

**BOEHM, KURTZ & LOWRY**

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

RECEIVED

MAR 02 2010

PUBLIC SERVICE  
COMMISSION

**Via Overnight Mail**

March 1, 2010

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

Re: **Case No. 2009-00353**

Dear Mr. Derouen:

Please find enclosed the original and twelve (12) copies each of RESPONSES OF JOINT INTERVENORS, ATTORNEY GENERAL AND KENTUCKY INDUSTRIAL UTILITY CUSTOMERS, INC. TO DATA REQUEST OF COMMISSION STAFF and LOUISVILLE GAS AND ELECTRIC COMPANY/KENTUCKY UTILITIES COMPANY 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

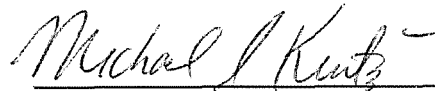
I hereby certify that a copy of the foregoing was served by mailing a true and correct copy via electronic mail (when available) and by first-class postage prepaid mail, (unless otherwise noted) to all parties this 1<sup>ST</sup> day of March, 2010

Lonnie E Bellar  
E.ON U.S. LLC  
220 West Main Street  
Louisville, KY 40202

Mr. Dennis Howard  
Assistant Attorney General  
1024 Capital Center Drive  
Frankfort, KY 40601

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

Honorable Allyson K Sturgeon  
Senior Corporate Attorney  
E.ON U.S. LLC  
220 West Main Street  
Louisville, KY 40202



---

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

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

Louisville Gas & Electric Company and Kentucky Utilities Company : Docket No. 2009-00353  
2009 Application for Approval of Purchased Power Agreements and :  
Recovery of Associated Costs :

---

**RESPONSES OF  
JOINT INTERVENORS, ATTORNEY GENERAL AND  
KENTUCKY INDUSTRIAL UTILITY CUSTOMERS, INC.  
TO DATA REQUESTS OF COMMISSION STAFF**

---

1. Refer to page 2 of the Direct Testimony of Lane Kollen ("Kollen Testimony") which indicates that the purpose of his testimony is to "[a]ddress the economics and ratemaking consequences of the Companies' proposed wind power purchased power agreements ("agreements"). From this statement, confirm that Mr. Kollen is not addressing the merits of the terms of the agreements or the proposal of Louisville Gas and Electric Company and Kentucky Utilities Company ("Joint Applicants") to recover the costs to be incurred under the agreements through a surcharge rather than through base rates.

**RESPONSE:**

Mr. Kollen did not address the terms of the proposed agreements, except to the extent those terms reflect the type of capacity and the economics of the agreements compared to other alternatives. Mr. Kollen also did not address the proposed surcharge form of recovery compared to other alternatives.

2. Refer to pages 4-5 of the Kollen Testimony, specifically, the discussion of the lack of a federal or state renewable portfolio standard ("RPS"). In view of the attempts at the federal level to enact RPS legislation, explain the basis for Mr. Kollen's statement that "[t]here is significant uncertainty as to whether there ever will be a federal or Kentucky legislative mandate to acquire such resources ... ." (Emphasis added)

**RESPONSE:**

The Companies have presented no evidence in this proceeding that federal or Kentucky renewables or carbon legislation is imminent, certain or even likely. In Mr. Kollen's opinion, there have been intermittent attempts at federal carbon legislation at least since the 1992-1993 legislative session, but these attempts have not succeeded. There does not appear at present a political consensus to pass such legislation.

3. Refer to the discussion on pages 9-10 of the Kollen Testimony regarding the anticipated increase in off-system sales if the agreements are consummated and the fact that an increase in off-system sales margins will be retained by Joint Applicants until a subsequent base rate case. Explain whether such an outcome (the retention of the increase in off-system sales margins until the next base rate case), in the event the agreements are consummated, is different from what occurs with virtually any addition of supply-side capacity resources.

**RESPONSE:**

It depends on whether the utility is capacity/energy short or long. If short, new capacity may reduce purchases more so than increase off-system sales. In any event, the utility would retain this benefit between rate cases as well as incur the cost for the new capacity between rate cases. In this proceeding, the Companies will retain the benefit until their next base rate cases, but will immediately pass through the cost through surcharges.

4. **Refer to the discussion on pages 10-16 of the Kollen Testimony regarding the impact on Joint Applicants' capital structures and increased equity return in the event the agreements are consummated. Explain whether Joint Intervenors believe there are measures that the Commission could take so that the greater equity return component of the costs resulting from the agreements could be offset and have a neutral impact on customers' bills.**

**RESPONSE:**

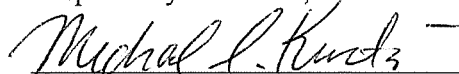
Yes. The Commission could condition its approval of the agreements by stating its intent to reduce the Companies' common equity in future rate cases to remove the effects resulting from the debt imputed by the rating agencies for these purchased power contracts. This would be particularly appropriate for these contracts because the Companies do not need the capacity or the energy and the contracts are uneconomic compared to other supply side resources.

