COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JOINT APPLICATION OF LOUISVILLE GAS AND ELECTRIC COMPANY AND KENTUCKY UTILITIES COMPANY FOR REVIEW, MODIFICATION, AND CONTINUATION OF EXISTING, AND ADDITION OF NEW, DEMAND-SIDE MANAGEMENT AND ENERGY EFFICIENCY PROGRAMS	)))))))	**CASE NO. 2014-00003**

REBUTTAL TESTIMONY OF
ROBERT M. CONROY
DIRECTOR, RATES
LG&E AND KU SERVICES COMPANY

Filed: June 16, 2014

Q. Please state your name, position, and business address.

A. My name is Robert M. Conroy. I am the Director of Rates for LG&E and KU Services Company, which provides services to Louisville Gas and Electric Company ("LG&E") and Kentucky Utilities ("KU") (collectively, "Companies"). My business address is 220 West Main Street, Louisville, Kentucky.

Q. What is the purpose of your rebuttal testimony?

A. The purpose of my testimony is to address certain intervenors' comments regarding the alignment of the Companies' proposed 2015-2018 Demand-Side Management and Energy Efficiency Program Plan ("Proposed DSM/EE Program Plan") with Kentucky's DSM/EE statute (KRS 278.285), customer incentives to engage in DSM/EE, statutorily-required DSM/EE funding and spending allocations, and the permitted scope of customer opt-outs from the Companies' DSM/EE programs. I conclude by recommending the Kentucky Public Service Commission ("Commission") approve the Companies' Proposed DSM/EE Program Plan as filed.

Q. On behalf of Wallace McMullen and Sierra Club ("Sierra Club"), Mr. Woolf testified about statewide goals for EE savings.[1] Does the Companies' Proposed DSM/EE Program Plan align with regulatory requirements and the spirit of statewide EE savings goals?

A. Yes, the Companies believe their Proposed DSM/EE Program Plan is consistent with KRS 278.285 and the spirit of the Governor's goals. It will continue to create demand and energy savings, and will do so economically. Moreover, it complies with the intent of the Commission's Integrated Resource Planning ("IRP") Standard: "Each electric utility shall integrate energy efficiency resources into its plans and shall adopt policies

[1] Woolf Testimony at 9.

establishing cost-effective energy efficiency resources with *equal priority* as other resource options."[2] The Companies' proposed DSM/EE portfolio therefore aligns well with statutory requirements, Kentucky's DSM/EE policy goals, and the Commission's standard for giving DSM/EE appropriate priority.

Q. Mr. Woolf testified that the Companies should consider non-energy benefits in their DSM/EE-programming analysis.[3] Do you agree?

A. No. Kentucky's courts have clearly stated that the Commission is a creature of statute, and may therefore exercise authority only within the boundaries of its statutorily granted jurisdiction, namely the rates and service of utilities.[4] By definition, non-energy benefits do not affect utility rates or service; if they did, they would be energy-related benefits, and the Companies would have accounted for them. But because they do not affect the Companies' rates or service, the Commission may not account for them or require the Companies to do so.

To be clear, the Companies do not desire to ignore benefits of their DSM/EE programs (though the costs must also be counted, as Michael E. Hornung's rebuttal testimony concerning non-energy benefits states). But the Companies must also fulfill their primary obligation to provide safe and reliable service at the lowest reasonable cost. To meet that obligation, the Companies strive to keep rates low within the constraints of market realities and regulatory requirements. Including externalities, i.e., items that do

[2] *In the Matter of Consideration of the New Federal Standards of the Energy Independence and Security Act of 2007*, Case No. 2008-00408, Order at 10 (July 24, 2012) (emphasis added).
[3] *Id.* at 14-15.
[4] *Enviro Power, LLC v. Public Service Commission of Kentucky*, 2007 WL 289328 at 3 (Ky. App. 2007) (not to be published) ("'[R]ates' or 'service' … are the only two subjects under the jurisdiction of the PSC.") *South Central Bell Telephone Company v. Utility Regulatory Commission*, 637 S.W.2d 649 at 643 (Ky. 1982) ("The legislative grant of power to regulate rates will be strictly construed and will neither be interpreted by implication nor inference. In fixing rates, the commission must give effect to all factors which are prescribed by the legislative body, but may not act on a matter which the legislature has not established.")

not affect the Companies' costs or are not constraints on the Companies' operations, in the Companies' decision-making would unavoidably and unnecessarily increase customers' rates. Whether to include externalities in the cost benefit analysis is a question for the Kentucky General Assembly.

