

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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| ELECTRONIC APPLICATION OF COLUMBIA |) | |
| GAS OF KENTUCKY, INC. FOR AN |) | |
| ADJUSTMENT OF RATES; APPROVAL OF |) | CASE NO. |
| DEPRECIATION STUDY; APPROVAL OF TARIFF |) | 2021-00183 |
| REVISIONS; ISSUANCE OF A CERTIFICATE OF |) | |
| PUBLIC CONVENIENCE AND NECESSITY; AND |) | |
| OTHER RELIEF |) | |

ORDER

This matter arises on two motions filed by Columbia Gas of Kentucky, Inc. (Columbia Kentucky) requesting confidential treatment for the designated material.

On June 11, 2021, Columbia Kentucky filed a motion, pursuant to 807 KAR 5:001E, Section 13, and KRS 61.878, requesting that the Commission grant confidential treatment for ten years for documents filed in response to Commission Staff's First Request for Information (Staff's First Request), Items 34 (Attachments A-D), 39 (Attachment A), and 46 (Attachment A), and for an indefinite period for documents filed in response to Staff's First Request, Item 54 (Attachment A).

On August 25, 2021, Columbia Kentucky filed a motion, pursuant to 807 KAR 5:001E, Section 13, and KRS 61.878, requesting that the Commission grant confidential treatment for ten years for documents filed in response to Commission Staff's Third Request for Information (Staff's Third Request), Items 4 (Attachment B), 25 (Attachments A-C), and 28 (Attachment A); the Attorney General of the Commonwealth of Kentucky, by and through the Office of Rate Intervention's (Attorney General) Second Request for

Information (Attorney General's Second Request), Items 34 (Attachment A-B), 48 (Attachment A), 60 (Attachment A-B); and the Attorney General's Supplemental Request for Information (Attorney General's Supplemental Request), Item 1.

LEGAL STANDARD

The Commission is a public agency subject to Kentucky's Open Records Act, which requires that all public records "be open for inspection by any person, except as otherwise provided by KRS 61.870 to 61.884."¹ In support of its motions, Columbia Kentucky argued the application of three provisions of KRS 61.878. KRS 61.878(1)(a) exempts "[p]ublic records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy."

KRS 61.878(1)(c)(1) provides an exception to the requirement for public disclosure for records that are "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."

Under KRS 61.878(1)(m), the Open Records Act exempts "[p]ublic records the disclosure of which would have a reasonable likelihood of threatening the public safety by exposing a vulnerability in preventing, protecting against, mitigating, or responding to a terrorist act . . ."² The exemption is limited to certain types of records, including:

Infrastructure records that expose a vulnerability referred to in this subparagraph through the disclosure of the location, configuration, or security of critical systems, including public utility critical systems. These critical systems shall include but not be limited to information technology, communication,

¹ KRS 61.872(1).

² KRS 61.878(1)(m)(1).

electrical, fire suppression, ventilation, water, wastewater, sewage, and gas systems.³

A terrorist act is defined as including a criminal act intended to “[d]isrupt a system” identified in the above.⁴

Exceptions to the free and open examination of public records contained in KRS 61.878 should be strictly construed.⁵ The party requesting that materials be treated confidentially has the burden of establishing that one of the exceptions is applicable.⁶

JUNE 11, 2021 MOTION

Attachments A through D to Columbia Kentucky’s response to Staff’s First Request, Item 34, consist of information on employee retirement plan terms and compensation and retirement cost data for retired employees. Attachment A to Columbia Kentucky’s response to Staff’s First Request, Item 39, includes redacted compensation data for current employees by job title. Columbia Kentucky argued that this information is personal in nature and if disclosed would violate its employees’ and retirees’ reasonable expectations of personal privacy under KRS 61.878(1)(a). Columbia Kentucky also argued that the data would also be valuable to competitors in the labor market who could use the information to poach Columbia Kentucky’s workforce. Columbia Kentucky does not seek confidential treatment for certain employees it has deemed executive officers, including “President/COO, VP & General Manager, and VP Ext & Customer Affairs.” Columbia Kentucky is seeking confidential treatment for compensation data for

³ KRS 61.878(1)(m)(1)(f).

