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January 13, 2012

VIA HAND DELIVERY

Jeff DeRouen
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, KY 40601

RE: Consideration of the New Federal Standards of the Energy Independence and Security Act of 2007
Case No. 2008-00408

Dear Mr. DeRouen:

Enclosed please find and accept for filing the original and ten copies of the Joint Brief of Atmos Energy Corporation, Big Rivers Electric Corporation, Big Sandy Rural Electric Cooperative Corporation, Blue Grass Energy Cooperative Corporation, Clark Energy Cooperative, Inc., Columbia Gas of Kentucky, Inc., Cumberland Valley Electric, Delta Natural Gas Company, Inc., Duke Energy Kentucky, Inc., East Kentucky Power Cooperative, Inc., Farmers Rural Electric Cooperative Corporation, Fleming-Mason Energy Cooperative, Grayson Rural Electric Cooperative Corporation, Inter-County Energy Cooperative Corporation, Jackson Energy Cooperative Corporation, Jackson Purchase Energy Corporation, Kenergy Corp., Kentucky Power Company, Kentucky Utilities Company, Licking Valley Rural Electric Cooperative Corporation, Louisville Gas and Electric Company, Meade County Rural Electric Cooperative Corporation, Nolin Rural Electric Cooperative Corporation, Owen Electric Cooperative, Inc., Salt River Electric Cooperative Corporation, Shelby Energy Cooperative, Inc., South Kentucky Rural Electric Cooperative Corporation, and Taylor County Rural Electric Cooperative Corporation in the above-referenced matter. Please confirm your receipt of this filing by placing the stamp of your Office with the date received on the enclosed additional copies and return them to me via our office courier.

Jeff DeRouen
January 13, 2011
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Should you have any questions please contact me at your convenience.

Yours very truly,

A handwritten signature in black ink, appearing to read "W. Duncan Crosby III", with a stylized flourish at the end.

W. Duncan Crosby III

WDC:ec
Enclosures
cc: Parties of Record

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

CONSIDERATION OF THE NEW)	
FEDERAL STANDARDS OF THE)	CASE NO. 2008-00408
ENERGY INDEPENDENCE AND)	
SECURITY ACT OF 2007)	

JOINT BRIEF OF
ATMOS ENERGY CORPORATION, BIG RIVERS ELECTRIC CORPORATION, BIG SANDY RURAL ELECTRIC COOPERATIVE CORPORATION, BLUE GRASS ENERGY COOPERATIVE CORPORATION, CLARK ENERGY COOPERATIVE, INC., COLUMBIA GAS OF KENTUCKY, INC., CUMBERLAND VALLEY ELECTRIC, DELTA NATURAL GAS COMPANY, INC., DUKE ENERGY KENTUCKY, INC., EAST KENTUCKY POWER COOPERATIVE, INC., FARMERS RURAL ELECTRIC COOPERATIVE CORPORATION, FLEMING-MASON ENERGY COOPERATIVE, GRAYSON RURAL ELECTRIC COOPERATIVE CORPORATION, INTER-COUNTY ENERGY COOPERATIVE CORPORATION, JACKSON ENERGY COOPERATIVE CORPORATION, JACKSON PURCHASE ENERGY CORPORATION, KENERGY CORP., KENTUCKY POWER COMPANY, KENTUCKY UTILITIES COMPANY, LICKING VALLEY RURAL ELECTRIC COOPERATIVE CORPORATION, LOUISVILLE GAS AND ELECTRIC COMPANY, MEADE COUNTY RURAL ELECTRIC COOPERATIVE CORPORATION, NOLIN RURAL ELECTRIC COOPERATIVE CORPORATION, OWEN ELECTRIC COOPERATIVE, INC., SALT RIVER ELECTRIC COOPERATIVE CORPORATION, SHELBY ENERGY COOPERATIVE, INC., SOUTH KENTUCKY RURAL ELECTRIC COOPERATIVE CORPORATION, AND TAYLOR COUNTY RURAL ELECTRIC COOPERATIVE CORPORATION

