

**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. 2016-00371**  
**RATES AND FOR CERTIFICATES OF )**  
**PUBLIC CONVENIENCE AND NECESSITY )**

**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 response to Items 2-27(b) and (c), 2-28(a), and 2-55(b) of the Attorney General’s (“AG”) Supplemental Data Requests and Items 3-8(a), 3-24 and 3-25 of the Commission’s Third Request for Information. In support of this Petition, LG&E states as follows:

**Confidential Information Protected from Disclosure by Federal or State Law**  
**(KRS 61.878(1)(k) and (l))**

1. Tax related documents and information merit confidential protection. KRS 61.878(1)(k) exempts from disclosure “[a]ll public records or information the disclosure of which is prohibited by federal law or regulation.”<sup>1</sup> Under 26 U.S.C. § 6103(a), state officials are prohibited from publicly disclosing any federal income tax return or its contents. Therefore, federal income tax returns and their content fall within the KRS 61.878(1)(k) exemption from

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<sup>1</sup> KRS 61.878(1)(k).

public disclosure. The Commission has previously kept LG&E's and KU's tax returns confidential in base rate cases.<sup>2</sup>

2. AG Item 2-28(a) makes a confidential request to LG&E in reference to AG Item 1-134. The request itself is confidential because it contains information from the response to AG Item 1-134, for which LG&E requested confidential protection on January 25, 2017. The document provided in response to AG Item 2-28(a) also requires confidential protection because it is a scheduled supporting information filed in a federal tax return. Thus, LG&E requests confidential protection of the entire document provided in response to AG Item 2-28(a).

**Confidential Personal Information – Salary Information and Customer Information (KRS 61.878(1)(a))**

3. The Kentucky Open Records Act exempts from disclosure certain private and personal information.<sup>3</sup> AG Item 2-55(b) asks LG&E to provide for certain salaried positions how the amounts reflected in the Company's filing were derived. In response, LG&E is providing a document that lists the wage rate and benefit information by position for certain gas distribution 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."<sup>4</sup> Additionally, the Kentucky Supreme Court has characterized "one's income" as "intimate" information of a private nature.<sup>5</sup> The Commission should therefore give confidential treatment to the information in LG&E's response to AG Item 2-55(b) because disclosing the contents thereof would invade the privacy rights of certain individuals. Individuals are not named in the response to the requests, but detailed job titles and

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<sup>2</sup> See, e.g., *In the Matter of: Application of Kentucky Utilities Company for an Adjustment of Its Electric Rates*, Case No. 2012-00221, Order Regarding Request for Confidential Treatment (Ky. PSC Sep. 18, 2013); *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 Derouen (Ky. PSC Feb. 6, 2009).

<sup>3</sup> KRS 61.878(1)(a).

<sup>4</sup> *Zink v. Department of Workers' Claims, Labor Cabinet*, 902 S.W.2d 825, 828 (Ky. App. 1994).

<sup>5</sup> *Cape Pub'ns, Inc. v. Univ. of Louisville Found., Inc.*, 260 S.W.3d 818, 822 (Ky. 2008).

compensation information given in the responses would allow viewers to deduce the wage rate of individuals. Confidential protection of a portion of AG Item 2-55(b) is thus necessary because disclosure would constitute an unwarranted invasion of employee's personal privacy in contravention of KRS 61.878(1)(a).

4. AG Item 2-27 requests, in reference to AG Item 1-67, additional information about salaries of replacement employees. LG&E requested confidential protection of AG Item 1-67 on January 25, 2017. LG&E's response to AG Item 2-27(b) and (c) requires confidential protection for the same reasons; disclosure of salary information would constitute an unwarranted invasion of employees' personal privacy in contravention of KRS 61.878(1)(a). Thus, LG&E respectfully requests that the Commission grant confidential protection to the responses to AG Item 2-27(b) and (c). Additionally, sections (b) and (d) of AG Item 2-27 make confidential requests to LG&E. The requests themselves in sections (b) and (d) are confidential because they contain information from the response to AG Item 1-67, for which LG&E requested confidential protection on January 25, 2017. LG&E is filing the response to AG Item 2-27(b)-(d) confidentially with the confidential information in the requests and responses highlighted.

