

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. 96-523
UTILITIES COMPANY FROM NOVEMBER 1,)
1994 TO OCTOBER 31, 1996)

O R D E R

This matter arising upon petition of Kentucky Utilities Company ("KU"), filed December 13, 1996, pursuant to 807 KAR 5:001, Section 7, for confidential protection of information relating to KU's solicitations for coal on the grounds that disclosure of the information is likely to cause KU competitive injury and it appearing to this Commission as follows:

On November 14, 1996, the Commission directed KU to furnish certain information relating to its solicitation of coal prices. Information requested included the number of vendors to which solicitations were sent, the number of vendors who responded and the selected vendors. KU was further directed to provide the bid tabulation sheet or corresponding document and to briefly discuss the reason for each selection. By this petition, KU has requested that this information 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 disclosed. Competitive injury occurs when disclosure of the information gives competitors an unfair business advantage.

KU, as a generator of electricity, purchases coal from several suppliers under a competitive bidding process. The coal suppliers participating in the bidding process would not submit the lowest possible bids, but instead would use the information sought to be protected to prepare bids based upon the amounts that KU was shown to be willing to pay in the past. This in turn would result in higher cost of production and weaken KU's position as a supplier of energy, particularly in the off system sales market. Therefore, disclosure of the information is likely to cause KU competitive injury and the information should be protected as confidential.

While the materials are entitled to protection 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 cease to be useful indicators of current market conditions. Similarly, as utility market conditions change, evaluation methodologies become stale. Therefore, the protection afforded the information should be limited to that period of time that the information has value.

This Commission being otherwise sufficiently advised,

IT IS ORDERED that:

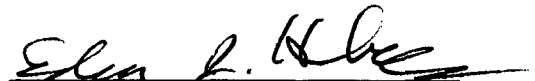
1. All coal bids submitted in response to the November 14, 1996 Order shall be held and retained by this Commission as confidential and shall not be open for public inspection for a period of two years from the date of their filing.

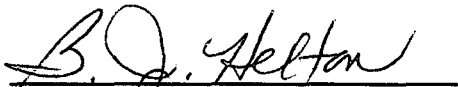
2. All coal bid tabulation sheets submitted in response to the November 14, 1996 Order shall be held and retained by this Commission as confidential and shall not be open for public inspection for a period of three years from the date of their filing. KU may, at the end of this period, petition for an extension of this period. Such petition will be granted only upon a showing of good cause.

Done at Frankfort, Kentucky, this 11th day of February, 1997.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director