

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF KENTUCKY)	
UTILITIES COMPANY FOR AN)	CASE NO. 2012-00221
ADJUSTMENT OF ITS ELECTRIC)	
RATES)	

PETITION OF KENTUCKY UTILITIES COMPANY
FOR CONFIDENTIAL PROTECTION

Kentucky Utilities Company (“KU”) hereby petitions the Kentucky Public Service Commission (“Commission”) pursuant to 807 KAR 5:001, Section 7 and KRS 61.878(1) to grant confidential protection for the items described herein, which KU seeks to provide in response to the Attorney General’s Supplemental Requests for Information. The specific Request for Information for which KU seeks confidential protection is: 18.

1. On June 29, 2012, KU filed with the Commission an application proposing changes in its base rate tariffs. On July 31, 2012, the Attorney General issued his Initial Data Requests to KU and on August 28, 2012, the Attorney General issued his Supplemental Data Requests to KU.

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

2. Request No. 18 asks KU to refer to certain Requests for Information submitted by the Attorney General to Louisville Gas and Electric Company (“LG&E”) in Case No. 2012-00222 that asks LG&E to identify “the amount that ratepayers are being requested” for certain officers’ “total compensation in dollars.” Request No. 18 asks KU to “state the amount of each referenced employee’s total compensation (in total dollar amounts) for which KU’s ratepayers are being requested to pay.” The Kentucky Open Records Act exempts from disclosure certain

private and personal information.¹ The Kentucky Court of Appeals has stated, “information such as ... wage rate ... [is] generally accepted by society as [a] detail[] in which an individual has at least some expectation of privacy.”² The Commission should therefore give confidential treatment to the information included in KU’s Response to Request No. 18 because disclosing the contents thereof would invade the privacy rights of the individuals named. These individuals’ compensation, including the portion included in rates in this proceeding, which KU does not otherwise publicly report, is personal and private information that should not be in the public realm. KU’s employees therefore have a reasonable expectation that KU will maintain the confidentiality of their compensation information, the disclosure of which would constitute an unwarranted invasion of personal privacy in contravention of KRS 61.878(1)(a).

Providing confidential protection for the compensation information of KU’s employees would fully accord with the purpose of the Act, which is to make government and its actions open to public scrutiny. Concerning the rationale for the Act, the Kentucky Court of Appeals has stated:

[T]he public’s ‘right to know’ under the Open Records Act is premised upon the public’s right to expect its agencies properly to execute their statutory functions. In general, inspection of records may reveal whether the public servants are indeed serving the public, and the policy of disclosure provides impetus for an agency steadfastly to pursue the public good. At its most basic level, the purpose of disclosure focuses on the citizens’ right to be informed as to what their government is doing.³

Citing the Court of Appeals, the Kentucky Office of the Attorney General (“AG”) stated in an Open Records Decision (“ORD”), “If disclosure of the requested record would not advance

¹ KRS 61.878(1)(a).

² *Zink v. Department of Workers’ Claims, Labor Cabinet*, 902 S.W.2d 825, 828 (Ky. Ct. App. 1994).

³ *Zink v. Department of Workers’ Claims, Labor Cabinet*, 902 S.W.2d 825, 828-29 (Ky. Ct. App. 1994).

the underlying purpose of the Open Records Act, namely exposing agency action to public scrutiny, then countervailing interests, such as privacy, must prevail.”⁴

Moreover, in an order approving a petition for confidential treatment for LG&E in Case No. 89-374, the Commission stated that salary information “should be available for customers to determine whether those salaries are reasonable,” but “the right of each individual employee within a job classification to protect such information as private outweighs the public interest in the information.”⁵ In the same order, the Commission concluded, “Thus, the salary paid to each individual within a classification is entitled to protection from public disclosure.”⁶ The Commission had reached the same conclusion in two previous orders in the same case.⁷

3. The compensation information for which KU seeks confidential protection in this case is comparable to that provided to the Commission by KU in the past. The Commission granted confidential protection of the compensation paid to certain professional employees in a letter from the Executive Director of the Commission dated December 1, 2003, in *In the Matter of: An Investigation Pursuant to KRS 278.260 of the Earnings Sharing Mechanism Tariff of*

⁴ *In re: James L. Thomerson/Fayette County Schools*, KY OAG 96-ORD-232 (Nov. 1, 1996) (citing *Zink v. Department of Workers' Claims, Labor Cabinet*, 902 S.W.2d 825 (Ky. Ct. App. 1994)) (emphasis added).

