

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matters of:

ELECTRONIC APPLICATION OF KENTUCKY	)	
UTILITIES COMPANY FOR AN ADJUSTMENT	)	
OF ITS ELECTRIC RATES, A CERTIFICATE OF	)	
PUBLIC CONVENIENCE AND NECESSITY TO	)	CASE NO.
DEPLOY ADVANCED METERING	)	2020-00349
INFRASTRUCTURE, APPROVAL OF CERTAIN	)	
REGULATORY AND ACCOUNTING	)	
TREATMENTS, AND ESTABLISHMENT OF A	)	
ONE-YEAR SURCREDIT	)	

ELECTRONIC APPLICATION OF LOUISVILLE	)	
GAS AND ELECTRIC COMPANY FOR AN	)	
ADJUSTMENT OF ITS ELECTRIC AND GAS	)	
RATES, A CERTIFICATE OF PUBLIC	)	CASE NO.
CONVENIENCE AND NECESSITY TO DEPLOY	)	2020-00350
ADVANCED METERING INFRASTRUCTURE,	)	
APPROVAL OF CERTAIN REGULATORY AND	)	
ACCOUNTING TREATMENTS, AND	)	
ESTABLISHMENT OF A ONE-YEAR	)	
SURCREDIT	)	

ORDER

This matter arises upon the November 25, 2020; December 15, 2020; January 22, 2021; and February 19, 2021 joint motions for confidential treatment filed by Kentucky Utilities Company (KU) and Louisville Gas and Electric Company (LG&E/KU) (jointly, LG&E/KU) in their respective cases. The motions were filed pursuant to KRS 61.878 and 807 KAR 5:001, Section 13, and are described in more detail below.

NOVEMBER 25, 2020 MOTION

On November 25, 2020, LG&E/KU requested confidential treatment for five years for the following designated material in their respective applications:

- Application, Tab 16, which contains customer-specific information. In support of its request, LG&E/KU contended that the customer-specific information in Tab 16 is exempt from public disclosure under KRS 61.878(1)(a), which prohibits public disclosure of personal information that would result in an unwarranted invasion of personal privacy if publicly disclosed.
- Application, Tab 60, which contains executive compensation and the 2020 average salary budget data. In support of its request, LG&E/KU contended that the disclosure of the executive compensation and the average salary budget data, that includes non-executive employees, would result in an unwarranted invasion of personal privacy, and thus public disclosure is prohibited under KRS 61.878(1)(a).
- Application, Exhibits LEB-2, LEB-3, JKW-1, and RMC-2 that were filed with direct testimony, and contain projected sales and fuel costs, future availability and expected pricing for customer meters, reliability and outage data. In support of the request, LG&E/KU asserted that the designated material was exempt from public disclosure under KRS 61.878(1)(c)(1), because public disclosure would permit an unfair commercial advantage to competitors in the wholesale market or would hinder LG&E/KU's ability to negotiate the most favorable price and terms in future contract negotiations, which would ultimately harm LG&E/KU's ratepayers. Separately, LG&E explained that the designated material in Exhibit RMC-2 was previously granted confidential treatment in Case No. 2019-00370.<sup>1</sup> LG&E, but not KU, was a party to Case No. 2019-00370.

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<sup>1</sup> Case No. 2019-00370, *Electronic Application of Louisville Gas and Electric Company, Meade County Rural Electric Cooperative Corporation, and Big Rivers Electric Corporation for (1) Approval of an Agreement Modifying an Existing Territorial Boundary Map and (2) Establishing Meade County Rural*

## FINDINGS

Having considered the motion and the designated material at issue, the Commission finds that designated material, with the exception of the material in Tab 60, are records that meet the criteria for confidential treatment pursuant to KRS 61.878(1)(a), KRS 61.878(1)(c)(1), and 807 KAR 5:001, Section 13.

