

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 EAST	)	CASE NO. 94-459-C
KENTUCKY POWER COOPERATIVE, INC.	)	
FROM NOVEMBER 1, 1995 TO APRIL 30, 1996	)	

AN EXAMINATION BY THE PUBLIC SERVICE	)	
COMMISSION OF THE APPLICATION OF THE	)	
FUEL ADJUSTMENT CLAUSE OF EAST	)	CASE NO. 96-522
KENTUCKY POWER COOPERATIVE, INC.	)	
FROM NOVEMBER 1, 1994 TO OCTOBER 31,	)	
1996	)	

O R D E R

This matter arising upon petition of ABB Power Generation, Inc. ("ABB"), filed March 20, 1997, pursuant to 807 KAR 5:001, Section 7, for confidential protection of a settlement agreement with East Kentucky Power Cooperative, Inc. ("EKPC") on the grounds that disclosure of the information is likely to cause ABB competitive injury and the information is generally regarded as confidential, and it appearing to this Commission as follows:

EKPC and ABB have entered into a settlement agreement which resolves a dispute relating to combustion turbine units sold by ABB to EKPC. The terms of the agreement are contained in a document entitled Memorandum of Understanding and Agreement to which related documents are attached to a two-page accounting schedule all of which are collectively referred to as the "Settlement Agreement." The information was filed with this Commission by EKPC in response to an information request by the Commission. When

filing the information, EKPC petitioned the Commission to protect it as confidential. The Commission on January 15, 1997 denied the petition on the grounds that EKPC had not shown that release of the Settlement Agreement would provide an unfair commercial advantage to an EKPC competitor. ABB was then allowed to intervene in these proceedings for the purpose of presenting to the Commission its interest in the confidential treatment of the Settlement Agreement.

KRS 61.872(1) requires the information filed with the Commission to be available for public inspection unless specifically exempted by statute. Exemptions from the statute 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 in conjunction with the regulation of a commercial enterprise. Such information is protected as confidential under subparagraph 1 of that paragraph if its publication 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 the 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 Settlement Agreement qualifies for protection under this exemption. The Settlement Agreement contains liquidated damage information that if made public would reduce ABB's ability to negotiate liquidated damage provisions in future contracts with other customers, and provides information that could be used by ABB's competitors in competitive negotiations with prospective customers. Similarly, the Settlement Agreement

contains information about performance and power replacement guarantees that both future and potential customers of ABB, and businesses competing with ABB for those same customers, could use to ABB's detriment in contract negotiations. Therefore, disclosure of the information is likely to cause ABB competitive injury, and the information should be protected as confidential.

ABB also maintains that the information should be protected under subparagraph (2) of paragraph (c)(1). That subparagraph protects from disclosure information generally recognized as confidential or proprietary. However, because it has been determined that the information is entitled to protection on other grounds, these grounds need not be addressed.

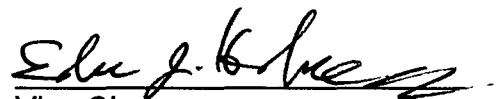
This Commission being otherwise sufficiently advised,

IT IS ORDERED that the Settlement Agreement between ABB and EKPC, which ABB 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.

Done at Frankfort, Kentucky, this 29th day of May, 1997.


PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

ATTEST:

  
Executive Director

  
Commissioner