

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

In the Matter of:

**APPLICATION OF LOUISVILLE GAS AND )  
ELECTRIC COMPANY FOR AN ADJUSTMENT ) CASE NO. 2012-00222  
OF ITS ELECTRIC AND GAS BASE RATES )**

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**PETITION OF  
KENTUCKY INDUSTRIAL UTILITY CUSTOMERS, INC.  
FOR CONFIDENTIAL TREATMENT OF INFORMATION**

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Pursuant to 807 KAR 5:001, Section 7, Kentucky Industrial Utility Customers, Inc. (“KIUC”) petitions the Commission for confidential treatment of certain Data Responses provided by KIUC provided in response to Data Requests of Commission Staff.

KIUC’s Data Responses contain commercially sensitive information (pricing information, internal economic analyses, etc.) that would provide an unfair commercial advantage to competitors of the KIUC member companies, if disclosed. The workpapers filed under seal are:

- Baron Workpaper – Carbide Revenue Pro-Forma
- Carbide – LGE TY Billing Analysis
- Carbide August 2012 LGE Bill
- LGE Data 2-years Prior to Explosion

This commercially sensitive information is kept confidential by the KIUC members and not disseminated to others unless they have a legitimate need to know and act upon the information. Such information is protected from disclosure even amongst the KIUC members involved in this proceeding.

Pursuant to KRS 61.878(1)(c)(1), the following records are exempted from disclosure under the Kentucky

Open Records Act:

*“[R]ecords confidentially disclosed to an agency or required by an agency to be disclosed to it, 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...”<sup>1</sup>*

Pursuant to 807 KAR 5:001, Section 7, KIUC has filed with the Commission and served the parties with copies of its Data Responses. An original of the Data Responses for which confidential treatment is sought were filed with the Commission (under seal) on October 26, 2012.

Based on the foregoing, KIUC respectfully requests that the Commission grant its Petition for Confidential Treatment of Information. The attached Confidentiality Agreement has been circulated to the parties of record.

Respectfully submitted,



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**COUNSEL FOR KENTUCKY INDUSTRIAL UTILITY  
CUSTOMERS, INC.**

October 26, 2012

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<sup>1</sup> KRS 61.878(1)(c).

**CONFIDENTIALITY AGREEMENT**

Kentucky Public Service Commission

Case No. 2012-00222

This Confidentiality Agreement (“Agreement”) is entered into by and between Kentucky Industrial Utility Customers Inc (“KIUC”) and its members: AAK USA K2, LLC, Carbide Industries LLC, Cemex, E.I. DuPont de Nemours and Company and Ford Motor Company, by and through their representatives and the undersigned Recipient.

This Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2012 by and between KIUC and \_\_\_\_\_ (“Recipient”). KIUC and Recipient are hereinafter sometimes referred to individually as a “Party” and collectively as the “Parties”.

WHEREAS, Recipient is a party to or has moved to intervene in the above referenced cases, and has requested review of certain information KIUC believes to be confidential and proprietary;

WHEREAS, Recipient is willing to enter into this agreement and have access to the information at issue upon the terms and conditions contained herein;

NOW, THEREFORE, the parties covenant and agree as follows:

1. Access to information which KIUC believes to be confidential and propriety for which confidential treatment is sought by KIUC in these cases will be limited strictly to officers, employees and directors of the end use customers that comprise Recipient with a need to review that information, and Recipient’s legal counsel and/or consultants who shall execute a nondisclosure certificate as described in paragraph 3 and attached as Exhibit A to this agreement.
2. Use of the information provided pursuant to this confidentiality agreement shall be limited strictly to Case No. 2012-00222 before the Kentucky Public Service Commission (the “Commission”) and any appeals from those cases.
3. The non-disclosure certificate shall require the officers, employees and directors of the end use customers that comprise Recipient, and Recipient’s legal counsel and consultants who are given access to the information subject to this agreement to read a copy of this agreement and certify in writing that it, he or she has reviewed this agreement and agrees to be bound by its terms before disclosure of the confidential and proprietary information will be made. The certificate shall contain the full name and permanent business address of each person signing it. A copy of each certificate will be provided upon request to KIUC.
4. All copies of documents containing information that are provided to Recipient under this agreement pending a ruling by the Commission upon a Petition for Confidential Treatment, and information for which the Commission has Ordered that confidential treatment shall be afforded, shall be deemed to be held in trust pursuant to this agreement and shall be

returned to KIUC upon demand at the conclusion of Case No. 2012-00222. Upon demand for return of the information, any notations or other work product of Recipient, its counsel or consultants made or contained in the information shall be redacted prior to the return of the information to the KIUC.

5. If Recipient desires to make use of any confidential or proprietary information obtained as a result of its, its legal counsel's or its consultant's examination of the information, whether in testimony filed by Recipient or through cross-examination of any witness or otherwise, Recipient shall notify KIUC in advance of the proposed use and shall meet with KIUC' representatives to attempt in good faith to establish a procedure that will accommodate the needs of Recipient to make use of the information without risking its public disclosure. If KIUC and Recipient are unable to agree on a means of preventing public disclosure of the confidential and proprietary information, KIUC and Recipient will submit these issues to the Commission for resolution before the proposed use of the information is made.

6. Each and every party to this agreement will act in good faith, and no party to the agreement will do anything to deprive any other party of the benefit of this agreement.

7. Recipient's participation in this agreement shall not be construed as an admission that the information claimed to be confidential and proprietary is, as a matter of law, confidential and proprietary, or as a waiver of any right to assert that the information is not confidential and proprietary before the Commission or any court of competent jurisdiction. In the event the Commission should rule that any of the information should be removed from the restrictions imposed by this agreement, no party shall disclose such information until the Commission's Order subjecting the information to public disclosure is final pursuant to KRS 278.410, or until all appeals of such Order have been exhausted, unless authorized to do so by the other party or a court of competent jurisdiction.

8. This agreement shall bind the parties to it from the date of its execution. Every executed copy of this agreement will be deemed an original.

EXECUTED this \_\_\_\_ day of \_\_\_\_\_, 2012.

RECIPIENT

\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

KENTUCKY INDUSTRIAL UTILITY  
CUSTOMERS, INC.

By: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT A**  
**NONDISCLOSURE CERTIFICATE**

The undersigned hereby certify that, before disclosure to them of confidential and proprietary information of KIUC, they have read the confidentiality agreement between KIUC and the Recipient, Clopay Plastic Products Company, Corning Incorporated, Dow Corning Corporation, Lexmark International, Inc. MeadWestvaco, NewPage Corp., North American Stainless, Schneider Electric USA, Toyota Motor Engineering and Manufacturing North America, Inc., Carbide Industries LLC, Cemex, E.I. DuPont de Nemours and Company, Ford Motor Company, GE Appliances and Lighting and Lonza, by and through Kentucky Industrial Utility Customers, Inc, which is incorporated herein by reference as if set forth in its entirety, and agree to be bound by its terms.

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Address

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