

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF ATMOS)	
ENERGY CORPORATION FOR AN ADJUSTMENT)	CASE NO.
OF RATES; APPROVAL OF TARIFF REVISIONS;)	2024-00276
AND OTHER GENERAL RELIEF)	

ORDER

This matter comes before the Commission on five motions filed by Atmos Energy Corporation (Atmos). On October 25, 2024, Atmos filed a motion, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential protection for an indefinite period for its response to Commission Staff's First Request for Information (Staff's First Request), Items 13 (Attachment 2); 15 (Attachments 1-2); 16 (Attachment 2); 17 (Attachments 1-2); 48 (Attachments 1-2); and 49 (Attachments 1-4).

On December 2, 2024, Atmos filed a motion, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential protection for an indefinite period for its response to 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), Items 5, 10, 23, 82, 84, and 89.

On December 12, 2024, Atmos filed a motion, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential protection for an indefinite period for its supplemental response to Staff's First Request, Item 48 (Attachment 2).

On January 3, 2025, Atmos filed a motion, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential protection for an indefinite period for its response to Commission Staff's Third Request for Information (Staff's Third Request), Item 5 (Attachment 1) and its response to the Attorney General's Second Request for Information (Attorney General's Second Request), Item 1.

On May 3, 2025, Atmos filed a motion, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential protection for Exhibit D filed into the record pursuant to a requirement in Case No. 2024-00340.¹

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."² Exceptions to the free and open examination of public records contained in KRS 61.878 should be strictly construed.³ The party requesting that materials be treated confidentially has the burden of establishing that one of the exceptions is applicable.⁴

In support of its motions, Atmos argued for the application of several exceptions enumerated in Kentucky's open records act. Atmos argued that confidentiality be granted based upon KRS 61.878(1)(c)(1), which 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

¹ Case No. 2024-00340, *Electronic Application of Atmos Energy Corporation for Approval of Special Contract Pursuant to Its Economic Development Rider* (Ky. PSC Apr. 7, 2025), Order at 12, ordering paragraph 3.

² KRS 61.872(1).

³ See KRS 61.871.

⁴ 807 KAR 5:001, Section 13(2)(c).

the entity that disclosed the records.” Atmos raised KRS 61.878(1)(k), which exempts “[a]ll public records or information the disclosure of which is prohibited by federal law or regulation or state law.” Atmos argued for KRS 61.878(1)(a), which exempts from disclosure “[p]ublic records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.” Finally, Atmos raised KRS 61.878(1)(m), which 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.”⁵ 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, electrical, fire suppression, ventilation, water, wastewater, sewage, and gas systems.⁶

A terrorist act is defined as including a criminal act intended to “[d]isrupt a system” identified in the above.⁷

OCTOBER 25, 2024 MOTION

Atmos’s response to Staff’s First Request, Item 13 (Attachment 2) consisted of contracts with consultants employed to assist with the rate case. Atmos invoked KRS

⁵ KRS 61.878(1)(m)(1).

⁶ KRS 61.878(1)(m)(1)(f).

⁷ KRS 61.878(1)(m)(2)(b).

61.878(1)(c)(1) when it argued that disclosure of these contract terms would result in competitive harm to Atmos in negotiating contracts with consultants in the future.⁸

Atmos's responses to Staff's First Request, Items 15 (Attachments 1-2), 16 (Attachment 2), and 17 (Attachments 1-2) included Excess Deferred Income Tax (EDIT) calculations, other operating tax calculations, and federal and Kentucky income tax returns, respectively. Atmos asserted that KRS 61.878(1)(k) exempts disclosure of tax information, which is prohibited by law from disclosure.

Atmos's responses to Staff's First Request, Items 48 (Attachments 1-2) and Item 49 (Attachments 1-4) consisted of a salary report prepared by a third party, incentive compensation plans, a human resources survey index, job study presentations to the Board of Directors, specific job compensation changes, and a pension plan actuarial report, respectively. Referencing KRS 61.878(1)(c)(1), Atmos claimed that if disclosed, this information would provide competitors with access to exclusive information regarding employee compensation and internal compensation strategies and would harm Atmos's ability to retain and hire employees.

