

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

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In the Matter of:

THE 2011 JOINT INTEGRATED RESOURCE )  
PLAN OF LOUISVILLE GAS AND ELECTRIC ) CASE NO. 2011-00140  
COMPANY AND KENTUCKY UTILITIES )  
COMPANY )

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**RICK CLEWETT, DREW FOLEY, JANET OVERMAN, GREGG WAGNER, THE  
NATURAL RESOURCES DEFENSE COUNCIL, AND THE SIERRA CLUB MOTION  
TO COMPEL DISCOVERY AND MEMORANDUM IN SUPPORT THEREOF**

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Intervenors Rick Clewett, Drew Foley, Janet Overman, Gregg Wagner, the Natural Resources Defense Council, and the Sierra Club (collectively “Public Interest Intervenors”) moves the Kentucky Public Service Commission (“Commission”) for an order compelling Louisville Gas & Electric and Kentucky Utilities Company’s (collectively, “Companies”) to fully answer Public Interest Intervenors’ First Set of Interrogatories and Requests for Production to the Companies (“Data Requests”) dated May 26, 2011 for the reasons set forth in the Memorandum in Support.

**Memorandum in Support**

**I. Introduction**

On July 21, 2011, the Companies filed Objections to Interrogatories 7, 8, 9, and 10 and to the instructions and definitions in Public Interest Intervenors’ First Set of Interrogatories and Requests for Production. In Interrogatories 7, 8, 9, and 10, Intervenors requested more detailed information regarding statements made in the Resource Assessment section of the Integrated Resource Plan (“IRP”). The Companies objected to these Interrogatories claiming “[t]hat material was provided only for informational purposes. The information requested was not used

in the development of the Resource Plan in Integrated Resource Plan and therefore is irrelevant to the issues in this proceeding.” The Commission should compel the Companies to respond to these Interrogatories because they are relevant to information that an IRP is legally mandated to address and are properly discoverable.

## **II. The Commission Should Compel Response to Interrogatories 7, 8, 9, and 10.**

In Interrogatories 7, 8, 9, and 10, Intervenors asked for additional detail for various statements contained in the Resource Assessment section of the IRP. The Resource Assessment section, which is mandated by state law, requires the Companies to:

include the utility’s resource assessment and acquisition plan for providing an adequate and reliable supply of electricity to meet forecasted electricity requirements at the lowest possible cost. The plan shall consider the potential impacts of selected, key uncertainties and shall include assessment of potentially cost-effective resource options available to the utility.

807 KAR 5:058, Sec. 8. The regulations go on to state that the Companies are required to “describe and discuss all options considered for inclusion in the plan including: Improvements to and more efficient utilization of existing utility generation, transmission, and distribution facilities.” 807 KAR 5:058, Sec. 8.(2)(a).

To address this requirement, the Companies walked through its planned maintenance schedule and efficiency improvements. IRP at 8-4 – 8-9. With regard to the Maintenance Schedule, the IRP states that “Maintenance schedules across the Companies’ generation fleet are coordinated across the combined KU and LG&E generation system that the outages will have the least economic impact to the customers and the Companies. The Companies continually evaluate potential improvements, economic and otherwise, through routine maintenance of their generation fleet.” IRP at 8-4. The IRP goes on to state that the “Companies continue to plan

three-to-four week boiler outages<sup>1</sup> biennially to keep their units running efficiently through the year. . . . The target seven-to-eight year cycle for performing major maintenance continues to be successful for the Companies.” Id.

With regard to efficiency improvements, the IRP states that “[s]ince the “Companies’ 2008 IRP, the Companies have proceeded with several activities that have maintained or improved efficiencies. These have included . . . boiler tube replacements, . . . and generator reliability improvements.” IRP at 8-5. The IRP goes on to discuss how important boiler tube replacement is:

Boiler tube failures contributor to the fleet’s equivalent forced outage rate. As native load has increased, so has boiler load demand. . . . To improve availability, boiler tube studies utilizing software modeling tools and inspections have been conducted using the latest technology to identify boiler sections in need of replacement. All units across the fleet have scheduled boiler outages to replace boiler tube sections. These efforts continue to ensure maximum boiler availability and reliability.

