

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF KENTUCKY)	
UTILITIES COMPANY FOR AN)	CASE NO. 2014-00371
ADJUSTMENT OF ITS ELECTRIC)	
RATES)	

PETITION OF KENTUCKY UTILITIES COMPANY
FOR CONFIDENTIAL PROTECTION

Kentucky Utilities Company (“KU” or the “Company”) hereby petitions the Kentucky Public Service Commission (“Commission”) pursuant to 807 KAR 5:001, Section 13 and KRS 61.878(1) to grant confidential protection for the items described herein, which KU seeks to provide in response to Item 20 of Kentucky Industrial Utility Customers, Inc.’s (“KIUC”) Second Set of Data Requests.¹

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

1. The Kentucky Open Records Act exempts from disclosure “information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.” KRS 61.878(1)(a).

2. Request No. 20 requests “calculations of each of these amounts in an electronic spreadsheet in sufficient detail to replicate the amounts. Provide all assumptions, the basis for all assumptions, the costs per employee, the costs for contractors, and the loadings for overtime, incentive compensation, payroll taxes, and benefits, as well as all other costs that were included in these amounts.” In response to this question, the Company is providing a spreadsheet that contains confidential personal information concerning compensation levels for specified

¹ In accordance with 807 KAR 5:001, Section 8(12)(b), a copy of this Petition’s electronic transmission receipt is affixed to the paper copy of the Petition being submitted to the Commission. None of the documents attached to the Petition require redaction under the Commission’s regulation, 807 KAR 5:001, Section 4(10).

positions. 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 And the Kentucky Supreme Court has characterized “one’s income” as “intimate” information of a private nature.³ The Commission should therefore give confidential treatment to the information included in the Company’s spreadsheet provided in response to Request No. 20. These Company employees have a reasonable expectation that their compensation is personal and private information, the disclosure of which would constitute an unwarranted invasion of their personal privacy in contravention of KRS 61.878(1)(a).

Providing the requested confidential protection for the compensation information of the Company’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.⁴

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.”⁵

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

³ *Cape Pub’ns, Inc. v. Univ. of Louisville Found., Inc.*, 260 S.W.3d 818, 822 (Ky. 2008).

⁴ 902 S.W.2d at 828-29 (Ky. Ct. App. 1994).

⁵ *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).

Moreover, in an order approving a petition for confidential treatment for Louisville Gas and Electric Company 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.”⁶ In the same order, the Commission concluded, “Thus, the salary paid to each individual within a classification is entitled to protection from public disclosure.”⁷ The Commission had reached the same conclusion in two previous orders in the same case.⁸

The compensation information for which the Company seeks confidential protection in this case is comparable to that provided to the Commission by the Company in the past. The Commission granted confidential protection of the compensation paid to certain 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. The Commission’s Executive Director has also denied such requests in the past.⁹ The Company has never publicly disclosed

⁶ *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).

⁷ *Id.*

⁸ 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.”).

⁹ 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

specific compensation information for non-executive, lower-ranking officers and employees. Granting confidential protection to this information also accords with internal Company policies, which advise employees that their compensation is a private matter and to avoid any disclosures. Thus, these employees have a reasonable expectation that the Company will maintain the confidentiality of their compensation information; to do otherwise would constitute an unwarranted invasion of privacy in contravention of KRS 61.878(1)(a). Moreover, the Commission in KU's most recent base-rate case granted confidential protection to non-executive salary and compensation information because the information met the criteria for confidential protection "due to a reasonable expectation of privacy in the information."¹⁰ The details of the compensation paid to these non-executive officers and employees are personal and private information that should not be publicly disclosed. The Company is providing to the Commission in unredacted form the compensation information and placing in the public record redacted versions with this information obscured.

3. 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.

4. 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.

5. 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

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).

¹⁰ Case No. 2012-00221, Order Regarding Request for Confidential Treatment at 2 (Sep. 11, 2013).

the Commission with a complete record to enable it to reach a decision with regard to this matter.¹¹

6. In compliance with 807 KAR 5:001, Sections 8(3) and 13(2)(e), KU is filing with the Commission one paper copy that identifies by highlighting or other means the information for which confidential protection is sought and one electronic copy with the same information obscured.

7. Consistent with the Commission's prior orders, KU requests that the information be kept confidential for an indefinite period of time due to the personal nature of the information.¹²

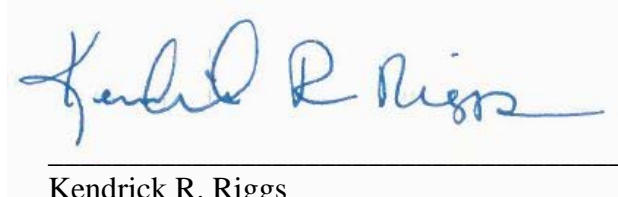
WHEREFORE, Kentucky Utilities Company respectfully requests that the Commission grant confidential protection for the information described herein.

¹¹ *Utility Regulatory Commission v. Kentucky Water Service Company, Inc.*, 642 S.W.2d 591, 592-94 (Ky. App. 1982).

¹² *See, e.g.*, Case No. 2012-00221, Order Regarding Request for Confidential Treatment (July 16, 2013).

Dated: February 20, 2015

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

This is to certify that Kentucky Utilities Company's February 20, 2015 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 February 20, 2015; that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding; and that an original in paper medium of the Petition and an unobscured copy of the material for which confidentiality is sought sealed in an opaque envelope are being hand delivered to the Commission on February 20, 2015.



Gerald R. Riess
Counsel for Kentucky Utilities Company