

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN ADJUSTMENT OF RATES OF)
COLUMBIA GAS OF KENTUCKY, INC.) CASE NO. 90-063

O R D E R

This matter arising upon petition of Columbia Gas of Kentucky, Inc. ("Columbia Gas") filed May 3, 1990 for confidential protection of its federal and state income tax returns and the federal and state income tax returns of its affiliates with whom it engages in business transactions and upon petition filed May 14, 1990 for confidential protection of the Consolidated Federal Income Tax Returns of Columbia Gas System, Inc. ("System") on the grounds that the information is protected as confidential by federal statute and that disclosure of the information is likely to cause Columbia Gas competitive injury, and it appearing to this Commission as follows:

In accordance with the Order of this Commission of April 20, 1990, Columbia Gas has provided certain data to perfect the "Notice of Intent" filing required under the Forecasted Test Year guidelines set forth in Administrative Case No. 331. Included among the data are the federal and state income tax returns for Columbia Gas and its affiliates with whom it transacts business, and the consolidated return of the System which covers the

operations of 19 subsidiaries, many of whom are unregulated. Columbia Gas contends that the information is protected from disclosure by federal statute and also as confidential commercial information.

Except for those records that are specifically exempted, KRS 61.872(1) of the Kentucky Open Records Act requires all public records "be open for public inspection." KRS 61.870(2) defines public records to include all documents in the possession of a public agency. Since the income tax returns are filed with the Commission in this proceeding by Columbia Gas, they are public records as defined by the statute.

KRS 61.878(1) exempts 10 categories of information which may be withheld from public disclosure. One of the categories exempt from disclosure is "information, disclosure of which is prohibited by federal law or regulations." It is under the authority of this paragraph that Columbia Gas contends the information should be protected as confidential.

In support of its position, Columbia Gas relies upon 26 USCA, Section 6103, (a). That statute provides in pertinent part as follows:

Returns and return information shall be confidential, and except as authorized by this title -

(2) no officer or employee of any state, . . . who has or had access to returns or return information under this section, . . . shall disclose any return or return information obtained by him in any manner in connection with his service as such an officer or an employee or otherwise or under the provisions of this section. . . . (Emphasis added.)

This statute prohibits the Commission from disclosing the income returns filed by Columbia Gas in this proceeding. Therefore the petition to protect the returns as confidential should be granted.

Columbia Gas also contends that the information is exempt from disclosure under 807 KAR 5:001, Section 7(2)(a), as confidential commercial information. Since it has been determined that the information is exempt by federal law under KRS 61.878(1)(j), it is not necessary to determine whether it is also exempt under this regulation.

This Commission being otherwise sufficiently advised,

IT IS ORDERED that:

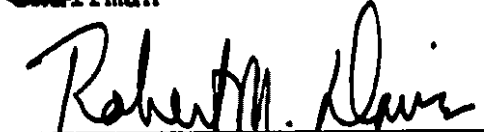
1. The federal and state income tax returns of Columbia Gas, the federal and state income tax of its affiliates with whom it engages in business transactions, and the consolidated federal income tax return of the System, which Columbia Gas has petitioned be withheld from public disclosure, shall be held and retained by this Commission as confidential and shall not be open for public inspection.

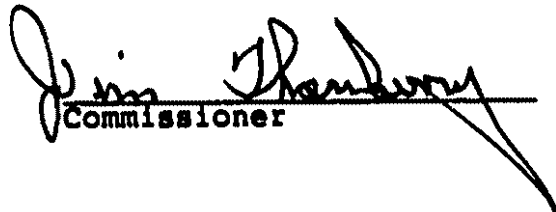
2. Columbia Gas shall, within 10 days of the date of this Order, file edited copies of the returns with the confidential material omitted for inclusion in the public record, with copies to all parties of record.

Done at Frankfort, Kentucky, this 20th day of September, 1990.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director