

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF LOUISVILLE GAS AND)	
ELECTRIC COMPANY FOR AN)	
ADJUSTMENT OF ITS ELECTRIC AND GAS)	
RATES, A CERTIFICATE OF PUBLIC)	
CONVENIENCE AND NECESSITY,)	CASE NO. 2012-00222
APPROVAL OF OWNERSHIP OF GAS)	
SERVICE LINES AND RISERS, AND A GAS)	
LINE SURCHARGE)	

PETITION OF LOUISVILLE GAS AND ELECTRIC COMPANY
FOR CONFIDENTIAL PROTECTION

Louisville Gas and Electric Company (“LG&E”) 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 LG&E seeks to provide in response to the Attorney General’s Initial Requests for Information. The specific Requests for Information for which LG&E seeks confidential protection are: 65, 67, 89, 96, 130, 132, 133, 134, 135, 138, 140, 141, 147, 158, 205, 210, 217, 222, 227, and 244. In support of this Petition, LG&E states as follows:

1. On June 29, 2012, LG&E filed with the Commission an application proposing changes in its base rate tariffs. On July 31, 2012, the Attorney General issued his First Set of Data Requests to LG&E.

Confidential or Proprietary Commercial Information (KRS 61.878(1)(c))

2. The Kentucky Open Records Act exempts from disclosure certain commercial information. KRS 61.878(1)(c). To qualify for this exemption and, therefore, maintain the confidentiality of the information, a party must establish that the material is of a kind generally

recognized to be confidential or proprietary, and the disclosure of which would permit an unfair commercial advantage to competitors of the party seeking confidentiality.

3. Request No. 67 asks LG&E to provide a copy of the Ventyx report. The “Ventyx report” refers to a depreciation-related document titled “An Economic Life Assessment Study of Generating Assets LG&E and KU,” which was completed by Ventyx, an ABB Company. LG&E is providing the report in response, but confidential protection is merited for the commercially sensitive matter. Specifically, the report contains the proprietary methodologies Ventyx uses in its analyses. The report is also subject to a confidentiality agreement between Ventyx and LG&E whereby LG&E must receive authorization to disclose the document. LG&E has received permission to disclose the document confidentially, but as of August 14, 2012, has not received permission to file a public version of the document. Ventyx has agreed to review the document, identify the material it considers proprietary, and allow LG&E to file a public version with the confidential material redacted.¹ Publicly disclosing the report without the confidential, proprietary information redacted will allow Ventyx’s competitors to review and analyze the methodologies and analyses that Ventyx utilizes in its work, thereby conferring an unfair commercial advantage on the competitors. Moreover, because LG&E and the vendor consider the information confidential and proprietary, they entered into a confidentiality agreement to recognize the proprietary nature of the work. For LG&E, public disclosure of such information would allow future vendors to see the terms upon which LG&E commonly does business and could affect future bids. For Ventyx, the methodologies and terms it employs in the study are proprietary information that should not be disclosed to its competitors.

¹ LG&E expects to supplement its response to Request No. 67 with a public version of the document by August 15, 2012.

4. Request No. 130 asks LG&E to provide details related to “major plant construction projects representing plan additions costing more than \$5 million during 2009, 2010, 2011, and 2012.” Request No. 244 asks LG&E to “provide any and all internal studies and correspondence from 2008-2012, inclusive, concerning FASB Statement No. 143, FIN 47, and FERC Order No. 631 in RM-02-7-000.” Included in response to both of these requests are documents containing confidential and proprietary information. Much of this confidential material is contained within documents such as Authorization for Investment Proposals and memoranda prepared for the Investment Committee. These documents include detailed cost analyses and assumptions, references to third-party vendors, copies of invoices and contracts, and other material that, if disclosed, will place LG&E at a disadvantage by allowing vendors to review LG&E’s past and upcoming spending plans, and the timing thereof. Public disclosure allows vendors to submit bids based upon past practices that are confidential and proprietary.

5. Request No. 210 asks LG&E to provide invoices from and information related to the organizations for which LG&E is a member, including the formula used to compute the amount of dues, as well as partial or complete credit card numbers. The information requested is confidential, proprietary, and personal in nature; therefore, confidential protection is merited. The organizations for which LG&E is a member set their dues using formulae that are confidential and proprietary to the organizations. Additionally, the invoices submitted by the organizations contain confidential and private information such as account numbers. Therefore, LG&E is also requesting confidential protection under KRS 61.878(1)(a) for this request as account information has been recognized by the Attorney General to be confidential.

