

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE CONTRACT BETWEEN)
AN END-USER AND DELTA)
NATURAL GAS COMPANY, INC.) CASE NOS. 98-380, 98-412, AND 98-479
FOR NATURAL GAS)
TRANSPORTATION SERVICE)

O R D E R

On April 13, 1998, June 25, 1998, and July 28, 1998, Delta Natural Gas Company, Inc. ("Delta") filed with the Commission three special contracts containing rates and conditions of service that affected certain large customers. Contending that each contract contained terms that were of a proprietary nature and thus exempted from public disclosure, Delta asserted that these contracts were exempted from public inspection and moved the Commission for confidential treatment of certain portions of them. The three cases involved similar facts and legal issues and were consolidated for administrative and hearing purposes. A hearing was held on September 17, 1998 and, on February 18, 1999, the Commission issued its Order in which it granted Delta's motion for confidential treatment of certain portions of the contracts, but denied confidential treatment of other portions of the contracts. After denial of its motion for rehearing of the February 18, 1999 Order, Delta then sought judicial review of the Order.

In that review, Delta Natural Gas Company, Inc. v. Public Service Commission, No. 99-CI-0253 (Franklin Cir. Ct. Ky., March 15, 2001), the Franklin Circuit Court

directed the Commission to determine whether, based upon the current state of the law (KRS 278.160(3)), the contracts in question must be available for public inspection in their entirety.

KRS 61.878(1)(c)(1) provides that “records confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records” are excluded from the public inspection requirement of the Open Records Act and shall be “subject to inspection only upon such order of a court of competent jurisdiction.”

In rendering its decision herein, the Commission made the following specific finding with respect to the information for which confidential treatment was sought:

Thus, disclosure of the information sought to be protected is likely to cause Delta 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.

The Commission finds that 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 Delta’s competitors or customers may derive substantial benefit from the information. The public disclosure is mandated by KRS 278.160.

Order of February 18, 1999 at 5-6. Since the Commission rendered its decision, the General Assembly has amended KRS 278.160 to provide:

(3) The provisions of this section do not require disclosure or publication of a provision of a special contract that contains rates and conditions of service not filed in a utility’s general schedule if such provision would otherwise be entitled to be excluded from the application of KRS 61.870 to 61.884 under the provisions of KRS 61.878(1)(c)(1).

The General Assembly's action effectively reverses the Commission's decision, restoring the applicability of KRS 61.878(1)(c)(1) to the current facts. We conclude that the actions of the General Assembly in enacting KRS 278.160(3) render the confidentially issues herein moot. As the information in question is of a proprietary and confidential nature, whose disclosure would permit an unfair commercial advantage to Delta's competitors, we conclude that it is exempted from disclosure under KRS 61.878(1)(c)(1) and that Delta's petitions for confidential treatment should be granted.

IT IS THEREFORE ORDERED that:

1. Ordering paragraphs 2, 3, and 4 of the Order of February 18, 1999 are revoked.
2. Delta's petitions for confidential treatment are granted.
3. The rates and conditions of service for which Delta has sought confidential protection are exempted from public disclosure and shall be afforded confidential treatment in accordance with Administrative Regulation 807 KAR 5:001, Section 7.

Done at Frankfort, Kentucky, this 21st day of March, 2001.

By the Commission

ATTEST:


Executive Director