The Commission further finds that the request for confidential treatment should be denied for the executive compensation and average salary information contained in Tab 60 to the application. The Commission has previously held that information regarding the compensation of executive officers is a matter of public concern in a rate case, such as this proceeding, and does not meet the criteria for confidential treatment.<sup>2</sup> Granting confidential treatment for executive compensation would not afford the appropriate level of transparency for ratepayers, who have the right to know the evidence upon which the Commission relied in reaching its decision. Further, the executive salary information is an aggregate without any identifying information, and would not result in an invasion of personal privacy of disclosed.

### DECEMBER 15, 2020 MOTION FOR CONFIDENTIAL TREATMENT

On December 15, 2020, LG&E/KU requested confidential treatment for their respective responses to Commission Staff's First Request for Information (Staff's First

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*Electric Cooperative Corporation as the Retail Electric Supplier for Nucor Corporation's Proposed Steel Plate Mill in Buttermilk Falls Industrial Park in Meade County, Kentucky, (Ky. PSC Feb. 24, 2020) Order.*

<sup>2</sup> See Case No. 2018-00295, Electronic Application of Louisville Gas and Electric Company for an Adjustment of its Electric and Gas Rates (Ky. PSC Oct. 8, 2019) at 2-4; see also, Case No. 2017-000321, Electronic Application of Duke Energy Kentucky, Inc. for: 1) An Adjustment of the Electric Rates; 2) Approval of an Environmental Compliance Plan and Surcharge Mechanism; 3) Approval of New Tariffs; 4) Approval of Accounting Practices to Establish Regulatory Assets and Liabilities; and 5) All Other Required Approvals and Relief (Ky. PSC Jun. 12, 2018) at 3-4, and Case No. 2012-00221, Application of Kentucky Utilities Company for an Adjustment of its Electric Rates (Ky. PSC Sept. 11, 2013) at 1.

Request), Items 6, 18, 39, 40, 41, and 56 for a period of five years. The designated material includes:

- LG&E/KU's response to Staff's First Request, Item 6 contains the hourly rates for legal services provided to LG&E/KU in 2020. As a basis for this request, LG&E/KU asserted that public disclosure will harm LG&E/KU's ability to negotiate for the most reasonable prices for legal services in the future, which would result in competitive harm to LG&E/KU and, in turn, financial harm to their customers who could pay more for utility service.
- LG&E/KU's response to Staff's First Request, Item 18 contains LG&E/KU's federal and state income tax returns. As a basis for this request, LG&E/KU asserted that public disclosure of the tax returns are prohibited by federal and state law. LG&E/KU further asserted that the designated material is exempt from public disclosure in accordance with KRS 61.878(k), which exempts information for which federal or state law prohibits public disclosure.
- LG&E/KU's response to Staff's First Request, Item 39 contains the percentage of general wage and merit increases for each employee group for the past two years. As a basis for the request, LG&E/KU asserted that public disclosure would result in an unwarranted invasion of personal privacy for the employees.
- LG&E/KU's response to Staff's First Request, Items 40 and 41 contain information pertaining to executive officer compensation. As a basis for the request, LG&E/KU asserted the public disclosure would invade the privacy rights of the executives.
- LG&E/KU's response to Staff's First Request, Item 56 contains the Excel spreadsheet for Exhibit RMS-2, which is subject to the November 25, 2020 motion

for confidential treatment, which was granted confidential treatment in the above findings.

### FINDINGS

Having considered the motion and the designated material at issue, the Commission finds that designated material, with the exception of the LG&E/KU's responses to Staff's First Request, Items 6, 39, 40, and 41, are records that meet the criteria for confidential treatment pursuant to KRS 61.878(1)(a), KRS 61.878(1)(c)(1), KRS 61.878(k), and 807 KAR 5:001, Section 13.

The Commission further finds that the request for confidential treatment should be denied for their responses Staff's First Request, Items 6, 39, 40, and 41. Regarding the hourly rates for legal services set forth in the response to Staff's First Request, Item 6, LG&E/KU failed to establish that public disclosure of hourly legal rates would permit an unfair commercial advantage to third parties or that disclosure of said materials could result in competitive injury. This is especially so given the Commission's need to be able to fully and specifically address the cost impact of legal expenses in its final determination.

