

RECEIVED

MAR 15 2010

PUBLIC SERVICE  
COMMISSION

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF KENTUCKY )  
UTILITIES COMPANY FOR AN ) CASE NO. 2009-00548  
ADJUSTMENT OF BASE RATES )

In the Matter of:

APPLICATION OF LOUISVILLE GAS )  
AND ELECTRIC COMPANY FOR AN ) CASE NO. 2009-00549  
ADJUSTMENT OF ITS ELECTRIC )  
AND GAS BASE RATES )

**JOINT PETITION OF KENTUCKY UTILITIES COMPANY  
AND LOUISVILLE GAS AND ELECTRIC COMPANY  
FOR CONFIDENTIAL PROTECTION FOR RESPONSES  
TO CERTAIN DATA REQUESTS OF THE ATTORNEY GENERAL**

Kentucky Utilities Company (“KU”) and Louisville Gas and Electric Company (“LG&E”) (collectively “Applicants”) hereby petition the Kentucky Public Service Commission (“Commission”) pursuant to 807 KAR 5:001, Section 7, and KRS 61.878(1)(c), (k), and (l) to grant confidential protection for the items described herein, which the Applicants seek to provide in response to: Attorney General’s Initial Requests for Information to KU Nos. 1(a), 15, 40, 42-45, 51, 57, 58, 64, 75, 126, 148, 181, 185, and 215; and Attorney General’s Initial Requests for Information to LG&E Nos. 1(a), 15, 40, 42-45, 51, 57, 58, 64, 75, 126, 148, 181, 185, 215, and 281. In support of this Petition, the Applicants state as follows:

**Confidential or Proprietary Commercial Information (KRS 61.878(1)(c))**

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 the material is of a kind generally

recognized to be confidential or proprietary, and the disclosure of which would permit an unfair commercial advantage to competitors of the party seeking confidentiality.

2. Request No. 1(a) asks each Applicant to provide “the business rules used in development of the Company’s ‘Customer Care’ computer program.” In response, the Applicants are providing over 160 business documents developed with their Customer Care System (“CCS”) development and implementation consultant, Accenture. These documents contain business rules, processes, and other confidential and proprietary information used to develop and implement CCS, which came at a significant cost of time and financial resources. Disclosing these documents would allow the Applicants’ competitors to obtain this costly information at no cost, giving them a significant commercial advantage. Moreover, Accenture has intellectual property rights in the process by which these documents were developed, which rights the Applicants are contractually obligated to protect.

3. In response to Request No. 15, the Applicants are providing Board of Directors minutes for three years. The Applicants seek confidential protection for a portion of those minutes, which contains descriptions of labor negotiations with the Applicants’ employees’ unions. Revealing publicly the strategies the Applicants use to negotiate labor contracts would significantly compromise the Applicants’ ability to obtain labor at competitive rates, which would in turn financially harm the Applicants’ customers.

4. In response to Request Nos. 148 and 215, the Applicants are supplying documents that contain a number of different corporations’ bank account and routing information throughout. Because such information is confidential and proprietary information of those companies, the public disclosure of which could harm the Applicants by making such companies unwilling to do further business with the Applicants, Applicants request confidential protection

for the documents containing such information. In addition to seeking protection for such information under this provision of the Open Records Act, the Applicants further seek protection for this information under KRS 61.878(1)(a), which protects sensitive personal information. The Kentucky Attorney General has consistently held that bank account numbers are information deserving confidential protection under that provision.<sup>1</sup>

5. Request Nos. 181 and 185 ask the Applicants to provide presentations made to and their communications with bond or credit rating agencies. These presentations and communications are made on a confidential basis and provided in confidence to the credit rating agencies. Such information merits confidential protection because, having provided it to the credit rating agencies on confidential basis, the Applicants are obligated to protect the public disclosure of the information. In addition, the information contains commercially sensitive information and a candid review of the Applicants' business strategies. Public disclosure of this confidential information would discourage the Applicants from providing such information to the credit rating agencies in the future. A less thorough review by the credit rating agencies could lead to less favorable credit ratings and higher capital costs for the Applicants than their competitors in the wholesale power market.

**Confidential Personal Information (KRS 61.878(1)(a))**

6. In response to Request No. 40, the Applicants are providing their corporate policy concerning helicopter usage, which policy contains personal phone contact information for a number of people. The Kentucky Attorney General has held that such personal contact

---

<sup>1</sup> See, e.g., 99-ORD-34 at 6 (“[D]epositor information ... is well recognized as confidential information[.]”); 94-ORD-91 (“[T]his Office has consistently held that social security numbers, as well as other numerical identifiers such as bank account numbers, may be excluded from public inspection, pursuant to KRS 61.878(1)(a)[.]”).

information is exempt from disclosure under the Kentucky Open Records Act.<sup>2</sup> For that reason, the Applicants seek confidential protection for the portion of the attachment to their responses to Request No. 40 that contains such personal contact information.

7. Request No. 126 to each Applicant to “list by customer and amount and by year for the period 2005 through 2008 any uncollectible accounts which have been written off and which exceeded \$1,000.00.” Similarly, Request No. 281 to LG&E asks for certain information by customer for customers taking service from high-pressure mains. The Applicants are supplying such information, but seek confidential protection for private, customer-identifying information (i.e., customer names and account numbers) contained in their responses. The Applicants believe protecting such information is particularly important in this time of ever-increasing identity theft.

