

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

WESTERN KENTUCKY GAS COMPANY'S)
REQUEST FOR CONFIDENTIAL TREATMENT)
OF INFORMATION CONTAINED IN ITS CONTRACT) CASE NO. 99-032
WITH AN INDUSTRIAL CUSTOMER)

O R D E R

On January 27, 1999, Western Kentucky Gas Company ("WKG") filed, pursuant to 807 KAR 5:001, Section 7, its Full Requirements Interruptible Natural Gas Transportation Contract with an industrial customer, together with a request for confidential protection of information therein, upon the grounds that such information is proprietary under KRS 61.878(1)(c).

On February 10, 1999, Commission Staff and WKG stipulated that the facts pertaining to the instant request for confidential treatment are similar to those of Case Nos. 96-096, 96-113, 96-185, 96-278, 96-295, 96-424, and 98-373,¹ which were previously before the Commission and are now on appeal to the Franklin Circuit Court. WKG waived its right to a hearing in this case in the stipulation. In addition, it has been stipulated that this case is to be submitted to the Commission upon the same testimony, evidence, and affidavits that were presented in the hearings of those cases, and said testimony, evidence, and affidavits are incorporated in this case by reference.

¹ Case Nos. 96-096, 96-113, 96-185, 96-278, 96-295, 96-424, 98-373, *In the Matter of Petition of Western Kentucky Gas Company for Approval and Confidential Treatment of a Special Contract Submitted to the Kentucky Public Service Commission.*

The Commission, having reviewed the record herein, finds the Legislature has expressed its intent in KRS 278.010(10) as to rates:

"Rate" means any individual or joint fare, toll, charge, rental, or other compensation for service rendered or to be rendered by any utility, and any rule, regulation, practice, act, requirement, or privilege in any way relating to such fare, toll, charge, rental or other compensation, and schedule or tariff or part of a schedule or tariff thereof.

The Commission agrees with WKG that KRS 61.878(1)(c)(1) applies in this case, and that the information would be entitled to protection, absent any statutory provision to the contrary. However, KRS 61.878(3) states: "The exceptions provided for in subparagraphs 1 and 2 of this paragraph shall not apply to records the disclosure or publication of which is directed by another statute." The statute requiring publication here is KRS 278.160. The Commission finds that KRS 278.160 requires and directs all utilities to file schedules of their rates and conditions of service with the Commission and to display those schedules for public inspection.

The contract provision setting forth the rates and terms under which service is to be provided is not entitled to protection even though WKG's competitors may derive substantial benefit from the information. The public disclosure of that information is mandated by KRS 278.160. That section requires all utilities to file schedules of their rates and conditions of service with the Commission and to display those schedules for public inspection. The prices to be charged under the contracts and the services to be rendered are "rates and conditions of service" within the meaning of KRS 278.160 and are subject to its requirements. In cases where public disclosure is directed by another statute, KRS 61.878(1)(c)(3) provides that the exemption provisions do not apply.

Therefore, while the information pertaining to the identity of each customer is entitled to protection, the remaining items sought to be protected are not.

The Commission, being otherwise sufficiently advised, HEREBY ORDERS that:

1. The identity of the customer with whom WKG has entered into a special contract, the description and location of that customer's facilities to be served, the receipt and delivery points for the service, which WKG 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.

2. The petition to protect as confidential the price of gas and term of the contract is hereby denied.

Done at Frankfort, Kentucky, this 15th day of March, 1999.

By the Commission

ATTEST:

Executive Director