

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC INVESTIGATION OF LOUISVILLE	)	
GAS AND ELECTRIC COMPANY AND	)	CASE NO.
KENTUCKY UTILITIES COMPANY SERVICE	)	2023-00422
RELATED TO WINTER STORM ELLIOTT	)	

ORDER

On February 16, 2024, Louisville Gas and Electric Company and Kentucky Utilities Company (jointly, LG&E/KU) filed a petition, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential treatment for certain attachments provided in their responses to Commission Staff's First Request (Staff's First Request), Joint Intervenor's Initial Data Request (Joint Intervenor's Initial Request), and Sierra Club's Initial Request for Information (Sierra Club's Initial Request) pursuant to KRS 61.878(1)(c)(1), KRS 61.878(1)(m)(1), KRS 61.878(1)(k), and 18 CFR § 358.5(a) and 358.6(a).

Proprietary Commercial Information

LG&E/KU sought confidential treatment for an indefinite period for its redacted responses to Staff's First Request, Item 3, and Item 26(d), pursuant to KRS 61.878(1)(c)(1). In addition, LG&E/KU is seeking confidential treatment for a period of five years for the entirety of their response to Staff's First Request, Item 19(b), Attachment 1, pursuant to KRS 61.878(1)(c)(1).

LG&E/KU's response to Staff's First Request, Item 3, contained weather forecasting methodology information provided by third parties. According to LG&E/KU,

this information is proprietary to the third parties and disclosure would allow commercial competitors unfair access to information that the third parties' expended resources to develop.<sup>1</sup>

LG&E/KU's response to Staff's First Request, Item 26(d), contained confidential bid pricing terms related to capital project costs obtained from equipment vendors, pipe and material manufacturers, and suppliers. LG&E/KU argued that public disclosure of these pricing terms could disrupt the competitive bid process and cause commercial harm to LG&E/KU's relationship with current and future prospective bidders.<sup>2</sup>

LG&E/KU's response to Staff's First Request, Item 19(b) Attachment 1, included a presentation obtained confidentially from a third party which provides insight into ongoing capital projects and assessment of strategies and methodologies aimed at improving business operations and information. According to the petition, this presentation was authorized to be disclosed under confidential treatment by the third party, and if openly disclosed could permit an unfair commercial advantage to competitors of LG&E/KU.<sup>3</sup>

Having considered the petition and the material at issue, the Commission finds that the redacted portions of LG&E/KU's responses to Staff's First Request, Item 3 and Item 26(d), be granted confidential treatment for an indefinite period pursuant to KRS 61.878(1)(c)(1), because public disclosure of this information would allow commercial competitors unfair access to the third parties' expended resources, and could

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<sup>1</sup> Joint Petition of LG&E/KU for Confidential Treatment (Petition) (filed Feb. 16, 2024) at 2, paragraph 3.

<sup>2</sup> Petition at 2, paragraph 6.

<sup>3</sup> Petition at 2, paragraph 4.

cause commercial harm to LG&E/KU's relationship with current and future prospective bidders, which in turn could increase the price for ratepayers.

The Commission also finds that Staff's First Request Item 19(b), Attachment 1, be granted confidential treatment for a period of five years in its entirety pursuant to KRS 61.878(1)(c)(1). Although the Commission is not bound to third party confidentiality agreements or non-disclosure agreements, this response contains sensitive information which would permit an unfair commercial advantage to competitors.

#### Critical Energy Infrastructure Information

LG&E/KU sought confidential treatment for an indefinite period for the entirety of its responses to Staff's First Request, Items 14 and 52(c), Joint Intervenors' Initial Request, Item 2(d), and Sierra Club's Initial Request, Item 37. LG&E/KU is also seeking confidential treatment for an indefinite period for the redacted portions of its response to Staff's First Request, Items 26(d), 43, and 82. LG&E/KU argued that confidential treatment is warranted pursuant to KRS 61.878(1)(m)(1), because disclosure of these records would have a reasonable likelihood of exposing the transmission system to vulnerabilities.<sup>4</sup>

LG&E/KU's responses to Staff's First Request Item 14 Attachments 1 through 3, contain transmission substation inspection data and transmission line structure inspection data. LG&E/KU's responses to Staff's First Request Item 52(c) Attachments 1 and 2, show detailed locations of infrastructure on specific streets. LG&E/KU's responses to Joint Intervenors' Initial Request Item 2(d), contain the locations of the transmission tie lines between LG&E/KU's balancing authority and adjacent balancing authorities.

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<sup>4</sup> Petition at 5, paragraph 15.

LG&E/KU's responses to Sierra Club's Initial Request, Item 37, contain detailed load information, capacity and timing information, economic dispatch information, and model area dispatch information, as well as the results of stability and sensitivity analyses. LG&E/KU's responses to Staff's First Request Item 43 Attachments 2 and 3, and Staff's First Request Item 82, identify by circuit number both customer and transformer locations. LG&E/KU's responses to Staff's First Request Item 26(d) pages 34 and 35, contain overhead views of compression equipment.

