 and 2009.” Finally, Item 47 seeks Delta’s “five-year . . . operating, maintenance, and capital budgets prepared in 2007, 2008 and 2009.”

3. In response to Items 2 and 47, Delta is providing the requested Board of Directors minutes and copies of the requested budgets. However, KRS 61.878(1)(c) exempts from disclosure certain confidential or proprietary information. To qualify for this exemption, and, therefore, maintain the confidentiality of the information, a party must establish that disclosure of the information would permit an unfair commercial advantage to competitors of the party seeking confidentiality. Board minutes and budgets contain information showing Delta’s highest-level decision making process on numerous matters, including confidential and proprietary financial matters, corporate growth strategy, and officer succession planning. To the extent such information is obtained by competitors, those competitors would derive an unfair commercial advantage.

4. Moreover, the requested budget information contains forecasted or predicted information. Delta’s stock is publicly traded and Delta is regulated by the Securities and Exchange Commission under the Securities Exchange Act of 1934 and the regulations promulgated thereunder. One of those regulations is Regulation FD, which prohibits selective disclosure of information by companies such as Delta. Delta does not report to the general investing public forecasts or predictions about operations, capital spending or the like, but, rather, reports historical information. The public filing of budgets in the record in this proceeding will place Delta in jeopardy of having made a selective disclosure of the budgets in violation of Regulation FD.

5. In response to Items 29 and 31, Delta is providing the requested federal and state tax returns (including supporting schedules) and the requested worksheets. However, KRS 61.878(1)(k) exempts from public disclosure “all public records or information the disclosure of which is prohibited by federal law or regulation.” Pursuant to 28 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 fall within the exemption provided by KRS 61.878(1)(k) and are exempt from disclosure. *See In the Matter of: Application for Adjustment of Rates of Kentucky Power Company*, Case No. 91-066, Order of July 23, 1991, at 5-6. KRS 61.878(1)(l) exempts from the Kentucky Open Records Act “public records or information the disclosure of which is prohibited or restricted or otherwise made confidential by enactment of the General Assembly.” KRS 131.190(1) requires that 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 KRS 61.878(1)(l). *See In the Matter of: Rate Adjustment of Western Kentucky Gas Company*, Case No. 90-013, Order of January 28, 1991, at 2.

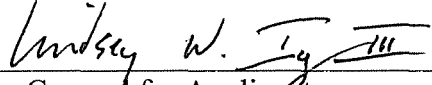
6. The description of the responsive documents above demonstrates that they merit confidential treatment. If the Commission disagrees, however, it must hold an evidentiary hearing to protect the due process rights of Delta and so that the Commission will have a complete record to enable it to reach a decision with regard to this matter. *Utility Regulatory Commission v. Kentucky Water Service Company, Inc.*, Ky. App., 642 S.W.2d 591, 592-94 (1982).

7. Delta does not object to the disclosure of the information at issue to the Attorney General upon the execution of a confidentiality agreement. Two copies of the confidential information are attached (under seal) and ten copies of Delta's responses without the confidential information are herewith filed with the Commission.

WHEREFORE, Delta prays that the Commission grant confidential protection to its discovery responses as set forth above.

Respectfully submitted,

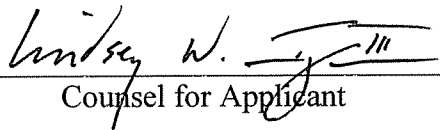
Robert M. Watt, III
Lindsey W. Ingram, III
Stoll Keenon Ogden PLLC
300 West Vine Street, Suite 2100
Lexington, Kentucky 40507
(859) 231-3000
robert.watt@skofirm.com
l.ingram@skofirm.com

By 
Counsel for Applicant

CERTIFICATE OF SERVICE

This is to certify that the foregoing pleading has been served by hand delivering a copy of same to the following persons on this 8th day of June, 2010:

Dennis Howard, II, Esq.
Lawrence W. Cook, Esq.
Assistant Attorneys General
Office of Rate Intervention
1024 Capital Center Drive
Frankfort, KY 40601



Counsel for Applicant

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