

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 its responses to Commission Staff’s Post-Hearing Requests for Information (“PSC”) Item Nos. 1, 3, 6, 18, 20, 21, 22, 23, 24, and 30, Joint Intervenors’ Post-Hearing Data Requests (“JI”) Item No. 1, and Kentucky Coal Association’s Post-Hearing Requests for Information (“KCA”) Item No. 1. 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. In response to PSC Item Nos. 1 and 6, the Companies are providing documents with confidential information regarding the Companies' outside vendor service costs. Confidential protection of this information is necessary because disclosure would reveal the Companies' analysis of anticipated outside vendor service costs to the detriment of and prejudice to the Company and its customers. Thus, the Companies request confidential protection for the entire documents provided as Attachment 1 and Attachment 2 in response to PSC Item No. 1, and for the entire document provided as Attachment 1 in response to PSC Item No. 6.

3. If the costs of outside vendor services are disclosed, vendors would become aware of how much the Companies expect to pay for these items. This would disadvantage the Companies in their negotiations for these items. For these reasons, the Companies request that outside vendor service cost information be treated as confidential.

4. In response to PSC Item No. 18, the Companies are providing gas and coal price forecasts. If the Commission grants public access to this information, LG&E and KU could be disadvantaged in negotiating contracts to buy 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. The Companies thus request confidential protection for the confidential portions of Attachment 1 to PSC Item No. 18.

¹ KRS 61.878(1)(c)(1).

5. In response to JI Item No. 1(a), the Companies are providing as Attachment 1 the summary price information sheets and related correspondence from the responses to the Companies' Request for Proposals ("RFP") for engineering, procurement, and construction ("EPC") for the natural gas combined cycle ("NGCC") units. As Attachment 2, the Companies are providing letters from the RFP respondents regarding the time period for the validity of the bids. The narrative response of JI Item No. 1(a) includes confidential statements from Attachments 1 and 2. Disclosure of content of the RFP responses, and the identity of the bidders would disrupt the competitive bid process. If bidders are aware of the number of bidders, identity of bidders, and details of the bids, they may be less willing to negotiate with the Companies. Disclosure could result in higher costs for the NGCC units, which would ultimately harm the Companies' customers.

6. Similarly, in response to JI Item No. 1(b), the Companies are providing as Attachment 1 a zip file containing responses and documents provided to NGCC EPC bidders. Disclosing the responses to a bidder could reveal a relative position of strength or weakness to other bidders, thereby weakening the Companies' bargaining position. Furthermore, some questions from bidders contain information that is proprietary to the bidder. For these reasons, the Companies request confidential protection for the entirety of Attachments 1 and 2 provided in response to JI Item No. 1(a), the portions of the narrative response to JI Item No. 1(a) that are identified as confidential, and the entirety of Attachment 1 provided in response to JI Item No. 1(b).

7. In response to PSC Item Nos. 20, 21, 22(a), 23(b), and 24(b), the Companies are providing workpapers and modeling data. These attachments are confidential because they contain (1) responses to the Companies' June 2022 RFP for capacity and energy, (2) forecasted

fuel prices, (3) NGCC EPC RFP information, or a combination thereof. First, the responses to the Companies' June 2022 RFP for capacity and energy are confidential 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 customers. The public disclosure of this information would create precisely the kind of competitive harm KRS 61.878(1)(c)(1) intends to prevent.

8. Second, the forecasted fuel prices are confidential because disclosure would disadvantage the Companies from purchasing fuel in the future if sellers are aware of what the Companies expect to pay. The Companies could also be disadvantaged in the wholesale energy market because fuel costs are important components of energy pricing. All such commercial harms, in turn, 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.

