

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

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JUN 23 2006

PUBLIC SERVICE  
COMMISSION

In the Matter of:

THE APPLICATION OF KENTUCKY UTILITIES )  
COMPANY FOR A CERTIFICATE OF PUBLIC )  
CONVENIENCE AND NECESSITY TO )  
CONSTRUCT A SELECTIVE CATALYTIC ) CASE NO. 2006-00206  
REDUCTION SYSTEM AND APPROVAL OF )  
ITS 2006 COMPLIANCE PLAN FOR RECOVERY )  
BY ENVIRONMENTAL SURCHARGE )

PETITION OF KENTUCKY UTILITIES COMPANY  
FOR CONFIDENTIAL PROTECTION

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) to grant confidential protection to certain information contained in the testimony of Mr. John P. Malloy. In support of this Petition, KU states as follows:

1. On June 23, 2006, KU filed an Application with the Commission for approval of its 2006 Compliance Plan for Recovery by Environmental Surcharge. Simultaneous with the filing of that application, testimony was filed by Mr. John P. Malloy. Exhibit JPM-2 to Mr. Malloy's testimony is the *2006 NO<sub>x</sub> Compliance Strategy for E.ON U.S. Subsidiaries Kentucky Utilities and Louisville Gas and Electric* ("NO<sub>x</sub> Strategy Study"). Such study provides, among other things, confidential market projection data including cost of production and revenue requirement figures for various NO<sub>x</sub> compliance strategies. This information is commercial and proprietary in nature, and thus warrants confidential protection.

2. Under KRS 61.878(1)(c), commercial information, generally recognized as confidential, is protected if disclosure would cause competitive injury and permit competitors an unfair commercial advantage. The information contained in Exhibit JPM-2 constitutes such

confidential information which must remain confidential if KU is to be protected from competitive injury.

3. The NO<sub>x</sub> Strategy Study found at Exhibit JPM-2 to Mr. Malloy's testimony contains sensitive commercial information concerning KU's market price projections including cost of production and revenue requirement figures for various NO<sub>x</sub> compliance strategies, the disclosure of which would unfairly advantage KU's competitors for both power supplies and wholesale power sales. Disclosure would unfairly advantage KU's power supply competitors by informing them of the price projections and the processes used to develop the price projections in transacting sales and purchases in the wholesale power market. Any impairment of KU's ability to obtain the most advantageous price possible from power suppliers and buyers will erode its competitive position among other utilities with whom KU competes for new and relocating industrial customers and for off-system sales and purchases.

4. Further, disclosure of KU's future market price projections including cost of production and revenue requirement figures in the public record will damage KU's competitive position and business interests. This information is generally recognized as confidential and proprietary throughout the industry and was prepared with considerable effort and expense by KU. Public disclosure would allow other developers of generation projects to avoid this effort and expense simply by copying KU's work and thus obtain unfair competitive advantage. Further, the portion of the NO<sub>x</sub> Strategy Study for which KU is seeking confidential protection contains KU's expectations of future energy markets and costs of strategic plans for addressing environmental costs. Public disclosure of this information would allow competitive generators of energy to "game" KU's strategic plans to the detriment of KU and its customers.

5. The information sought to be protected is not known outside of KU and is not disseminated within KU except to those employees with a legitimate business need to know and act upon the information.

6. The portion of Exhibit JPM-2 for which KU is seeking confidential treatment demonstrates on its face that it merits confidential protection. If the Commission disagrees, however, it must hold an evidentiary hearing to protect the due process rights of KU and supply 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., Ky. App., 642 S.W.2d 591, 592-94 (1982).

7. KU does not object to limited disclosure of the confidential information, pursuant to a protective agreement, to the Attorney General, KIUC or to other intervenors with a legitimate interest in reviewing the same in the context of this proceeding.

8. In accordance with the provisions of 807 KAR 5:001, Section 7, one copy of the confidential information contained in Mr. Malloy's testimony at Exhibit JPM-2 is highlighted in yellow and attached to this petition in a sealed envelope. Ten (10) copies of Exhibit JPM-2 without the confidential information are filed with the Commission as Exhibit JPM-2 to Mr. Malloy's testimony attached to KU's Application.

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

Dated: June 23, 2006.



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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the above and foregoing document was served, via overnight delivery, postage prepaid, to the following persons on the 23<sup>rd</sup> day of June, 2006:

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