⁴ KRS 61.878(1)(m)(2)(b).

⁵ See KRS 61.871.

⁶ 807 KAR 5:001E, Section 13(2)(c).

numerous other officers, including “President/CEO, CIO,” and numerous “VP” officers.

Attachment A to Columbia Kentucky’s response to Staff’s First Request, Item 46, is a compensation study in the form of a spreadsheet that includes redacted employee identification numbers and pay rates alongside unredacted job titles. Columbia Kentucky argued that the study includes proprietary data and that the Commission has previously recognized that wage and compensation studies are confidential under KRS 61.878(1)(c)(1).

Attachment A to Columbia Kentucky’s response to Staff’s First Request, Item 54, is an extensive spreadsheet with numerous tabs consisting of Columbia Kentucky’s workpapers used to calculate the revenue requirement and plant-in-service values for the forecasted test period. Columbia Kentucky argued that this study represents the culmination of hundreds of hours of labor to develop an analytical model that is unique to Columbia Kentucky and is based upon information that is confidential and proprietary.

Having considered the motion and the material at issue, the Commission finds that Columbia Kentucky’s motion should be granted in part and denied in part. Confidential treatment should be granted for Attachments A through D to Columbia Kentucky’s response to Staff’s First Request, Item 34, except for aggregate compensation and cost information in Attachments C and D. Although names or job titles are not included, positions could potentially be determined by referencing codes. This information is generally considered private under KRS 61.878(1)(a).⁷ This information is also generally protected by KRS 61.878(1)(c)(1) because Columbia Kentucky competes for labor and

⁷ Case No. 2021-00185, *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), Order at 3.

disclosure of detailed compensation information would make it difficult for Columbia Kentucky to compete with other utilities for employees if competitors could undercut Columbia Kentucky and potential employees negotiated with knowledge of compensation information. However, confidential treatment should be denied for aggregate compensation information, because it is a key component used to determine revenue requirement.⁸

Confidential treatment should be granted for Attachment A to Columbia Kentucky's response to Staff's First Request, Item 39, for the same reasons set forth above, excluding aggregate compensation information and compensation information for Columbia Kentucky's President/CEO. The Commission considers this position an executive officer position. Any privacy interest executive officers may seek in their compensation data is outweighed by the public's interest in executive compensation that is to be recovered in base rates. The Commission has previously held that executive salaries are not entitled to confidential protection because of the public interest in

⁸ See Case No. 2020-00290, *Electronic Application of Bluegrass Water Utility Operating Company, LLC for an Adjustment of Rates and Approval of Construction* (Ky. PSC Dec. 27, 2021), Order at 6.

disclosure.⁹

Redactions to Attachment A to Columbia Kentucky's response to Staff's First Request, Item 46, should be granted confidential treatment because wage and compensation studies consist of valuable data it uses to determine compensation, and would be disadvantaged relative to its labor market competitors if this information were freely disclosed.¹⁰

Confidential treatment should be denied for Attachment A to Columbia Kentucky's response to Staff's First Request, Item 54. These spreadsheets are a calculation of

