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PUBLIC SERVICE COMMISSION

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN INVESTIGATION OF THE ENERGY AND REGULATORY ISSUES IN SECTION 50 OF KENTUCKY'S 2007 2007 ENERGY ACT	))))	CASE NO. 2007-00477

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Post-Hearing Brief of Kentucky Power Company

Kentucky Power Company for its Post-Hearing Brief states:

A. Introduction

This proceeding was instituted by the Public Service Commission of Kentucky ("Commission") to carry out the legislative mandate[1] imposed by Section 50 of HB 1 ("2007 Energy Act") directing the Commission to investigate and report on the Commission's statutory authority over four areas:

> (1) Eliminating impediments to the consideration and adoption by utilities of cost-effective demand-management strategies for addressing future demand prior to Commission consideration of any proposal for increasing generating capacity;
>
> (2) Encouraging diversification of utility energy portfolios through the use of renewables, and distributed generation;
>
> (3) Incorporating full-cost accounting that considers and requires comparison of life-cycle energy, economic, public health, and environmental costs of various strategies for meeting future energy demand; and
>
> (4) Modifying rate structures and cost recovery to better align the financial interests of the utility with the goals of achieving energy efficiency

[1] Order, *In the Matter of: Investigation of the Energy and Regulatory Issues in Section 50 of Kentucky's 2007 Energy Act*, P.S.C. Case No. 2007-00477 (Ky. P.S.C. November 20, 2007.)

and lowest life-cycle energy costs to all classes of ratepayers.[2]

As part of its investigation, the Commission retained a consultant, Overland Consulting ("Overland.") On March 4, 2008, Overland filed its report "*A Review of the Incentives for Energy Independence Act of 2007 Section 50*,"[3] in which it made recommendations for changes in both Commission and policy and statutory authority. Concurrently, discovery was propounded by the Staff and among the parties. On February 29, 2008 Kentucky Power joined in the joint testimony of Lonnie Bellar that was filed on behalf of the generating utilities.[4] Kentucky Power also filed rebuttal testimony on April 1, 2008 to address several recommendations made by Overland Consulting in its report. A hearing was held on April 30, 2008

The record in this proceeding demonstrates:

- The Commission already enjoys substantial authority under Chapter 278 of the Kentucky Revised Statutes to address in whole or part the four areas identified by the General Assembly in Section 50;[5]

- Because of differences in population and terrain of their respective service territories, and, in the case of Kentucky Power, affiliated corporate resources, Integrated Resource Planning and Demand-Side Management are best addressed at the utility-specific level;[6]

- Kentucky's existing Demand-Side Management statute, as implemented by the Commission, is both effective and equitable.[7]

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[2] HB 1 2007 Kentucky General Assembly (Second Extraordinary Session).

[3] Overland Consulting, *A Review of the Incentives for Energy Independence Act of 2007 Section 50* (filed March 4, 2007) ("Overland Report.")

[4] Kentucky Power Company, Louisville Gas and Electric Company, Kentucky Utilities Company, Duke Energy Kentucky, Inc., East Kentucky Power Cooperative, Inc. and Big Rivers Electric Corporation.

[5] *See, e.g.*, Prefiled Joint Testimony of Lonnie E. Bellar, Vice President, State Regulatory and Rates, E.ON U.S. Services, Inc. On Behalf of Big Rivers Electric Corporation, Duke Energy Kentucky, Inc., East Kentucky Power Cooperative, Inc., Kentucky Power Company, Kentucky Utilities Company and Louisville Gas and Electric Company at 2-3,7-8 (Filed February 29, 2008) ("Bellar Joint Testimony."); Prefiled Rebuttal Testimony of Errol K. Wagner On Behalf of Kentucky Power Company at 5, 7 (Filed April 1, 2008) ("Wagner Rebuttal Testimony.")

[6] *See, e.g.*, Wagner Rebuttal Testimony at 4; Bellar Joint Testimony at 2-3.