5. **Refer to the recommendation on page 16 of the Kollen Testimony that the Commission should not approve the proposed agreements. Referring back to the stated purpose of the Kollen Testimony, confirm that this recommendation is based solely on the "[e]conomic and ratemaking consequences" of the agreements.**

**RESPONSE:**

Mr. Kollen addressed only the economic and ratemaking consequences of the proposed agreements on behalf of the Joint Intervenors; however, Mr. Kollen is aware that KIUC and the Attorney General have raised other legal arguments in opposition to the proposed agreements.

Respectfully submitted,



Michael L. Kurtz, Esq.

Kurt J. Boehm, Esq.

**BOEHM, KURTZ & LOWRY**

36 East Seventh Street, Suite 1510

Cincinnati, Ohio 45202

Ph: (513) 421-2255 Fax: (513) 421-2764

E-Mail: [mkurtz@BKLawfirm.com](mailto:mkurtz@BKLawfirm.com)

[kboehm@BKLawfirm.com](mailto:kboehm@BKLawfirm.com)

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

March 1, 2010

MAR 02 2010

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSIONPUBLIC SERVICE  
COMMISSION

Louisville Gas & Electric Company and Kentucky Utilities Company : Docket No. 2009-00353  
 2009 Application for Approval of Purchased Power Agreements and :  
 Recovery of Associated Costs :

---

**RESPONSE OF JOINT INTERVENORS, ATTORNEY GENERAL  
 AND KENTUCKY INDUSTRIAL UTILITY CUSTOMERS, INC.  
 TO DATA REQUESTS OF LOUISVILLE GAS AND  
 ELECTRIC COMPANY AND KENTUCKY UTILITIES COMPANY**

---

1. On page 3 of his testimony on the Joint Intervenors' behalf, Lane Kollen states, "The approval of these contracts would result in rates that are not just and reasonable and that are based on an imprudent selection of supply side resource options." Given that the Companies' stated goal was to find the most cost-effective *renewable* resource available to them, please state in detail what about using a nation-wide request-for-proposals process to achieve that end was "imprudent."

**RESPONSE:**

The testimony cited does not address the "request for proposals process" and Mr. Kollen does not claim that the "request for proposals process" was imprudent.

2. Mr. Kollen states on page 3 of his testimony, "The Companies admit that there is no federal or state renewables portfolio standard [RPS] or mandate that overrides the basic ratemaking requirement to select the least cost supply side resource options." He further state on page 5, "There is significant uncertainty as to whether there ever will be a federal or Kentucky legislative mandate to acquire such resources ...."
- (a) Does Mr. Kollen acknowledge that the U.S. House of Representatives passed the Waxman-Markey bill, HR 2454, on June 26, 2009, which calls for a 4.5% renewable energy requirement in 2012, climbing to a 15% renewable energy requirement by 2020?<sup>1</sup>
- (b) Does Mr. Kollen acknowledge that 29 states and the District of Columbia have an RPS, and that six additional states have non-binding renewable energy goals?<sup>2</sup>
- (c) Does Mr. Kollen acknowledge that of the states near Kentucky, Ohio, Illinois, Missouri, Virginia, North Carolina, and Pennsylvania all have RPSes?<sup>3</sup>
- (d) Does Mr. Kollen acknowledge that in November 2008, Governor Steven L. Beshear, with the advice and assistance of the Energy and Environment Cabinet, released a report entitled *Intelligent Energy Choices for Kentucky's Future: Kentucky's 7-Point Strategy for Energy Independence*, which proposed a Renewable and Efficiency Portfolio Standard ("REPS") whereby 25 percent of Kentucky's energy needs in 2025 would be met by reductions through energy efficiency and conservation and through use of renewable resources?

<sup>1</sup> See H.R. 2454 , 111th Cong. (2009).

<sup>2</sup> [http://www.dsireusa.org/documents/summarymaps/RPS\\_map.ppt](http://www.dsireusa.org/documents/summarymaps/RPS_map.ppt).

<sup>3</sup> *Kentucky Needs a Renewable Portfolio Standard*, October 1, 2008, Tom Kimmerer.

- (e) Does Mr. Kollen acknowledge that during the 2009 legislative session, a bill was proposed in the Kentucky General Assembly that would have codified this standard: “A Kentucky Renewable and Efficiency Portfolio Standard (REPS) is established whereby twenty-five percent (25%) of Kentucky's projected energy demand for the year 2025 shall be derived from energy efficiency measures, conservation, renewable energy, and biofuels.”?<sup>4</sup>
- (f) Is Mr. Kollen aware that on February 9, 2010, Rep. Moberly introduced in the Kentucky House of Representatives a bill concerning renewable energy and related matters (HB 408)? Is Mr. Kollen aware that the bill contains a Renewable Energy Portfolio requirement of 2% in 2012, which would climb to 10.5% by 2020, and then increase 1% each year thereafter?