⁵ *In the Matter of: Application of Louisville Gas and Electric Company for an Order Approving an Agreement and Plan of Exchange and to Carry Out Certain Transactions in Connection Therewith*, Case No. 89-374, Order at 2 (Apr. 30, 1997).

⁶ *Id.*

⁷ See *In the Matter of: Application of Louisville Gas and Electric Company for an Order Approving an Agreement and Plan of Exchange and to Carry Out Certain Transactions in Connection Therewith*, Case No. 89-374, Order at 2 (Apr. 4, 1996); *In the Matter of: Application of Louisville Gas and Electric Company for an Order Approving an Agreement and Plan of Exchange and to Carry Out Certain Transactions in Connection Therewith*, Case No. 89-374, Order at 2 (Apr. 8, 1994). See also *In the Matter of: Application of BellSouth Telecommunications, Inc. d/b/a South Central Bell Telephone Company to Modify its Method of Regulation*, Case No. 94-121, Order at 4-5 (July 20, 1995) (“Salaries and wages are matters of private interest which individuals have a right to protect unless the public has an overriding interest in the information. The information furnished, however, only shows the salary range for three labor classifications and does not provide the identity of persons who receive those salaries. Therefore, disclosure of the information would not be an invasion of any employee’s personal privacy, and the information is not entitled to protection.”).

Louisville Gas and Electric Company, Case No. 2003-00335. The Commission's Executive Director has also denied such requests in the past.⁸

4. The information for which KU is seeking confidential treatment is not known outside of KU, and it is not disseminated within KU except to those employees with a legitimate business need to know the information.

5. KU will disclose the confidential information, pursuant to a confidentiality agreement, to intervenors with a legitimate interest in this information and as required by the Commission.

6. If the Commission disagrees with this request for confidential protection, however, it must hold an evidentiary hearing (a) to protect KU's due process rights and (b) to supply with the Commission with a complete record to enable it to reach a decision with regard to this matter.⁹

7. To satisfy the provisions of the Commission's June 22, 2012 Order in this proceeding concerning electronic filing procedures, KU will timely file with the Commission one paper copy of the Confidential Information in paper medium and one copy of the Confidential Information in electronic medium on a DVD or CD-ROM. KU, in accordance with the Commission's June 22, 2012 Order, is also providing a copy of the redacted material. The Confidential Information is redacted from the public version and highlighted in the confidential version.


⁸ See, e.g., *In the Matter of Application of Kentucky Utilities Company for an Adjustment of Base Rates*, Case No. 2008-00251, Letter from Executive Director Stumbo (Sept. 2, 2008); *In the Matter of Application of Louisville Gas and Electric Company for an Adjustment of Its Electric and Gas Base Rates*, Case No. 2008-00252, Letter from Executive Director Stumbo (Sept. 2, 2008). See also *In the Matter of: An Adjustment of Gas and Electric Rates of Louisville Gas and Electric Company*, Case No. 90-158, Order (Sept. 7, 1990).

⁹ *Utility Regulatory Commission v. Kentucky Water Service Company, Inc.*, 642 S.W.2d 591, 592-94 (Ky. App. 1982).

WHEREFORE, Kentucky Utilities Company respectfully requests that the Commission grant confidential protection for the information described herein.

Dated: September 12, 2012

Respectfully submitted,

A handwritten signature in blue ink that reads "Kendrick R. Riggs". The signature is written in a cursive style and is positioned above a horizontal line.

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CERTIFICATE OF COMPLIANCE

In accordance with Ordering Paragraph No. 10 of the Commission's June 22, 2012 Order, this is to certify that Kentucky Utilities Company's September 12, 2012 electronic filing of the Petition for Confidential Protection is a true and accurate copy of the same document being filed in paper medium; that the electronic filing has been transmitted to the Commission on September 12, 2012; that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding; and that an original and two copies in paper medium of the Petition are being hand delivered to the Commission on September 12, 2012.



Gerald R. Rieps
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