

On March 27, 2013, Mr. Damron filed responses to Commission Staff's First Request for Information and again stated "[d]ue to the nature of this situation, I am requesting all my information be held in a confidential manner."³ Mr. Damron's March 27, 2013 Response contained portions of 19 bills from LG&E with his account number and telephone number redacted from each of the bills. The redactions contained in Mr. Damron's Response are identical to the redactions made by LG&E in its publicly filed version of its Responses to Item No. 4 of Commission Staff's First Request for Information filed March 1, 2013.

On April 5, 2013, Mr. Damron filed a letter concerning his previous requests that his information be maintained in a confidential manner. The Commission will construe this April 5, 2013 letter as a supplemental request for confidential treatment.

The documents that Complainants filed with the Commission are in the possession of the Commission; therefore, the documents are public records.⁴ "All public records shall be open for inspection by any person, except as otherwise provided by KRS 61.870 to 61.884, . . ." KRS 61.872(1). Public records that are excluded from inspection are identified in KRS 61.878.⁵ Records that are excluded include:

Public records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy;

KRS 61.878(1)(a).

³ Letter from Glen Damron at third [unnumbered] page filed March 27, 2013.

⁴ Public records are defined as ". . . all books, papers, maps, photographs, cards, tapes, discs, diskettes, recordings, software, or other documentation regardless of physical form or characteristics, which are prepared, owned, used, in the possession of or retained by a public agency." KRS 61.870(2).

⁵ The records identified in KRS 61.878 are subject to inspection only upon order of a court of competent jurisdiction. KRS 61.878(1).

The Commission's regulation concerning confidential material is found at 807 KAR 5:001, Section 13.⁶ 807 KAR 5:001, Section 13(1) states, "All material on file with the commission shall be available for examination by the public unless the material is *confidential*." (Emphasis added.) 807 KAR 5:001, Section 13(2)(a)(1) refers to KRS 61.878 for purposes of identifying material as *confidential*.

To determine if the information provided by Complainants should be disclosed, the Commission must first determine if the information is of a personal nature. If the information is of a personal nature, the Commission must then determine if the disclosure would be an invasion of personal privacy. "The privacy interest in nondisclosure is balanced against the general rule of inspection and its underlying policy of openness for the public good." *Zink v. Commonwealth, Dep't of Workers' Claims, Labor Cabinet*, 902 S.W.2d 825, 828 (Ky. App. 1995) citing *Kentucky Bd. of Examiners of Psychologists v. Courier-Journal & Louisville Times Co.*, 826 S.W.2d 324, 327 (Ky. 1992).

The policy of openness for the public good is based upon the public's right to verify that agencies are properly performing their statutory functions. "That purpose is not fostered however by disclosure of information about private citizens that is accumulated in various government files that reveals little or nothing about an agency's own conduct." *Zink* at 829.

A person's telephone number and utility account number are of a personal nature. These numbers are specifically assigned to the Complainants. Utilities

⁶ That regulation became effective January 4, 2013. The Commission regulation concerning confidential material that was in effect on January 2, 2013, the date that Complainants' complaint was filed, was found at 807 KAR 5:001, Section 7.

generally require a customer to provide an account number before making changes to the customer's account, including disconnection of service. Disclosure of Complainants' account number and telephone number would be an invasion of their personal privacy.

The issue raised in the Complaint is the accuracy of the LG&E electric meter at Complainants' residence. The Commission properly performed its statutory function to investigate that issue. After the Commission more fully developed the evidence of record and held an informal conference, Mr. Damron and LG&E filed a joint motion to dismiss the Complaint. Revealing Complainants' account number and phone number does not further the public's right to verify whether the Commission is properly performing its statutory duties.

Complainants failed to follow the Commission's regulations to request confidential treatment. A person who requests confidential treatment of material shall file a motion that: (1) establishes specific grounds pursuant to KRS 61.878 upon which the Commission should classify that material as confidential; (2) states the time period in which the material should be treated as confidential and the reasons for this time period; and (3) includes, in a separate sealed envelope marked confidential, one copy of the material in paper medium which identifies by underscoring, highlighting with transparent ink, or other reasonable means only those portions which unless redacted would disclose confidential material. Text pages or portions thereof which do not contain confidential material shall not be included in this identification. If confidential treatment is sought for an entire document, unambiguous written notification that the entire document is confidential may be filed with the document in lieu of the required highlighting.

Complainants' January 2, 2013 Complaint and their January 22, 2013 Revised/Amended Complaint failed to redact personal information. There was no request filed simultaneously, pursuant to 807 KAR 5:001, Section 13, seeking confidential protection of information in the January 2, 2013 Complaint nor the January 22, 2013 Revised/Amended Complaint. Complainants attached their unredacted utility bills, including their account number and telephone number, to the complaint form provided to them by Commission Staff. This form does not advise a potential complainant that all of the information filed with the Commission will be publicly disclosed.

While 807 KAR 5:001, Section 13, sets forth the procedures that parties before the Commission must follow regarding confidential information, 807 KAR 5:001, Section 21, allows deviations from the rules for good cause shown. The Commission is aware that utility customers may not have the legal background to fully comprehend statutes and regulations. The Commission does not want to discourage citizens from contacting the Commission with complaints for fear their personal information might be publicly disclosed.

Based on the record and Mr. Damron's written requests that certain information on his bills be held in a confidential manner, the Commission finds that although Complainants failed to follow the procedures in 807 KAR 5:001, Section 13, to request confidentiality, good cause exists under 807 KAR 5:001, Section 21, to deviate from the rules and grant the requests for confidentiality of Complainants' account number and telephone number. Complainants' account number and telephone number should be

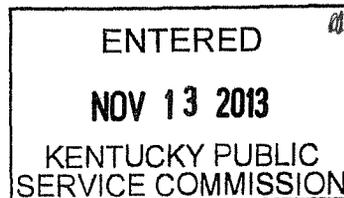
redacted from the copy of information that is posted to the Commission's website and should be redacted from any files that are publicly available.

IT IS THEREFORE ORDERED that:

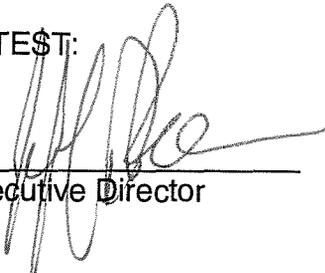
1. Mr. Damron's requests of March 18, 2013, March 27, 2013, and April 5, 2013, for confidential protection of his account number and telephone number are granted.

2. Executive Director shall redact Mr. Damron's personal information consisting of account numbers and telephone numbers that are posted to the Commission's website and from any files that are publicly available.

By the Commission



ATTEST:



Executive Director

Case No. 2013-00008

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