

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

ORDER

On July 21, 2021, Columbia Gas of Kentucky, Inc. (Columbia Kentucky) filed a motion pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential protection for ten years for information provided in response to requests for information submitted by the Attorney General and Commission Staff. Columbia Kentucky requests indefinite confidential treatment for its response to Attorney General First Request Item 128d.

In its motion, Columbia Kentucky requests confidential treatment for 18 specific items provided in response to requests for information. The specific items are the following from Columbia Kentucky's Response to Commission Staff's Second Request for Information (Response to Staff's Second Request): Items 8, 27, 28, 31, and 39(b). The motion also requests confidential treatment for the following from Columbia Kentucky's Response to Attorney General's First Request for Information (Response to Attorney General's First Request): Items 4, 35(a), 35(b), 37(a), 40(b), 40 (e), 40(f), 54(b), 55(a), 93, 126, 127, 128(d), 63, 206, and 212.

COMMISSION STAFF'S SECOND REQUEST FOR INFORMATION

In support of its motion, Columbia Kentucky makes the following arguments in support of ten years of confidential treatment.

Columbia Kentucky asserts Item 8, Attachment A, includes vendor information and pricing. Columbia Kentucky states public disclosure of this information would harm both Columbia Kentucky and its vendors by allowing a competitive advantage to competitors.

In response to Item 27, which was a request for the most recent Value Line Investment Survey profiles on Columbia/NiSource, companies in the Local Distribution Company Gas Group and Combination Gas group, Columbia Kentucky filed Attachment A. Columbia Kentucky asserts the reports in Attachment A are confidential in nature and subject to copyrights held by others. Columbia Kentucky states public disclosure would infringe upon the copyright of these other parties. Further, Columbia Kentucky states this information is only available to subscribers, and public disclosure of the information could be a breach of Columbia Kentucky's subscription.

Columbia Kentucky's response to Item 28, Attachment A, includes the most recent ratings reports for Columbia and NiSource from Standard and Poor's Ratings Agency and Moody's Investment Services for 2020 until present, including credit rating information. Columbia Kentucky asserts public disclosure of this information would permit a commercial disadvantage to Columbia Kentucky as the information is sensitive in nature.

Columbia Kentucky submits pipeline location information in response to Item 31 which explains how close each of Columbia Kentucky's industrial and transportation customers is to the nearest competing pipeline in order to bypass Columbia Kentucky. Columbia Kentucky states this information is critical infrastructure information that is

highly sensitive and confidential and that disclosure would also cause competitive harm to both customers and Columbia Kentucky if it were made available.

In response to Item 39b, Columbia Kentucky provides Attachment A, which contains the Blue Chip Financial Forecasts used to derive a 2.94 percent risk free rate noted in Columbia Kentucky's application. Columbia Kentucky states these reports are subject to copyrights held by others and that public disclosure would infringe upon the copyright of these other parties.

ATTORNEY GENERAL'S FIRST REQUEST FOR INFORMATION

In support of its motion, Columbia Kentucky, makes the following arguments pertaining to the Attorney General's First Request for Information.

In response to Item 4, Columbia Kentucky provides Attachments A and B which contain organizational charts with employee information for Columbia Kentucky, NiSource Gas Distribution Group, NiSource Inc., and NiSource Corporate Services Company. This information also includes whether each employee is based in Kentucky. Columbia Kentucky asserts public disclosure of this information would give competitors an employee-specific understanding of Columbia Kentucky's workforce and also violate the general expectation of privacy afforded to non-executive employees.

Columbia Kentucky's response to Items 35(a) and (b) specifically identifies wholesale and electric generation customers. Columbia Kentucky asserts disclosure would provide customer names, usage metrics, and other sensitive customer information and would violate the general expectation of privacy afforded this information.

Columbia Kentucky asserts its response to Item 37(a) includes sensitive customer information and usage data generally recognized as confidential. The responsive

information identifies the five industrial customers that comprise the majority of Columbia Kentucky's throughput to transportation customers.

Columbia Kentucky's response to Items 40(b), (e), and (f) includes Attachments B, F, AJ, and AK. Columbia Kentucky states that these attachments are articles and publications prepared by third parties, and they are not available without a paid subscription. Columbia Kentucky asserts these articles are subject to the copyright of other parties and public disclosure would permit an infringement on these copyrights.

In response to Item 54(b), Columbia Kentucky provides Attachments A through E, which contain the names of utility and general industry companies included in a comparison of Columbia Kentucky's base salaries. Columbia Kentucky asserts this information is proprietary information of the individual survey companies who completed the survey and subject to confidential treatment.

