

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 Items 36, 47(a)(9), and 49 of Commission Staff’s First Request for Information (“PSC 1-”).¹

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

1. The Kentucky Open Records Act exempts from disclosure confidential or proprietary information to the extent that open disclosure would permit an unfair commercial advantage to competitors of the entity disclosing the information to the Commission. KU is providing certain documents in response to PSC 1-49, which requests policies, schedules, agreements, and additional information pertaining to the compensation paid for professional outside services.² Some of these documents contain pricing, the public disclosure of which will prejudice the Company’s ability to obtain the most reasonable prices for such professional services in the competitive marketplace and prejudice the Company’s ability to negotiate the rates for

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).

² This confidential information is in paper medium which identifies by underscoring, highlighting with transparent ink, or other reasonable means only those portions which unless redacted would disclose confidential material and is enclosed in an opaque envelope marked “Confidential PSC DR 1-49.”

professional services in the future. Some of the documents also contain descriptions of the scope of work, the disclosure of which could prejudice the Company's negotiating position in bargaining-unit negotiations in the future. KU requests with this petition that the Commission protect from public disclosure this confidential information. The public disclosure of this information will create precisely the kind of competitive harm KRS 61.878(1)(c)(1) intends to prevent. Thus, the Commission should grant confidential protection to this information.

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

2. The Kentucky Open Records Act exempts from disclosure certain private and personal information.³ The Kentucky Court of Appeals has stated, “[I]nformation such as ... wage rate ... [is] generally accepted by society as [a] detail in which an individual has at least some expectation of privacy.”⁴ And the Kentucky Supreme Court has characterized “one’s income” as “intimate” information of a private nature.⁵ KU’s response to PSC 1-36 provides a schedule showing “the salaries and compensation of each executive officer for the base period and three most recent years.”⁶ The Commission should therefore give confidential treatment to the information in KU’s schedule responding to PSC 1-36 because disclosing the contents thereof would invade the privacy rights of the individuals named. Specifically, KU seeks confidential protection for the amount of the executive salary and other compensation not otherwise publicly disclosed. With a very limited exception, KU does not otherwise publicly report these individuals’ compensation, making that information personal and private information that should not be in the

³ KRS 61.878(1)(a).

⁴ *Zink v. Department of Workers’ Claims, Labor Cabinet*, 902 S.W.2d 825, 828 (Ky. App. 1994).

⁵ *Cape Pub’ns, Inc. v. Univ. of Louisville Found., Inc.*, 260 S.W.3d 818, 822 (Ky. 2008).

⁶ This confidential information is in paper medium which identifies by underscoring, highlighting with transparent ink, or other reasonable means only those portions which unless redacted would disclose confidential material and is enclosed in an opaque envelope marked “Confidential PSC DR 1-36.”

public realm.⁷ The limited exception is a portion of the salary of the top five executives that is allocated to KU and is publicly disclosed in the annual FERC Form 1 Report. But that amount, plus the amount reported in the Louisville Gas and Electric Company (“LG&E”) FERC Form 1 Report, does not equal the total amount of salary for the top five executives. Thus, with the exception of the chief executive officer, the remaining top five executives’ total salaries are not publicly disclosed, and their other compensation is not publicly disclosed. These KU employees therefore 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 KU’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.⁸

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

⁷ Only the chief executive officer’s complete salary and other compensation is publicly disclosed each year in filings with the Securities and Exchange Commission, and KU is not requesting protection from public disclosure of that information.

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

underlying purpose of the Open Records Act, namely exposing agency action to public scrutiny, then countervailing interests, such as privacy, must prevail.”⁹

Moreover, in an order approving a petition for confidential treatment for LG&E 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.”¹⁰ In the same order, the Commission concluded, “Thus, the salary paid to each individual within a classification is entitled to protection from public disclosure.”¹¹ The Commission had reached the same conclusion in two previous orders in the same case.¹²

The compensation information for which KU seeks confidential protection in this case is comparable to that provided to the Commission by KU 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*

⁹ *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. App. 1994)) (emphasis added).

¹⁰ *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).

¹¹ *Id.*

¹² 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.”).

Gas and Electric Company, Case No. 2003-00335. The Commission’s Executive Director has also denied such requests in the past.¹³

Although the Commission also has previously denied confidential protection to executive officer information, it did so in part “based upon the fact that salaries are included as an expense in base rate calculations.”¹⁴ As the record demonstrates, however, only a portion of the officers’ salary and other compensation is included in the cost of providing service to customers, and the average salary and other compensation is publicly disclosed on the filing schedule.

