

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF ATMOS)	
ENERGY CORPORATION FOR AN ORDER)	CASE NO.
AUTHORIZING THE ISSUANCE OF UP TO)	2024-00392
2,000,000 SHARES OF COMMON STOCK)	
THROUGH ITS LONG-TERM INCENTIVE PLAN)	

ORDER

On February 14, 2025, Atmos Energy Corporation (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 Atmos’s responses to Commission Staff’s First Request for Information (Staff’s First Request), Items 1 and 5.

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

In support of its motion, Atmos argued for the application of KRS 61.878(1)(c)(1), which provides an exception to the requirement for public disclosure for records that are

¹ KRS 61.872(1).

² See KRS 61.871.

³ 807 KAR 5:001, Section 13(2)(c).

“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 First Request, Item 1, Atmos provided a copy of its Long-Term Incentive Plan (2025 LTIP). Atmos argued that this document should not be publicly disclosed because it is designed to attract and retain the services of employees who competitors could compete for using the incentive compensation information.⁴ Atmos’s response to Staff’s First Request, Item 5, included a report provided by a third-party contractor that analyzed the cost and effect of the 2025 LTIP. Atmos argued that if disclosed, the report would allow competitors to know the results of an internal study regarding compensation and that information could be used to compete for employees.⁵ Atmos also asserted that the report is proprietary to the third-party and could cause competitive harm to the third-party if the information were publicly disclosed.⁶

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. Confidential treatment should be granted for the third-party report because disclosure would allow competitors to unfairly compete for labor, could jeopardize Atmos’s ability to obtain this type of information from third parties in the future, and might represent a copyright law violation.⁷ Competitors could also use this information for their own benefit without incurring the cost

⁴ Atmos’s Motion for Confidential Treatment (Motion) (filed Feb. 14, 2025) at 2.

⁵ Motion at 2.

⁶ Motion at 2-3.

⁷ See Case No. 2021-00245, *Electronic 2021 Integrated Resource Plan of Duke Energy Kentucky, Inc.* (Ky. PSC June 13, 2023), Order at 7.

Atmos has incurred. Therefore, Atmos's response to Staff's First Request, Item 5, meets the criteria for confidential treatment and should be indefinitely exempted from public disclosure pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:001, Section 13.

The Commission agrees that the 2025 LTIP document supplied in response Staff's First Request, Item 1, contains information that would benefit labor market competitors. However, the 2025 LTIP is substantially the same as the 2015 LTIP document filed in Case No. 2015-00379.⁸ The only figure that changed is the number of aggregate shares permitted, which would be discernible from the application but for an apparent error.⁹ Since the terms material to employee compensation under the 2025 LTIP have already been publicly disclosed, the Commission finds that the material is not entitled to confidential treatment.

IT IS THEREFORE ORDERED that:

1. Atmos's February 14, 2025 motion for confidential treatment for is granted, in part, and denied, in part.
2. Atmos's response to Staff's First Request, Item 5, 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.
3. Atmos's response to Staff's First Request, Item 1 is denied confidential treatment.

⁸ Case No. 2015-00379, *Application of Atmos Energy Corporation for an Order Authorizing the Issuance of Up to 2,500,000 Shares of Common Stock Through Its Long-Term Incentive Plan*, Atmos's Response to Commission Staff's First Request for Information, Item 1 (2015 LTIP) (filed Dec. 22, 2015).

⁹ Although Atmos's application seeks approval to issue an additional two million LTIP shares, the 2025 LTIP adds three million shares from the 2015 LTIP. See 2015 LTIP, Article 5 and 2025 LTIP, Article 5.

4. 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).

5. 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.

6. 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, Atmos 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 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.

7. 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.

8. 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.

9. 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.

10. 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.


11. 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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PUBLIC SERVICE COMMISSION



Chairman



Commissioner



Commissioner

ATTEST:

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Executive Director

ENTERED
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KENTUCKY PUBLIC
SERVICE COMMISSION

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