⁹ The Commission has a long precedent of not granting confidential treatment for executive compensation. See Case No. 2012-00221, *Application of Kentucky Utilities Company for an Adjustment of its Electric Rates* (Ky. PSC Sept. 11, 2013); Case No. 2014-00371, *Application of Kentucky Utilities Company for an Adjustment of its Electric Rates* (Ky PSC Jan 20, 2016); Case No. 2015-00418, *Application of Kentucky-American Water Company for an Adjustment of Rates* (Ky PSC Aug. 31, 2016); Case No. 2017-00321, *Electronic Application of Duke Energy Kentucky, Inc. For: 1) An Adjustment of the Electric Rates; 2) Approval of an Environment Compliance Plan and Surcharge Mechanism; 3) Approval of New Tariffs; 4) Approval of Accounting Practices to Establish Regulatory Assets and Liabilities; and 5) All other Required Approvals and Relief* (Ky. PSC June 12, 2018); Case No. 2018-00294, *Electronic Application of Kentucky Utilities Company for an Adjustment of its Electric Rates* (Ky. PSC Oct. 8, 2019); Case No. 2018-00295, *Electronic Application of Louisville Gas and Electric Company for an Adjustment of its Electric and Gas Rates* (Ky. PSC Oct. 8, 2019); Case No. 2019-00268, *Application of Knott County Water and Sewer District for an Alternative Rate Adjustment* (Ky. PSC Dec. 3, 2019); Case No. 2019-00271, *Electronic Application of Duke Energy Kentucky, Inc. for 1) An Adjustment of the Electric Rates; 2) Approval of New Tariffs; 3) Approval of Accounting Practices to Establish Regulatory Assets and Liabilities; and 4) All other Required Approvals and Relief* (Ky. PSC May 4, 2020); Case No. 2020-00290, *Electronic Application of Bluegrass Water Utility Operating Company, LLC for an Adjustment of Rates and Approval of Construction* (Ky. PSC Dec. 27, 2021); Case No. 2020-00349, *Electronic Application of Kentucky Utilities Company for an Adjustment of Electric Rates, a Certificate of Public Convenience and Necessity to Deploy Advanced Metering Infrastructure, Approval of Certain Regulatory and Accounting Treatments, and Establishment of a One-Year Subcredit* (Ky. PSC Dec. 7, 2021); Case No. 2020-00350, *Electronic Application of Louisville Gas and Electric Company for an Adjustment of its Electric and Gas Rates, a Certificate of Public Convenience and Necessity to Deploy Advanced Metering Infrastructure, Approval of Certain Regulatory and Accounting Treatments, and Establishment of One-Year Surcredit* (Ky. PSC Dec. 7, 2021); Case No. 2021-00183, *Electronic Application of Columbia Gas of Kentucky, Inc. for an Adjustment of Rates; Approval of Depreciation Study; Approval of Tariff Revision; Issuance of a Certificate of Public Convenience and Necessity; and Other Relief* (Ky. PSC Oct. 5, 2021); Case No. 2021-00185, *Electric Application of Delta Natural Gas Company, Inc. for an Adjustment of its Rates and a Certificate of Public Convenience and Necessity* (Ky. PSC Dec. 8, 2021).

¹⁰ See Case No. 2019-00271, *Electronic Application of Duke Energy Kentucky, Inc. for 1) An Adjustment of the Electric Rates; 2) Approval of New Tariffs; 3) Approval of Accounting Practices to Establish Regulatory Assets and Liabilities; and 4) All Other Required Approvals and Relief* (Ky. PSC Apr. 29, 2020), Order at 3, 5.

revenue requirement and total plant-in-service, both of which are necessary for determining rates, the calculation of which should be transparent. Although it uses a forecasted test year and not a historical test year, the forecasted year is now over so the forecasts are out of date.

AUGUST 25, 2021 MOTION

Attachment B to Columbia Kentucky's response to Staff's Third Request, Item 4, is a map of gas pipeline DE. Columbia Kentucky argued that this represents critical infrastructure information exempted from disclosure by KRS 61.878(1)(m).

Attachment A to Columbia Kentucky's response to Staff's Third Request, Item 25, is a list of in-line inspection (ILI) retrofitting contractors that Columbia Kentucky sent requests for proposals (RFPs) to. Attachment B includes the RFP, contractor bid packages, and Columbia Kentucky's bid analysis. Attachment C¹¹ includes contractor conditions and engineering plans for the ILI retrofitting project. Columbia Kentucky argued that these documents contain sensitive and personal information regarding ILI contractors and disclosure could harm both Columbia Kentucky and the contractors.

Attachment A to Columbia Kentucky's response to Staff's Third Request, Item 28, consists of forecasts of load, sales, and construction costs through 2025. Columbia Kentucky argued that this spreadsheet contains sensitive future financial information, names of current and potential customers, and other sensitive information such as load expectation for those entities.

