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PUBLIC SERVICE
COMMISSION

Ms. Elizabeth O'Donnell
Executive Director
Kentucky Public Service Commission
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October 5, 2007

**RE: APPLICATION OF LOUISVILLE GAS AND ELECTRIC
COMPANY AND KENTUCKY UTILITIES COMPANY FOR A
NEW TARIFF-BROWNFIELD DEVELOPMENT RIDER
Case No. 2007-00192**

Dear Ms. O'Donnell:

Enclosed please find and accept for filing Louisville Gas and Electric Company and Kentucky Utilities Company's Comments pursuant to the Commission's Order dated June 8, 2007 in the above mentioned docket.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

F. Howard Bush

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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In the Matter of:

APPLICATION OF LOUISVILLE GAS AND)
ELECTRIC COMPANY AND KENTUCKY)
UTILITIES COMPANY FOR A NEW TARIFF-) CASE NO. 2007-00192
BROWNFIELD DEVELOPMENT RIDER)

LOUISVILLE GAS AND ELECTRIC COMPANY AND
KENTUCKY UTILITIES COMPANY'S RESPONSE TO
THE COMMENTS OF THE ATTORNEY GENERAL

Louisville Gas and Electric Company ("LG&E") and Kentucky Utilities Company ("KU") (collectively, the "Companies") hereby respectfully submit their comments and clarifications in response to the Attorney General's Comments, filed in this proceeding on September 26, 2007.

The Attorney General's ("AG") initial and "long-standing objection to the use of rates offering discounts from the standard cost of service based rates for customers for any reason not specifically enumerated in KRS 278.170,"¹ cannot withstand the Commission's determination in Case No. 2004-00253 that the approval of a substantially identical brownfield tariff rider for Union Light, Heat and Power Company (now "Duke-Kentucky") was entirely within the Commission's lawful authority.² The Commission stated that, contrary to the same objection the AG raised in that proceeding, utilities have authority under KRS 278.030(3) to create "suitable

¹ *In the Matter of: Application of Louisville Gas and Electric Company and Kentucky Utilities Company for a New Tariff – Brownfield Development Rider*, Case No. 2007-00192, Attorney General's Comments at 2 (Sept. 26, 2007) ("AG Comments").

² *In the Matter of an Application of Union Light, Heat and Power Company for Approval of its Proposed Economic Development Riders*, Case No. 2004-00253, Order at 7 (Apr. 19, 2005).

and reasonable classifications of its service, patrons and rates” on the basis of “any ... reasonable consideration.”³ On the basis of this statutory authority, the Commission concluded, “[T]here is nothing illegal or unreasonable about creating a special class consisting of customers who locate within a designated ... brownfield site.”⁴ There is therefore no merit in the AG’s objection based upon KRS 278.170.

The AG further objects that he does not believe the Companies’ proposed brownfield tariff rider will achieve its stated purposes of encouraging economic development and reclamation of state-designated brownfield sites, and notes that the Companies have provided no studies or other evidence to support a reasonable relation between providing discounted rates for reclaiming brownfield sites and the actual reclamation thereof, or of any related economic development.⁵ Again, the AG’s objections founder on the rocks of precedent: In Case No. 2004-00253, the Commission approved several different ULH&P economic development riders, including a brownfield development rider, for which ULH&P had no studies to support a rational link between discounted rates and economic development.⁶ ULH&P did, however, provide anecdotal evidence that brownfield tariff riders can help stimulate economic development and brownfield reclamation:

The availability of Rider BR [brownfield] along with state and local incentives have stimulated property development and business growth in the area [where one customer took service under the BR rider] with five (5) large businesses and a number of small businesses residing in an area that was formerly an abandoned manufacturing site.⁷

³ *Id.*

⁴ *Id.*

⁵ AG Comments at 2-4.

⁶ See *In the Matter of an Application of Union Light, Heat and Power Company for Approval of its Proposed Economic Development Riders*, Case No. 2004-00253, Order at 7 (Apr. 19, 2005).

⁷ *In the Matter of an Application of Union Light, Heat and Power Company for Approval of its Proposed Economic Development Riders*, Case No. 2004-00253, ULH&P Response to Commission Staff’s 8/19/04 DR No. 4(b) (Sept. 1, 2004). See also *In the Matter of an Application of Union Light, Heat and Power Company for Approval of its*

Insofar as such anecdotal evidence supported ULH&P's brownfield tariff rider, it similarly supports the Companies' proposed brownfield tariff riders, which are substantially identical to ULH&P's rider.

