

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF LOUISVILLE	)	
GAS AND ELECTRIC COMPANY FOR	)	CASE NO.
MODIFICATION OF ITS PERFORMANCE BASED	)	2021-00028
RATEMAKING MECHANISM	)	

ORDER

On March 17, 2021, Louisville Gas and Electric Company (LG&E) filed a petition, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential protection for an indefinite period for redacted documents provided in response to Commission Staff's First Request for Information (Staff's First Request), Item 2.

The Commission is a public agency subject to Kentucky's Open Records Act, which requires that all public records "be open for inspection by any person, except as otherwise provided by KRS 61.870 to 61.884."<sup>1</sup> In support of its motion, LG&E argued for the application KRS 61.878(1)(c)(1), which exempts records that are "[g]enerally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records.

LG&E sought confidential treatment for gas supplier names redacted from a sales summary, contracts, supplier Secretary of State filings and tax documents, requests for proposal (RFP's), and nomination schedules. LG&E also asked for confidential treatment

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<sup>1</sup> KRS 61.872(1).

for gas supply plans and credit assessment procedures for gas suppliers. LG&E argued that public disclosure of all the redacted information would allow its competitors to know the unit price and overall cost of the gas purchased from each supplier, which could attempt to outbid LG&E for those suppliers.

Having considered the petition and the material at issue, the Commission finds that LG&E's petition is granted in part and denied in part. Supplier names are exempt from disclosure because competitors could undercut LG&E's contracts with gas suppliers if it knew their identities and pricing. The Commission recently found that a sales summary showing gas supplier names, gas volume sold, and sales were entitled to indefinite confidential protection.<sup>2</sup> LG&E confidentially filed the entirety of the contracts and RFP's. The boilerplate portions of the contracts are a form provided by North American Energy Standards Board, Inc., which charges a fee for use of the contract form on its website. Therefore, this form is proprietary and would benefit competitors if they were allowed to access the form language without paying for it. The RFP's contain volume and price information that are also generally recognized as confidential. Gas supply plans are also exempt from public disclosure because they constitute internal company strategies.<sup>3</sup> The Commission finds that redactions from responses to Staff's First Request, Item 2(b), Attachments 1-6, Item 2(h), Attachments 1-5 and 7, and Item 2(i), Attachments 1 and 2

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<sup>2</sup> Case No. 2021-00185, *Electronic Application of Delta Natural Gas Company, Inc. for an Adjustment of Its Rates and a Certificate of Public Convenience and Necessity* (Ky. PSC Dec. 7, 2021), Order at 4, citing Case No. 2016-00200, *Purchased Gas Adjustment Filing of Valley Gas, Inc.* (Ky. PSC July 27, 2017), Order at 2–3.

<sup>3</sup> See Case No. 2016-00370, *Electronic Application of Kentucky Utilities Company for an Adjustment of Its Electric Rates and for Certificates of Public Convenience and Necessity* (Ky. PSC Dec. 12, 2018), Order at 3, 5.

are records that meet the criteria for confidential treatment and are exempted from public disclosure pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:001, Section 13.

The Commission further finds that the request for confidential treatment is denied for the credit assessment procedure. Supplier identities and sales information are not included in this information and LG&E has not made any argument specific to this material. Therefore, the response to Staff's First Request, Item 2(h), Attachment 6 does not meet the criteria for confidential treatment and is not exempted from public disclosure pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:001, Section 13.

IT IS THEREFORE ORDERED that:

1. LG&E's petition for confidential treatment for the designated material is granted in part and denied in part.

2. LG&E's petition for confidential treatment for redactions from responses to Staff's First Request, Item 2(b), Attachments 1-6, Item 2(h), Attachments 1-5 and 7, and Item 2(i), Attachments 1 and 2 is granted.

3. LG&E's petition for confidential treatment for Attachment 6 filed in response to Staff's First Request, Item 2(h), is denied.

4. The designated material granted confidential treatment by this Order shall not be placed in the public record or made available for public inspection for an indefinite period or until further Order of this Commission.

5. Use of the designated material granted confidential treatment by this Order in any Commission proceeding shall comply with 807 KAR 5:001, Section 13(9).

6. LG&E shall inform the Commission if the designated material granted confidential treatment becomes publicly available or no longer qualifies for confidential treatment.

7. If a nonparty to this proceeding requests to inspect the material granted confidential treatment by this Order and the period during which the material has been granted confidential treatment has not expired, LG&E shall have 30 days from receipt of written notice of the request to demonstrate that the material still falls within the exclusions from disclosure requirements established in KRS 61.878. If LG&E is unable to make such demonstration, the requested material shall be made available for inspection. Otherwise, the Commission shall deny the request for inspection.

8. The Commission shall not make the requested material for which confidential treatment was granted available for inspection for 30 days from the date of service of an Order finding that the material no longer qualifies for confidential treatment in order to allow LG&E to seek a remedy afforded by law.

9. The designated material denied confidential treatment by this Order is not exempt from public disclosure and shall be placed in the public record and made available for public inspection.

10. If LG&E objects to the Commission's determination that the requested material not be granted confidential treatment, it must seek either rehearing pursuant to KRS 278.400 or judicial review of this Order pursuant to KRS 278.410. Failure to exercise either of these statutory rights will be deemed as agreement with the Commission's determination of which materials shall be granted confidential treatment.

11. Within 30 days of the date of service of this Order, LG&E shall file a revised version of the designated material for which confidential treatment was denied, reflecting as unredacted the information that has been denied confidential treatment.

12. The designated material for which LG&E's request for confidential treatment has been denied shall neither be placed in the public record nor made available for inspection for 30 days from the date of service of this Order to allow LG&E to seek a remedy afforded by law.

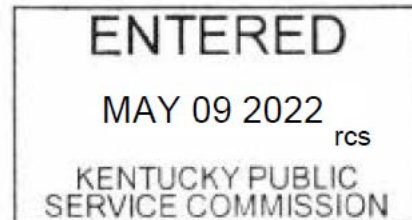
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PUBLIC SERVICE COMMISSION

  
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