

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

REQUEST FOR CONFIDENTIAL TREATMENT OF)	
INFORMATION FILED WITH LOUISVILLE GAS)	
AND ELECTRIC COMPANY'S COOPERATIVE)	CASE NO. 95-270
LICENSE AGREEMENT WITH TCI/TKR OF)	
JEFFERSON COUNTY, INC.)	

O R D E R

This matter arising upon petition of Louisville Gas and Electric Company ("LG&E"), filed June 20, 1995, pursuant to 807 KAR 5:001, Section 7, for confidential protection of its agreement with TCI/TKR of Jefferson County, Inc. ("TCI/TKR"), the summary of that agreement, and portions of the cover letter that accompanies both documents on the grounds that disclosure of the information is likely to cause LG&E and TCI/TKR competitive injury, and it appearing to this Commission as follows:

LG&E has entered into a special contract with TCI/TKR for the placement on LG&E's poles of TCI/TKR's fiber and cable that may be used in the operation of TCI/TKR's cable television system. The services to be provided by LG&E under this contract are not included in its tariffs on file with this Commission. LG&E maintains that the information is entitled to protection on the grounds that disclosure is likely to cause competitive injury to both parties to the agreement.

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 subsection of the statute exempts several categories of information. One category exempted in paragraph (c)1 of that subsection is commercial information confidentially disclosed to the Commission which if made public would permit an unfair commercial advantage to competitors of the party from whom the information was obtained. To qualify for the exemption, 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 petition filed by LG&E does not identify any competitors who would benefit from the information, nor does it establish how the information could be used by competitors to LG&E's disadvantage. Instead, LG&E maintains that the information should be protected because disclosure will impair its ability to negotiate the most favorable terms with other prospective communications service providers for the same or similar service that it has agreed to provide TCI/TKR under the agreement. This is not a basis for protection recognized by the statute and the petition cannot be granted on these grounds.

LG&E also maintains that the agreement contains a significant amount of information pertaining to TCI/TKR's plan for a fiber/coaxial communication system in the Louisville area through which TCI/TKR will offer services in a highly competitive market,

and that unless the confidentiality of the information is protected TCI/TKR will suffer competitive injury.

Assuming for the moment that disclosure of the information will benefit TCI/TKR's competitors, there is no evidence that such benefits will be detrimental to LG&E. Thus LG&E has no interest to protect in the information and, consequently, no standing to raise the issue. Stuart v. Richardson, Ky., 407 S.W.2d 716, 717(1966). While TCI/TKR has such standing, it has neither intervened in these proceedings, nor filed a petition for confidential protection of the information. Bockham v. Board of Education of Jefferson County, Ky. 873 S.W.2d 575, 579 (1994). Therefore, the petition cannot be granted on these grounds.

This Commission being otherwise sufficiently advised,

IT IS ORDERED that:

1. The petition to protect as confidential the terms of the cooperative license agreement with TCI/TKR, the summary of that agreement, and portions of the cover letter that accompanies both documents, which LG&E has petitioned to be withheld from public disclosure, 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, without further orders herein, be placed in the public record.

Done at Frankfort, Kentucky, this 27th day of October, 1995.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director