Filed: January 13, 2012

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I. Introduction

Atmos Energy Corporation (“Atmos”), Big Rivers Electric Corporation (“Big Rivers”), Big Sandy Rural Electric Cooperative Corporation, Blue Grass Energy Cooperative Corporation, Clark Energy Cooperative, Inc., Columbia Gas of Kentucky, Inc. (“Columbia”), Cumberland Valley Electric, Delta Natural Gas Company, Inc. (“Delta”), Duke Energy Kentucky, Inc. (“Duke Kentucky”), East Kentucky Power Cooperative, Inc. (“EKPC”), Farmers Rural Electric Cooperative Corporation, Fleming-Mason Energy Cooperative, Grayson Rural Electric Cooperative Corporation, Inter-County Energy Cooperative Corporation, Jackson Energy Cooperative Corporation, Jackson Purchase Energy Corporation (“JPEC”), Kenergy Corp. (“Kenergy”), Kentucky Power Company (“Kentucky Power”), Kentucky Utilities Company (“KU”), Licking Valley Rural Electric Cooperative Corporation, Louisville Gas and Electric Company (“LG&E”), Meade County Rural Electric Cooperative Corporation (“Meade County RECC”), Nolin Rural Electric Cooperative Corporation, Owen Electric Cooperative, Inc., Salt River Electric Cooperative Corporation, Shelby Energy Cooperative, Inc., South Kentucky Rural Electric Cooperative Corporation, and Taylor County Rural Electric Cooperative Corporation (collectively, the “Utility Group”) offer this Joint Brief in response to the Commission’s November 17, 2011 Order in this proceeding. The November 17, 2011 Order requires utilities to brief the legal issue of whether adopting the Kentucky IRP Standard and the EISA 2007 Smart Grid Investment Standard require the promulgation of new administrative regulations, and permits parties to address other issues raised by certain Utility Group members in their filings seeking rehearing or reconsideration of a number of issues addressed in the Commission’s October 6, 2011 Order in this proceeding. As described at length below, the Utility Group respectfully submits that the best practice for promulgating generally applicable standards, particularly ones modifying existing administrative regulations, is to use notice-and-comment

rule-makings pursuant to KRS Chapter 13A, the requirements of which apply to the Commission through KRS 278.040(3). The Utility Group further respectfully submits that the proposed Kentucky IRP Standard and the EISA 2007 Smart Grid Investment Standard raise concerns that should be addressed before they are finally promulgated, but also that there is not a need to promulgate either standard to achieve the Commission's aims of promoting increased energy efficiency and Smart Grid development. The Utility Group does, however, support the opening of a new administrative case to explore further Smart Grid development in Kentucky.

In addition, this brief argues: (1) the Commission's proposed requirement that the Local Distribution Companies ("LDCs") adopt gas energy-efficiency policies and procedures is not necessary, but if there is to be a requirement, it should be revised to require LDCs to treat cost-effective energy efficiency as a resource with equal priority as other cost-effective resources; and (2) the utilities' March 25, 2011 Response to Kentucky PSC's February 19, 2010 Guidance Document Letter should be included in the record of the new Smart Grid and Smart Meter administrative case.

Finally, the Utility Group members that are EKPC member cooperatives agree with and adopt the arguments and points raised by EKPC in its October 28, 2011 Application for Rehearing concerning the DSM and energy efficiency program offerings of EKPC and its member cooperatives.

II. The Kentucky IRP Standard

The Utility Group respectfully asserts that the preferred approach to issuing rules or standards of general applicability, such as the Commission's proposed Kentucky IRP Standards, is to use a notice-and-comment rule-making in accordance with the provisions of KRS Chapter 13A. But the Utility Group further believes the Kentucky IRP Standard, as proposed, has

ambiguous language that, once corrected, renders the proposed standard redundant. The Utility Group therefore recommends against issuing the Kentucky IRP Standard.

A. The Best Practice for Changing Existing Regulations Is to Use a KRS Chapter 13A Rule-Making.

If the Commission desires to add new generally applicable energy-efficiency planning requirements to existing regulations, the best practice for doing so is to conduct a standard administrative rule-making proceeding as set out in KRS Chapter 13A, in accordance with KRS 278.040(3).¹ The new Kentucky IRP Standard included in the Commission’s October 6, 2011 Order in this proceeding is, in effect, a new rule of general applicability; as the Order stated, the new standard “shall be adopted by all jurisdictional utilities.”² The Kentucky IRP Standard states:

Each electric utility shall integrate energy efficiency resources into its plans and shall adopt policies establishing cost-effective energy efficiency resources with equal priority as other resource options.

In each integrated resource plan, the subject electric utility shall fully explain its consideration of cost-effective energy efficiency resources as a priority resource as required by regulation. In each certificate case, the subject electric utility shall fully explain its consideration of cost-effective energy efficiency resources as a priority resource.

In each rate case, the subject electric utility shall fully explain its consideration of cost-effective energy efficiency resources and the impact of such resources on its test year.

These new requirements would affect three existing Commission regulations: the IRP administrative regulation (807 KAR 5:058); the existing CPCN regulation (807 KAR 5:001 Section 9); and the existing rate case filing regulation (807 KAR 5:001 Section 10).

