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PUBLIC SERVICE
COMMISSION



a PPL company

Mr. Jeff DeRouen
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, KY 40602

Kentucky Utilities Company
State Regulation and Rates
220 West Main Street
PO Box 32010
Louisville, Kentucky 40232
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Robert M. Conroy
Director - Rates
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May 1, 2013

**RE: *AN EXAMINATION OF THE APPLICATION OF THE FUEL
ADJUSTMENT CLAUSE OF KENTUCKY UTILITIES COMPANY
FROM NOVEMBER 1, 2010 THROUGH OCTOBER 31, 2012 -
CASE NO. 2012-00552***

Dear Mr. DeRouen:

Please find enclosed and accept for filing the original and eight (8) copies of the Supplemental Response of Kentucky Utilities Company to Commission Staff's First Request for Information No. 24.b.3 and c. in Appendix B of Commission's Order Dated February 13, 2013, in the above-referenced matter.

Also enclosed are an original and ten (10) copies of a Petition for Confidential Protection regarding certain information provided in response to Question No. 24.

Should you have any questions concerning the enclosed, please contact me at your convenience.

Sincerely,

Robert M. Conroy

Enclosures

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PUBLIC SERVICE
COMMISSION

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN EXAMINATION OF THE APPLICATION OF)
THE FUEL ADJUSTMENT CLAUSE OF) CASE NO.
KENTUCKY UTILITIES COMPANY FROM) 2012-00552
NOVEMBER 1, 2010 THROUGH OCTOBER 31, 2012)

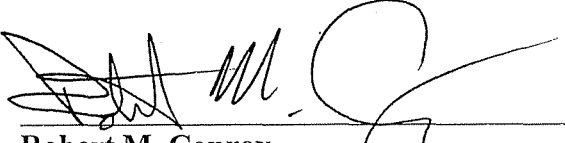
MAY 1, 2013 SUPPLEMENTAL RESPONSE OF
KENTUCKY UTILITIES COMPANY
TO
COMMISSION STAFF'S FIRST REQUEST
FOR INFORMATION
DATED FEBRUARY 13, 2013

FILED: May 1, 2013


VERIFICATION

COMMONWEALTH OF KENTUCKY)
) SS:
COUNTY OF JEFFERSON)

The undersigned, **Robert M. Conroy**, being duly sworn, deposes and says that he is Director - Rates for LG&E and KU Services Company, and that he has personal knowledge of the matters set forth in the responses for which he is identified as the witness, and the answers contained therein are true and correct to the best of his information, knowledge and belief.


Robert M. Conroy

Subscribed and sworn to before me, a Notary Public in and before said County and State, this 29th day of April 2013.


Notary Public (SEAL)

My Commission Expires:

7/21/2015

VERIFICATION

COMMONWEALTH OF KENTUCKY)
) SS:
COUNTY OF JEFFERSON)

The undersigned, **Mike Dotson**, being duly sworn, deposes and says that he is Manager – LG&E and KU Fuels for LG&E and KU Services Company, and that he has personal knowledge of the matters set forth in the responses for which he is identified as the witness, and the answers contained therein are true and correct to the best of his information, knowledge and belief.

Mike Dotson

Mike Dotson

Subscribed and sworn to before me, a Notary Public in and before said County and State, this 29th day of April 2013.

Sean A. Henry (SEAL)

Notary Public

My Commission Expires:

7/21/2015

KENTUCKY UTILITIES COMPANY

**May 1, 2013 Supplemental Response to Commission Staff's
First Request for Information No. 24.b.3 and c in Appendix B
of Commission's Order Dated February 13, 2013**

Case No. 2012-00552

Question No. 24

Witness: Mike Dotson / Robert M. Conroy

- Q-24. a. State whether KU is currently involved in any litigation with its current or former coal suppliers.
- b. If the response is yes, for each litigation:
- (1) Identify the coal supplier;
 - (2) Identify the coal contract involved;
 - (3) State the potential liability or recovery to KU;
 - (4) List the issues presented; and
 - (5) Provide a copy of the complaint or other legal pleading that initiated the litigation and any answers or counterclaims. If a copy has previously been filed with the Commission, provide the date on which it was filed and the case in which it was filed.
- c. State the current status of all litigation with coal suppliers.

Original Response:

- A-24. a. Yes
- b. **Coal Supply Agreement KUF02860/LGE02013**
- (1) Resource Sales, Inc. ("Resource"), Allied Resources, Inc. ("Allied"), Cochise Coal Company, Inc. ("Cochise"), and Smoky Mountain Coal Corporation ("SMCC")
 - (2) Coal Purchase Order KUF-02860 dated as of January 1, 2002, as amended
 - (3) KU and LG&E jointly seek to recover damages arising from the non-delivery of 1,019,829 tons of coal. Plaintiffs seek to have the court interpret the force majeure provision in the Agreement and to recover the

amount of payments withheld by KU and LG&E to offset their claim for damages.