[7] *See, e.g.*, Bellar Joint Testimony at 2, 4, 8.

- Any new DSM program should provide for the contemporaneous recovery of costs and return of and on capital invested.[8]

- Mandatory state-wide renewable and distributed generation standards are unnecessary and would represent the arbitrary imposition of higher costs on ratepayers.[9]

- The goals of "full-cost accounting ... which considers and requires comparison of life-cycle energy, economic, public health, and environmental costs of various strategies for meeting future energy demand,"[10] to the extent obtainable, are already being met by the Commission.[11]

Kentucky Power will not reiterate here all of the points made in Mr. Bellar's testimony on behalf of the generating utilities, Mr. Wagner's testimony on behalf of Kentucky Power or the Company's responses to the data requests. Nevertheless, and based on the matters addressed at the hearing, Kentucky Power believes the following matters require further discussion.

B. As the Overland Report Confirms, Mandatory Renewable Portfolio Standards Are Not Appropriate.

The Cumberland Chapter of the Sierra Club ("Sierra Club") urged the Commission to seek legislation mandating renewable portfolio standards for Kentucky's generating utilities: "it would be appropriate for the PSC and Legislature to develop statutes and policies that not only encourage ***but mandate*** the diversification of utility energy portfolios through the use of renewables and distributed generation."[12] The

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[8] *See, e.g.*, Wagner Rebuttal Testimony at 4, 6, 9; Item No. 39, Kentucky Power's Response to Commission Staff Second Set of Data Requests Dated January 3, 2008 (Filed January 14, 2008).

[9] Item No. 39, Kentucky Power's Response to Commission Staff Second Set of Data Requests Dated January 3, 2008 (Filed January 14, 2008); Wagner Rebuttal Testimony at 3-4; Bellar Joint Testimony at 5-6.

[10] Section 50, HB 1 2007 Kentucky General Assembly (Second Extraordinary Session).

[11] Bellar Joint Testimony at 6-7.

[12] Prefiled Testimony of Andrew S. McDonald at 3 (Filed February 29, 2008) ("McDonald Testimony") (emphasis supplied.)

Sierra Club's recommendation seemingly is premised upon two contentions (a) its belief that "the potential for developing each of these [renewable] energy resources is almost completely undeveloped in Kentucky ... we are fortunate that we have a great untapped potential for renewables;"[13] and (b) its belief that the costs associated with traditional coal-fired generation are not fully accounted for in Commission proceedings.[14] The Sierra Club twice errs.

First, Overland Consulting was much less sanguine than the Sierra Club concerning the potential for Kentucky-based renewable generating resources. Specifically, the Overland Report found:

- "According to the National Renewable Energy Laboratory (NREL), opportunities to utilize wind power are very limited.... there is a very small area with Class 3 potential on the ridges of Pine Mountain – Kentucky's first state park. Only Class 3 and above are assessed as having adequate wind power potential to make wind power projects economically feasible. Therefore, with current technology, substantial wind development is unlikely.[15]

- "Photovoltaic solar energy projects generally require significant capital outlays and large areas of land. Most part of Kentucky have little potential (similar to the Northeast US); only the southwestern portion of Kentucky is rated having medium potential. As with photovoltaic systems, thermal solar power projects require substantial initial capital costs and large areas of land. They also require high capacity factors to achieve economies of scale.... Once again, the potential for commercial of thermal solar power in Kentucky is not significantly greater than that of the U.S. Northeast, and in fact, lower in scale than for photovoltaic applications."[16]

- "Biomass-based electricity generation is considered a relatively cost-effective renewable technology in Kentucky, but the economics generally require placement near the fuel source... While biomass is generally more cost-effective when co-fired with fossil fuels, this approach also raises some concerns with respect to the impacts on the reliability of power plant capacity, operational performance of boilers and premature erosion of air pollution equipment....

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[13] *Id.* at 6.

[14] *Id.* at 2.

[15] Overland Report at 61.

[16] *Id.* at 63.

