

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

INCIDENT INVESTIGATION OF COLUMBIA)	
GAS OF KENTUCKY, INC. RELATING TO)	CASE NO. 89-268
THE REPORTING OF AN EXPLOSION)	

O R D E R

This matter arising upon petition of Columbia Gas of Kentucky, Inc. ("Columbia Gas") filed December 18, 1989 pursuant to 807 KAR 5:001, Section 7, for confidential protection of its responses to the Commission's December 12, 1989 Order, and it appearing to this Commission as follows:

On December 12, 1989, the Commission directed Columbia Gas to respond to certain data requests concerning the incident which is the subject of this case. Columbia Gas is a defendant in civil litigation arising out of the incident and it has petitioned the Commission not to disclose the information contained in its responses to the general public, particularly any of the parties in the litigation, and instead to defer to the applicable discovery procedures in civil litigation.

The records of all public agencies are required by the Kentucky Open Records Act, KRS 61.870 et seq, to be available for public inspection unless the information in the record is specifically exempted from disclosure by the provisions of the Act. KRS 61.878(1)(b), from which 807 KAR 5:001, Section

7, derives its authority, exempts from public disclosure certain commercial information. To qualify for this exemption, it must be established that disclosure is likely to cause substantial competitive injury to the party from whom the information is obtained. In order to satisfy this requirement, the party claiming confidentiality must demonstrate actual competition and a likelihood of substantial competitive injury if the information is disclosed. Competitive injury occurs when disclosure of the information gives competitors an unfair business advantage.

While it may affect the pending litigation, Columbia Gas has not demonstrated that disclosure of the information contained in its responses to the Commission's Order will result in competitive injury. Consequently, the provisions of KRS Chapter 61 require that the information be available for public disclosure and the petition for confidential protection of the responses should be denied.

This Commission being otherwise sufficiently advised,

IT IS ORDERED that:


1. The petition for confidential protection of the responses by Columbia Gas to the Commission's Order of December 12, 1989 be and is hereby denied.

2. The information sought to be protected from disclosure shall be held as confidential and proprietary for a period of 5 working days from the date of this Order, at the expiration of which time it shall be placed in the public record.

Done at Frankfort, Kentucky, this 23rd day of January, 1990.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman

Commissioner

ATTEST:


Executive Director