According to the petition, the information present in these responses is considered Critical Energy Infrastructure Information (CEII), as defined by 18 CFR 388.113, and the disclosure of this information could create serious security concerns by exposing vulnerabilities of public utility critical systems and configurations, which could cause public harm through the disruption of the electric system.<sup>5</sup> LG&E/KU did not provide evidence that the information in the attachments has been designated CEII under the federal regulation; however, LG&E/KU is relying on KRS 61.878(1)(m)(1) for confidential treatment, along with prior cases in which the Commission has historically recognized the need for confidential treatment of similar sensitive information.<sup>6</sup>

Having considered the petition and the material at issue, the Commission finds that the entirety of LG&E/KU's responses to Staff's First Request Item 14 Attachments 1 through 3, Item 52(c) Attachments 1 and 2, responses to Joint Intervenor's Initial Request Item 2(d), and responses to Sierra Club's Initial Request Item 37, be granted indefinite

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<sup>5</sup> Petition at 5, paragraph 15.

<sup>6</sup> Case No. 2018-00348, *Electronic 2018 Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company* (Ky. PSC Nov. 16, 2018), Order at 3; (Ky. PSC Apr. 3, 2020), Order at 2-3.

confidential treatment pursuant to KRS 61.878(1)(m)(1), it exposes location information of the transmission system, the knowledge of which would pose a security concern to the transmission system.

The Commission also finds that the redacted portions of LG&E/KU's response to Staff's First Request's Item 26(d) pages 34 and 35, Item 43 Attachments 2 and 3, and Item 82 be granted confidential treatment for an indefinite period of time pursuant to KRS 61.878(1)(m)(1); the responses contain overhead views of equipment and identification of transformers, information that exposes critical systems and configurations, the knowledge of which could allow vulnerabilities to the transmission system.

Confidential Information protected by Federal or State Law

LG&E/KU sought confidential protection for an indefinite period, or until the information becomes public, for the redacted portions of LG&E/KU's response to Staff's First Request, Item 3 and the entirety of the response to Joint Intervenors' Initial Request, Item 2(d), pursuant to KRS 61.878(1)(k) and 18 CFR § 358.5(a) and 358.6(a), because the information in these responses contains non-public transmission function information that should be treated confidentially to ensure that it is not accessible to LG&E/KU marketing function employees.<sup>7</sup>

The Federal Energy Regulatory Commission Standards of Conduct for Transmission Providers, as stated in 18 CFR § 358.5(a) and 358.6(a), impose the "independent functioning rule," which requires transmission function and marketing function employees to operate independently of each other, and the "no-conduit rule,"

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<sup>7</sup> Petition at 6, paragraph 19.

which prohibits passing non-public transmission function information to marketing function employees respectfully.

According to LG&E/KU, the information provided in the response to Joint Intervenors' Initial Request, Item 2(d), contains the locations of the transmission tie lines between LG&E/KU's balancing authority and adjacent balancing authorities.<sup>8</sup> Disclosure of the information in these responses would provide marketing function employees with access to information that, in turn, would violate the federal regulation which prohibits passing transmission function information to marketing function employees.

Having considered the petition and the material at issue, the Commission finds that a determination regarding the applicability of KRS 61.878(1)(k) could not be reached concerning the response to LG&E/KU's response to Staff's First Request, Item 3. However, the Commission finds that the material warrants confidential treatment for an indefinite period for the redacted portions of LG&E/KU's response to Staff's First Request, Item 3, pursuant to KRS 61.878(1)(c)(1) because public disclosure of this information is proprietary and disclosure of such would allow commercial competitors unfair access to information that was created for LG&E/KU and third parties' expended resources to create on the utility's behalf.

The Commission finds that confidential protection be granted indefinitely, or until the information becomes public, for the entirety of the response to Joint Intervenors' Initial Request, Item 2(d), pursuant to KRS 61.878(1)(k) and 18 CFR § 358.5(a) and 358.6(a), to ensure transmission function employees function independently of marketing function employees.

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<sup>8</sup> Petition at 1, paragraph 13.

IT IS THEREFORE ORDERED that:

1. The redacted portions of LG&E/KU's responses to Staff's First Request, Item 3, Item 26(d) pages 34 and 35, Item 43 Attachments 2 and 3, and Item 82, granted confidential treatment by this Order shall not be placed in the public record or made available for public inspection for an indefinite period, or until further order of this Commission.

2. The entirety of LG&E/KU's response to Staff's First Request Item 14 Attachments 1 through 3, Item 52(c) Attachments 1 and 2, responses to Joint Intervenor's Initial Request Item 2(d), and responses to Sierra Club's Initial Request Item 37, granted confidential treatment by this Order shall not be placed in the public record or made available for public inspection for an indefinite period, or until further order of this Commission.

3. The entirety of LG&E/KU's response to Staff's First Request Item 19(b), Attachment 1, granted confidential treatment by this Order shall not be placed in the public record or made available for public inspection for a period of five years, or until further order of this Commission.

4. 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).

5. If the designated material granted confidential treatment by this Order becomes publicly available or no longer qualifies for confidential treatment, LG&E/KU shall inform the Commission and file with the Commission an unredacted copy of the designated material.

6. 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, LG&E/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 LG&E/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.

7. 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 LG&E/KU to seek a remedy afforded by law.

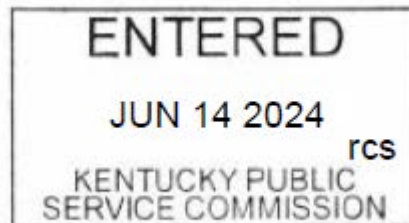


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