

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF KENTUCKY UTILITIES)	
COMPANY FOR A CERTIFICATE OF)	
CONVENIENCE AND NECESSITY TO)	CASE NO. 92-005
CONSTRUCT A SCRUBBER ON UNIT NO. 1)	
OF ITS GHENT GENERATING STATION)	

O R D E R

This matter arising upon petition of Kentucky Utilities Company ("KU") filed April 27, 1992 pursuant to 807 KAR 5:001, Section 7, for confidential protection of analyses of costs, expenses, or budgets relating to the construction of the Ghent I scrubber contained in its responses to Item 3 of the Commission's Order of February 25, 1992, the Attorney General's Data Request 6, and the Kentucky Industrial Utility Customers' ("KIUC") Data Requests 1 and 12 on the grounds that disclosure of the information is likely to affect the bidding and purchasing aspects of the construction project, and it appearing to this Commission as follows:

In this proceeding, KU seeks a Certificate of Public Convenience and Necessity to construct a scrubber on one of its units at the Ghent Generating Station. Although a vendor for the scrubber has been selected, there are other aspects of the construction of the scrubber which have not been finally determined. These include the selection of contractors for various elements of the construction and the selection of

suppliers for materials. The selection will be determined by competitive bidding. In its petition, KU maintains that the information sought to be protected would reveal to potential bidders the amounts KU has budgeted for these expenditures and that knowledge of such information may discourage some potential bidders and may also encourage other potential bidders to increase their bids to match what KU has budgeted for particular items. KU contends that the result will be an increase in the construction costs.

KRS 61.872(1) requires information filed with the Commission to be available for public inspection unless specifically exempted by statute. Exemptions from this requirement are provided in KRS 61.878(1). That section of the statute exempts 10 categories of information. One category exempted in subparagraph (b) of that section is commercial information confidentially disclosed to the Commission. To qualify for that exemption, it must be established that disclosure of the information is likely to cause substantial competitive harm to the party from whom the information was obtained. 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.

The supposition that contractors and vendors will submit bids based upon KU's estimated costs is contrary to the logic upon which competitive bidding is based. Competitive bidding reduces costs by forcing competing contractors and suppliers to offer

their services or supplies at the lowest possible price. It is therefore immaterial to a bidder what KU estimates it will be required to pay. What is material to a bidder is what price its competitors will offer for a contract. Therefore, it cannot be assumed that knowledge of KU's estimated costs will have any affect at all upon the bidding process.

But even if it is assumed that disclosure of the total project cost will result in higher bids, that is not an injury for which protection is specifically provided by the Kentucky Open Records Act. The object of the Act as declared in KRS 61.872(1) is that "all public records shall be open for inspection" unless specifically exempted. The information sought to be protected does not fall within any exemption provided by the Act and therefore cannot be maintained as confidential. Protection of the information should thus be denied.

This Commission being otherwise sufficiently advised,

IT IS ORDERED that:

1. The petition to protect as confidential KU's responses to Item 3 of the Commission's Order of February 25, 1992, the Attorney General's Data Request 6, and the KIUC's Data Requests 1 and 12 be and is hereby denied.

2. The information sought to be protected shall be held and retained by this Commission as confidential and shall not be open for public inspection for a period of 20 days from the date of this Order, at the expiration of which it shall be placed in the public record without further Order of the Commission.

Done at Frankfort, Kentucky, this 2nd day of July, 1992.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director, Acting