

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN INVESTIGATION OF NATURAL GAS ) ADMINISTRATIVE  
RETAIL COMPETITION PROGRAMS ) CASE NO. 2010-00146

O R D E R

This matter arises upon the motion of Louisville Gas and Electric Company ("LG&E") to compel Stand Energy Corporation ("Stand") to provide complete responses to LG&E's information requests issued on July 15, 2010 or, in the alternative, to strike from the record in this proceeding the pre-filed testimony of Stand witness Mark Ward. Stand filed its response to the motion on August 23, 2010. By this Order, we grant LG&E's motion.

Stand's pre-filed testimony includes claims that Stand saved two customers it serves in LG&E's territory, the LaGrange Reformatory and a large motel complex, several thousand dollars of what the customers would have paid under LG&E's tariff.<sup>1</sup> Without supporting evidence having been offered with the pre-filed testimony to support its claim of savings, LG&E requested Stand to provide all work papers and all other documents showing in detail how the claimed savings were calculated and copies of all invoices rendered to the customers.<sup>2</sup> The Commission notes that Stand also claims in its pre-filed testimony that it has saved the Commonwealth of Kentucky for services to

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<sup>1</sup> See Pre-filed Direct Testimony of Mark Ward, at 5 and 9.

<sup>2</sup> See Data Requests of Louisville Gas and Electric Company to Stand Energy Corporation ("LG&E's First Information Request") dated July 15, 2010.

facilities in Frankfort, Kentucky over one million dollars in an eight-year period of what would have been paid under Columbia Gas of Kentucky's tariff.<sup>3</sup> There was likewise no evidence offered to support this claim and we note that AARP, Duke Energy Kentucky, Inc. and Commission Staff all issued information requests to Stand to obtain work papers and other documents to support Stand's claims of savings to these Kentucky facilities.<sup>4</sup>

Stand refused to provide the requested information, asserting that it has a customer privacy policy that does not allow the release of specific customer information unless the customer provides written authorization. LG&E asserts that 807 KAR 5:001, Section 7(5)(a),<sup>5</sup> prohibits Stand from refusing to answer the information requests based solely on confidentiality.

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<sup>3</sup> See Mark Ward pre-filed direct testimony at 5 and 9 and Donald Mason pre-filed direct testimony at page 6.

<sup>4</sup> See AARP's First Set of Requests to MX Energy, Inc., Proliance Energy, LLC and Stand Energy Corporation, Item 1; Duke Energy Kentucky, Inc.'s Requests for Information to Stand Energy Corporation, Item 2; and Commission Staff's First Information Request to Stand Energy Corporation ("Staff's First Information Request"), Item 6.

<sup>5</sup> 807 KAR 5:001, Section 7(5)(a), provides:

No party to any proceeding before the commission shall fail to respond to discovery by the commission or its staff or any other party to the proceeding on grounds of confidentiality. If any party responding to discovery requests seeks to have a portion or all of the response held confidential by the commission, it shall follow the procedures for petitioning for confidentiality contained in this administrative regulation. Any party's response to discovery requests shall be served upon all parties, with only those portions for which confidential treatment is sought obscured.

In response to LG&E's motion, Stand admits that it did not comply with the regulation regarding confidentiality but contends that the regulation was "not designed to be used as a sword by a utility to silence or punish a competitor making valid, factual points."<sup>6</sup> Stand argues that the customers at issue are competitively bid and that disclosure of the information could result in its competitors underbidding it in the future. Stand further argues that, since several of its competitors are parties to this proceeding, only LG&E and the Commission Staff should be allowed to review the data concerning the Louisville area customers and any other decision would be an abuse of the Commission's discretion.

The Commission has reviewed LG&E's motion and Stand's response and finds that Stand should be required to file the requested information. We also find that Stand should be required to file the information requested regarding Stand's testimony that it has saved the Commonwealth by providing service to several Frankfort, Kentucky facilities.