IRP at 8-6.

The IRP then goes on to talk about other planned “efficiency improvements and unit derate improvements at various plants in the fleet,” including “[a]ir heater basket replacement on numerous units, improving air flow and boiler efficiency.” IRP at 8-6 – 8-7.

Interrogatories 7, 8, 9 and 10 requested more detail about planned maintenance and efficiency improvements discussed in the Resource Assessment section of the IRP.

Interrogatory 7: “For each of the Companies’ coal-fired electric generating units, identify in which years over the life of the Resource Plan the Companies intend to carry out “three-to-four week boiler outages,” and list each project the Companies plan to carry out during each outage, and the cost of each such project.”

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<sup>1</sup> We have underlined sections of the IRP that form the basis of Interrogatories 7, 8, 9, and 10, to make it easier for the Commission to identify the section of the IRP that provided the basis for Intervenors’ Interrogatories.

Interrogatory 8: “For each of the Companies’ coal-fired electric generating units, identify in which years over the life of the Resource Plan the Companies intend to carry out the “target seven-to-eight year cycle for performing major maintenance.” List each project the Companies plan to carry out during each such major maintenance, and the cost of each such project.

Interrogatory 9: For each of the Companies’ coal-fired electric generating units, identify in which years during the life of the Resource Plan “boiler outages to replace boiler tube sections” have been scheduled.

Interrogatory 10: Identify which of the Companies’ coal-fired electric generating units have replaced air heater baskets and in what year they did so.

The Companies objected to Interrogatories 7, 8, 9, and 10 claiming

The quoted material referenced in the request for information is from a description of information in the Integrated Resource Plan. That material was provided only for informational purposes. The information requested was not used in the development of the Resource Plan in Integrated Resource Plan and therefore is irrelevant to the issues in this proceeding.

Kentucky Rule of Civil Procedure 26.02(1), regarding the scope of discovery, provides “[p]arties may obtain discovery regarding any matter, not privileged, *which is relevant to the subject matter involved in the pending action*, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party . . . [i]t is not ground for objection that the information sought will be inadmissible at the trial if the information sought *appears reasonably calculated to lead to discovery of admissible evidence*.” The information sought by the Public Interest Intervenors qualifies as discoverable under this standard.

The information the Public Interest Intervenors seeks is relevant to the issues involved in this case and properly discoverable. This case involves the Companies’ IRP. Under Kentucky law, an IRP must include a Resource Assessment to ensure that the utility is “providing an adequate and reliable supply of electricity to meet forecasted electricity requirements at the lowest possible cost.” Completely understanding planned outages to install boiler tube section and air heater baskets and other planned projects is critical to fully analyzing whether the IRP

will ensure a reliable source of electricity. Moreover, to analyze and assess whether these projects represent the lowest possible cost, Public Interest Intervenors need to know what projects are planned for the various units in the fleet and what are the estimated costs of these projects. It is absolutely critical that Public Interest Intervenors have access to this information to provide fully developed comments that address the Companies' resource assessment, including assessing whether the planned outages will impact reliability, whether the planned projects represent the lowest possible costs, and describe any potentially additional cost-effective resource options available to the Companies. Finally, given that Kentucky law mandates an IRP include this resource assessment, it is illogical for the Companies to claim that the information noted in the Resource Assessment that formed the basis of our Interrogatories "was not used in the development of the Resource Plan in Integrated Resource Plan and therefore is irrelevant to the issues in this proceeding."

Should the Companies have concerns regarding the production of confidential or sensitive information, Public Interest Intervenors suggests they file a petition for confidential treatment and file the requested information under seal.

### CONCLUSION

It is for the Commission and not the Companies to decide whether the information that is the subject of a data request is relevant and admissible. The Companies should not be permitted to unilaterally decide which data requests and interrogatories it will answer based upon their determination of what is what is not relevant to the proceeding.

Respectfully submitted,



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Dated: August 4, 2011

**CERTIFICATE OF SERVICE**

I certify that I served a copy of this Reply in Support of Petition for Full Intervention Motion via first class mail on August 4, 2011, to the following:

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