Item 55(a) requests that Columbia Kentucky identify the portion of its Corporate Incentive Plan that is tied to financial performance measures. Columbia Kentucky's response includes Attachment A, which Columbia Kentucky maintains contains sensitive and proprietary information regarding the measures for its Long-term Incentive Plan.

Columbia Kentucky's response to Item 93 includes Attachment A, a spreadsheet that contains Global Insight data. Columbia Kentucky asserts this information is purchased from a third-party vendor and subject to a copyright held by other parties. Further, Columbia Kentucky states that release of this information could constitute a breach of Columbia Kentucky's subscription.

In response to Item 126, Columbia Kentucky provides Attachments A through D, which Columbia Kentucky maintains include copies of studies comparing administration

and general cost burdens of NiSource with its peer holding companies. Columbia Kentucky asserts these studies contain unique and particular analytical methods that, if publically disclosed, would permit unfair commercial harm by allowing competitors to ascertain the extend Columbia Kentucky compares its performance to its peers in the industry.

Item 127 requests the most recent comparison of NiSource's benefits with industry benefits. Columbia Kentucky seeks confidential treatment for Attachments A and B. Columbia Kentucky states this information was developed by a third-party vendor utilizing confidential and proprietary information. Further, Columbia Kentucky maintains that this information could be valuable to a competitor who may desire to "mimic" Columbia Kentucky's benefit structure or to "poach" its skilled workforce.

Columbia Kentucky's response to Item 128(d) includes Attachments i-1 through i-2, and Attachments ii-1 through ii-8, which are presentations that were provided to executive management regarding the NiSource Next Initiative. Columbia Kentucky asserts this information is maintained on a need-to-know basis and involves forward-looking initiatives. Further, Columbia Kentucky maintains this information contains information regarding sensitive business options and decisions that could be highly prejudicial to Columbia Kentucky if this information were publicly available. Columbia Kentucky asserts this information is a trade secret and public disclosure would permit unfair commercial harm and competitive advantage.

In response to Item 163, Columbia Kentucky submits Attachments C, D, H, J, L and M, which contain internal documents regarding incentive compensation and information for NiSource employees regarding the details of incentive compensation

plans offered by the NiSource. Columbia Kentucky states public disclosure of this information could be detrimental to Columbia Kentucky and cause competitive harm if it were made publicly available.

Columbia Kentucky's response to Item 206 includes Attachments A and B, which contain invoices for legal fees, underlying analysis supporting legal liabilities, and the analysis used to develop the budget for legal costs. Columbia Kentucky avers a number of these invoices are for matters other than the underlying rate proceeding and states the invoices include sensitive, confidential, and privileged information.

Finally, Columbia Kentucky's response to Item 212 includes Attachment A, which contains work papers supporting the forecast of the Large Customer Relations (LCR) customers performed by the LCR group. Columbia Kentucky states that this information is provided in Excel format, and Columbia Kentucky asserts this format does not lend itself to redacting customer information and names. Columbia Kentucky states the spreadsheet includes customer names and usage information generally recognized as confidential and affording the document full confidential treatment keeps formulas utilized intact.

Columbia Kentucky States that all of the above items are exempt from public disclosure pursuant to KRS 61.878(1).¹ However, Columbia Kentucky does not state with particularity which of the 18 exceptions to the Kentucky Open Records Act² provided in KRS 61.878(1) applies to any given item.

¹ Motion for Confidential Treatment at 14, paragraph 43.

² KRS 61.870 through 61.884.

ANALYSIS

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. The Commission finds that the designated material contained in Columbia Kentucky's responses to Commission Staff Second Request Items 8 and 31, as well as Items 54B, 55a, 126, 127, 128d, 163, and 206 of Columbia Kentucky's Response to the Attorney General's First Request are records that meet the criteria for confidential treatment and are exempted from public disclosure pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:001, Section 13. The material at issue falls within this exception because the Commission required Columbia Kentucky to disclose to the Commission records that if publicly disclosed would permit an unfair commercial advantage to Columbia Kentucky's competitors. Item 31 of Columbia Kentucky's Response to Attorney General's First Request is also excluded from public disclosure by KRS 31.878(1)(m)(1)(f), as critical energy infrastructure.