Having considered the motion and the material at issue, the Commission finds that Atmos's October 25, 2024 motion for confidential treatment should be granted, in part, and denied, in part. The Commission finds that the designated material contained in Atmos's responses to Staff's First Request, Items 13 (Attachment 2), 15, (Attachments 1-2), 16 (Attachment 2), 17 (Attachments 1-2), 48 (Attachments 1-2), and 49 (Attachments 2-4) are records that meet the criteria for confidential treatment and should be exempted

⁸ Oct. 25, 2024 Motion at 2.

from public disclosure pursuant to KRS 61.878(1)(c)(1), KRS 61.878(1) (k) and 807 KAR 5:001, Section 13.

Consulting contracts should be exempt under KRS 61.878(1)(c)(1) because public disclosure of such contracts could negatively affect Atmos in future consulting contract negotiation.⁹ KRS 61.878(1)(k) exempts disclosure of tax return information pursuant to 26 U.S.C. § 6103(a), and KRS 131.190(1). Return information includes

A taxpayer's identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments, . . . or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary with respect to a return or with respect to the determination of the existence, or possible existence, of liability (or the amount thereof) of any person under this title for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense."¹⁰

The Item 15 and 16 spreadsheets consist of income, deductions, and tax liability and assets used to calculate returns and Item 17 consists of the returns themselves. Item 48 and 49 attachments, excluding Item 49, Attachment 1, should not be disclosed because Atmos is in competition for labor and public disclosure of compensation information would allow competitors to unfairly compete with Atmos.¹¹

The Commission further finds that the request for confidential treatment should be denied for Atmos's responses to Staff's First Request, Item 49, Attachment 1 because

⁹ See Case No. 2018-00281, *Electronic Application of Atmos Energy Corporation for an Adjustment of Rates* (Ky. PSC Feb. 3, 2021), Order at 3.

¹⁰ 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 3, citing 26 U.S.C. § 6103(b)(2)(A).

¹¹ See Case No. 2018-00281, *Electronic Application of Atmos Energy Corporation for an Adjustment of Rates* (Ky. PSC Feb. 3, 2021), Order at 1.

this document is a list of surveys with no substantive information. Therefore, this information does not meet the criteria for confidential treatment and should not be exempted from public disclosure pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:001, Section 13.

DECEMBER 2, 2024 MOTION

Atmos's response to the Attorney General's First Request, Items 5 and 10 consist of Atmos's Distribution Integrity Management Plan (DIMP) and Transmission Integrity Management Plan (TIMP). Atmos argued that these plans should stay confidential under KRS 61.878(1)(m) these documents contain infrastructure records that expose potential vulnerabilities in the critical infrastructure in Atmos's system.

Atmos's response to the Attorney General's First Request, Item 23, is a list of capital investments made by industrial customers. Atmos alleged that this information is personal to those customers and if disclosed would be an invasion of privacy under KRS 61.878(1)(a) and could also give competitors an unfair commercial advantage under KRS 61.878(1)(c)(1).

Atmos's response to the Attorney General's First Request, Items 82 and 84, include pension and post-retirement actuarial reports and pension calculations for the forecasted test year. Atmos argued that this information could be used by competitors to gain a competitive advantage in the labor market.

Atmos's response to the Attorney General's First Request, Item 89 consists of a settlement agreement with the Kentucky Department of Revenue. Atmos contended that KRS 61.878(1)(k) exempts disclosure of tax information.

Having considered the motion and the material at issue, the Commission finds that Atmos's December 2, 2024 motion should be granted, in part, and denied, in part. The Commission finds that the designated material contained in Atmos's response to the Attorney General's First Request, Items 5, 10, 82, 84, and 89 are records that meet the criteria for confidential treatment and should be exempted from public disclosure pursuant to KRS 61.878(1)(c)(1), KRS 61.878(1)(k), KRS 61.878(1)(m), and 807 KAR 5:001, Section 13.