9. Third, the NGCC EPC RFP response information is confidential for the same reasons as identified in Paragraph 5.

10. For these three reasons, KU and LG&E request confidential protection for the confidential portions of Attachments 1 and 2 to PSC Item No. 20, the confidential portions of Attachment 1 to PSC Item No. 21, the confidential portions of Attachment 1 to PSC Item No. 22(a), the entirety of Attachment 1 to PSC Item No. 23(b), and the confidential portions of Attachment 2 to PSC Item No. 24(b). The Companies previously requested the Commission to

afford this kind of information confidential protection in Case No. 2020-00016.² The Commission previously granted the Companies' request to protect this information from public disclosure.³

11. In response to PSC Item No. 30 and KCA Item No. 1, the Companies are providing versions of their Financial Model, which contains cost information about specific bids the Companies have received and forecasts for coal combustion residuals ("CCR"). First, the bid information includes details about the responses to the Companies' June 2022 RFP for capacity and energy and information about the NGCC EPC RFP responses. The attachments are confidential for the same reasons as described in Paragraphs 5 and 7. Second, the CCR forecasts are confidential because if the Commission grants public access to this information, LG&E and KU could be disadvantaged in negotiating contracts to sell these commodities in the future. The Companies thus request confidential protection for Attachment 1 to PSC Item No. 30 and Attachment 1 to KCA Item No. 1.

Confidential Personal Information – Non-Executive Compensation Information
(KRS 61.878(1)(a))

12. 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

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).

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).

13. Certain attachments the Companies are providing in response to PSC Item Nos. 1 and 6 are also confidential because they contain current salary information for employees. The Companies request confidential protection for all non-officer compensation information.

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

15. 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

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

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

17. 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.

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).

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).

**Confidential Personal and Proprietary Commercial Information – Nonrecoverable
Performance Units of Compensation Information (KRS 61.878(1)(a) and (1)(c)(1))**

18. The Kentucky Open Records Act exempts from disclosure certain private and personal information.¹² 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.”¹³ The Kentucky Supreme Court has characterized “one’s income” as “intimate” information of a private nature, further stating that “[i]t is a widely held societal belief that matters of personal finance are intensely private and closely guarded.”¹⁴

19. The Kentucky Open Records Act also exempts from disclosure certain records which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records.¹⁵ Public disclosure of the information identified in this petition would prompt such a result for the reasons set forth below.

20. In response to PSC Item No. 3, the Companies are providing an attachment that contains information regarding the incentive compensation certain executive employees of the Companies received referred to as ESG-based performance units of compensation.

21. The Companies’ expenses related to this performance unit compensation program have not, are not, and will not be recovered in rates.

22. Disclosure of this specific information would invade the privacy rights of the individuals named. This specific personal and private information is not and has not been in the public realm. Disclosure would constitute an unwarranted invasion of their personal privacy in contravention of KRS 61.878(1)(a). The Companies’ employees have a reasonable expectation

¹² KRS 61.878(1)(a).

¹³ *Zink v. Department of Workers’ Claims, Labor Cabinet*, 902 S.W.2d 825, 828 (Ky. App. 1994).

¹⁴ *Cape Pub’ns, Inc. v. Univ. of Louisville Found., Inc.*, 260 S.W.3d 818, 822 (Ky. 2008).

¹⁵ KRS 61.878(1)(c)(1).

that their compensation is personal and private information when such costs are not included in rates customers pay for service.

23. Additionally, disclosure of this information is likely to result in a competitive disadvantage for the Companies through increased costs and a loss of negotiating ability. Public disclosure of this information would make it easier and less expensive for other employers to successfully compete with the Companies for executive employees. Anyone who views this information would have the ability to more precisely craft competitive employment offers for the Companies' current and prospective employees. This would increase the risk of a higher cost of service resulting from greater employee compensation demands and higher costs to recruit and retain employees. This would also increase employee attrition, the average time to fill vacant positions, hiring expenses, and exempt labor costs.

