

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN ELECTRONIC EXAMINATION OF THE)	
APPLICATION OF THE FUEL ADJUSTMENT)	CASE NO.
CLAUSE OF KENTUCKY UTILITIES COMPANY)	2021-00294
FROM NOVEMBER 1, 2020 THROUGH APRIL 30,)	
2021)	

ORDER

On September 1, 2021, Kentucky Utilities Company (KU) filed a petition, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential treatment for five years for certain information provided by KU in response to Commission Staff's First Request for Information, Item 4(b), as contained in the Appendix to the Commission's Order dated August 18, 2021. The information for which KU requested confidential treatment pertains to coal bid analysis information.

The Commission is a public agency subject to Kentucky's Open Records Act, which requires that all public records "be open for inspection by any person, except as otherwise provided by KRS 61.870 to 61.884."¹ Exceptions to the free and open examination of public records contained in KRS 61.878 should be strictly construed.² The party requesting that materials be treated confidentially has the burden of establishing that one of the exceptions is applicable.³

¹ KRS 61.872(1).

² See KRS 61.871.

³ 807 KAR 5:001, Section 13(2)(c).

In support of its petition, KU argued that disclosure of the factors underlying KU's bid analysis/selection process would damage KU's competitive position and business interests. KU further claimed that because this information reveals its business model for evaluating bids, potential bidders with access to the information could manipulate the bid solicitation process to the detriment of KU and its ratepayers by tailoring bids to correspond to and comport with KU's bidding criteria and process. KU further noted that the Commission has treated this information as confidential in KU's recent six-month and two-year fuel adjustment clause review proceedings. KU argued for the application of KRS 61.878(1)(c)(1), which exempts "[r]ecords confidentially disclosed to an agency or required by an agency to be disclosed to it, 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."

Having considered the petition and the material at issue, the Commission finds that the coal bid analysis information is generally recognized as confidential or proprietary and competitively sensitive and if openly disclosed would permit an unfair commercial advantage to KU's competitors;⁴ it therefore meets the criteria for confidential treatment and is exempted from public disclosure pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1).

IT IS THEREFORE ORDERED that:

1. KU's petition for confidential treatment is granted.

⁴ See Case No. 2019-00229, *An Examination of the Application of the Fuel Adjustment Clause of Louisville Gas & Electric Co.* (Ky. PSC Mar. 30, 2020); Case No. 2007-00524, *An Examination of the Application of the Fuel Adjustment Clause of Kentucky Utilities Co. from May 1, 2007 through October 31, 2007* (Ky. PSC Feb. 27, 2008) (on delegated authority).

2. The designated material granted confidential treatment by this Order shall not be placed in the public record or made available for public inspection for five years or until further Order of this Commission.

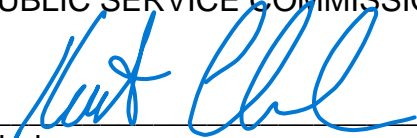
3. Use of the designated material granted confidential treatment by this Order in any Commission proceeding shall comply with 807 KAR 5:001, Section 13(9).

4. KU shall inform the Commission if the designated material granted confidential treatment by this Order becomes publicly available or no longer qualifies for confidential treatment.

5. If a nonparty to this proceeding requests to inspect the material granted confidential treatment by this Order and the period during which the material has been granted confidential treatment has not expired, KU shall have 30 days from receipt of written notice of the request to demonstrate that the material still falls within the exclusions from disclosure requirements established in KRS 61.878. If KU is unable to make such demonstration, the requested material shall be made available for inspection. Otherwise, the Commission shall deny the request for inspection.

6. The Commission shall not make the requested material available for inspection for 30 days from the date of service of an Order finding that the material no longer qualifies for confidential treatment in order to allow KU to seek a remedy afforded by law.

PUBLIC SERVICE COMMISSION



Chairman

Vice Chairman

Commissioner

ENTERED
MAY 17 2022
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KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:



Executive Director

*Andrea M. Fackler
Manager, Revenue Requirement
LG&E and KU Energy LLC
220 West Main Street
Louisville, KENTUCKY 40202

*Honorable Allyson K Sturgeon
Managing Senior Counsel - Regulatory &
LG&E and KU Energy LLC
220 West Main Street
Louisville, KENTUCKY 40202

*Robert Conroy
Vice President, State Regulation and Rates
LG&E and KU Energy LLC
220 West Main Street
Louisville, KENTUCKY 40202

*Kentucky Utilities Company
220 W. Main Street
P. O. Box 32010
Louisville, KY 40232-2010