

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 November 28, 2023, Metropolitan Housing Coalition, Kentuckians for the Commonwealth, Kentucky Solar Energy Society, and Mountain Association (collectively, Joint Intervenors) filed a corrected petition,¹ pursuant to KRS 278.400, requesting rehearing of the Order entered November 6, 2023, approving, among other things, Kentucky Utilities Company and Louisville Gas and Electric Company's (jointly, LG&E/KU) joint request to expand the eligibility requirement for a home weatherization demand side management-energy efficiency (DMS-EE) program known as Income Qualified Solutions, formerly known as WeCare. On December 1, 2023, LG&E/KU filed a response to Joint Intervenors' petition.

¹ Joint Intervenors filed the initial petition on November 27, 2023. Pursuant to 807 KAR 5:001, Section 4(5), a filing that corrects a previous filing amends the original filing and the amendment does not relate back to the original date unless the Commission orders otherwise.

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.”² An order can only be unlawful if it violates a state or federal statute or constitutional provision.³

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.

The program at issue is a low-income weatherization program offered as part of LG&E/KU’s DSM-EE plan and is subject to KRS 278.285. The Commission considers the following factors set forth in KRS 278.285(1) in approving DSM-EE plans:

- (a) The specific changes in customers' consumption patterns which a utility is attempting to influence;
- (b) The cost and benefit analysis and other justification for specific demand-side management programs and measures included in a utility's proposed plan;

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

³ *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).

(c) A utility's proposal to recover in rates the full costs of demand-side management programs, any net revenues lost due to reduced sales resulting from demand-side management programs, and incentives designed to provide positive financial rewards to a utility to encourage implementation of cost-effective demand-side management programs;

(d) Whether a utility's proposed demand-side management programs are consistent with its most recent long-range integrated resource plan;

(e) Whether the plan results in any unreasonable prejudice or disadvantage to any class of customers;

(f) The extent to which customer representatives and the Office of the Attorney General have been involved in developing the plan, including program design, cost recovery mechanisms, and financial incentives, and if involved, the amount of support for the plan by each participant, provided however, that unanimity among the participants developing the plan shall not be required for the commission to approve the plan;

(g) The extent to which the plan provides programs which are available, affordable, and useful to all customers; and

(h) Next-generation residential utility meters that can provide residents with amount of current utility usage, its cost, and can be capable of being read by the utility either remotely or from the exterior of the home.

PETITION AND RESPONSE

LG&E/KU proposed to increase the eligibility threshold for the Income Qualified Solutions home weatherization program from 200 percent of the federal poverty level to

300 percent of the federal poverty level. In the November 6, 2023 Order, the Commission approved LG&E/KU's DSM-EE plan as proposed.

In their request for rehearing, Joint Intervenors asserted that the Commission's decision to approve the increase in the eligibility threshold was unreasonable and failed to consider Joint Intervenors' claim that LG&E/KU's proposal to increase the eligibility threshold was unsupported by data and would result in fewer funds available for lower-income customers who, according to Joint Intervenors, have the greatest need for energy-savings programs. Joint Intervenors argued that evidence demonstrates there is more demand for the program than available funds for customers at or below 200 percent of the federal poverty level and the LG&E/KU did not provide evidence to rebut Joint Intervenors' concern that customers earning between 201 percent and 300 percent of the federal poverty level would adversely impact the availability of the program for customers who earn 200 percent or less of the federal poverty level.

Joint Intervenors argued that the November 6, 2023 Order did not make specific findings of fact regarding the increase in the eligibility threshold. Joint Intervenors noted that LG&E/KU did not refute Joint Intervenors' arguments against increasing the threshold and that LG&E/KU stated in briefing that LG&E/KU did not object to retaining the 200 percent eligibility threshold. Joint Intervenors argued that the eligibility expansion for Income Qualified Solutions was not supported by customer representatives, the Attorney General, or data.

Joint Intervenors requested that the Commission either restore the 200 percent eligibility threshold or find that program funds should be made available to customers in

the 200-300 percent Federal Poverty Level threshold only if funds remain after all customers with incomes at or below 200 percent have received assistance.

In their joint response, LG&E/KU argued that the November 6, 2023 Order adequately addressed the increase in the eligibility threshold for the Income Qualified Solutions program, and that LG&E/KU would not object to keeping the eligibility threshold at 200 percent. LG&E/KU emphasized that their goal in expanding the eligibility was to make the program available to more customers, and thus grow the number of participants, and to increase the budget per home.

DISCUSSION AND FINDINGS

The Commission notes that, in the November 6, 2023 Order, the Commission made a finding of fact that LG&E/KU's proposed DSM-EE plan in the aggregate satisfied the legal standard established KRS 278.285(1) and should be granted. The Commission further notes that the only evidence of record regarding the proposed increase in the program's eligibility threshold was provided by LG&E/KU and Joint Intervenors.⁴

To the degree that the November 6, 2023 Order did not make a specific finding of fact regarding the proposed eligibility increase and based upon the petition, response, November 6, 2023 Order, and case record, and being otherwise sufficiently advised, the Commission finds that rehearing should be granted. Furthermore, LG&E/KU does not object to retaining the current income eligibility threshold for the Income Qualified Solutions program. Additionally, retaining the Income Qualified Solutions eligibility threshold at 200 percent of the federal poverty level will not reduce or impact the DSM-

⁴ The evidentiary record in this matter closed on September 15, 2023. The Attorney General did not file witness testimony in this matter. The Attorney General set forth its position on the proposed eligibility increase in briefing filed on September 22, 2023, after the evidentiary record was closed.

