

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

WESTERN KENTUCKY GAS COMPANY S)
REQUEST FOR CONFIDENTIAL)
TREATMENT OF INFORMATION) CASE NO. 98-373
CONTAINED IN ITS CONTRACT WITH)
AN INDUSTRIAL CUSTOMER)

O R D E R

On June 8, 1998 and June 12, 1998, Western Kentucky Gas Company (WKG) filed, pursuant to 807 KAR 5:001, Section 7, its Full Requirements for Interruptible Natural Gas Transportation With an Industrial Customer contract, and requested confidential protection of information therein upon the grounds that such information is proprietary under KRS 61.878(1)(c).

On June 18, 1998, the request for confidential treatment was granted, except that the price of gas and the term of the contract was found to be subject to public disclosure under the provisions of KRS 278.160.

On July 7, 1998, WKG filed its motion for a hearing. The parties have agreed that the facts and contracts of this case are similar to the facts and contracts of Case Nos. 96-096; 96-113; 96-185; 96-278; 96-295 and 96-424, which were previously before the Commission and are now on appeal to the Franklin Circuit Court.¹ WKG agrees that this case is to be submitted to the Commission upon the same testimony, evidence and

¹ All cases were consolidated and are now before the Franklin Circuit Court as: *Western Kentucky Gas Co. v. Public Service Commission*, 98-CI-00411.

affidavits that were presented in those hearings and shall be incorporated in this case by reference. See Appendix A attached.

The Commission, having reviewed the record herein, finds the Legislature has expressed its intent in KRS 278.010(10) as to rates:

Rate means any individual or joint fare, toll, charge, rental, or other compensation for service rendered or to be rendered by any utility, and any rule, regulation, practice, act, requirement, or privilege in any way relating to such fare, toll, charge, rental, or other compensation, and any schedule or tariff or part of a schedule or tariff thereof.

The Commission does agree with WKG in that KRS 61.878(1)(c)(1) applies in this case and the information would be entitled to protection, absent any statutory provision to the contrary.

KRS 61.878(3) states:

The exceptions provided for in subparagraphs 1 and 2 of this paragraph shall not apply to records the disclosure or publication of which is directed by another statute.

That statute is KRS 278.160. The Commission finds that KRS 278.160 requires and directs all utilities to file schedules of their rates and conditions of service with the Commission and to display those schedules for public inspection.

The provision of the contract 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, HEREBY ORDERS that:

1. The identity of the customer with whom WKG has entered into a special contract, the description and location of that customer's facilities to be served, and the receipt and delivery points for the service, which WKG has petitioned to be withheld from public disclosure, shall be held and retained by this Commission as confidential and shall not be opened for public inspection.

2. The petition to withhold from public disclosure the price of gas and term of the contract is hereby denied.

Done at Frankfort, Kentucky, this 5th day of February, 1999.

By the Commission

ATTEST:

Executive Director