While this type [municipal solid waste] of power plant can be economically feasible, many concerns have been raised about the environmental safety of burning a multitude of domestic, commercial and industrial waste products whose impacts on air pollution are unknown."[17]

- "The potential for new hydroelectric generation in Kentucky is likely to be limited to small-scale and/or run-of-the-river projects. Large hydro projects require very long lead times and large capital investments, and usually generate significant stakeholder opposition."[18]

In short, it appears the Sierra Club's assessment of the "untapped potential for renewables" in Kentucky may be more of a matter of wishful thinking than hard science.

Second, the Sierra Club also errs to the extent it seeks to offset the high cost of renewable energy projects[19] by calling for implementation of "full-cost accounting."[20] As cross-examination revealed, many of these externalities are already accounted for.[21] Moreover, while advocating that the Commission account for a broad range of externalities, the Sierra Club has not undertaken any effort to account for the impact of its proposal on Kentucky ratepayers:

A. Let me see if I understand your question correctly. Has the Sierra Club attempted to quantify the impact on Kentucky's gross domestic product from the costs associated with these externalities, the loss of production?

Q. Correct....

A. Well, the answer to the first part, the loss of economic activity due to impacts of these externalities, no, we haven't. I think that would be a very interesting question for someone to hire an economist to dig into. The answer would be rather interesting in my opinion....

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[17] *Id.* at 64-65.

[18] *Id.* at 65.

[19] *Id.* at 67.

[20] *See*, Prefiled Testimony of Wallace McMullen (Filed February 29, 2008); McDonald Testimony at 3. Full-cost accounting attempts "to account for, and ensure that business decisions are based on, a consideration of relevant externalities." Overland Report at 87.

[21] T.H. at 85-89. *See also*, Bellar Joint Testimony at 6-7.

The debate is, however, far from the academic exercise envisioned by the Sierra Club. As Overland Consulting found: "[t]o impose recognition of externalities (except in the limited context addressed earlier in this chapter) would arbitrarily and improperly cause energy costs in Kentucky to increase significantly; jeopardize the credit quality of regulated utilities in the State; and hamper economic development."[22]

Given what is at best the very limited potential for Kentucky-based renewable generation, coupled with the costs and uncertainties of both full-cost accounting and mandatory renewable portfolio standards, the Overland Report strikes the appropriate balance:

> The KPSC may wish to consider whether to recommend an RPS target to the General Assembly, consistent with similar initiatives in many other states. If it does so, we recommend that the target be voluntary, providing financial incentives for Kentucky utilities that choose to comply. The target must realistic and cost effective in light of Kentucky geological constraints, with a range of perhaps 5 to 10% of energy served, graduated to 2020.[23]

Significantly, Kentucky's utilities are moving toward such voluntary programs.[24] In fact, subsequent to the publication of the Overland Report, Kentucky Power filed and sought approval of its Green Pricing Option Rider.[25] Such efforts are likely to be enhanced by Overland Consulting's proposal that "[t]o properly compensate utilities for increased renewables projects risks, and to attract utility commitments to these investments, the Commission should consider allowing a premium of up to 300 basis points over the latest authorized rate of return for these investments."[26]

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[22] Overland Report at 96.

[23] *Id.* at 69.

[24] *Id.* at 86-86; 108-109.

[25] *See, In the Matter of: Application of Kentucky Power Company for Approval of its Green Pricing Option Rider (Rider G.P.O.)*, P.S.C. Case No. 2008-00151 (Filed April 23, 2008).

[26] *Id.* at 71.

C. A Public Benefit Fund Would Be Largely Duplicative[27] Of Existing Demand-Side Management Programs And Is Not Likely To Be Effective Or Equitable.

