

BOEHM, KURTZ & LOWRY

ATTORNEYS AT LAW
36 EAST SEVENTH STREET
SUITE 1510
CINCINNATI, OHIO 45202
TELEPHONE (513) 421-2255
TELECOPIER (513) 421-2764

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COMMISSION

Via Overnight Mail

July 29, 2011

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


Re: Case No. 2011-00161 & 2011- 00162

Dear Mr. Derouen:

Please find enclosed the original and twelve (10) copies of the MOTION TO COMPEL DISCOVERY AND MEMORANDUM IN SUPPORT OF KENTUCKY INDUSTRIAL UTILITY CUSTOMERS, INC filed in the above-referenced matter. By copy of this letter, all parties listed on the Certificate of Service have been served.

Please place this document of file.

Very Truly Yours,


Michael L. Kurtz, Esq.
Kurt J. Boehm, Esq.
BOEHM, KURTZ & LOWRY

MLKkew
Attachment
cc: Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by mailing a true and correct copy via electronic mail (when available) and by first-class postage prepaid mail, to all parties on the 29th day of July, 2011



Michael L. Kurtz, Esq.
Kurt J. Boehm, Esq.

Lonnie Bellar
Vice President, State Regulation & Rates
Kentucky Utilities Company
220 W. Main Street
P. O. Box 32010
Louisville, KY 40232-2010

Honorable Dennis G Howard II
Assistant Attorney General
Office of the Attorney General Utility & Rate
1024 Capital Center Drive
Suite 200
Frankfort, KY 40601-8204

Honorable Leslye M Bowman
Director of Litigation
Lexington-Fayette Urban County Government
Department Of Law
200 East Main Street
Lexington, KY 40507

Honorable Kendrick R Riggs
Attorney at Law
Stoll Keenon Ogden, PLLC
2000 PNC Plaza
500 W Jefferson Street
Louisville, KY 40202-2828

David Brown
Stites & Harbison, PLLC
1800 Providian Center
400 West Market Street
Louisville, KY 40202

Honorable Iris G Skidmore
415 W. Main Street
Suite 2
Frankfort, KY 40601

Robert M Conroy
Director, Rates
Kentucky Utilities Company
220 W. Main Street
P. O. Box 32010
Louisville, KY 40202

Allyson K Sturgeon
Senior Corporate Attorney
LG&E and KU Services Company
220 West Main Street
Louisville, 40202

Edward George Zuger, III
Zuger Law Office PLLC
P.O. Box 728
Corbin, KY 40702

**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

In The Matter Of:

**Application Of Kentucky Utilities Company for an
Amended Environmental Compliance Plan, a Revised
Surcharge to Recover Costs, and Certificates of Public
Convenience and Necessity for the Construction of
Necessary Environmental Equipment**

:
:
: **Case No. 2011-00161**

**Application Of Louisville Gas And Electric Company
for an Amended Environmental Compliance Plan, a
Revised Surcharge to Recover Costs, and Certificates of
Public Convenience and Necessity for the Construction
of Necessary Environmental Equipment**

:
:
: **Case No. 2011-00162**
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**MOTION TO COMPEL DISCOVERY AND MEMORANDUM IN SUPPORT OF
KENTUCKY INDUSTRIAL UTILITY CUSTOMERS, INC.**

Kentucky Industrial Utility Customers, Inc. (“KIUC”) moves the Kentucky Public Service Commission (“Commission”) for an order compelling Kentucky Utilities Company and Louisville Gas & Electric (collectively, the “Companies”) to fully answer of KIUC’s First Set of Data Requests to the Companies (“Data Requests”) dated July 12, 2011 for the reasons set forth in the Memorandum in Support made a part herein.

MEMORANDUM IN SUPPORT

On July 18, 2011, the Companies filed Objections to Certain Initial Requests for Information, including objections to all or part of KU Questions Nos. 1-6, 1-7, 1-8, 1-11, and 1-14 (for LG&E Questions Nos. 7, 8, 9, 12 and 15) of KIUC's Data Requests.¹

In its Data Requests, KIUC requested various financial projections and/or information supporting those projections from the Companies. Specifically, in KU Question No. 1-6/LG&E Question No. 7 (subparts b, c, and d), KIUC requested the underlying support for the five-year financial projections included in a 2011 presentation by PPL Corp., the Companies' parent company. Those projections addressed the Companies' regulated rate base growth, Environmental Cost Recovery Surcharge ("ECR") capital expenditures, and base capital expenditures. In KU Question No. 1-7/LG&E Question No. 8 (subpart b), KIUC requested the underlying support for financial projections in a PPL Corp. presentation related to the Companies' projected growth. In KU Question 1-8/LG&E Question No. 9, KIUC requested a copy of the Companies' most recent projected financial statements developed for 2011 and five years later, including supporting information. The Companies' objected to each of KIUC's requests on the basis of relevance, arguing that "such information is not discoverable when a utility is not seeking to recover costs based upon forecasted or estimated expenses."

In KU Questions 1-11/LG&E Question No. 12, KIUC requested information regarding each source of short-term debt available to PPL Corporation. In KU Question 1-14/LG&E Question No. 15, KIUC requested "a copy of all studies that address PPL Corp.'s financing requirements and plans in 2011 and the next five years, including, but not limited to, financing the Company's environmental compliance costs." The Companies' objected to both of these requests on the basis of relevance, stating

¹ These question numbers differ in KIUC's Data Requests to Louisville Gas & Electric.

that PPL Corp. is not providing any financing to the Companies' with regard to the projects in its environmental compliance plan.

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 the discovery of admissible evidence.*”² The information sought by KIUC qualifies as discoverable under this standard.

The information KIUC seeks is relevant to the issues involved in this case and properly discoverable. These cases involve costs associated with the Companies' 2011 Environmental Compliance Plans. Information used to develop financial projections of the Companies' regulated rate base growth and future capital expenditures, particularly the Companies' ECR capital expenditures, may lead to the discovery of additional information regarding the costs associated with the Companies' 2011 Environmental Compliance Plan. Because environmental compliance costs are a central part of these proceedings, the information KIUC requested in KU Questions 1-6, 1-7, and 1-8 (LG&E Question Nos. 7, 8 and 9) is relevant and properly discoverable.

Regarding KIUC's requests for information related to PPL Corp. financing information, the ability of the Companies' parent company to assist in financing of the Companies' environmental compliance costs is relevant to these proceedings as it may affect the terms of the Companies' financing. The Companies are proposing a \$2.5 billion capital project. The Companies propose that ratepayers

² Emphasis added.

pay not only for the direct costs of this project, but also it's financing. It is absolutely critical that KIUC have access to this financing information.

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

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

WHEREFORE, for the reasons set forth herein, KIUC moves the Commission to compel the Companies to fully answer KIUC's Data Requests.

Respectfully submitted,



Michael L. Kurtz, Esq.

Kurt J. Boehm, Esq.

BOEHM, KURTZ & LOWRY

36 E. Seventh Street, Suite 1510

Cincinnati, Ohio 45202

Ph: (513) 421-2255, Fax: (513) 421-2765

E-Mail: mkurtz@BKLawfirm.com

kboehm@BKLawfirm.com

**COUNSEL FOR KENTUCKY INDUSTRIAL
UTILITY CUSTOMERS, INC.**

July 29, 2011