

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF DELTA)	CASE NO.
NATURAL GAS COMPANY, INC. FOR AN)	2024-00346
ADJUSTMENT OF GAS RATES)	

ORDER

On January 3, 2025, Delta Natural Gas Company, Inc. (Delta) filed a petition, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential treatment for several items provided in responses to Commission Staff's Second Request for Information (Staff's Second Request) and the Attorney General's First Request for Information (Attorney General's First Request).

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."¹ Exceptions to the free and open examination of public records contained in KRS 61.878 should be strictly construed.² The party requesting that materials be treated confidentially has the burden of establishing that one of the exceptions is applicable.³ KRS 61.878(1)(c)(1) provides an exception to the requirement for public disclosure of records that are "generally recognized as

¹ KRS 61.872(1).

² See KRS 61.871.

³ 807 KAR 5:001, Section 13(2)(c).

confidential and proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records.”⁴

In support of its petition, Delta argued that its responses to the Attorney General’s First Request, Item 25, Item 57, Item 58, and Item 66(a)-(b) should all be given confidential treatment pursuant to KRS 61.878(1)(c)(1).⁵ The items include two reports created by Willis Towers Watson and a pension expense forecast report created by a different vendor. Delta argued that all three items were proprietary and in the case of the Willis Towers Watson reports the Commission has granted confidential treatment in the past.⁶ The three reports were created by two different third-party vendors and are considered proprietary. The response to Item 25 included salaries, positions, and overtime pay of individual employees.

Having considered the petition and the material at issue, the Commission finds that the motion should be granted, in part, and denied in part. The Commission finds that Item 57, Item 58, and Item 66(a)-(b) provided in response to the Attorney General’s First Request are generally recognized as proprietary; they therefore meet the criteria for confidential treatment and should be exempted from public disclosure pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1). The Commission has given the two reports by Willis Towers Watson confidential treatment in the past.⁷

⁴ KRS 61.878(1)(c)(1).

⁵ Delta’s Petition for Confidential Treatment (Petition) (filed Jan. 3, 2025).

⁶ Petition at 2-3.

⁷ Petition 4-5 *citing* Case No. 2014-00159, *Application of Cumberland Valley Electric, Inc. for an Adjustment of Rates* (Ky. PSC May 7, 2015), Order; Case No 2013-00167, *Application of Columbia Gas of Kentucky, Inc. for an Adjustment of Rates for Gas Service* (Ky. PSC Oct. 29, 2013), Order.

The Commission finds that Item 25 should be given confidential treatment except for the information as it relates to the president of Delta. The information related to individual employees, their positions, salaries and overtime should be given confidential treatment pursuant to 807 KAR 5:001 Section 13 and KRS 61.878(1)(a). The individual employees have a right to be protected from an unwarranted invasion of privacy. As to the president's⁸ information, the Commission has long held that information related to the compensation of the executives should be public information.⁹

In support of its petition, Delta argued that Item 6 and Item 7 provided in response to Staff's Second Request should be given confidential treatment pursuant to KRS 61.878(1)(m).¹⁰ Item 6 and Item 7 consisted of the Distribution Integrity Management Plan (DIMP) and Delta's Transportation Integrity Management Plan (TIMP), and Delta argued that the Commission has previously granted confidential treatment for such documents because the plans contain critical infrastructure information.¹¹ Delta argued the response to Staff's Second Request, Item 23, should be given confidential

⁸ Listed as "state president" in Item 25.

⁹ The Commission has a long precedent of not granting confidential treatment for executive compensation. See Case No. 2012-00221, *Application of Kentucky Utilities Company for an Adjustment of its Electric Rates* (Ky. PSC Sept. 11, 2013); Case No. 2014-00371, *Application of Kentucky Utilities Company for an Adjustment of its Electric Rates* (Ky PSC Jan 20, 2016); Case No. 2015-00418, *Application of Kentucky-American Water Company for an Adjustment of Rates* (Ky PSC Aug. 31, 2016); Case No. 2017-00321, *Electronic Application of Duke Energy Kentucky, Inc. For: 1) An Adjustment of the Electric Rates; 2) Approval of an Environment 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 June 12, 2018); Case No. 2018-00294, *Electronic Application of Kentucky Utilities Company for an Adjustment of its Electric Rates* (Ky. PSC Oct. 8, 2019); Case No. 2018-00295, *Electronic Application of Louisville Gas and Electric Company for an Adjustment of its Electric and Gas Rates* (Ky. PSC Oct. 8, 2019); Case No. 2019-00268, *Application of Knott County Water and Sewer District for an Alternative Rate Adjustment* (Ky. PSC Dec. 3, 2019).

¹⁰ Petition at 6-7.

¹¹ Petition at 7 *citing* Case No. 2020-00396 *Electronic Application of Navitas KY NG, Johnson County Gas Company, and B&H Gas Company for Approval of Acquisition, Transfer of Ownership, and Control of Natural Gas Utility Systems* (Ky. PSC Apr. 28, 2021), Order.

treatment pursuant to KRS 61.878(1)(c)(1).¹² Lastly, Delta argued the response to Staff's Second Request Item 28's highlighted portions only, and the response to Item 40 should be given confidential treatment pursuant to KRS 61.878(1)(c)(1) and, in the case of the response to Item 40, confidential treatment pursuant to KRS 61.878(1)(a), as well.¹³

Having considered the petition and the material at issue, the Commission finds that the motion should be granted as to the items filed in response to Staff's Second Request. The Commission finds that the responses to Item 23 and Item 28, highlighted portions only, both contain information related to customers who may bypass the Delta system and as such disclosure would result in a commercial disadvantage to Delta. The Commission finds that Delta's response to Staff's Second Request Item 40 should be given confidential treatment as it contains employee wage information in a comparative wage report and such disclosure would be both an invasion of privacy for the employees but also, as a portion is a wage study, disclosure might disadvantage Delta in recruiting and retention of employees. The Commission finds both the TIMP and the DIMP should be given confidential treatment because both plans contain critical infrastructure information. These items, therefore, meet the criteria for confidential treatment and should be exempted from public disclosure pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1), KRS 61.878(1)(a), or KRS 61.878(1)(m).

IT IS THEREFORE ORDERED that:

1. Delta's January 3, 2025 petition for confidential treatment is granted, in part, and denied, in part.

¹² Petition at 1-2.

¹³ Petition 2-6.

2. Delta's January 3, 2025 petition for confidential treatment for its response to the Attorney General's First Request, Item 25, Item 57, Item 58, and Item 66(a)-(b), is granted except as set out above as to Item 25. Delta's January 3, 2025 petition for confidential treatment for its response to Staff's Second Request, is granted.

3. Delta's January 3, 2025 petition for confidential treatment for the salary information related to the president, a line item in response to Item 25, 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 indefinite period of time or until further order of this Commission.

5. 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.

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

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, 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.

9. 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 shall be granted confidential treatment.

10. 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.

11. The Commission shall not make the requested material 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.

PUBLIC SERVICE COMMISSION

Chairman 

Vice Chairman

Commissioner 

ATTEST:


Executive Director

ENTERED
APR 24 2025 AH
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SERVICE COMMISSION

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