

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 June 11, 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. 16, 37, 38, 39, and 54 of Commission Staff’s First Request for Information (Staff’s First Request).

Staff’s First Request Item No. 16 asks Delta to provide federal and state income tax returns and schedules. Delta argued that this information should be granted confidential treatment under KRS 61.878(1)(k), which exempts from disclosure “[a]ll public records or information the disclosure of which is prohibited by federal law or regulation or state law.” Delta asserted that release of tax returns is prohibited under 26 U.S.C. § 6103(a) which states that “[r]eturns and return information shall be confidential,” and KRS 131.190(1) which prohibits any person from divulging tax returns or schedules.

Delta also alleged executive compensation information provided in response to Staff First Request Item Nos. 37, 38, and 39 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 further asserted that customer-identifying information provided in its application³ and referenced in response to Staff’s First Request Item No. 54 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.” Delta stated that the identification of specific customers is personal information that should not be in the public domain.

Lastly, Delta asked for confidential treatment of portions of two exhibits provided in response to Staff’s First Request Item No. 54. Exhibit JM-2 includes a spreadsheet⁴

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.

³ Application, Tab 55 and Tab 66.

⁴ Exhibit JM-2 Nicholasville 8-inch Transmission Line Estimate.

containing transmission line estimates and a spreadsheet showing pipeline purchase history and forecasts from various vendors.⁵ Delta stated that pursuant to KRS 61.878(1)(c)(1) these items 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.” Delta argued that disclosure of transmission line estimates could result in potential bidders on the transmission line project manipulating the bid solicitation process to the detriment of Delta and its ratepayers. Delta further argued that the public disclosure of pipeline purchase information would provide its competitors a commercial advantage and would injure its ability to negotiate future gas supply contracts at advantageous prices. This data includes vendor names and gas volumes purchased from these vendors as well as forecasts of future volumes.

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 that tax returns and schedules should be held confidential for an indefinite period of time under KRS 61.878(1)(k) because they are prohibited from release pursuant to 26 U.S.C. § 6103(a), and KRS 131.190(1).⁶ The Commission finds that the designated material contained in Delta’s responses to Staff’s First Requests, namely tax returns and schedules disclosed in response to Item No. 16 are records that meet the criteria for confidential treatment and are exempted from public disclosure pursuant to KRS 61.878(1)(k) and 807 KAR 5:001, Section 13.

⁵ Exhibit JM-2 Mix of Gas Supply, Tab 29.

⁶ Case No. 2018-00041, *In the Matter of: Electronic Investigation of the Impact of the Tax Cuts and Job Act on the Rates of Columbia Gas of Kentucky, Inc.* (Ky. PSC June 6, 2018), Order at 2.

The Commission previously held that customer identities and accompanying information was exempt from disclosure under KRS 61.878(1)(a) and should stay confidential for an indefinite period.⁷ Customer-identifying information should be held confidential because identities of customers are of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy. The Commission finds that the designated material contained in Delta's responses to Staff's First Requests, specifically customer names listed in Tabs 55 and 66 to Delta's application and referenced in response to Item No. 54 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.

Regarding transmission line estimates, the possibility of bid manipulation has been specifically addressed by the Commission, which agreed that the situation merited confidential treatment for an indefinite period.⁸ Disclosure of these estimates could result in competitors outbidding Delta for suppliers or suppliers underbidding to Delta's detriment. However, the Commission finds that five years is an adequate time period to protect Delta's commercial interest in the confidentiality of its estimate. Regarding pipeline purchase history, disclosure of this information would indeed hamper Delta's ability to negotiate with each vendor, as each vendor could take advantage of Delta's historical and forecasted demand and vendor supply, thus affecting purchase prices and

⁷ Case No. 2020-00174, *Electronic Application of Kentucky Power Company For (1) A General Adjustment of Its Rates for Electric Service; (2) Approval of Tariffs and Riders; (3) Approval of Accounting Practices to Establish Regulatory Assets and Liabilities; (4) Approval of a Certificate of Public Convenience and Necessity; and (5) All Other Required Approvals and Relief* (Ky. PSC Oct. 27, 2020), Order at 3.

⁸ Case No. 2020-00309, *Electronic Purchased Gas Adjustment Filing of Louisville Gas and Electric Company* (Ky. PSC Aug. 20, 2021), Order at 3.

giving Delta's competitors an unfair advantage. These types of documents 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. The Commission finds that Exhibit JM-2 Nicholasville 8-inch Transmission Line Estimate spreadsheet, and Mix of Gas Supply spreadsheet, Tab 29 provided in response to Item No. 54 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 Commission further finds that the request for confidential treatment should be denied for all documents provided in response to Staff's First Requests Items No. 37, 38, and 39. 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.⁹ In the Order that Delta cited as an exception to executive compensation disclosure, the Commission decided to keep executive compensation confidential until the date of the required federal Securities and Exchange Commission (SEC) disclosures.¹⁰ However, the exception provided by the Commission in that 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. The executive salaries were ultimately disclosed and were included in rate calculations. The Commission allowed this delay in disclosure

⁹ 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.

¹⁰ Case No. 2017-00179, *Kentucky Power Company* (Ky. PSC Aug. 23, 2017), Order at 3.

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 public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy. 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 time 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 all tax documents provided in response to Item No. 16; customer names listed in Tabs 55 and 66 to Delta's application; and Mix of Gas Supply spreadsheet, Tab 29 provided in response to Item No. 54 is granted for an indefinite period.
3. Exhibit JM-2 Nicholasville 8-inch Transmission Line Estimate spreadsheet provided in response to Item No. 54 is granted for five years.

¹¹ 17 C.F.R. § 240.10b-5.

4. Delta's petition for confidential treatment for executive compensation documentation provided in response to Staff's First Request Items No. 37, 38, and 39 is denied.

5. 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 designated period or until further Order of this Commission.

6. 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).

7. Delta shall inform the Commission if the designated material granted confidential treatment becomes publicly available or no longer qualifies for confidential treatment.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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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