

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

REQUEST FOR	)	CASE NOS. 96-096
CONFIDENTIAL TREATMENT	)	96-113
OF INFORMATION FILED	)	96-185
WITH WESTERN KENTUCKY	)	96-278
GAS COMPANY'S PROPOSED	)	96-295
SPECIAL CONTRACTS	)	96-424
	)	98-373
	)	99-032

O R D E R

Western Kentucky Gas Company ("WKG"), a division of Atmos Energy Corporation, has filed with the Commission special contracts containing rates and conditions of service that affected certain large commercial and industrial customers.

WKG contends that each contract contained terms that were of a proprietary nature and thus exempted from public disclosure. WKG asserted that these contracts were exempted from public inspection and petitioned the Commission for confidential treatment of those terms. On July 17, 1997, the Commission issued an Order finding that KRS 278.160 required public disclosure of those terms. The Commission denied those provisions of WKG's petitions that sought confidential treatment of rates and the terms under which service was to be provided.<sup>1</sup> Likewise, the Commission found, in an

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<sup>1</sup> The Order of July 17, 1997 in effect consolidated all of the then pending petitions of WKG into one Order which found certain provisions of the contracts to be entitled to confidential treatment, but found the provisions as to rates and services not entitled to confidential treatment.

Order dated March 15, 1999, that Commission Staff and WKG had entered a stipulation and that the stipulated facts required the rates and terms of service of those petitions be denied confidential treatment based upon KRS 278.160(1).<sup>2</sup>

WKG then sought judicial review of these decisions. In Western Kentucky Gas Company v. Public Service Commission, No. 98-CI-00411 (Franklin Cir. Ct. Ky. Dec. 20, 2000), the Franklin Circuit Court directed the Commission to determine whether, based upon the current state of the law, the contracts in question must be available for public inspection in their entirety.

KRS 61.878(1)(c)(1) provides that “records confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records” are excluded from the public inspection requirement of the Open Records Act and shall be “subject to inspection only upon an order of a court of competent jurisdiction.”

In rendering its decision upon WKG’s original request, the Commission specifically found that the information in question met “the criteria of competitive injury and/or trade secret, and therefore, would typically be protected under KRS 61.878(1).” The Commission further concluded that KRS 278.160(1) required public disclosure of

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<sup>2</sup> Case No. 99-032 and Case No. 98-373, Western Kentucky Gas Company’s Request For Confidential Treatment of Information Contained In Its Contract With An Industrial Customer.

the information and that as KRS 278.160(1)<sup>3</sup> required such disclosure, KRS 61.878(1)(c)(3) rendered KRS 61.878(1)(c)(1) inapplicable.<sup>4</sup>

Since the Commission rendered its decision, the General Assembly has amended KRS 278.160 to provide:

(3) The provisions of this section do not require disclosure or publication of a provision of a special contract that contains rates and conditions of service not filed in a utility's general schedule if such provision would otherwise be entitled to be excluded from the application of KRS 61.870 to 61.884 under the provisions of KRS 61.878(1)(c) 1.

The General Assembly's action effectively reverses the Commission's decision, restoring the applicability of KRS 61.878(1)(c)(1) to the current facts.

We conclude that the actions of the General Assembly in enacting KRS 278.160(3) render the confidentially issues herein moot. As the information in question involves proprietary and confidential information whose disclosure would permit an unfair commercial advantage to WKG's competitors, we conclude that it is exempted from disclosure under KRS 61.878(1)(c)(1) and that WKG's petitions for confidential treatment should be granted.

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Under rules prescribed by the commission, each utility shall file with the commission, within such time and in such form as the commission designates, schedules showing all rates and conditions for service established by it and collected or enforced. The utility shall keep copies of its schedules open to public inspection under such rules as the commission prescribes.

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The exemptions 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.

IT IS THEREFORE ORDERED that:

1. WKG's petitions for confidential treatment are granted.
2. The rates and conditions of service for which WKG has sought confidential protection are exempted from public disclosure and shall be afforded confidential treatment in accordance with Administrative Regulation 807 KAR 5:001, Section 7.

Done at Frankfort, Kentucky, this 2<sup>nd</sup> day of February, 2001.

By the Commission

ATTEST:

  
Executive Director