

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

INVESTIGATION OF THE PROPOSED)	
POLE ATTACHMENT TARIFFS OF)	CASE NO. 2022-00105
INVESTOR OWNED ELECTRIC)	
UTILITIES)	

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”) 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 for the items described herein, which the Companies seek to provide in response to Item 7 of the Commission Staff’s Second Request for Information (“Item 7”).

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

1. 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.”¹

2. Item 7 requests that the Companies “[p]rovide any current joint use agreements.” Joint use agreements are individually negotiated agreements between pole-owning utilities pursuant to which each party utilizes capacity on the other’s pole network. Though there are similarities amongst the Companies’ joint use agreements, there are also important differences

¹ KRS 61.878(1)(c)(1).

with respect to cost-sharing, space allocations, processes, and risk allocation, among other differences. Each agreement is an integral, bargained-for exchange.

3. The Commission’s new pole attachment regulation, 807 KAR 5:015, does not apply to the terms and conditions of the Companies’ joint use agreements, and the pole attachment regulation excludes attachments made pursuant to the Companies’ joint use agreements from the Companies’ pole attachment tariff.²

4. The joint use agreements that the Companies have provided to the Commission in response to Item 7 contain confidential and/or proprietary information and thus merit confidential treatment.

5. As noted above, the Companies’ joint use agreements were separately negotiated and contain unique, bargained-for concessions by the Companies and their joint use counterparties. Disclosure of these unique terms and conditions could potentially harm the relationships the Companies have with their joint use agreement counterparties. Furthermore, disclosure of the joint use agreements could also place the Companies at a disadvantage in future negotiations, as their

² See, e.g., 807 KAR 5:015, Section 2(1) (providing “any cable television system operator, telecommunications carrier, broadband internet provider, or governmental unit nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by [a utility].”); *id.* at Section 1 (defining the terms “broadband internet provider,” “new attacher,” and “telecommunications carrier” to exclude “a utility with an applicable joint use agreement with the utility that owns or controls the pole to which it is seeking to attach”); *id.* at Section 3(7) (requiring utilities to file “[t]ariffs conforming to the requirements of this administrative regulation”). According to these provisions, the counterparties to the Companies’ joint use agreements do not have a mandatory right of access under the new pole attachment regulation. Furthermore, because the definition of “new attacher” expressly excludes parties to a joint use agreement, the terms and conditions of the new pole attachment regulation do not apply to the Companies’ joint use agreement counterparties. Finally, because utilities are required to file “tariffs conforming to the requirements of [the new pole attachment regulation],” which expressly exclude “a utility with an applicable joint use agreement,” the Companies’ pole attachment tariffs do not address the terms and conditions pursuant to which the Companies’ joint use agreement counterparties make their attachments to the Companies’ poles, ducts, conduit, or rights-of-way.

joint use counterparties could unfairly leverage the terms and conditions of other counterparties' joint use agreements in such negotiations.

6. Further, the Commission's new pole attachment regulation provides pole owners and attaching entities with the right to negotiate pole attachment license agreements that include rates, terms and conditions that differ from those set forth in the Companies' tariffs.³ If new attachers can access the Companies' joint use agreements, which contain qualitatively different terms and conditions than the Companies' pole attachment license agreements, then the new attachers could potentially leverage this information to unfairly negotiate pole attachment license agreements.

7. The Commission has previously granted confidential protection to the Companies' joint use agreements—including many of the joint use agreements that have been provided in response to Item 7—on grounds similar to those identified herein.⁴

8. With the exception of the Companies' counterparties, the terms and conditions of the joint use agreements for which the Companies are seeking confidential treatment are not known outside of the Companies. Further, the joint use agreements are not disseminated within the

³ See 807 KAR 5:015, Section 2(3) (“If a utility provides access to its poles...pursuant to an agreement that establishes rates, terms, or conditions for access not contained in its tariff: (a) [t]he rates, terms, and conditions of the agreement shall be in writing; and (b) [t]he utility shall file the written agreement with the commission pursuant to 807 KAR 5:011, Section 13.”).

⁴ See *In the Matter of: 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 Regarding Request for Confidential Treatment to KCTA's Initial Request for Information (Ky. PSC Dec. 10, 2018); See *In the Matter of: Electronic Application of Louisville Gas and Electric Company for an Adjustment of Its Electric and Gas Rates and for Certificates of Convenience and Necessity*, Case No. 2016-00371, Order Regarding Request for Confidential Treatment to KCTA's Initial Request for Information (Ky. PSC Dec. 10, 2018); see also *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).

Companies except to the Companies' employees with a legitimate business interest in the terms and conditions thereof.


9. Accordingly, pursuant to 807 KAR 5:001, Section 13(2)(a)(3)(b), the Companies seek confidential treatment for the entirety of each joint use agreement produced in response to Item 7. The Companies request that confidential treatment be granted for the term of each joint use agreement, plus five (5) years. The Companies have filed written notification that the entirety of each joint use agreement is confidential in lieu of highlighting and producing the specific pages containing confidential information to the Commission.⁵

10. If the Commission disagrees with this request for confidential protection, the Commission 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.⁶

WHEREFORE, the Companies respectfully request that the Commission grant confidential treatment for the joint use agreements described herein.

Dated: June 2, 2022

Respectfully Submitted,



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⁵ See 807 KAR 5:001, Section 13(2)(a)(3)(b) (“If confidential treatment is sought for an entire document, written notification that the entire document is confidential may be filed with the document in lieu of the required highlighting.”)


⁶ *Util. Regulatory Comm’n v. Ky. Water Serv. Co., Inc.*, 642 S.W.2d 591, 592-94 (Ky. App. 1982).

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CERTIFICATE OF SERVICE

In accordance with 807 KAR 5:001, Section 8, and the Public Service Commission's Order of July 22, 2021 in Case No. 2020-00085, I certify that this document was transmitted to the Public Service Commission on June 2, 2022 and that there are currently no parties that the Public Service Commission has excused from participation by electronic means in this proceeding.



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