¹ KRS 278.040(3): “The commission may adopt, in keeping with KRS Chapter 13A, reasonable regulations to implement the provisions of KRS Chapter 278 and investigate the methods and practices of utilities to require them to conform to the laws of this state, and to all reasonable rules, regulations and orders of the commission not contrary to law.”

² Oct. 6 Order at 24.

KRS 13A.010(2) defines an administrative regulation as a “statement of general applicability promulgated by an administrative body that implements, interprets, or prescribes law or policy, or describes the organization, procedure, or practice requirements of any administrative body.” The statute clarifies that the term “administrative regulation” includes “the amendment or repeal of an existing administrative regulation.” The new Kentucky IRP Standard clearly fits the definition of an administrative regulation set out in KRS Chapter 13A; it is meant to apply to all jurisdictional utilities, and changes (or at least definitively interprets) the substantive requirements of three existing administrative regulations.

Promulgating an administrative regulation in Kentucky requires adherence to the procedures set out in KRS Chapter 13A. KRS 13A.100 states:

Subject to limitations in applicable statutes, any administrative body which is empowered to promulgate administrative regulations shall, by administrative regulation prescribe, consistent with applicable statutes: (1) Each statement of general applicability, policy, procedure, memorandum, or other form of action that implements; interprets; prescribes law or policy; describes the organization, procedure, or practice requirements of any administrative body; or affects private rights or procedures available to the public[.]

The requirements of KRS Chapter 13A apply to “standards” and all other pronouncements of administrative bodies that fit the definition of “administrative regulation”: “No administrative body shall issue standards or by any other name issue a document of any type where an administrative regulation is required or authorized by law.”³ KRS Chapter 13A further prohibits modifying, expanding, or limiting an administrative regulation by anything other than another administrative regulation unless such an action is explicitly permitted by statute.⁴ In other words, the only means by which a Kentucky administrative agency may promulgate an

³ KRS 13A.120(6).

⁴ KRS 13A.130.

administrative regulation is through the procedures established for such promulgation in KRS Chapter 13A (unless an alternative procedure is explicitly authorized elsewhere in statute).

This analysis finds support in a Franklin Circuit Court order addressing an appeal of a Commission action in Administrative Case No. 331. In its April 27, 1990 Order in that case, the Commission approved a set of guidelines on an interim basis for use by any utility that submitted a timely motion to use a forecasted test period.⁵ The Commission's April 27, 1990 Order was appealed by the Kentucky Attorney General to the Franklin Circuit Court on May 18, 1990. On July 10, 1991, the Franklin Circuit Court entered an Order that determined that the April 27, 1990 Order of the Commission "falls neatly within the statutory definition of a regulation, as it implements the new policy of the PSC of allowing the future test period method and describes the procedures that applicants will need to use to obtain the PSC's approval." The Franklin Circuit Court further determined that the April 27, 1990 Order was "clearly a 'regulation' as defined in KRS 13A.010(2), and as such, the PSC was required to observe proper procedures in creating the regulation." The Franklin Circuit Court held that the Commission's action in promulgating the April 27, 1990 Order in Administrative Case No. 331 was contrary to KRS 13A.010, KRS 13A.120(6), and KRS 278.040(3) and was void. There was no further appeal of the Franklin Circuit Court's decision. Therefore, as a general matter, the appropriate means by which the Commission may issue generally applicable standards is by using KRS Chapter 13A rule-makings.

⁵ Administrative Case No. 331, An Investigation of Appropriate Guidelines for Filing Forecasted Test Periods. This proceeding preceded the amendment of KRS 278.190 and the creation of KRS 278.192 in 1992, which established the option of using a forecasted test period for rate cases.

The provisions of EISA 2007 do not appear to provide an alternative means of promulgating an administrative regulation. The relevant PURPA provision, as modified by EISA 2007, states:

(1) The State regulatory authority (with respect to each electric utility for which it has ratemaking authority) or nonregulated electric utility may, *to the extent consistent with otherwise applicable State law*—(A) implement any such standard determined under subsection (a) of this section to be appropriate to carry out the purposes of this chapter, or (B) decline to implement any such standard.⁶

There is a provision of KRS Chapter 13A that explicitly addresses regulations that federal law requires Kentucky administrative agencies to issue: “An administrative body that promulgates an administrative regulation required by federal law or federal regulation shall comply with the provisions of this chapter.”⁷ Although it is true that EISA 2007 does not require the Commission to issue regulations, the requirement that the provisions of KRS Chapter 13A be followed to issue administrative regulations would still appear to apply given the wording of KRS 13A.120(4): “Any administrative regulation in violation of this section *or the spirit thereof* is null, void, and unenforceable.”⁸ It therefore appears that even standards issued at the suggestion of federal law, such as the Kentucky IRP Standard, should be issued through KRS Chapter 13A rule-makings.

