

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF THE UNION LIGHT,)
HEAT AND POWER COMPANY FOR) CASE NO. 2003-00054
CONFIDENTIAL TREATMENT)

O R D E R

The Union Light, Heat and Power Company (ULH&P) has petitioned the Commission for confidential treatment of certain information contained in its fourth quarter filing of 2002 in Case No. 2002-00107.¹ Finding that the information contained therein qualifies for protection, the Commission grants ULH&P s petition and orders the information withheld from public disclosure.

In its Order of August 30, 2002 in Case No. 2002-00107, the Commission directed ULH&P to file quarterly progress reports for all Accelerated Main Replacement Program (AMRP) projects currently in progress or completed during that quarter. On December 30, 2002, ULH&P filed its Fourth Quarter AMRP Report and, simultaneously, petitioned the Commission for confidential treatment of the contractor bid information contained therein.

On January 9, 2003, the Executive Director, as the official custodian of the Commission s records, granted ULH&P s request; however, on January 15, 2003, the

¹ Case No. 2002-00107, An Adjustment of Rider AMRP of The Union Light, Heat and Power Company.

Executive Director sent a second letter in which he denied ULH&P's petition.² ULH&P now requests the Commission to review its request for information and to override the Executive Director's decision of January 15, 2003. The Commission acknowledges that the Fourth Quarter AMRP Report should be filed in Case No. 2002-00107, but finds that a new case should be established to address ULH&P's petition for confidentiality.

KRS 61.872(1) requires that information filed with the Commission shall be available for public inspection unless the information is specifically exempted by statute. Exemptions from this requirement are provided in KRS 61.878(1). ULH&P states that the contractor bid information filed in its Fourth Quarter AMRP Report is entitled to confidential protection because KRS 61.878(1)(c) exempts certain commercial information.

KRS 61.878(1)(c) provides:

Upon and after July 15, 1992, 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 . (Emphasis added).

To satisfy this test, the party seeking confidentiality must demonstrate actual competition and a likelihood of substantial competitive injury to it if the information is disclosed. ULH&P states that the information in question is not known outside of ULH&P and its contractors, and that it is not disseminated within ULH&P except to those employees with a legitimate business reason to have knowledge of the

² See letter from Thomas M. Dorman, Executive Director, Public Service Commission of Kentucky, to John Finnigan, Jr., Senior Counsel for ULH&P, dated January 15, 2003.

information. ULH&P states that it uses a competitive bidding process for its AMRP to encourage outside contractors to submit the lowest bids for which they would be willing to perform the AMRP work. It asserts that if contractors bidding on future AMRP work are able to access other contractors past bids, the contractors could use the information as a benchmark for their bids and that this would likely lead to the submission of higher bids. It also asserts that contractors would not want their bid information publicly available for other contractors and that this disclosure would reduce the contractor pool available to ULH&P. It states that this would likely drive up the AMRP costs and; consequently, the rates that its gas customers must pay.

ULH&P's large volume customers are permitted to choose their natural gas commodity suppliers. Therefore, ULH&P must compete with other gas suppliers for its large-volume customers and must compete with suppliers of other forms of energy such as electricity and propane. Higher gas rates will lessen its ability to compete with these other suppliers.

After consideration of the evidence of record and being otherwise sufficiently advised, the Commission finds that the bid information in question is generally recognized as confidential and proprietary and that disclosure to the public will create an unfair commercial advantage to ULH&P. Therefore, the bids should be exempt from public disclosure under KRS 61.878(1)(c) and should be afforded confidential treatment.

IT IS THEREFORE ORDERED that:

1. This case is established to address ULH&P's request for confidential treatment of its Fourth Quarter AMRP Report filed in Case No. 2002-00107.
2. ULH&P's request for confidential treatment is granted.

Done at Frankfort, Kentucky, this 4th day of August, 2003.

By the Commission

ATTEST:

A handwritten signature in black ink, appearing to read "Thomas H. [unclear]", written over a horizontal line.

Executive Director