Furthermore, there is a clear rational relation between providing an economic actor an incentive to do something, in this case to reclaim an otherwise unused brownfield site, and the actual doing of that thing. It does not require extensive evidence to demonstrate that discounting electricity costs provides an incentive to a rational economic actor for whom electricity is a useful input. Of course, if the AG is correct in asserting that the incentive will not actually cause anyone to reclaim such sites and take service under the Companies' proposed brownfield riders, there still is no merit in the AG's objection: If no one takes service under the riders, then they will be mere surplusage at worst, doing neither harm nor good. On the other hand, if the AG is incorrect and the riders do motivate businesses to reclaim brownfield sites and use otherwise unused electric facilities, the public and the Companies' customers will benefit. Given that the proposed riders appear to offer only potential upside, the Companies respectfully request that the Commission approve them as filed.

The AG then goes on to state a frankly puzzling objection. The gist of the objection appears to be that encouraging the reclamation of brownfield sites and the use of existing electric facilities on those sites will not increase overall efficiency because: (1) the Companies will serve their customers' load in any event; and (2) it would be better for the environment and less burdensome on the Companies' generation fleet if the Companies generated less electricity.⁸ With respect to the first part of the AG's objection, the Companies' have a duty to serve their customers, a duty which they take seriously and are proud to have fulfilled at low cost and with

Proposed Economic Development Riders, Case No. 2004-00253, ULH&P Response to AG's 7/27/04 DR Nos. 10, 12, & 14 (Aug. 9, 2004).

⁸ AG Comments at 4.

excellent service for many years; thus, it is certainly true that the Companies will serve the customers in their respective service territories. But that does not detract from the fact that customers' locating on sites where currently unused electric facilities exist does indeed increase the cost efficiency of the Companies' overall provision of service. Were such customers to locate where there were no existing facilities, the Companies would have to construct the facilities necessary to serve such customers. The result would be an economically inefficient multiplicity of facilities that could have been avoided if those same customers would have located at brownfield sites with existing unused facilities. Indeed, it is precisely this economic efficiency that allows the Companies to offer discounted demand charges under the proposed brownfield tariff riders without placing a cost burden on other customers.⁹

Turning briefly to the second part of the AG's objection, which concerns the environmental impacts of generating additional electricity and the potential additional wear on the Companies' generation fleet for doing so, the Companies have always maintained and operated their generation fleet in an efficient, reasonable, and environmentally responsible manner. Certainly there are reasonable operational limits that the Companies observe to keep their fleet operating efficiently, but within those limits it is more cost-efficient to generate more, not less, electricity. Through base rates the Companies' recover the costs of generating assets regardless of whether they operate at marginally higher or lower load factors; thus, all other

⁹ See *In the Matter of: Application of Louisville Gas and Electric Company and Kentucky Utilities Company for a New Tariff – Brownfield Development Rider*, Case No. 2007-00192, Companies' Response to Commission Staff's 6/15/07 DR No. 4 (June 29, 2007):

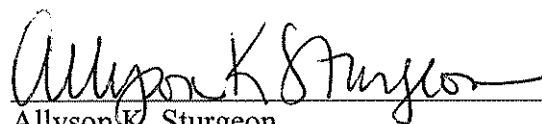
The demand charge is roughly 50% generation and transmission and 50% distribution or customer-specific depending on voltage delivery level and the particular delivery point needs. The discount is intended to "forgive" the 50% of the demand charge associated with distribution or customer-specific investment in the first year and begin recovery of the return on the existing investment in increasing amounts through years 4, 3, etc. Because the proposed tariffs require all facilities for service to be existing or idle, serving the customers will not result in any marginal distribution or customer-specific costs. Consequently, there is no marginal fixed-cost burden for non-participating customers to assume.

things being equal, it is more cost-effective – for all customers – to spread those costs over more customers and more load. Once a customer has made the decision to begin operations in Kentucky, their new business will add a load to the system either at a Greenfield or Brownfield site, but it will appear somewhere. It seems intuitive that the Brownfield site would be preferable from the perspective of the utility and its customers, because of the ability to utilize existing facilities and the positive benefits that result from the reclamation of a Brownfield site.

The AG closes his comments with the assertion that customers who take service under the proposed riders should pay cost-of-service-based taxes of all kinds based upon the standard tariffed rate, not a discounted rider rate.¹⁰ This position, however, is inconsistent with the tax treatment afforded to customers under other riders, such as merger surcredit and the curtailable service rider, which reduce customers' cost of service. Because the AG provides no justification or authority for such inconsistent treatment, the Companies respectfully request that the Commission afford discounts under the proposed brownfield tariff riders the same tax treatment as those their customers currently enjoy under other applicable riders.

Dated: October 5th, 2007

Respectfully submitted,



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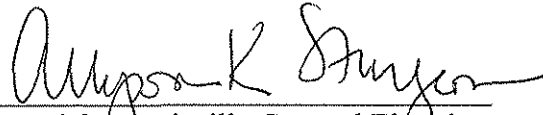
¹⁰ AG Comments at 4-5.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the above and foregoing Response to the Comments of the Attorney General was served, via United States mail, postage prepaid, to the following persons on the 5th day of October 2007:

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