(4) Plaintiffs claim the force majeure provision should be interpreted in such a way that KU is not entitled to any more deliveries of coal pursuant to the Agreement. KU disagrees and withheld certain payments, as permitted under the Agreement, and demands that the Plaintiffs resume deliveries as required under the Agreement.

(5) A copy of the Complaint filed by the Plaintiffs in the Circuit Court of Webster County, Kentucky, Civil Action No. 08-CI-00334, a copy of the First Amended Complaint filed by the Plaintiffs in the Circuit Court of Webster County, Kentucky, Civil Action No. 08-CI-00334, and a copy of the Answer and Counterclaim filed by KU was filed with the Commission in Case No. 2008-00520.

c. This case is in the discovery phase and is ongoing. The Court denied Plaintiffs' motion for judgment on the pleadings and agreed with KU's argument that the UCC applies to the contract and allows its interpretation to be informed by evidence on course of conduct, course of dealing and usage of trade. A trial is presently set to begin on June 17, 2013.

Supplemental Response:

b.

(3) KU and LG&E jointly seek to recover damages arising from the non-delivery of 1,019,829 tons of coal.¹ Plaintiffs seek to have the court interpret the force majeure provision in the Agreement and to recover the amount of payments withheld by KU and LG&E to offset their claim for damages.

c. Resource Sales, Inc. and affiliated entities (collectively "RSI") contractually agreed to supply the Companies and Western Kentucky Energy, Inc. ("WKE") with certain amounts of coal in 2008 and 2009 at set prices per ton. By 2008, the agreed price was well below the spot-market price for similar coal. RSI declared a force majeure event in 2008, following which it delivered significantly less coal to the Companies and WKE than the contracted amount. RSI's failure to deliver the contracted amounts forced the Companies and WKE to purchase higher-priced replacement coal on the spot market. In general, KU purchased 655,842 replacement tons for its Ghent Generating Station, LG&E purchased 230,924

¹ The 1,019,829 tons identified in the response to Staff's First Request for Information Item No. 24.b.3. in Appendix B to the Commission's Order dated February 13, 2013, was based on the Companies' original calculation made in 2008. During the course of the litigation, the Companies determined that 20,000 tons was inadvertently included in the original calculation. The correct tonnage is 999,829.

replacement tons for its Trimble County Generating Station and 113,063 replacement tons for its Mill Creek Generating Station, and WKE purchased 297,438 replacement tons.

On September 26, 2008, RSI filed two lawsuits in the Circuit Court of Webster County, Kentucky, entitled *Resource Sales, Inc., Allied Resources, Inc., Cochise Coal Company, Inc. and Smoky Mountain Coal Corporation v. Louisville Gas and Electric Company and Kentucky Utilities Company*, Case No. 08-CI-00334, and *Resource Sales, Inc., Allied Resources, Inc., Cochise Coal Company, Inc. and SMCC, Inc. v. Western Kentucky Energy Company*, Case No. 08-CI-00335. RSI asserted claims against the Companies and WKE for declaratory relief, breach of contract for alleged non-payment for coal RSI delivered, and alleged non-payment of RSI's government imposition claims in connection with the contracts and the operation of RSI's coal mines in Webster County, Kentucky.

The Companies and WKE filed counterclaims against RSI for alleged breach of their coal-supply contracts, for declaratory relief arising out of RSI's operation of its coal mines in Webster County, Kentucky, and RSI's failure to deliver the contracted amounts of coal to LG&E's Trimble County and Mill Creek Generating Stations, KU's Ghent Generation Station and WKE's then leased generation.

The civil action: *Resource Sales, Inc., Allied Resources, Inc., Cochise Coal Company, Inc. and SMCC, Inc. v. Western Kentucky Energy Company*, Case No. 08-CI-00335 was subsequently transferred to the Jefferson Circuit Court, Division 8, Kentucky and was re-styled as Case No. 09-CI-007221.

After several years of litigation, on March 12, 2013, RSI, the Companies, and WKE, following a court-ordered mediation by the Circuit Court of Webster County, Kentucky, entered into a confidential global settlement agreement to resolve and mutually release all claims. A complete copy of the March 12, 2013 settlement agreement and the confidential portion of this supplemental data response is enclosed in a sealed envelope and filed with a petition requesting confidential treatment. The entire settlement agreement and certain portions of this supplemental data response are considered to be confidential under the terms of the settlement agreement.