

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC TARIFF FILINGS OF)
LOUISVILLE GAS AND ELECTRIC COMPANY)
AND KENTUCKY UTILITIES COMPANY TO)
REVISE PURCHASE RATES FOR SMALL) CASE NO. 2023-00404
CAPACITY AND LARGE CAPACITY)
COGENERATION AND POWER PRODUCTION)
QUALIFYING FACILITIES AND NET)
METERING SERVICE-2 CREDIT RATES)

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 Kentucky Public Service Commission (“Commission”) pursuant to 807 KAR 5:001, Section 13 and KRS 61.878(1) to grant confidential protection to the items described herein, which the Companies are providing in its responses to Commission Staff’s (“PSC”) Second Request for Information, Item Nos. 1, 3, and 4; Joint Intervenors’ (“JI”) Supplemental Requests for Information, Item Nos. 6(a) and (b); and Kentucky Solar Industries Association, Inc.’s (“KYSEIA”) Supplemental Requests for Information, Item No. 4. In support of this 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.

2. The following responses include commercially sensitive information that should remain confidential: PSC 2-1, PSC 2-3, PSC 2-4, JI 2-6(a)-(b), and KYSEIA 2-4.

PSC 2-1

3. In response to PSC 2-1, the Companies are supplying workpapers that provide insight into the Companies' avoided energy cost or avoided capacity cost analysis. These workpapers include several confidential items, including fuel prices, coal combustion residual ("CCR") prices, and unit maintenance schedules.

4. The workpapers provided in response to PSC 2-1 contain projections of what the Companies expect to pay and receive for commodities they buy and sell like fuel and CCRs. If the Commission grants public access to this information, the Companies 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. Further, public disclosure of the forecasted fuel, and CCR pricing information would provide a commercial advantage to the Companies' retail and wholesale customers when negotiating power requirement contracts. All such commercial harms would ultimately harm the Companies' 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

¹ KRS 61.878(1)(c)(1).

Commission has historically recognized the need for confidential treatment of fuel cost projections,² as well as CCR prices.³

5. The workpapers provided in response to PSC 2-1 also include unit maintenance schedules, the disclosure of which would unfairly advantage the Companies' competitors for wholesale power sales. This information would allow the Companies' competitors to know when generating plants will be down for maintenance and thus know a crucial input into the Companies' generating costs and need for power and energy during those periods. The commercial risk of the disclosure of this information is that potential suppliers will be able to manipulate the price of power bid to the Companies to maximize their revenues, thereby causing higher prices for the Companies' customers and giving a commercial advantage to the Companies' competitors. The Commission has historically recognized the need for confidential treatment of unit maintenance schedules.⁴

PSC 2-3 and JI 2-6(a)-(b)

6. Within the workpapers provided in response to PSC 2-3 and the information provided in response to JI 2-6(a)-(b), the Companies are providing confidential information related to projected capital costs associated with the construction of a new natural gas combined cycle ("NGCC") unit. This information was obtained from the responses to the Companies' Request for

² See, e.g., *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 3 (Ky. PSC Dec. 6, 2022); *Electronic 2018 Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company*, Case No. 2018-00348, Order at 3 (Ky. PSC Nov. 16, 2018).

³ See *Electronic Application of Kentucky Utilities Company for a Certificate of Public Convenience and Necessity and Approval of Amendment to Its 2016 Compliance Plan for Recovery by Environmental Surcharge*, Case No. 2017-00483, Order at 1-2 (Ky. PSC Apr. 30, 2018).

⁴ See, e.g., *Electronic Review of the Adequacy of Kentucky's Generation Capacity and Transmission System*, Administrative Case No. 387, Order at 2 (June 20, 2023); *An Electronic Examination of the Application of the Fuel Adjustment Clause of Big Rivers Electric Corporation from May 1, 2021 through October 31, 2021*, Case No. 2022-00041, Order at 2-3 (Ky. PSC Jan. 10, 2023).

Proposals (“RFPs”) for engineering, procurement, and construction of the NGCC unit. Public disclosure of the content of an RFP response would disrupt the competitive bid process. Disclosure could cause commercial harm to the Companies’ relationship with the selected bidder, as well as the Companies’ relationship with future prospective bidders, because bidders may be less willing to negotiate with the Companies if bid details are publicly disclosed, or bidders may use the disclosure to manipulate bid prices at higher levels. The Commission has previously granted confidential treatment to capital project costs.⁵

PSC 2-1, PSC 2-3, PSC 2-4, and KYSEIA 2-4

7. The Companies’ responses to PSC 2-1, PSC 2-3, PSC 2-4, and KYSEIA 2-4 contain information on the agreed upon rates that the Companies will pay for solar energy. Specifically, the responses to PSC 2-1, PSC 2-3, and PSC 2-4 include workpaper attachments that contain non-public pricing information. The response to KYSEIA includes six solar purchase power agreements (“PPAs”), five of which include confidential pricing provisions and all of which include other commercially sensitive terms and provisions.⁶

