

**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 October 24, 2018, LG&E and KU entered into a Coal Feedstock Purchase Agreement, Coal

Handling and Consulting Agreement, Environmental Indemnity Agreement, License and Services Agreement, Notice of Commercial Operations, Pre-Closing Inventory Purchase Agreement, Refined Coal Supply Agreement, and Security Agreement (“Agreements”) with Trimble Clean Fuels, LLC, which is managed by a wholly owned subsidiary of Tinum Group, LLC (Tinum was formerly known as Clean Coal Solutions, LLC). LG&E and KU also received a Guaranty from Tinum Group, LLC to support its obligations under the Agreements and a Termination Agreement with a wholly owned subsidiary of Tinum Group, LLC (collectively, the “Agreements and Documents”).

3. The Agreements and Documents 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 publicly 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, liability caps, 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 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, liability caps, 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 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.

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<sup>1</sup> See, e.g., *In the Matter of: Application of Kentucky Utilities Company for Certificates of Public Convenience and Necessity and Approval of its 2016 Compliance Plan for Recovery by Environmental Surcharge*, Case No. 2016-00026, Order (Ky. PSC Sept. 27, 2016); *In the Matter of: Application of Kentucky Utilities Company for an Adjustment of Its Electric Rates*, Case No. 2014-00371, Order Regarding Request for Confidential Treatment (Ky. PSC Dec. 2, 2015).

<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, Orders (Ky. PSC Sept. 24, 2018, Aug. 6, 2018, May 8, 2017, & 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).

7. The Companies request that confidential protection be granted for five years due to the sensitive nature of the information at issue. The Companies agree that upon the end of the five-year period, the Commission may file full versions in the public docket.

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

Dated: December 4, 2018

Respectfully submitted,



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**CERTIFICATE OF COMPLIANCE**

This is to certify that Louisville Gas and Electric Company and Kentucky Utilities Company's December 4, 2018 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 December 4, 2018; 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 will be delivered to the Commission within two business days.

*Marcia H. Braun*

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