As discussed above, the Commission has previously held that information regarding the compensation of executive officers is a matter of public concern in a rate case, such as this proceeding, and does not meet the criteria for confidential treatment.<sup>3</sup> Granting confidential treatment for executive compensation and the percentage of salary

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<sup>3</sup> See Case No. 2018-00295, *Electronic Application of Louisville Gas and Electric Company for an Adjustment of its Electric and Gas Rates* (Ky. PSC Oct. 8, 2019) at 2-4; see also, Case No. 2017-000321, *Electronic Application of Duke Energy Kentucky, Inc. for: 1) An Adjustment of the Electric Rates; 2) Approval of an Environmental Compliance Plan and Surcharge Mechanism; 3) Approval of New Tariffs; 4) Approval of Accounting Practices to Establish Regulatory Assets and Liabilities; and 5) All Other Required Approvals and Relief* (Ky. PSC Jun. 12, 2018) at 3-4, and Case No. 2012-00221, *Application of Kentucky Utilities Company for an Adjustment of its Electric Rates* (Ky. PSC Sept. 11, 2013) at 1.

increases would not afford the appropriate level of transparency for ratepayers, who have the right to know the evidence upon which the Commission relied in reaching its decision. Further, the percentage of salary increase is an aggregate without any identifying information, and would not result in an invasion of personal privacy.

#### JANUARY 22, 2021 MOTION FOR CONFIDENTIAL TREATMENT

LG&E/KU requested confidential treatment for their joint responses to Commission Staff's Second Request for Information (Staff's Second Request); Attorney General/KIUC's First Request for Information (Attorney General/KIUC's First Request); Lexington-Fayette Urban County Government's First Request for Information (LFUCG's First Request); Louisville/Jefferson County Metro Government's First Request for Information (Louisville Metro's First Request); Mountain Association, Kentuckians for the Commonwealth, and Kentucky Solar Energy Society's First Request for Information (MA/KFTC/KSES's First Request); Metropolitan Housing Coalition, Kentuckians for the Commonwealth, and Kentucky Solar Energy Society's First Request (MHC/KFTC/KSES); and Sierra Club's First Request for Information (Sierra Club's First Request). LG&E/KU requested confidential treatment for five years for the designated material, with the exception of KU's response to Staff's Second Request, Item 141 and LG&E's response to Staff's Second Request, Item 161, which LG&E/KU requested receive confidential treatment for an indefinite period. The designated material is more specifically described as follows:

- KU's response to Staff's Second Request, Items 34(e) and 127; LG&E's response to Staff's Second Request, Items 38(e) and 142; and LG&E/KU's response to Attorney General/KIUC's First Request, Item 203(b). The designated material

contains vendor responses to a request for proposal (RFP), modeling inputs, and LG&E/KU's analysis of the bids. LG&E/KU asserted that public disclosure of the designated material would result in commercial harm by revealing LG&E/KU's internal evaluation and analysis, which could allow future bidders to manipulate their bids to the financial detriment of LG&E/KU and their ratepayers, and thus is exempt from public disclosure pursuant to KRS 61.878(1)(c)(1).

- KU's response to Staff's Second Request, Item 141, and LG&E's response to Staff's Second Request, Item 161, which consist of maps, diagrams, and schematics for infrastructure. LG&E/KU asserted that the designated material is exempt from public disclosure pursuant to KRS 61.878(1)(m), which prohibits public disclosure of infrastructure and critical systems that, if publicly disclosed, have a reasonable likelihood of threatening public safety by exposing a vulnerability.
- LG&E/KU's response to Attorney General/KIUC's First Request, Item 121, which contains information that is proprietary to LG&E/KU's modeling software vendor. LG&E/KU asserted that public disclosure of third party proprietary information could result in vendors being unwilling to provide software to LG&E/KU, which could result in commercial harm to LG&E/KU.
- LG&E/KU's response to Attorney General/KIUC's First Request, Item 172, which contains forecasted costs and prices, including hourly marginal costs, fuel prices, and variable operations and maintenance costs. LG&E/KU asserted that public disclosure could result in commercial harm to LG&E/KU when negotiating future

power requirement contracts, and thus the designated material is exempt from public disclosure in accordance with KRS 61.878(1)(c)(1).

