

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 November 5, 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 at least five years for four exhibits appended to the rebuttal testimony of Jonathan Morpew and John B. Brown, and figures from those exhibits recited in Mr. Morpew’s testimony.

The three exhibits¹ referenced by Mr. Morpew consist of three detailed bid packages submitted for right-of-way development. Each bid contains: (1) contractor costs associated with acquiring right-of-way, (2) payments to landowners to acquire easement rights, and (3) associated engineering costs. As a basis for its petition, Delta argued that disclosure of the bids and detailed cost estimates derived from the winning bid may disadvantage its bidders and may injure its ability to receive future bids at advantageous prices. Also, Delta alleged that disclosure of its anticipated spending on right-of-way acquisition could disadvantage its negotiations with landowners. Delta asserted that these exhibits should be exempt from disclosure under KRS 61.878(1)(c)(1), which

¹ Rebuttal Testimony of Jonathan Morpew, Exhibits JM-1, JM-2, and JM-3.

prohibits disclosure of “[r]ecords confidentially disclosed to an agency or required by an agency to be disclosed to it, 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 also sought confidential treatment for Mr. Morphew’s testimonial recitation of the figures and resulting cost estimates derived from the winning bid. However, Delta did not seek confidential treatment for the total amount of the winning bid including easement acquisition cost.²

Delta also sought confidential treatment for an exhibit³ to the rebuttal testimony of John B. Brown which consists of personnel costs, including a list of employee salaries with job titles but no names identifying the employees. All the line items are for non-executive employees except one for the president of the company. Delta argued that all employee data should be granted confidential treatment pursuant to KRS 61.878(1)(a) which prevents disclosure of “Public records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy. Regarding executive salary information, Delta 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

² Rebuttal Testimony of Jonathan Morphew at 7, Line 4.

³ Rebuttal Testimony of John B. Brown, Exhibit JB-4.

disclosed to any other regulatory body. Delta argued that a prior Commission Order⁴ 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.⁵

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. Delta is not seeking confidential treatment for the winning bid total amount sought to be recovered for rate calculation purposes. The bid documents themselves and the recitation of figures in Mr. Morpew's testimony should remain confidential because their disclosure could disadvantage Delta and its bidders, and could permit unfair advantage to Delta's competitors.⁶ The Commission finds that Exhibits JM-1, JM-2, and JM-3 to the rebuttal testimony of Jonathan Morpew and the designated portions of the rebuttal testimony of Jonathan Morpew 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 Exhibit JB-4 to the rebuttal testimony of John B. Brown, the Commission finds that confidential treatment is granted only as to the spreadsheet line items

⁴ 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.

⁵ *Id.* at 3.

⁶ See Case No. 2020-00004, *An Electronic Examination of the Application of the Fuel Adjustment Clause of Kentucky Power Company from May 1, 2019 Through October 31, 2019*, (Ky. PSC Apr. 9, 2020), Order at 1-2.

containing non-executive employee information. Despite the lack of name identification of non-executive 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.⁷ This would prevent the possibility that employee identities could be matched to their salaries. The Commission finds that line items showing non-executive employee data in Exhibit JB-4 to the rebuttal testimony of John B. Brown 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 the remainder of Exhibit JB-4 to the rebuttal testimony of John B. Brown. Tab 1 to the spreadsheet consists of aggregate personnel spending figures necessary for rate calculation purposes and should not be granted confidential treatment, as they do not identify individual employee information. In addition, 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.⁸ 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 SEC

⁷ 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.

⁸ 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.

disclosures.⁹ 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 because the utility was required by SEC insider regulations¹⁰ 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, Tab 1 to Exhibit JB-4 to the rebuttal testimony of John B. Brown and the line item in Tab 2 for executive compensation information do 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.

IT IS THEREFORE ORDERED that:

1. Delta's November 5, 2021 petition for confidential treatment is granted in part and denied in part.
2. Delta's petition for confidential treatment for Exhibits JM-1, JM-2, and JM-3 to the rebuttal testimony of Jonathan Morpew, designated portions of the rebuttal testimony of Jonathan Morpew, and Tab 2 line items showing non-executive employee

⁹ Case No. 2017-00179, *Kentucky Power Company* (Ky. PSC Aug. 23, 2017), Order at 3.

¹⁰ 17 C.F.R. 240.10b-5.

data in Exhibit JB-4 to the rebuttal testimony of John B. Brown is granted for a period of five years.

3. Delta's petition for confidential treatment for Tab 1 to the rebuttal testimony of John B. Brown and the line item in Tab 2 for executive compensation information is denied.

4. The designated material granted confidential treatment by this Order shall not be placed in the public record or made available for public inspection for five years or until further Order of this Commission.

5. 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).

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

7. 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, Delta 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.

8. 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.

9. 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.

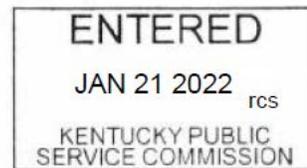
10. If Delta objects to the Commission's determination that the requested material not be granted confidential treatment, it must seek either rehearing pursuant to KRS 278.400 or judicial review of this Order pursuant to KRS 278.410. Failure to exercise either of these statutory rights will be deemed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

11. 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.

12. 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

Chairman Kent Chandler did not participate in the decision concerning this case.



ATTEST:

A handwritten signature in blue ink that reads "Linda C. Bidwell". The signature is written in a cursive style and is positioned above a horizontal line.

Executive Director

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