

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, A CERTIFICATE OF PUBLIC)	
CONVENIENCE AND NECESSITY TO)	
DEPLOY ADVANCED METERING)	CASE NO. 2020-00349
INFRASTRUCTURE, APPROVAL OF)	
CERTAIN REGULATORY AND)	
ACCOUNTING TREATMENTS, AND)	
ESTABLISHMENT OF A ONE-YEAR)	
SURCREDIT)	

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) and 807 KAR 5:001, Section 16(8)(g), and as exhibits to certain testimonies filed with the Application.

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. Customer identifying information is included in these documents. The identification of specific customers is personal information that should not be placed in the public domain. The Commission previously granted confidential protection to

¹ KRS 61.878(1)(a).

similar information,² including similar information contained in the Company’s last application for rate adjustment.³ Because 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.⁴ 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 The Kentucky Supreme Court has characterized “one’s income” as “intimate” information of a private nature.⁶ At Tab 60, KU’s application provides a schedule showing “executive compensation by title” and a compensation study conducted by Willis Towers Watson showing the average salary budget for 2020 to satisfy the requirement in Section 16(8)(g).⁷ Disclosure of this information would invade the privacy rights of the individuals named and provide insight into the Company’s base salary budget calculations. Specifically, KU seeks

² *Application of Duke Energy Kentucky, Inc. for: (1) An Adjustment of the Electric Rates; (2) Approval of an Environmental Compliance Plan and Surcharge Mechanism; (3) Approval of New Tariffs; (4) Approval of Accounting Practices to Establish Regulatory Assets and Liabilities; and (5) All Other Required Approvals and Relief*, Case No. 2017-00321, Order (Ky. PSC May 3, 2018) (granting confidential protection to specific customer account information, including account numbers and billing data); *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); *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. 2012-0222, 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 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); *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 *Electronic Application of Kentucky Utilities Company for an Adjustment of its Electric Rates*, Case No. 2018-00294, Order (Ky. PSC Oct. 8, 2019).

⁴ KRS 61.878(1)(a).

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).

⁷ 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.”

confidential protection for the amount of the salary and other compensation of executive employees that is not otherwise publicly disclosed and the 2020 average salary budget data. Since 2016, KU has not publicly reported in the annual Federal Energy Regulatory Commission (“FERC”) Form 1 Report the portion of the salary of the top five executives that is allocated to KU. Moreover, KU has not publicly disclosed any 2020 salary information of the current KU officers in filings with the Securities Exchange Commission (“SEC”). As such, this personal and private information should not be in the public realm. 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). If KU publicly reports in the annual FERC Form 1 Report a portion of the salary of the top five executives that is allocated to KU, or publicly reports the chief executive officer’s compensation in filings with the SEC, KU will supplement its filing and disclose the information to the extent publicly disclosed in the FERC and SEC filings.

3. Disclosure of the compensation information of KU’s employees – private citizens who are not government officers or employees, would not further the Act’s purpose, which is to make government and its actions open to public scrutiny. Discussing 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

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

Relying upon this precedent, the Kentucky Office of the Attorney General (“AG”) has opined that “[i]f 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

4. The Commission has recognized a right to utility employee privacy. In an order approving a petition for confidential treatment in Case No. 89-374, the Commission found that salary information “should be available for customers to 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

5. The compensation information for which KU seeks confidential protection is comparable to that KU has previously provided to the Commission. The Commission granted

⁹ *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).

¹⁰ *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 *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); *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 *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.”). See generally *Electronic Application of Duke Kentucky, Inc. for 1) An Adjustment of the Electric Rates; 2) Approval of New Tariffs; 3) Approval of Accounting Practices to Establish Regulatory Assets and Liabilities; and 4) All Other Required Approvals and Relief*, Case No. 2019-00271, Order (Ky. PSC Apr. 28, 2020) (Confidential protection afforded to internal presentations containing compensation and benefit information made to Duke Kentucky’s Compensation Committee pursuant to KRS 61.878(1)(c)(1)).

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 *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

6. 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 should not be entitled to confidential protection.¹⁴ Such reasoning, however, is not applicable in the current request. 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. Second, none of the current salary or benefit information for

¹³ See, e.g., *Application of Kentucky Utilities Company for an Adjustment of Base Rates*, Case No. 2008-00251, Letter from Executive Director Stumbo (Sept. 2, 2008); *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 *An Adjustment of Gas and Electric Rates of Louisville Gas and Electric Company*, Case No. 90-158, Order (Ky. PSC Sept. 7, 1990).

¹⁴ *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 *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”); *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”); *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.”). See also Case No. 2018-00294, Order (Ky. PSC Oct. 8, 2019); Case No. 2018-00295, Order (Ky. PSC Oct. 8, 2019).

the existing officers has been publicly disclosed at any time in the past.¹⁵ KU's request is also supported by a recent Commission precedent regarding salaries disclosed in regulatory filings.¹⁶ Because KU requests confidential protection only for the executive salary and benefits not otherwise publicly disclosed, granting confidential protection to this limited information accords with KRS 61.878(1)(a).

7. 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 guidance, which advises 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 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 AG in an Open Records Decision, "[T]he policy of disclosure [under the Act] is purposed to subserve the public interest, not to satisfy the public's curiosity"¹⁷ Though there may be some citizens who are curious to know particular employees' compensation information, mere curiosity is not

¹⁵ If KU publicly reports executive salary or benefits in FERC or SEC filings, KU will supplement its petition and disclose the information to the same extent publicly disclosed in the FERC and SEC filings through a filing in this case.