**Confidential Information Protect from Disclosure by Federal or State Law**  
**(KRS 61.878(1)(k) and (l))**

8. Request Nos. 42-45, 51, 57, 58, 64, and 75 ask the Applicants to provide copies of federal and state tax returns, as well as supporting tax information, schedules, calculations, and descriptions for the years 2007, 2008, and 2009. KRS 61.878(1)(k) exempts from public disclosure “all public records or information the disclosure of which is prohibited by federal law or regulation.” Under 26 U.S.C.A. § 6103(a), state officials are prohibited from publicly disclosing any federal income tax return or its contents. Therefore, federal income tax returns and their content fall within the exemption provided by KRS 61.878(1)(k) and are exempt from disclosure. KRS 61.878(1)(l) exempts from the Kentucky Open Records Act “public records or information the disclosure of which is prohibited or restricted or otherwise made confidential by

---

<sup>2</sup> See, e.g., 99-ORD-87 at 5 (“The City of Monterey may properly discharge its duty under the Act by furnishing Mr. Kemper with copies of the records identified in his request after the applicant’s addresses and home telephone numbers are redacted, or masked[.]”).

enactment of the General Assembly.” KRS 131.190(1) requires that all income tax information filed with the Kentucky Department of Revenue be treated in a confidential manner. Thus, state income tax returns and the information they contain are also confidential in nature and are protected from disclosure by KRS 61.878(1)(l).

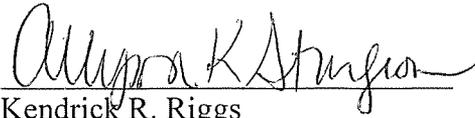
9. If the Commission disagrees with any of these requests for confidential protection, however, it must hold an evidentiary hearing (a) to protect the Applicants’ due process rights and (b) to supply the Commission with a complete record to enable it to reach a decision with regard to this matter. Utility Regulatory Commission v. Kentucky Water Service Company, Inc., Ky. App., 642 S.W.2d 591, 592-94 (1982).

10. The Applicants 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 Applicants herewith file with the Commission one copy of the above-discussed responses with the confidential information highlighted and ten (10) copies of its response without the confidential information.

**WHEREFORE**, Kentucky Utilities Company and Louisville Gas and Electric 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: March 15, 2010

Respectfully submitted,



Kendrick R. Riggs  
Robert M. Watt III  
W. Duncan Crosby III  
Monica H. Braun  
Stoll Keenon Ogden PLLC  
2000 PNC Plaza  
500 West Jefferson Street  
Louisville, Kentucky 40202-2828  
Telephone: (502) 333-6000

Allyson K. Sturgeon  
Senior Corporate Attorney  
E.ON U.S. LLC  
220 West Main Street  
Louisville, Kentucky 40202  
Telephone: (502) 627-2088

Counsel for Kentucky Utilities Company and  
Louisville Gas and Electric Company

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing Joint Petition for Confidential Protection was served via U.S. mail, first-class, postage prepaid, this 15th day of March 2010 upon the following persons:

Dennis G. Howard II  
Lawrence W. Cook  
Assistant Attorneys General  
Office of the Attorney General  
Office of Rate Intervention  
1024 Capital Center Drive, Suite 200  
Frankfort, KY 40601-8204

Michael L. Kurtz  
Boehm, Kurtz & Lowry  
36 East Seventh Street, Suite 1510  
Cincinnati, OH 45202

Lisa Kilkelly  
Legal Aid Society  
416 West Muhammad Ali Blvd.  
Suite 300  
Louisville, KY 40202

Gardner F. Gillespie  
Hogan & Hartson, L.L.P.  
555 Thirteenth Street, N.W.  
Washington, DC 20004-1109

David C. Brown  
Stites & Harbison, PLLC  
400 West Market Street, Suite 1800  
Louisville, KY 40202

Iris G Skidmore  
415 W. Main Street, Suite 2  
Frankfort, KY 40601

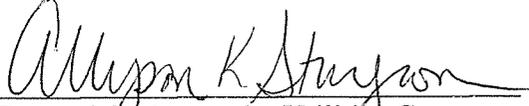
Frank F. Chuppe  
Wyatt, Tarrant & Combs, LLP  
500 West Jefferson Street  
Suite 2800  
Louisville, KY 40202-2898

Carroll M. Redford III  
Miller, Griffin & Marks, PSC  
271 W. Short St., Ste. 600  
Lexington, KY 40507

Holly Rachel Smith  
Hitt Business Center  
3803 Rectortown Rd.  
Marshall, VA 20115

Robert A Ganton, Esq.  
Regulatory Law Office  
U.S. Army Legal Services Agency  
901 N. Stuart Street, Suite 525  
Arlington, VA 22203-1837

Steven A. Edwards, Esq.  
Administrative Law Division  
Office of Staff Judge Advocate  
1310 Third Avenue Room 215  
Fort Knox, KY 40121-5000

  
Counsel for Kentucky Utilities Company  
and Louisville Gas and Electric Company