

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

CONSTELLATION NEW-ENERGY-GAS DIVISION, LLC)	
)	
COMPLAINANT)	
)	
V.)	CASE NO.
)	2005-00184
COLUMBIA GAS OF KENTUCKY, INC.)	
)	
DEFENDANT)	

O R D E R

Constellation New-Energy-Gas Division, LLC (“CNEG”) has petitioned for confidential protection of certain information relating to its customer list and has moved the Commission for authority to withdraw its initial complaint filing. Columbia Gas of Kentucky, Inc. (“Columbia”) has moved the Commission to dismiss the complaint. By this Order, the Commission addresses these outstanding motions.

DISCUSSION

CNEG’s Motion to Withdraw and Petition for Confidential Treatment

On April 29, 2005, CNEG submitted for filing a formal complaint against Columbia which included unredacted customer information. Finding that the complaint failed to comply with Kentucky law, the Commission rejected the complaint.¹ As permitted, CNEG resubmitted its formal complaint on June 10, 2005 properly signed by

¹ CNEG’s complaint was not signed by an attorney licensed to practice in Kentucky, as required by SCR 2.120.

an attorney licensed to practice law in Kentucky. CNEG's revised complaint was accepted for filing and placed on the Commission's active docket. CNEG redacted the previously included customer information from its revised complaint and petitioned the Commission for confidential protection of the redacted customer information. CNEG then moved the Commission to withdraw the originally submitted complaint.

In its petition for confidentiality, CNEG argues that its customers' names are subject to the exemptions set forth in KRS 61.878. It asserts that disclosure would invade the privacy rights of the individuals involved and that its customers have an expectation of privacy as CNEG has agreed by contract to take all reasonable action to ensure that customer contracts and the terms thereof remain confidential. It further argues that CNEG's customer information should be granted confidential treatment because disclosure of the information would provide CNEG's competitors an unfair commercial advantage.

KRS 61.872(1) provides that "[a]ll public records shall be open for inspection by any person, except as otherwise provided by KRS 61.870 to 61.884." KRS 61.878(1) establishes several classes of public records that are excluded from public inspection. Among those classes are records "of a personal nature" or those "generally recognized as confidential or proprietary" whose disclosure would "constitute a clearly unwarranted invasion of personal privacy" or "permit an unfair commercial advantage to competitors of the entity that disclosed the records." KRS 61.878(1)(a) and (c).

CNEG is a natural gas marketer that provides natural gas commodity and related services to commercial and industrial customers. This service includes arranging for

the supply and delivery of natural gas to the city gate of local utility systems that serve CNEG's customers, including Columbia.

The Commission, having considered CNEG's request and being otherwise sufficiently advised, finds that disclosure of CNEG's customer information could permit an unfair commercial advantage to CNEG's competitors and that the customer information is exempt from disclosure under KRS 61.878(1)(c). Having determined that the customer information is exempt from disclosure pursuant to KRS 61.878(1)(c), the Commission finds it unnecessary to determine whether disclosure of the information also constitutes an unwarranted invasion of personal privacy.

The Commission finds that the information related to CNEG's customers has been afforded confidential treatment during the pendency of these motions and that it should continue to be treated confidentially. We further find that CNEG's motion to withdraw its complaint of April 29, 2005 should be granted. However, the Commission advises that the customer information divulged by CNEG in its originally submitted complaint was available for the public to review and copy from the date of original submission until we received CNEG's motion to withdraw.

Columbia's Motion to Dismiss

Columbia has moved the Commission to dismiss CNEG's complaint of June 10, 2005, arguing that CNEG has failed to demonstrate that it has any present interests or legal rights at stake in the proceeding. Columbia contends that CNEG is attempting to "rest upon the legal rights of end use customers" and that CNEG lacks standing to prosecute its complaint. The Commission, having reviewed Columbia's arguments, finds that CNEG should be permitted an opportunity to file a response.

IT IS THEREFORE ORDERED that:

1. CNEG's motion to withdraw the complaint submitted for filing on April 29, 2005 is granted.
2. The Executive Director of the Commission, as custodian of the records, shall return CNEG's April 29, 2005 complaint to counsel for CNEG by secured mail.
3. CNEG's petition for confidentiality is granted.
4. CNEG shall have 20 days from the date of this Order to file a response to Columbia's motion to dismiss CNEG's June 10, 2005 complaint.

Done at Frankfort, Kentucky, this 9th day of February, 2006.

By the Commission

ATTEST:



Executive Director