

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN EXAMINATION BY THE PUBLIC SERVICE)
COMMISSION OF THE APPLICATION OF THE)
FUEL ADJUSTMENT CLAUSE OF LOUISVILLE) CASE NO. 92-494-B
GAS AND ELECTRIC COMPANY FROM)
MAY 1, 1993 TO OCTOBER 31, 1993)

O R D E R

This matter arising upon petition of Louisville Gas & Electric Company ("LG&E"), filed January 25, 1994, pursuant to 807 KAR 5:001, Section 7, for confidential protection of portions of its responses to data requests 1(b) and 1(d) of the Commission's Order of December 27, 1993, on the grounds that disclosure of the information is likely to cause LG&E competitive injury and it appearing to this Commission as follows:

In this proceeding the Commission seeks to examine the application and effectiveness of LG&E's fuel adjustment clause. Fuel adjustment clauses allow electric utilities to automatically raise or lower their rate schedules in accordance with fluctuations in their cost of fuel used to generate electricity. These clauses must comply with the provisions of 807 KAR 5:056. The information sought to be protected consists of LG&E's analysis of bids received from coal suppliers and the criteria used to select the successful bids from among those suppliers. The information sought to be protected is not known outside LG&E and is not disseminated within

LG&E except to those employees with a legitimate business need to know and act upon the information.

KRS 61.872(1) requires information filed with the Commission to be available for public inspection unless specifically exempted by statute. Exemptions from this requirement are provided in KRS 61.878(1). That section of the statute exempts 11 categories of information. One category exempted in subparagraph (c) of that section is commercial information confidentially disclosed to the Commission. To qualify for that exemption, it must be established that disclosure of the information 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.

In its petition LG&E maintains that disclosure of the bid information from which current contracts are obtained will impair its ability to obtain coal in the future at the most advantageous price possible. LG&E argues that with this information coal suppliers will adjust their bids to correspond with LG&E's past bidding history on terms and prices.

LG&E's argument ignores the dynamics of the bidding process. Since LG&E purchases coal in a competitive market, it is more logical to assume that prospective suppliers knowing they face competition from each other will continue to offer their product at

the best terms they can afford in order to obtain the contract. Therefore, disclosure of the information is not likely to cause competitive injury and the petition should be denied.

This Commission being otherwise sufficiently advised,

IT IS ORDERED that:

1. The petition to protect as confidential portions of LG&E's responses to data requests 1(b) and 1(d) of the Commission's December 27, 1993 Order, which LG&E has petitioned be protected as confidential, be and is hereby denied.

2. The information sought to be protected shall be held as retained by this Commission as confidential for a period of 20 days from the date of this Order, at the expiration of which it shall be placed in the public record without further Orders herein.

Done at Frankfort, Kentucky, this 14th day of February, 1994.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director