

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC JOINT APPLICATION OF	)	
KENTUCKY UTILITIES COMPANY AND	)	
LOUISVILLE GAS AND ELECTRIC COMPANY	)	
FOR CERTIFICATES OF PUBLIC CONVENIENCE	)	CASE NO.
AND NECESSITY AND SITE COMPATIBILITY	)	2022-00402
CERTIFICATES AND APPROVAL OF A DEMAND	)	
SIDE MANAGEMENT PLAN AND APPROVAL OF	)	
FOSSIL FUEL-FIRED GENERATING UNIT	)	
RETIREMENTS	)	

ORDER

On September 22, 2023, Louisville Gas & Electric Company and Kentucky Utilities Company (jointly, LG&E/KU) filed, pursuant to KRS 278.400, a joint motion to reconsider three decisions in the Commission’s August 31, 2023 Order denying in part certain confidentiality motions.

LEGAL STANDARD

KRS 278.400, which establishes the standard of review for motions for rehearing, limits rehearing to new evidence not readily discoverable at the time of the original hearings, to correct any material errors or omissions, or to correct findings that are unreasonable or unlawful. A Commission Order is deemed unreasonable only when “the evidence presented leaves no room for difference of opinion among reasonable minds.”<sup>1</sup>

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<sup>1</sup> *Energy Regulatory Comm’n v. Kentucky Power Co.*, 605 S.W.2d 46 (Ky. App. 1980).

An order can only be unlawful if it violates a state or federal statute or constitutional provision.<sup>2</sup>

By limiting rehearing to correct material errors or omissions, and findings that are unreasonable or unlawful, or to weigh new evidence not readily discoverable at the time of the original hearings, KRS 278.400 is intended to provide closure to Commission proceedings. Rehearing does not present parties with the opportunity to relitigate a matter fully addressed in the original Order.

### MOTION FOR RECONSIDERATION

LG&E/KU requested that the Commission reconsider the denial of confidential treatment for designated information pertaining to solar purchase power agreements (PPAs) contained in LG&E/KU's March 1, 2023 and March 10, 2023 motions for confidential treatment until cost recovery of the energy purchased through the solar PPAs is sought. The designated information in the March 1, 2023 motion is the same as or similar to the designated information in the March 10, 2023 motion.

The designated material at issue on rehearing from a March 1, 2023 motion consists of the excess solar energy payment rate; liquidated damages contract terms; financial security requirements, such as the amount of dollars on deposit for acceptable credit bank, as the term is defined in the PPAs, and seller guaranty amount; available energy percentage; and interconnection upgrade cost limit.

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<sup>2</sup> *Public Service Comm'n v. Conway*, 324 S.W.3d 373, 377 (Ky. 2010); *Public Service Comm'n v. Jackson County Rural Elec. Coop. Corp.*, 50 S.W.3d 764, 766 (Ky. App. 2000); *National Southwire Aluminum Co. v. Big Rivers Elec. Corp.*, 785 S.W.2d 503, 509 (Ky. App. 1990).

The designated material at issue on rehearing from March 10, 2023 motion consists of solar PPA cost projections developed in connection with a request for purchase.

LG&E/KU argued that the designated material denied confidential treatment should remain confidential until LG&E/KU seek cost recovery to protect negotiating abilities with solar developers and prevent unfair commercial advantages. LG&E/KU asserted that three of four solar PPAs contain price-reopener clauses that allow LG&E/KU or the solar PPA seller, or both, to reopen the PPA terms if solar energy prices increase or decrease above contractual terms. LG&E/KU argued that, because solar energy payment rates for those PPAs are subject to change in the future, publicly disclosing the price-reopener clause before prices are “solidified” will commercially disadvantage LG&E/KU and their customers.<sup>3</sup> LG&E/KU argued that public disclosure of this information will harm LG&E/KU’s ability to negotiate a future adjustment, which may result in higher costs passed to customers.

LG&E/KU argued that public disclosure of the solar energy payment rates in the solar PPA that does not include a price-reopener clause would prejudice LG&E/KU because the non-negotiable solar energy payment rate may become a price floor for the other three solar projects for which the price-reopener clause is still being negotiated.

LG&E/KU maintained that, although the Commission used similar reasoning in denying confidential treatment to similar solar PPA terms in Case No. 2020-00016,<sup>4</sup> the

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<sup>3</sup> Motion for Reconsideration (filed Sept. 22, 2023) at 3.

<sup>4</sup> Case No. 2020-00016, *Electronic Application of Louisville Gas and Electric Company and Kentucky Utilities Company for Approval of A Solar Power Contract and Two Renewable Power Agreements to Satisfy Customer Requests for a Renewable Energy Source Under Green Tariff Option #3* (Ky. PSC May 8, 2020).

circumstances here are distinguishable from Case No. 2022-00016 because the negotiation in the price-reopener clause is more akin to evaluating RFP bids that have yet to be fully accepted.

LG&E/KU argued that the solar developers oppose premature public disclosure of the designated material because the contract terms “have yet to mature into standard contract terms” and public disclosure could impact future negotiations.<sup>5</sup> LG&E/KU attached to the motion correspondence from solar project developers in support of LG&E/KU’s request.

### DISCUSSION AND FINDINGS

Relevant to the Commission’s decision, LG&E/KU requested a declaratory order that the four solar PPAs, which are non-firm energy-only PPAs for an aggregate of 637 MW, do not require prior Commission approval under KRS 278.020 or KRS 278.300, arguing that the Commission’s reasoning in Case No. 2020-00016 that a solar PPA did not require approval under KRS 278.020 or KRS 278.300 applied to the facts presented in this matter.

In the August 31, 2023 Order, the Commission denied confidential treatment for the designated material because the information concerned the cost impact of the PPA and the Commission must be able to transparently address the pricing and resultant cost impact to provide the public with a meaningful cost-benefit analysis required to analyze the solar PPAs concurrently with the Commission’s evaluation regarding the applicability of KRS 278.020 or KRS 278.300.

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<sup>5</sup> Motion for Reconsideration at 3.

The Commission is not persuaded by LG&E/KU's arguments in its motion. The reason for denying confidential treatment in the August 31, 2023 Order remains the same: the Commission must be able to address the PPA pricing and cost impact with transparency.

The Commission notes that LG&E/KU is in control of how it pled and submitted the matters that created the issue that pertains to the price-reopener clause. The designated material relates to information that the Commission needs to be able to fully and specifically address in its evaluation and, if there is a finding that the solar PPAs require prior commission approval under KRS 278.020 and KRS 278.300, in its final determination. Confidential treatment will prevent the transparency necessary for LG&E/KU ratepayers to know what information the Commission relied upon in rendering its final determination. LG&E/KU created this issue in the manner in which it pled and submitted the matters.

For the reasons set forth above, the Commission finds that LG&E/KU's motion for reconsideration should be denied.

IT IS THEREFORE ORDERED that LG&E/KU's motion for reconsideration of the Commission's August 31, 2023 Order is denied.

PUBLIC SERVICE COMMISSION

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