24. The Companies recognize that the Commission has a "long-standing precedent" of denying confidential protection to certain executive officer compensation information.¹⁶ An

¹⁶ See e.g., *Electronic Application of South Kentucky Rural Electric Cooperative Corporation for a General Adjustment of Rates, Approval of Depreciation Study, and Other General Relief*, Order at 7 n.9, 8 (Ky. PSC Mar. 28, 2022). See also Case No. 2017-00321, *Electronic Application of Duke Energy Kentucky, Inc. for: 1) an Adjustment of the Electric Rates; 2) Approval of an Environment 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*, Order at 2-3 (Ky. PSC June 12, 2018) ("The Commission has generally held that executive officer compensation does not meet the criteria for confidential treatment, **because such compensation is included as an expense in base rate calculations and because executive compensation information must be disclosed to the public in other regulatory filings.**") (emphasis added); Case No. 2019-00268, *Application of Knott County Water and Sewer District for an Alternative Rate Adjustment*, Order at 3 (Ky. PSC Dec. 9, 2019) (holding the same); Case No. 2019-00271, *Electronic Application of Duke Energy 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*, Order at 3 (Ky. PSC May 4, 2020) (same); Case No. 2021-00183, *Electronic Application of Columbia Gas of Kentucky, Inc. for an Adjustment of Rates; Approval of Depreciation Study; Approval of Tariff Revision; Issuance of a Certificate of Public Convenience and Necessity; and Other Relief*, Order at 3 (Ky. PSC Oct. 5, 2021) (same); Case No. 2021-00185, *Electric Application of Delta Natural Gas Company, Inc. for an Adjustment of its Rates and a Certificate of Public Convenience and Necessity* (Ky. PSC Dec. 8, 2021) (same); Case No. 2020-00290, *Electronic Application of Bluegrass Water Utility Operating Company, LLC for an Adjustment of Rates and Approval of Construction*, Order at 6-7 (Ky. PSC Dec. 27, 2021) ("The Commission does not believe that disclosure of the individualized compensation information regarding high-level officers or executives **that a utility is asking customers to pay**, results in an unwarranted invasion of privacy.") (emphasis added).

analysis of the Commission’s precedent presents three reasons for denial of confidential treatment.

25. First, confidential treatment of executive salaries has been routinely denied “because the salaries and other executive compensation are included as an expense in base rate calculations.”¹⁷

26. Second, confidential treatment of executive salary information has been denied because “salaries of certain officers are subject to public dissemination in regulatory filings.”¹⁸

27. Third, confidential treatment of executive officer compensation has been denied because the Commission has stated that this information “is a matter of public concern in a rate case” and that “[g]ranting confidential treatment for executive compensation would not afford the appropriate level of transparency for ratepayers, who have the right to know the evidence upon which the Commission relied in reaching its decision.”¹⁹

28. However, the Commission has previously granted confidential protection to executive compensation information when the information is not relied upon by the Commission

¹⁷ *Electronic Application of Delta Natural Gas Company, Inc. for an Adjustment of its Rates and a Certificate of Public Convenience and Necessity*, Case No. 2021-00185, Order Regarding Request for Confidential Treatment at 5 (Ky. PSC Mar. 16, 2022). 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).

¹⁸ *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).

¹⁹ *Electronic Application of Kentucky Utilities Company for an Adjustment of its Electric Rates, 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*, Case No. 2020-00349, Order at 5-6 (Ky. PSC Dec. 7, 2021); *Electronic Application of Louisville Gas and Electric Company for an Adjustment of its Electric and Gas Rates, 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*, Case No. 2020-00350, Order at 5-6 (Ky. PSC Dec. 7, 2021).

to reach a decision regarding rates. In Case No. 2020-00342, the Commission issued an Order on March 16, 2022 denying Citipower, LLC’s petition for confidential protection of a payroll expenditure spreadsheet that listed pay rate information for the managing member and controller because of the “public’s interest in executive compensation that is to be recovered in base rates.”²⁰ Subsequently, on April 5, 2022, Citipower, LLC filed a motion for rehearing of its motion for confidential treatment on the basis that the Commission’s rationale was inapplicable because Citipower, LLC would not recover executive compensation in base rates.²¹ In the Commission’s Order entered on April 25, 2022, the Commission granted Citipower, LLC’s motion for rehearing:

