

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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PUBLIC SERVICE
COMMISSION

In the Matter of:

KENTUCKY POWER COMPANY'S APPLICATION)
FOR APPROVAL OF 2011 ENVIRONMENTAL) Case No. 2011-00401
COMPLIANCE PLAN AND ENVIRONMENTAL)
SURCHARGE RECOVERY AND RELATED RELIEF)

MOTION FOR REHEARING OF RIVERSIDE GENERATING COMPANY

Pursuant to KRS 278.400, Riverside Generating Company (Riverside), by counsel, requests that the order of January 26, 2010 be reconsidered as to its interest as an intervener in this matter.

1. Since the issuance of the order of January 26, 2012, the applicant has filed information related to Riverside and its business relationship with it pursuant to a petition for confidentiality.

2. If Riverside, which is a customer of and which has a business relationship with the applicant, is not a party to the case, it will have no ability to know the nature, extent or type of information about its business operations that is being disclosed. This lack of ability to know the nature and scope of potentially sensitive financial or business information prevents Riverside from protecting its business interests. It is forced to accept the applicant's judgment about the confidential nature of the information.

3. Riverside is prevented from asserting confidential protection of its business documents and must rely on the discretion of the applicant to adequately and correctly determine the confidential nature of the information.

4. Without the opportunity to know what documents are included in the filing, Riverside cannot know if its interest in protecting confidential business information has been satisfied. It

cannot know the actual or potential competitive harm it will suffer because of the lack of awareness of the nature, extent, scope and detail of the information provided to the Commission.

5. Just as problematic as its inability to know what has been filed pursuant to a confidentiality petition, is Riverside's inability to protect information that it believes is confidential, but which has not been included in the applicant's petition.

6. Riverside is without any control over the disclosure of confidential business information and without any remedy to protect itself from inappropriate disclosure. 807 KAR 7(4) allows any person to respond to the petition for confidentiality within 10 days, yet because Riverside has no knowledge of the contents of the petition, it cannot object to its content. Further, that regulation allows a "petitioner" seeking confidential treatment to seek any remedy at law. Riverside is unable to assert that remedy. Riverside's right to protect its own business interests is in the hands of the applicant - an option that is unsatisfactory to protect the rights of Riverside.

7. The disclosure of confidential or proprietary business information will have a direct effect on Riverside and its parent and subsidiary companies. Riverside is a subsidiary of a privately held company which operates in several states. Those operations are not regulated and involve highly competitive energy production, marketing and sales. The disclosure of detailed financial information of the type involved in the discussions with the applicant will provide competitors with information that those competitors do not disclose to Riverside, such as financial details, operating capacities, management strategies and other sensitive data not disclosed outside the company. The disclosure of information would put Riverside and its related companies at a competitive disadvantage.

8. In “Rate Adjustment of Western Kentucky Gas, Case No. 90-013”, Order entered August 14, 1990, copy attached, the Commission determined that a third party affected by the potential disclosure of confidential information was the real party in interest in protecting its rights to non-disclosure. It denied Western’s petition for confidential treatment of the third party information.

While the information sought to be protected in this case may consist of a unique method of study, disclosure of this method of study would not be detrimental to Western Kentucky. Only Ernst & Young could suffer injury if its competitor were able to acquire the information. As Ernst & Young is the real party in interest as contemplated by CR 17.01, et. seq., the Commission finds the petition of Western Kentucky should be denied.

9. In “An Investigation Into The Diversification Of Rural Electric Cooperative Corporations Into The Satellite-Delivered Television Programming Services, Administrative Case No. 326”, Order entered September 17, 1990, copy attached, the Commission determined that a third party facing disclosure of its confidential business information should have the opportunity to intervene in the case.

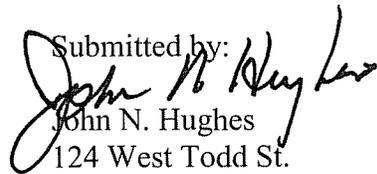
As in this case, the applicant (Green River) submitted a petition for confidentiality for information of a third party (KTI). The Commission determined that Green River had no basis to assert protection of KTI’s information, but that KTI should be allowed to intervene to protect its interests.

Because the information may be of a sensitive nature, KTI should be permitted to intervene in this proceeding for the purpose of protecting the information from disclosure. Order, page 2

If the Commission treats the applicant’s petition for confidentiality in this case as it treated those in the two cases cited, Riverside could find that its confidential information is subject to disclosure, but without any recourse to assert its right to protect that information.

10. Because information about confidential Riverside business operations is the subject of several data responses and because Riverside has no ability to protect its interest in maintaining the confidentiality of that information or other information that may be filed in this record, it should be granted intervention status. Without the ability to know the nature of the information filed in the case, Riverside cannot protect the information from disclosure or avoid the competitive harm it may suffer.

For these reasons, Riverside requests that the Commission grant its intervention.

Submitted by:

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Certificate of Service:

I certify that a copy of this motion was served on the following parties the ^{7th} day of February, 2012:

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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

RATE ADJUSTMENT OF WESTERN)	CASE NO.
KENTUCKY GAS COMPANY)	90-013

O R D E R

This matter arising upon petition of Western Kentucky Gas Company ("Western Kentucky") filed May 30, 1990 pursuant to 807 KAR 5:001, Section 7, for confidential protection of a valuation study and purchase price allocation prepared for Western Kentucky, and it appearing to this Commission as follows: In making the study, Ernst & Young represented to Western Kentucky that it had employed a methodology which it believes is unique and constitutes highly valuable proprietary information. As a consequence, Ernst & Young required Atmos Energy Corporation, the parent of Western Kentucky, to agree not to disclose the methodology to any third party.

