

**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 ) CASE NO. 2020-00349**  
**AND NECESSITY TO DEPLOY ADVANCED )**  
**METERING 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 in response to the Commission Staff’s First Request for Information. The specific Requests for Information for which KU seeks confidential protection are Request Nos. 6, 18, 39, 40, and 41. In support of this Petition, KU states as follows:

1. On October 23, 2020, KU served notice of its intent to file a rate application with the Commission for a general adjustment of its electric base rates, including changes to its electric tariffs, a Certificate of Public Convenience and Necessity to deploy advanced metering infrastructure, approval of certain regulatory and accounting treatments, and establishment of a one-year surcredit. On November 24, 2020, the Commission Staff issued its First Request for Information to KU. On November 25, 2020, KU filed its rate application with the Commission.

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

2. Commission Staff Request No. 18 asks KU to provide “federal and state income tax returns for the most recent tax year, including supporting schedules.” 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 public disclosure. The Kentucky Open Records Act also exempts from disclosure “[p]ublic records or information the disclosure of which is prohibited or restricted or otherwise made confidential by enactment of the General Assembly.”<sup>2</sup> KRS 131.190(1) requires all income tax information filed with the Kentucky Department of Revenue be treated in a confidential manner. Thus, state income tax returns are also confidential in nature and protected from disclosure by the Kentucky Open Records Act. The Commission has previously kept KU’s and Louisville Gas and Electric Company’s (“LG&E”) federal and state income tax returns and supporting schedules and documents confidential in base rate cases.<sup>3</sup>

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

<sup>2</sup> KRS 61.878(1)(l).

<sup>3</sup> *Electronic Application of Kentucky Utilities Company for an Adjustment of Its Electric Rates*, Case No. 2018-00294, Order (Ky. PSC Oct. 8, 2019); *Electronic Application of Louisville Gas and Electric Company for an Adjustment of Its Electric and Gas Rates*, Case No. 2018-00295, Order (Ky. PSC Oct. 8, 2019); *Electronic Application of Kentucky Utilities Company for an Adjustment of Its Electric Rates and for Certificates of Public Convenience and Necessity*, Case No. 2016-00370, Order (Ky. PSC Apr. 17, 2019); *Electronic Application of Louisville Gas and Electric Company for an Adjustment of Its Electric and Gas Rates and for Certificates of Public Convenience and Necessity*, Case No. 2016-00371, Order (Ky. PSC Jan. 25, 2019); *Application of Kentucky Utilities Company for an Adjustment of Its Electric Rates*, Case No. 2014-00371, Order (Ky. PSC May 2, 2019); *Application of Louisville Gas and Electric Company for an Adjustment of Its Electric and Gas Rates*, Case No. 2014-00372, Order (Ky. PSC Jan. 24, 2019); *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); *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). The Commission has also recently granted confidential protection for income tax return information filed by other utilities. See, e.g., *In the Matter of: Investigation of the Impact of the Tax Cuts and Jobs Act on the Rates of Columbia Gas of Kentucky, Inc.*, Case No. 2018-00041, Order (Ky. PSC June 6, 2018); *Electronic Application of Duke Energy Kentucky, Inc. for 1) An Adjustment of the Electric Rates; 2) Approval of an*

Because KU's response to Commission Staff Request No. 18 contains KU's federal and state tax returns, and such information is of a confidential nature, the Commission should grant confidential protection to this information.

**Confidential Personal Information – Compensation Information (KRS 61.878(1)(a))**

3. Commission Staff Request No. 40 asks KU to provide the percentage annual increase in executive compensation and the salaries for the executive officers replaced if another employee was elected to executive officer status. Commission Staff Request No. 41 requests information about individual employee salaries and benefits. The Kentucky Open Records Act exempts from disclosure certain private and personal information.<sup>4</sup> 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>5</sup> And the Kentucky Supreme Court has characterized “one’s income” as “intimate” information of a private nature.<sup>6</sup> The Commission should therefore give confidential treatment to the information included in KU’s response to Commission Staff Request Nos. 40 and 41 because disclosing the contents thereof would invade the privacy rights of the individuals named. Specifically, KU seeks confidential protection for the amount of the salary and other compensation not otherwise publicly disclosed.

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

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*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); Application of Kentucky American Water Company for an Adjustment of Rates, Case No. 2015-00418, Order (Ky. PSC Aug. 31, 2016).*

<sup>4</sup> KRS 61.878(1)(a).

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

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

information is personal and private information that 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.

