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AUG 12 2008

PUBLIC SERVICE
COMMISSION

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF KENTUCKY)
UTILITIES COMPANY FOR AN) CASE NO. 2008-00251
ADJUSTMENT OF BASE RATES)

PETITION OF
KENTUCKY UTILITIES COMPANY
FOR CONFIDENTIAL PROTECTION

Kentucky Utilities Company (“KU”) petitions the Kentucky Public Service Commission (“Commission”) pursuant to 807 KAR 5:001 § 7 and KRS 61.878(1)(a) to grant confidential protection to certain information that would readily identify individual KU employees and make known each individual’s compensation, which information KU is providing in response to Item No. 46 of the First Data Request of Commission Staff dated July 16, 2008, in the above-captioned proceeding. In support of this Petition, KU states as follows:

1. On July 1, 2008, KU served notice of its intent to file a rate application for a general adjustment of its electric base rates with the Commission. On July 16, 2008, the Commission Staff issued its First Set of Data Requests to KU. On July 29, 2008, KU filed with the Commission an application proposing changes in its base rate tariffs.

2. Commission Staff Data Request No. 46 asks KU to produce the salary and other private personal information of some of its employees. The Kentucky Open Records Act (“Act”) exempts from disclosure certain private and personal information.¹ The Kentucky Court of Appeals has stated, “information such as ... wage rate ... [is] generally accepted by society as [a] detail[] in which an individual has at least some expectation of privacy.”² The Commission

¹ KRS 61.878(1)(a).

² Zink v. Department of Workers’ Claims, Labor Cabinet, 902 S.W.2d 825, 828 (Ky. Ct. App. 1994).

should therefore give confidential treatment to the information redacted from KU's response to Item No. 46, because disclosing the contents thereof – which includes each employee's compensation and annual increase for three years – would invade the privacy rights of the individuals named. The Commission should also grant confidential protection to previous executive officers' salaries, where KU has provided such to be responsive to Item No. 46. (As stated in Paragraph No. 5 below, however, KU is providing a complete response, including this information, to the Commission under seal.) These individuals' compensation, which KU does not otherwise publicly report, is personal and private information that should not be in the public realm. KU's employees therefore have a reasonable expectation that KU will maintain the confidentiality of their compensation information, the disclosure of which would constitute an unwarranted invasion of personal privacy in contravention of KRS 61.878(1)(a).

Providing confidential protection for the compensation information of KU's employees would fully accord with the purpose of the Act, which is to make government and its actions open to public scrutiny. Concerning the rationale for the Act, the Kentucky Court of Appeals has stated:

[T]he public's 'right to know' under the Open Records Act is premised upon the public's right to expect its agencies properly to execute their statutory functions. In general, inspection of records may reveal whether the public servants are indeed serving the public, and the policy of disclosure provides impetus for an agency steadfastly to pursue the public good. At its most basic level, the purpose of disclosure focuses on the citizens' right to be informed as to what their government is doing.³

Citing the Court of Appeals, the Kentucky Office of the Attorney General ("AG") stated in an Open Records Decision ("ORD"), "If disclosure of the requested record would not advance the

³ Zink v. Department of Workers' Claims, Labor Cabinet, 902 S.W.2d 825, 828-29 (Ky. Ct. App. 1994).

underlying purpose of the Open Records Act, namely exposing agency action to public scrutiny, then countervailing interests, such as privacy, must prevail.”⁴

KU’s redacted response to Item No. 46 provides the compensation information for the same set of employees as in the unredacted version provided to the Commission, but in an averaged manner that protects the identities and particular compensation information of individual employees. The public can use the average compensation information to evaluate the Commission’s determination of the reasonableness of that compensation. Though there may be certain citizens who are curious to know particular KU employees’ compensation information, mere curiosity is not sufficient to overcome the employees’ right to privacy in that information. As the AG stated in another ORD, quoting the Kentucky Court of Appeals, “[T]he policy of disclosure [under the Act] is purposed to subserve the public interest, not to satisfy the public’s curiosity”⁵

Moreover, in an order approving an LG&E petition for confidential treatment in Case No. 89-374, the Commission stated that salary information “should be available for customers to determine whether those salaries are reasonable,” but “the right of each individual employee within a job classification to protect such information as private outweighs the public interest in the information.”⁶ In the same order, the Commission concluded, “Thus, the salary paid to each individual within a classification is entitled to protection from public disclosure.”⁷ The

⁴ In re: James L. Thomerson/Fayette County Schools, KY OAG 96-ORD-232 (Nov. 1, 1996) (citing *Zink v. Department of Workers’ Claims, Labor Cabinet*, 902 S.W.2d 825 (Ky. Ct. App. 1994)) (emphasis added).

