

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

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COMMISSION

In the Matter of:

APPLICATION OF KENTUCKY UTILITIES )  
COMPANY FOR CERTIFICATES OF )  
PUBLIC CONVENIENCE AND NECESSITY ) CASE NO. 2011-00161  
AND APPROVAL OF ITS 2011 COMPLIANCE )  
PLAN FOR RECOVERY BY )  
ENVIRONMENTAL SURCHARGE )

**PETITION OF KENTUCKY UTILITIES COMPANY FOR CONFIDENTIAL  
PROTECTION FOR RESPONSES TO CERTAIN DATA REQUESTS OF THE  
ATTORNEY GENERAL**

Kentucky Utilities Company (“KU”) hereby petitions the Kentucky Public Service Commission (“Commission”) pursuant to 807 KAR 5:001, Section 7, and KRS 61.878(1)(c) and (a) to grant confidential protection for the items described herein, which KU seeks to provide in response to the Attorney General’s (“AG”) Initial Data Requests Nos. 2(a)-(c) and 5(a). In support of this Petition, KU states 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.

2. AG Request No. 2(a)-(c) asks KU to provide “all correspondence, memoranda and e-mails regarding any and all alternatives to the proposed environmental compliance plan set forth in the company’s petition in the instant matter.” Similarly, AG Request No. 5(a) seeks “any and all documents, emails, correspondence, memoranda, reports, letters, studies, analyses,

conclusions, or opinions that relate to the preparation of the application...” As explained in KU’s objections to these requests, KU is providing documents in a rolling production beginning with the first tranche of documents that have been filed contemporaneously with this Petition. Certain of the documents contained in the voluminous production contain commercially sensitive and proprietary information, including, but not limited to, budgeting information, power production cost information, contract compensation terms, and links to secure websites.

(a) As to the budgeting information, disclosure of the information would reveal KU’s budget strategies and processes, the public disclosure of which would reveal to competitors how KU prepares its budgetary information which will inure a significant benefit to KU’s competitors by permitting third parties to manipulate the information for its advantage.

(b) As to the power production cost information, such information merits confidential protection because revealing it would likely harm KU’s ability to compete in wholesale power markets by revealing their input costs and dispatch methodology, which can affect wholesale sales strategy and performance.

(c) Certain of KU’s contract terms, namely the agreed-upon compensation rates, contain highly sensitive and commercial information. These provisions represent concessions, terms and conditions that KU has been able to negotiate for KU’s and its customers’ benefit. Revealing publicly the compensation rates would significantly compromise KU’s ability to obtain contract labor at competitive rates, which would in turn financially harm KU’s customers. Permitting other contractors to obtain this information would inure a significant commercial advantage to the companies at KU’s and its customers’ expense because third party contractors will be less likely to contract with KU at the least possible cost if their negotiated prices and other contract terms will be available to the public. Moreover, contractors 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 KU in the future, thus jeopardizing KU's ability to obtain the best possible contracts, placing it at an additional competitive disadvantage.

**Confidential Personal Information (KRS 61.878(1)(a))**

3. In response to AG Request No. 2(a)-(c) and 5(a), KU is providing documents that include links to secure websites and likewise includes the requisite log-in information, such as user names and passwords for these sites. This information constitutes confidential personal information because of the personal identifiers, such as user names. The Kentucky Attorney General has previously held that personal identifying information, such as phone numbers, is exempt from disclosure under the Kentucky Open Records Act.<sup>1</sup> User names and passwords are equally significant identifying information, the disclosure of which would permit the public to gain access to the secure sites and the highly confidential information available on those sites. KU believes that protecting such information is critical, not only because of the identifying information, but also because the disclosure of the identifying information would permit competitors to access many forms of the commercially sensitive information discussed above.

4. If the Commission disagrees with any of these requests for confidential protection, however, it must hold an evidentiary hearing (a) to protect KU's 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).

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<sup>1</sup> See, e.g., 99-ORD-87 at 5.

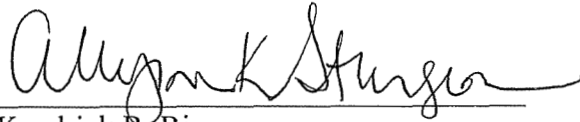
5. The information for which KU is seeking confidential treatment is not known outside of KU, is not disseminated within KU except to those employees with a legitimate business need to know and act upon the information, and is generally recognized as confidential and proprietary information in the energy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

6. KU 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, KU herewith files with the Commission one copy of the above-discussed responses with the confidential information highlighted and fifteen (15) copies of its responses without the confidential information.

**WHEREFORE**, Kentucky Utilities Company respectfully requests that the Commission grant confidential protection for the information at issue, or in the alternative, schedule and evidentiary hearing on all factual issues while maintaining the confidentiality of the information pending the outcome of the hearing.

Dated: July 25, 2011

Respectfully submitted,



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Counsel for Kentucky Utilities Company

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing Response was served via U.S. mail, first-class, postage prepaid, this 25th day of July 2011 upon the following persons:

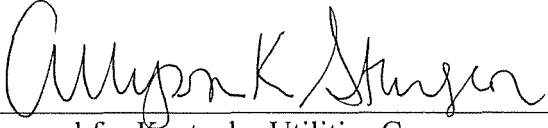
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