

**COMMONWEALTH OF KENTUCKY**  
**BEFORE THE PUBLIC SERVICE COMMISSION**

**In re the Matter of:**

<b>LOUISVILLE GAS AND ELECTRIC</b>	)	
<b>COMPANY AND KENTUCKY UTILITIES</b>	)	
<b>COMPANY 2009 APPLICATION FOR</b>	)	
<b>APPROVAL OF PURCHASED POWER</b>	)	<b>CASE NO. 2009-00353</b>
<b>AGREEMENTS AND RECOVERY OF</b>	)	
<b>ASSOCIATED COSTS</b>	)	

**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, the "Companies") hereby 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 confidential and proprietary information ("Confidential Information") contained in the Companies' Response to Question No. 7 of Commission Staff's First Data Request, dated December 21, 2009, and in the Companies' Response to Question Nos. 4 and 20 of Joint Intervenors' [Attorney General and Kentucky Industrial Utility Customers, Inc.] Initial Data Request, dated December 21, 2009 (collectively, "Responses"). In support of this Petition, the Companies state as follows:

1. KRS 61.878(1)(c) protects commercial information, generally recognized as confidential or proprietary, if its public disclosure would cause competitive injury to the disclosing entity. Competitive injury occurs when disclosure of the information would give competitors an unfair business advantage. The Commission has taken the position that the statute and the regulation require the party requesting confidentiality to demonstrate actual competition and the likelihood of competitive injury if the information is disclosed. Here, there

is actual competition, as the information in question concerns confidential and proprietary information related to the procurement of renewable energy resources. Because 29 states and the District of Columbia have mandatory Renewable Portfolio Standards (“RPS”) and another five have non-binding goals, the market for renewable energy has become quite competitive. The Confidential Information relates to the pricing, bidding, proposal-reviewing, and contract negotiation strategies the Companies use to procure this type of generation. This is confidential business information the public disclosure of which would enable the Companies’ competitors to discover, and make use of, the Companies’ business strategies, to the unfair competitive disadvantage of the Companies and their customers.

2. The Commission has already determined that similar information contained in the Companies’ Application, Testimony of Lonnie E. Bellar, and attachments thereto (specifically, the Wind Power Contracts) should be treated confidentially on the same grounds the Companies assert herein concerning the Confidential Information.<sup>1</sup>

3. The Companies have contractually committed to Invenergy LLC (the counterparty to the Wind Power Contracts) to keep confidential the information at issue in this Petition; Invenergy has likewise agreed to keep confidential commercially sensitive information the Companies provided Invenergy in the course of negotiating the Wind Power Contracts (*see* Section 12.07, “Confidentiality,” of each contract). If the Confidential Information is not afforded confidential protection, it could harm the Companies’ ability to negotiate similar contracts in the future.

4. Public disclosure of the information for which the Companies are seeking confidential protection would also cause competitive harm to Invenergy and its subsidiaries with

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<sup>1</sup> See Letters from Commission Executive Director Jeff Derouen to Lonnie E. Bellar, Dated December 7, 2009, Case No. 2009-00353.

respect to other purchased power buyers from Invenergy's wind power projects, putting Invenergy at a competitive disadvantage in future transactions. The commercially sensitive information at issue derives actual or potential economic value from not being generally known to other persons who can obtain economic value from its disclosure or use because such information is not readily ascertainable or obtainable on a non-confidential basis by third parties using proper means.

5. The information for which confidential treatment is sought is maintained internally by the Companies and by other parties to this case who have a business need to know this information and is limited in distribution to those employees who have a business reason to have access to such information. This information is not on file with the Federal Energy Regulatory Commission, Securities and Exchange Commission, or other public agency. It is not available from any commercial or other source outside of the Companies.

6. Disclosure of the information sought to be protected in this matter would make available to the Companies' competitors information concerning their business strategies that such competitors could use to the Companies' competitive disadvantage. The Companies' competitors are not required to file, or to make public, similar proprietary information.

7. The information contained in the Companies' Response to Question No. 7 of Commission Staff's First Data Request, and in the Companies' Response to Question No. 4 of the Joint Intervenors' Initial Data Request, is commercially sensitive and confidential wind power price information that, if disclosed publicly, would significantly diminish the Companies' ability to negotiate renewable energy contracts favorable to LG&E and KU, and to their customers. The Companies' Response to Question No. 20 of the Joint Intervenors' Initial Data Request consists of over six hundred documents requested by the Attorney General and the

Kentucky Industrial Utility Customers, Inc. Of those documents, several hundred contain commercially sensitive and confidential renewable energy pricing, bidding, proposal-reviewing, and contract-negotiation information that, if disclosed publicly, would significantly diminish the Companies' ability to negotiate renewable energy contracts favorable to LG&E and KU, and to their customers. The Companies therefore request confidential treatment for the information described above pursuant to 807 KAR 5:001, Section 7, and KRS 61.878(1)(c).

8. If the Commission disagrees with this request for confidential protection, it must hold an evidentiary hearing (a) to protect the Companies' due process rights and (b) to 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).

9. The Companies will disclose the Confidential Information, pursuant to a protective agreement, to intervenors and others with a legitimate interest in this information and as required by the Commission. In accordance with the provisions of 807 KAR 5:001 Section 7, the Companies herewith file with the Commission one copy of the above-discussed Responses with the Confidential Information highlighted and ten (10) copies of the same without the Confidential Information.

**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: January 6, 2010

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing Petition of Louisville Gas and Electric Company and Kentucky Utilities Company for Confidential Protection was served on the following persons on the 6th day of January, 2010, United States mail, postage prepaid:

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