

**COMMONWEALTH OF KENTUCKY**  
**BEFORE THE PUBLIC SERVICE COMMISSION**

**In the Matter of:**

<b>ELECTRONIC APPLICATION OF</b>	)	
<b>KENTUCKY UTILITIES COMPANY FOR AN</b>	)	
<b>ADJUSTMENT OF ITS ELECTRIC RATES, A</b>	)	<b>CASE NO. 2020-00349</b>
<b>CERTIFICATE OF PUBLIC CONVENIENCE</b>	)	
<b>AND NECESSITY TO DEPLOY ADVANCED</b>	)	
<b>METERING INFRASTRUCTURE,</b>	)	
<b>APPROVAL OF CERTAIN REGULATORY</b>	)	
<b>AND ACCOUNTING TREATMENTS, AND</b>	)	
<b>ESTABLISHMENT OF A ONE-YEAR</b>	)	
<b>SURCREDIT</b>	)	

**In the Matter of:**

<b>ELECTRONIC APPLICATION OF</b>	)	
<b>LOUISVILLE GAS AND ELECTRIC</b>	)	
<b>COMPANY FOR AN ADJUSTMENT OF ITS</b>	)	<b>CASE NO. 2020-00350</b>
<b>ELECTRIC AND GAS RATES, A</b>	)	
<b>CERTIFICATE OF PUBLIC CONVENIENCE</b>	)	
<b>AND NECESSITY TO DEPLOY ADVANCED</b>	)	
<b>METERING INFRASTRUCTURE,</b>	)	
<b>APPROVAL OF CERTAIN REGULATORY</b>	)	
<b>AND ACCOUNTING TREATMENTS, AND</b>	)	
<b>ESTABLISHMENT OF A ONE-YEAR</b>	)	
<b>SURCREDIT</b>	)	

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

Kentucky Utilities Company (“KU”) and Louisville Gas and Electric Company (“LG&E”) (collectively, the “Companies”) hereby petition the Kentucky Public Service Commission (“Commission”) pursuant to 807 KAR 5:001, Section 13 and KRS 61.878(1) to grant confidential protection of the documents produced to the Commission on April 27, 2021 for in-camera review.

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

1. The Kentucky Open Records Act exempts from disclosure certain records which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records.<sup>1</sup>

2. Commission Staff Item No. 6-6 requests KU and LG&E to provide a copy of all of the responses, in their entirety, to LG&E and KU's request for proposals ("RFP") that were submitted on or before March 31, 2021. In their responses filed April 20, 2021, KU and LG&E declined to provide the requested documents, stating that the data in the RFP responses was then presently unverified and not considered comparable, reliably useable, and finalized.

3. During the hearing on April 27, 2021, the Commission requested KU and LG&E to produce the documents requested in Commission Staff Item No. 6-6. KU and LG&E through their counsel formally objected to the request, stating public disclosure of this information would irreparably harm the Companies' ability to negotiate the lowest cost most reasonable options for serving their customers in the future and further asserting that even confidential disclosure of this information to the parties in the pending cases would provide in some cases proprietary information of the respondents to direct competitors of the respondents. The Companies expressed the belief that the release of this information to certain parties could possibly cause commercial harm to certain respondents and certainly would undermine the RFP process, perhaps even necessitating the issuance of a new RFP.

4. In response to KU and LG&E's objection at the hearing, the Commission verbally ordered the Companies to produce the documents for an in-camera inspection for the purpose of assessing KU and LG&E's objection to the production of the documents in the records in these

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

cases. That same day, KU and LG&E by counsel electronically provided access to the documents to only the commissioners and staff counsel for the Commission's in-camera review. The documents were downloaded by the Commission at a later date.

5. The responses to the Companies' January 7, 2021 RFP is highly confidential information, the public disclosure of which would harm the Companies' RFP process. The RFP process remains an active process and is not yet complete at this time. As noted in the production cover sheet with the documents, it is highly unlikely that the parties submitting the responses to the RFP have submitted their last, best, and final offer when responding to requests for proposals. The fundamental information in these responses is likely to change in material amounts and may change completely following negotiations with the third parties by LG&E and KU in price and other terms and, as such, may increase or decrease in the course of further negotiations of various terms. The information in the present state should not be used for any determinative analysis or the formation of opinions of market values.

6. Public disclosure of this information or confidential production of the information for use in these records will irreparably harm the Companies' ability to negotiate the lowest cost most reasonable options for serving their customers in the future.

7. Public or confidential disclosure of this information to the parties in the pending Case Nos. 2020-00349 and 2020-00350 will provide proprietary information of the respondents to direct competitors of the respondents. The Companies believe that the release of this information to certain parties could possibly cause commercial harm to certain respondents and certainly will undermine the RFP process, perhaps even necessitating the issuance of a new RFP.

8. Further, public disclosure of the responses will provide competitors a commercial advantage in the wholesale market and provide a commercial advantage to the qualifying cogeneration and small production facilities, and other competitors when negotiating contracts.

9. This information 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 the responses, KU and LG&E could be disadvantaged in negotiating future contracts. Thus, KU and LG&E request confidential protection for all the documents produced for the in-camera inspection.

10. In the event the Commission does not sustain the Companies' objection to the production of this information, and the Commission determines to allow the information to be produced into the records in these cases, albeit on a confidential basis, the Companies object to providing the information under a confidentiality agreement to certain intervenors who will gain a proprietary advantage from the information.<sup>2</sup>

**The Confidential Information Subject to this Petition**

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

12. If the Commission disagrees with this request for confidential protection, however, it must hold an evidentiary hearing (a) to protect the Companies' due process rights and (b) to

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<sup>2</sup> The Companies object to providing the information under a confidentiality agreement to Kentucky Solar Energy Society and Kentucky Solar Industries Association, Inc.

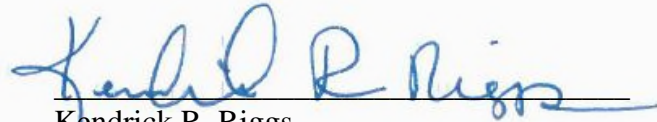
supply the Commission with a complete record to enable it to reach a decision with regard to this matter.<sup>3</sup>

13. The Companies request that confidential protection be granted for five years due to the sensitive nature of the information at issue.

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

Dated: August 25, 2021

Respectfully submitted,



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<sup>3</sup> *Utility Regulatory Commission v. Kentucky Water Service Company, Inc.*, 642 S.W.2d 591, 592-94 (Ky. App. 1982).

**CERTIFICATE OF COMPLIANCE**

In accordance with the Commission's Order of July 22, 2021 in Case No. 2020-00085 (Electronic Emergency Docket Related to the Novel Coronavirus COVID-19), this is to certify that the electronic filing has been transmitted to the Commission on August 25, 2021; and that there are currently no parties in this proceeding that the Commission has excused from participation by electronic means.



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Louisville Gas and Electric Company