

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In re the Matter of:)
)
THE 2018 INTEGRATED RESOURCE) **CASE NO. 2018-00348**
PLAN OF LOUISVILLE GAS AND)
ELECTRIC COMPANY AND)
KENTUCKY UTILITIES COMPANY)

**JOINT PETITION OF
LOUISVILLE GAS AND ELECTRIC COMPANY
AND KENTUCKY UTILITIES COMPANY
FOR CONFIDENTIAL PROTECTION**

Louisville Gas and Electric Company (“LG&E”) and Kentucky Utilities Company (“KU”) (collectively, the “Companies”) petition the Public Service Commission of Kentucky (“Commission”) pursuant to 807 KAR 5:001, Section 13, to grant confidential protection to the items described herein, which the Companies seek to provide in response to Item Nos. 23 (a-d), 27(d), 28, 29(a), 31, and 32 of the Sierra Club’s Initial Request for Information, Item No. 23 of the Commission’s Initial Request for Information and Item No. 21(i) of the Attorney General’s Initial Request for Information.¹ In support of this Joint Petition, the Companies state as follows:

1. Under the Kentucky Open Records Act, the Commission is entitled to withhold from public disclosure commercially sensitive information to the extent that open disclosure would permit an unfair commercial advantage to competitors of the entity disclosing the information to the Commission. See KRS 61.878(1)(c). Public disclosure of the information identified herein would, in fact, prompt such a result for the reasons set forth below.

2. In the attachments provided in response to Sierra Club Request Nos. 23 (a-d) and 28, LG&E and KU are providing Ohio Valley Electric Corporation (“OVEC”) cost forecasts.

¹ The Companies will also be providing confidential materials to the Attorney General in response to Item Nos. 45 and 51(d) of the Attorney General’s Initial Request for Information. These confidential materials were included in the original IRP filing and are subject to the Companies’ joint petition for confidential protection filed October 19, 2018.

These forecasts relate to future energy, demand, and transmission charges, as well as operations and maintenance costs and capital costs. Similarly, in response to Sierra Club Request Nos. 31 and 32, LG&E and KU are providing OVEC Board of Directors meeting minutes and presentations, which include commercially sensitive information relating to operating costs, cost estimates of environmental capital projects, and decision-making criteria and considerations concerning capital projects and energy market matters. The filed copies of these documents contain redactions to protect confidential projected cost information from public disclosure.

3. In the attachment provided in response to Sierra Club Request No. 27(d), the Companies are providing a table showing recent unit-level OVEC equivalent forced outage rates (“EFOR”). This data is potentially commercially sensitive and is available to the Companies under agreement to maintain its confidentiality. The filed copy of the response contains redactions to protect the confidential EFOR data from public disclosure.

4. LG&E and KU purchase 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 such capital goods and other services in the competitive marketplace, which would adversely impact the price of power the Companies purchase from OVEC. OVEC does not want confidential information or concessions they have made publicly disclosed because such information could be used against them in their future negotiations with other customers or by their competitors. OVEC and other similarly situated entities are more likely to provide proposals and enter contracts when they know that sensitive terms will not be known to their competitors or their other customers. OVEC’s vendors would not favor public disclosure of this information and may be less willing to enter into contracts with OVEC or offer OVEC concessions if the information is disclosed.

5. In response to Attorney General Request No. 21(i), the Companies are providing O&M cost estimates related to two pending enforcement actions by regulatory agencies. These cost estimates are inherently intertwined with the possible settlement of these pending actions. The cost estimates are not publicly-available, and public disclosure of these costs would prejudice the Companies in their negotiations with regulatory agencies seeking to resolve pending enforcement actions. Such cost estimates are akin to settlement offers in a pending commercial dispute. Utilities and other regulated entities would be disinclined to attempt to resolve enforcement actions if their cost estimates attributable to such actions were made public. The Commission has in the past relied on KRS 61.878(1)(c)(1) to grant confidential protection to executed settlement agreements.² The need to protect settlement positions in pending enforcement actions against public disclosure is even stronger.

6. Such information is generally recognized as confidential and proprietary information in the energy industry. The Commission has recently granted confidential protection to pricing information.³ The confidential information in the attachments provided in response to Sierra Club Request Nos. 23 (a-d), 27(d), 28, 31, and 32 and Attorney General Request No. 21(i) should therefore be afforded confidential protection to protect the Companies and their customers.

² *In the Matter of: An Examination of the Application of the Fuel Adjustment Clause of Louisville Gas and Electric Company from November 1, 2010 through October 31, 2012*, Case No. 2012-00553, Order (Ky. PSC Aug. 26, 2013).

