

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF KENTUCKY UTILITIES)
COMPANY FOR AN ADJUSTMENT OF ITS)
ELECTRIC RATES AND FOR) CASE NO. 2016-00370
CERTIFICATES OF PUBLIC)
CONVENIENCE AND NECESSITY)

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 to comply with 807 KAR 5:001, Section 16(7)(c), 807 KAR 5:001, Section 16(7)(o) and 807 KAR 5:001, Section 16(8)(g).

Confidential Personal Information – Customer-Identifying Information (KRS 61.878(1)(a))

1. The Kentucky Open Records Act exempts from disclosure certain private and personal information.¹ KU is providing certain documents to satisfy the requirements of 807 KAR 5:001, Section 16(7)(c) at Tab 16 and 807 KAR 5:001, Section 16(7)(o) at Tab 45. Customer identifying information is included in those tabbed documents. The identification of specific customers is personal information that should not be in the public domain. The Commission recently granted confidential protection to similar information.² Because

¹ KRS 61.878(1)(a).

² *In the Matter of: Application of Kentucky Utilities Company for an Adjustment of its Electric Rates*, Case No. 2012-000221, Order at 1-2 (Ky. PSC July 25, 2013) (granting confidential protection to customer names, account numbers, and usage information); *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. 2012-0022, Order at 1-2 (Ky. PSC July 16, 2013) (granting confidential protection to “customer-identifying information such as customer names and account numbers”); *see also In the Matter of: Application of Kentucky-American Water Company for an Adjustment of Rates Supported by a Fully Forecasted Test Year*, Case No. 2012-00520, Order at 4 (Ky. PSC Aug. 1, 2014) (granting

information in these documents identifies specific customers, KU requests through this petition that the Commission protect the information from public disclosure.

Confidential Personal Information – Compensation 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, “information 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 application provides a schedule at Tab 60 showing “executive compensation by title” to satisfy the requirement in Section 16(8)(g).⁶ The Commission should therefore give confidential treatment to the information included in KU’s schedule complying with 807 KAR 5:001, Section 16(8)(g) because disclosing the contents thereof would invade the privacy rights of the individuals named. Specifically, KU seeks confidential protection for the amount of the 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 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

confidential protection to the response of Staff Item 77, which contained customer-identifying information like names, account numbers, balance history, and the names of customers qualifying for discounted service); *In the Matter of: DPi Teleconnect, LLC v. Bellsouth Telecommunications, Inc. d/b/a AT&T Kentucky*, Case No. 2005-00455, Letter from Stephanie Stumbo to Mary Keyer (Ky. PSC May 29, 2008).

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 Section 16(8)(g) requires applications seeking a general adjustment of rates supported by a forecasted test period to include: “Analyses of payroll costs including schedules for wages and salaries, employee benefits, payroll taxes, straight time and overtime hours, and executive compensation by title.”

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.

(“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. And none of the salaries or other compensation of the remaining 21 officers of KU are publicly disclosed. These KU employees, therefore, have a reasonable expectation that their compensation is personal and private information. Disclosure 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 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

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

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).

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

The Commission also has previously denied confidential protection to executive officer information and held that because executive officer “salaries are included as an expense in base rate calculations” and are “subject to public dissemination of regulatory filings,” the information

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 (Ky. PSC 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 (Ky. PSC 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 (Ky. PSC 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 (Ky. PSC 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.”).

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 (Ky. PSC Sept. 7, 1990).

should not be entitled to confidential protection.¹⁴ KU respectfully disagrees because neither of these reasons justify denying confidential protection to executive officer information in this case. First, as the record demonstrates, 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. Accordingly, KU customers may gauge the reasonableness of compensation through publicly disclosed information that is already available.