¹⁶ *Electronic Application of Kentucky Power Company for (1) A General Adjustment of Its Rates for Electric Service; (2) An Order Approving Its 2017 Environmental Compliance Plan; (3) An Order Approving Its Tariffs and Riders; (4) An Order Approving Accounting Practices to Establish Regulatory Assets and Liabilities; and (5) An Order Granting All Other Required Approvals and Relief*, Case No. 2017-00179, Order (Ky. PSC Aug. 23, 2017)(approving Kentucky Power Company's request to treat confidentially executive officer compensation information until the information is publicly disclosed in SEC filings).

¹⁷ *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)).

sufficient to overcome the employees' right to privacy in that information. Moreover, the Commission in KU's 2014 base rate case granted confidential protection to non-executive salary and compensation information.¹⁸ The details of the compensation paid to these non-executive officers are personal and private information that should not be publicly disclosed.

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

8. 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."¹⁹

9. Exhibit LEB-2 to Mr. Lonnie E. Bellar's Direct Testimony includes future sales prices and future fuel prices as part of the Company's Analysis of Generating Unit Retirement Years. Information regarding projected sales prices and fuel prices is confidential information, the public disclosure of which would provide the Company's competitors a commercial advantage in the wholesale market. Further, public disclosure of the information would provide a commercial advantage to the Company's retail and wholesale customers when negotiating power requirement contracts. This information was developed internally by Company's personnel, is not on file with any public agency, is not available from any commercial or other source outside KU, and is distributed within the Company only to those employees who must have access for business reasons. If the Commission grants public access to this information, KU could be disadvantaged

¹⁸ *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 *Application of Kentucky-American Water Company for an Adjustment of Rates*, Case No. 2015-00418, Order at 8 (Ky. PSC Aug. 31, 2016); *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); *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); *Application of Kentucky Utilities Company for an Adjustment of Its Electric Rates*, Case No. 2012-00221, Order Regarding Request for Confidential Treatment at 2 (Ky. PSC Sep. 11, 2013).

¹⁹ KRS 61.878(1)(c)(1).

in negotiating future fuel contracts and could also be disadvantaged in the wholesale energy market because fuel costs are important components of energy pricing.

10. Exhibit LEB-3 to Mr. Lonnie E. Bellar's Direct Testimony contains proprietary meter data that the Company obtained through a request for information ("RFI") issued in March 2020 to meter vendors regarding the future availability and pricing for various meter types. KU is requesting confidential protection for the highlighted portions of Exhibit LEB-3, which contain the names of the RFI respondents, the meter information provided to the Company by the respondents, including the Metering RFI Summary contained in Appendix B and the Meter Life Study conducted by one of the respondents contained in Appendix F, and the Company's analysis of this information. Public disclosure of the highlighted portions of Exhibit LEB-3 will adversely affect KU in several respects. It will violate the Company's contractual obligation to refrain from disclosing to the public the proprietary information received from certain meter vendors. Public disclosure is likely to reduce the willingness of other meter vendors and similar entities to contract or otherwise transact business with the Company in the future. Public disclosure of meter pricing information and assumptions used in the meter life studies will also place the Company at a considerable disadvantage when negotiating future contracts. Public disclosure of information contained in the responses to the RFI will prejudice bidding meter vendors by allowing their competitors access to sensitive operational information concerning their products.

11. Exhibit JKW-1 to Mr. John K. Wolfe's Direct Testimony contains confidential results from studies and surveys that benchmarked the Company's reliability performance against the electric industry. This information details how KU ranks relative to its industry peers. The survey information is proprietary to the vendors supplying this information. The vendors derive revenues from developing and selling such survey information to customers. Similarly, the

business plans for the Transmission and Distribution lines of businesses submitted as part of Tab 16 of the Filing Requirements contain confidential SAIDI and SAIFI industrial survey data. Public disclosure of the survey information would render it commercially worthless and KU has agreed to not disclose the survey information publicly.

The Confidential Information Subject to This Petition

12. The information for which KU is seeking confidential treatment is not known outside of KU. It is not disseminated within KU except to those employees with a legitimate business need to know the information.

13. 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.

14. 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.²⁰

15. KU is filing with the Commission one electronic copy that identifies with redactions the information for which confidential protection is sought. Pursuant to the Commission's Order March 24, 2020 Order in Case No. 2020-00085, KU will upload the unredacted copies noting the confidential information with highlighting to its encrypted file-share site for the Commission's retrieval. Access to the encrypted file-share site will be provided to intervenors pursuant to a confidentiality agreement.

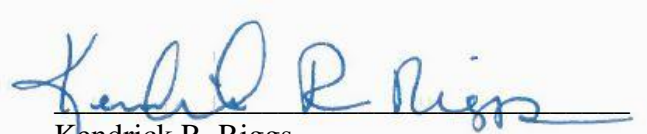
²⁰ *Utility Regulatory Commission v. Kentucky Water Service Company, Inc.*, 642 S.W.2d 591, 592-94 (Ky. App. 1982).

16. 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.

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

Dated: November 25, 2020

Respectfully submitted,




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CERTIFICATE OF COMPLIANCE

In accordance with 807 KAR 5:001 Section 8(7), this is to certify that Kentucky Utilities Company's November 25, 2020 electronic filing is a true and accurate copy of the documents being filed in paper medium; that the electronic filing has been transmitted to the Commission on November 25, 2020; that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding; and that a true and correct copy in paper medium will be delivered to the Commission within 30 days of the lifting of the State of Emergency.



Counsel for Kentucky Utilities Company