

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN EXAMINATION BY THE PUBLIC )  
SERVICE COMMISSION OF THE FUEL )  
ADJUSTMENT CLAUSE OF EAST ) CASE NO. 94-459-C  
KENTUCKY POWER COOPERATIVE, )  
INC. FROM NOVEMBER 1, 1995 TO )  
APRIL 30, 1996 )

O R D E R

This matter arising upon petition of East Kentucky Power Cooperative, Inc. ("EKPC"), pursuant to 807 KAR 5:001, Section 7, filed on October 30, 1996 and amended on December 11, 1996, for confidential protection of its settlement agreement and attached schedule of the accounting for the agreement with ABB Power Generation, Inc. ("ABB") on the grounds that disclosure of the information is likely to cause EKPC competitive injury, and it appearing to this Commission as follows:

EKPC and ABB have executed an agreement entitled "Memorandum of Understanding and Agreement." The agreement and the attached contains the settlement terms of EKPC's claim against ABB for reimbursement of expenses relating to the non-availability of ABB-supplied Combustion Turbine ("CT") units. The agreement has been filed with the Commission in accordance with its Order of October 11, 1996 requiring EKPC to provide updates of the progress of its negotiations with ABB. EKPC maintains that disclosure of the information is likely to cause it competitive injury.

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.

EKPC competes with other electric generating utilities, power marketers and other entities for sales of surplus power in the bulk power market. EKPC contends that knowledge of the settlement terms agreed to by ABB will provide competitors with operating characteristics of the CT units once repairs are completed, cost to be borne by ABB, and other information from which estimates of operating costs for the CT units can be derived. A review of the information does not support this contention.

On the contrary, there is little in the settlement agreement that discloses the operating characteristics of the CT units once repairs are completed and the disclosure of the costs to be borne by ABB primarily relate to the power EKPC will purchase in lieu of the availability of the units and a cash settlement on various damage claims by EKPC. Therefore, disclosure of the information is not likely to cause EKPC competitive injury and the information is not entitled to protection.

This Commission being otherwise sufficiently advised,

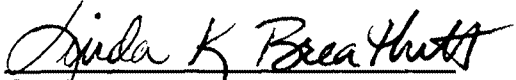
IT IS ORDERED that:

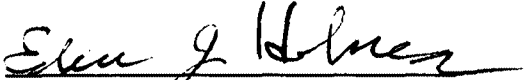
1. The petition to protect as confidential the Memorandum of Understanding and Agreement between EKPC and ABB be and is hereby denied.

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

Done at Frankfort, Kentucky, this 15th day of January, 1997.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ATTEST:

  
Executive Director