

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF)
KENTUCKY UTILITIES COMPANY FOR AN)
ADJUSTMENT OF ITS ELECTRIC RATES) **CASE NO. 2018-00294**

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 in response to Items 14, 33(b), 45(a) and 45(b), and 53(b) of the Attorney General’s (“AG”) Second Set of Data Requests; Item 11 of Kentucky School Boards Association’s (“KSBA”) Second Set of Data Requests; Items 7, 16(c), 24(a) and 24(b), and 30 of the Commission’s Third Set of Data Requests; and Item 4(b) of the Sierra Club, Alice Howell, and Carl Vogel’s (“Sierra Club”) Second Set of Data Requests.

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 KSBA Item 11 requests the account names and account numbers for each numerically referenced pilot account that was provided in response to a previous KSBA data request. In response to KSBA Item 11, KU is providing a document with contract account numbers highlighted and business partner names redacted pursuant to 807 KAR 5:001(4)(10). This regulation prohibits disclosure of customer account names and customer account numbers

¹ KRS 61.878(1)(a)

together, even if provided confidentially.² The identification of customer account numbers is personal information that should not be in the public domain. The Commission recently granted confidential protection to similar customer-identifying information.³ Because information in the response to KSBA Item 11 identifies specific customers and their account numbers, KU requests through this petition that the Commission approve KU's redaction of business partner names as required by 807 KAR 5:001(4)(10) and protect the highlighted portions of the document from public disclosure.

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

2. 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.”⁴

3. AG Item 14 asks KU to explain how the Companies calculate their target reserve margin. In response, KU is providing the Companies' 2018 IRP Reserve Margin Analysis. The information regarding power production costs that the Companies wish to protect from public disclosure—including projected costs of fuel—is highlighted in the attachment. This information

² 807 KAR 5:001(4)(10) pertains to privacy protection and is applicable to all filings. 807 KAR 5:001(4)(10)(a) reads: “If a person files a paper containing personal information, the person shall encrypt or redact the paper so that personal information cannot be read. Personal information shall include a business name; an individual's first name or first initial and last name in combination with one (1) or more of the following data elements: (3) the digits of an account number ...”

³ *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 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. Bel/south Telecommunications, Inc. d/b/a AT&T Kentucky*, Case No. 2005-00455, Letter from Stephanie Stumbo to Mary Keyer (Ky. PSC May 29, 2008).

⁴ KRS 61.878(1)(c)(1).

was developed internally by Companies' personnel, is not on file with any public agency, is not available from any commercial or other source outside the Companies, and is distributed within the Companies only to those employees who must have access for business reasons. If the Commission grants public access to this information, KU could be disadvantaged in negotiating fuel contracts in the future, and could also be disadvantaged in the wholesale energy market because fuel costs are important components of energy pricing. Public disclosure would give the Companies' contractors, vendors, and competitors access to the Companies' cost and operational parameters, and insight into the Companies' contracting practices. Public access to this information would impact the Companies' ability to negotiate with prospective contractors and vendors, and could harm the Companies' competitive position in the wholesale power market. All such commercial harms would ultimately harm KU's customers, who would have to pay higher rates if the disclosed information resulted in higher fuel prices or adversely affected the Companies' generation asset procurement process or off-system energy sales. In addition, certain supply-side information concerns interruptible contract information specific to identifiable customers of the Companies and should be protected as sensitive commercial information that could cause harm to the Companies and their customers if disclosed. Thus, KU requests confidential protection for the highlighted portions of the document provided in response to AG Item 14.

4. AG Items 45(a) and 45(b) ask KU to provide the current 50th percentile of national market for call center employees and the current 70% to 130% range based on that 50th percentile. The compensation information supplied in response is proprietary to a third party vendor named Willis Towers Watson because the vendor derives revenues from developing and selling such information to customers. Public disclosure could harm the relationship between KU

and the vendor and others that provide similar information to KU. If the compensation information is disclosed, vendors may be less willing to provide information to KU in the future to the detriment of KU and its ratepayers. In addition, 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.”⁵ Furthermore, the Kentucky Supreme Court has characterized “one’s income” as “intimate” information of a private nature.⁶ The Commission should therefore give confidential treatment to the highlighted information in KU’s response to AG Items 45(a) and 45(b) because disclosing the compensation of entry level call center jobs would invade the privacy rights of certain individuals. Individuals are not named in the response to AG Items 45(a) and 45(b), but job titles and the ability to research national general industry compensation data would allow viewers to deduce the wage rate of individuals. Thus, KU requests confidential protection for the highlighted portions of the document provided in response to AG Items 45(a) and 45(b).

