

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 KRS 278.160(3), 807 KAR 5:011, Sections 13, 14, and 807 KAR 5:001, Section 13 to grant confidential protection for certain information the Companies are providing in response to Joint Intervenors’ Supplemental Data Requests (“JI”) Item No. 25. In support of this Joint Petition, the Companies state as follows:

Applicable Standards

1. KRS 278.160, which pertains to public filing and display of rates, specifically provides that “[t]he provisions of this section do not require disclosure or publication of a provision of a special contract that contains rates and conditions of service not filed in a utility’s general schedule if such provision would otherwise be entitled to be excluded from the application of [Kentucky’s Open Records Act] under the provisions of KRS 61.878(1)(c)1.”

2. 807 KAR 5:011, Section 14 permits a utility to request confidential treatment of special contracts filed with the Commission, which are made and reviewed pursuant to 807 KAR 5:001, Section 13(3).

3. Under the Kentucky Open Records Act, the Commission is entitled to withhold from public disclosure commercially sensitive information to the extent that open disclosure would permit an unfair commercial advantage to competitors of the entity disclosing the information to the Commission.¹ Public disclosure of the information identified herein would, in fact, prompt such a result for the reasons set forth below.

Confidential Terms of the Special Contract

1. *The Special Contract for Electric Service Between Kentucky Utilities and BlueOval SK, LLC* (the “special contract”) is attached to the response to JI 3-25. The highlighted portions of Appendix A to the special contract contain the agreed upon demand rates BlueOval SK, LLC (“BlueOval SK”) will pay KU for retail electric service to BlueOval SK’s new battery production facilities at the Glendale Megasite located in Hardin County, Kentucky.

2. The highlighted portions of Appendix A to JI 3-25 contain special contract demand rates, which constitute sensitive financial information meriting confidential treatment. The special contract demand charge rates are the product of extensive negotiations between representatives of BlueOval SK and KU and reflect tradeoffs and concessions by both parties. Specifically, the negotiated demand rates contained in the special contract are a product of numerous factors unique to this customer and this project, including the expected load profile of the battery plants, variable cost coverage and contribution to fixed costs, and the size of the BlueOval SK load.

¹ See KRS 61.878(1)(c).

3. The rate information is commercially sensitive and public disclosure of that information would impair KU's ability to negotiate future customer contracts. If disclosed, KU anticipates the special contract rates would establish a specific target for future negotiations with other industrial and commercial enterprises looking to locate in KU's service territory. That data point could impair KU's ability to negotiate future contracts on terms that are advantageous to KU or to KU's other customers. Moreover, existing customers with different load characteristics than BlueOval SK could use the special contract rates to seek the same or similar rate treatment. The Commission has regularly granted confidential protection of special contract rate information to prevent other customers of a utility—both new and existing—from gaining unfair commercial advantage in future negotiations with the utility.²

4. Public disclosure of the special contract rates would further prejudice KU by allowing its competitors to know the prices at which KU is willing to sell energy and capacity, which they could then use to underbid KU or cause KU to offer a lower rate than would otherwise be required in the absence of public disclosure to secure a prospective customer. This would, in turn, place KU at a commercial disadvantage in its economic development efforts to attract commercial and industrial customers to its service territory, to the detriment of KU's customers and the residents in its service territory. The Commission has recognized the unfair

² See, e.g., *In the Matter of: Valley Gas, Inc. Request for Approval of a Special Contract with Mago Construction Company and a Deviation from the Gas Cost Adjustment Clause*, Case No. 2014-00368, Letter Motion at 1 (Ky. PSC Oct. 3, 2014) (seeking confidential of the rate contained in a special contract in part because public disclosure “would allow other large volume costumers to use that information as the ‘ceiling’ in any future contract negotiations that they might have with [the servicing utility]”); *Id.*, Order at 4 (Ky. PSC Oct. 28, 2014) (granting the servicing utility’s request for confidential protection of the special contract rate); *Electronic Application of Kentucky Power Company for Approval of a Contract for Electric Service with Braidy Industries, Inc.*, Case No. 2018-00418, Order at 2 (Ky. PSC Aug. 20, 2019) (granting confidential protection of the rate contained in a special contract where “public disclosure of the contract rate would result in unfair commercial injury to Kentucky Power by establishing a ceiling for future negotiations with industrial and commercial enterprises looking to locate in the company's service territory”); *Application of East Kentucky Power Cooperative for Approval of Special Contract Between EKPC, Owen Electric Cooperative, and Gallatin Steel Company*, Case No. 2013-00174, Order at 1-2 (Ky. PSC April 8, 2014) (granting confidential information to special contract rate information where disclosure “could provide an unfair commercial advantage to potential new industrial customers of [the servicing utility]”).

