

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN ELECTRONIC EXAMINATION OF THE)	
APPLICATION OF THE FUEL ADJUSTMENT)	CASE NO.
CLAUSE OF LOUISVILLE GAS & ELECTRIC)	2021-00295
COMPANY FROM NOVEMBER 1, 2020)	
THROUGH APRIL 30, 2021)	

ORDER

On September 1, 2021, Louisville Gas & Electronic Company (LG&E) filed a petition, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential treatment for five years for certain information provided by LG&E in response to Commission Staff's First Request for Information, Item 4(b), as contained in the Appendix to the Commission's Order dated August 18, 2021. The information for which LG&E requested confidential treatment pertains to coal bid analysis information.

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."¹ Exceptions to the free and open examination of public records contained in KRS 61.878 should be strictly construed.² The

¹ KRS 61.872(1).

² See KRS 61.871.

party requesting that materials be treated confidentially has the burden of establishing that one of the exceptions is applicable.³

In support of its petition, LG&E argued that disclosure of the factors underlying KU's bid analysis/selection process would damage LG&E's competitive position and business interests. LG&E further claimed that because this information reveals its business model for evaluating bids, potential bidders with access to the information could manipulate the bid solicitation process to the detriment of LG&E and its ratepayers by tailoring bids to correspond to and comport with LG&E's bidding criteria and process. LG&E further noted that the Commission has treated this information as confidential in KU's recent six-month and two-year fuel adjustment clause review proceedings. LG&E argued for the application of KRS 61.878(1)(c)(1), which exempts "[r]ecords confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records."

Having considered the petition and the material at issue, the Commission finds that information relating bid analysis and selection process is generally recognized as confidential or proprietary,⁴ that public disclosure would give competitors an unfair commercial advantage; it therefore meets the criteria for confidential treatment and is exempted from public disclosure pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1). The Commission further finds that LG&E tendered an overly

³ 807 KAR 5:001, Section 13(2)(c).

⁴ Case No. 2020-00248, *An Electronic Examination of the Application of the Fuel Adjustment Clause of Louisville Gas & Electric Company from November 1, 2019 Through April 30, 2020* (Ky. PSC Feb. 3, 2021), Order.

redacted copy of the confidential material into the public case file as compared to the highlighted material filed with the confidential petition, as such LG&E shall file a properly redacted copy of the document into the case file only redacting the highlighted information that was tendered with the confidential petition.

IT IS THEREFORE ORDERED that:

1. LG&E's petition for confidential treatment is granted.
2. The designated material granted confidential treatment by this Order shall not be placed in the public record or made available for public inspection for five years or until further Order of this Commission.
3. 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).
4. LG&E shall inform the Commission if the designated material granted confidential treatment by this Order becomes publicly available or no longer qualifies for confidential treatment.
5. LG&E shall file a version of the confidential material that only redacts the information highlighted in the confidential filing, into the public record.
6. 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.

7. The Commission shall not make the requested material 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.

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PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ENTERED
AUG 25 2023 rcs
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SERVICE COMMISSION

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