- LG&E/KU's response to Attorney General/KIUC's First Request, Item 264; KU's response to MA/KFTC/KSES's First Request, Item 29(d); and LG&E's response to MHC/KFTC/KSES's First Request, Item 29(d), which consist of contracts with vendors who provide meter reading and field services, and electric vehicle charging services. LG&E/KU asserted that public disclosure of designated material would allow vendors to know competitors' offers and prices, which would result in commercial harm to LG&E/KU by adversely impacting their ability to negotiate the most reasonable prices for such services in a competitive marketplace. For this reason, LG&E/KU argued that the designate material is exempt from public disclosure under KRS 61.878(1)(c)(1).
- KU's response to Attorney General/KIUC's First Request, Items 131(c), 131(h)-(l), 163, 168, and LGE's response to Attorney General/KIUC's First Request, Item 163, which contain replies to surveys, forecasted peak demand, sales, and billing information specific to named customers. LG&E/KU asserted that public disclosure of the designated material would result in an unwarranted invasion of personal privacy, and thus is exempt from public disclosure in accordance with KRS 61.878(1)(a).
- LG&E's response to Attorney General/KIUC's First Request, Item 57, which contains salary and payroll costs for non-executive employees within LG&E's gas division. LG&E asserted that public disclosure would result in an unwarranted

invasion of personal privacy, and thus is exempt from public disclosure in accordance with KRS 61.878(1)(a).

- LG&E's response to Attorney General/KIUC's First Request, Item 159, which contains daily natural gas net injections and withdrawals. LG&E asserted that public disclosure would provide a commercial advantage to LG&E's competitors in the wholesale market because the competitors would have information regarding LG&E's positions, and thus disadvantage L&GE in the wholesale market. For that reason, LG&E argued that the designated material is exempt from public disclosure in accordance with KRS 61.878(1)(c)(1).
- KU's response to LFUCG's First Request, Items 39 and 47(b). KU's response to Item 39 contains a spreadsheet of revenue derived from a specific customer. KU asserted that public disclosure of its response to Item 39 would result in an unwarranted invasion of personal privacy, and thus is exempt from public disclosure in accordance with KRS 61.878(1)(a).
- KU's response to LFUCG's First Request, Item 47(b), and KU's response to Louisville Metro's First Request, Item 47(b), which contain a list of utilities that use the advance metering infrastructure (AMI) meters that KU proposed to purchase. KU stated that it obtained the list from the AMI vendor, that the information is proprietary to the AMI vendor, and that the AMI vendor provided the information to LG&E/KU to use in this proceeding only under confidential seal. KU asserted that the response to Item 47(b) is exempt from public disclosure in accordance with KRS 61.878(1)(c)(1).

- LG&E's response to Louisville Metro's First Request, Items 39 and 110(a). LG&E's response to Item 39 contains a spreadsheet of revenue derived from a specific customer. LG&E's response to Item 110(a) contains salary and payroll costs for non-executive employees within LG&E's gas division. LG&E asserted that public disclosure of its response to Items 39 and 110(a) would result in an unwarranted invasion of personal privacy, and thus is exempt from public disclosure in accordance with KRS 61.878(1)(a).
- LG&E/KU's response to Sierra Club's First Request, Item 3(a)(i)(1), which contains Ohio Valley Electric Corporation's (OVEC) projected costs of projects costs and projected power costs in evaluating potential compliance with Effluent Limitations Guidelines (ELG) and Coal Combustion Residuals (CCR) Rules. LG&E/KU asserted that the designated material was commercially sensitive because OVEC relied upon projected costs in evaluating ELG compliance options.