6. Request No. 217 asks LG&E to provide information related to settlements resulting from claims against LG&E. Publicly disclosing the amounts LG&E settles claims for,

while also stating the type of claims, would allow potential counterparties and their counsel to have detailed information about LG&E's settlement practices—practices which are confidential to LG&E and its legal counsel. Additionally, LG&E, and counterparties, generally consider the settlement agreements they enter into as confidential.² Requiring public disclosure of settlement agreements, even without identifying the parties involved, could allow the public to easily surmise the identity of LG&E's counterparty by researching or recollecting past news events. Therefore, public disclosure would also violate the personal expectation of privacy embodied by KRS 61.878(1)(a) for “information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.”

7. Request No. 222 asks LG&E to provide information related to fees for lines of credit. This financial information is considered confidential by both LG&E and the third-party financial institution. Publicly releasing information about the third-parties LG&E does business with on financial matters will discourage financial institutions from transacting business with LG&E. Additionally, publicly releasing the fees LG&E is charged by financial institutions will provide nonparty financial institutions with confidential and proprietary information regarding how much to charge LG&E and how much their competitors are charging.

8. In response to Request No. 227, LG&E is supplying documents that contain a number of different corporations' bank account and routing information throughout, as well as partial or complete credit card numbers. Because such information is confidential and proprietary information of those companies, the public disclosure of which could harm LG&E by making such companies unwilling to do further business with LG&E, LG&E requests confidential protection for the documents containing such information. In addition to seeking protection for such information under this provision of the Open Records Act, LG&E further

² Cf. Kentucky Rule of Evidence 408 (making compromises and offers of compromise inadmissible).

seeks protection for this information under KRS 61.878(1)(a), which protects sensitive personal information. The Kentucky Attorney General has consistently held that bank account numbers are information deserving confidential protection under that provision.³

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

9. Request No. 205 asks LG&E to “list by customer and amount and by year for the period 2008 through 2011 any uncollectible accounts which have been written off and which exceeded \$1,000.00.” LG&E is supplying such information, but seeks confidential protection for private, customer-identifying information (i.e., customer names and account numbers) contained in their responses. LG&E believes protecting such information is particularly important in this time of ever-increasing identity theft.

10. Request Nos. 65, 89, and 96 ask LG&E to produce the “total compensation package” of some of its non-officer employees. The Kentucky Open Records Act exempts from disclosure certain private and personal information.⁴ 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.”⁵ The Commission should therefore give confidential treatment to the information included in LG&E’s response to Request Nos. 65, 89, and 96 because disclosing the contents thereof would invade the privacy rights of the individuals named. These individuals’ compensation, which LG&E does not otherwise publicly report, is personal and private information that should not be in the public realm. LG&E’s employees therefore have a reasonable expectation that LG&E will maintain the confidentiality of their

³ See, e.g., 99-ORD-34 at 6 (“[D]epositor information ... is well recognized as confidential information[.]”); 94-ORD-91 (“[T]his Office has consistently held that social security numbers, as well as other numerical identifiers such as bank account numbers, may be excluded from public inspection, pursuant to KRS 61.878(1)(a)[.]”).

⁴ KRS 61.878(1)(a).

⁵ *Zink v. Department of Workers’ Claims, Labor Cabinet*, 902 S.W.2d 825, 828 (Ky. Ct. App. 1994).

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 LG&E'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.⁶

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 the underlying purpose of the Open Records Act, namely exposing agency action to public scrutiny, then countervailing interests, such as privacy, must prevail."⁷

Moreover, in an order approving LG&E's petition for confidential treatment 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."⁸ In the same order, the Commission concluded, "Thus, the salary paid to each

⁶ *Zink v. Department of Workers' Claims, Labor Cabinet*, 902 S.W.2d 825, 828-29 (Ky. Ct. App. 1994).

⁷ *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).

⁸ *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).

individual within a classification is entitled to protection from public disclosure.”⁹ The Commission had reached the same conclusion in two previous orders in the same case.¹⁰

11. The compensation information for which LG&E seeks confidential protection in this case is comparable to that provided to the Commission by LG&E 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 Louisville Gas and Electric Company*, Case No. 2003-00335. A copy of the Executive Director’s letter and of LG&E’s response to the Commission Staff’s Data Request in that proceeding are attached hereto as Exhibit A. The Commission’s Executive Director has also denied such requests in the past.¹¹

Confidential Information Protected from Disclosure by Federal or State Law (KRS 61.878(1)(k) and (l))

12. Request Nos. 132-35, 138, 140, 141, 147, and 158 ask LG&E to provide copies of federal and state tax returns, as well as supporting tax information, schedules, calculations, and descriptions for the years 2009, 2010, and 2011. Tax-related documents and information merit confidential protection. KRS 61.878(1)(k) exempts from public disclosure “all public records or

⁹ *Id.*

¹⁰ 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.”).