Providing the requested confidential protection for the compensation information of KU's employees would fully accord with the purpose of the Act, which is to make government and its actions open to public scrutiny. Concerning 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.<sup>7</sup>

Citing the Court of Appeals, the Kentucky Office of the Attorney General ("AG") stated in an Open Records Decision ("ORD"), "If 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."<sup>8</sup>

Moreover, in an order approving a petition for confidential treatment for LG&E in Case No. 89-374, the Commission stated that salary information "should be available for customers to

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<sup>7</sup> 902 S.W.2d at 828-29 (Ky. App. 1994).

<sup>8</sup> *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).

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.”<sup>9</sup> In the same order, the Commission concluded, “Thus, the salary paid to each individual within a classification is entitled to protection from public disclosure.”<sup>10</sup> The Commission had reached the same conclusion in two previous orders in the same case.<sup>11</sup>

The compensation information for which KU seeks confidential protection in this case is comparable to that provided to the Commission by KU in the past. The Commission granted 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 *In the Matter of: 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.<sup>12</sup>

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

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<sup>9</sup> *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).

<sup>10</sup> *Id.*

<sup>11</sup> 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.”).

<sup>12</sup> 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).

rate calculations” and are “subject to public dissemination of regulatory filings,” the information should not be entitled to confidential protection.<sup>13</sup> KU respectfully disagrees because neither of these reasons justify denying confidential protection to executive officer information in this case. 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 the existing officers for which KU is seeking confidential protection has been publicly disclosed at any time in the past.<sup>14</sup> KU’s request is further supported by other Commission precedent.<sup>15</sup> In Case No. 2017-00179, the Commission approved Kentucky Power Company’s request to treat confidentially executive officer compensation information until the information is publicly disclosed in SEC filings.<sup>16</sup> Because KU requests confidential protection only for the executive salary benefits not otherwise

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<sup>13</sup> *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).

<sup>14</sup> 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.

<sup>15</sup> *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).

<sup>16</sup> *Id.*

publicly disclosed, granting confidential protection to this limited information accords with KRS 61.878(1)(a).

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

4. Commission Staff Request No. 6 asks KU to provide a detailed analysis of expenses for professional services during the 12 months preceding the base period. In response, KU is providing an attachment that contains the 2020 hourly rate information for legal services. 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>17</sup> A decision on approving any change in rates paid to outside counsel is reached based on a number of factors, including but not necessarily limited to: years of experience, subject matter expertise, nature of representation, geographic location, cost-of-living adjustment, available market rate data, and internal rate comparisons. The public disclosure of this pricing information will prejudice both the service provider by allowing its competitors to know how it prices its services and the Company’s ability to obtain the most reasonable prices for such professional services in the competitive marketplace and negotiate the rates for professional services in the future. KU requests with this petition that the Commission protect from public disclosure this confidential information. The public disclosure of this information will create precisely the kind of competitive harm KRS 61.878(1)(c)(1) intends to prevent. The Commission granted confidential protection to this type of information in KU’s and LG&E’s 2018 and 2016 rate case proceedings.<sup>18</sup> Thus, the Commission should grant confidential protection to this information.

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<sup>17</sup> KRS 61.878(1)(c)(1).

<sup>18</sup> Case No. 2018-00294, Order (Ky. PSC Oct. 8, 2019); Case No. 2018-00295, Order (Ky. PSC Oct. 8, 2019); Case No. 2016-00370, Order (Ky. PSC Dec. 10, 2018); Case No. 2016-00371, Order (Ky. PSC Dec. 10, 2018).

5. Commission Staff Request No. 39 asks KU to provide the amounts and percentage increases for general wage increases and for merit increases for each employee group for the past two calendar years, the base period, and the forecasted test period. With respect to the base period and forecasted test period, KU requests to keep its expectations regarding increases for its employees confidential. If KU's expectations are publicly disclosed, it could impair the Company's competitive negotiating position with employee groups in direct contravention of KRS 61.878(1)(c)(1). The Commission has granted confidential protection to this information in the past.<sup>19</sup>

### **The Confidential Information Subject to this Petition**

6. 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.

7. 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.

8. 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.<sup>20</sup>

9. 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 March 24, 2020 Order in Case No. 2020-00085, KU will upload the unredacted

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<sup>19</sup> Case No. 2018-00294, Order (Ky. PSC Oct. 8, 2019); Case No. 2018-00295, Order (Ky. PSC Oct. 8, 2019).

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



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.

10. 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: December 15, 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 December 15, 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 December 15, 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.



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