

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF DELTA)	
NATURAL GAS COMPANY, INC. FOR AN)	CASE NO.
ADJUSTMENT OF ITS RATES AND A)	2021-00185
CERTIFICATE OF PUBLIC CONVENIENCE)	
AND NECESSITY)	

ORDER

On July 28, 2021, Delta Natural Gas Company, Inc. (Delta) filed a petition for confidential treatment, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential protection for an unspecified period to Delta’s documents responsive to Items No. 8(b), 14, 22(a), 75(a), 80(a), 80(b), 83(c), 90, and 95(c) of the Attorney General of the Commonwealth of Kentucky, by and through the Office of Rate Intervention’s (Attorney General) First Request for Information (Attorney General’s First Request) and Items No. 10(d), 10(e), 10(f), and 50(a) of the Commission Staff’s Second Request for Information (Staff’s Second Request).

Attorney General’s First Request Items No. 14, 80(a), and 80(b) request information that includes executive employee compensation data. Delta argued that its executive compensation information provided in response should be held confidential under KRS 61.878(1)(a) as “containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.” It further argued that the Commission has carved out an exception to its usual practice of denying confidential treatment for executive compensation information. Delta is not a

publicly traded company, as it was delisted in 2017. It stated that executive compensation has not been disclosed to any other regulatory body. Delta argued that a prior Commission Order¹ stands for the position that executive compensation should only be disseminated if it is subject to other regulatory disclosure. In the prior case, the Commission decided to keep executive compensation confidential until the date of the required federal Securities and Exchange Commission (SEC) disclosures.²

Delta sought confidential treatment of several items based on KRS 61.878(1)(c)(1), which prohibits disclosure of information “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.” In response to Staff’s Second Requests Items No. 10(d), 10(e), and 10(f) and Attorney General’s First Request Item No. 90, Delta has provided gas supplier contracts, a summary of supplier sales with prices and volume, and invoices. Delta argued that disclosure of this information would provide its competitors with a commercial advantage and would injure its ability to negotiate future gas supply contracts at advantageous prices.

Delta also sought confidential treatment for documents provided in response to Attorney General’s First Request Items No. 22(a) and 8(b) pursuant to KRS 61.878(1)(c)(1). Item No. 22(a) asked for strategic business plans for future years and Item No. 8(b) sought cost rate for short-term debt capital through 2021. Delta stated

¹ Case No. 2017-00179, *Electronic Application of Kentucky Power Company for (1) a General Adjustment of Its Rates for Electric Service; (2) an Order Approving Its 2017 Environmental Compliance Plan; (3) an Order Approving Its Tariffs and Riders; (4) an Order Approving Accounting Practices to Establish Regulatory Assets and Liabilities; and (5) an Order Granting All Other Required Approvals and Relief* (Ky. PSC Aug. 23, 2017), Order at 6–7.

² *Id.* at 3.

that strategic business plans and these debt figures contain commercially sensitive information that would disadvantage Delta by providing insight into the company's potential growth opportunities and insight into its forecasting calculations.

Delta further asserted that KRS 61.878(1)(c)(1) protects a third-party actuarial report provided in response to Attorney General's First Request Item No. 83(c) and the identities of and contracts with each of the vendors for SAP and GIS software provided in response to Attorney General Item No. 75(a). Delta stated that this information is proprietary to each third party and to disclose this information would harm its relationships with these parties, which may be less willing to provide these types of services to Delta in the future.

Delta also sought confidential treatment for an employee compensation study report provided in response to Attorney General's First Request Item No. 95(c), alleging it would invade the privacy rights of the employees. Pursuant to KRS 61.878(1)(a), "Public records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy" are exempt from public disclosure. However, individuals are not named in the report. Delta argued that since the report job titles and the ability to research national general industry compensation data would allow viewers to deduce the wage rate of individual employees.

Lastly, Delta asked for confidential treatment of three contracts referenced in Mr. Seelye's testimony and provided in response to Staff's Second Request Item No. 50(a).

These contracts have already been granted confidential period in other cases for an indefinite period.³

Having considered the petition and the material at issue, the Commission finds that Delta's petition should be granted in part and denied in part. The Commission previously held confidential all data containing pricing information for an indefinite period pursuant to KRS 61.878(1)(c)(1).⁴ Gas supplier contracts, the supplier sales summary with prices and volume, and invoices contain pricing data and should be granted confidential treatment because they are generally recognized as confidential or proprietary, and if openly disclosed would permit an unfair commercial advantage to Delta's competitors. The Commission finds that the designated materials contained in Delta's responses to Item No. 90 of Attorney General's First Request and Items No., 10(d), 10(e), 10(f) of the Staff's Second 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.

Regarding strategic business plans, the Commission previously found that business plans should be held confidential for five years.⁵ This information should remain confidential because disclosure could result in competitor commercial advantage due to competitor insight into Delta's future strategies. The Commission finds that the

³ Case Nos. 1998-00380, 1998-00412, and 1998-00479, *The Contract Between an End-User and Delta Natural Gas Company, Inc. for Natural Gas Transportation Service* (Ky. PSC Mar. 1, 2001), Order at unnumbered page 3.

⁴ Case No. 2016-00200, *Purchased Gas Adjustment Filing of Valley Gas, Inc.* (Ky. PSC July 27, 2017), Order at 2–3.