The DIMP and TIMP documents identify vulnerabilities in the gas distribution and transmission systems and should be exempt from disclosure under KRS 61.878(1)(m).¹² Actuarial reports include third-party proprietary information, subject to federal copyright law and would disadvantage Atmos if it were unable to contract with such third parties. The additional pension-related information could be used by competitors to gain a competitive advantage in the labor market—expenses should be disclosed but this information is a calculation by the plan vendor showing how the plan costs are determined.¹³ The tax settlement agreement contains details regarding tax return information and should remain confidential pursuant to KRS 61.878(1)(k) as above.

The Commission further finds that the request for confidential treatment should be denied for Atmos's response to the Attorney General's First Request, Item 23. Business

¹² See Case No. 2016-00162, *Application of Columbia Gas of Kentucky, Inc. for an Increase In Base Rates* (Ky. PSC Mar. 7, 2018), Order.

¹³ See Case No. 2022-00372, *Electronic Application of Duke Energy Kentucky, Inc. for (1) An Adjustment of 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 Oct. 30, 2023), Order at 7.

entities do not have personal privacy under KRS 61.878(1)(a).¹⁴ Atmos does not explain how disclosure of industrial customer capital spending disadvantages Atmos with competitors under KRS 61.878(1)(c)(1) and has not met its burden. Therefore, this material does not meet the criteria for confidential treatment and should not be exempted from public disclosure pursuant to KRS 61.878(1)(a) or KRS 61.878(1)(c)(1) and 807 KAR 5:001, Section 13.

DECEMBER 12, 2024 MOTION

Atmos's supplemental response to Staff's First Request, Item 48 (Attachment 2) was an update to the incentive compensation plan response discussed above. The Commission finds that Atmos's December 12, 2024 motion should be granted pursuant to KRS 61.878(1)(c)(1), for the reasons set out above in the section regarding Atmos's October 25, 2024 Motion.

JANUARY 3, 2025 MOTION

Atmos's response to Commission Staff's Third Request, Item 5 (Attachment 1), consists of a Performance-Based Rate (PBR) savings spreadsheet. Atmos argued that pursuant to KRS 61.878(1)(c)(1), disclosure of this information would allow competitors an unfair commercial advantage by gaining information regarding Atmos's gas purchases, transportation costs, and business strategies.

Atmos's response to the Attorney General's Second Request, Item 1, included merit pay raise recommendations prepared by a third party. Atmos asserted that pursuant

¹⁴ See *Palmer v. Driggers*, 60 S.W.3d 591, 598 (Ky. App. 2001), in which the Court defined the term "personal" in KRS 61.878(1)(a) as meaning causing "serious personal embarrassment or humiliation" which can only be experienced by actual people and not legal entities. See also Case No. 2016-00117, *Joint Application of Kenergy Corp. and Big Rivers Electric Corporation for Approval of Contracts* (Ky. PSC Dec. 22, 2021), Order at 2.

to KRS 61.878(1)(c)(1), this information, if disclosed, would give competitors in the utility industry inside knowledge of Atmos's pay structure, causing an unfair commercial advantage in the competitive area of employee retention. Also, Atmos argued that disclosure of the salary recommendations of employees would be an unwarranted invasion of personal privacy pursuant to KRS 61.878(1)(a).

Having considered the motion and the material at issue, the Commission finds that Atmos's January 3, 2025 motion should be granted. The Commission finds that the designated material contained in Atmos's response to Commission Staff's Third Request, Item 5 (Attachment 1) and Atmos's response to the Attorney General's Second Request, Item 1, are records that meet the criteria for confidential treatment and should be exempted from public disclosure pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:001, Section 13. Gas purchase and transportation cost disclosure would allow competitors to compete unfairly for gas purchase and transportation contracts.¹⁵ The third-party compensation information is proprietary report, subject to federal copyright law and if disclosed, would disadvantage Atmos if it were unable to contract with such third parties as a result. Competitors could also use the information to disadvantage Atmos in the labor market.