¹¹ Identified as Attachment B Set 2 in Columbia Kentucky's Motion for Confidential Treatment and in the document file name.

Attachments A and B to Columbia Kentucky's response to the Attorney General's Second Request, Item 34, include the project charter for a data and logistics initiative, along with its budget and Kentucky allocation. Attachment A to Columbia Kentucky's response to the Attorney General's Second Request, Item 48, consists of forecasted savings from this initiative. Columbia Kentucky argued that these documents contain sensitive information regarding a unique, forward-looking initiative. Columbia Kentucky stated that disclosure would provide its competitors with proprietary information regarding this initiative without having to spend the time and expense to develop it on their own.

Attachments A and B to Columbia Kentucky's response to the Attorney General's Second Request, Item 60, consist of employee benefit cost projections through 2025. Columbia Kentucky argued that this information is provided pursuant to a paid subscription, is only available to paid subscribers, and could be competitively harmful to Columbia Kentucky and the provider if released publicly.

Columbia Kentucky's response to the Attorney General's Supplemental Request, Item 1, contains forecasted compensation information. Columbia Kentucky argued that this information is not publicly available at this time and is highly sensitive and personal information.

Having considered the motion and the material at issue, the Commission finds that Columbia Kentucky's motion should be granted in part and denied in part. Confidential treatment should be granted for Attachment B to Columbia Kentucky's response to Staff's Third Request, Item 4, as it reveals the location of public utility critical infrastructure and should be exempted indefinitely under KRS 61.878(1)(m). Regarding Attachment A to Columbia Kentucky's response to Staff's Third Request, Item 25, this is a list of

contractors the RFP was sent to, has no proprietary value, and contains no personal information—confidential treatment should be denied for this document. Attachment B should be granted confidential treatment in part. Page 4 of this document is a pipeline map and should be confidential indefinitely under KRS 61.878(1)(m) because it reveals the location of public utility critical infrastructure. Pages 8 and 9 are analyses of contractors, ranking them in various areas. This should remain confidential because it would affect future bidding if disclosed, hindering Columbia Kentucky’s negotiation capabilities. Bid packages start on page 53 through the end of the document. These should remain confidential because disclosure of bids would also affect Columbia Kentucky’s negotiation with contractors, leading to possible bid manipulation and disadvantaging it compared to competitors.¹² However, the total winning bid should be disclosed because this figure is an element of revenue requirement for ratemaking purposes.¹³ The remainder of the document is primarily a description of the project and contract conditions from the RFP and should be denied confidential treatment. Attachment C consists of project plans, which should be confidential under KRS 61.878(1)(m) for an indefinite period because of their potential to expose vulnerabilities in public utility critical systems.

Attachment A to Columbia Kentucky’s response to Staff’s Third Request, Item 28, should be granted confidential treatment because the document contains load, sales, and

¹² See Case No. 2019-00269, *Electronic Application of Big Rivers Electric Corporation for Enforcement of Rate and Service Standards*, (Ky. PSC Dec. 8, 2021), Order at 2-3.

¹³ See Case No. 2021-00358, *Electronic Application of Jackson Purchase Energy Corporation for a General Adjustment of Rates and Other General Relief* (Ky. PSC Feb. 28, 2022), Order at 2-3.

cost projections that could be used by competitors to unfairly compete with Columbia Kentucky.¹⁴

Attachments A and B to Columbia Kentucky's response to the Attorney General's Second Request, Item 34, and Attachment A to Columbia Kentucky's response to the Attorney General's Second Request, Item 48, should be granted confidential treatment because these documents contain internal strategic plans, forecasts, budgets, and allocation for Columbia Kentucky initiatives that would benefit its competitors if disclosed.¹⁵ Competitors could unfairly compete by implementing similar initiatives without making the same expenditures to develop the program as Columbia Kentucky.

