

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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In the Matter of:

THE 2011 JOINT INTEGRATED)
RESOURCE PLAN OF LOUISVILLE GAS) CASE NO. 2011-00140
AND ELECTRIC COMPANY AND)
KENTUCKY UTILITIES COMPANY)

JOINT PETITION OF LOUISVILLE GAS AND ELECTRIC COMPANY
AND KENTUCKY UTILITIES COMPANY
FOR CONFIDENTIAL PROTECTION OF,
AND MOTION TO DEVIATE FROM RULE WITH RESPECT TO,
RESPONSES TO FIRST SET OF INTERROGATORIES AND
REQUESTS FOR DOCUMENTS OF
RICK CLEWETT, DREW FOLEY, JANET OVERMAN, GREGG WAGNER,
THE NATURAL RESOURCES DEFENSE COUNCIL AND SIERRA CLUB

Louisville Gas and Electric Company (“LG&E”) and Kentucky Utilities Company (“KU”) (collectively, “Companies”) hereby petition the Kentucky Public Service Commission (“Commission”) pursuant to 807 KAR 5:001 § 7, and KRS 61.878(1)(c) and (m) to grant confidential protection for the items described herein which the Companies seek to provide as part of their response to Rick Clewett, Drew Foley, Janet Overman, Gregg Wagner, the Natural Resources Defense Council and Sierra Club’s (collectively, the “Environmental Group”) First Set of Interrogatories No. 7 and to Environmental Group’s First Requests for Production of Documents (“RPD”) Nos. 8, 13, 14, 23, 29, 31, 33, 35, and 37.

Also, pursuant to 807 KAR 5:001 § 14, the Companies respectfully move the Commission for permission to deviate from the rule requiring the highlighting of specific confidential information and the marking of each page containing confidential information with a “CONFIDENTIAL” stamp. (See 807 KAR 5:001 § 7.) Because the confidential information being produced is voluminous and in electronic format (the subject of a separate Motion to Deviate being filed herewith), the Companies request that marking the compact discs containing

the confidential information with a yellow label clearly stating “CONFIDENTIAL” be deemed sufficient to comply with the rule.

In support of this Petition and Motion, the Companies state as follows:

Confidential or Proprietary Commercial Information (KRS 61.878(1)(c))

1. The Kentucky Open Records Act exempts from disclosure certain commercial information. KRS 61.878(1)(c). To qualify for the exemption and, therefore, maintain the confidentiality of the information, a party must establish that the material is of a kind generally recognized to be confidential or proprietary, and the disclosure of which would permit an unfair commercial advantage to competitors of the party seeking confidentiality.

(a) The confidential information contained in the Companies’ responses to Environmental Group’s RPD Nos. 8, 13, 14, 35, and 37 includes the Companies’ coal and gas base fuel costs and cost projections. If the Commission grants public access to this information, LG&E and KU could be disadvantaged in negotiating fuel contracts in the future, and could also be disadvantaged in the wholesale energy market because fuel costs are important components of energy pricing. All such commercial harms would ultimately harm LG&E’s and KU’s customers, who would have to pay higher rates if the disclosed information resulted in higher fuel prices or adversely impacted the Companies’ off-system energy sales.

The Commission has given confidential treatment to projected fuel cost information in previous IRP cases. For example, see the Commission’s letter to the Companies dated May 1, 2008, concerning the Companies’ 2008 IRP case (Case No. 2008-00148); the Commission’s letter to the Companies dated April 28, 2005, concerning the Companies’ 2005 IRP case (Case No. 2005-00162); the Commission’s letter to the Companies dated October 24, 2002, concerning the Companies’ 2002 IRP case (Case No. 2002-00367); and the Commission’s letter to the Companies dated March 6, 2000, concerning the Companies’ 1999 IRP case (Case No. 99-430).

(b) The Companies' responses to Environmental Group's Interrogatories No. 7 and RPD Nos. 35 and 37 contain confidential information concerning the Companies' maintenance and outage plans. Such information merits confidential protection because revealing it would likely harm the Companies' ability to compete in wholesale power markets by revealing their unit availability and dispatch methodology, hampering their off-system sales and harming the Companies and their customers.

(c) The confidential information contained in the Companies' responses to Environmental Group's RPD Nos. 29, 31, and 33 includes generation construction bid and request-for-proposals-related information, which is highly sensitive commercial information. These provisions represent concessions, terms, and conditions that the Companies have been able to negotiate for their and their customers' benefit, as well as terms that certain vendors have offered to the Companies through request-for-proposals processes. Permitting other vendors to obtain this information could redound to the Companies' and their customers' detriment by allowing them to make offers and demand terms not as advantageous as the Companies might otherwise have been able to negotiate. Moreover, vendors have revealed much of this information in confidence and would not favor public disclosure of concessions that they have made because those concessions would be used against them in future negotiations with other customers. They would therefore be more likely to insist on standard contract provisions and less willing to negotiate terms with the Companies in the future, thus jeopardizing the Companies' ability to obtain the best possible contracts, and placing them at an additional competitive disadvantage.