This is because the basis for denying confidentiality to executive compensation is that ratepayers should know the information that the Commission relied upon in reaching its decision regarding rates. Because Citipower will not recover executive compensation in rates, the Commission concurs that denying the request for confidential treatment for executive compensation was an error and not supported by the evidence of record.²²

29. Additionally, the Commission has recently granted confidential treatment for incentive compensation plans, finding that this information is “generally recognized as confidential or proprietary as disclosure of them could cause a competitive disadvantage in the hiring and retention of employees.”²³

²⁰ *Electronic Application of Citipower, LLC for a Rate Adjustment for Small Utilities Pursuant to 807 KAR 5:076*, Case No. 2020-00342, Order at 4 (Ky. PSC Mar. 16, 2022).

²¹ *Electronic Application of Citipower, LLC for a Rate Adjustment for Small Utilities Pursuant to 807 KAR 5:076*, Case No. 2020-00342, Order at 1-2 (Ky. PSC Apr. 25, 2022).

²² *Id.* at 2.

²³ *Electronic Application of Kentucky Power Company for (1) A General Adjustment of its Rates for Electric Service; (2) Approval of Tariffs and Riders; (3) Approval of Accounting Practices to Establish Regulatory Assets and Liabilities; (4) A Securitization Financing Order; and (5) All Other Required Approvals and Relief*, Case No. 2023-00159, Order at 3 (Ky. PSC Sept. 12, 2023); *see also Electronic Application of Duke Energy 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 May 4, 2020) (granting confidential treatment for attachments consisting of a short-term incentive plan and a union employee incentive plan). Note that the Commission’s Order in Case No. 2019-00271 simultaneously denied confidential treatment for an attachment consisting of the utility’s executive long-term

30. In light of the Commission’s long-standing precedent of treatment of executive compensation, the Companies respectfully submit that this request for confidential treatment is distinguishable from previous requests of a similar nature submitted by the Companies.²⁴ In contrast to previous requests for confidential treatment submitted by the Companies, the specific information regarding the performance unit compensation program for each employee sought to be protected in this petition (1) is not included as an expense in the Companies’ base rate calculations, (2) is not subject to public dissemination in regulatory filings,²⁵ and (3) is not a matter of public concern.

31. Disclosure of the ESG-based performance units of compensation program that the Companies offer to these 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

incentive plan, but the denial was based on the rationale that “executive compensation is included as an expense in base rate calculations and because certain executive salary information must be disclosed to the public in any case in other regulatory filings.” *Id.* at 3. The Companies’ present request is distinguishable because the expenses related to the Companies’ performance unit compensation program are not included as expenses in their rates and the specific information at issue is not required to be disclosed in other regulatory filings.

²⁴ See Case No. 2012-00221, Order (Ky. PSC Sept. 11, 2013) (denying Kentucky Utilities Company’s petition for confidential treatment of executive officer salary and compensation where the salaries were included as an expense in base rate calculations); Case No. 2014-00371, Order (Ky. PSC Jan. 20, 2016) (same); Case No. 2018-00294, Order (Ky. PSC Oct. 8, 2019) (same); Case No. 2018-00295, Order (Ky. PSC Oct. 8, 2019) (same, with Louisville Gas and Electric Company as movant); Case No. 2020-00349, Order (Ky. PSC Dec. 7, 2021) (same, with Kentucky Utilities Company as movant); Case No. 2020-00350, Order (Ky. PSC Dec. 7, 2021) (same, with Louisville Gas and Electric Company as movant).