The Sierra Club also recommended the General Assembly enact legislation creating a public benefit fund to be funded by a surcharge on customers' bills.[28] In large part, the Sierra Club's testimony simply surveys, without making recommendations, public benefit funds in the minority of states[29] to implement such programs.[30] Although the Sierra Club's proposal is vague, it appears the fund would be administered by a yet to be determined board with state-wide authority.[31] Surcharge rates would be set by the General Assembly or the body administering the public benefit fund.[32] Money would be paid into the fund by utility customers and allocated by the board.[33] Although one state requires money collected from a specific utility's customers be spent on programs in that utility's service territory,[34] most public benefit funds collect funds statewide and allocate the funds without regard to the amounts paid by each utility's customers.[35]

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[27] To the extent the Sierra Club recommends using public benefit funds for purposes other than demand-side management, a public benefit fund would not be duplicative of existing programs. Nevertheless, the drawbacks to public benefit funds detailed below make clear that public benefit funds are also inappropriate for non-demand-side management initiatives.

[28] McDonald Testimony at 21-22. Supplemental Prefiled Testimony of Susan Marie Zinga at 1-12 (Filed April 1, 2008) ("Zinga Testimony.") Ms. Zinga defines a public benefit fund as "a funding mechanism with a stream of revenue, usually collected through a small surcharge on consumer electricity bills... These funds are used to support energy efficiency, renewable energy, energy research and development, and low-income energy assistance projects." Zinga Testimony at 3.

[29] Only 18 of the 51 jurisdictions surveyed had Public benefit funds. Zinga Testimony at 3. As Ms. Zinga's testimony makes clear, most of these programs arose in connection with the deregulation of electric markets. *Id.* at 2-3. Kentucky's electric markets, of course, have never been deregulated. In addition, Ms. Zinga's testimony is silent as to whether any state with a demand-side management program similar to Kentucky's program has replaced it with a public benefit fund.

[30] *Id.* at 2-9.

[31] Transcript of Hearing, *In the Matter of: An Investigation of the Energy and Regulatory Issues of Section 50 of Kentucky's 2007 Energy Act* at 58 (Ky. P.S.C. April 30, 2008) ("T.H.")

[32] *See,* Zinga Testimony at 4-7.

[33] *Id.* at 2, 7-9.

[34] *Id.* at 58.

[35] *Id.*

Thus, funds paid by Kentucky Power's customers in Letcher and Knott Counties, for example, could be used to underwrite programs in the "Golden Triangle."[36]

The Sierra Club's proposal for a public benefit fund is a solution in search of a problem. Like the proposed public benefit fund, demand-side management programs operated pursuant to KRS 278.285 provide a "revenue stream" to support energy efficiency and low-income energy assistance projects. But demand-side management programs also provide benefits beyond those suggested by the Sierra Club for public benefit funds. In particular, under KRS 278.285:

(a) *Demand-side management programs are required to be cost-effective.*[37] By contrast, public benefits fund surcharges are imposed and then decisions are made concerning the expenditure of the funds.[38]

(b) No customer class is required to bear the cost of programs that do not benefit its members.[39]

(c) Demand-side management programs are specific to each utility.[40] This is particularly important in Kentucky in light of the differences between customer demographics and operating characteristics (e.g., summer vs. winter peak) among utilities.

(d) Demand-side management programs are reviewed and presented to the Commission for approval by a collaborative consisting of representatives of the

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[36] The "Golden Triangle" is generally understood to have Lexington, Louisville and Cincinnati at its apexes and to be bounded by I-64, I-75 and I-71 between those cities. *See, e.g.*, http://www.uky.edu/AS/Geography/About/Bluegrass/

[37] KRS 278.285(1)(b),(c); KRS 278.285(2)(b). *See also*, T.H. at 52.

[38] T.H. at 52.

[39] KRS 278.285(3).

