

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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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)
REDUCTION SYSTEM AND APPROVAL OF)
ITS 2006 COMPLIANCE PLAN FOR RECOVERY)
BY ENVIRONMENTAL SURCHARGE)**

CASE NO. 2006-00206

In the Matter of:

**THE APPLICATION OF LOUISVILLE GAS AND)
ELECTRIC COMPANY FOR APPROVAL OF ITS)
2006 COMPLIANCE PLAN FOR RECOVERY BY)
ENVIRONMENTAL SURCHARGE)**

CASE NO. 2006-00208

**PETITION OF LOUISVILLE GAS AND ELECTRIC COMPANY
AND KENTUCKY UTILITIES COMPANY
FOR CONFIDENTIAL PROTECTION**

Louisville Gas and Electric Company (“LG&E”) and Kentucky Utilities Company (“KU”) (collectively “Applicants”) petition 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 the Companies seek to provide in response to the Commission Staff’s August 21, 2006 Second Data Request Question No. 3(a) (“Question No. 3(a)”). In support of this Petition, LG&E and KU state as follows:

1. The Kentucky Open Records Act exempts from disclosure certain commercial information. KRS 61.878(1)(c). To qualify for this exemption and, therefore, maintain the confidentiality of the information, a party must establish that disclosure of the commercial information would permit an unfair advantage to competitors of the party seeking confidentiality.

2. Question No. 3(a) essentially seeks further information about how the Companies came to choose 5 ppm as the appropriate level to which to mitigate their sulfur trioxide (SO₃) emissions. In response to this request, the Companies desire to produce to the Commission a copy of an Electric Power Research Institute (EPRI) study titled, “SO₃ Mitigation Guide” (“EPRI Study”) and a data response discussing in part the information contained in the EPRI Study.¹ The Companies, however, may not simply produce the EPRI Study or a portion of the data response to the Commission because the license agreement under which the Companies obtained a copy of the study forbids reproduction or disclosure of the study (the Companies’ hold a single-user license). EPRI has stated it will allow the Companies to produce the study to the Commission, but only if the Commission affords the study confidential treatment.

3. The relevant information provided in the Companies’ response to Question No. 3(a) merits confidential protection because the Companies are legally obligated under their license agreement with EPRI not to produce the study except under agreements for confidential treatment. Moreover, revealing the study in the public record will harm the Companies by providing to their competitors valuable information for which the Companies had to pay. If the Commission disagrees, however, it must hold an evidentiary hearing to protect the due process rights of the Applicants 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).

4. The Companies do not object to disclosure of the confidential information, pursuant to a protective agreement, to intervenors and others with a legitimate interest in this

¹ The Companies inadvertently produced Figure 2-3 of the EPRI Study when they produced the Sargent & Lundy SO₃ Mitigation Study on page 8 therein and contained in Exhibit JPM-3 to the LG&E and Exhibit JPM-4 of the KU testimonies of John Malloy. The Companies therefore do not seek confidential treatment for Figure 2-3 of the EPRI Study.

information. In accordance with the provisions of 807 KAR 5:001 Section 7, one copy of the confidential information contained in the Companies' response to Question No. 3(a) is highlighted on yellow paper and ten (10) copies of the response without the confidential information is herewith filed with the Commission.

WHEREFORE, Louisville Gas and Electric Company and Kentucky Utilities Company respectfully request 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: September 7, 2006

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Petition for Confidential Protection was served via U.S. mail, first-class, postage prepaid, this 7th day of September 2006, upon the following persons:

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