commercial injury to retail utilities that results from public disclosure of the rates and rate-related information of special contracts.³ The public disclosure of this information would create precisely the kind of competitive harm KRS 61.878(1)(c)(1) intends to prevent. Thus, the Commission should grant confidential protection to this information.

5. KU requested confidential protection of the same portions of the special contract for the same reasons in Case No. 2023-00123.⁴

Confidential Information Subject to this Petition

6. 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 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.

7. The Commission has consistently given confidential treatment to similar information in previous cases.⁵

8. 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.

9. 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.⁶

³ See, e.g., *Electronic Application of Kentucky Power Company for Approval of a Contract for Electric Service with Braidley Industries, Inc.*, Case No. 2018-00418, Order at 2 (Ky. PSC Aug. 20, 2019); *In the Matter of: The Filing of a Special Contract by Natural Energy Utility Corporation*, Case No. 2018-00164, Order at 2 (Ky. PSC Sep. 6, 2018).

⁴ *Application of Kentucky Utilities Company for Approval of Special Contract Between Kentucky Utilities Company and BlueOval SK, LLC*, Case No. 2023-00123, Petition of Kentucky Utilities Company for Confidential Protection (Ky. PSC filed Apr. 14, 2023).

⁵ See, *supra*, notes 1-2.

10. Pursuant to 807 KAR 5:001, Section 13(2)(a)(3), the Companies are filing with the Commission one electronic copy that identifies with redactions the information for which confidential protection is sought. The Companies are also providing confidential versions of the responses to JI 3-31 and JI 3-32 because the questions contain confidential information that is subject to prior Petitions for Confidential Protection filed in this proceeding.

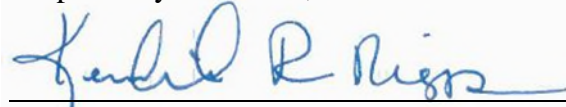
11. In accordance with the Commission's March 24, 2020 and July 22, 2021 Orders in Case No. 2020-00085, the Companies will upload the unredacted copy noting the confidential information with highlighting to its encrypted file-share site for the Commission's retrieval. Access to the encrypted file-share site will be provided to intervenors upon request pursuant to a confidentiality agreement.

12. 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: June 9, 2023

Respectfully submitted,



Kendrick R. Riggs
Stoll Keenon Ogden PLLC
500 West Jefferson Street, Suite 2000
Louisville, Kentucky 40202-2828
Telephone: (502) 333-6000
Fax: (502) 627-8722
kendrick.riggs@skofirm.com

⁶ *Utility Regulatory Commission v. Kentucky Water Service Company, Inc.*, 642 S.W.2d 591, 592-94 (Ky. App. 1982).

Allyson K. Sturgeon
Vice President and Deputy General Counsel
Sara V. Judd
Senior Counsel
PPL Services Corporation
220 West Main Street
Louisville, Kentucky 40202
Telephone: (502) 627-2088
Fax: (502) 627-3367
ASturgeon@pplweb.com
SVJudd@pplweb.com

*Counsel for Kentucky Utilities Company and
Louisville Gas and Electric Company*

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 June 9, 2023, and that there are currently no parties in this proceeding that the Commission has excused from participation by electronic means.

A handwritten signature in blue ink, appearing to read "Gerald R. Niers", is written over a light gray rectangular background.

*Counsel for Louisville Gas and Electric Company
and Kentucky Utilities Company*