

**COMMONWEALTH OF KENTUCKY**  
**BEFORE THE PUBLIC SERVICE COMMISSION**

**In the Matter of:**

**VERIFIED APPLICATION OF LOUISVILLE )**  
**GAS AND ELECTRIC COMPANY AND )**  
**KENTUCKY UTILITIES COMPANY )**  
**REGARDING ENTRANCE INTO REFINED ) CASE NO. 2015-00264**  
**COAL AGREEMENT, FOR PROPOSED )**  
**ACCOUNTING AND FUEL ADJUSTMENT )**  
**CLAUSE TREATMENT, AND FOR )**  
**DECLARATORY RULING )**

**LOUISVILLE GAS AND ELECTRIC COMPANY AND**  
**KENTUCKY UTILITIES COMPANY'S**  
**PETITION FOR CONFIDENTIAL PROTECTION**

Louisville Gas and Electric Company (“LG&E”) and Kentucky Utilities Company (“KU”) (collectively, the “Companies”) petition 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 the Companies seek to provide to comply with their Application in the above-captioned proceeding, in which the Companies stated that they would file copies of all refined coal agreements with the Commission. In support of this Petition, the Companies state as follows:

1. The Kentucky Open Records Act exempts from disclosure certain commercial information. KRS 61.878(1)(c). To qualify for the exemption and maintain the confidentiality of the information, a party must establish that the material is of a kind generally recognized to be confidential or proprietary, the disclosure of which would permit an unfair commercial advantage to competitors of the party seeking confidentiality.

2. In paragraph 11 of the Companies’ Application and Amended Application, the Companies agreed to file copies of any executed refined coal agreements with the Commission. On November 18, 2016, KU entered into a short-term Operation Agreement (“Operation

Agreement”) with a wholly owned subsidiary of Tinium Group, LLC (Tinium was formerly known as Clean Coal Solutions, LLC). KU also received a Guaranty from Tinium Group, LLC to support their obligations under the Operation Agreement (“Tinium Guaranty”). Additionally, on December 11, 2015, LG&E and KU entered into an Exclusivity and Fees Agreement with Clean Coal Solutions, LLC (“CCS Agreement”).

3. The Operation Agreement, Tinium Guaranty, and CCS Agreement contain confidential information the public disclosure of which would hinder the Companies’ ability to receive the best proposals and procure the best contract terms in future negotiations. Counterparties in a competitive market do not want confidential technical information or concessions, including pricing concessions, they have made publically disclosed, to be used against them in their future negotiations with other customers or by their competitors. Counterparties are more likely to provide proposals and enter contracts when they know that sensitive terms such as pricing, contract forms, or counterparty financial, legal, operating, tax or other structures will not be known to their competitors or their other customers. Those entities, and others who might make proposals to the Companies in the future, would not favor public disclosure of this information, and may be less willing to make proposals or respond to requests for proposals, or to offer the Companies concessions. In addition, disclosing information to counterparties about their competitors’ proposals would allow them to determine where they might have advantages over other entities. They could use that information to fully exploit any inherent advantages they might have, rather than offering their best proposal, to the disadvantage of the Companies and their customers. Diminishing the Companies’ ability to receive the best proposals and contract for the best possible terms would harm both the Companies and their customers through increased costs of service. This information should therefore be afforded confidential protection to protect the Companies and their customers.

4. The information for which the Companies are seeking confidential treatment is not known outside of the Companies and their counsel, and is not disseminated within the Companies except to those employees with a legitimate business need to know and act upon the information. Such information is generally recognized as confidential and proprietary information in the energy industry. The Companies request that the Commission maintain the confidentiality of the information in perpetuity. The Commission has given confidential protection to similar information, including contracts with third parties, in prior proceedings.<sup>1</sup> Indeed, in this proceeding, the Commission has given confidential protection to information that contained confidential technical vendor information, third party proposals, and pricing information.<sup>2</sup>

5. If the Commission disagrees with this request for confidential protection, it must hold an evidentiary hearing (a) to protect the Companies' 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.<sup>3</sup>

6. In compliance with 807 KAR 5:001, Sections 8(3) and 13(2)(e), the Companies are 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.

**WHEREFORE**, Louisville Gas and Electric Company and Kentucky Utilities Company respectfully request that the Commission grant confidential protection to the information designated as confidential.

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<sup>1</sup> See, e.g., *In the Matter of: Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for Review, Modification, and Continuation of Existing, and Addition of New, Demand-Side Management and Energy-Efficiency Programs*, Case No. 2011-00134, Letter from Executive Director Jeff DeRouen (Ky. PSC Aug. 31, 2011).

<sup>2</sup> *In the Matter of: Application of Louisville Gas and Electric Company and Kentucky Utilities Company Regarding Entrance into Refined Coal Agreements, for Proposed Accounting and Fuel Adjustment Clause Treatment, and for Declaratory Ruling*, Case No. 2015-00264, Order (Ky. PSC Jan. 13, 2016).

<sup>3</sup> *Utility Regulatory Commission v. Kentucky Water Service Company, Inc.*, 642 S.W.2d 591, 592-94 (Ky. App. 1982).

DATED: February 2, 2017

Respectfully submitted,



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**CERTIFICATE OF COMPLIANCE**

This is to certify that Louisville Gas and Electric Company and Kentucky Utilities Company's February 2, 2017 electronic filing of this Petition is a true and accurate copy of the same documents being filed in paper medium; that the electronic filing has been transmitted to the Commission on February 2, 2017; that there are currently no parties the Commission has excused from participation by electronic means in this proceeding and that an original paper medium of the Motion is being mailed, by first class United States mail, postage prepaid, to the Commission on February 2, 2017.

*Marcia H. Braun*

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*Counsel for Louisville Gas and Electric Company  
and Kentucky Utilities Company*