**RESPONSE:**

- (a) Yes. However, passage of a bill in the House of Representatives is not equivalent to law; it also must pass the Senate and be signed into law by the President. Whether this bill or any legislation limiting carbon emissions or taxing them will become law is uncertain at this time.
- (b) Mr. Kollen has not independently researched this issue and does not believe that it is relevant to the Commonwealth. There is no such requirement in Kentucky.
- (c) Please see the response to part (b) of this question.
- (d) Yes.
- (e) Mr. Kollen has not independently researched this issue.
- (f) Please see the response to part (e) of this question.

3. On page 3 of his testimony, Mr. Kollen states: “[T]he Companies assumed that ... the wind power purchased power agreements would reduce ... assumed CO<sub>2</sub> costs by \$34.0 million. This is an invalid savings in the absence of federal legislation or regulation of CO<sub>2</sub>.”

- (a) Is Mr. Kollen aware that on December 7, 2009, the U.S. EPA Administrator issued an endangerment finding concerning greenhouse gasses (“GHGs”), including CO<sub>2</sub>, as part of promulgating a rule concerning emissions from light-use vehicles?
- (b) Is Mr. Kollen aware that a reason the Administrator cited for promulgating a rule concerning such vehicles is the percentage of overall GHGs they emit?
- (c) Is Mr. Kollen aware that EPA data from 1990-2007 shows that electricity generation is responsible for a significantly larger amount of overall CO<sub>2</sub> emissions in America than is transportation?<sup>5</sup>

<sup>4</sup> Kentucky General Assembly, 09 RS HB 537/GA.

<sup>5</sup>

**Table ES-2: Recent Trends in U.S. Greenhouse Gas Emissions and Sinks (Tg CO<sub>2</sub> Eq.)**

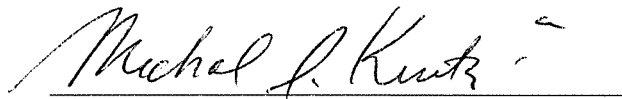
Gas/Source	1990	1995	2000	2005	2006	2007
CO <sub>2</sub>	5,076.7	5,407.9	5,955.2	6,090.8	6,014.9	6,103.4
Fossil Fuel Combustion	4,708.9	5,013.9	5,561.5	5,723.5	5,635.4	5,735.8
Electricity Generation	1,809.7	1,938.9	2,283.2	2,381.0	2,327.3	2,397.2
Transportation	1,484.5	1,598.7	1,800.3	1,881.5	1,880.9	1,887.4

- (d) Given the EPA's endangerment finding, does Mr. Kollen agree that it is not unreasonable to believe that a federal or state CO<sub>2</sub> emission restriction regime will exist in the next 20 years? If not, please state in detail why he disagrees, citing to recent and relevant legislative or regulatory development(s), if any exist, to support his position.

**RESPONSE:**

- (a) Yes.
- (b) Yes.
- (c) Yes. Mr. Kollen is aware of this claim, but has not independently researched this issue.
- (d) Mr. Kollen believes that the question calls for speculation. Not only is it impossible to know if such federal or state legislation will be enacted in the next 20 years, it is impossible to know what requirements may be imposed by such speculative legislation, e.g., reductions in emissions, capture, sequestration, credits, or the timing of any such speculative requirements of any such speculative legislation. Mr. Kollen is aware that numerous scientists at the forefront of the GHG and claims of anthropomorphic climate change have been relieved of their duties and some have resigned over allegations of data falsification and careless research. Mr. Kollen also is aware that the head of the U.N. Intergovernmental Panel on Climate Change ("IPCC") recently resigned after reports that published research into climate change was found to be fraught with errors and that the research had not been properly peer reviewed. In addition, Mr. Kollen is aware that the United States and much of the world economy has suffered through an economic recession and that the political process may be more reluctant to impose incremental costs on society in the absence of greater certainty that GHG actually cause climate change. This is evident by the failure to reach any meaningful agreement among the nations represented at the 2009 Copenhagen conference.

Respectfully submitted,



Michael L. Kurtz, Esq.

Kurt J. Boehm, Esq.

**BOEHM, KURTZ & LOWRY**

36 East Seventh Street, Suite 1510

Cincinnati, Ohio 45202

Ph: (513) 421-2255 Fax: (513) 421-2764

E-Mail: [mkurtz@BKLawfirm.com](mailto:mkurtz@BKLawfirm.com)

[kboehm@BKLawfirm.com](mailto:kboehm@BKLawfirm.com)

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

March 1, 2010