Next, the fact that salaries of certain officers are publicly disseminated in regulatory filings also does not justify the refusal to grant confidential protection. 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.¹⁵ 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 next four executive officers. Because KU requests confidential protection only for the executive benefits not otherwise publicly

¹⁴ *In the Matter of: Application of Kentucky Utilities Company for an Adjustment of its Electric Rates*, Case No. 2012-00222, Order Regarding Request for Confidential Treatment at 2 (Ky. PSC Sept. 11, 2013). See also *In the Matter of: Application of Kentucky-American Water Company for an Adjustment of Rates*, Case No. 2015-00418, Order at 2 (Ky. PSC Aug. 31, 2016) (finding "that KAWC's executive salaries are an expense in the rate base calculations" and holding that "such salary compensation is not entitled to confidential protection"); *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 at 1-2 (Ky. PSC Jan. 20, 2016) (denying confidential protection for executive salary information for the same reasons as Case No. 2012-00222 and noting that "[m]ovant has not offered any argument to depart from this precedent"); *In the Matter of: An Adjustment of Gas and Electric Rates of Louisville Gas and Electric Company*, Case No. 90-158, Order (Ky. PSC Sept. 7, 1990) ("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 KU's FERC Form 1 for the year ending December 31, 2015, available at <http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=14178712>, provided the salary amounts allocated to KU for the following officers: Victor A. Staffieri (Chairman of the Board, President, and Chief Executive Officer); Gerald A. Reynolds (General Counsel, Chief Compliance Officer, and Corporate Secretary); Kent W. Blake (Chief Financial Officer); Paul W. Thompson (Chief Operating Officer); Paula H. Pottinger (Senior Vice-President-Human Resources) and former officer S. Bradford Rives (Chief Administrative Officer).

disclosed, granting confidential protection to this limited information accords with KRS 61.878(1)(a) and Commission precedent regarding salaries disclosed in regulatory filings.

Regarding the amount of non-executive compensation, KU has never publicly disclosed specific compensation information for all other non-executive, lower-ranking officers. Granting confidential protection to this information also accords with internal KU policies, which advise employees that their compensation is a private matter and to avoid any disclosures. Thus, these employees have a reasonable expectation that KU will maintain the confidentiality of their compensation information; to do otherwise would constitute an unwarranted invasion of privacy in contravention of KRS 61.878(1)(a). KU is providing to the Commission in unredacted form the compensation information of non-executive officers and placing in the public record redacted versions in an average manner that protects the identities and particulate compensation information of individual employees. The public can use the average compensation information to evaluate the Commission's determination of the reasonableness of that compensation. As stated by the Attorney General in an ORD, quoting the Kentucky Court of Appeals, "[T]he policy of disclosure [under the Act] is purposed to subserve the public interest, not to satisfy the public's curiosity"¹⁶ Though there may be some citizens who are curious to know particular employees' compensation information, mere curiosity is not sufficient to overcome the employees' right to privacy in that information. Moreover, the Commission in KU's most recent base-rate case granted confidential protection to non-executive salary and compensation

¹⁶ *In re: Becky J. Hartell/Department of Personnel*, KY OAG 93-ORD-118 (Oct. 15, 1993) (quoting *Kentucky Board of Examiners of Psychologists v. Courier-Journal and Louisville Times Company*, 826 S.W.2d 324, 328 (Ky. 1992)).

information.¹⁷ The details of the compensation paid to these non-executive officers are personal and private information that should not be publicly disclosed.

3. 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.

4. 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.

5. If the Commission disagrees with this request for confidential protection, it must hold an evidentiary hearing (a) to protect KU's 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.¹⁸

6. 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.

7. 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.

¹⁷ *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 at 2 (Ky. PSC Jan. 20, 2016). The Commission has also granted confidential protection to non-executive salary and compensation information in other recent base-rate cases. See *In the Matter of: Application of Kentucky-American Water Company for an Adjustment of Rates*, Case No. 2015-00418, Order at 8 (Ky. PSC Aug. 31, 2016); *In the Matter of: Application of Louisville Gas and Electric Company for an Adjustment of its Electric and Gas Rates*, Case No. 2014-00372, Order Regarding Request for Confidential Treatment at 3 (Ky. PSC Jan. 20, 2016); *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, Order Regarding Request for Confidential Treatment at 2 (Ky. PSC Sept. 11, 2013). Case No. 2012-00221, Order Regarding Request for Confidential Treatment at 2 (Ky. PSC Sept. 11, 2013).

¹⁸ *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: November 23, 2016

Respectfully submitted,



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CERTIFICATE OF COMPLIANCE

This is to certify that Kentucky Utilities Company's November 23, 2016 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 November 23, 2016; that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding; 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 November 23, 2016; and that a complete list of the parties and their counsel who should receive electronic notice of this electronic filing from the Commission are shown below:

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