Attachments A and B to Columbia Kentucky's response to the Attorney General's Second Request, Item 60, should be granted confidential treatment because forecasted costs could be useful to Columbia Kentucky's competitors and contains data that is proprietary that competitors should not have free access to.¹⁶

Lastly, confidential treatment should be denied for Columbia Kentucky's response to the Attorney General's Supplemental Request, Item 1 because the Commission has already denied confidential treatment for this information.¹⁷

¹⁴ See Case No. 2020-00064, *Application of Big Rivers Electric Corporation for Approval to Modify Its MRSB Tariff, Cease Deferring Depreciation Expenses, Establish Regulatory Assets, Amortize Regulatory Assets, and Other Appropriate Relief* (Ky. PSC Mar. 17, 2020), Order at 1-2.

¹⁵ See Case No. 2019-00370, *Electronic Joint Application of Louisville Gas and Electric Company, Meade County Rural Electric Cooperative Corporation, and Big Rivers Electric Corporation for (1) Approval of an Agreement Modifying an Existing Territorial Boundary Map and (2) Establishing Meade County Rural Electric Cooperative Corporation as the Retail Electrical Supplier for Nucor Corporation's Proposed Steel Plate Mill in Buttermilk Falls Industrial Park in Meade County, Kentucky* (Ky. PSC Mar. 9, 2020(1)), Order.

¹⁶ See Case No. 2021-00053, *An Electronic Examination of the Application of the Fuel Adjustment Clause of Kentucky Power Company from November 1, 2018 Through October 31, 2020* (Ky. PSC June 24, 2022), Order at 2-3; Case No. 2018-00358, *Electronic Application of Kentucky American Water Company for an Adjustment of Rates* (Ky. PSC Mar. 14, 2019), Order at 2.

¹⁷ Order (Ky. PSC Oct. 5, 2021) at 3-4.

IT IS THEREFORE ORDERED that:

1. Columbia Kentucky's June 11, 2021 and August 25, 2021 motions for confidential treatment are granted in part and denied in part.

2. Confidential treatment for the designated material identified in Columbia Kentucky's June 11, 2021 motion that is contained in Columbia Kentucky's response to Staff's First Request, Item 34, Attachments A, B, C, and D, with the exception of aggregate compensation and aggregate compensation cost data, is granted for ten years or until further order of this Commission.

3. Confidential treatment for the designated material identified in Columbia Kentucky's June 11, 2021 motion consisting of aggregate compensation and aggregate compensation cost data that is contained in Columbia Kentucky's response to Staff's First Request, Item 34, Attachments A, B, C, and D is denied.

4. Confidential treatment for the designated material identified in Columbia Kentucky's June 11, 2021 motion that is contained in Columbia Kentucky's response to Staff's First Request, Item 39, Attachment A, with the exception of aggregate compensation, aggregate compensation cost data, and the President/CEO compensation line-item, is granted for ten years or until further order of this Commission.

5. Confidential treatment for the designated material identified in Columbia Kentucky's June 11, 2021 motion consisting of aggregate compensation, aggregate compensation cost data, and the President/CEO compensation line-item that is contained in Columbia Kentucky's response to Staff's First Request, Item 39, Attachment A is denied.

6. Confidential treatment for the designated material identified in Columbia Kentucky's June 11, 2021 motion that is contained in Columbia Kentucky's response to Staff's First Request, Item 46, Attachment A, for ten years or until further order of this Commission.

7. Confidential treatment for the designated material identified in Columbia Kentucky's June 11, 2021 motion that is contained in Columbia Kentucky's response to Staff's First Request, Item 54, Attachment A, is denied.

8. Confidential treatment for the designated material identified in Columbia Kentucky's August 25, 2021 motion that is contained in Columbia Kentucky's response to Staff's Third Request, Item 4, is granted for an indefinite period or until further order of this Commission.

9. Confidential treatment for the designated material identified in Columbia Kentucky's August 25, 2021 motion that is contained in Columbia Kentucky's response to Columbia Kentucky's response to Staff's Third Request, Item 25, Attachment A is denied.

10. Confidential treatment for the designated material identified in Columbia Kentucky's August 25, 2021 motion that is contained in Columbia Kentucky's response to Columbia Kentucky's response to Staff's Third Request, Item 25, Attachment B, is granted for ten years or until further order of this Commission, with the exception of pages 1-4, 5-7, 10-52, and the total selected bid amount.

