

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

**APPLICATION OF LOUISVILLE GAS AND)
ELECTRIC COMPANY TO MODIFY ITS)
CERTIFICATE OF PUBLIC CONVENIENCE) CASE NO. 2012-00469
AND NECESSITY AS TO THE MILL CREEK)
UNIT 3 FLUE-GAS DESULFURIZATION UNIT)**

**PETITION OF LOUISVILLE GAS AND ELECTRIC COMPANY
FOR CONFIDENTIAL PROTECTION OF RESPONSE TO
DATA REQUEST OF THE COMMISSION STAFF**

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)(c) to grant confidential protection for the items described herein, which LG&E seeks to provide in response to Commission Staff’s First Information Request to Nos. 8 and 11 (the “Confidential Information”).

In support of this Petition, LG&E states as follows:

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

1. The Kentucky Open Records Act exempts from disclosure certain commercial information. KRS 61.878(1)(c). To qualify for the 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.

2. LG&E is providing as an attachment to its response to Staff Request No. 8 a detailed June 20, 2012 report from the environmental division of Babcock Power, Inc. (“BPEI”). BPEI treats the entire report as confidential, and has not authorized LG&E to disclose it publicly. The report contains confidential vendor cost estimates and related data, which if disclosed could

adversely affect BPEI's ability to compete with similar vendors. Also, BPEI could refuse to do business with LG&E in the future if BPEI's confidential and proprietary data and techniques are publicly disclosed, which could harm LG&E's customers by limiting the vendors available for LG&E to use. LG&E therefore seeks confidential protection for the entirety of the BPEI report.

3. Staff Request No. 11 asks LG&E to provide "all support including electronic files that support the Net Present Value of Revenue Requirements ('NPVRR') values presented in the columns titled 'Retrofit Mill Creek 3' [shown in Exhibit JNV-3 at page 4, Table 6]." In response, LG&E is providing a number of electronic files, including a number of Strategist modeling files. The Strategist files contain projected fuel prices LG&E purchased from reputable vendors to enable LG&E to make prudent business decisions of several kinds, including fuel contracting decisions and environmental-compliance decisions. If the Commission grants public access to this information, the vendors from whom LG&E purchased the fuel forecast information at issue could refuse to do business with the utilities in the future, which would do serious harm to LG&E's ability to make prudent fuel contract, environmental compliance, and other decisions. All such commercial harms would ultimately harm LG&E's customers. Moreover, publicly disclosing such information would do immediate and costly harm to the firms from which LG&E purchased the fuel forecast information at issue; the firms derive significant revenues from developing and selling such forecasts to customers under strict license agreement obligations not to disclose. Any public disclosure of the forecasts would render them commercially worthless.

4. The Commission has granted confidential protection to Strategist files on the same grounds in the past.¹

5. If the Commission disagrees with any of these requests 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. Utility Regulatory Commission v. Kentucky Water Service Company, Inc., 642 S.W.2d 591, 592-94 (Ky. App. 1982).

6. The information for which LG&E is seeking confidential treatment is not known outside of LG&E, is not disseminated within LG&E except to those employees with a legitimate business need to know and act upon the information, and is generally recognized as confidential and proprietary information in the energy industry.

7. To satisfy the provisions of the Commission's October 25, 2012 Order in this proceeding concerning electronic filing procedures with respect to the Confidential Information responsive to Staff Request No. 8, LG&E will timely file with the Commission one paper copy of the Confidential Information and one copy of the Confidential Information in electronic medium on a DVD-ROM or CD-ROM.

8. To satisfy the provisions of the Commission's October 25, 2012 Order in this proceeding concerning electronic filing procedures with respect to the Confidential Information responsive to Staff Request No. 11, LG&E will timely file with the Commission one copy of the Confidential Information in electronic medium on a DVD-ROM or CD-ROM. (By a Motion to Deviate being filed herewith, LG&E is requesting a deviation from the requirement to file a paper copy of the Confidential Information responsive to Staff Request No. 11.)

¹ See, e.g., *In the Matter of: Application of Louisville Gas and Electric Company for Certificates of Public Convenience and Necessity and Approval of Its 2011 Compliance Plan for Recovery by Environmental Surcharge*, Case No. 2011-00162, Letter from Executive Director DeRouen to Allyson Sturgeon (Dec. 9, 2011).

9. Because the attachments discussed herein, i.e., the Confidential Information in LG&E's responses to Staff Request Nos. 8 and 11, are confidential in their entirety, no public versions with redactions have been provided. Instead, the public versions contain slip sheets noting the entire attachments are confidential.

WHEREFORE, Louisville Gas and Electric Company respectfully requests that the Commission grant confidential protection for the information at issue, or in the alternative, schedule and evidentiary hearing on all factual issues while maintaining the confidentiality of the information pending the outcome of the hearing.

Dated: November 30, 2012

Respectfully submitted,



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CERTIFICATE OF COMPLIANCE

In accordance with Ordering Paragraph No. 10 of the Commission's October 25, 2012 Order, this is to certify that Louisville Gas and Electric Company's November 30, 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 November 30, 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 one copy in paper medium of the Petition are being hand delivered to the Commission on November 30, 2012.

A handwritten signature in blue ink, reading "Gerald R. Riess", is positioned above a horizontal line. The signature is written in a cursive style.

Counsel for Louisville Gas and Electric Company