8. Public disclosure of confidential pricing information will place the Companies at a considerable disadvantage when negotiating future contracts, to the detriment of the Companies’ customers. Furthermore, public disclosure will provide insight into the Companies’ evaluation of bids for such contracts to the detriment of the Companies and their ratepayers. Additionally, disclosing this information will likely reduce the willingness of the vendors and similar entities to contract or otherwise transact business with the Companies in the future. The public disclosure of

⁵ *Electronic Application of Duke Energy Kentucky, Inc. for (1) An Adjustment of 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. 2022-00372, Order at 9 (Ky. PSC Oct. 30, 2023); *Application of Big Rivers Electric Corporation for Termination of Contracts and a Declaratory Order and for Authority to Establish a Regulatory Asset*, Case No. 2018-00146, Order at 1-3 (Ky. PSC Sept. 17, 2019).

⁶ The pricing of the Rhudes Creek PPA was made public in Case No. 2020-00016, and the Companies are not seeking confidential protection for its pricing in this proceeding.

this information will create precisely the kind of competitive harm KRS 61.878(1)(c)(1) intends to prevent.

9. Because solar development continues to be an emerging field, the commercial terms involved in solar contracts have yet to mature into standard terms. Solar contracts often involve extensive negotiations of commercial terms that may be generally standardized in other industries, such as in contracts involving the purchase of coal. Coal contracts, in comparison, have had more time to develop and mature because of coal's iterative presence in the energy industry, resulting in more contract terms that may be considered "boilerplate" or standard in the negotiation phase. Solar contracts have not matured to the same degree. Because of the incipient nature of solar contracts, public disclosure of commercially sensitive terms permits an exceptionally unfair commercial advantage to competitors of solar developers in contravention of KRS 61.878(1)(c)(1). In light of the distinctive context of solar contracts, the Companies requests such information not be disclosed until the costs are proposed for recovery.⁷

⁷ The Commission has previously granted confidential protection for the non-pricing commercially sensitive terms of a solar PPA while denying such protection for the solar PPA's pricing. *See Electronic Joint 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, Order (Ky. PSC May 8, 2020). More recently, the Commission denied confidential protection for solar PPA pricing and other commercially sensitive provisions. *See 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 at 17 (Ky. PSC Aug. 31, 2023) (denying confidential treatment for information relating to solar PPAs); Case No. 2022-00402, Order at 5 (Ky. PSC Oct. 10, 2023) (denying motion for reconsideration of the Commission's August 31, 2023 Order regarding the confidential treatment of solar PPA information). The Companies maintain the position that their rationale for requesting confidential protection of solar energy pricing information and other commercially sensitive terms and provisions has merit, and the Companies have appealed the Commission's determinations on the confidential nature of this information to the Franklin Circuit Court in Civil Action Nos. 23-CI-01010 and 23-CI-01148. Consequently, the Companies respectfully set forth the same reasoning as in Case No. 2022-00402 for the confidential protection of this sensitive commercial information.

Confidential Information Subject to this Petition

10. With the exception of third-party information provided to the Companies in confidence, 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.

11. 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.

12. 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.⁸

13. The Companies are providing a confidential zip file in response to PSC 2-1. Certain files contained therein are confidential in their entirety (denoted by folder or filenames including the word "CONFIDENTIAL"); for those files, the Companies are providing written notification pursuant to 807 KAR 5:001 § 13(2)(b) that each such file is confidential in its entirety because it is impracticable to redact the confidential information from it. The Companies are also filing electronically with the Commission a public version of the attachment to PSC 2-1 that includes only non-confidential files.

14. Pursuant to 807 KAR 5:001 § 13(2)(b), the Companies are providing written notification the attachment to PSC 2-3 is confidential in its entirety.

⁸ *Utility Regulatory Commission v. Kentucky Water Service Company, Inc.*, 642 S.W.2d 591, 592-94 (Ky. App. 1982).

15. With regard to the Companies' response to JI 2-6(a)-(b) and the attachments to PSC 2-4 and KYSEIA 2-4, 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.


16. In accordance with the Commission's March 24, 2020 and July 22, 2021 Orders in Case No. 2020-00085, the Companies will upload the confidential versions of PSC 2-1, PSC 2-3, PSC 2-4, JI 2-6(a)-(b), and KYSEIA 2-4 noting the confidential information with highlighting to the Companies' 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.

17. Because of the unique nature of solar contracting terms, the Companies request that the solar energy rate information contained in the response to PSC 2-1, PSC 2-3, PSC 2-4, and KYSEIA 2-4 remains confidential until the costs are proposed for recovery. For all other 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 issue an order granting protection from public disclosure for the confidential information specifically described in this petition.

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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 February 22, 2024, and that there are currently no parties in this proceeding that the Commission has excused from participation by electronic means.



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