⁵ Case No. 2016-00370, *Electronic Application of Kentucky Utilities Company for an Adjustment of Its Electric Rates and for Certificates of Public Convenience and Necessity* (Ky. PSC Dec. 12, 2018), Order at 3, 5.

designated materials contained in Delta's responses to Items No. 8(b) and 22(a) of 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.

With respect to Delta's actuarial reports, the Commission has specifically held third-party actuarial reports to be confidential for an indefinite period.⁶ Regarding Delta's software vendor information, the Commission previously ruled that vendor proprietary information should be held confidential for 20 years to protect the vendor's information and maintain vendor relationships.⁷ The Commission finds that the designated materials contained in Delta's responses to Items No. 75(a) and 83(c) of 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.

Regarding non-executive employee salary information, despite the lack of name identification of employees, the identity of these employees could be determined using the remaining data in the documentation. The Commission has previously allowed confidential treatment for an indefinite period for entire documents containing non-executive employee salary or wage information.⁸ This would prevent the possibility that employee identities could be matched to their salaries. Non-executive employees have

⁶ Case No. 2018-00358, *Electronic Application of Kentucky American Water Company for an Adjustment of Rates* (Ky. PSC Mar. 14, 2019), Order at 2, 5.

⁷ 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.

⁸ Case No. 2020-00160, *Electronic Application of Water Service Corporation of Kentucky for a General Adjustment in Existing Rates* (Ky. PSC Dec. 22, 2020), Order at 2.

an expectation of privacy regarding their salaries. The Commission finds that the designated materials contained in Delta's responses to Item No. 95(c) of 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)(a), and 807 KAR 5:001, Section 13.

The Commission finds that the contracts provided in response to Staff's Second Request Item No. 50(a) are already subject to an Order granting confidential treatment and confidential treatment⁹ should remain in place for an indefinite period.

The Commission further finds that the request for confidential treatment should be denied for all documents provided in response to Attorney General's First Request Items No. 14, 80(a), and 80(b). The exception noted by Delta in the Commission's 2017 Order is distinguishable from the present case because in the prior case, the Commission granted confidential treatment for only approximately seven months until the utility's required disclosure in SEC filings.¹⁰ The executive salaries were ultimately disclosed and were included in rate calculations. The Commission allowed this delay in disclosure because the utility was required by SEC insider regulations¹¹ to keep this information confidential until its required disclosures. The present case is different from the prior case because it does not seek a limited period for confidential treatment, and Delta is not required to keep its executive compensation confidential under federal law. It has not met its burden to show that executive compensation is of a personal nature where the

⁹ Case Nos. 1998-00380, 1998-00412, and 1998-00479, *Delta Natural Gas Company, Inc.* (Ky. PSC Mar. 1, 2001), Order at unnumbered 3.

¹⁰ Case No. 2017-00179, *Kentucky Power Company* (Ky. PSC Aug. 23, 2017), Order at 6–7.

¹¹ 17 C.F.R. § 240.10b-5.

public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy. The Commission has previously held that executive compensation information is not entitled to confidential protection because the salaries are included as an expense in base rate calculations.¹² Therefore, executive compensation information does not meet the criteria for confidential treatment and is not exempted from public disclosure pursuant to KRS 61.878(1)(a) and 807 KAR 5:001, Section 13.

The Commission notes that Delta did not comply with 807 KAR 5:001, Section 13 (2)(a)(2) by including a requested period sought for confidential treatment and the reasoning for this period. In the interest of administrative expedience, the Commission relies upon prior Orders referenced herein to determine the applicable period.

IT IS THEREFORE ORDERED that:

1. Delta's petition for confidential treatment is granted in part and denied in part.
2. Delta's petition for confidential treatment for documents responsive to Attorney General's First Request Items No. 90 and 95(c) and Staff's Second Requests Items No. 10(d), 10(e), 10(f), and 50(a) is granted for an indefinite period or until further Order of this Commission.
3. Delta's petition for confidential treatment for documents responsive to Attorney General's First Request Items No. 8(b) and 22(a) is granted for a period of five years or until further Order of this Commission.

¹² Case No. 2017-00321, *Electronic Application of Duke Energy Kentucky, Inc. for: 1) an Adjustment of the Electric Rates; 2) Approval of an Environmental 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 May 3, 2018), Order at 4–5.

4. Delta's petition for confidential treatment for documents responsive to Attorney General's First Request Items No. 75(a) and 83(c) is granted for a period of 20 years or until further Order of this Commission.

5. Delta's petition for confidential treatment for executive compensation documentation provided in response to Attorney General's First Request Items No. 14, 80(a), and 80(b) is denied.

6. The designated material granted confidential treatment by this Order shall not be placed in the public record or made available for public inspection for the specified period 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. Delta 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 Delta 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 Delta to seek a remedy afforded by law.

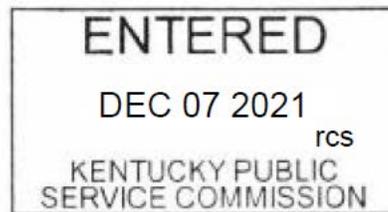
11. The designated material denied confidential treatment by this Order is not exempt from public disclosure and shall be placed in the public record and made available for public inspection.

12. If Delta 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, Delta 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 Delta'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 Delta to seek a remedy afforded by law.

By the Commission



ATTEST:


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