

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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| REQUEST FOR CONFIDENTIAL TREATMENT OF )    |          |
| INFORMATION FILED WITH DELTA NATURAL GAS ) | CASE NO. |
| COMPANY, INC.'S SPECIAL TRANSPORTATION )   | 94-028   |
| CONTRACT WITH ALCAN ROLLED PRODUCTS )      |          |

O R D E R

On December 8, 1994, this Commission entered an Order denying confidential protection to certain terms of the contract between Delta Natural Gas Company, Inc. ("Delta") and Alcan Rolled Products Company ("Alcan"). The terms and conditions regarding which confidential treatment had been requested included information regarding transportation terms, volumes, and pricing. As we noted in the Order, KRS 61.872(1)(c) permits confidential treatment of commercial information confidentially disclosed to the Commission if it has been established that disclosure of the information is likely to cause substantial competitive harm to the party from whom the information was obtained. Because Delta had not shown that disclosure would cause it such harm, confidential treatment of those terms was denied. Subsequent to issuance of the December 1994 Order, Delta sought judicial review of the matter in Franklin Circuit Court.<sup>1</sup> The terms and conditions at issue have received confidential protection during the pendency of this case.

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<sup>1</sup> Delta Natural Gas Company, Inc. v. Public Service Commission of Kentucky (C.A. No. 95-00108).

Delta has now filed a motion to reopen the Commission proceeding and to seek modification of the Order (the "Motion"). For the following reasons, we grant Delta's motion, modifying our December 1994 Order, and will accord confidential treatment to the terms and conditions for which confidential treatment is sought.

Delta's current Motion includes allegations that it would, in fact, face greater threat of competitive bypass if the transportation, volume, and pricing terms of the subject contract were disclosed. The petition makes it clear that public availability of such information would hamper Delta's ability to compete for transportation customers, placing it at a competitive disadvantage with those companies that are not required to disclose similar information and that would use Delta's information to the detriment of the latter. Unlike Delta's initial petition, which we denied, Delta's current Motion demonstrates the likelihood of competitive injury and thereby meets the standard prescribed by KRS 61.878(1)(c) for nondisclosure.

We also note that the law regarding confidential treatment of utility contracts has changed significantly since issuance of our initial Order. The General Assembly amended KRS 278.160 in 2000, specifically providing that the public filing requirements of that statute do not apply if a provision of a utility's special contract is otherwise entitled to confidential treatment pursuant to KRS 61.878(1)(c). This amendment explicitly demonstrates the General Assembly's recognition that certain provisions of utility contracts should be accorded confidential treatment by this Commission despite public filing requirements that are otherwise applicable.

In summary, Delta's Motion demonstrates that the information for which confidential treatment is sought meets the requirements for nondisclosure provided by

KRS 61.878(1)(c). In addition, KRS 278.160 poses no barrier to nondisclosure. Accordingly, Delta's Motion should be granted.

Motion having been made, and the Commission having been otherwise sufficiently advised, IT IS HEREBY ORDERED that:

1. Delta's motion is granted.
2. The Commission's Order in this docket dated December 8, 1994 is modified to the extent that it conflicts with the decision herein.
3. The terms and conditions of Delta's subject contract with Alcan that were highlighted by Delta pursuant to 807 KAR 5:001, Section 7 in its initial filing shall be held and retained by this Commission as confidential and shall not be open for public inspection.

Done at Frankfort, Kentucky, this 30<sup>th</sup> day of May, 2001.

By the Commission

ATTEST:

  
Executive Director