Regarding the amount of executive benefits not otherwise publicly disclosed, the Commission has previously denied confidential protection to executive officer information, but did so in part because “salaries of certain officers are subject to public dissemination in regulatory filings.”¹⁵ In 2010, KU began disclosing in the public record as part of its FERC Form 1 Reports the salary amounts allocated to KU, but not any other compensation information, for its top five officers only.¹⁶ In 2010, KU disclosed in filings with the Securities Exchange Commission details regarding executive benefits of its top five officers. In subsequent years, KU disclosed details regarding executive benefits of only its top chief executive officer and not its

¹³ 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).

¹⁴ *In the Matter of: Application of Kentucky Utilities Company for an Adjustment of Its Electric Rates*, Case No. 2012-00221, Order Regarding Request for Confidential Treatment (Sept. 11, 2013). See also, e.g., *In the Matter of: An Adjustment of Gas and Electric Rates of Louisville Gas and Electric Company*, Case No. 90-158, Orders (Aug. 15 and Sept. 7, 1990). In denying LG&E’s motion for reconsideration of the August 15, 1990 order, rejecting LG&E’s request for confidential protection, the Commission held, “Since LG&E seeks to recover through its rate structure the compensation in salaries paid to its executive employees, LG&E customers have a right to know whether the salaries and compensation paid to such employees are reasonable.”

¹⁵ Case No. 2012-00221, Order Regarding Request for Confidential Treatment at 2 (Sept. 11, 2013).

¹⁶ KU’s FERC Form 1 for the year ending December 31, 2013, available at <http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=13490963>, provided the salary amounts allocated to KU for the following officers: Victor A. Staffieri (Chairman of the Board, President, and Chief Executive Officer); S. Bradford Rives (Chief Administrative Officer); Gerald A. Reynolds (General Counsel, Chief Compliance Officer, and Corporate Secretary); Kent W. Blake (Chief Financial Officer); Paul W. Thompson (Chief Operating Officer); and former officer Chris Herman (Senior Vice President, Energy Delivery). KU included its top six officers in its 2012 FERC Form 1.

next four executive officers. Because KU requests confidential protection only for the executive benefits not otherwise publicly disclosed, granting confidential protection to this limited information accords with KRS 61.878(1)(a) and Commission precedent regarding salaries disclosed in regulatory filings.

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

3. The Kentucky Open Records Act exempts from disclosure certain information the disclosure of which is prohibited by federal law or regulation or prohibited or restricted or otherwise made confidential by enactment of the General Assembly.¹⁷ KU is providing certain documents in response to PSC 1-47(a)(9), which requests a copy of KU’s “federal and state income tax returns for the most recent tax year, including supporting schedules.”¹⁸ Tax-related documents and information merit confidential protection from public disclosure. Regarding KU’s federal tax returns, 26 U.S.C. § 6103(a) prohibits state officials from publicly disclosing any federal income tax return or its contents. Therefore, federal income tax returns and their content fall within the KRS 61.878(1)(k) exemption from public disclosure. Regarding KU’s state tax returns, KRS 131.190(1) requires that all income tax information filed with the Kentucky Department of Revenue be treated in a confidential manner. Therefore, state income tax returns and their content fall within the KRS 61.878(1)(l) exemption from public disclosure. The Commission has previously kept KU’s federal and state income tax returns confidential in base rate cases.¹⁹ Because this information contains KU’s federal and state tax returns, KU requests

¹⁷ KRS 61.878(1)(m)(1)(e).

¹⁸This confidential information is in paper medium which identifies by underscoring, highlighting with transparent ink, or other reasonable means only those portions which unless redacted would disclose confidential material and is enclosed in an opaque envelope marked “Confidential PSC DR 1-47(a)(9).”

¹⁹ See, e.g., Case No. 2012-00221, Order Regarding Request for Confidential Treatment (Sep. 18, 2013); Case No. 2008-00251, Letter from Executive Director Derouen (Feb. 6, 2009).

through this petition that the Commission protect this information from public disclosure. The Commission should grant confidential protection of this information.

4. 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.

5. 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.

6. 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 the Commission with a complete record to enable it to reach a decision with regard to this matter.²⁰

7. 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 the information for which confidential protection is sought and one electronic copy with the same information obscured.

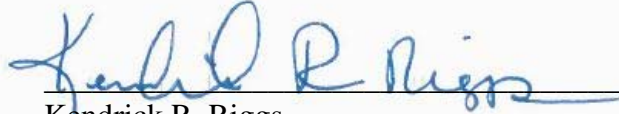
8. KU requests that the information be kept confidential for at least five years from the date of this filing as that is the amount of time necessary before the confidential information becomes dated to the point that the need for protection no longer exists.

²⁰ *Utility Regulatory Commission v. Kentucky Water Service Company, Inc.*, 642 S.W.2d 591, 592-94 (Ky. App. 1982).

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

Dated: December 12, 2014

Respectfully submitted,



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CERTIFICATE OF COMPLIANCE

This is to certify that Kentucky Utilities Company's December 12, 2014 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 December 12, 2014; 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 December 12, 2014.



Gerald R. Riess
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