⁵ In re: Becky J. Hartell/Department of Personnel, KY OAG 93-ORD-118 (Oct. 15, 1993) (quoting *Kentucky Board of Examiners of Psychologists v. Courier-Journal and Louisville Times Company*, 826 S.W.2d 324, 328 (Ky. 1992)).

⁶ *In the Matter of: Application of Louisville Gas and Electric Company for an Order Approving an Agreement and Plan of Exchange and to Carry Out Certain Transactions in Connection Therewith*, Case No. 89-374, Order at 2 (Apr. 30, 1997).

⁷ *Id.*

Commission had reached the same conclusion in two previous orders in the same case.⁸ Therefore, KU respectfully submits that the average compensation information provided in the redacted version of its response is sufficient to enable the non-intervening public to monitor in an informed way the Commission's actions in this proceeding, while protecting the privacy rights of KU's employees.

3. The information for which KU is seeking confidential treatment is not known outside of the Company, and it is not disseminated within KU except to those employees with a legitimate business need to know the information.

4. The information for which KU seeks confidential protection in this case is similar to that provided to the Commission by KU in the past. The Commission granted confidential protection of the compensation paid to certain professional employees in a letter from the Executive Director of the Commission dated December 2, 2003 in *In the Matter of: An Investigation Pursuant to KRS 278.260 of the Earnings Sharing Mechanism Tariff of Kentucky Utilities Company*, Case No. 2003-00334. A copy of the Executive Director's letter and of KU's response to the Commission Staff's Data Request in that proceeding are attached hereto as Exhibit A.

5. In accordance with the provisions of 807 KAR 5:001 Section 7, KU herewith files with the Commission one copy of its response to the Commission Staff's Data Request No. 46

⁸ See *In the Matter of: Application of Louisville Gas and Electric Company for an Order Approving an Agreement and Plan of Exchange and to Carry Out Certain Transactions in Connection Therewith*, Case No. 89-374, Order at 2 (Apr. 4, 1996); *In the Matter of: Application of Louisville Gas and Electric Company for an Order Approving an Agreement and Plan of Exchange and to Carry Out Certain Transactions in Connection Therewith*, Case No. 89-374, Order at 2 (Apr. 8, 1994). See also *In the Matter of: Application of BellSouth Telecommunications, Inc. d/b/a South Central Bell Telephone Company to Modify its Method of Regulation*, Case No. 94-121, Order at 4-5 (July 20, 1995) ("Salaries and wages are matters of private interest which individuals have a right to protect unless the public has an overriding interest in the information. The information furnished, however, only shows the salary range for three labor classifications and does not provide the identity of persons who receive those salaries. Therefore, disclosure of the information would not be an invasion of any employee's personal privacy, and the information is not entitled to protection.").

with the confidential information highlighted and ten (10) copies of its response without the confidential information.

WHEREFORE, Kentucky Utilities Company respectfully requests that the Commission grant confidential protection for the information described herein.

Dated: August 12, 2008

Respectfully submitted,



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Counsel for Kentucky Utilities Company

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served on the following persons on the 12th day of August, 2008, United States mail, postage prepaid:

Dennis G. Howard II
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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF KENTUCKY)
UTILITIES COMPANY FOR AN) **CASE NO. 2008-00251**
ADJUSTMENT OF BASE RATES)

EXHIBIT A



Paul E. Patton, Governor
Janie A. Miller, Secretary
Public Protection and
Regulation Cabinet
Thomas M. Dorman
Executive Director
Public Service Commission

COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION
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Martin J. Huelsmann
Chairman
Gary W. Gillis
Vice Chairman
Robert E. Spurlin
Commissioner

December 1, 2003

Linda S. Portasik, Esq.
Senior Corporate Attorney
LG&E Energy Corp.
220 West Main Street
Louisville, KY 40232

RE: KU/LG&E's Petition for Confidential Protection
Cases No. 2003-00334 and 2003-00335

Dear Ms. Portasik:

The Commission has received your petition filed November 21, 2003, to protect as confidential certain information relating to the compensation paid to certain professional employees. A review of the information has determined that it is entitled to the protection requested on the grounds relied upon in the petition, and it will be withheld from public inspection.

If the information becomes publicly available or no longer warrants confidential treatment, you are required by 807 KAR 5:001, Section 7(9)(a), to inform the Commission so that the information may be placed in the public record.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas M. Dorman".