5. Commission Item 3-25 requests information related to LG&E's proposal to build a natural gas pipeline in Bullitt County. In responding to that request, LG&E is providing a document which contains customer-identifying information. In order to protect the privacy interests of customers, LG&E requests confidential protection of that customer-identifying information.

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

6. The Kentucky Open Records Act exempts from disclosure information "generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair

commercial advantage to competitors of the entity that disclosed the records.”<sup>6</sup> The Commission has recently relied on this section of the Kentucky Open Records Act to grant confidential protection to a variety of documents when disclosure would disadvantage the company.<sup>7</sup>

7. Commission Item 3-8(a) requests the response to Commission Item 2-8 in Excel format. LG&E requested confidential protection for Commission Item 2-8 on January 25, 2017 and requests confidential protection for Commission Item 3-8(a) for the same reasons. The response to Commission Item 3-8(a) contains equipment costs that are negotiated contract rates with vendors that the Company agreed would remain confidential. Publicly disclosing these costs would negatively impact the Company and its ratepayers because it may harm the relationship with LG&E and its vendors and LG&E’s bargaining ability; as a result, LG&E may have difficulty negotiating favorable costs for equipment in the future. Thus, the Commission should grant confidential protection to the entire document provided in response to Commission Item 3-8(a).

8. Commission Item 3-24 requests an explanation of how LG&E developed a pipeline route. In response, LG&E is providing a study, map, and document identifying the gas pipeline route. The documents first require confidential treatment because they contain information that, if disclosed, would create a competitive disadvantage for LG&E. The documents identify a proposed pipeline route, for which LG&E has not notified property owners, obtained easement rights to, or requested survey rights. If the location of the proposed pipeline route was disclosed, the land through which the pipeline crosses may increase in value or landholders may resist

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<sup>6</sup> KRS 61.878(1)(c)(1).

<sup>7</sup> See, e.g., *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 to KIUC’s Initial Request for Information (Ky. PSC Jan 14, 2016) (granting confidential treatment to agreements between the Company and third parties, projected outage schedules, design information, and others).

construction, forcing LG&E to spend more to construct the pipeline, to the detriment of the Company and its ratepayers.

9. AG Item 2-50(a) and (b) make confidential requests to LG&E in reference to AG Item 1-264. The requests themselves are confidential because they contain information from the response to AG Item 1-264, for which LG&E requested confidential protection on January 25, 2017. The responses to AG Item 2-50(a) and (b) do not require confidential protection, but will be filed under seal due to the confidential nature of the requests.

**The Confidential Information Subject to this Petition**

10. The information for which LG&E is seeking confidential treatment is not known outside of LG&E, and it is not disseminated within LG&E except to those employees with a legitimate business need to know the information.

11. 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.

12. 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 the Commission with a complete record to enable it to reach a decision with regard to this matter.<sup>8</sup>

13. Unless otherwise noticed, in compliance with 807 KAR 5:001, Sections 8(3) and 13(2)(e), LG&E is filing with the Commission one paper copy that identifies by highlighting or other means the information for which confidential protection is sought and one electronic copy

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<sup>8</sup> *Utility Regulatory Commission v. Kentucky Water Service Company, Inc.*, 642 S.W.2d 591, 592-94 (Ky. App. 1982).

with the same information obscured. LG&E is filing a CD containing the requested confidential Excel files for its response to Commission Item 3-8(a). Pursuant to 807 KAR 5:001, Section 13(2)(a)(3)(b), confidential treatment is sought for the entire documents produced in response to Commission Items 3-8(a) and 3-24 and AG Item 2-28(a).

14. LG&E requests that confidential protection be granted for five years due to the sensitive nature of the information at issue.

**WHEREFORE**, Louisville Gas and Electric Company respectfully requests that the Commission grant confidential protection for the information described herein.

Dated: February 20, 2017

Respectfully submitted,



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**CERTIFICATE OF COMPLIANCE**

This is to certify that Louisville Gas and Electric Company's February 20, 2017 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 February 20, 2017; that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding; and 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 February 20, 2017.

A handwritten signature in blue ink, appearing to read "Gerald R. Nigg", is written over a light blue rectangular background.

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*Counsel for Louisville Gas and Electric Company*