

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN EXAMINATION BY THE PUBLIC SERVICE)	
COMMISSION OF THE APPLICATION OF THE)	CASE NO.
FUEL ADJUSTMENT CLAUSE OF KENTUCKY)	10439-A
UTILITIES COMPANY FROM NOVEMBER 1, 1988)	
TO APRIL 30, 1989)	

O R D E R

This matter arising upon petition of Kentucky Utilities Company ("KU") pursuant to Commission Regulation 807 KAR 5:001, Section 7, for confidential treatment of three coal transportation contracts, and it appearing to the Commission as follows:

KU seeks to protect as confidential three rail transportation contracts covering the movement of coal to KU's Brown Generating Station. KU is acquiring the coal under recently executed coal supply agreements with Royal Fuel Company and Shamrock Coal Company, Inc. Each rail transportation contract is a special contract and is the product of extensive negotiations. The contracts are neither part of, nor do they contain, the published tariff rates or provisions of the railroads involved. KU contends that public disclosure of the terms of these contracts will place it at a competitive disadvantage in negotiating for additional coal supplies. KU argues that potential suppliers who are aware of the provisions governing the rates, volume, and net cost of the movement under these contracts, will be in a better position to raise their mine prices and still remain competitive.

KU's arguments fail on two grounds. First, 807 KAR 5:056 precludes confidential treatment of an electric utility's coal supply and transportation contracts. 807 KAR 5:056, Section 1(7), requires electric utilities to submit to the Commission all documents "related to the procurement of fuel supply and purchase power." 807 KAR 5:056, Section 1(10), requires that these documents "shall be open and made available for public inspection." On a prior review of the relationship between 807 KAR 5:001, Section 7, and 807 KAR 5:056, Section 1(10), the Commission declared:

[T]his confidentiality regulation [807 KAR 5:001, Section 7] is not applicable to coal supply and transportation documents filed pursuant to the requirements of the FAC regulation [807 KAR 5:056]. This is based on the mandatory language of paragraph (10) of the FAC regulation stating that such documents "shall be open and made available for public inspection" and the administrative history of the FAC regulation indicating the explicit rejection in 1978 of utility requests to keep coal contracts confidential.¹

Thus, the coal supply contracts fall squarely within the mandate of 807 KAR 5:056, Section 1(10), and may not be protected from public disclosure.

Notwithstanding the provisions of Commission Regulation 807 KAR 5:056, Section 1(10), the contracts do not qualify for protection from disclosure under 807 KAR 5:001, Section 7. That

¹ Case No. 9674, A Petition for Confidentiality of Coal Supply and Coal Transportation Contracts of Kentucky Power Company, Order dated December 22, 1986, pages 4-5.

regulation protects information as confidential only when it is established that disclosure will result in competitive injury to the party from whom the information was obtained. Competitive injury occurs when competitors gain an unfair advantage from the public disclosure of information that would not otherwise have been disclosed. KU does not contend that disclosure of the transportation agreements is likely to cause such injury. Therefore, the information is not protected under the provisions of Commission Regulation 807 KAR 5:001, Section 7.

This Commission being otherwise sufficiently advised,

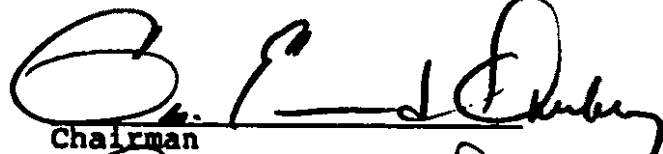
IT IS ORDERED that:

1. KU's petition for confidential protection from public disclosure of the transportation contracts for the rail movement of coal to KU's Brown Generating Station under recently executed coal supply agreements with Royal Fuel Company and Shamrock Coal Company, Inc. is hereby denied.

2. The rail transportation contracts sought to be protected shall be held and retained by the Commission as confidential for a period of 5 working days from the date of this Order, at the expiration of which period the contracts shall be placed in the public file.

Done at Frankfort, Kentucky, this 8th day of November, 1989.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman

Commissioner

ATTEST:

Executive Director