5. AG Item 53(b) references a first round Attorney General data request and asks KU to explain if the Companies expect and have requested recovery for a 2018 matter. KU is requesting confidential protection for the document provided in response because it contains information relating to an ongoing proceeding. KU’s legal position and strategies could be harmed if the information were publically disclosed. KU is requesting confidential protection for the entirety of the document provided in response to AG Item 53(b).

6. Commission Item 7 requests support for the Charge Point Annual costs for single and double ports. The contract provided in response to Commission Item 7 merits confidential protection because it is confidential business information. If potential vendors who supply

⁵ *Zink v. Department of Workers’ Claims, Labor Cabinet*, 902 S.W.2d 825, 828 (Ky. App. 1994).

⁶ *Cape Pub’ns, Inc. v. Univ. of Louisville Found., Inc.*, 260 S.W.3d 818, 822 (Ky. 2008).

electric vehicle charging stations had access to these agreements, these vendors could use this information to unfairly negotiate electric vehicle charging agreements. Thus, disclosing the contracts could potentially harm the relationship that KU has with Charge Point and could place KU at a competitive disadvantage in negotiating future electric vehicle charging agreements with Charge Point or other vendors. The Commission recently granted confidential protection to agreements between the Company and third parties on similar grounds.⁷ KU requests confidential protection for the entire document provided in response to Commission Item 7.

7. Commission Item 16(c) refers to a second round Commission staff request and asks for any correspondence or emails between KU and the surplus parts firms. In response, KU is providing an attachment that documents email correspondence between the Companies and The Babcock and Wilcox Company. The email discussions concern an upcoming RFQ related to the sale of Brown Unit 1 and Unit 2 inventory. These emails reveal that KU is not interested in the inventory of the Brown Units. If this information were publically disclosed, KU would suffer a competitive disadvantage because the public's knowledge would very likely result in lower bid prices. Because of this, KU is requesting confidential protection for the entirety of the document provided in response to Commission Item 16(c).

8. Commission Item 24(a) asks KU to identify the separate matters forecasted between 2017 Regulatory and 2018 Regulatory and Commission Item 24(b) asks KU to identify the separate matters forecasted between 2018 Regulatory and 2019 Regulatory. In response, KU is providing a document that contains forecasted and budgeted amounts for 2018 and 2019 matters. Disclosing this information publicly would be disadvantageous to KU because it allows KU's competitors to discover the Companies' strategies for specific matters. Further, public disclosure

⁷ *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 to KIUC's Initial Request for Information (Ky. PSC Dec. 2, 2015).

of this information may limit KU's ability to secure favorable contracts and agreements because KU's vendors will have access to the amount KU expects to pay for certain matters. To prevent competitive disadvantage to KU and its customers, KU requests confidential protection for the entirety of the document provided in response to Commission Items 24(a) and 24(b).

9. Commission Item 30 asks KU to provide its policy for hedging against risk exposure for interest rate changes. The attachments provided in response include the Company's risk management programs for debt financing. These attachments include policies and procedures used by KU to manage the interest rate exposure of the Company. This is confidential business information and disclosure of this information could be used by competitors of the Company and vendors. Moreover, public disclosure of this information would reveal information about KU's business strategies, which could affect KU's negotiation abilities in the future. Thus, KU seeks confidential protection of the entirety of the documents provided in response to Commission Item 30.