B. However the Commission Ultimately Decides to Promulgate the KY IRP Standard, It Should Address Conflicts and Ambiguities in the Standard.

As several of the Utility Group members noted in their October 28, 2011 Joint Motion for Clarification and Amendment of Order, the “priority resource” language contained in the second paragraph of the Kentucky IRP Standard appears to conflict with the “equal priority” language

⁶ 16 USC 2621(c) (emphasis added).

⁷ KRS 13A.120(1)(b).

⁸ Emphasis added.

contained in the first paragraph. Use of the “priority resource” language in conjunction with “cost-effective” could be construed as suggesting that energy efficiency should be given priority over more cost-effective supply- and demand-side alternatives. But this would conflict with the Commission’s current IRP regulation (807 KAR 5:058), which requires utilities to file triennially their plans for providing an adequate and reliable supply of electricity to meet forecasted electricity requirements at the lowest possible cost; in other words, the IRP regulation does not permit preferring one means of meeting demand over another on a ground other than cost-effectiveness.

Similarly, the KY IRP Standard’s “priority resource” language again could be interpreted to conflict with the CPCN statute. KRS 278.020(1) states only one kind of preference for the Commission to consider when a CPCN application for a new generating unit is before it: “the policy of the General Assembly to foster and encourage use of Kentucky coal by electric utilities serving the Commonwealth.” It is not clear how “consider[ing] ... cost-effective energy efficiency resources as a priority resource” could be squared with that statutory policy. Neither is it clear how the public convenience or necessity would be served if “cost-effective energy efficiency resources” were given priority over more cost-effective means of meeting demand.

In addition, the term “cost-effective energy efficiency resources” is undefined in the October 6, 2011 Order. The Utility Group believes the term should be defined in the same way such resources are considered in the context of the IRP regulation. Specifically, “cost-effective energy efficiency resources” should be defined as “improvements to and more efficient utilization of existing utility generation, transmission, and distribution facilities,” and “conservation and load management or other demand-side programs not already in place.”⁹

⁹ 807 KAR 5:058, Section 8(2)(a)and (b).

For these reasons, the Utility Group requests that the Kentucky IRP Standard, if formally adopted in any form, be modified to read as follows:

Each electric utility shall integrate energy efficiency resources into its plans and shall adopt policies establishing cost-effective energy efficiency resources with equal priority as other resource options.

In each integrated resource plan, certificate case, and rate case, the subject electric utility shall fully explain its consideration of cost-effective energy efficiency resources as defined in the Commission's IRP regulation (807 KAR 5:058).

But the Utility Group believes that, consistent with its members' previously stated positions in the record of this proceeding, the Kentucky IRP Standard is unnecessary, whatever its form.¹⁰ The three regulations the Standard would modify, i.e., those applying to IRPs, CPCN applications, and rate cases, along with the statutes authorizing the regulations, already provide the Commission adequate authority to require utilities to demonstrate the cost-effectiveness of their proposals. Demonstrating cost-effectiveness generally requires demonstrating the lack of more cost-effective reasonable alternatives, including cost-effective energy-efficiency resources. It would therefore be redundant to issue the Kentucky IRP Standard, and the Utility Group recommends against such issuance.

III. The EISA 2007 Smart Grid Investment Standard

The Utility Group respectfully requests that the Commission refrain from putting into effect at this time the EISA 2007 Smart Grid Investment Standard.¹¹ As the Utility Group members stated in their March 25, 2011 Response to Kentucky PSC's February 19, 2010 Guidance Document Letter, and as the Commission acknowledged in its October 6, 2011 Order,

¹⁰ The Utility Group members stated at page 50 of their March 25, 2011 Response to Kentucky PSC's February 19, 2010 Guidance Document Letter, "The parties of record recommend that the Commission should not adopt any of these standards, or any variation thereof." The Commission summarized the Utility Group members' positions at pages 12-16 of its October 6, 2011 Order.