³ *In the Matter of Electronic Application of Kentucky Utilities Company for an Order Authorizing the Issuance of Securities and Assumption of Obligations and an Order Amending and Extending Existing Authority with Respect to Revolving Line of Credit*, Case No. 2018-00153, Order (Ky. PSC Aug. 22, 2018); *see also 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) (granting confidential protection to information that contained technical vendor information, third party proposals, and pricing information); *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).

7. In the attachments provided in response to Sierra Club Request No. 29(a) and Commission Request No. 23, the Companies are providing documents that include OVEC project outage costs and OVEC's and the Companies' unit outage schedules. Disclosure of this information would allow wholesale market participants to know when OVEC's plants and the Companies' plants will be down for maintenance and thus know the availability of all such units to meet the Companies' loads, which affects the costs and availability of wholesale market power purchased by the Companies. The competitive risk of disclosing this information is that potential energy suppliers to the Companies will be able to manipulate the price of power bids to the Companies to maximize their revenues by knowing OVEC's and the Companies' outage schedules, thereby causing higher prices for the Companies' customers and giving a commercial advantage to competitors. The Commission has previously found that outage schedules merit confidential protection.⁴ Disclosing projected outage costs could also adversely affect the pricing vendors offer OVEC and the Companies' for outage-related services, in turn harming the Companies' customers. The public disclosure of this information will create precisely the kind of competitive harm KRS 61.878(1)(c)(1) intends to prevent. Thus, the Commission should grant confidential protection to this information contained in Sierra Club Request No. 29(a) and the Commission's Request No. 23.

8. The information for which the Companies are seeking confidential treatment is not known outside of the Companies and its counsel, OVEC and its counsel (for OVEC-related information), and other limited parties (pursuant to confidentiality arrangements). It is not disseminated within LG&E and KU except to those employees with a legitimate business need to

⁴ *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, (Ky. PSC Jan. 14, 2016); *In the Matter of An Examination of the Application of the Fuel Adjustment Clause of Kentucky Power Company from November 1, 2010 through October 31, 2012* (Case No. 2012-00550) (Ky. PSC Aug. 19, 2013).

know and act upon the information, and is generally recognized as confidential and proprietary information in the energy industry.

9. Also in response to the Commission's Request No. 23, the Companies are providing information about planned transmission expansion projects and upgrades filed under seal as part of Vol. III of the IRP filing.⁵ The Kentucky Open Records Act protects from disclosure certain information that has a reasonable likelihood of threatening public safety by exposing a vulnerability "in preventing, protecting against, mitigating, or responding to a terrorist act." KRS 61.878(1)(m). This includes infrastructure records exposing such a vulnerability in the location, configuration, or security of critical systems, including electrical systems. KRS 61.878(1)(m)(1)(f). The transmission information provided in response to Commission Request No. 23 contains infrastructure records that could expose a vulnerability through the disclosure of the location, configuration, or security of public utility critical systems. If such information is made available in the public record, individuals seeking to induce public harm will have critical information concerning the present vulnerabilities of the Companies' transmission system. Knowledge of such vulnerabilities may allow a person to cause public harm through the disruption of the electric transmission system. Accordingly, the Commission should grant confidential protection to transmission project information provided in response to the Commission's Request No. 23.

10. The Commission has given confidential treatment to similar information in previous IRP cases. For example, see the Commission's letter to the Companies dated October 10, 2011, concerning the Companies' 2011 IRP case (Case No. 2011-00140); the Commission's letter to the Companies dated May 1, 2008, concerning the Companies' 2008 IRP case (Case No. 2008-00148); the Commission's letter to the Companies dated April 28, 2005, concerning the

⁵ See IRP Vol. III, "Transmission Construction Projects."

Companies' 2005 IRP case (Case No. 2005-00162); the Commission's letter to the Companies dated October 24, 2002, concerning the Companies' 2002 IRP case (Case No. 2002-00367); and the Commission's letter to the Companies dated March 6, 2000, concerning the Companies' 1999 IRP case (Case No. 99-430).⁶

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

12. In compliance with 807 KAR 5:001, Sections 8(3) and 13(2)(e), LG&E and KU will file 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.

13. LG&E and KU request 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.

⁶ See also *In the Matter of: 2014 Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company*, Case No. 2014-00131, Joint Petition of Louisville Gas and Electric Company and Kentucky Utilities Company for Confidential Protection (Ky. PSC April 21, 2014) (requesting confidential protection for similar information; petition not ruled upon).

WHEREFORE, Louisville Gas and Electric Company and Kentucky Utilities Company respectfully request that the Commission grant confidential protection for all of the information described herein.

Dated: October 25, 2019.

Respectfully submitted,



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*Counsel for Louisville Gas and Electric Company
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CERTIFICATE OF COMPLIANCE

This is to certify that Louisville Gas and Electric Company and Kentucky Utilities Company's October 25, 2019 electronic filing of the Joint 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 October 25, 2019; that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding; and that an original 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 within two business days from the date of the electronic filing.

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

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