Critical Energy Infrastructure Information (KRS 61.878(1)(m)1.f.)

2. The Companies' response to Environmental Group's RPD No. 23 is an analysis of transmission elements that may need to be adjusted to accommodate possible future generating

unit retirements. The analysis may include Critical Energy Infrastructure Information as defined by the Federal Energy Regulatory Commission, which is exempt from federal Freedom of Information Act disclosure, and which meets the exemption requirements of KRS 61.878(1)(m)1.f: “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 ... electrical ... systems[.]” The analysis provides details concerning the location, capabilities, and contingency plans related to the Companies’ transmission system, which infrastructure information would clearly be useful to anyone seeking to threaten or harm public safety. It is therefore highly confidential and must be protected from public disclosure.

3. If the Commission disagrees with any of these requests for confidential protection, it must hold an evidentiary hearing (a) to protect the Companies’ due process rights and (b) to supply with the Commission with a complete record to enable it to reach a decision with regard to this matter. Utility Regulatory Commission v. Kentucky Water Service Company, Inc., 642 S.W.2d 591, 592-94 (Ky. App. 1982).

4. The information for which the Companies are seeking confidential treatment is not known outside the Companies, is not disseminated within the Companies except to those employees with a legitimate business need to know and act upon the information, and is generally recognized as confidential and proprietary information in the energy industry.

5. The Companies will disclose the confidential information, pursuant to a confidentiality agreement, to intervenors and others with a legitimate interest in this information and as required by the Commission. In accordance with the provisions of 807 KAR 5:001, Section 7 and the Commission’s June 28, 2011 Order in this proceeding, the Companies herewith

file with the Commission one copy of the above-discussed responses with the confidential information highlighted and ten (10) copies of its responses without the confidential information.

Motion to Deviate from Rule

6. 807 KAR 5:001 § 7 requires confidential information supplied to the Commission to be highlighted, and each page containing such information to be clearly marked as confidential.

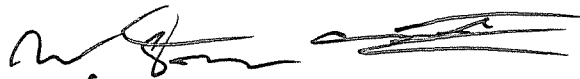
7. 807 KAR 5:001 § 14 permits deviations from the regulation's rules when a party shows good cause.

8. The Companies are producing attachments to responses to the Environmental Group's RPDs in electronic format (as requested by the Environmental Group, and which electronic production is the subject of a separate Motion to Deviate being filed herewith). The responses are voluminous, made up of numerous computer files, and would span hundreds, if not thousands, of pages if printed. Also, a great deal of the data the Companies are providing is in machine-readable format, making it all but unintelligible to the naked eye. It would therefore be impracticable (if not impossible) to highlight all of the confidential data contained in such documents, just as it would be impracticable to stamp each "page" of these numerous electronic files with a "CONFIDENTIAL" stamp. The Companies therefore respectfully submit there is good cause to deviate from the ordinarily applicable requirements of 807 KAR 5:001 § 7 and to permit the Companies to substantially comply therewith by placing all files containing confidential information on separate compact discs with yellow labels clearly marked "CONFIDENTIAL."

WHEREFORE, Louisville Gas and Electric Company and Kentucky Utilities Company respectfully request that the Commission grant confidential protection for the information at issue, or in the alternative, schedule an evidentiary hearing on all factual issues while maintaining the confidentiality of the information pending the outcome of the hearing. The Companies further respectfully move the Commission to permit the Companies to deviate from the ordinarily applicable rules concerning the filing of confidential information by permitting the Companies to file such confidential information on compact discs with yellow labels clearly marked "CONFIDENTIAL."

Dated: August 4, 2011

Respectfully submitted,



Kendrick R. Riggs
W. Duncan Crosby III
Monica H. Braun
Stoll Keenon Ogden PLLC
2000 PNC Plaza
500 West Jefferson Street
Louisville, Kentucky 40202-2828
Telephone: (502) 333-6000

Allyson K. Sturgeon
Senior Corporate Attorney
LG&E and KU Services Company
220 West Main Street
Louisville, Kentucky 40202
Telephone: (502) 627-2088

*Counsel for Louisville Gas and Electric Company
and Kentucky Utilities Company*

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Joint Petition and Motion was served via U.S. mail, first-class, postage prepaid, this 4th day of August 2011 upon the following persons:

Dennis G. Howard II
Lawrence W. Cook
Assistant Attorneys General
Office of the Attorney General
Office of Rate Intervention
1024 Capital Center Drive, Suite 200
Frankfort, KY 40601-8204

Kristin Henry
Staff Attorney
Sierra Club
85 Second Street
San Francisco, CA 94105

Michael L. Kurtz
Kurt J. Boehm
Boehm, Kurtz & Lowry
36 East Seventh Street, Suite 1510
Cincinnati, OH 45202

Shannon Fisk
Senior Attorney
Natural Resources Defense Council
2 N. Riverside Plaza, Suite 2250
Chicago, IL 60660

Edward George Zuger III
Zuger Law Office PLLC
P.O. Box 728
Corbin, KY 40702



*Counsel for Louisville Gas and Electric Company
and Kentucky Utilities Company*