

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

**RECEIVED**  
OCT 21 2010  
PUBLIC SERVICE  
COMMISSION

**In the Matter of:**

**AN EXAMINATION OF THE )**  
**APPLICATION OF THE FUEL )**  
**ADJUSTMENT CLAUSE OF KENTUCKY ) CASE NO.**  
**UTILITIES COMPANY FROM ) 2010-00266**  
**NOVEMBER 1, 2009 THROUGH APRIL )**  
**30, 2010 )**

**PETITION OF KENTUCKY UTILITIES COMPANY**  
**FOR CONFIDENTIAL PROTECTION**

Kentucky Utilities Company (“KU”) respectfully petitions the Commission pursuant to 807 KAR 5:001 § 7 to classify as confidential and protect from public disclosure certain information provided by KU in response to Post-Hearing Data Request Nos. 1 and 2 from the Commission’s hearing held on October 12, 2010. Specifically, KU requests confidential protection for coal bid analysis information provided in response to Post-Hearing Data Request Nos. 1 and 2. In support of this Motion, KU notes that the Commission treated the same kind of coal bid information as confidential in KU’s two most recent six-month fuel adjustment clause review proceedings. (*See* Letter from Executive Director Jeff Derouen re KU’s Petition for Confidential Protection, Case No. 2009-00507 (March 18, 2010); Letter from Executive Director Jeff Derouen re KU’s Petition for Confidential Protection, Case No. 2009-00287 (December 11, 2009); both attached hereto as Attachment 1.)

1. Under the Kentucky Open Records Act, the Commission is entitled to withhold from public disclosure information confidentially disclosed to it to the extent that open disclosure would permit an unfair commercial advantage to competitors of the entity disclosing

the information to the Commission. *See* KRS 61.878(1)(c). Public disclosure of the information identified herein would, in fact, prompt such a result for the reasons set forth below.

2. Disclosure of the factors underlying KU's coal or rail car bid analysis and selection process would damage KU's competitive position and business interests. This information reveals the business model the Company uses—the procedure it follows and the factors/inputs it considers—to evaluate bids for coal supply and rail cars to transport that coal. If the Commission grants public access to the information requested in Question Nos. 1 and 2, potential bidders could manipulate the bid solicitation process to the detriment of KU and its ratepayers by tailoring bids to correspond to and comport with KU's bidding criteria and process. As noted above, the Commission has treated such information as confidential in the past.<sup>1</sup>

3. The information for which KU is seeking confidential treatment is not known outside of KU, is not disseminated within KU except to those employees with a legitimate business need to know and act upon the information, and is generally recognized as confidential and proprietary information in the energy industry.

4. If the Commission disagrees with any of these requests for confidential protection, it must hold an evidentiary hearing (a) to protect KU's 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., 642 S.W.2d 591, 592-94 (Ky. App. 1982).

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<sup>1</sup> *See* Attachment 1, Letter from Executive Director Jeff Derouen re KU's Petition for Confidential Protection, Case No. 2009-00507 (March 18, 2010); Letter from Executive Director Jeff Derouen re KU's Petition for Confidential Protection, Case No. 2009-00287 (December 11, 2009).

5. KU does not object to limited disclosure of the confidential information described herein, pursuant to an acceptable protective agreement, to intervenors with legitimate interests in reviewing the same for the purpose of participating in this case.

6. In accordance with the provisions of 807 KAR 5:001 § 7, KU is filing with the Commission one copy of the Confidential Information highlighted and ten (10) copies without the Confidential Information.

**WHEREFORE**, Kentucky Utilities Company respectfully requests that the Commission grant confidential protection to the information designated as confidential for a period of five years from the date of filing the same.

Dated: October 21, 2010

Respectfully submitted,



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

# **Attachment 1**



Steven L. Beshear  
Governor

Leonard K. Peters  
Secretary  
Energy and Environment Cabinet

Commonwealth of Kentucky  
**Public Service Commission**  
211 Sower Blvd.  
P.O. Box 615  
Frankfort, Kentucky 40602-0615  
Telephone: (502) 564-3940  
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psc.ky.gov

David L. Armstrong  
Chairman

James W. Gardner  
Vice Chairman

Charles R. Borders  
Commissioner

March 18, 2010

E.ON U.S. LLC  
Attention: Allyson K. Sturgeon  
220 West Main Street  
Louisville, Kentucky 40202

