

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE UNION LIGHT, HEAT AND POWER)
COMPANY'S REQUEST FOR)
CONFIDENTIAL TREATMENT OF) CASE NO. 97-375
INFORMATION CONTAINED IN ITS)
CONTRACT WITH NEWPORT STEEL)
CORPORATION)

ORDER

This matter arising upon separate petitions of The Union Light, Heat and Power Company ("ULH&P"), filed August 5, 1997, pursuant to 807 KAR 5:001, Section 7, for confidential protection of the billing information contained in its contract with Newport Steel Corporation ("Newport Steel"), on the grounds that disclosure is likely to cause ULH&P competitive injury, and it appearing to this Commission as follows:

ULH&P has entered into a contract with Newport Steel to transport natural gas that Newport Steel has purchased for its manufacturing operations. Under the terms of the agreement ULH&P has agreed to transport the natural gas 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, ULH&P has petitioned to protect as confidential the amounts Newport Steel will be billed for the service. As grounds for its petition, ULH&P maintains that disclosure of the billing information is likely to cause competitive injury to both itself and Newport Steel, and therefore the information should 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, ULH&P 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.

ULH&P competes in the natural gas market with other natural gas utilities, intrastate and interstate gas pipelines, gas suppliers and alternative fuel source suppliers, such as sellers of fuel oil. Newport Steel is ULH&P's largest customer and the special contract was used to retain it on the ULH&P system. If the billing information sought to be protected is publicly disclosed, it will provide ULH&P's competitors with a substantial advantage in future negotiations with Newport Steel and possibly result in the loss of Newport Steel as a customer. Disclosure will also adversely affect ULH&P's

ability to contract on favorable terms with other customers who will be unwilling to agree to terms less favorable than those agreed to by Newport Steel.

Newport steel could also be affected adversely by public disclosure of the billing information. Newport steel produces its product in competition with companies operating in other states. Energy costs are a critical component of Newport Steel's manufacturing process and disclosure of the billing information would give Newport Steel's competitors valuable information concerning its production costs.

Thus, disclosure of the billing information sought to be protected is likely to cause competitive injury, both to ULH&P and its customer, Newport Steel, and the information thereby falls within the provisions of KRS 61.878(1)(c)1. Thus, absent any statutory provision to the contrary, the billing information would be entitled to protection. However, KRS 278.160 mandates that the billing information be placed in the public record.

KRS 278.160 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 contract 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 billing information may have competitive value, it is specifically excluded from protection.

This Commission being otherwise sufficiently advised,

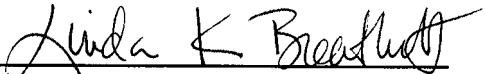
IT IS ORDERED that:

1. The petition to protect the billing information contained in the contract between ULH&P and Newport Steel is hereby denied.


2. The information sought to be protected shall be held and retained by the Commission as confidential for 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 23rd day of September, 1997.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director