

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC JOINT APPLICATION OF)	
KENTUCKY UTILITIES COMPANY AND)	
LOUISVILLE GAS AND ELECTRIC)	
COMPANY FOR CERTIFICATES OF)	
PUBLIC CONVENIENCE AND NECESSITY)	CASE NO. 2022-00402
AND SITE COMPATIBILITY)	
CERTIFICATES AND APPROVAL OF A)	
DEMAND SIDE MANAGEMENT PLAN)	

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 “Companies”) petition the Public Service Commission of Kentucky (“Commission”) pursuant to 807 KAR 5:001 Section 13 to grant confidential protection for certain information the Companies are providing in response to Commission Staff’s First Request for Information (“PSC”) Item Nos. 17(b), 47(a), 48(c), 53(b), 69(b), 90(d), and 106; Joint Intervenors’ Initial Data Requests (“JI”) Item Nos. 1(c), 9(e), 36, 40(a), and 45; Kentucky Coal Association’s First Request for Information (“KCA”) Item Nos. 3 and 51; Mercer County Fiscal Court’s Initial Requests for Information (“Mercer”) Item No. 8; and Sierra Club’s Initial Requests for Information (“SC”) Item No. 12(a). In support of this Joint Petition, the Companies state as follows:

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.¹ Public disclosure of the information identified herein would, in fact, prompt such a result for the reasons set forth below.

2. The Companies are providing data submitted in response to the Companies' Request for Proposals ("RFP") or solar power purchase agreement ("PPA") proposals in response to PSC 1-47(a), PSC 1-53(b), PSC 1-69(b), PSC 1-90(d), and JI 1-40(a). Confidential protection of the RFP response data is necessary because disclosure would disrupt the competitive bid process. Public disclosure would place the Companies at a considerable disadvantage when negotiating future contracts and could disadvantage them in the wholesale energy market. Furthermore, public disclosure would provide insight into the Companies' evaluation of bids to the detriment of the Companies and their ratepayers. The public disclosure of this information would create precisely the kind of competitive harm KRS 61.878(1)(c)(1) intends to prevent. The Companies previously requested the Commission to afford this kind of information confidential protection in Case No. 2020-00016.² The Commission granted the Companies' request to protect this information from public disclosure.³

3. Attachments provided in response to PSC 1-47(a), JI 1-1(c), JI 1-9(e), and JI 1-45 contain proprietary information, including user guides, diagrams, and projections, obtained from third parties. These third parties include Astrapé Consulting, EPRI, General Electric, IHS Markit, Mitsubishi Power, S&P Global, and Siemens Energy. As participants in competitive markets, these third parties do not want confidential technical information or projections they have made to be publicly disclosed or to be used against it in future negotiations with other customers or by its competitors. If this proprietary information is disclosed, these parties and

¹ KRS 61.878(1)(c)(1).

² *Electronic Application of Louisville Gas and Electric Company and Kentucky Utilities Company for Approval of a Solar Power Contract and Two Renewable Power Agreements to Satisfy Customer Requests for a Renewable Energy Source Under Green Tariff Option #3*, Case No. 2020-00016, Petition for Confidential Protection (Ky. PSC Jan. 23, 2020).

³ Case No. 2020-00016, Order (Ky. PSC May 8, 2020).

other third-party suppliers of the same kinds of information and analyses may be less willing to supply reports to the Companies in the future. Diminishing the Companies' ability to receive this information would harm both the Companies and their customers. This information should therefore be afforded confidential protection to protect the Companies and their customers.

4. In response to PSC 1-48(c), the Companies are providing internal analyses for three previous depreciation studies, which contain projections of what the Companies expect to pay and receive for fuel and coal combustion residuals. Similarly, Attachments 3 and 4 to SC 1-12(a) and Attachment 2 to JI 1-36 contain projections of what the Companies expect to pay for coal and gas. The Companies are also providing fuel price data in the PLEXOS solution files and SERVVM database provided in response to JI 1-40(a) and PSC 1-106, respectively. If the Commission grants public access to this information, LG&E and KU could be disadvantaged in negotiating contracts to buy or sell these commodities in the future. The Companies could also be disadvantaged in the wholesale energy market because fuel costs are important components of energy pricing. All such commercial harms would ultimately harm LG&E's and KU's customers, who would have to pay higher rates if the disclosed information resulted in higher fuel prices or adversely affected the Companies' off-system energy sales.

