

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

NOTICE OF ADJUSTMENT OF THE RATES)
OF COLUMBIA GAS OF KENTUCKY, INC.) CASE NO. 94-179
ON AND AFTER JULY 1, 1994)

O R D E R

This matter arising upon the amended petition of Columbia Gas of Kentucky, Inc. ("Columbia Gas"), filed October 17, 1994, pursuant to 807 KAR 5:001, Section 7, for confidential protection of the comparative data, the payroll and executive compensation information, and the strategic plan filed in response to the Attorney General's interrogatories of July 1, 1994, on the grounds that disclosure of the information is likely to cause Columbia Gas competitive injury and that the information is specifically exempt from disclosure by statute, and it appearing to this Commission as follows:

The original petitions were filed on July 27, 1994, and August 1, 1994, and those petitions were denied for procedural reasons on September 27, 1994. The Order, however, provided that the information would be protected for a period of 20 days to allow Columbia Gas an opportunity to file an amended petition in accordance with the procedural requirements set forth in the regulation. This amended petition then followed.

The information sought to be protected falls into three general categories, namely comparative data, executive compensation

programs, and the company's strategic plan. All of the information is treated by Columbia Gas as confidential and is not disclosed to the public. Columbia Gas maintains that the information is entitled to the same protection from the Commission under the provisions of KRS 61.878(1)(c) and KRS 61.878(1)(k).

Information filed with the Commission is required by KRS 61.872(1) 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 (c) of that section is commercial information confidentially disclosed to the Commission. As noted in the Order of September 27, 1994, to qualify for that exemption it must be established that disclosure of the information is likely to cause substantial competitive injury 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.

The comparative data consists of gas cost comparisons, average rate comparisons, and a copy of a "swing contract." Columbia Gas maintains that disclosure of this information would reveal its gas suppliers, volumes purchased, and the average cost of gas purchases. Columbia Gas contends that gas suppliers will be able to use this information to establish a base price for their gas and thereby limit Columbia Gas's ability to negotiate lower prices in the future. This argument, however, ignores the competitive nature

of the market in which Columbia Gas makes its purchases. Gas is purchased on an open competitive market in which the price freely fluctuates according to supply and demand and other economic factors. Therefore, it is more reasonable to assume that market conditions existing at the time of purchase, rather than historical data, will have the greatest effect and influence upon the price that Columbia Gas pays for its gas. Thus, the disclosure of past purchases is not likely to impair Columbia Gas's ability to negotiate lower prices in the future and the information is not entitled to protection on these grounds.

Columbia Gas also maintains that because its swing contracts and other agreements contain confidentiality clauses which require them to take reasonable steps to prevent disclosure of their terms, they are likewise protected by the statute. The statute, however, makes no provision for protecting information on that basis. On the contrary, the public disclosure requirements of KRS 61.872(1) take precedence over the contract provisions and, therefore, the information is not entitled to protection on those grounds.

The petition filed by Columbia Gas also seeks to protect from disclosure its compensation programs that provide special executive compensation packages and benefits not available to all other employees. While Columbia Gas maintains that it "would be unfairly impacted" by public disclosure of this information, the petition does not establish how disclosure of this information is likely to affect Columbia Gas's competitive position. Therefore, the petition cannot be granted on this ground.

The third and final category of information sought to be protected consists of Columbia Gas's strategic plan. This plan sets forth the volumetric level projections for certain target markets as well as information regarding the actions and activities that Columbia Gas plans to undertake to assist in the development of these markets in the future. Columbia Gas competes with other utilities (both gas and electric), interstate and intrastate pipelines, and energy marketers and brokers. These competitors could use Columbia Gas's strategic plan not only to gain insight into the market, but to devise more effective marketing strategies to compete with Columbia Gas. Therefore, disclosure of the strategic plan is likely to cause Columbia Gas competitive injury and the information should be protected as confidential.

Columbia Gas also seeks to protect all the information as confidential under the provisions of subparagraph (k) of KRS 61.878(1). That subparagraph exempts information whose disclosure is prohibited or restricted by state statute. Columbia Gas maintains that the information consists of trade secrets which are protected by the provisions of the Uniform Trade Secrets Act codified as KRS 365.880 through KRS 365.894. As noted in the September 27, 1994 Order, while that Act establishes equitable and legal remedies for the misappropriation of trade secrets as they are defined by those statutes, the Act does not have any application to the Open Records provisions codified in KRS 61.870. Therefore, the petitions cannot be granted on those grounds.

This Commission being otherwise sufficiently advised:

IT IS ORDERED that:

1. The petition to protect as confidential the comparative data and the payroll and executive compensation information, which Columbia has petitioned to be withheld from public disclosure, be and is hereby denied.

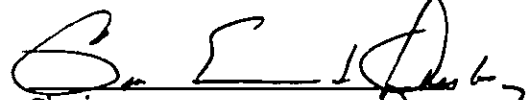
2. The strategic plan, which Columbia Gas has petitioned to be withheld from public disclosure, shall be held and retained by this Commission as confidential and shall not be open for public inspection.

3. The comparative data and the executive compensation programs, which Columbia Gas has petitioned to be withheld from public disclosure, shall be held and retained by this Commission as confidential 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.

4. Columbia Gas shall within 20 days from the date of this Order, file for inclusion in the public record an edited copy of its strategic plan with the confidential information obscured.

Done at Frankfort, Kentucky, this 1st day of December, 1994.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director