

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN EXAMINATION BY THE PUBLIC SERVICE )  
COMMISSION OF THE APPLICATION OF THE )  
FUEL ADJUSTMENT CLAUSE OF KENTUCKY ) CASE NO. 92-492-B  
POWER COMPANY FROM MAY 1, 1993 TO )  
OCTOBER 31, 1993 )

O R D E R

This matter arising upon petition of Kentucky Power Company ("Kentucky Power"), filed January 24, 1994, pursuant to 807 KAR 5:001, Section 7, for confidential protection of its responses to Information Request 1(b) as set forth in Appendix A of the Commission's Order dated December 27, 1993, on the grounds that disclosure of the information is likely to cause Kentucky Power competitive injury, that the information constitutes preliminary drafts, notes, and correspondence with private individuals exempt from disclosure, and that the information constitutes preliminary recommendations and preliminary drafts exempt from disclosure. It appears to this Commission as follows:

By Order entered December 27, 1993, Kentucky Power was directed to furnish certain information to the Commission relating to the application of its fuel adjustment clause. Such clauses are authorized by 807 KAR 5:056 and permit electric utilities to adjust their tariff rates in accordance with a fixed formula to reflect fluctuations in the utilities cost of fossil fuels used to generate

electricity. The information request directed Kentucky Power to furnish the number of coal vendors to whom bid solicitations were sent, the number of vendors who responded, the bid tabulation sheet which ranked the coal vendor proposals, the vendor selected, and a brief explanation for the selection. Kentucky Power has petitioned the Commission to protect its responses to the information request as confidential.

KRS 61.872(1) requires information filed with the Commission to be available for public inspection unless specifically exempted by statute. One category exempted by paragraph (c) is commercial information confidentially disclosed to the Commission. KRS 61.878(1)(c). 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.

Kentucky Power maintains that revealing the method used to evaluate the bids furnished by its coal suppliers will adversely affect its ability to obtain coal at reasonable prices in the future. Kentucky Power reasons that coal suppliers will use the successful bid as a benchmark price and will be reluctant to submit bids which are lower.

This argument completely ignores the dynamics of the bidding process. Since Kentucky Power purchases its coal in a competitive market, it is more logical to assume that prospective suppliers knowing they face competition from each other will continue to offer coal at the best terms they can afford in order to obtain the contract. Therefore, the information is not entitled to protection on those grounds.

Kentucky Power also contends that the information sought to be protected is exempt from disclosure as a preliminary draft, note, or correspondence exempt under KRS 61.878(1)(h) and as a preliminary recommendation and preliminary memoranda exempt under KRS 61.878(1)(i). Both of these sections, however, are intended to protect the decision making process of public agencies and do not extend to information filed with those agencies. Therefore, the information is not entitled to confidential protection on those grounds.

Finally, some of the information sought to be protected can be derived from the coal purchase contracts executed by Kentucky Power. These contracts are required to be filed with the Commission by Section 1(7) of 807 KAR 5:056 and must be maintained for public inspection under Section 1(10) of the same regulation.

This Commission being otherwise sufficiently advised,

IT IS ORDERED that:

1. The petition to protect as confidential Kentucky Power's responses to information request 1(b) and set forth in Appendix A

of the Commission's Order dated December 27, 1993 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 Orders herein.

Done at Frankfort, Kentucky, this 4th day of March, 1994.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ATTEST:

  
Executive Director