

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) CASE NO. 2014-00372
RATES)

PETITION OF LOUISVILLE GAS AND ELECTRIC COMPANY
FOR CONFIDENTIAL PROTECTION

Louisville Gas and Electric Company (“LG&E” 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 LG&E seeks to provide in connection with the Rebuttal Testimony of David J. Wathen.¹

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

1. KRS 61.878(1)(a) provides protection from public disclosure for “information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.”

2. On behalf of LG&E, Mr. Wathen is providing Rebuttal Testimony regarding LG&E’s employee headcount and compensation levels. Included with Mr. Wathen’s Rebuttal Testimony are spreadsheets that contain confidential personal information concerning compensation levels for specified 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

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

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 spreadsheets provided with Mr. Wathen’s Rebuttal Testimony. 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

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

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).

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 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

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 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).

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 LG&E'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. Because the spreadsheet is confidential in its entirety, the Company is providing to the Commission in unredacted form the compensation information.

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

3. The Kentucky Open Records Act exempts from disclosure confidential or proprietary information, of a kind generally recognized to be confidential or propriety, to the extent that open disclosure would permit an unfair commercial advantage to competitors of the entity disclosing the information to the Commission.

4. Included with Mr. Wathen's Rebuttal Testimony are workpapers containing confidential and proprietary information of Towers Watson. This information was developed through extensive time and effort, and, if publicly disclosed, would work to the commercial disadvantage of Towers Watson. Moreover, Towers Watson provided this information to the Company with the expectation that such information would not be publicly disclosed. Public disclosure of this confidential information would harm the Company's ability to obtain services in the future by discouraging firms from fully and candidly assisting the Company due to confidentiality concerns.

¹⁰ Case No. 2012-00222, Order Regarding Request for Confidential Treatment at 2 (Sep. 11, 2013).

5. 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.

6. 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.

7. 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.¹¹

8. In compliance with 807 KAR 5:001, Sections 8(3) and 13(3)(a)(3)(b), the entire spreadsheet is confidential, and, therefore, LG&E is filing with the Commission one paper copy under seal of the spreadsheet and requests confidentiality of the entire document.

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

WHEREFORE, Louisville Gas and Electric 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., 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, Approval of Ownership of Gas Service Lines and Risers, and a Gas Line Surcharge* (Case No. 2012-00222) (Ky. PSC July 16, 2013).

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Respectfully submitted,



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CERTIFICATE OF COMPLIANCE

This is to certify that Louisville Gas and Electric Company's April 14, 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 April 14, 2015; that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding; and that an original 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 April 14, 2015.



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