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**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

IN THE MATTER OF:

**AN INVESTIGATION OF NATURAL GAS)
RETAIL COMPETITION PROGRAMS) Case No. 2010-00146**

**PETITION OF STAND ENERGY CORPORATION
FOR CONFIDENTIAL TREATMENT OF DATA**

On July 15, 2010, Louisville Gas and Electric Company ("LG&E") served its first set of data requests upon Stand Energy Corporation. On July 29, 2010 Stand Energy filed its responses with the Kentucky Public Service Commission ("Commission") to these data requests. Stand Energy declined to provide confidential and proprietary data supporting testimony of Stand Energy Witness Mark Ward regarding savings realized by the La Grange Reformatory and a large Louisville motel complex. The testimony described savings when compared to what those customers would otherwise have paid LG&E. Stand Energy also declined to provide similar confidential and proprietary data supporting testimony regarding savings realized by the Commonwealth of Kentucky to the Staff's First Set of Data Requests, again, because of the obligation to copy all parties with all data. On August 6, 2010, LG&E filed a Motion To Compel discovery of the data. Stand Energy responded on August 23, 2010 raising defenses.

By Commission Order entered October 6, 2010, Stand Energy was given five (5) days to produce: 1) the information requested in LG&E's Motion to Compel, items 1 and 2; and 2) the information requested by Staff in their First Information Request, Item 6.

Because the requested data contains confidential and proprietary pricing information that could give a competitor of Stand Energy an advantage when the competitively-bid customer accounts at issue come up for contract renewal, Stand Energy has provided to the parties other than LG&E and Staff, the responses to the data requests but not the data contained in the Attachments. The only information redacted from the data requests (served on all parties) is the specific identity of the Louisville Hotel customer.

Pursuant to 807 KAR 5:001, Section 7, Stand Energy hereby requests that the data and information produced herein in the Attachments A and B, be afforded confidential treatment. The Commission's regulations require any request for confidential treatment to set forth specific grounds pursuant to KRS 61.870, *et seq.*, to be filed with the Commission, an original clean copy of the proposed confidential material with proprietary information highlighted. Pursuant to 807 KAR 5:001, Section 7, Stand Energy's unredacted response is attached to the original copy of this Petition as Attachment A. Because the requested data is confidential, none of the data is highlighted. The Commission's regulations further require the requesting party to serve the petition and a redacted copy of the material on all parties of record. All other copies of this Petition include, not the Attachments A and B, but only the responses to the data requests at issue because all the remaining pages of data contain confidential and proprietary pricing information.

In light of the foregoing, and as required by 807 KAR 5:001, Section 7, the data should be classified as confidential, pursuant to §§ 61.870 *et seq.* on the following specific grounds:

- (1) Pricing information which "would permit an unfair commercial advantage to competitors" of Stand Energy if disclosed is generally recognized as confidential or proprietary under KRS § 61.878(l)(c)(1).

- (2) Pricing information also constitutes a trade secret, as defined by KRS 365.880(4) and protected by KRS §365.888, and is shielded from disclosure in Commission proceedings under KRS § 61.878(1)(1).

The pricing information and methodology related to the La Grange Reformatory, the large motel complex and the savings realized by the Commonwealth of Kentucky constitute a trade secret, as defined by Kentucky's Uniform Trade Secret Act, KRS § 365.880, *et seq.* Under the act, a trade secret is defined as:

Information, including a formula, pattern, compilation, program, data, device, method, technique, or process, that:

(a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and

(b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. KRS § 365.880(4).

Kentucky Revised Statutes provide that trade secrets should be protected and preserved by reasonable means, which may include granting protective orders. Under the Open Records Act, “public records or information the disclosure of which is prohibited or restricted or otherwise made confidential by enactment of the General Assembly,” are excluded from public disclosure. KRS § 61.878(1)(1). The Trade Secrecy Act falls within the last category of exemptions from public disclosure.

As applied to the data requested herein, the methodology utilized by Stand Energy to determine pricing for its customers, which also includes the actual pricing of such services, is a protected trade secret. Stand Energy and its customers derive independent economic value from the pricing methodology being held confidential because public disclosure of such information

would create an unfair advantage with respect to competitor pricing. Moreover, Stand Energy has taken every reasonable effort to ensure the contents of the data remain confidential.

The information at issue is not disseminated within Stand Energy, and is known only by those of Stand Energy's employees who have a legitimate business need to know and act upon that information. Therefore, the information is a trade secret and should not be disclosed to the public, as exempted under KRS § 61.878(1)(I).

Disclosure of the information and methodology contained in the data will provide Stand Energy's competitors with an unfair commercial advantage. The Open Records Act provides an exception for "records confidentially disclosed to an agency or required by an agency to be disclosed to it, general recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entities that disclosed the records." The Commission has interpreted this section to require a showing that the: (1) commercial documents are generally recognized as confidential or proprietary and that (2) disclosure would permit an unfair commercial advantage to competitors. *In the Matter of Joint Petition for Arbitration of New South Communications Corp., Nuvox Communications, Inc., KMC Telecom III, LLC and Xspedius Communications, LLC on behalf of its Operating Subsidiaries*, Commission Case No. 2004-00044, Order entered June 2, 2006. The Kentucky Supreme Court has held that in order to invoke the KRS § 61.878(1)(c)(1) exemption, disclosure to competitors should provide substantially more than a trivial unfair advantage. *United Medigroup, Inc. v. John J. Hughes*, 952 S.W.2d 195 (Ky. 1997).

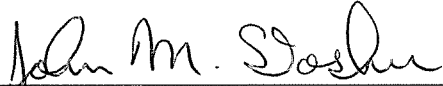
As applied to this data, the pricing and methodology of Stand Energy is confidential information. To require disclosure of this information to Stand Energy's competitors would almost certainly lead to the loss of the referenced customers by Stand Energy. In addition, were

this information to be made public, Stand Energy would be at a serious competitive disadvantage with other gas marketers who offer similar services, often through a competitive bidding process, for these specific customers. Furthermore, the competitive position of the hotel customer in its industry could be compromised by public disclosure of its natural gas costs. Therefore, the Commission should protect the pricing information and methodology under the Open Records Act exemption KRS § 61.878(1)(c)(1).

By granting this Petition and providing for confidential treatment of Stand Energy's response to this data request, the Commission and the parties can fully evaluate retail natural gas competition issues in Kentucky, while maintaining the general confidentiality of such data, thereby balancing the public interest with the personal privacy concerns identified in KRS § 61.878(1)(c)(1), and (l).

WHEREFORE, Stand Energy respectfully requests that the Commission issue an order authorizing the confidential treatment of Stand Energy's response to these data requests in Attachment A hereto, pursuant to 807 KAR 5:001, Section 7, for the reasons stated herein.

Respectfully submitted,


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CERTIFICATE OF SERVICE

I hereby certify that I served true and accurate copies of Stand Energy Corporation's Petition For Confidential Treatment of Data; Revised Responses to Requests for Information from the PSC Staff; and Revised Responses to Requests for Information from LG&E on this 11th day of October, 2010 by regular U.S. Mail upon the following parties of record and their representatives or counsel:

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