### FINDINGS

Having considered the motion and the material at issue, the Commission finds that the designated material in LG&E/KU's January 22, 2021 motion is generally recognized as confidential or proprietary, and therefore meet the criteria for confidential treatment and is exempted from public disclosure pursuant to KRS 61.878(1)(a), because public disclosure of customer-specific and non-executive employee-specific material would result in an unwarranted invasion of personal privacy; KRS 61.878(1)(c)(1), because public disclosure of the material could result in competitive harm to LG&E/KU; KRS 61.878(1)(m), which prohibits public disclosure of critical infrastructure systems; and 807 KAR 5:001, Section 13.

FEBRUARY 19, 2021 MOTION FOR CONFIDENTIAL TREATMENT

LG&E/KU requested confidential treatment for their responses to Attorney General/KIUC's Second Request for Information (Attorney General/KIUC's Second Request), LFUCG's Second Request for Information (LFUCG's Second Request), Louisville Metro's Second Request for Information (Louisville Metro's Second Request), and Sierra Club's Second Request for Information (Sierra Club's Second Request), and United States Department of Defense and All Other Federal Executive Agencies' Second Request for Information (DOD/FEA's Second Request). LG&E/KU requested that the designated material remain confidential for a period of five years, with the exception of LFUCG's Second Request, Items 45 and 49; Louisville Metro's Second Request, Items 45 and 49; and DOD/FEA's Second Request, Item 8(a), which LG&E/KU requested receive confidential treatment for an indefinite period.

- KU's response to LFUCG's Second Request, Items 45 and 49; LG&E's response to Louisville Metro's Second Request, Items 45 and 49; and LG&E's response to DOD/FEA's Second Request, Item 8(a), contain maps and locations of critical infrastructure, such as transmission lines, and thus public disclosure would result in a security concern. LG&E/KU asserted that public disclosure of the designated material is prohibited by KRS 61.878(1)(m), which exempts records that if publicly disclosed would have a reasonable likelihood of threatening the public safety by exposing a vulnerability in preventing or mitigating a terrorist act.
- KU's response to Attorney General/KIUC's Second Request, Items 28(a), 28(g), 29(b), 30(e), 61(b), and 74(d), and LG&E's response to Attorney General/KIUC's Second Request, Items 22(a), 22(g), 23(b), 61(b), and 74(d), which consist of

vendor contracts. LG&E/KU asserted that public disclosure of designated material would allow vendors to know competitors' offers and prices, which would result in commercial harm to LG&E/KU by adversely impacting their ability to negotiate the most reasonable prices for such services in a competitive marketplace. For this reason, LG&E/KU argued that the designated material is exempt from public disclosure under KRS 61.878(1)(c)(1). Additionally, LG&E/KU's respective responses to Attorney General/KIUC's Second Request, Item 74(d) contain the same material for which LG&E/KU requested confidential treatment in their January 22, 2021 motions.

- KU's response to Sierra Club's Second Request, Item 6(b), which contains information regarding legal fees and expenses incurred in a civil case. KU asserted that public disclosure of the information will harm KU's ability to negotiate the rates for professional service in the future, and thus is exempt from public disclosure pursuant to KRS 61.878(1)(c)(1).

### FINDINGS

Having considered the motion and the material at issue, the Commission finds that the designated material contained in LG&E/KU's February 19, 2021 motion, with the exception of KU's response to Sierra Club's Second Request, Item 6(b), is generally recognized as confidential or proprietary. The designated material therefore meets the criteria for confidential treatment and is exempted from public disclosure pursuant to KRS 61.878(1)(c)(1) KRS 61.878(1)(m), and 807 KAR 5:001, Section 13.

The Commission further finds that the request for confidential treatment should be denied for KU's response to Sierra Club's Second Request, Item 6(b). KU failed to

establish that the legal fees and expenses incurred in connection with a civil matter would result in competitive harm, and does not meet the criteria for confidential treatment. Granting confidential treatment for legal fees and expense would not afford the appropriate level of transparency for ratepayers, who have the right to know the evidence upon which the Commission relied in reaching its decision.