Thomas M. Dorman
Executive Director

cc: Parties of Record



AN EQUAL OPPORTUNITY EMPLOYER M/F/D

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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

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PUBLIC SERVICE
COMMISSION

In the Matter of:

AN INVESTIGATION PURSUANT TO KRS)
278.260 OF THE EARNINGS SHARING)
MECHANISM TARIFF OF KENTUCKY) CASE NO. 2003-00334
UTILITIES COMPANY)

AND

AN INVESTIGATION PURSUANT TO KRS)
278.260 OF THE EARNINGS SHARING)
MECHANISM TARIFF OF LOUISVILLE) CASE NO. 2003-00335
GAS AND ELECTRIC COMPANY)

PETITION
OF KENTUCKY UTILITIES COMPANY AND
LOUISVILLE GAS AND ELECTRIC COMPANY
FOR CONFIDENTIAL PROTECTION

Kentucky Utilities Company ("KU") and Louisville Gas and Electric Company ("LG&E") (collectively, the "Companies") hereby petition the Public Service Commission of Kentucky ("Commission"), pursuant to 807 KAR 5:001, Section 7, to grant confidential protection to certain information relating to the compensation paid to certain professional employees, which information is being provided in response to Commission Data Request Nos. 6 and 26 (proffered October 30, 2003) in the above-captioned proceedings. In support of this Petition, KU and LG&E state as follows:

1. The Kentucky Open Records Act exempts from disclosure certain information of a personal nature. KRS 61.878(1)(a). The above-referenced compensation information contains

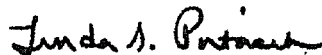
such sensitive personal information, the disclosure of which would constitute a clearly unwarranted invasion of privacy.

2. The information for which KU and LG&E are seeking confidential treatment is not known outside of the Companies, and it is not disseminated within KU and LG&E except to those employees with a legitimate business need to know the information, such as employees within the Human Resources department.

3. In accordance with the provisions of 807 KAR 5:001 Section 7, the Companies are filing herein one copy of their respective responses to Commission Request Nos. 6 and 26 with the confidential information highlighted, and ten (10) copies for public inspection, with such confidential information fully redacted.

WHEREFORE, Kentucky Utilities Company and Louisville Gas and Electric Company respectfully request that the Commission grant confidential protection, or in the alternative, schedule an evidentiary hearing on all factual issues.

Respectfully submitted,



Linda S. Portasik
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P.O. Box 32010
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Telephone: (502) 627-2557

COUNSEL FOR
LOUISVILLE GAS AND
ELECTRIC COMPANY


CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was served via U.S. mail, first-class, postage prepaid, this 21st day of November, 2003.

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Counsel for Louisville Gas and Electric
Company and Kentucky Utilities Company

LOUISVILLE GAS AND ELECTRIC COMPANY

CASE NO. 2003-00335

Response to First Data Request of Commission Staff dated October 30, 2003

Question No. 6

Responding Witness: Paula H. Pottinger, Ph.D.

Q-6. Refer to pages 5 and 6 of the Pottinger Testimony. Concerning the impact that the E.ON AG ("E.ON") acquisition had on incentive payments in 2002, prepare a comparison showing the level of incentives actually awarded versus what the levels would have been absent the impact of the E.ON merger agreement. Include an explanation of the impacts of the merger agreement on the incentive payments.

A-6. Total annual incentive paid in 2002 = [REDACTED]

Total calculated using actual 2002 results = [REDACTED]

Difference = [REDACTED]

Only \$ [REDACTED] of the difference was paid to officers. The remainder was paid to employees below the officer level.

The E.ON merger agreement provided protection of bonuses at a minimum of target for 2002.

The figures above include incentive payments made to employees of all companies, not just LG&E.

LOUISVILLE GAS AND ELECTRIC COMPANY

CASE NO. 2003-00335

Response to First Data Request of Commission Staff dated October 30, 2003

Question No. 26

Responding Witness: Paula H. Pottinger, Ph.D.

- Q-26. For each senior executive participating in the ESTICP and for each key employee participating in the LTICP, provide the following information for calendar years 2000, 2001, and 2002. Identify the participating employees by job title only.
- a. The total compensation paid to the employee.
 - b. A breakdown of the total compensation between the following categories:
 - (1) Base salary.
 - (2) ESTICP.
 - (3) LTICP.
 - (4) Other incentive and/or compensation plans.
 - c. Indicate the amount of the total compensation directly charged to LG&E, LG&E Services, LG&E Energy, and other LG&E Energy affiliates and subsidiaries.
 - d. Indicate the amount of the total compensation allocated from LG&E Services to LG&E.
 - e. Indicate the amount of the total compensation allocated from other LG&E Energy affiliates and subsidiaries to LG&E.
- A-26. a. The attached schedule, filed under seal pursuant to the Company's Petition for Confidential Treatment submitted concurrently herewith, shows the base, ESTICP and LTICP by officer in position at the end of each calendar year. Please note, as we have previously discussed, that no ESTIP nor LTICP has been charged to the utility's ratepayers. Furthermore, the only portion of the compensation expense charged to the ratepayers is a very modest portion of the officers' base salaries.
- b. (1) Base salary reflected in the schedule is the gross wage earned for the respective officer in each calendar year.

