

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 KENTUCKY ) CASE NO. 94-461-B  
UTILITIES COMPANY FROM MAY 1, 1995 TO )  
OCTOBER 31, 1995 )

O R D E R

This matter arising upon petition of Kentucky Utilities Company ("KU"), filed January 19, 1996, pursuant to 807 KAR 5:001, Section 7, for confidential protection of its settlement agreement with AMAX Coal Company and Cyprus AMAX Minerals Company (collectively "AMAX") on the grounds that disclosure of the information is likely to cause KU competitive injury, and it appearing to this Commission as follows:

Beginning in Case No. 94-461 and continuing in Case No. 94-461-A, KU advised the Commission of a claim by AMAX for additional reclamation, which has resulted in litigation. KU and AMAX have now entered into a settlement agreement providing for a dismissal of the litigation and a mutual release of all claims. The settlement agreement, a copy of which has been filed with this Commission, also requires the parties to keep its terms confidential. In accordance with that requirement, KU has filed this petition for confidential protection of the agreement.

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 subsection of the statute exempts several categories of information. One category exempted in paragraph (c)1 of that subsection is commercial information confidentially disclosed to the Commission which if made public would permit an unfair commercial advantage to competitors of the party from whom the information was obtained. To qualify for the exemption, 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 support of its petition, KU maintains that disclosure of the terms of the settlement agreement will adversely affect its ability to negotiate favorable settlements if or when disputes arise with AMAX or other coal vendors and that this in turn will result in higher fuel costs. The agreement, however, contains no information other than KU and AMAX have agreed to release each other from claims arising out of their contract and, therefore, would have no impact on future settlement negotiations. Therefore, no competitive value for the agreement has been established and the petition should be denied.

This Commission being otherwise sufficiently advised,

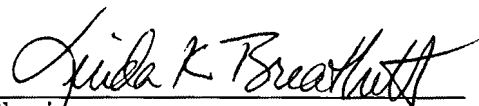
IT IS ORDERED that:

1. The petition to protect as confidential the terms of the settlement agreement between KU and AMAX is hereby denied.

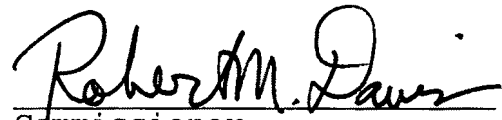
2. The settlement agreement between KU and AMAX shall be held and retained by this Commission as confidential and shall not be open for public inspection for a period of 20 days from the date of this Order, at the expiration of which it shall be placed in the public record.

Done at Frankfort, Kentucky, this 20th day of March, 1996.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ATTEST:

  
Executive Director