[40] KRS 278.285(1).

affected stakeholders including the utility, participating customer classes and the Attorney General.[41] Thus, programs are designed with input from the persons who not only receive their benefits but who will bear their costs.[42]

Paradoxically, it is the elimination of many of these benefits that Ms. Zinga heralded as a strength of the public benefit funds:

> I also think that it's going to help eliminate a lot of the administrative processes and controversy over a lot of the analytical details. For example, on a utility-by-utility basis, right now, my understanding in Kentucky is that a utility, an electric service provider, must show that the demand-side management that is being provided in its service territory is cost-effective.... So what it would do would be to standardize and not go on a case-by-case basis. I think there would be many benefits that could be achieved there.[43]

While advocating the abandonment of strengths of the demand-side management program as administered by the Commission, Ms. Zinga nowhere quantifies the benefits she suggests will be gained. Nor can she say what the benefits would be other than broad allusions to "economies of scale .. for marketing, for administration ... for monitoring and verification."[44] More to the point, Ms. Zinga, who indicated she was familiar with Kentucky demand-side management programs only "at a high level,"[45]

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[41] *See*, 278.285(1)(e),(f). T.H. at 169. In fact, Kentucky Power's Demand-Side Management Collaborative most recently included representatives of Kentucky Power, the Office of the Attorney General, Big Sandy Community Action, Middle Kentucky River Area Development Council, Kentucky Association for Community Action, Kentucky LINKS, Department of Families and Children.

[42] Such input can be important. For example, although Kentucky Power offers time-of-day rates there has been little customer interest. "The Company believes that most customers have decided that the economic rewards associated with participating in various time-based program do not outweigh the inconvenience and cost associated with changing their usage characteristics in order to take advantage of the Company's time-of-day service offerings. Absent a material increase in the Company's costs, the Company does not expect a significant change in customer interest." Item No. 23, Kentucky Power's Response to Commission Staff Second Set of Data Requests Dated January 3, 2008 (Filed January 14, 2008). *See also*, Item No. 33, Kentucky Power's Response to Commission Staff Second Set of Data Requests Dated January 3, 2008 (Filed January 14, 2008) (No customers currently served under Net-Metering Service tariff.)

[43] T.H. at 52.

[44] *Id.*

[45] *Id.* at 51.

conceded on cross-examination by the Commission staff that she has had "no basis to say whether they're [administrative costs for Kentucky demand-side management program] too high or too low, considering what's going on here...."[46]

In fact, the real benefit of public benefit funds, at least in the apparent view of the Sierra Club, is the creation of a large fund to be administered centrally on a state-wide basis, along with the decoupling of the revenue stream from the costs of specific projects determined to be cost-effective.[47] Unlike the present system, where demand-side projects first are determined to be cost-effective and then funding for the project obtained, public benefit funds impose a surcharge without regard to cost of approved projects. Demand-side management has worked well in Kentucky – certainly the Sierra Club has not presented any evidence to the contrary – and it should not be abandoned for a poorly-defined concept that arose in circumstances not applicable here, and that moves the decision-making and funding away from the persons affected.

D. Overland Consulting's Recommendation That KRS 278.285 Be Amended To Authorize the Commission "to Act on Its Own Initiative to Investigate and Implement DSM Programs" Is Contrary to the Principles Underlying the Demand-Side Management System In Kentucky And Should Be Rejected.

Overland Consulting recommends that "[t]he KPSC should consider the need to revise the DSM statute to authorize the KPSC to act on its own initiative or direction to investigate and direct utilities to implement particular DSM programs, the cost of which would be recovered by surcharge."[48] It makes this recommendation without identifying any instances in which a utility or its collaborative refused to consider a demand-side

[46] *Id.* at 54.

[47] *Id.* at 52, 57.

[48] Overland Report at 54.

management program recommended by the Commission or its staff. Nor does Overland Consulting address why the Commission's general authority to investigate and enter orders with respect to any "*practice or act affecting or relating to the service of* utility ... [that is] insufficient ... [or] inadequate ...,"[49] or the Commission's general authority to approve demand-side management programs,[50] leaves the Commission and its staff without sufficient statutory authority to work with demand-side management collaboratives to address any concerns the Commission might have.