¹¹ Kentucky Power supports adoption of the EISA Smart Grid Investment Standard, Section 107(a)(16), to the extent set out in Mr. Wagner's January 12, 2009 testimony.

the “Smart Grid” is a constantly changing construct, one that is in flux because the different technologies are new and rapidly developing. It is precisely because the Smart Grid is so promising and new that it is not advisable to place constraints on its development or deployment in Kentucky with generally applicable standards that could stifle it. Moreover, the Commission may already consider all of the criteria contained in the proposed Smart Grid Investment Standard except “societal benefit” when examining Smart Grid proposals under existing statutes or regulations. Adding another standard would be unnecessary. Also, because the proposed Smart Grid Investment Standard is a rule of general applicability, the better practice would be to issue it through a notice-and-comment rule-making as prescribed in KRS Chapter 13A. For these reasons, the Utility Group recommends that the Commission refrain from putting in place a Smart Grid Investment Standard at this time, although the Group recommends proceeding with the new Smart Grid and Smart Meter administrative case to explore further the current state of Smart Grid and Smart Meter development and deployment, and to provide the Commission additional insight into the Utility Group’s Smart Grid and Smart Meter plans.

As an initial matter, the proposed Smart Grid Investment Standard is a rule of general applicability: “The Commission, therefore, has determined that the jurisdictional electric utilities shall adopt the EISA 2007 Smart Grid Investment Standard.”¹² For all the reasons discussed concerning the Kentucky IRP Standard in Section II above, the best practice for issuing a rule of general applicability is to use the rule-making process set forth in KRS Chapter 13A. For this reason alone the Utility Group respectfully asks the Commission to use its order on rehearing to rescind the requirement for jurisdictional utilities to adopt the Smart Grid Investment Standard.

¹² October 6, 2011 Order at 114.

Additionally, such a standard is neither advisable nor necessary at this time. As discussed above and in the Utility Group members' March 25 Response, Smart Grid technology is rapidly changing and improving. Rather than constraining Smart Grid development with a generally applicable standard now, the Utility Group encourages the Commission to proceed with the proposed Smart Grid and Smart Meter administrative case to explore further the current state and the future of Smart Grid and Smart Meter technology. Also, allowing the Smart Grid to develop rationally in Kentucky by permitting utilities to bring Smart Grid and Smart Meter project proposals to the Commission as new technologies and cost-saving opportunities arise will enable the Commission and utilities to develop a better understanding of which technologies work best and most cost-effectively in different service territories and to serve different customer groups. In time, as technology in the Smart Grid field evolves and industry standards develop, a comprehensive, generally applicable Smart Grid Investment Standard may become an important means of ensuring that utilities are providing high-quality and cost-effective service. But at this early stage of Smart Grid development, such a standard could prove to be stifling rather than helpful.

In addition, there are aspects of the proposed Smart Grid Investment Standard that are problematic from practical and jurisdictional perspectives. The standard states:

Each State shall consider requiring that, prior to undertaking investments in nonadvanced grid technologies, an electric utility of the State demonstrate to the State that the electric utility considered an investment in a qualified Smart Grid system based on appropriate factors, including:

- total costs;
- cost-effectiveness;
- improved reliability;
- security;

- system performance; and
- societal benefit.

As a practical matter, the standard does not facially restrict itself only to the kinds of investments that would require Commission approval, i.e., the kinds of investments that would require obtaining a CPCN; thus, it is not clear whether the standard is creating a dramatically increased regulatory compliance burden or is a minor adjustment to existing regulatory requirements. Jurisdictionally, the standard appears to bring “societal benefit” into the matters the Commission may review concerning utility decision-making, which conflicts with the statutory restriction of the Commission’s jurisdiction to the rates and service of public utilities,¹³ as well as the Commission’s own past orders rejecting invitations to expand its jurisdiction into other matters.¹⁴ These practical and jurisdictional issues should be resolved before the Commission puts into effect any Smart Grid Investment Standard.

These concerns and issues militate against issuing a generally applicable standard at this time, particularly because the Commission may already consider all of the criteria contained in the proposed Smart Grid Investment Standard except “societal benefit” when examining Smart Grid proposals under existing statutes or regulations. But if the Commission believes it is useful to issue such a standard in the near future, the Utility Group would respectfully request that the Commission wait until the end of the new Smart Grid and Smart Meter administrative case to issue it. That would permit the Commission to address the practical and jurisdictional concerns cited above, as well as to refine the parameters of such a standard based on further review and consideration.

¹³ See KRS 278.040(2) (“The commission shall have exclusive jurisdiction over the regulation of rates and service of utilities”).

¹⁴ See, e.g., *In the Matter of: The 2008 Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company*, Case No. 2008-00148, Order at 5 (July 18, 2008) (“Notably absent from the Commission’s jurisdiction are environmental concerns”).

IV. The EISA 2007 Gas Energy Efficiency Standard¹⁵

With regard to the section of the Commission's October 6, 2011 Order relating to the EISA 2007 Gas Energy Efficiency Standard, the Commission determined not to require jurisdictional gas utilities to adopt the standard. The Commission opted instead to require the five major LDCs to develop policies and procedures that ensure that cost-effective energy efficiency is considered as a priority resource.