5. In response to JI 1-9(e), the Companies are providing a combined cycle feasibility study. In addition to containing proprietary information, portions of the attachment provided in response to JI 1-9(e) are confidential because they contain details price estimates for the construction of combined cycle units. Additionally, the attachment provided in response to KCA 1-51 includes firm gas transportation estimates. If the Commission grants public access to this information, LG&E and KU could be disadvantaged in negotiating contracts for construction of the natural gas combined cycle units or firm gas transportation in the future. All such

commercial harms would ultimately harm LG&E's and KU's customers, who would have to pay higher costs if the disclosed information resulted in higher contract prices.

6. In response to KCA 1-3 and Mercer 1-8, the Companies are providing exclusivity agreements between the Companies and Marion County and Savion. Certain terms within these agreements, including pricing, entities, and dates, are confidential. Per the agreements, these terms are to remain confidential. If the Commission grants public access to this information, LG&E and KU could be disadvantaged in negotiating contracts in the future. All such commercial harms would ultimately harm LG&E's and KU's customers, who would have to pay higher costs if the disclosed information resulted in higher contract prices.

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

7. 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

8. In response to PSC 1-17(b), the Companies are providing an attachment that contains program plan inputs, including salary information for positions associated with the DSM program.

9. Disclosure of this information would invade the privacy rights of the individuals named and provide insight into the Companies’ salary determinations. This personal and private information is not in the public realm. The Companies’ employees have a reasonable expectation that their compensation is personal and private information. Disclosure would

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).

constitute an unwarranted invasion of their personal privacy in contravention of KRS 61.878(1)(a).

10. Disclosure of the compensation information of the Companies' 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*.⁷

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."⁸

11. 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."⁹ In the same order, the

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

⁸ *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).

⁹ *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).

Commission concluded, “Thus, the salary paid to each individual within a classification is entitled to protection from public disclosure.”¹⁰

12. 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.¹¹ Such reasoning, however, is not applicable in the current request because the Companies are not requesting confidential protection for executive salaries.

13. Disclosure of this information would invade the privacy rights of the individuals named and provide insight into the Companies’ salary calculation. This personal and private information is not in the public realm. The Companies’ employees 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).

Confidential Information Subject to this Petition

14. The information for which the Companies are seeking confidential treatment is not known outside of LG&E and KU, their consultants with a need to know the information, and

¹⁰ *Id.*

¹¹ *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 Companies' counsel, is not disseminated within LG&E and KU except to those employees with a legitimate business need to know and act upon the information, and is generally recognized as confidential and proprietary information in the energy industry.

15. The Commission has consistently given confidential treatment to similar information in previous cases.¹²

16. The Companies 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.

17. 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.¹³

18. Pursuant to 807 KAR 5:001, Section 13(2)(b), for all of PSC 1-17(b), Attachments 2, 3, and 4 to PSC 1-47(a), PSC 1-53(b), PSC 1-69(b), PSC 1-90(d), PSC 1-106, Attachment 5 to JI 1-1(c), JI 40(a), JI 1-45, and Attachments 3 and 4 to SC 1-12(a), the Companies are providing written notification that the entire document is confidential. For Attachment 1 to PSC 1-47(a), PSC 1-48(c), JI 1-9(e), Attachment 2 to JI 1-36, KCA 1-3, KCA 1-51, and Mercer 1-8, which are not entirely confidential, the Companies are filing with the Commission one electronic copy that identifies with redactions the information for which confidential protection is sought. In accordance with the Commission's March 24, 2020 and July 22, 2021 Orders in Case No. 2020-00085, the Companies will upload the unredacted copies noting the confidential information with highlighting to its encrypted file-share site for the

¹² See, e.g., Case Nos. 2020-00349 and 2020-00350, Order (PSC Ky. Dec. 7, 2021) (granting confidential protection for fuel prices and variable O&M data); *Electronic 2018 Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company*, Case No. 2018-00348, Order (Ky. PSC Nov. 16, 2018).

¹³ *Utility Regulatory Commission v. Kentucky Water Service Company, Inc.*, 642 S.W.2d 591, 592-94 (Ky. App. 1982).

Commission's retrieval. Access to the encrypted file-share site will be provided to intervenors upon request pursuant to a confidentiality agreement.

19. For all requests for confidential protection, the Companies request that confidential protection be granted for five years due to the sensitive nature of the information at issue.

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: March 10, 2023

Respectfully submitted,




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CERTIFICATE OF SERVICE

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 March 10, 2023, and that there are currently no parties in this proceeding that the Commission has excused from participation by electronic means.



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and Kentucky Utilities Company*