

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF LOUISVILLE GAS AND)	
ELECTRIC COMPANY AND KENTUCKY)	
UTILITIES COMPANY REGARDING ENTRANCE)	CASE NO.
INTO REFINED COAL AGREEMENTS, FOR)	2015-00264
PROPOSED ACCOUNTING AND FUEL)	
ADJUSTMENT CLAUSE TREATMENT, AND FOR)	
DECLARATORY RULING)	

ORDER

On April 3, 2017, Louisville Gas and Electric Company (“LG&E”) and Kentucky Utilities Company (“KU”) (collectively, “LG&E/KU”) filed a petition, pursuant to KRS 61.878(1) and 807 KAR 5:001, Section 13, requesting that the Commission grant confidential protection for a period of five years to refined coal agreements and related documents. The information for which LG&E/KU request confidential treatment is more specifically described as a “Coal Purchase Agreement, Refined Coal Sale Agreement, Coal Yard Services Agreement, and Refined Coal Facility and Coal Yard Site License”, (collectively, “Refined Coal Agreements”) that KU entered into with GS RC Ghent, LLC, a subsidiary of The Goldman Sachs Group, Inc. (“Goldman Sachs”), and a guaranty from Goldman Sachs to support its obligations under the Agreements, and a “Start Date Certificate, and a Termination of Operation Agreement” that KU entered into with Goldman Sachs, (collectively, “Refined Coal Agreements and Documents”).

In support of their petition, LG&E/KU state that the designated materials are proprietary information that the parties expended significant time and resources to

develop. LG&E/KU assert that, given the unique and proprietary nature of the designated materials and the small size and specialized nature of the industry, public disclosure would allow competitors of LG&E/KU and Goldman Sachs to replicate the Refined Coal Agreements and Documents without expending the financial and time resources that LG&E/KU and Goldman Sachs spent to develop the designated materials. LG&E/KU further assert that counterparties are more likely to respond to requests for proposals from LG&E/KU, or to offer concessions in contract terms, when counterparties know that sensitive proprietary information will not be publicly disclosed to competitors. LG&E/KU contend that public disclosure of the designated materials will diminish their ability to receive bids from and negotiate with counterparties, which could result in economic harm to LG&E/KU and their customers through increased cost of service. LG&E/KU state that, for these reasons, the designated materials are generally recognized as confidential and exempt from public disclosure pursuant to KRS 61.878(1)(c).

Having carefully considered the petition and the materials at issue, the Commission finds that the designated materials contained in the Refined Coal Agreements and Documents are records that are generally recognized as confidential or proprietary, and therefore meet the criteria for confidential treatment and are exempted from public disclosure pursuant to KRS 61.878(1)(c) and 807 KAR 5:001, Section 13. The Commission notes that the Refined Coal Agreements provide for the sale of coal by LG&E/KU to Goldman Sachs at the weighted average cost of coal in inventory at specific generating stations, with the coal, after treatment, being repurchased by LG&E/KU at the same cost. The financial benefits under the

agreements to LG&E/KU are not recorded in Account 151 of the Uniform System of Accounts, and neither those benefits nor the coal sales and repurchases are reflected in the calculation of fuel costs for purposes of the Fuel Adjustment Clause pursuant to 807 KAR 5:056. Consequently, the Refined Coal Agreements are properly excluded from the classification of "fossil fuel purchase contract[s]" which are required to be filed with the Commission and available for public inspection pursuant to 807 KAR 5:056, Section 1(7).

IT IS THEREFORE ORDERED that:

1. LG&E/KU's motion for confidential protection for the designated materials in the Refined Coal Agreements and Documents is granted.

2. The materials contained in the Refined Coal Agreements and Documents for which LG&E/KU requested confidential treatment shall not be placed in the public record or made available for public inspection for a period of five years, or until further Orders of this Commission.

3. Use of the materials in question in any Commission proceeding shall be in compliance with 807 KAR 5:001, Section 13(9).

4. LG&E/KU shall inform the Commission if the materials in question become publicly available or no longer qualify for confidential treatment.

5. If a non-party to this proceeding requests to inspect materials granted confidential treatment by this Order and the period during which the materials have been granted confidential treatment has not run, then LG&E/KU shall have 20 days from receipt of written notice of the request to demonstrate that the materials still fall within the exclusions from disclosure requirements established in KRS 61.878. If LG&E/KU

are unable to make such demonstration, the requested materials shall be made available for inspection. Otherwise, the Commission shall deny the request for inspection.

6. The Commission shall not make the requested materials available for inspection for 20 days following an Order finding that the materials no longer qualify for confidential treatment in order to allow LG&E/KU to seek a remedy afforded by law.

By the Commission



ATTEST:


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