

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN ADJUSTMENT OF GAS AND)
ELECTRIC RATES OF LOUISVILLE) CASE NO. 90-158
GAS AND ELECTRIC COMPANY)

O R D E R

This matter arising upon petition of Ohio Valley Electric Corporation ("OVEC") and its attorneys, Simpson Thacher & Bartlett ("ST&B") for confidential protection of a legal memorandum submitted as an exhibit to the testimony of Randall J. Falkenberg on the grounds that the memorandum is privileged communication between attorney and client, the memorandum is the work-product of ST&B, and the memorandum contains information which if publicly disclosed would cause OVEC competitive injury, and it appearing to this Commission as follows:

This case was initiated when Louisville Gas and Electric Company ("LG&E") filed a tariff schedule with the Commission amending its rates. Several parties intervened in the proceeding including Kentucky Industrial Utility Customers ("KIUC"). In support of its position, KIUC submitted the testimony of Randall J. Falkenberg which included as an exhibit the memorandum sought to be protected in this proceeding. The memorandum was produced by ST&B at the request of OVEC and is concerned with the legal obligations of OVEC in connection with a proposed extension of an existing power supply arrangement with the Department of Energy.

OVEC is owned by several midwestern electric utilities and holding companies, including LG&E and Ohio Edison Company ("Ohio Edison"). Mr. Falkenberg was inadvertently provided a copy of the memorandum by Ohio Edison when it responded to data requests made by Industrial Energy Consumers ("IEC") in a rate proceeding before the Public Utilities Commission of Ohio. Mr. Falkenberg was working with IEC in that proceeding and consequently received the memorandum. It is not known whether there were other parties in that proceeding before the Ohio Commission who also received copies of the memorandum. In any event, the memorandum was not used in the Ohio proceeding.

Under the Kentucky Open Records Act, as codified in KRS 61.870, all information filed with a public agency is required to be open for public inspection unless specifically exempted by statute. The exemptions from public inspection are found in KRS 61.878, which permits public agencies to deny access to 10 different types of information. In order to qualify for this exemption, however, the information must be confidential.

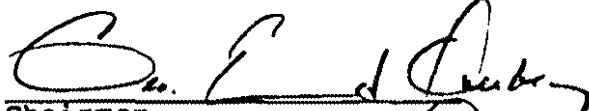
When the memorandum was submitted as part of Mr. Falkenberg's testimony, it was placed in the Commission's public records and thereby made available for public inspection. In addition, in accordance with Commission rules, copies were presumably served upon all parties of record to this proceeding, some of whom are also public agencies subject to the provisions of the Open Records Act. Thus, the confidential nature of this information has long since been lost and it no longer qualifies for protection under the Act.

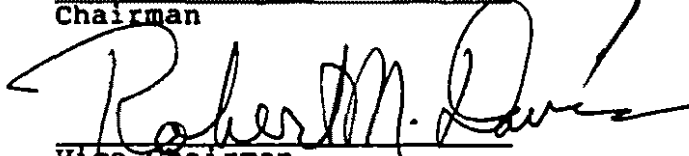
This Commission being otherwise sufficiently advised,

IT IS ORDERED that the petition to protect as confidential the memorandum from ST&B to OVEC, submitted as an exhibit to the testimony of Randall J. Falkenberg, be and is hereby denied.

Done at Frankfort, Kentucky, this 21st day of November, 1991.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman

Commissioner

ATTEST:


Executive Director