



J. GREGORY CORNETT

DIRECT DIAL 502-560-4210

DIRECT FAX 502-627-8710

gcornett@ogdenlaw.com

1700 PNC PLAZA
500 WEST JEFFERSON STREET
LOUISVILLE, KENTUCKY 40202-2874
(502) 582-1601
FAX (502) 581-9564
www.ogdenlaw.com

March 28, 2005

Elizabeth O'Donnell
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, Kentucky 40601

RECEIVED
MAR 29 2005
PUBLIC SERVICE
COMMISSION

RE: In the Matter of: Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for a Certificate of Public Convenience and Necessity, and a Site Compatibility Certificate, for the Expansion of the Trimble County Generating Station
Case No. 2004-00507

Dear Ms. O'Donnell:

Enclosed please find and accept for filing the original and ten copies of Louisville Gas and Electric Company's and Kentucky Utilities Company's Response to IBEW, Local 2100, and Greater Louisville Building and Construction Trades Council's Motion to Release Documents Under Seal in the above-referenced matter. Please confirm your receipt of this filing by placing the stamp of your Office with the date received on the enclosed additional copies and return them to me in the enclosed self-addressed stamped envelope.

Should you have any questions or need any additional information, please contact me at your convenience.

Very truly yours,



J. Gregory Cornett

JGC/ec

Enclosures

cc: Parties of Record

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

In the Matter of:

MAR 29 2005

**JOINT APPLICATION OF LOUISVILLE GAS)
AND ELECTRIC COMPANY AND KENTUCKY)
UTILITIES COMPANY FOR A CERTIFICATE)
OF PUBLIC CONVENIENCE AND NECESSITY,)
AND A SITE COMPATIBILITY CERTIFICATE,)
FOR THE EXPANSION OF THE TRIMBLE)
COUNTY GENERATING STATION)**

PUBLIC SERVICE
COMMISSION

CASE NO: 2004-00507

**RESPONSE OF LOUISVILLE GAS AND ELECTRIC COMPANY AND
KENTUCKY UTILITIES COMPANY TO MOTION OF INTERNATIONAL
BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 2100 AND GREATER
BUILDING AND CONSTRUCTION AND TRADES COUNCIL
TO RELEASE DOCUMENTS UNDER SEAL**

Louisville Gas and Electric Company and Kentucky Utilities Company (collectively, “the Companies”) hereby respond to International Brotherhood of Electrical Workers, Local 2100’s and the Greater Building and Construction Trades Council’s (collectively, “Movants”) March 17, 2005 Motion to Release Documents Under Seal. As set forth below, the documents that were afforded confidential treatment in Case No. 2000-00112¹ continue to qualify for confidential treatment, and, therefore, Movants’ March 17, 2005 Motion should be denied. Additionally, the documents that Movants seek to unseal have no relevance to the issues before the Commission in this case and, therefore, regardless of whether they continue to qualify for confidential treatment, the Motion should be denied.

The documents at issue are documents that were responsive to a Commission data request that sought a Request for Proposal (“RFP”) for the construction of the Selective Catalytic Reduction units at issue in Case No. 2000-00112. In responding to that request, the Companies

¹ *Application of Kentucky Utilities Company and LG&E for Certificate of Public Convenience and Necessity to Construct Selective Catalytic Reduction Control (SCR) Technologies.*

informed the Commission that the proposals submitted in response to the Companies' RFP were subject to Non-Disclosure Agreements which provided the bidders with certain rights regarding public disclosure, because the information provided by the bidders is proprietary. Moreover, just because the RFP process was completed and a bidder was chosen does not mean that the protected documents should be made public. Contractors and other parties frequently use historical data to extrapolate bidding strategies and future prices, and that could be done with the information at issue here. Thus, disclosure of this information, even if after the fact, will still reveal how the bidders formulated their bids, how pricing was quoted, and the like. In other words, they will reveal significant information about the processes used which would provide unfair competitive advantages. Therefore, the documents do qualify for confidential protection under the Kentucky Open Records Act at KRS § 61.878(1)(c)1, which excludes from the open records requirement confidential or proprietary records "generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records." The subject documents are the exact type of information that is confidential and proprietary, and, thus, deserving of continued confidential protection. Southeastern United Medigroup, Inc. v. Hughes, 952 S.W.2d 195, 199 (Ky. 1997) (holding that if disclosure of documents would give competitors an unfair advantage, then confidential protection is warranted).

Additionally, regardless of the confidential nature of the subject documents, Movants' Motion is not appropriate in this case. The Commission has already ruled that this case is *not the correct forum* to raise the issues of cost of labor, "local investment or the Commonwealth's business and employment wellbeing." (March 4, 2005 Order, p. 2). Despite that ruling and the Commission's admonition to Movants to limit the issues they address in this case to issues

properly before the Commission in this case (March 4, 2005 Order, p. 3), Movants assert that the documents should be unsealed because Movants have “a substantial interest in reviewing RFP criteria regarding major construction proposal, to gain an insight into criteria utilized by LG&E with regard to employment of Kentucky workers.” (Motion, p. 2). Thus, the clearly stated purpose of the Motion is in direct violation of the Commission’s March 4, 2005 Order. Accordingly, for that reason as well, the Motion should be denied.

WHEREFORE, the Companies hereby respectfully request the Commission to deny Movants’ March 17, 2005 Motion to Release Documents Under Seal.

Dated: March 28, 2005

Respectfully submitted,



Kendrick R. Riggs
J. Gregory Cornett
Ogden Newell & Welch PLLC
1700 PNC Plaza
500 West Jefferson Street
Louisville, Kentucky 40202
Telephone: (502) 582-1601

Robert M. Watt III
Lindsey W. Ingram, III
Stoll, Keenon & Park, LLP
300 West Vine Street, Suite 2100
Lexington, Kentucky 40507-1801
Telephone: (859) 231-3000

Elizabeth L. Cocanougher
Senior Regulatory Counsel
Louisville Gas and Electric Company
220 West Main Street
Post Office Box 32010
Louisville, Kentucky 40232
Telephone: (502) 627-4850

Counsel for Louisville Gas and
Electric Company and Kentucky Utilities
Company

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Response was served on the following persons on the 28th day of March, 2005, U.S. mail, postage prepaid:

Elizabeth E. Blackford
Assistant Attorney General
Office of the Attorney General
Office of Rate Intervention
1024 Capital Center Drive, Suite 200
Frankfort, Kentucky 40601

John N. Hughes
Attorney at Law
124 West Todd Street
Frankfort, Kentucky 40601

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

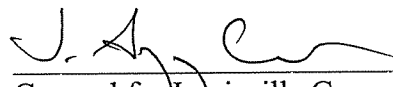
Daniel A. Lane
Vice President and Managing Counsel
Indiana Municipal Power Agency
11610 North College Avenue
Carmel, Indiana 46032

Troy A. Fodor, P.C.
913 South Sixth Street
Springfield, Illinois 62703

Douglas L. Jeavons
Managing Director
BBC Research & Consulting
3773 Cherry Creek North Drive, Suite 850
Denver, Colorado 80209-0448

Don Meade
Priddy, Isenberg, Miller & Meade, PLLC
800 Republic Building
429 West Muhammad Ali Boulevard
Louisville, Kentucky 40202

Irv Maze
Jefferson County Attorney
N. Scott Lilly
Second Assistant County Attorney
Hall of Justice, 2nd Floor
600 West Jefferson Street
Louisville, Kentucky 40202



Counsel for Louisville Gas and Electric
Company and Kentucky Utilities Company