The LDC members of the Utility Group give the same priority to resource options, including cost-effective energy-efficiency options, and plan their systems based upon the lowest reasonable cost. To treat gas energy-efficiency options as "priority" resources, which the Utility Group believes could be interpreted as favoring such resources above other reasonable low-cost or lower-cost resources, would be to deviate from lowest-reasonable-cost standards currently set forth in the Commission's statutes and regulations. The Utility Group LDCs recommend against such a deviation.

Moreover, to the extent that the Commission's October 6, 2011 Order requiring LDCs to adopt policies and procedures concerning gas energy-efficiency resources was intended to require LDCs to treat such resources on an equal footing with other resources, the Utility Group LDCs do not believe a new regulatory requirement is necessary. Existing statutes and regulations give the Commission the necessary authority to review gas energy-efficiency proposals as part of reviewing LDCs' lowest-reasonable-cost service provision.

If the Commission determines that an additional requirement is necessary, the Utility Group LDCs request that the Commission amend its Order so that the policies and procedures to

¹⁵ Because Big Rivers, EKPC, Kentucky Power, KU and the electric distribution cooperatives do not provide gas service, they do not express an opinion concerning the EISA 2007 Gas Energy Efficiency Standard or join the Utility Group members concerning this section of the Joint Brief. Because Atmos, Columbia, and Delta provide only gas service, they join only this section of the Joint Brief.

be developed will ensure that cost-effective energy efficiency will be considered with the same priority as all other cost-effective resources.

V. Incorporating into the Record of the New Smart Grid and Smart Meter Administrative Case the Utilities' March 25, 2011 Comments in this Proceeding, as well as the Comments of the Attorney General and the Community Action Council

On page 3 of its October 28, 2011 Application for Rehearing, EKPC requested rehearing and asked that the Commission review pages 114 and 127 of the October 6, 2011 Order and clarify that the March 25, 2011 report by the utilities of record in this proceeding (“Joint Parties”) titled “Consideration of the New Federal Standards of the Energy Independence and Security Act,” and the joint comments filed on March 25, 2011 by the Attorney General (“AG”) and the Community Action Council of Lexington-Fayette, Bourbon, Harrison and Nicholas Counties, Inc. (“CAC”) regarding this report were also incorporated into the record of the upcoming administrative case on Smart Grid issues in order that the record in the case will be more fully developed to assist in its orderly consideration.

On page 114 of its October 6, 2011 Order, the Commission had stated, “The Commission also believes that it is appropriate to use the March 25, 2011 report of the Joint Parties as well as the joint comments regarding the report submitted by the AG and CAC as the basis for establishing another administrative case focusing solely on Smart Grid and Smart Meter initiatives and to manage the collaborative effort.” However, ordering paragraph number 5 on page 127 of the October 6, 2011 Order failed to list either the March 25, 2011 report of the Joint Parties or the March 25, 2011 joint comments of the AG and CAC as being incorporated into the record of the new administrative case.

In its November 17, 2011 Order granting rehearing on this matter, the Commission stated that EKPC had only sought to include the March 25, 2011 joint comments filed by the AG and

CAC into the record of the new administrative case.¹⁶ On December 20, 2011 the AG and CAC filed a joint motion asking that their March 25, 2011 joint comments be incorporated into the record of the new administrative case.

The Utility Group agrees with and supports EKPC's request that both the March 25, 2011 report of the Joint Parties and the March 25, 2011 joint comments of the AG and CAC should be incorporated into the record of the new administrative case on Smart Grid and Smart Meter issues. The Joint Parties invested considerable time and resources in the March 25, 2011 report, and believe the report will provide valuable background information for the new administrative case. The December 20, 2011 joint motion by the AG and CAC clearly indicates these parties believe their joint comments will also provide valuable information for the new administrative case.

Therefore, the Utility Group requests and recommends that the Commission amend ordering paragraph number 5 of its October 6, 2011 Order to clearly state that the March 25, 2011 report of the Joint Parties and the March 25, 2011 joint comments of the AG and CAC are incorporated into the record of the new administrative case on Smart Grid and Smart Meter issues.

VI. EKPC and Member Cooperatives' Commitment to DSM and Energy Efficiency Programs¹⁷

On pages 8 through 10 of its October 28, 2011 Application for Rehearing, EKPC expressed its concern for statements and conclusions included on pages 66 and 67 of the Commission's October 6, 2011 Order relating to DSM and energy efficiency programs offered

¹⁶ The November 17, 2011 Order incorrectly stated the joint comments of the AG and CAC were filed on April 29, 2010, which was eleven months prior to the submission of the Joint Parties' report the joint comments addressed.

