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**FAX**

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| <b>To:</b>   | KPSC- DOCKETING  | <b>Fax:</b>  | 502-564-3460               |
| <b>From:</b> | Michael L. Kurtz, Esq.<br>Kurt J. Boehm, Esq.  | <b>Date:</b> | August 10, 2011            |
| <b>Re:</b>   | 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<br><br>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<br><br>Docket Nos. 2011-00161 and 2011-00162 | <b>Pages</b> | <u>8</u> (including cover) |

Attached please find KENTUCKY INDUSTRIAL UTILITY CUSTOMERS, INC's REPLY TO JOINT RESPONSE OF KENTUCKY UTILITIES COMPANY AND LOUISVILLE GAS AND ELECTRIC COMPANY TO MOTION TO COMPEL deemed filed today in the above-referenced matter. The original and 10 copies will follow via overnight mail.

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PUBLIC SERVICE  
COMMISSION

Via Overnight Mail

August 9, 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 REPLY TO JOINT RESPONSE OF KENTUCKY UTILITIES COMPANY AND LOUISVILLE GAS AND ELECTRIC COMPANY TO MOTION TO COMPEL BY 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**

MLK/lew  
Attachment

cc: Certificate of Service

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

|  |   |                            |
|--|---|----------------------------|
| In The Matter Of:                                      | : |                            |
|  | : |                            |
| Application Of Kentucky Utilities Company for an       | : | <b>Case No. 2011-00161</b> |
| Amended Environmental Compliance Plan, a Revised       | : |                            |
| Surcharge to Recover Costs, and Certificates of Public | : |                            |
| Convenience and Necessity for the Construction of      | : |                            |
| Necessary Environmental Equipment                      | : |                            |
|  | : |                            |
| Application Of Louisville Gas And Electric Company for | : | <b>Case No. 2011-00162</b> |
| 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                      | : |                            |

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**REPLY TO JOINT RESPONSE  
OF KENTUCKY UTILITIES COMPANY AND  
LOUISVILLE GAS AND ELECTRIC COMPANY  
TO MOTION TO COMPEL  
BY KENTUCKY INDUSTRIAL UTILITY CUSTOMERS, INC.**

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Kentucky Industrial Utility Customers, Inc. (“KIUC”) requested certain information from Kentucky Utilities Company and Louisville Gas & Electric (collectively, the “Companies”) regarding various financial projections and/or information supporting those projections as well as financing information.<sup>1</sup>

In their Joint Response to KIUC’s Motion to Compel filed August 4, 2011 in these proceedings (“Joint Response”), the Companies allege that “*KIUC offers no justifiable reason for requiring the*

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<sup>1</sup> KIUC Question Nos. 1-6, 1-7, 1-8, 1-11 and 1-14 to Kentucky Utilities Co. (“KU”) and Nos. 1-7, 1-8, 1-9, 1-12, and 1-15 to Louisville Gas & Electric Co. (“LG&E”).

*Companies to disclose...financial projections....*<sup>2</sup> The Companies attempt to impose a burden of proof upon KIUC to prove that the information sought is discoverable. But the Commission has held that “[w]here a party objects to [a discovery] request, the burden is upon the objecting party to demonstrate that the request is improper.”<sup>3</sup> Accordingly, the Companies, not KIUC, bear the burden of proof to demonstrate that KIUC’s discovery requests are improper. In their Joint Response, the Companies did not meet that burden of proof.

The precedent that the Companies’ heavily rely upon in their Joint Response is distinguishable from and inapplicable to the present cases. Commission Case No. 90-158 was a traditional rate proceeding based upon an historical test year.<sup>4</sup> The nature of these proceedings is different. Although the Companies can only recover actual costs in its environmental cost recovery surcharge (“ECR”), the costs of the Companies’ proposed 2011 Environmental Compliance Plans are based upon multi-year projections.<sup>5</sup> The Environmental Compliance Plans proposed by the Companies extend through 2016, and discovery through at least 2016 is therefore appropriate. Those projections assist the Commission in determining whether the proposed Environmental Compliance Plans and rate surcharges are “...reasonable and cost-effective for compliance with the applicable environmental requirements...” in accordance with KRS 278.183(2)(a). Accordingly, these proceedings are distinguishable from traditional rate proceedings based on an historic test year like Case No. 90-158. KIUC’s requests for

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<sup>2</sup> Joint Response at 1.

<sup>3</sup> *In the Matter of the Application of Kentucky-American Water Co. for a Certificate of Public Convenience and Necessity Authorizing the Construction of Kentucky River Station II, Association Facilities and Transmission Main*, Case No. 2007-00134 (Nov. 15, 2007) at 5.

<sup>4</sup> *In the Matter of an Adjustment of Gas and Electric Rates of Louisville Gas and Electric Co.*, Case No. 90-158.

<sup>5</sup> “The total capital cost of the amended and new projects in the 2011 [KU Environmental Compliance] Plan is estimated to be approximately \$1.1 billion.” Direct Testimony of John N. Voyles, Jr., Case No. 2011-000161 (June 1, 2011) at 3. “The total capital cost of the new and additional projects in the 2011 [LG&E Environmental Compliance] Plan is estimated to be approximately \$1.4 billion.” Direct Testimony of John N. Voyles, Jr., Case No. 2011-000162 (June 1, 2011) at 3.

financial projections and supporting information<sup>6</sup> are consistent with the nature of this proceeding and are not barred by Commission precedent.

