

COMMONWEALTH OF KENTUCKY  
BEFORE THE KENTUCKY PUBLIC SERVICE COMMISSION

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In the Matter of:

MAR 30 2005

JOINT APPLICATION OF LOUISVILLE GAS )  
AND ELECTRIC COMPANY AND KENTUCKY )  
UTILITIES COMPANY FOR A CERTIFICATE )  
OF PUBLIC CONVENIENCE AND NECESSITY, )  
AND A SITE COMPATIBILITY CERTIFICATE, )  
FOR THE EXPANSION OF THE TRIMBLE )  
COUNTY GENERATING STATION )

PUBLIC SERVICE  
COMMISSION

CASE NO.: 2004-00507

INTERVENOR IBEW AND TRADES COUNCIL  
REPLY IN SUPPORT OF  
MOTION TO RELEASE DOCUMENTS UNDER SEAL

Come the Intervenors, International Brotherhood of Electrical Workers, Local 2100 (IBEW) and the Greater Louisville Building and Construction Trades Council (Trades Council), and in reply to LG&E's response opposing release of documents filed under seal, cites the following:

The Commission has received the petition filed April 28, 2000, on behalf of Kentucky Utilities Company and Louisville Gas & Electric Company to protect as confidential the RFPs being provided pursuant to Commission information request #7 as ordered on April 14, 2000. A review of the information has determined that it is entitled to the protection requested *on the grounds relied upon in the petition*, and it will be withheld from public inspection. [Our emphasis] (PSC letter of May 5, 2000; Case No. 2000-112)

Since LG&E filed its Petition for Confidential Protection under seal, the Intervenors do not have the benefit of a complete review of the grounds asserted for confidential protection. Yet as summarized in Mr. Brooks April 28, 2000 letter to the Commission, the grounds relate exclusively to the fact that the disclosure of the RFPs would prejudice the bidding process due to the timing of the Commission's request: "Despite our best efforts we have been unable to satisfactorily conclude these discussions by today, and are therefore unable to publicly file at this time the responses we receive from the vendors." From all the information publicly available, the grounds upon which the Commission granted confidential treatment no longer exists. By the terms

of the open records statute, and the Commission's own regulations, the documents are no longer entitled to protection.

LG&E comes forward and asserts additional grounds for the exclusion of these documents, based upon proprietary business information. As grounds for the protection, it cites KRS 61.87A(1)(c)(1), which provides:

(1) The following public records are excluded from the application of KRS 61.870 to 61.884 and shall be subject to inspection only upon order of a court of competent jurisdiction ...

(c)(1) Upon and after July 15, 1992, records 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.

The Commission must review this statute carefully to determine if the exemption, upon which LG&E relies, is applicable. The exemption only applies to records which, if disclosed, "would permit an unfair commercial advantage to competitors of the entity that disclosed the records."

Intervenors do not seek for the records to be "openly disclosed," as they have offered to negotiate appropriate confidentiality protections with the Company. Further, Intervenors are not "competitors of the entity" that would be given an unfair advantage based upon the information disclosed. Therefore, the exemption should not be applied to prevent disclosure. As stated by the Supreme Court in Fiscal Court v. Department of Public Advocacy, Ky., 794 SW2d 162 (1990), "Where the words of the statute are clear and unambiguous and express the legislative intent, there is no room for construction or interpretation and the statute must be given its effect as written."

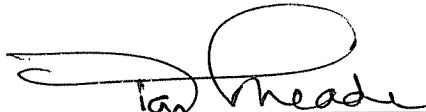
Finally, LG&E argues that (1) the motion cannot be properly entertained by the Commission within the context of this case and (2) the motion is violative of this Commission's Order of March 4, 2005. First, if the Commission determines that the motion is not filed in the proper case, Intervenors will re-file it in Case 2000-00112, although judicial economy would mitigate against such a requirement. Secondly, the only issue before the Commission is whether

the information may properly be excluded from inspection, under the Open Records statute, to a party that not only enjoys the standing of any citizen, but who has articulated a legitimate interest in disclosure of the information.

If the Commission finds the legal question to implicate countervailing interests, Intervenors request a hearing so that the matter may be fully explored and resolved, in an effort to avoid further litigation of the open records issue.

Respectfully submitted,

PRIDDY, ISENBERG, MILLER & MEADE, PLLC




Don Meade  
800 Republic Bldg.  
429 W. Muhammad Ali Blvd.  
Louisville, KY 40202  
(502) 587-8600

**Counsel for IBEW, Local 2100 and  
Greater Louisville Building and Construction  
Trades Council**

**CERTIFICATE OF SERVICE**

It is hereby certified that on the 30<sup>th</sup> day of March, 2005, an original and 10 copies of the foregoing motion was mailed to the Public Service Commission, P. O. Box 615, 211 Sower Blvd., Frankfort, KY 40602-0615, and a true copy thereof was mailed to the attached service list.

  
Don Meade

**SERVICE LIST**

Elizabeth E. Blackford  
Office of Rate Intervention  
1024 Capital Center Drive, Ste. 200  
Frankfort, KY 40601

Michael L. Kurtz  
36 E. Seventh Street, Ste. 1510  
Cincinnati, OH 45202

Troy A. Fodor  
913 S. Sixth Street  
Springfield, IL 62703

J. Gregory Cornett  
1700 PNC Plaza  
500 W. Jefferson Street  
Louisville, KY 40202

Elizabeth L. Cocanougher  
220 W. Main Street  
P. O. Box 32010  
Louisville, KY 40232

John N. Hughes  
124 W. Todd Street  
Frankfort, KY 40601

Daniel A. Lane  
Indiana Municipal Power Agency  
11610 North College Avenue  
Carmel, IN 46032

Douglas L. Jeavons  
BBC Research & Consulting  
3773 Cherry Creek North Dr., Ste. 850  
Denver, CO 80209-0448

Robert M. Watt III  
Stoll, Keenon & Park  
300 W. Vine Street, Ste. 2100  
Lexington, KY 40507-1801