

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” or “Company”) 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 Supplemental Requests for Information. The specific Requests for Information for which LG&E seeks confidential protection are as follows: 6, 12, 15, 16, 17, 18, 28 and 59. 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 Initial Data Requests to LG&E and on August 28, 2012, the Attorney General issued his Supplemental Data Requests to LG&E.

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

2. Request Nos. 6, 12, 15, 16, 17, and 18 ask LG&E to identify “the amount that ratepayers are being requested” for certain officers’ “total compensation in dollars.” These Requests follow up on similar Initial Requests for Information, for which LG&E likewise sought confidential protection. 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 LG&E’s response to Request Nos. 6, 12, 15, 16, 17, and 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 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 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.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 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.”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

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*

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

3. Request No. 28 asks LG&E to provide detailed information regarding injury and damage claims that resulted in settlements that exceeded \$10,000 that are included in the Company’s requested rate increase. 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.⁹ 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.” LG&E sought confidential protection for a similar request by the Attorney General in the first round of discovery.¹⁰

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

4. 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

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

¹⁰ See LG&E’s Response to No. 217 of the Attorney General’s Initial Requests for Information.

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

5. Request No. 59 asks LG&E to provide maps showing the location of certain customers relative to the Company's distribution system. The attached maps reveal the location, *inter alia*, of LG&E's transmission pipelines, generating and regulator stations, and other distribution infrastructure. These types of information fall within the Federal Energy Regulatory Commission's ("FERC") classification of Critical Energy Infrastructure Information, which is defined as "specific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure" that "[r]elates details about the production, generation, transmission, or distribution of energy" that "[c]ould be useful to a person planning an attack on critical infrastructure" that is "exempt from mandatory disclosure under the Freedom of Information Act" and "[g]ives strategic information beyond the location of the critical infrastructure."¹¹ Because the maps contain Critical Energy Infrastructure Information, LG&E must seek confidential protection for the information. LG&E never provides this information in any proceeding without including a disclaimer that notes the information contains Critical Energy Infrastructure Information and should not be disclosed.

6. 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.

7. LG&E 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.

¹¹ See <http://www.ferc.gov/legal//maj-ord-reg/land-docs/ceii-rule.asp> and the links contained therein.

8. If the Commission disagrees with this request for confidential protection, however, it must hold an evidentiary hearing (a) to protect LG&E'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.¹²


9. 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 or CD-ROM. LG&E, in accordance with the Commission's June 22, 2012 Order, is also providing a copy of the redacted material.

10. For Request Nos. 6, 12, 15, 16, 17 and 18, the Confidential Information is redacted from the public version of the responses and highlighted in the confidential version. Because the attachments to Requests No. 28 and 59 are confidential in their entirety, no public version with redactions has been provided. Instead, the public version contains a slip sheet noting the entire attachment is confidential. In the confidential version, each page of the attachment has the word "CONFIDENTIAL" in either the header or the footer.

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

Dated: September 12, 2012

Respectfully submitted,



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¹² *Utility Regulatory Commission v. Kentucky Water Service Company, Inc.*, 642 S.W.2d 591, 592-94 (Ky. App. 1982).

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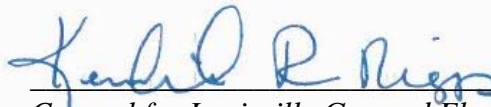
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CERTIFICATE OF COMPLIANCE

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



Counsel for Louisville Gas and Electric Company