IT IS THEREFORE ORDERED that:

1. LG&E/KU's November 25, 2020; December 15, 2020; and February 19, 2021 motions for confidential treatment are granted in part and denied in part.
2. LG&E/KU's January 22, 2021 motion for confidential treatment is granted.
3. LG&E/KU's November 25, 2020 motion for confidential treatment of the designated material, with the exception of Tab 60 to the application, is granted.
4. LG&E/KU's December 15, 2020 motion for confidential treatment of the designated material, with the exception of LG&E/KU's responses to Staff's First Request, Items 6, 39, 40, and 41, is granted.
5. LG&E/KU's February 19, 2021 motion for confidential treatment, with the exception of KU's response to Sierra Club's Second Request, Item 6(b), is granted.
6. LG&E/KU November 25, 2020 motion for confidential treatment of the designated material in Tab 60 to the application is denied.
7. LG&E/KU's December 15, 2020 motion for confidential treatment of the designated material in LG&E/KU's responses to Staff's First Request, Items 6, 39, 40, and 41 is denied.

8. LG&E/KU's February 19, 2021 motion for confidential treatment of the designated material in KU's response to Sierra Club's Second Request, Item 6(b), is denied.

9. The designated material contained in LG&E/KU's November 25, 2020 motion; December 15, 2020 motion; January 22, 2021 motion, with the exception of KU's response to Staff's Second Request, Item 141, and LG&E's response to Staff's Second Request, Item 161; LG&E/KU's February 19, 2021 motion, with the exception of LFUCG's Second Request, Items 45 and 49, Louisville Metro's Second Request, Items 45 and 49, and DOD/FEA's Second Request, Item 8(a) granted confidential treatment by this Order shall not be placed in the public record or made available for public inspection for five years or until further Order of this Commission.

10. The designated material contained in KU's response to Staff's Second Request, Item 141; LG&E's response to Staff's Second Request, Item 161; KU's response to LFUCG's Second Request, Items 45 and 49; LG&E's response to Louisville Metro's Second Request, Items 45 and 49; and LG&E's response to DOD/FEA's Second Request, Item 8(a) granted confidential treatment by this Order shall not be placed in the public record or made available for public inspection for an indefinite period or until further Order of this Commission.

11. Use of the designated material granted confidential treatment by this Order in any Commission proceeding shall comply with 807 KAR 5:001, Section 13(9).

12. LG&E/KU shall inform the Commission if the designated material granted confidential treatment by this Order becomes publicly available or no longer qualifies for confidential treatment.

13. If a nonparty to this proceeding requests to inspect the material granted confidential treatment by this Order and the period during which the material has been granted confidential treatment has not expired, LG&E/KU shall have 30 days from receipt of written notice of the request to demonstrate that the material still falls within the exclusions from disclosure requirements established in KRS 61.878. If LG&E/KU is unable to make such demonstration, the requested material shall be made available for inspection. Otherwise, the Commission shall deny the request for inspection.

14. The Commission shall not make the requested material available for inspection for 30 days from the date of service of an Order finding that the material no longer qualifies for confidential treatment in order to allow LG&E/KU to seek a remedy afforded by law.

15. The designated material denied confidential treatment by this Order is not exempt from public disclosure and shall be placed in the public record and made available for public inspection.

16. If LG&E/KU objects to the Commission's determination that the requested material not be granted confidential treatment, it must seek either rehearing pursuant to KRS 278.400 or judicial review of this Order pursuant to KRS 278.410. Failure to exercise either of these statutory rights will be deemed as agreement with the Commission's determination of which materials should be granted confidential treatment.

17. Within 30 days of the date of service of this Order, LG&E/KU shall file a revised version of the designated material for which confidential treatment was denied, reflecting as unredacted the information that has been denied confidential treatment.

By the Commission

Commissioner Marianne Butler did not participate in the deliberations or decision concerning this case.



ATTEST:

  
Executive Director

Case No. 2020-00349  
Case No. 2020-00350

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