²⁵ The Companies are not requesting confidential protection for Mr. Crockett’s compensation information because it is included in regulatory filings.

level, the purpose of disclosure focuses on the citizens' right to be informed as to *what their government is doing*.²⁶

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.”²⁷

32. Even if the Commission determines that disclosure of this information would not clearly invade the personal privacy of the Companies’ employees who received this compensation pursuant to KRS 61.878(1)(a), disclosure of the compensation program would undoubtedly permit competitors of the Companies to have an unfair commercial advantage in recruiting current or prospective employees in contravention of KRS 61.878(1)(c)(1).²⁸

33. Therefore, because the attachment responsive to PSC Item No. 3 includes information that will not be used to calculate rates and is not included in rates, and because the information is confidential and proprietary in nature, the Companies request that the entire attachment be kept confidential for a period of five years.

Confidential Information Subject to this Petition

34. 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.

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

²⁷ *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).

²⁸ *Electronic Application of Kentucky Power Company for (1) A General Adjustment of its Rates for Electric Service; (2) Approval of Tariffs and Riders; (3) Approval of Accounting Practices to Establish Regulatory Assets and Liabilities; (4) A Securitization Financing Order; and (5) All Other Required Approvals and Relief*, Case No. 2023-00159, Order at 3 (Ky. PSC Sept. 12, 2023).

35. The Commission has previously granted confidential protection for similar information.²⁹

36. 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.

37. 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.³⁰

38. Pursuant to 807 KAR 5:001, Section 13(2)(b), for all of Attachments 1 and 2 to PSC Item No. 1, Attachment 1 to PSC Item No. 6, Attachment 1 to PSC Item No. 23(b), Attachment 1 to PSC Item No. 30, Attachments 1 and 2 to JI Item No. 1(a), Attachment 1 to JI Item No. 1(b), and Attachment 1 to KCA Item No. 1, the Companies are providing written notification that the entire documents are confidential.

39. For Attachment 1 to PSC Item No. 3, Attachment 1 to PSC Item No. 18, Attachment 1 to PSC Item No. 20, and the narrative response to JI Item No. 1(a), 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

²⁹ See, e.g., *Electronic Joint Application of Kentucky Utilities Company and Louisville Gas and Electric Company for Certificates of Public Convenience and Necessity and Site Compatibility Certificates and Approval of a Demand Side Management Plan and Approval of Fossil Fuel-Fired Generating Unit Retirements*, Case No. 2022-00402, Order (Ky. PSC Aug. 31, 2023) (granting in part the Companies' March 10, 2023 Petition for Confidential Protection as to employee salary data and as to outside vendor cost projections).

³⁰ *Utility Regulatory Commission v. Kentucky Water Service Company, Inc.*, 642 S.W.2d 591, 592-94 (Ky. App. 1982).

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.

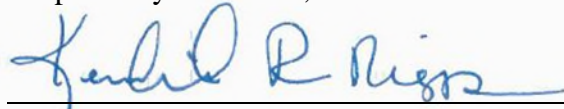
40. For Attachment 2 to PSC Item No. 20, Attachment 1 to PSC Item No. 21, Attachment 1 to PSC Item No. 22(a), and Attachment 2 to PSC Item No. 24(b), which are also not entirely confidential, the Companies are filing with the Commission one electronic copy that identifies with "CONFIDENTIAL" notations in the file structure the files within the attachments for which the Companies seek confidential protection. In the public version, the "CONFIDENTIAL" folders are empty. The Companies will upload the complete copies of the attachment to their encrypted file-share site for the Commission's retrieval.

41. 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: September 15, 2023

Respectfully submitted,



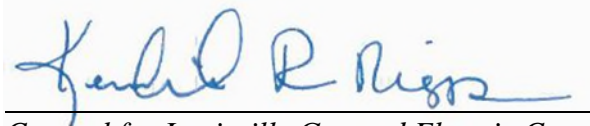
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Louisville Gas and Electric Company*

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 September 15, 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, reading "Gerald R. Nigro", is written over a light gray rectangular background.

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