While the information sought to be protected in this case may consist of a unique method of study, disclosure of this method of study would not be detrimental to Western Kentucky. Only Ernst & Young could suffer injury if its competitors were able to acquire the information. As Ernst & Young is the real party in interest, as contemplated by CR 17.01, et. seq., the Commission finds the petition of Western Kentucky should be denied.

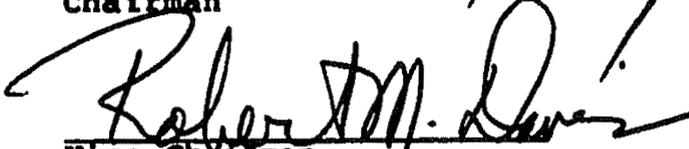
This Commission being otherwise sufficiently advised,

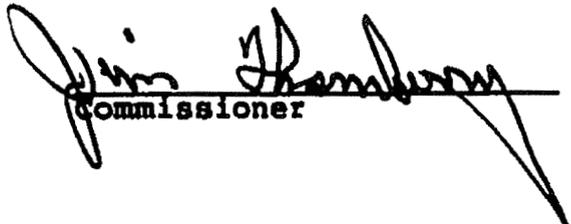
IT IS ORDERED that the petition for confidential treatment of the evaluation study prepared by Ernst & Young be and it hereby is denied.

Done at Frankfort, Kentucky, this 14th day of August, 1990.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN INVESTIGATION INTO THE DIVERSIFICATION)
OF RURAL ELECTRIC COOPERATIVE CORPORATIONS) ADMINISTRATIVE
INTO THE SATELLITE-DELIVERED TELEVISION) CASE NO. 326
PROGRAMING SERVICES)

O R D E R

This matter arising upon petition of Green River Electric Corporation ("Green River") filed August 17, 1990, pursuant to 807 KAR 5:001, Section 7, for confidential protection of the Shareholders' Agreement of Kentucky Telecommunications, Inc. ("KTI") on the grounds that public disclosure of the information is likely to cause KTI competitive injury and it appearing to this Commission as follows:

Green River seeks to protect as confidential the Shareholders' Agreement of KTI attached as an exhibit to the testimony of Kenneth A. Hazelwood served in this proceeding on August 16, 1990. In support of its position, Green River states that the document contains confidential information about the structure of KTI, the business and activities of KTI, and the capitalization of KTI which is not publicly available and which competitors could use to gain an unfair commercial advantage over KTI.

807 KAR 5:001, Section 7, protects information as confidential when it is established that disclosure is likely to

cause substantial competitive harm to the party from whom the information was obtained. In order to satisfy this test, the party claiming confidentiality must demonstrate actual competition and a likelihood of substantial competitive injury if the information is disclosed. Competitive injury occurs when disclosure of the information gives competitors an unfair business advantage.

The petition does not establish that disclosure of the information is likely to cause competitive injury or harm to Green River from whom it was obtained. On the contrary, the petition states that the injury or harm would be suffered by KTI, a third party to this proceeding. Furthermore, while the petition alleges competitive injury to KTI, it does not identify the competitors who would benefit from the information nor does it describe how the information could be used by competitors to KTI's disadvantage. Therefore, the petition should be denied.

Because the information may be of a sensitive nature, KTI should be permitted to intervene in this proceeding for the purpose of protecting the information from disclosure. Therefore, the information should be withheld from the public record for a period of 15 days to allow KTI an opportunity to take appropriate action if it deems it necessary to protect the information as confidential.

This Commission being otherwise sufficiently advised,

IT IS ORDERED that:

1. The petition by Green River to protect as confidential the KTI Shareholders' Agreement submitted as an exhibit to the testimony of Kenneth A. Hazelwood be and is hereby denied.

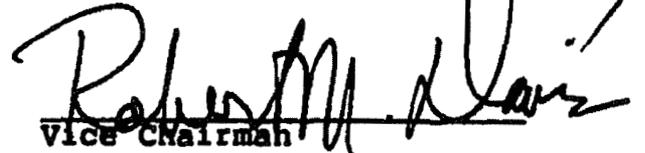
2. The information sought to be protected shall be withheld as confidential and proprietary for a period of 15 days from the date of this Order to allow KTI an opportunity to intervene in this proceeding and to file a petition for confidential protection of the information if it deems such protection is necessary to preserve its competitive position.

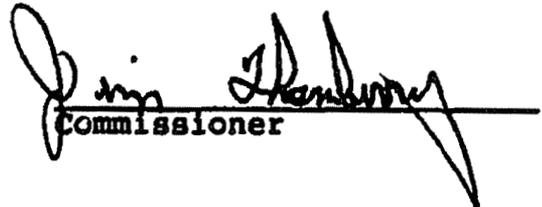
3. Any petition filed by KTI shall identify competitors who would benefit from the information sought to be protected and shall describe the manner in which the information could be used by such competitors to gain an unfair advantage over KTI.

Done at Frankfort, Kentucky, this 17th day of September, 1990.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director