Contrary to the Companies' assertions in their Joint Response,<sup>7</sup> the information KIUC requested is relevant to this proceeding and properly discoverable. The Commission has repeatedly stated, in accordance Ky. Civil Rule 26.02(1),<sup>8</sup> that "[t]he scope of discovery in Kentucky is very broad."<sup>9</sup> The Commission has said "[i]f the requested material appears reasonably calculated to lead to discovery of admissible evidence, then the request is relevant."<sup>10</sup> (Emphasis added). As KIUC argued in its Motion to Compel, the information sought by KIUC qualifies as discoverable under this standard. Information used to develop financial projections of the Companies' regulated rate base growth and future capital expenditures, particularly projections related to the Companies' ECR capital expenditures,<sup>11</sup> is relevant to the current proceeding because such information is reasonably likely to lead to the discovery of admissible evidence regarding the Companies' proposed 2011 Environmental Compliance Plan and its costs. Further, given the magnitude of costs at issue in this case, the Commission should allow parties to seek broad discovery.

Regarding KIUC's requests for information related to PPL Corp. financing information,<sup>12</sup> Ky. Civil Rule 26.02(1) 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

<sup>6</sup> KIUC Question Nos. 1-6, 1-7, 1-8 to KU and Nos. 1-7, 1-8, 1-9 to LG&E.

<sup>7</sup> Joint Response at 5-7.

<sup>8</sup> Providing "[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, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter..."

<sup>9</sup> DPI Teleconnect, L.L.C. v. BellSouth Telecommunications, Inc., Case No. 2005-00455 (April 7, 2009) at 2; In the Matter of the Application of Kentucky-American Water Co. for a Certificate of Public Convenience and Necessity Authorizing the Construction of Kentucky River Station II, Association Facilities and Transmission Main, Case No. 2007-00134 (Nov. 15, 2007) at 5 ("While the Commission's Rules of Procedure are generally silent upon discovery, the Kentucky Civil Rules make clear that scope of discovery is quite broad").

<sup>10</sup> *Id.* at 5 (Emphasis added).

<sup>11</sup> KIUC Question No. 1-6(c) to KU and No. 1-7(c) to LG&E.

<sup>12</sup> KIUC Question Nos. 1-11 and 1-14 and Nos. 1-12, and 1-15 to LG&E.

defense of the party seeking discovery or to the claim or defense of any other party...." (Emphasis added). The Companies are proposing an estimated \$2.5 billion in capital costs through 2016.<sup>13</sup> Given the magnitude of these estimated costs, KIUC is exploring options to finance the ECR capital costs in these proceedings. The financing occurs on at least three levels: 1) PPL Corp. ("PPL"); 2) the intermediate holding company that owns the Companies ("LKE"); and then 3) the Companies. Additionally, PPL Capital Funding, PPL's affiliate, may obtain financing available to other subsidiaries. The disclosure of the financing information that KIUC seeks is necessary to these proceedings because it affects the costs that will be incurred by the Companies and recovered through the ECR. Further, KIUC seeks to ensure that the Companies' customers will not be subsidizing unregulated affiliate companies of the Companies. Thus, the financing information KIUC seeks is related to a claim or defense of KIUC in accordance with Ky. Civil Rule 26.02(1) and is properly discoverable.

In the Joint Response, the Companies' express concerns regarding the confidentiality of the information KIUC requests.<sup>14</sup> But 807 KAR 5:001, Section 7(5)(a) provides "[n]o party to any proceeding before the commission shall fail to respond to discovery by the commission or its staff or any other party to the proceeding on grounds of confidentiality. If any party responding to discovery requests seeks to have a portion or all of the response held confidential by the commission, it shall follow the procedures for petitioning for confidentiality contained in this administrative regulation...."

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<sup>13</sup> "The total capital cost of the amended and new projects in the 2011 [KU Environmental Compliance] Plan is estimated to be approximately \$1.1 billion." Direct Testimony of John N. Voyles, Jr., Case No. 2011-000161 (June 1, 2011) at 3. "The total capital cost of the new and additional projects in the 2011 [LG&E Environmental Compliance] Plan is estimated to be approximately \$1.4 billion." Direct Testimony of John N. Voyles, Jr., Case No. 2011-000162 (June 1, 2011) at 3.

<sup>14</sup> Joint Response at 7-8.

KIUC reiterates that, should the Companies have concerns regarding the production of confidential or sensitive information, the Companies can file a petition for confidential treatment and file the requested information under seal.

**WHEREFORE**, for the reasons set forth herein, KIUC moves the Commission to grant KIUC's Motion to Compel.

Respectfully submitted,



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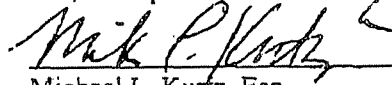
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**COUNSEL FOR KENTUCKY INDUSTRIAL  
UTILITY CUSTOMERS, INC.**

August 8, 2011

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 9<sup>th</sup> day of August, 2011.

  
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