- (2) ESTICP reflected in the schedule is the short-term incentive earned for the calendar year, paid in the beginning of the following year, with the exception of 2000 which was paid at the end of 2000.
- (3) LTICP reflected in the schedule are those components paid during the calendar year. These components are stock option exercises, performance unit payouts and the vesting of restricted stock awards.
- (4) The above items reflect the only incentive and/or compensation plans for the relevant years. The Company does have various perquisites, programs and specific employee arrangements that are not based on company performance, are not paid pursuant to a plan and accordingly are not reflected in the schedule.

Other than the short and long term incentive plans, there are no other compensation plans available to the senior executives and key employees of LG&E, LG&E Services, and LG&E Energy. Base salary is not administered through a compensation plan, rather company policy and practice.

- c. The amounts charged to LG&E, LG&E Services, LG&E Energy, and other LG&E Energy affiliates and subsidiaries are all amounts except those labeled "paid time off". "Paid time off" is handled through a clearing account which is part of the burden process, generally following the allocation of base pay.
- d. The schedule reflects the amount of base salary, ESTICP and LTICP allocated to LG&E.
- e. No amounts were allocated from other LG&E Energy affiliates and subsidiaries to LG&E.

2000 Compensation Summary

CONFIDENTIAL INFORMATION

Attachment to PSC Question No. 26
Page 1 of 3

CEO	COO	Vice Presidents		Tot
-----	-----	-----------------	--	-----

Base Salary
Short-Term Incentive Plan
Long-Term Incentive Plan
Total

Accounting Distribution for Base

LOGE
LOGE-Below the line
KJ
KJ-Below the line
LOGE Energy and other Non-Utility Affiliates

Total

Acctg Dist for Short Term Incentive

LOGE
LOGE-Below the line
KJ
KJ-Below the line
LOGE Energy and other Non-Utility Affiliates

Total

Acctg Dist for Long Term Incentive

LOGE
LOGE-Below the line
KJ
KJ-Below the line
LOGE Energy and other Non-Utility Affiliates

Total

Accounting Distribution Summary

LOGE
LOGE-Below the line
KJ
KJ-Below the line
LOGE Energy and other Non-Utility Affiliates

Total

CONFIDENTIAL INFORMATION REDACTED

Attachment to PSC Question No. 26
Page 1 of 3

2001 Compensation Summary

CONFIDENTIAL INFORMATION

CEO	CEO-Pay Set	Vice Presidents	Total
-----	-------------	-----------------	-------

Base Salary
Short-Term Incentive Plan
Long-Term Incentive Plan
Total

Accounting Distribution for Base

LG&E
LG&E-Below the line
KJ
KJ-Below the line
LG&E Energy and other Non-Utility Affiliates
Paid Time Off

Total

Accounting Distribution for Short-Term Incentive

LG&E
LG&E-Below the line
KJ
KJ-Below the line
LG&E Energy and other Non-Utility Affiliates

Total

Accounting Distribution for Long-Term Incentive

LG&E
LG&E-Below the line
KJ
KJ-Below the line
LG&E Energy and other Non-Utility Affiliates

Total

Accounting Distribution Summary

LG&E
LG&E-Below the line
KJ
KJ-Below the line
LG&E Energy and other Non-Utility Affiliates
Paid Time Off

Total

CONFIDENTIAL INFORMATION REDACTED

2002 Compensation Summary

CONFIDENTIAL INFORMATION

Attachment to PSC Question No. 26
Page 3 of 3

CEO	Vice Presidents	Total
-----	-----------------	-------

Base Salary
Short Term Incentive Plan
Long-Term Incentive Plan

Total

Accounting Distribution for Base

LOGAR
LOGAR-Below the Line
KLI
KLI-Below the Line
LOGAR Energy and other Non-Utility Activities
Paid Time Off

Total

Accounting Distribution for Short Term Incentives

LOGAR
LOGAR-Below the Line
KLI
KLI-Below the Line
LOGAR Energy and other Non-Utility Activities

Total

Accounting Distribution for Long Term Incentives

LOGAR
LOGAR-Below the Line
KLI
KLI-Below the Line
LOGAR Energy and other Non-Utility Activities

Total

Accounting Distribution Summary

LOGAR
LOGAR-Below the Line
KLI
KLI-Below the Line
LOGAR Energy and other Non-Utility Activities
Paid Time Off

Total

CONFIDENTIAL INFORMATION REDACTED

Attachment to PSC Question No. 26
Page 3 of 3