

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN INVESTIGATION OF LOUISVILLE)
GAS AND ELECTRIC COMPANY S) CASE NO. 2002-00232
PREPAID GAS AND ELECTRIC SERVICE)

O R D E R

Pending before the Commission is a petition filed by Louisville Gas and Electric Company (LG&E) requesting confidential protection for: (1) certain provisions in a new contract to purchase electric meters to provide residential prepaid electric service; and (2) references to those contract provisions in rebuttal testimony and exhibits. LG&E cites KRS 61.878(1)(c)(1) as justification for granting confidential protection to the information which it asserts is generally recognized as confidential, the disclosure of which would cause competitive injury and permit competitors an unfair commercial advantage. The Commission initially reviewed LG&E s petition, which was unsupported by any testimony, and found, by Order dated January 15, 2003, that the petition did not contain allegations sufficient to grant the request for confidential protection. The Order further established a procedural schedule for the filing of testimony by LG&E in support of its petition and scheduled a hearing.

LG&E filed on January 21, 2003 a redacted version of its contract to purchase prepaid meters from Ampy Automation Digilog Limited (Ampy) and the testimony of two witnesses in support of its request for confidentiality: Susan Sanchez, Retail Business Projects Manager, LG&E; and Paul Taylor, Sales and Marketing Manager,

Ampy. Ms. Sanchez claims that LG&E would be harmed in its ability to contract for goods and services on favorable terms in the future if the pricing provisions set forth in its contract with Ampy are disclosed. Further, she states that future vendors will be less likely to sell goods and services to LG&E at the least possible cost if their negotiated prices and other contract terms will be available to the public. In addition, she states that the contract was entered into to encourage greater diversity among suppliers and to create increased competition in the metering market.

Mr. Taylor states that on September 11, 2002, Ampy entered into a contract to develop a prepayment metering system utilizing smart cards, along with other metering products, for use by LG&E. Ampy has agreed to sell its products to LG&E at a very competitive price in exchange for LG&E's assistance and cooperation in the development of the metering system. Ampy sells its meters world-wide but is interested in expanding its business into the United States and Canada. Ampy's efforts to enter these markets are hampered by a lack of available market information and, thus, Ampy will receive significant benefits from LG&E's agreement to provide meter testing, specification information, and other feedback. Absent this information, Ampy believes it would be unable to successfully compete in the meter market in the United States and Canada. Public disclosure of the pricing terms in the contract could, in Ampy's opinion, be used by competitors to formulate strategic plans for entry, pricing, marketing, and overall business strategies. In addition, disclosure of the pricing information could hamper Ampy's ability to sell meters at higher prices to other buyers. The inability to sell meters to other buyers at higher prices would act as a disincentive for Ampy to

develop new products in the future and to continue doing business in the United States and Canada.

A hearing on the issue of confidentiality was originally scheduled on January 29, 2003, but was subsequently canceled due to the unavailability of Ampy's witness, Mr. Taylor. Subsequently, on February 5, 2003, LG&E filed a motion which states that counsel for intervenors have agreed to waive their right to cross-examination and that all parties request the issue of confidentiality be decided based on the existing evidence of record.

Based on the evidence of record and being otherwise sufficiently advised, the Commission finds that LG&E has failed to provide adequate support to demonstrate that any competitive injury would result to LG&E from the public release of the terms and conditions set forth in its contract with Ampy. Under KRS 61.878(1)(c)(1), confidential protection can be granted only when specific facts have been presented to show that public disclosure would permit an unfair commercial advantage to competitors of the entity that disclosed the information. LG&E has not carried its burden to show that competitors of LG&E would receive an unfair commercial advantage if they knew the terms of the Ampy meter contract. Although LG&E argues that public release of the contract information would make other vendors reluctant to offer their lowest price to LG&E, it is just as likely that public release of the pricing information would encourage other vendors to offer the same or similar goods or services at lower prices in an effort to gain LG&E's business.

With respect to the information provided by Ampy, the Commission finds that good cause has been shown to grant confidentiality to the pricing and other limited

terms of the meter contract. The provision of metering equipment is a competitive business and the pricing and other terms of Ampy's contract with LG&E are unique because LG&E has agreed to provide meter testing, specification information, and other feedback to Ampy. These services are not traditionally provided as part of a meter purchase contract and they will assist Ampy in its entry into the markets in the United States and Canada. Further, disclosure of the pricing and other relevant terms of the contract could cause competitive injury to Ampy by hindering its ability to sell similar meters at higher prices to other buyers.

IT IS THEREFORE ORDERED that:

1. Confidential protection is granted to those portions of the meter contract between LG&E and Ampy that were designated as confidential in Exhibit 1 to the prepared testimony of Susan Sanchez filed on January 21, 2003, and all references thereto in prepared testimony and cross-examination.

2. In the event that the information granted confidential protection herein becomes publicly available, or otherwise no longer qualifies for confidential protection, LG&E and Ampy shall notify the Commission in writing within 10 days of the event.

Done at Frankfort, Kentucky, this 19th day of February, 2003.

By the Commission

ATTEST:

Wm H. Fowler
Deputy Executive Director