

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

RATE ADJUSTMENT OF WESTERN ) CASE NO.  
KENTUCKY GAS COMPANY ) 90-013

O R D E R

This matter arising upon petition of Western Kentucky Gas Company ("Western") filed May 14, 1990, for confidential protection of certain information in response to the Attorney General's first request for information on the grounds that public disclosure of the material is likely to cause significant competitive injury to Western and that the material consists in part of information of a personal nature, disclosure of which would constitute an unwarranted invasion of personal privacy, and it appearing to this Commission as follows:

The Attorney General, as an intervenor in this action, served a request for information upon Western, which requested in part information which Western seeks to protect from disclosure as confidential. The information sought to be protected falls into four basic categories:

- (I) Identities of individual employees matched to sensitive information about those individuals;
- (II) Identities of individual customers matched to sensitive information about those customers;

- (III) State and federal income tax returns of Western and its parent, Atmos Energy Corporation;
- (IV) Information concerning alternative fuel or physical by-pass capabilities of individual industrial customers of Western.

I. Employee-Specific Information.

In response to the Attorney General's Initial Data Request Items 22, 60(a) and (b), and 66(a) and (b), Western has furnished to the Attorney General, and filed in this record, the salaries and wages of identified employees of the company. Western contends that this information is private in nature and should be protected from public disclosure.

KRS 61.872(1) requires all public records to be open for inspection unless specifically exempted by law. The exemptions from this requirement are contained in KRS 61.878. Subsection (1) of that section exempts from disclosure "information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy." This provision is intended to exempt from public disclosure any information contained in public records that relates the details of an individual's private life. The information is exempt from disclosure when the individual's privacy interest in the information outweighs the public's interest in the information.

Salaries and wages are matters of private interest which individuals have a right to protect, unless the public has an overriding interest in the information. No such overriding

interest is presented here and the salaries and wages of the identified individual employees need not be disclosed.

II. Customer-Specific Information.

In response to the Attorney General's Data Request Items 18, 33, 110, 137, 148, 196, and 223, Western has furnished the identity of certain customers, the volume of sales during various periods to those customers, and the identity of the current supplier for each customer on Western's transportation rate. Western contends that disclosure of this information is likely to cause Western competitive injury.

807 KAR 5:001, Section 7, protects information as confidential when it is established that disclosure is likely to cause substantial competitive harm to the party from whom the information was obtained. In order to satisfy this test, 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.

Western actively competes with marketers and other promoters of physical or alternative fuel by-pass. The customer-specific information provided in response to the interrogatories could be used by Western's competitors to market their competing services. Thus, disclosure of the information would give competitors an unfair business advantage and the information should be protected as confidential.

III. Income Tax Returns.

In response to Attorney General's Initial Data Request Items 44, 45, 48A, 88C, and 95D, Western has furnished the Attorney General copies of its income tax returns and the income tax returns of its parent, Atmos Energy Corporation. In addition, in response to the Attorney General's Initial Data Request Item 45, Western has furnished a copy of the company's Consolidated and Combined Financial Statements for the fiscal years ending September 30, 1989 and September 30, 1988. Western contends that this information is confidential and proprietary and should be withheld from public disclosure.

As stated above, public records must be maintained for public inspection unless they are specifically exempted by law. Western has not established that the income tax returns and the financial information sought to be protected fall into any of the protected categories, and the issue should be held in abeyance to allow Western an opportunity to supplement its petition in this regard.

IV. Alternative Fuel and Physical By-Pass Information.

In response to the Attorney General's Initial Data Request Items 107, 108, 110, 112, 113, and 223, Western has furnished information concerning the alternative fuel capabilities and physical by-pass capabilities of Western's customers. This information would provide marketers and promoters of alternative fuel or physical by-pass, with whom Western competes, with an unfair advantage in the market place, and should be protected from disclosure.

This Commission being otherwise sufficiently advised,

IT IS ORDERED that:

1. The employee-specific information furnished in response to the Attorney General's Initial Data Request Items 22, 60(a) and (b), and 66(a) and (b), the customer-specific information furnished in response to the Attorney General's Initial Data Request Items 18, 33, 110, 137, 148, 196, and 223, and the information furnished in response to the Attorney General's Initial Data Request Items 107, 108, 110, 112, 113, and 223, which Western has petitioned be withheld from public disclosure, shall be held and retained by this Commission as confidential and shall not be open for public inspection.

2. Western shall, within 10 days of this Order, file edited copies of its responses with the confidential material obscured for inclusion in the public record, with copies to all parties of record.

3. a. The petition by Western for confidential protection of the income tax returns and financial data filed in response to the Attorney General's Initial Data Request Items 44, 45, 48A, 88C, and 95D shall be held in abeyance to allow Western to supplement its petition with a statement setting forth the grounds for protecting the information from disclosure.

b. If such statement is not filed within 60 days, the petition for confidentiality of the income tax returns and financial statements shall, without further Orders herein, be denied.

Done at Frankfort, Kentucky, this 5th day of June, 1990.

PUBLIC SERVICE COMMISSION

B. C. Dickey  
Chairman

Robert M. Davis  
Vice Chairman

Jim Tharby  
Commissioner

ATTEST:

T. M. McRae  
Executive Director