

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ADJUSTMENT OF GAS AND ELECTRIC RATES)
OF LOUISVILLE GAS AND ELECTRIC COMPANY) CASE NO. 10064

O R D E R

On December 4, 1987, Louisville Gas and Electric Company ("LG&E") filed a petition, pursuant to 807 KAR 5:001, Section 7, requesting that its responses to the Commission's November 12, 1987, data request, Item Nos. 20(a)(8) and 39, be deemed confidential and withheld from public disclosure. Item 20(a)(8) requested "A copy of Federal [sic] and state income tax returns for the taxable year ended during the test year including supporting schedules." Item 39 requested, in pertinent part, "A schedule reflecting the salaries and other compensation of each executive officer for the test year and the preceding 2 calendar years."

LG&E supports its request for confidential treatment of the responses by stating that: (1) the information is not known outside LG&E with the exception of the Internal Revenue Service; (2) the information is not disseminated within LG&E except to those employees with a legitimate need to know; (3) all appropriate means are taken to preserve the confidentiality of the information; and (4) the information cannot be properly acquired and duplicated by others through legitimate means.

In reviewing LG&E's petition for confidentiality, the Commission must apply the provisions of the governing regulation, 807 KAR 5:001, Section 7. Pursuant to subsection (3)(a), LG&E has the burden of proof to show by a preponderance of the evidence that the information requires confidential treatment. The regulation also sets out guidelines for the evaluation of confidentiality petitions. Those guidelines provide assistance in reviewing claims that information must be kept confidential because it is either a trade secret (subsection (7)(a)) or confidential commercial information that meets the criteria for exclusion from the Open Records Law, KRS 61.878(1) (subsection (7)(b)).

LG&E's petition does not specify which provision of the confidentiality regulation shields its information. However, in reviewing the information the Commission finds that neither the tax returns nor the salaries of executive officers contains any trade secrets for which LG&E expended effort or money to develop. Therefore, the information may be withheld from public review only if it qualifies as confidential commercial information.

The guidelines to be applied to this review suggest that the following factors be considered:

- (1) Evidence revealing actual competition and the likelihood of substantial competitive injury;
- (2) The extent to which data of the sort in dispute is customarily disclosed to the public;
- (3) A balancing of the private competitive interests versus the public interest in disclosure.

807 KAR 5:001, Section 7(7)(b). As to the first factor, LG&E's petition does not allege that disclosure of the information could result in any competitive injury. Therefore, the Commission finds that no record evidence exists to support a finding of actual competitive injury or substantial likelihood for such an injury. As to the second factor, the Commission takes administrative notice that the tax returns and executive officers' salaries of other utilities regulated by this agency are available in the public records of their respective rate cases. The Commission further finds that the salaries of executive officers of major utilities have been publicly disclosed for many years in the utilities' Annual Reports on file with the Commission.

Turning to the final factor, the record is devoid of any evidence to indicate the existence of a private "competitive" interest to justify withholding the information from the public. The fact that a utility goes to extraordinary lengths to prevent the public disclosure of certain information does not create a "competitive" interest in that information. Absent any evidence of competitive injury, the public has an overriding right to review all portions of the record compiled in a rate case.

IT IS THEREFORE ORDERED that LG&E's Petition for Confidentiality be and it hereby is Denied.

Done at Frankfort, Kentucky, this 29th day of December, 1987.

PUBLIC SERVICE COMMISSION

Richard D. Wemen, Jr.
Chairman

Robert M. Davis
Vice Chairman

James N. Williams, Jr.
Commissioner

ATTEST:

Executive Director