

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 March 20, 2017, KU entered into a Coal Purchase Agreement, Refined Coal Sale Agreement,

Coal Yard Services Agreement, and Refined Coal Facility and Coal Yard Site License (collectively, the “Agreements”) with GS RC Ghent, LLC, a subsidiary of The Goldman Sachs Group, Inc (“Goldman Sachs”). KU also received a Guaranty from Goldman Sachs to support its obligations under the Agreements, a Start Date Certificate, and a Termination of the Operation Agreement dated November 18, 2016 (collectively, the “Agreements and Documents”).

3. The Agreements and Documents are proprietary information and should remain confidential because the parties expended significant time and resources to develop them. Given the unique and proprietary nature of these documents in a specialized and small industry, public disclosure would allow competitors of the Companies and Goldman Sachs to replicate the Agreements and Documents without spending the time and money that the parties spent in developing these documents. Counterparties in a competitive market are more likely to provide proposals and enter into contracts when they know that sensitive proprietary information will not be disclosed to their competitors. Confidential protection of the Agreements and Documents is thus necessary to ensure that parties like Goldman Sachs continue to offer the Companies their best available services and proprietary information. Diminishing the Companies’ ability to negotiate with these parties would harm both the Companies and their customers through increased costs of service. The Agreements and Documents 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 Commission has previously given confidential protection to contracts with

third parties in prior proceedings.¹ Indeed, in this proceeding, the Commission has granted confidential protection to confidential technical vendor information, third party proposals, and pricing information.²

5. If the Commission disagrees with this request for confidential protection, it must hold an evidentiary hearing to (a) protect the Companies' due process rights and (b) supply the Commission with a complete record to enable it to reach a decision with regard to this matter.³

6. Pursuant to 807 KAR 5:001, Section 13(2)(a)(3)(b), confidential treatment is sought for the entirety of the Agreements and Documents described herein. Confidential protection of the entirety of the Agreements and Documents is necessary because public disclosure would allow competitors to replicate the Agreements and Documents without spending the time and resources spent by the parties. The Companies request that confidential protection be granted for five years due to the sensitive nature of the information at issue.

WHEREFORE, Louisville Gas and Electric Company and Kentucky Utilities Company respectfully request that the Commission grant confidential protection to the items described herein.

DATED: April 3, 2017

Respectfully submitted,



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¹ 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).

² *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).

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

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CERTIFICATE OF COMPLIANCE

This is to certify that Louisville Gas and Electric Company and Kentucky Utilities Company's April 3, 2017 electronic filing of this Petition 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 3, 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 Petition is being delivered to the Commission on April 3, 2017.

Marcia H. Braun

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and Kentucky Utilities Company*