The Commission finds that Columbia Kentucky's Response to Staff's Second Request, Item 8, as well as Columbia Kentucky's Response to Attorney General's First Request, Items 54b, 126, and 127 should be treated as confidential for ten years. The Commission also finds that Columbia Kentucky's Response to Staff's Second Request, Item 31 and Columbia Kentucky's Response to Attorney General's First Request, Item 128d should be treated as confidential indefinitely. Further, the Commission finds that Columbia Kentucky's Response to Attorney General's First Request Items 55a and 163 should be provided confidential treatment for 12 months or until this information is made

publicly available in a filing with the Securities and Exchange Commission (SEC), whichever occurs first.

The Commission finds that Columbia Kentucky's Response to Staff's Second Request, Items 27 and 39b, as well as Columbia Kentucky's Response to Attorney General's First Request, Items 40b, 40e, 40f, and 93 should be granted confidential treatment because these items contain material for which a copyright is held by a non-party to this proceeding. The Commission is not persuaded by Columbia Kentucky's argument that this information is available only by subscription and that Columbia Kentucky may breach its terms of subscription to the distributors of this information if the Commission denies confidential treatment. Columbia Kentucky cannot shield information from public disclosure merely by contracting with another party to treat information as confidential. However, KRS 61.878(1)(k) exempts from public disclosure public records or information the disclosure of which is prohibited by federal law or regulation or state law. Since the information contained in these items is subject to copyright protection, which is a matter of federal law, the Commission finds these items should be granted confidential treatment for ten years.

KRS 61.878(1)(a) excludes from public disclosure public records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy. Because the information contained in Columbia Kentucky's Response to Attorney General's First Request, Items 4, 5a, 35b, 37a, and 212 contain private information relating to Columbia Kentucky's non-executive employees and its customers, the Commission finds this information should be granted confidential treatment for ten years.

The Commission further finds that the request for confidential treatment should be denied for Columbia Kentucky's Response to Staff's Second Request, Item 28. The Commission has previously held that credit rating information is not entitled to confidential protection because it is generally public information and part of the record in other Commission matters.³ Therefore, credit rating information does not meet the criteria for confidential treatment and is not exempted from public disclosure pursuant to KRS 61.878(1)(a) or(c) and 807 KAR 5:001, Section 13.

IT IS THEREFORE ORDERED that:

1. Columbia Kentucky's motion for confidential treatment is granted in part and denied in part.
2. Columbia Kentucky's motion for confidential treatment for its Response to Staff Second Request, Items 8, 27, 31, and 39(b) and its Response to Attorney General First Request, Items 4, 35(a) and (b), 37(a), 40(b) (e) and (f), 54(b), 55(a), 93, 126, 127, 128(d), 163, 206, and 212 is granted.
3. Columbia Kentucky's motion for confidential treatment for Commission Staff Second Request for Information Item 28 is denied.
4. The designated material granted confidential treatment by this Order and filed in Columbia Kentucky's Response to Attorney General's First Request, Items 55(a) and 163 shall not be placed in the public record or made available for public inspection

³ See Case No. 2019-00365 *Electronic Joint Application of Big Rivers Electric Corporation and Meade County Rural Electric Cooperative Corporation for (1) Approval of Contracts for Electric Service with Nucor Corporation; and (2) Approval of Tariff*, Response to Staff's First Request (filed Apr. 14, 2020), Item 3, Attachment 1 through 5, contain Standard and Poor's Ratings Agency and Moody's Investment Services reports for Big Rivers Electric Corporation; and 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 (4) All Other Required Relief*, (filed Dec. 13, 2019) Direct Testimony of Rick Baudino at 15 and 43, contains credit rating information for Duke Energy Kentucky.

for 12 months, or until filed with the SEC, whichever is earlier, or until further Order of this Commission.

5. The designated material granted confidential treatment by this Order and filed in Columbia Kentucky's Response to Staff's Second Request, Item 31, and Columbia Kentucky's Response to Attorney General First Request, Item 128(d) shall not be placed in the public record or made available for public inspection for an indefinite period or until further Order of this Commission.

6. The designated material granted confidential treatment by this Order for Columbia Kentucky's Response to Staff's Second Request, Items 8, 27, and 39(b) and Columbia Kentucky's Response to Attorney General First Request, Items 4, 35(a), 35(b), 37(a), 40(b), 40(e), 40(f), 54(b), 93, 126, 127, 206, and 212 shall not be placed in the public record or made available for public inspection for ten years or until further Order of this Commission.

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

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

9. 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, 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.

10. 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.

11. 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.

12. 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 should be granted confidential treatment.

13. 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.

14. 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.

By the Commission

ENTERED
OCT 04 2021 rcs
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:


Executive Director

Case No. 2021-00183

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