

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. 94-462-B  
GAS AND ELECTRIC COMPANY FROM MAY 1, )  
1995 TO OCTOBER 31, 1995 )  
)

O R D E R

On January 29, 1996, Louisville Gas and Electric Company ("LG&E") filed a petition seeking confidential protection of certain information relating to its fuel procurement practices. The information in question was supplied to the Commission in response to Item 1(b) of the Commission's December 20, 1995 Order and consists of bid tabulation and bid evaluation data. Pursuant to 807 KAR 5:001, Section 7, LG&E asserts that disclosure of the information is likely to cause it competitive injury.

KRS 61.872(1) requires information filed with the Commission to be available for public inspection unless specifically exempted by KRS 61.878(1). That subsection exempts, in paragraph (c)1, 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.

The material in question consists of spreadsheets and computer analyses that disclose how LG&E evaluates responses to solicitations for coal supply. The information is not known outside of LG&E, and it is not disseminated within LG&E except to those employees with a legitimate business need to know and act upon it.

Given the nature of the coal market, disclosure of coal supplier bids and a utility's written evaluations of those bids will likely increase utility fuel costs. A coal supplier's principal objective is the maximization of its profits. Only a coal supplier's uncertainty about its competitors' prices and its fear of losing a contract because of an excessive bid, limit its bid price. Coal suppliers routinely play the coal solicitation process to their advantage in an effort to obtain the highest price for their coal.

Disclosure of unsuccessful bids would provide coal suppliers with detailed information about market conditions in general and their competitors in particular. Armed with information about its competitors' costs, a coal supplier can increase its offered price to maximize its profit without fear of losing a contract.

In some instances, disclosure of the bidding information and a utility's bid evaluation methodology may strengthen a coal supplier's bargaining position. This information will reveal the number of available coal suppliers for certain types of coal and their particular locations. If a coal supplier learns that it has few, if any, competitors to supply a particular type of coal or a

particular utility plant, its bargaining position when negotiating a contract is significantly increased and its selling price will likely be higher.

As the disclosure of the bidding information and bid evaluation methodology will lead to higher fuel prices and thus higher electric rates, it will injure LG&E's ability to compete in the retail and wholesale electric markets. Higher energy rates will weaken its ability to compete with other electric utilities in the wholesale power market. While each utility has a monopoly on retail electric service in its certified territory,<sup>1</sup> it must compete with suppliers of other forms of energy such as natural gas. Higher retail electric prices will lessen its ability to compete with these suppliers.

Disclosure of the bid evaluation methodology will also weaken LG&E's ability to compete in the wholesale electric market in another manner. The methodology contains detailed information about LG&E's internal operations. Competitors could use this information to obtain an advantage in securing coal suppliers and in marketing their bulk power.

After considering the evidence of record and being otherwise sufficiently advised, the Commission finds that the materials in question are generally recognized as confidential and proprietary, and that their disclosure to the public will create an unfair commercial advantage to LG&E's competitors. This material is,

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<sup>1</sup> KRS 278.018(1).

therefore, exempted from public disclosure under KRS 61.878(1)(c) and should be afforded confidential treatment.

While the materials in question should be afforded confidential treatment at the time of their filing, their value and the adverse impact of their disclosure decreases with time. Market conditions change and the coal supplier bids gradually cease to be useful indicators of current market conditions. Similarly, as utility market conditions change, evaluation methodologies become stale.

Accordingly, the Commission finds that coal bids submitted in the Commission's periodic reviews of an electric utility's fuel adjustment clause should be given confidential treatment only for a period of two years from the date of their filing and that an electric utility's written evaluation of those bids should be afforded confidential treatment only for a period of three years from the date of filing. Where, at the end of this three-year period, an electric utility believes these written evaluations continue to contain confidential information, it may petition for an extension of this period.

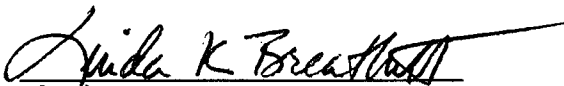
IT IS THEREFORE ORDERED that:

1. LG&E's petition for confidential protection is granted.
2. The coal bids submitted in response to the Commission's Order of December 20, 1995 shall be afforded confidential protection for a period of two years from the date of their filing.
3. The coal bid tabulation sheets submitted in response to the Commission's Order of December 20, 1995 shall be afforded

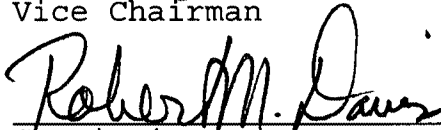
confidential protection for a period of three years from the date of their filing. LG&E may, at the end of this period, petition for an extension of this period. Such petition will be granted only upon a showing of good cause.

Done at Frankfort, Kentucky, this 14th day of March, 1996.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ATTEST:

  
Executive Director