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COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

PUBLIC SERVICE
COMMISSION

In the Matter of:

APPLICATION OF LOUISVILLE GAS AND)	
ELECTRIC COMPANY FOR APPROVAL OF)	
SALE OF PROPERTY TO THE LOUISVILLE)	CASE NO. 2006-00391
ARENA AUTHORITY, INC.)	

PETITION OF LOUISVILLE GAS AND ELECTRIC COMPANY
FOR CONFIDENTIAL PROTECTION

Louisville Gas and Electric Company (“LG&E”), by counsel, hereby petitions the Kentucky Public Service Commission (“Commission”), pursuant to 807 KAR 5:001, Section 7, KRS 61.878(1)(m)1.f., and KRS 61.878(1)(c)1., to grant confidential protection (1) to its responses to Item Nos. 9(b) and (c) of the First Data Request of Commission Staff dated September 5, 2006 (“Staff Data Request”), and (2) to the E.ON-US Waterside Facility Assessment prepared by ProEnergy Services and dated September 8, 2006 (the “Facility Assessment”), supplied in support of its Response to Staff Data Request No. 7(a). In support of this Petition, LG&E states as follows:

* * *

1. In reviewing LG&E’s Verified Application (the “Application”) for approval of the sale of certain property to the Louisville Arena Authority, Inc. (“Arena Authority”), Commission Staff requested, among other things, certain information relating to the retirement of the two combustion turbines (“CTs”) at the Waterside site.¹ Staff also requested a description of the New Transmission Dispatch Facilities to be

¹ Staff Data Request No. 7(a).

constructed² and information relating to the location and acreage of the land yet to be acquired for the New Transmission Facilities.³ LG&E understands that the information requested will be helpful to the Commission in reaching its decision on the Application. However, certain portions of the information provided in LG&E's Response are protected from public disclosure by KRS 61.878(1)(m)1.f., which exempts records whose disclosure "would have a reasonable likelihood of threatening the public safety by exposing a vulnerability" to terrorism, as follows:

Infrastructure records that expose a vulnerability referred to in this subparagraph through the disclosure of the location, configuration, or security of critical systems, including public utility critical systems. These critical systems shall include but not be limited to information technology, communications, electrical, ... and gas systems.

2. Certain additional portions of LG&E's Response, specifically the response to Data Request No. 9(b), are also protected by KRS 61.878(1)(c)1., which protects from disclosure the following records:

...records confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records;...

Responses Protected by the Public Utility Critical Systems Exemption

3. In Data Request No. 9(c), Commission Staff requested a description of the new Transmission Dispatch Facilities to be constructed. LG&E's response to the request contains physical and operational details that, if disclosed, would threaten the public safety by exposing the vulnerability of public utility critical systems.

² Staff Data Request No. 9(c).

³ Staff Data Request No. 9(b).

4. In Data Request No. 7(a), Commission Staff requested information concerning the imminent retirement of the two Waterside CTs. As part of its Response, LG&E has supplied a copy of the Facility Assessment which describes the structure and operation of the two CTs as well as their current condition and concludes that they lack any significant market value. The Facilities Assessment consists of a detailed discussion of specific physical and operational details that, if disclosed, would threaten the public safety by exposing the vulnerability of public utility critical systems.

Response Protected by the Unfair Commercial Disadvantage Exemption

5. In response to Data Request No. 9(b), LG&E has supplied information concerning the type of property it seeks to acquire, including the optimum location of such property, the desired acreage, and other desirable attributes, given the purposes for which the land will be purchased. Public disclosure of this information, which is confidential and proprietary, would compromise LG&E's negotiating stance by publicizing LG&E's needs, requirements, and plans, thereby placing LG&E at an unfair commercial disadvantage with relation to other potential buyers, as well as potential sellers, in competitive negotiations to obtain property on which the new Transmission Dispatch Facilities may be constructed.

6. LG&E's position, that this preliminary information concerning confidential negotiations is exempted from disclosure by the unfair commercial disadvantage exemption, is supported by 04-ORD-081 (Ky. A.G., 2004), in which the Kentucky Attorney General upheld the refusal of the Cabinet for Economic Development to disclose certain documents relating to preliminary negotiations with the United States Enrichment Corporation ("USEC") to locate two manufacturing plants in Paducah. The

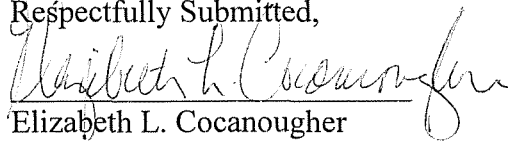
Attorney General concluded, *inter alia*, that documents relevant to the negotiations were "preliminary" records protected under KRS 61.878(1)(i) and (j). In so ruling, the Attorney General noted that the person requesting the documents reflecting the negotiations from the Cabinet "did not desire to inspect or copy any material which is solely proprietary to USEC and recognized this material's exemption from disclosure under KRS 61.878(1)(c)." [04-ORD-081, at 3.] The same recognition of similar material applies in this case. The unfair commercial disadvantage applies as clearly to LG&E's confidential negotiating status as it did to USEC's. Disclosure would permit an unfair commercial advantage to competitive purchasers who are interested in purchasing options on property in this area for the purpose of "flipping" or making short term purchases of real estate to increase the price and achieve substantial gain in the ultimate real sale of the property. LG&E and in turn its customers will be harmed by this impact on the real estate market because of the higher real estate prices disclosure will likely cause.

Conclusion

7. Pursuant to 807 KAR 5:001, Section 7, LG&E has highlighted the confidential information in one copy of its Response to First Data Request of Commission Staff ("Response"), has filed the highlighted version under seal herewith, and has redacted the confidential information from the original and five (5) publicly available copies.

WHEREFORE, Louisville Gas and Electric Company respectfully requests that the Commission grant confidential protection, pursuant to 807 KAR 5:001, Section 7, KRS 61.878(1)(m)1.f., and KRS 61.878(1)(c), to the Responses to Data Request Nos. 9(b) and (c) and to the Facility Assessment filed herewith.

Respectfully Submitted,



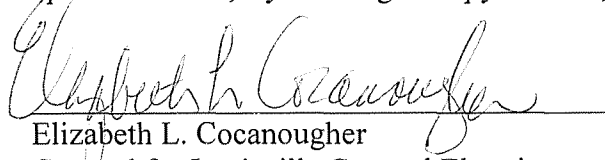
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served on the following, this 12th day of September 2006, by mailing a copy thereof, postage prepaid, via U.S. mail to:


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