

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

REQUEST FOR CONFIDENTIAL TREATMENT	)	CASE NOS.
FOR INFORMATION FILED WITH WESTERN	)	96-096, 96-113,
KENTUCKY GAS COMPANY'S PROPOSED	)	96-185, 96-278,
SPECIAL CONTRACTS	)	96-295 & 96-424

O R D E R

This matter arising upon separate petitions of Western Kentucky Gas Company ("WKG"), filed March 15, 1996, March 21, 1996, May 1, 1996, June 14, 1996, June 25, 1996 and August 27, 1996, respectively, pursuant to 807 KAR 5:001, Section 7, for confidential protection of portions of special contracts with selected customers, including attachments thereto, on the grounds that disclosure is likely to cause WKG competitive injury, and it appearing to this Commission as follows:

WKG has entered into separate contracts with several of its customers, each of which is called a "Large Volume Natural Gas Service Agreement." Under the terms of these contracts WKG has agreed to furnish all of the customers' natural gas service requirements under rates and conditions that vary from those filed with the Commission and are applicable to customers generally. In submitting copies of the contracts to the Commission for its review, WKG has petitioned to protect as confidential the following information found within them:<sup>1</sup>

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The contracts, though similar, are not identical to one another. Therefore, not every item of the information sought to be protected is in all of the agreements.

1. The identity of the customers.
2. The description and locations of the customers' facilities to be served.
3. The receipt and delivery points for the service.
4. The identity of the stock exchange on which the customers' securities are listed or traded.
5. The dates of the contracts.
6. The terms of the contracts.
7. The rates to be charged and the services to be provided.
8. The method by which price adjustments are calculated.
9. The maximum volumes of gas to be delivered.
10. The customers' option rights.
11. The quantities of "banked gas" the customers may accrue.
12. The customers' obligations to purchase pipeline and related facilities constructed by WKG to serve them.

WKG maintains that disclosure of the information is likely to cause it competitive injury and should, therefore, be protected as confidential.

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 publicly disclosed. Competitive injury occurs when disclosure of the information gives competitors an unfair business advantage.

As a regulated utility, WKG offers service to its customers generally in accordance with its published tariffs. Here, though, the contracts offer service under terms that are specific to each particular customer. Because the contracts deviate from the general tariffs, they are characterized as "special contracts" and are used in situations where the published tariffs do not satisfy the demands or needs of the customer. Special contracts are reviewed by the Commission to ensure that they are not subsidized by the general customers.

In these cases, each customer has an interstate pipeline in close proximity to its premises and, therefore, easy access to competing sources of natural gas. The special contracts were used to retain the customers' load on the WKG system. If the information sought to be protected is publicly disclosed, it will provide WKG's competitors with a substantial advantage in future negotiations with the same customers since it will enable them to offer service at lower rates in order to induce them to bypass WKG's system. Disclosure will also adversely affect WKG's ability to contract on favorable terms with other customers. Because future customers will want the most favorable terms that they can negotiate, it is unlikely that they will agree to terms less favorable than those agreed to by WKG in the subject contracts. Thus, disclosure of the information sought to be protected

is likely to cause WKG competitive injury and the information falls within the provisions of KRS 61.878(1)(c)1. Nevertheless, not all of the information is entitled to protection.

Those provisions of the contracts that set forth the rates and terms under which service is to be provided are not entitled to protection even though WKG's competitors may derive substantial benefit from the information. The public disclosure of that information is mandated by KRS 278.160. That section requires all utilities to file schedules of their rates and conditions of service with the Commission and to display those schedules for public inspection. The prices to be charged under the contracts and the services to be rendered are "rates and conditions of service" within the meaning of KRS 278.160 and are subject to its requirements. In such cases, where public disclosure is directed by another statute, KRS 61.878(1)(c)3 provides that the exemption provisions do not apply. Therefore, while the information pertaining to the identity of each customer is entitled to protection, the remaining items sought to be protected are not.

The Commission being otherwise sufficiently advised,

IT IS ORDERED that:

1. The identity of each customer with whom WKG has entered into a special contract, the description and location of each customer's facilities to be served, the receipt and delivery points for the service and the identity of the stock exchange on which the customers' securities are listed or traded, which WKG has petitioned to be withheld from public disclosure, shall be held and retained by this Commission as confidential and shall not be open for public inspection.

2. The petition to protect the remaining items sought to be protected is hereby denied.

3. WKG shall, within 20 days from the date hereof, file edited copies of the contract for inclusion in the public record, obscuring only those portions protected by this Order.

Done at Frankfort, Kentucky, this 17th day of July, 1997.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ATTEST:

  
Executive Director