

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE PETITION OF WESTERN KENTUCKY GAS)	
COMPANY FOR CONFIDENTIAL TREATMENT OF)	
SPECIAL CONTRACTS SUBMITTED TO THE)	CASE NO. 95-247
KENTUCKY PUBLIC SERVICE COMMISSION)	

O R D E R

On June 2, 1995, Western Kentucky Gas Company ("Western") submitted special contracts for the Commission's approval pursuant to 807 KAR 5:011, Section 13. Western also filed its Petition for Confidential Treatment of the contracts pursuant to 807 KAR 5:001, Section 7. Western stated that the contracts have not previously been disclosed to the public, that such company-specific energy purchase contracts represent the equivalent of a trade secret, that the disclosure of these contracts would give competitors and other industrial customers an unfair advantage, and that the customers have an interest in protecting the confidentiality of the contracts.

On July 24, 1995, CMS Gas Marketing ("CMS") filed a motion to intervene in this proceeding. On July 31, 1995, Orbit Gas Company ("Orbit") filed its motion to intervene. Both Movants cite objections to Western's request for confidential treatment of the contracts in support of their Motions to Intervene.

On August 1, 1995, Western filed in opposition to the Motions to Intervene, citing 807 KAR 5:001, Section 7(2)(e), which states that persons may respond to a petition for confidential treatment

within ten days after the petition is filed with the Commission. Because the motions were not filed until August 1, Western points out that CMS and Orbit missed the filing deadline. Western also offers arguments that CMS and Orbit have no interest in the contracts other than as its competitors for the business of the customers involved.

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 11 categories of information. One category exempted in subparagraph (c) 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. Rarely has the Commission found that publication of a utility's retail rates will result in competitive injury warranting confidential protection. The Commission has found that disclosure could cause competitive injury in instances where the petitioner alleged that disclosure of retail rates would lead to the threat of customers physically bypassing its system. Western has made no such allegations in this case and its petition should be denied.

The motions to intervene filed by CMS and Orbit should likewise be denied. As Western correctly notes, 807 KAR 5:001, Section 7(2)(e) provides that persons may respond to a petition for confidential treatment within 10 days after the petition is filed

with the Commission. Western asserts that CMS and Orbit, having missed the deadline for filing responses to the petition, are now attempting to skirt the limitations of the regulation by obtaining access to the information through intervention. The Commission agrees. The Commission further notes that by denying Western's request for confidential protection of the contracts, CMS and Orbit will gain access to the information.

The contracts themselves have been reviewed by the Commission and are reasonable and are approved as filed.

IT IS THEREFORE ORDERED that:

1. The contracts filed by Western are hereby approved.
2. The petitions to intervene of CMS and Orbit are hereby denied.
3. Western's request for confidential treatment of the terms of the special contracts hereby is denied.
4. The contracts 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, and shall be placed in the public record without further Orders herein at the expiration of the 20 days.

Done at Frankfort, Kentucky, this 12th day of September, 1995.

ATTEST:

Don Mills
Executive Director

PUBLIC SERVICE COMMISSION

Don Mills
Chairman

Robert M. Davis
Vice Chairman

Linda K. Breakitt
Commissioner