

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

INVESTIGATION INTO ALLEGED
UNAUTHORIZED RATES OF WESTERN
KENTUCKY GAS COMPANY

CASE NO. 90-030

ALLEGED VIOLATION OF KRS
CHAPTER 278

O R D E R

This matter arising upon petition of Western Kentucky Gas Company, a division of Atmos Energy Corporation ("Western"), filed March 5, 1990 for confidential protection of certain responses to the Commission's Order of February 22, 1990 on the grounds that disclosure of the information is likely to result in competitive injury, and it appearing to this Commission as follows:

On February 22, 1990, the Commission directed Western to file certain information concerning the identity and energy usage history of several of Western's industrial customers. The information sought to be protected by Western is the name of individual gas customers matched with the monthly and cumulative volumes of gas delivered to them for use in their commercial enterprises. In support of the motion, Western states that these customers are in active competition with other industries and that disclosure of this information would allow the competitors of these customers to create a profile of a customer's production costs and activity levels, which they could use to their competitive advantage.

The Kentucky Open Records Act, codified in KRS 61.870 through KRS 61.884 generally provides that all public records, including information filed with a governmental agency, shall be available for public inspection unless the information is specifically exempted from disclosure under the provisions of the act. KRS 61.878(1) lists nine categories of information which may be withheld from public disclosure, including certain commercial information. The exemption for commercial information is found in KRS 61.878(1)(b) which defines such information, in pertinent part, as follows:

Records confidentially disclosed to an agency. . .in conjunction with. . .the regulation of a commercial enterprise, including. . .commercially valuable plans,. . .which are generally recognized as confidential. . .and if openly disclosed would permit an unfair advantage to competitors of the subject enterprise. (Emphasis added.)

To qualify for the exemption, it must be established that the commercial information sought to be protected is likely to cause substantial competitive harm to the party from whom the information was obtained. To satisfy this test, the party claiming confidentiality must demonstrate actual competition and a likelihood of substantial competitive injury if the information is disclosed. Competitive injury occurs when disclosure of the information gives competitors an unfair business advantage.

Assuming that knowledge of this information by competitors of Western's customers gave those competitors an unfair advantage, the question remains whether such information, when filed by Western is entitled to the protection of the exemption. A careful reading of the exemption indicates that it only protects

information against disclosure to "competitors of the subject enterprise." Since the "subject enterprise" is the business being regulated, that business must establish that disclosure is likely to cause it competitive injury. It is not sufficient to show that the information sought to be protected will cause competitive injury to a customer of the "subject enterprise."

The petition also states that Western, as a vendor of gas and transportation services, "has a myriad of competitors for that business" and that it would not be fair to Western to give its competitors its customer information. However, the petition does not identify its competitors, nor describe how those competitors could use the information to gain a competitive advantage over Western.

This Commission being otherwise sufficiently advised,

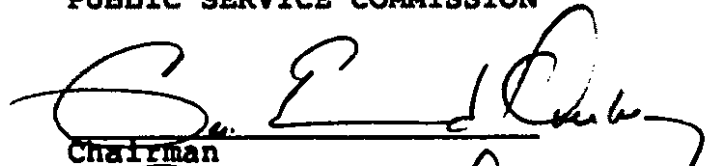
IT IS ORDERED that:

1. The petition by Western for confidential protection of the information furnished in response to the Commission's Order of February 22, 1990 shall be held in abeyance to allow Western to supplement its petition with a statement identifying its competitors who would benefit from the information to be protected and explaining how they could use the information to gain an unfair business advantage.

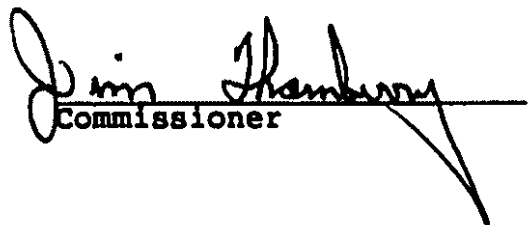
2. If such statement is not filed within 20 days of the date of this Order, the petition for confidentiality shall, without further Orders herein, be denied and the information sought to be protected shall be placed in the public record, at the expiration of five working days thereafter.

Done at Frankfort, Kentucky, this 21st day of August, 1990.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director