Re: Kentucky Utilities Company  
Petition for Confidential Protection received 2/17/10  
PSC Reference – Case No. 2009-00507

Dear Ms. Sturgeon:

The Public Service Commission has received the Petition for Confidential Protection you filed on February 17, 2010 on behalf of Kentucky Utilities Company ("KU") to protect certain information filed with the Commission as confidential pursuant to Section 7 of 807 KAR 5:001 and KRS 61.878. The information you seek to have treated as confidential is identified as information contained in KU's Responses to Commission Data Request Nos. 19 and 20 as in Appendix of the Commission's Order dated January 27, 2010. The information is more particularly described as containing coal bid analysis information: procedure for evaluating bids for coal supply.

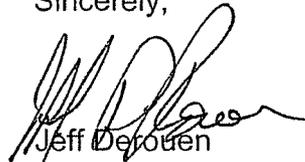
Your justification for having the Commission handle this material as confidential is that the public disclosure of the information would compromise KU's competitive position in the industry and result in an unfair commercial advantage to their competitors.

Based on a review of the information and pursuant to KRS 61.878 and 807 KAR 5:001, Section 7, the Commission has determined that the information you seek to keep confidential is of a proprietary nature, which if publicly disclosed would permit an unfair commercial advantage to KU's competitors. Therefore, the information requested to be treated as confidential **meets the criteria for confidential protection** and will be maintained as a nonpublic part of the Commission's file in this case. The procedure for usage of confidential materials during formal proceedings may be found at Section 7(8) of 807 KAR 5:001.

Ms. Sturgeon  
March 18, 2010  
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If the information becomes publicly available or no longer warrants confidential treatment, Kentucky Utilities Company is required by Section 8(9)(a) of 807 KAR 5:001 to inform the Commission so that the information may be placed in the public record.

Sincerely,



Jeff DeGouen  
Executive Director

kg/

cc: Parties of Record



Steven L. Beshear  
Governor

Leonard K. Peters  
Secretary  
Energy and Environment Cabinet

Commonwealth of Kentucky  
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David L. Armstrong  
Chairman

James W. Gardner  
Vice Chairman

Charles R. Borders  
Commissioner

December 11, 2009

E.ON U.S. LLC  
Attention: Allyson K. Sturgeon  
220 West Main Street  
Louisville, Kentucky 40202

Re: Kentucky Utilities Company  
Petition for Confidential Protection received 9/10/09  
PSC Reference – Case No. 2009-00287

Dear Ms. Sturgeon:

The Public Service Commission has received the Petition for Confidential Protection you filed on September 10, 2009 on behalf of Kentucky Utilities Company ("KU") to protect certain information filed with the Commission as confidential pursuant to Section 7 of 807 KAR 5:001 and KRS 61.870. The information you seek to have treated as confidential is identified as information contained in KU's Responses to Commission Data Request Nos. 12(a) and 19 contained in Appendix A of the Commission's Order dated August 20, 2009. The information is more specifically described as the "Weir Report" which contains coal suppliers costs for complying with the "Miner Act", and coal bid analysis procedure used for evaluating bids for coal supply.

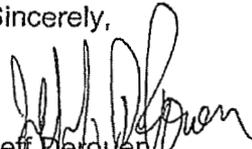
Your justification for having the Commission handle this material as confidential is that the public disclosure of the information would compromise KU's competitive position in the industry and result in an unfair commercial advantage to its competitors.

Based on a review of the information and pursuant to KRS 61.878 and 807 KAR 5:001, Section 7, the Commission has determined that the information you seek to keep confidential is of a confidential or proprietary nature, which if publicly disclosed would permit an unfair commercial advantage to KU's competitors. Therefore, the information requested to be treated as confidential **meets the criteria for confidential protection** and will be maintained as a nonpublic part of the Commission's file in this case. The procedure for usage of confidential materials during formal proceedings may be found at Section 7(8) of 807 KAR 5:001.

Ms. Sturgeon  
December 11, 2009  
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If the information becomes publicly available or no longer warrants confidential treatment, Kentucky Utilities Company is required by Section 8(9)(a) of 807 KAR 5:001 to inform the Commission so that the information may be placed in the public record.

Sincerely,



Jeff Derquen  
Executive Director

kg/

cc: Parties of Record