We respect Stand's position with regard to disclosing the requested information to its competitors but find that, if Stand wishes to use its testimony regarding savings to support its position that competition will provide benefits to Kentucky consumers, the testimony must be subject to cross-examination. Therefore, we find that the information should be filed pursuant to 807 KAR 5:001, Section 7(5)(a), along with a petition for confidential protection. The Commission will hold the information confidential until its ruling on the petition for confidentiality and require any party wishing the information to sign a non-disclosure agreement. Should Stand object to the requesting party receiving

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<sup>6</sup> Stand's Response to LG&E's Motion to Compel, at 3.

the information, it must file its objection with the Commission and the Commission will require the requesting party to show that it will be unable to fully participate in these proceedings without the information at issue. If the requested information is not provided, the Commission will, on its own motion, consider whether the testimony related to the requests should be stricken from the record.

Based on the above, the Commission HEREBY ORDERS that:

1. LG&E's motion to compel is granted.
2. Stand shall provide the information LG&E requested in its First Information Request, Items 1 and 2, dated August 15, 2010 no later than five days from the date of this Order.
3. Stand shall provide the information Staff requested in Staff's First Information Request, Item 6, dated August 15, 2010 no later than five days from the date of this Order.

By the Commission

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KENTUCKY PUBLIC  
SERVICE COMMISSION

ATTEST:

  
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Executive Director

Lonnie E Bellar  
VP - State Regulation an  
Louisville Gas and Electric Company  
220 W. Main Street  
P. O. Box 32010  
Louisville, KY 40202

Mark David Goss  
Frost, Brown, Todd, LLC  
250 West Main Street  
Suite 2700  
Lexington, KY 40507

Mark Martin  
VP Rates & Regulatory Affairs  
Atmos Energy Corporation  
3275 Highland Pointe Drive  
Owensboro, KY 42303

John B Brown  
Chief Financial Officer, Treasurer  
Delta Natural Gas Company, Inc.  
3617 Lexington Road  
Winchester, KY 40391

Michael T Griffith  
ProLiance's  
111 Monument Circle Suite 2200  
Indianapolis, IN 46204

John B Park  
Kathemine K. Yunker  
Yunker & Park, PLC  
P.O. Box 21784  
Lexington, KY 40522-1784

Judy Cooper  
Manager, Regulatory Services  
Columbia Gas of Kentucky, Inc.  
2001 Mercer Road  
P. O. Box 14241  
Lexington, KY 40512-4241

Mark R Hutchinson  
Wilson, Hutchinson & Poteat  
611 Frederica Street  
Owensboro, KY 42301

Carroll M Redford III  
Miller, Griffin & Marks, PSC  
271 W Short Street, Suite 600  
Lexington, KY 40507

Rocco D'Ascenzo  
Senior Counsel  
Duke Energy Kentucky, Inc.  
139 East 4th Street, R. 25 At II  
P. O. Box 960  
Cincinnati, OH 45201

Honorable Lisa Kilkelly  
Attorney at Law  
Legal Aid Society  
416 West Muhammad Ali Boulevard  
Suite 300  
Louisville, KY 40202

Iris G Skidmore  
415 W. Main Street, Suite 2  
Frankfort, KY 40601

Honorable John M Dosker  
General Counsel  
Stand Energy Corporation  
1077 Celestial Street  
Building 3, Suite 110  
Cincinnati, OH 45202-1629

Jeanne Kingery  
Duke Energy Business Services, Inc.  
155 East Broad Street, 21st Floor  
Columbus, OH 43215

Holly Rachel Smith  
Hitt Business Center  
3803 Rectortown Road  
Marshall, VA 20115

Trevor L Earl  
Reed Weitkamp Schell & Vice PLLC  
500 West Jefferson Street  
Suite 2400  
Louisville, KY 40202-2812

Brooke E Leslie  
Columbia Gas of Kentucky, Inc.  
200 Civic Center Drive  
P.O. Box 117  
Columbus, OH 43216-0117

Honorable Robert M Watt, III  
Attorney At Law  
STOLL KEENON OGDEN PLLC  
300 West Vine Street  
Suite 2100  
Lexington, KY 40507-1801

Thomas J FitzGerald  
Counsel & Director  
Kentucky Resources Council, Inc.  
Post Office Box 1070  
Frankfort, KY 40602

Honorable Matthew R Malone  
Attorney at Law  
Hurt, Crosbie & May PLLC The Equus Building  
127 West Main Street  
Lexington, KY 40507

Katherine K Yunker  
John B. Park  
Yunker & Park, PLC  
P.O. Box 21784  
Lexington, KY 40522-1784