

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PETITION OF THE UNION LIGHT, HEAT)
AND POWER COMPANY FOR CONFIDENTIAL)
TREATMENT OF INFORMATION FILED IN)
SUPPORT OF ITS FULL REQUIREMENTS) CASE NO. 91-398
INTERRUPTIBLE NATURAL GAS)
TRANSPORTATION CONTRACT WITH)
INTERNATIONAL PERMALITE INC.)

O R D E R

This matter arising upon petition of The Union Light, Heat and Power Company ("ULH&P") filed August 27, 1991 pursuant to 807 KAR 5:001, Section 7, for confidential protection of the billing information in its Full Requirements Interruptible Natural Gas Transportation Contract with International Permalite Inc. ("Permalite") on the grounds that disclosure of the information is likely to cause ULH&P and Permalite competitive injury, and it appearing to this Commission as follows:

ULH&P has entered into a contract to transport natural gas to Permalite on an interruptible basis at special contract rates. Permalite is ULH&P's second largest natural gas customer and natural gas is the most critical component of Permalite's production costs. The information sought to be protected consists of rates and charges for gas transportation to Permalite which are not otherwise included in ULH&P's general tariff and, therefore, not a matter of public record.

Permalite's Kentucky plant produces an insulation product in competition with other plants in the states of Illinois, Mississippi, Kansas, and Virginia. Natural gas is an important component of the production process, and knowledge of the transportation costs as they relate to production costs would provide Permalite's competitors with valuable information that they could use in marketing their competing products.

Under 807 KAR 5:001, Section 7, information is protected as confidential when it is established that disclosure is likely to cause substantial competitive harm to the party from whom the information was obtained. In order 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.

Although the petition demonstrates that disclosure of the information could cause competitive injury to Permalite, ULH&P, not Permalite is the party claiming confidential protection. Unless disclosure of the information is likely to cause ULH&P competitive injury, the information is not entitled to protection as confidential. Therefore, ULH&P should supplement its petition to demonstrate how disclosure of the information is likely to cause it competitive injury and therefore entitle it to protection as confidential.

This Commission being otherwise sufficiently advised,

IT IS ORDERED that:

1. The billing information contained in the Full Requirements Interruptible Natural Gas Transportation Contract between ULH&P and Permalite, which ULH&P has petitioned be withheld from public disclosure, shall be held and retained by this Commission for a period of 20 days from the date of this Order to allow ULH&P an opportunity to file a petition setting forth, in detail, the facts upon which it relies to establish that disclosure of the information is likely to cause ULH&P competitive injury.

2. If such petition 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 5 working days thereafter.

Done at Frankfort, Kentucky, this 8th day of November, 1991.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman

ATTEST:


Executive Director

Commissioner