¹⁷ As this issue only applies to EKPC and its member cooperatives, Big Rivers, Duke Energy, JPEC, Kenergy, Kentucky Power, KU, LG&E, and Meade County RECC do not express an opinion on or join the other Parties to this Joint Brief concerning this section.

by EKPC and its member cooperatives. EKPC requested rehearing and asked the Commission to review these statements and conclusions and provide clarification as to how the conclusions were determined. The Commission granted rehearing on this issue in its November 17, 2011 Order.

The Utility Group members that are EKPC member distribution cooperatives express their agreement and adoption of the arguments and points raised by EKPC in the October 28, 2011 Application for Rehearing.

VII. Conclusion

The Utility Group appreciates being given the opportunity to address these important issues from the Commission's October 6, 2011 Order in this proceeding. Although the Utility Group agrees with the Commission concerning the importance of cost-effective energy efficiency and the potential of the Smart Grid, the Utility Group respectfully submits that the best practice for promulgating generally applicable standards, including the Kentucky IRP Standard and the EISA 2007 Smart Grid Investment Standard, is to use notice-and-comment rule-makings pursuant to KRS Chapter 13A. Although the Utility Group does not believe such standards are necessary to achieve the Commission's goals in those areas, if the Commission determines to promulgate the standards in final form, the Utility Group further respectfully submits that the proposed Kentucky IRP Standard and the EISA 2007 Smart Grid Investment Standard should be clarified to address ambiguities in the existing standards before their final issuance. Regardless of the approach the Commission ultimately decides to take concerning issuing such standards, the Utility Group supports opening a new administrative case to explore further Smart Grid and Smart Meter development in Kentucky, and would recommend not issuing a Smart Grid standard of any kind until the end of the new administrative case.

Additionally, the Utility Group LDCs respectfully ask the Commission to rescind as unnecessary the Commission's proposed requirement that LDCs adopt gas energy-efficiency

policies and procedures, or, in the alternative, revise the requirement to require LDCs to treat cost-effective energy efficiency as a resource with equal priority as other reasonable cost-effective resources; and the Utility Group respectfully asks the Commission to include the utilities' March 25, 2011 Response to Kentucky PSC's February 19, 2010 Guidance Document Letter in the record of the new Smart Grid and Smart Meter administrative case.

Finally, Utility Group members EKPC and its member cooperatives ask the Commission to review the statements and conclusions expressed on pages 66 and 67 of the October 6, 2011 Order and provide clarification as to how conclusions concerning the diversity of DSM and energy-efficiency programs and the level of commitment of EKPC and its member cooperatives to such programs when compared to investor-owned utilities were determined.

Dated: January 13, 2012

Respectfully submitted,

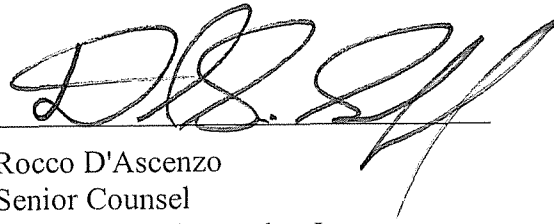
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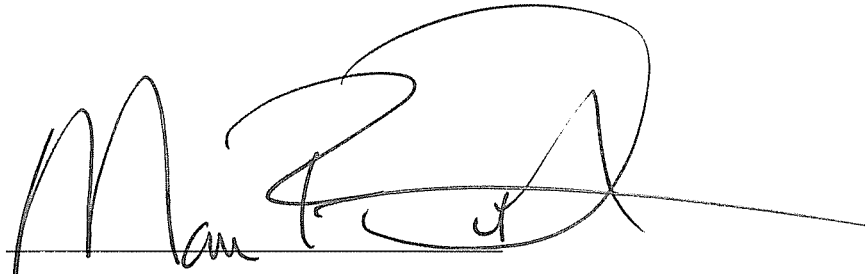
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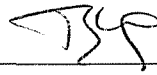
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A handwritten signature in black ink, appearing to read 'Mark R. Overstreet', written over a horizontal line. The signature is stylized and cursive.