EE budget or DSM-EE rates proposed by LG&E/KU and approved by the Commission in the November 6, 2023 Order. For these reasons, the Commission further finds that the income eligibility threshold for LG&E/KU's Income Qualified Solutions program, formerly known as WeCare, should remain at 200 percent or less of the federal poverty level.

The Commission directs LG&E/KU to closely monitor the Income Qualified Solutions program and propose amendments as necessary, including whether to expand this DSM-EE program to more low-income customers.

IT IS THEREFORE ORDERED that:

1. Joint Intervenors' petition for rehearing is granted.
2. The income eligibility threshold for LG&E/KU's Income Qualified Solutions program, formerly known as WeCare, shall be 200 percent or less of the federal poverty level.
3. The remainder of the November 6, 2023 Order, as amended by a November 14, 2023 Order, not in conflict with this Order remain in effect.
4. This case is closed and removed from the Commission's docket.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ENTERED
DEC 07 2023
KENTUCKY PUBLIC SERVICE COMMISSION ^{rCS}

ATTEST:


Executive Director

*Angela M Goad
Assistant Attorney General
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204

*Honorable David J. Barberie
Managing Attorney
Lexington-Fayette Urban County Government
Department Of Law
200 East Main Street
Lexington, KENTUCKY 40507

*Joe F. Childers
Childers & Baxter PLLC
300 Lexington Building, 201 West Sho
Lexington, KENTUCKY 40507

*Ashley Wilmes
Kentucky Resources Council, Inc.
Post Office Box 1070
Frankfort, KENTUCKY 40602

*Dennis G Howard II
Howard Law PLLC
740 Emmett Creek Lane
Lexington, KENTUCKY 40515

*John G Horne, II
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204

*Honorable Allyson K Sturgeon
Managing Senior Counsel - Regulatory &
LG&E and KU Energy LLC
220 West Main Street
Louisville, KENTUCKY 40202

*Tom Fitzgerald
Kentucky Resources Council, Inc.
Post Office Box 1070
Frankfort, KENTUCKY 40602

*Joshua Smith
Sierra Club
2101
Webster St. , Suite 1300
Oakland, CALIFORNIA 94612

*William H May, III
Hurt, Deckard & May
The Equus Building
127 West Main Street
Lexington, KENTUCKY 40507

*Glibert Zelaya
Earthjustice 156 William Street, Suite 800
New York, NEW YORK 10038

*Kate Huddleston
Sierra Club Environmental Law Program
2101 Webster Street
Suite 1300
Oakland, CALIFORNIA 94612

*Byron Gary
Kentucky Resources Council, Inc.
Post Office Box 1070
Frankfort, KENTUCKY 40602

*James W Gardner
Sturgill, Turner, Barker & Moloney, PLLC
333 West Vine Street
Suite 1400
Lexington, KENTUCKY 40507

*Honorable Kurt J Boehm
Attorney at Law
Boehm, Kurtz & Lowry
36 East Seventh Street
Suite 1510
Cincinnati, OHIO 45202

*Carrie H Grundmann
Spilman Thomas & Battle, PLLC
110 Oakwood Drive, Suite 500
Winston-Salem, NORTH CAROLINA 27103

*Jody Kyler Cohn
Boehm, Kurtz & Lowry
36 East Seventh Street
Suite 1510
Cincinnati, OHIO 45202

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

*Cassandra McCrae
Earthjustice
1617 JFK Boulevard, Suite 1675
Philadelphia, PENNSYLVANIA 19103

*Jody M Kyler Cohn
Boehm, Kurtz & Lowry
36 East Seventh Street
Suite 1510
Cincinnati, OHIO 45202

*Larry Cook
Assistant Attorney General
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204

*J. Michael West
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204

*Rebecca C. Price
Sturgill, Turner, Barker & Moloney
155 East Main Street
Lexington, KENTUCKY 40507

*M. Todd Osterloh
Sturgill, Turner, Barker & Moloney, PLLC
333 West Vine Street
Suite 1400
Lexington, KENTUCKY 40507

*Honorable Michael L Kurtz
Attorney at Law
Boehm, Kurtz & Lowry
36 East Seventh Street
Suite 1510
Cincinnati, OHIO 45202

*Steven W Lee
Spilman Thomas & Battle, PLLC
1100 Brent Creek Blvd., Suite 101
Mechanicsburg, PENNSYLVANIA 17050

*Honorable Matthew R Malone
Attorney at Law
Hurt, Deckard & May
The Equus Building
127 West Main Street
Lexington, KENTUCKY 40507

*Susan Speckert
Lexington-Fayette Urban County Government
Department Of Law
200 East Main Street
Lexington, KENTUCKY 40507

*Megan W. Mullins
Spilman Thomas & Battle, PLLC
300 Kanawha Blvd, East
Charleston, WEST VIRGINIA 25301

*Kentucky Utilities Company
220 W. Main Street
P. O. Box 32010
Louisville, KY 40232-2010

*Quang Nguyen
Assistant County Attorney
Louisville/Jefferson County Metro Government
First Trust Centre
200 South 5th Street, Suite 300N
Louisville, KENTUCKY 40202

*Louisville Gas and Electric Company
220 W. Main Street
P. O. Box 32010
Louisville, KY 40232-2010

*Rick LoveKamp
Kentucky Utilities Company
220 W. Main Street
P. O. Box 32010
Louisville, KY 40202

*Sara Judd
Senior Corporate Attorney
LG&E and KU Energy LLC
220 West Main Street
Louisville, KENTUCKY 40202

*Robert Conroy
Vice President, State Regulation and Rates
LG&E and KU Energy LLC
220 West Main Street
Louisville, KENTUCKY 40202

*Thomas Cmar
Earthjustice
6608 Wooster Pike
Cincinnati, OHIO 45227