

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN INVESTIGATION OF NATURAL GAS  
RETAIL COMPETITION PROGRAMS

) ADMINISTRATIVE  
) CASE NO. 2010-00146

O R D E R

This matter arises upon the motion of Louisville Gas and Electric Company ("LG&E") to compel Stand Energy Corporation ("Stand") to provide complete responses to LG&E's information requests issued on July 15, 2010 or, in the alternative, to strike from the record in this proceeding the pre-filed testimony of Stand witness Mark Ward. Stand filed its response to the motion on August 23, 2010. By this Order, we grant LG&E's motion.

Stand's pre-filed testimony includes claims that Stand saved two customers it serves in LG&E's territory, the LaGrange Reformatory and a large motel complex, several thousand dollars of what the customers would have paid under LG&E's tariff.<sup>1</sup> Without supporting evidence having been offered with the pre-filed testimony to support its claim of savings, LG&E requested Stand to provide all work papers and all other documents showing in detail how the claimed savings were calculated and copies of all invoices rendered to the customers.<sup>2</sup> The Commission notes that Stand also claims in its pre-filed testimony that it has saved the Commonwealth of Kentucky for services to

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<sup>1</sup> See Pre-filed Direct Testimony of Mark Ward, at 5 and 9.

<sup>2</sup> See Data Requests of Louisville Gas and Electric Company to Stand Energy Corporation ("LG&E's First Information Request") dated July 15, 2010.

facilities in Frankfort, Kentucky over one million dollars in an eight-year period of what would have been paid under Columbia Gas of Kentucky's tariff.<sup>3</sup> There was likewise no evidence offered to support this claim and we note that AARP, Duke Energy Kentucky, Inc. and Commission Staff all issued information requests to Stand to obtain work papers and other documents to support Stand's claims of savings to these Kentucky facilities.<sup>4</sup>

Stand refused to provide the requested information, asserting that it has a customer privacy policy that does not allow the release of specific customer information unless the customer provides written authorization. LG&E asserts that 807 KAR 5:001, Section 7(5)(a),<sup>5</sup> prohibits Stand from refusing to answer the information requests based solely on confidentiality.

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<sup>3</sup> See Mark Ward pre-filed direct testimony at 5 and 9 and Donald Mason pre-filed direct testimony at page 6.

<sup>4</sup> See AARP's First Set of Requests to MX Energy, Inc., Proliance Energy, LLC and Stand Energy Corporation, Item 1; Duke Energy Kentucky, Inc.'s Requests for Information to Stand Energy Corporation, Item 2; and Commission Staff's First Information Request to Stand Energy Corporation ("Staff's First Information Request"), Item 6.

<sup>5</sup> 807 KAR 5:001, Section 7(5)(a), provides:

No party to any proceeding before the commission shall fail to respond to discovery by the commission or its staff or any other party to the proceeding on grounds of confidentiality. If any party responding to discovery requests seeks to have a portion or all of the response held confidential by the commission, it shall follow the procedures for petitioning for confidentiality contained in this administrative regulation. Any party's response to discovery requests shall be served upon all parties, with only those portions for which confidential treatment is sought obscured.

In response to LG&E's motion, Stand admits that it did not comply with the regulation regarding confidentiality but contends that the regulation was "not designed to be used as a sword by a utility to silence or punish a competitor making valid, factual points."<sup>6</sup> Stand argues that the customers at issue are competitively bid and that disclosure of the information could result in its competitors underbidding it in the future. Stand further argues that, since several of its competitors are parties to this proceeding, only LG&E and the Commission Staff should be allowed to review the data concerning the Louisville area customers and any other decision would be an abuse of the Commission's discretion.

The Commission has reviewed LG&E's motion and Stand's response and finds that Stand should be required to file the requested information. We also find that Stand should be required to file the information requested regarding Stand's testimony that it has saved the Commonwealth by providing service to several Frankfort, Kentucky facilities.

We respect Stand's position with regard to disclosing the requested information to its competitors but find that, if Stand wishes to use its testimony regarding savings to support its position that competition will provide benefits to Kentucky consumers, the testimony must be subject to cross-examination. Therefore, we find that the information should be filed pursuant to 807 KAR 5:001, Section 7(5)(a), along with a petition for confidential protection. The Commission will hold the information confidential until its ruling on the petition for confidentiality and require any party wishing the information to sign a non-disclosure agreement. Should Stand object to the requesting party receiving

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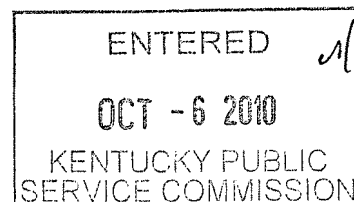
<sup>6</sup> Stand's Response to LG&E's Motion to Compel, at 3.

the information, it must file its objection with the Commission and the Commission will require the requesting party to show that it will be unable to fully participate in these proceedings without the information at issue. If the requested information is not provided, the Commission will, on its own motion, consider whether the testimony related to the requests should be stricken from the record.

Based on the above, the Commission HEREBY ORDERS that:

1. LG&E's motion to compel is granted.
2. Stand shall provide the information LG&E requested in its First Information Request, Items 1 and 2, dated August 15, 2010 no later than five days from the date of this Order.
3. Stand shall provide the information Staff requested in Staff's First Information Request, Item 6, dated August 15, 2010 no later than five days from the date of this Order.

By the Commission



ATTEST:

  
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