Overland Consulting's proposal also is at odds with the bottom-up approach embodied in KRS 278.285.[51] Implicit in the statute is the recognition that because customers can not be forced to participate in demand-side management programs, the most-successful programs are likely to be those developed by the affected stakeholders and then presented to the Commission for approval. Indeed, Overland Consulting's top-down proposal runs contrary to its earlier recognition of the importance of full stake-holder participation in implementing the recommendations contained in its report.[52]

On a broader level, KRS 278.285 has worked well for Kentucky ratepayers and utilities. Kentucky Power is part of the American Electric Power Company system, which provides service in eleven states. In each of these states, the American Electric

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[49] KRS 278.260(1).

[50] KRS 278.285(1)(g) authorizes the Commission to consider whether a proposed demand-side management initiative "provides programs which are ... *useful to all customers*."

[51] KRS 278.285(1)(f) directs that in evaluating a proposed demand-side management program the Commission to consider "'[t]he extent to which customer representatives and the Office of the Attorney General have been involved in developing the plan, ... and ... the amount of support by each participant...."

[52] Overland Report at 42.

Power operating companies have pointed to KRS 278.285 as a model demand-side management system. The statute is not broken and is not in need of repair.[53]

E. Overland Consulting's Proposed Rate Cap Is Flawed And Should Be Rejected.

The Overland Report recognizes that the effective implementation of programs to address the objectives outlined in Section 50 of the 2007 Energy Act may require the imposition of surcharges or rate increases.[54] Near the conclusion of its report, Overland Consulting nevertheless recommends that the Commission seek authority to impose a rate cap on increases in customer rates due to programs arising as a result of its recommendations.[55] Under Overland's proposal, costs that exceed the rate cap would be "deferred for future recovery, including appropriate carrying costs."[56] Overland's proposal suffers at least four deficiencies.

<u>First</u>, although the apparent purpose of the rate cap is to avoid what it styles a precipitous increase in rates, Overland Consulting nowhere explains why the recovery of costs incurred in connection with programs approved by the Commission, and designed to advance legislatively sanctioned goals, should be delayed.[57] Indeed, capping an increase and then requiring later ratepayers to bear the deferred costs, plus carrying costs, at best only delays a larger overall increase.[58]

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[53] Overland Consulting also recommends that "customers who seek to opt-out of the DSM program make a showing of their own energy efficiency efforts...." Overland Report at 56. Any verification of such efforts should be made directly by the customer to the Commission. Utilities have no way of verifying their customers' efforts.

[54] *See, e.g.*, Overland Report at 71.

[55] *Id.* at 113.

[56] *Id.*

[57] *Id.*

[58] Wagner Rebuttal Testimony at 9.

Second, delaying recovery of costs provides consumers with inaccurate price signals. To the extent demand is tied to price, these inaccurate signals run counter to a utility's demand-side management initiatives. Indeed, the Overland Report recognizes:

> DSM programs have generally not been as successful in Kentucky as other jurisdictions. The relatively low cost of electricity in the state reduces consumer motivation to conserve.... retail residential rates in Kentucky are among the lowest in the nation.... Future potential for DSM is a function of economic rather than technical issues. DSM programs are likely to become cost-effective from the customers' perspective when the utilities' cost of production rise, or utilities consider more explicitly the time-based nature of costs in providing transmission and distribution services.[59]

Third, any portfolio of programs should stand on its own merit and the impact on overall rates of a proposed program can and should be considered at the time the initiative is approved.[60] *Further, a utility should not be required to commit resources in* support of legislatively sanctioned goals without being able to recover its costs contemporaneously. Delaying the recovery of costs only impedes the ability of the parties and the Commission to evaluate fairly the merits of an initiative.

Finally, Overland Consulting's rate cap proposal would result in future ratepayers paying for benefits received by current customers in violation of the general principle of ratemaking that costs should be borne by the "cost-causer."

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[59] Overland Report at 48.

[60] Wagner Rebuttal Testimony at 9.

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Certificate of Service

I hereby certify that a true copy of Kentucky Power Company's Brief was served this 30th day of May, 2008 on the persons on the attached list by mailing the same first class mail, postage prepaid to the addresses indicated.

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