¹¹ 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

information the disclosure of which is prohibited by federal law or regulation.” Under 26 U.S.C. § 6103(a), state officials are prohibited from publicly disclosing any federal income tax return or its contents. Therefore, federal income tax returns and their content fall within the exemption provided by KRS 61.878(1)(k) and are exempt from disclosure. KRS 61.878(1)(l) exempts from the Kentucky Open Records Act “public records or information the disclosure of which is prohibited or restricted or otherwise made confidential by enactment of the General Assembly.” KRS 131.190(1) requires that all income tax information filed with the Kentucky Department of Revenue be treated in a confidential manner. Thus, state income tax returns and the information they contain are also confidential in nature and are protected from disclosure by KRS 61.878(1)(l). The Commission has previously kept such information confidential in LG&E’s and Kentucky Utilities Company’s base rate cases.¹²

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

14. To satisfy the provisions of the Commission’s June 22, 2012 Order in this proceeding concerning electronic filing procedures, LG&E 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, except in cases where the Confidential Information exceeds 1,000 pages for that question. For those attachments for which the Confidential Information exceeds 1,000 pages, LG&E is filing simultaneously herewith a Motion to Deviate which requests that the Commission allow the Confidential Information to be

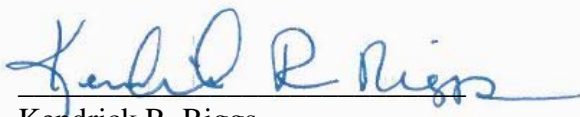
Executive Director Stumbo (Sept. 2, 2008). *See also In the Matter of: An Adjustment of Gas and Electric Rates of Louisville Gas and Electric Company*, Case No. 90-158, Order (Sept. 7, 1990).

filed only in electronic medium on a DVD due to the voluminous nature of the Confidential Information in paper medium. LG&E, in accordance with the Commission's June 22, 2012 Order, is also providing a copy of the redacted material. For those individual attachments for which the entire attachment is confidential, LG&E is marking the header or footer of the document with the word "CONFIDENTIAL" and only a slipsheet referencing confidentiality will appear in the public record as the proposed method of an "other reasonable means" to comply with the Commission's June 22, 2012 Order. For those attachments to responses for which only a portion of the material is confidential, the Confidential Information is redacted from the public version and highlighted in the confidential version.¹³

WHEREFORE, Louisville Gas and Electric Company respectfully requests that the Commission grant confidential protection for the information described herein.

Dated: August 14, 2012

Respectfully submitted,



Kendrick R. Riggs

W. Duncan Crosby III
Barry L. Dunn
Stoll Keenon Ogden PLLC
2000 PNC Plaza
500 West Jefferson Street
Louisville, Kentucky 40202-2828
Telephone: (502) 333-6000

Allyson K. Sturgeon
Senior Corporate Attorney
LG&E and KU Energy LLC
220 West Main Street

¹² See, e.g., *In the Matter of Application of Kentucky Utilities Company for an Adjustment of Base Rates*, Case No. 2008-00251, and *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 (Oct. 22, 2008).

¹³ The only exception to this process is the attachment in response to Request No. 244, which has a both a confidential portion and public portion. Because the confidential attachment is voluminous, it is designated confidential by having the word "CONFIDENTIAL" in the header of footer of each page. A slip sheet at the end of the public portion notes that the remainder of the attachment is confidential and has been provided under seal.

Louisville, Kentucky 40202
Telephone: (502) 627-2088

Robert M. Watt III
Lindsey W. Ingram III
Monica H. Braun
Stoll Keenon Ogden PLLC
300 West Vine Street, Suite 2100
Lexington, KY 40507-1801

Counsel for Louisville Gas and Electric Company

CERTIFICATE OF COMPLIANCE

In accordance with Ordering Paragraph No. 10 of the Commission's June 22, 2012 Order, this is to certify that Louisville Gas and Electric Company's August 14, 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 August 14, 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 August 14, 2012.



Counsel for Louisville Gas and Electric Company