11. Confidential treatment for the designated material identified in Columbia Kentucky's August 25, 2021 motion that is contained in Columbia Kentucky's response

to Columbia Kentucky's response to Staff's Third Request, Item 25, Attachment B, page 4, is granted for an indefinite period or until further order of this Commission.

12. Confidential treatment for the designated material identified in Columbia Kentucky's August 25, 2021 motion consisting of pages 1-3, 5-7, 10-52, and the total selected bid amount which are contained in Columbia Kentucky's response to Columbia Kentucky's response to Staff's Third Request, Item 25, Attachment B, is denied.

13. Confidential treatment for the designated material identified in Columbia Kentucky's August 25, 2021 motion that is contained in Columbia Kentucky's response to Columbia Kentucky's response to Staff's Third Request, Item 25, Attachment C is granted for an indefinite period or until further order of this Commission.

14. Confidential treatment for the designated material identified in Columbia Kentucky's August 25, 2021 motion that is contained in Columbia Kentucky's response to Staff's Third Request, Item 28, Attachment A, is granted for ten years or until further order of this Commission.

15. Confidential treatment for the designated material identified in Columbia Kentucky's August 25, 2021 motion that is contained in Columbia Kentucky's response to Attorney General's Second Request, Item 34, Attachments A and B, is granted for ten years or until further order of this Commission.

16. Confidential treatment for the designated material identified in Columbia Kentucky's August 25, 2021 motion that is contained in Columbia Kentucky's response to Attorney General's Second Request, Item 48, Attachment A, is granted for ten years or until further order of this Commission.

17. Confidential treatment for the designated material identified in Columbia Kentucky's August 25, 2021 motion that is contained in Columbia Kentucky's response to Attorney General's Second Request, Item 60, Attachments A and B, is granted for ten years or until further order of this Commission.

18. Confidential treatment for the designated material identified in Columbia Kentucky's August 25, 2021 motion that is contained in Columbia Kentucky's response to Attorney General's Supplemental Request, Item 1, is denied.

19. Use of the designated material granted confidential treatment by this Order in any Commission proceeding shall comply with 807 KAR 5:001E, Section 13(9).

20. Columbia Kentucky shall inform the Commission if the designated material granted confidential treatment becomes publicly available or no longer qualifies for confidential treatment.

21. If a nonparty to this proceeding requests to inspect the material granted confidential treatment by this Order and the period during which the material has been granted confidential treatment has not expired, Columbia Kentucky shall have 30 days from receipt of written notice of the request to demonstrate that the material still falls within the exclusions from disclosure requirements established in KRS 61.878. If Columbia Kentucky is unable to make such demonstration, the requested material shall be made available for inspection. Otherwise, the Commission shall deny the request for inspection.

22. The Commission shall not make the requested material for which confidential treatment was granted available for inspection for 30 days from the date of service of an Order finding that the material no longer qualifies for confidential treatment in order to allow Columbia Kentucky to seek a remedy afforded by law.

23. The designated material denied confidential treatment by this Order is not exempt from public disclosure and shall be placed in the public record and made available for public inspection.

24. If Columbia Kentucky objects to the Commission's determination that the requested material not be granted confidential treatment, it must seek either rehearing pursuant to KRS 278.400 or judicial review of this Order pursuant to KRS 278.410. Failure to exercise either of these statutory rights will be deemed as agreement with the Commission's determination of which materials shall be granted confidential treatment.

25. Within 30 days of the date of service of this Order, Columbia Kentucky shall file a revised version of the designated material for which confidential treatment was denied, reflecting as unredacted the information that has been denied confidential treatment.

26. The designated material for which Columbia Kentucky's request for confidential treatment has been denied shall neither be placed in the public record nor made available for inspection for 30 days from the date of service of this Order to allow Columbia Kentucky to seek a remedy afforded by law.


PUBLIC SERVICE COMMISSION



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