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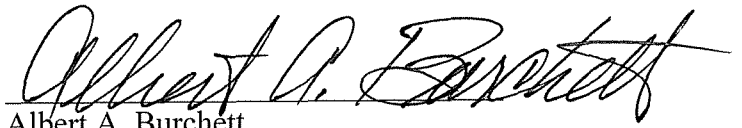
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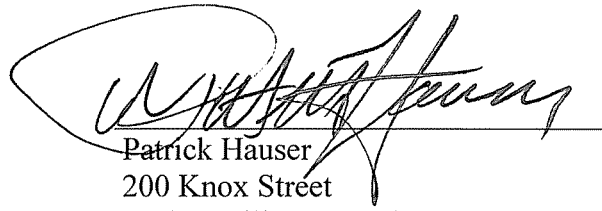
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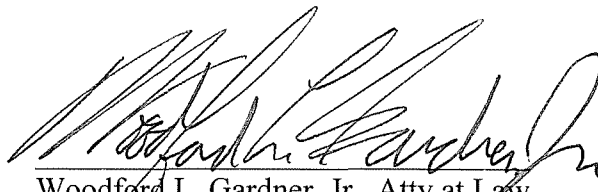
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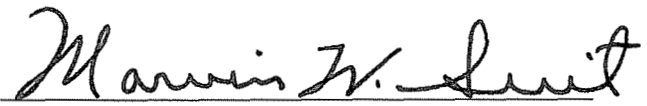
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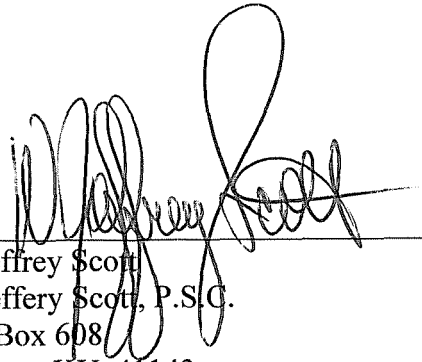


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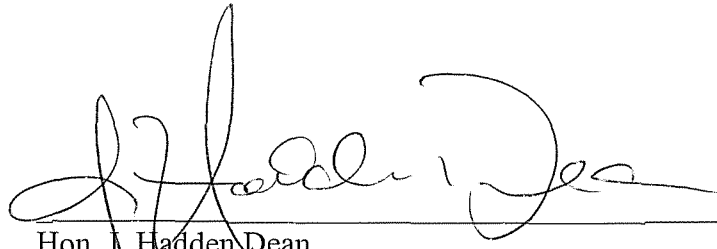
A handwritten signature in black ink that reads "Marvin W. Suit". The signature is written in a cursive style with a horizontal line underneath the name.

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A handwritten signature in black ink, appearing to read "Hadden Dean". The signature is written in a cursive style with a large initial "H" and a long, sweeping underline that extends to the right.

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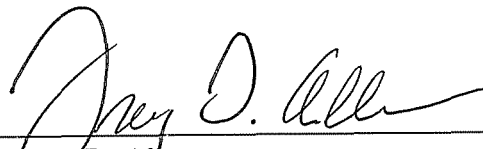
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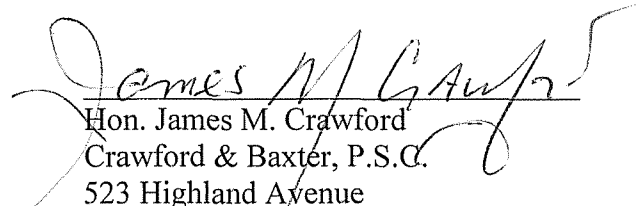


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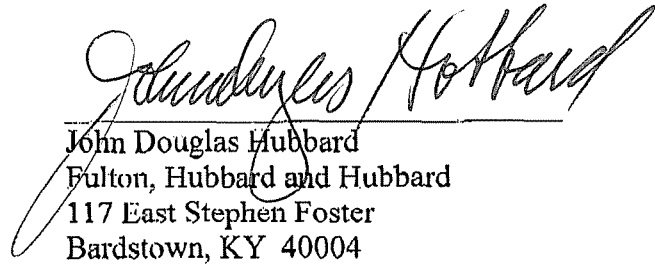
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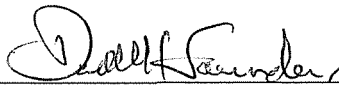
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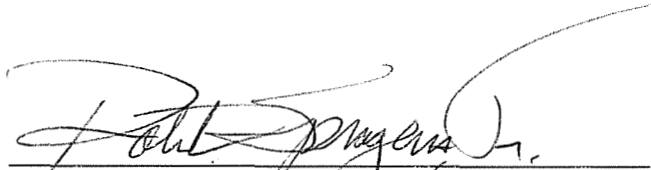


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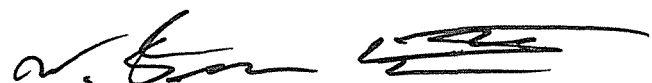
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