10. Sierra Club Item 4(b) asks KU to provide a copy of the merchant plant analysis, along with corresponding handouts, that were provided to the Board. In response to this request, KU is providing portions of presentations given to the Ohio Valley Electric Corporation (OVEC) Board of Directors. These presentations reveal which model OVEC uses for its merchant analysis and forecasts. Because KU purchases power from OVEC pursuant to a long-existing cost-based Inter-Company Power Agreement, public disclosure of this confidential information would affect OVEC's ability to obtain the most reasonable prices for goods and services in the competitive marketplace, which would adversely impact the price of power the Company purchases from OVEC. Thus, KU requests confidential protection for the highlighted portions of the document provided in response to Sierra Club Item 4(b).

Critical Energy Infrastructure Information (KRS 61.878(1)(m))

11. KRS 61.878(1)(m)(1) exempts from disclosure public records that have a reasonable likelihood of threatening public safety by exposing a vulnerability, such as infrastructure records that disclose the “location, configuration, or security of critical systems,” or “detailed drawings, schematics, maps, or specifications of structural elements, floor plans, and operating, utility, or security systems.”

12. AG Item 33(b) requests copies of “any and all cost-benefit analyses not already of record pertaining to” 2018-2022 infrastructure projects. KU’s documents contain a number of Investment Committee (“IC”) Proposals, which contemplate physical security upgrades to specific substations. Other IC Proposals contain detailed schematics, line maps, and diagrams for various transmission infrastructure, including substation protection and control equipment and transmission lines, along with the load served by that equipment. Releasing a copy of these documents would thus pose a security concern. The Commission has recently granted confidential protection to similar Critical Energy Infrastructure Information.⁸ In addition to infrastructure concerns, some of the IC Proposals contain sensitive commercial information in the form of vendor or contractor names and bidding prices. These bids detail KU’s process for selecting a bidder. Confidential protection of the competitive bid information is necessary because disclosure would disrupt the competitive bid process and reveal KU’s internal analysis of bids to the detriment of the Company and its ratepayers. Lastly, portions of the document contain information regarding ongoing or threatened litigation, disclosure of which could harm the Companies’ interests. Because the Company’s responses relate to the security of Critical Energy Infrastructure Information and contain sensitive commercial information, the Company

⁸ *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 to AG’s Initial Request for Information (Ky. PSC Dec. 2, 2015).

requests that the Commission protect the highlighted portions of KU's response to AG Item 33(b) from public disclosure.

The Confidential Information Subject to this Petition

13. 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.

14. 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.

15. If the Commission disagrees with this request for confidential protection, however, 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.⁹

16. Unless otherwise noted, 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 or other means the information for which confidential protection is sought and one electronic copy with the same information obscured. Pursuant to 807 KAR 5:001, Section 13(2)(a)(3)(b), confidential treatment is sought for the entire documents produced in response to AG Item 53(b) and Commission Items 7, 16(c), 24, and 30. For these documents, as required by 807 KAR 5:001, Section 13(2)(a)(3)(b), written notification that the entire document is confidential is filed in lieu of highlighting.

⁹ *Utility Regulatory Commission v. Kentucky Water Service Company, Inc.*, 642 S.W.2d 591, 592-94 (Ky. App. 1982).

17. Due to the serious security concerns related to the disclosure of Critical Energy Infrastructure Information, the Company requests that the responses to the highlighted portions of AG Item 33(b) remain confidential indefinitely. For all other requests for confidential protection, the Company requests that confidential protection be granted for five years due to the sensitive nature of the information at issue.

WHEREFORE, Kentucky Utilities Company respectfully requests that the Commission grant confidential protection for the information described herein.

Dated: January 2, 2019

Respectfully submitted,




Kendrick R. Riggs
Stoll Keenon Ogden PLLC
2000 PNC Plaza
500 West Jefferson Street
Louisville, Kentucky 40202-2828
Telephone: (502) 333-6000
Fax: (502) 627-8722
kendrick.riggs@skofirm.com

Allyson K. Sturgeon
Senior Corporate Attorney
LG&E and KU Services Company
220 West Main Street
Louisville, Kentucky 40202
Telephone: (502) 627-2088
Fax: (502) 627-3367
allyson.sturgeon@lge-ku.com

Counsel for Kentucky Utilities Company

CERTIFICATE OF COMPLIANCE

This is to certify that Kentucky Utilities Company's January 2, 2019 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 January 2, 2019; 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 January 2, 2019.

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

Counsel for Kentucky Utilities Company