MAY 3, 2025 MOTION

Exhibit D, filed into the record pursuant to a requirement in Case No. 2024-00340, includes redactions from a marginal cost study pertaining to a special contract. Atmos

¹⁵ See 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 a One-Year Surcredit* (Ky. PSC Dec. 7, 2021), Order at 10.

argued that pursuant to KRS 61.878(1)(c)(1), disclosure would give market participants an unfair commercial advantage by providing insight into the prices at which it is willing to buy and sell natural gas and use it to manipulate the bidding process.

Having considered the motion and the material at issue, the Commission finds that Atmos's motion should be granted, in part, and denied, in part. The Commission finds that Exhibit D is a record that meet the criteria for confidential treatment and should be exempted from public disclosure pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:001, Section 13. Disclosure of redacted portions of a marginal cost study pertaining to a special contract could affect Atmos's ability to fairly negotiate with other potential special contract partners in the future, disadvantaging Atmos compared to its competitors. However, the Commission denies the motion insofar as the requested period to remain confidential and finds that confidential treatment for special contract terms should be limited to ten years, at which time this data will be obsolete because demand and pricing will have changed sufficiently.¹⁶

IT IS THEREFORE ORDERED that:

1. Atmos's October 25, 2024 motion for confidential treatment is granted, in part, and denied, in part.
2. Atmos's December 2, 2024 motion for confidential treatment is granted, in part, and denied, in part.
3. Atmos's December 12, 2024 motion for confidential treatment is granted.
4. Atmos's January 3, 2025 motion for confidential treatment is granted.

¹⁶ See Case No. 2023-00013, *An Electronic Examination of the Application of the Fuel Adjustment Clause of Big Rivers Electric Corporation from November 1, 2020 Through October 31, 2022* (Jan. 29, 2024), Order at 3-4; Case No. 2016-00117, (Ky. PSC Dec. 22, 2021), Order at 2.

5. Atmos's May 3, 2025 motion for confidential treatment is granted, in part, and denied, in part.

6. Atmos's responses to Staff's First Request, Items 13 (Attachment 2), 15, (Attachments 1-2), 16 (Attachment 2), 17 (Attachments 1-2), 48 (Attachments 1-2), and 49 (Attachments 2-4), Atmos's responses to the Attorney General's First Request, Items 5, 10, 82, 84, and 89, Atmos's supplemental response to Staff's First Request, Item 48 (Attachment 2), Atmos's response to Commission Staff's Third Request, Item 5 (Attachment 1), Atmos's response to the Attorney General's Second Request, Item 1, 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.

7. Exhibit D filed May 3, 2025, shall not be placed in the public record or made available for public inspection for a period of ten years.

8. Confidential treatment is denied for Atmos's responses to Staff's First Request, Items 49 (Attachment 1) and Atmos's response to the Attorney General's First Request, Item 23.

9. 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).

10. If the designated material granted confidential treatment by this Order becomes publicly available or no longer qualifies for confidential treatment, Atmos shall inform the Commission and file with the Commission an unredacted copy of the designated material.

11. 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 20 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 Atmos is unable to make such demonstration, the requested material shall be made available for inspection. Otherwise, the Commission shall deny the request for inspection.

12. 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 Atmos to seek a remedy afforded by law.

13. 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.

14. If Atmos 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.

15. Within 30 days of the date of service of this Order, Atmos 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.

16. The designated material for which Atmos'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 Atmos to seek a remedy afforded by law.


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Entered on this 24th day of June, 2026.

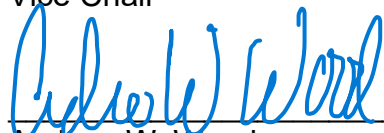
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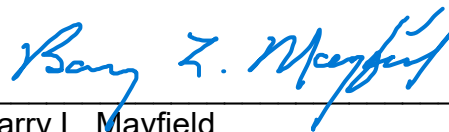
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