

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)	CASE NO.
FOR A SITE COMPATIBILITY CERTIFICATE FOR)	2023-00361
THE CONSTRUCTION OF A SOLAR FACILITY IN)	
MERCER COUNTY, KENTUCKY)	

ORDER

On May 10, 2024, Kentucky Utilities Company (KU) and Louisville Gas and Electric Company (LG&E) (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 five years for portions of a real estate purchase, sale, and assignment agreement provided in their response to Commission Staff's Second Request for Information, (Staff's Second Request) Item 14, Attachment 1.

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 KRS 61.878(1)(a) exempts from disclosure

¹ KRS 61.872(1).

² See KRS 61.871.

³ 807 KAR 5:001, Section 12(2)(c).

“[p]ublic records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.”⁴ KRS 61.878(1)(c)(1) provides an exception to the requirement for public disclosure of records that are “generally recognized as confidential and proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records.”⁵

LG&E/KU requested confidential treatment under KRS 61.878(1)(c)(1) for certain terms in their response to Staff’s Second Request, Item 14, Attachment 1, a Real Estate Purchase, Sale and Assignment Agreement entered into between KU and Mercer County Solar Project, LLC.⁶ In support of its petition, LG&E/KU argued that it contains non-public pricing terms that would cause competitive harm to LG&E/KU if publicly disclosed.⁷ LG&E/KU argued that if confidential pricing terms for which LG&E/KU are seeking protection, become publicly available, then LG&E/KU would be disadvantaged in their negotiating position with future landowners when entering similar agreements concerning the lease or purchase of real property.⁸ LG&E/KU contended that if they are required to publicly disclose the sensitive pricing terms for which they seek protection, despite such reasonable efforts, then future contracting parties may be less willing to enter into agreements with them.⁹ They further argued that all such commercial harms would

⁴ KRS 61.878(1)(a).

⁵ KRS 61.878(1)(c)(1).

⁶ LG&E/KU’s Petition for Confidential Protection (filed May 10, 2024) at 1.

⁷ LG&E/KU’s Petition for Confidential Protection at 2.

⁸ LG&E/KU’s Petition for Confidential Protection at 2.

⁹ LG&E/KU’s Petition for Confidential Protection at 2.

ultimately harm LG&E's and KU's customers, who would have to pay higher costs if the disclosed information resulted in higher contract prices or fewer contracting opportunities for them in the future.¹⁰ LG&E/KU argued that the Commission has previously granted protection to similar information.¹¹

Having considered the petition and the material at issue, the Commission finds that certain terms in the real estate purchase, sale, and assignment agreement provided in LG&E/KU's response to Staff's Second Request Item 14, Attachment 1 are generally recognized as confidential or proprietary; it therefore meets the criteria for confidential treatment and should be exempted from public disclosure pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1). Disclosure of pricing terms could put LG&E/KU at a competitive disadvantage in future negotiations. The Commission has previously found that purchase price should be afforded confidential treatment.¹²

IT IS THEREFORE ORDERED that:

1. LG&E/KU's May 10, 2024 petition for confidential treatment is granted.
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.

¹⁰ LG&E/KU's Petition for Confidential Protection at 2.

¹¹ LG&E/KU's Petition for Confidential Protection at 2 citing Case No. 2022-00402, *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* (Ky. PSC Aug. 31, 2023), Order at 8.

¹² See Case No. 2020-00339, *Application of Jackson Purchase Energy Corporation for Approval Under KRS 278.218 to Transfer Ownership of Existing Headquarters Facility*, (Ky PSC Feb. 23, 2021), Order.

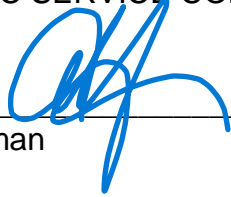
3. Use of the designated material granted confidential treatment by this Order in any Commission proceeding shall comply with 807 KAR 5:001, Section 13(9).

4. 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.

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, 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.


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

PUBLIC SERVICE COMMISSION



Chairman

Vice Chairman



Commissioner

ENTERED
AUG 16 2024
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KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:



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