

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PETITION OF WESTERN KENTUCKY GAS	)	
COMPANY FOR CONFIDENTIAL TREATMENT OF	)	CASE NO. 2001-016
SPECIAL CONTRACTS SUBMITTED TO THE	)	
KENTUCKY PUBLIC SERVICE COMMISSION	)	

ORDER

On October 7, 1999, Western Kentucky Gas Company ("WKG"), a division of Atmos Energy Corporation, filed with the Commission 14 special contracts containing rates and conditions of service that affected certain large commercial and industrial customers. On November 17, 1999, WKG filed another special contract that also contained rates and conditions of service. Contending 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 them. Finding that KRS 278.160 required public disclosure of these terms, the Executive Director, the custodian of the Commission's records,<sup>1</sup> denied WKG's petitions. WKG then sought judicial review of these decisions.<sup>2</sup>

In Western Kentucky Gas Company v. Public Service Commission, No. 99-CI-01460 (Franklin Cir. Ct. Ky. Dec. 29, 2000), the Franklin Circuit Court directed the

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<sup>1</sup> KRS 278.100.

<sup>2</sup> WKG's requests and the Executive Director's decisions were docketed by the Commission as Supplemental Mailings No. 99-00439, No. 99-00440, No. 99-00441, No. 99-00442, No. 99-00443, No. 99-00444, No. 99-00445, No. 99-00446, No. 99-00447, No. 99-00448, No. 99-00449, No. 99-00450, No. 99-00451, No. 99-452, and No. 99-00510.

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 her decision upon WKG’s original request, the Executive Director 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).” She further concluded that KRS 278.160(1) required public disclosure of 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 Executive Director rendered her decision, the General Assembly has amended KRS 278.160 to provide:

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<sup>3</sup> 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.

<sup>4</sup> 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;

(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 Executive Director's decision in restoring the applicability of KRS 61.878(1)(c)(1) to the current facts. Accordingly, 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.

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 1<sup>st</sup> day of February, 2001.

By the Commission

ATTEST:

  
Executive Director