Q. Mr. Woolf criticizes the Companies for using their avoided cost of capacity to limit the incentives they provide to customers to participate in DSM/EE programs, arguing that the Companies should include avoided energy costs, environmental costs, and the value of non-energy benefits.[5] Do you agree?

A. No. I address above the reasons for excluding non-energy benefits from the Companies' DSM/EE considerations, and Mr. Hornung's testimony addresses additional reasons for excluding them.

But Mr. Woolf is also incorrect about customers' incentives to participate in DSM/EE programs. Indeed, rather than providing inadequate incentives for DSM/EE, the Companies' rates already provide adequate, if not inflated, energy-conservation incentives through volumetric energy, DSM/EE, and environmental cost recovery ("ECR") charges. These volumetric charges encourage customers to decrease consumption, participate in the Companies' DSM/EE measures, and increase their own EE measures.

Residential Service (Rate RS) and General Service (Rate GS) customers, which constitute the vast majority of eligible DSM/EE customers, do not incur demand charges; rather, they incur volumetric energy charges that include not only the Companies' marginal cost of energy, but also a fixed-cost recovery component, including a portion of the Companies' fixed costs of environmental compliance; indeed, for Rate RS and Rate

[5] Woolf Testimony at 43-44.

GS customers the Companies recover most of their non-variable costs through volumetric energy charges. This creates an inflated incentive for these customers to engage in independent and utility-sponsored DSM/EE measures, notwithstanding the additional incentives provided by the Companies' DSM/EE programs. Thus, it is unnecessary to include avoided energy costs when calculating incentives for the Companies to offer their customers to participate in DSM/EE programs.

Likewise, the Companies recover a portion of their environmental-compliance costs through the volumetric ECR charge, until those costs are incorporated in base rates and recovered through the aforementioned volumetric energy charge. The volumetric ECR charge creates yet another customer incentive to engage in independent and utility-sponsored DSM/EE programs, notwithstanding the additional incentives provided by the Companies' DSM/EE programs. Thus, it is also unnecessary to include avoided environmental compliance costs in the comparison.

Although Metropolitan Housing Coalition ("MHC") criticizes volumetric charges as having a disproportionate effect on low-income residential customers,[6] volumetric charges encourage all customers, particularly high-usage customers, to participate in the Companies' DSM/EE programs and to pursue independent EE measures. Non-volumetric DSM/EE charges would both reduce this incentive and penalize customers who have already increased their efficiency or who simply use relatively low amounts of electricity; thus, the Companies maintain that volumetric charges are the most appropriate and effective means of funding and encouraging DSM/EE.

Q. May the Companies accommodate MHC's request to allocate DSM/EE funding and spending by census tract?

[6] Hinko Testimony at 6.

A. No. KRS 278.285(3) requires the Commission to apportion DSM/EE-program costs across the rate classes—not the census tracts—that benefit from the programs. MHC witness Cathy Hinko proposes that DSM/EE funding be collected and spent by census tract,[7] under the assertion that census-tract revenue collection and spending would ensure low-income and minority customers receive benefits equal to the fees they pay. Not only would this proposal be administratively infeasible, it is proscribed by KRS 278.285(3), and is inconsistent with KRS 278.030 and KRS 278.170. KRS 278.030 requires just and reasonable rates and classifications, and KRS 278.170 proscribes rate discrimination. Ms. Hinko's census-tract proposal is essentially a proposal to create a low-income rate; the Commission has repeatedly held over many years that special low-income rates are impermissible under these statutes.[8]

Furthermore, DSM/EE rate collection and spending by census tract could have the perverse effect of reducing DSM/EE funding available for low-income customers, as Mr. Hornung discusses in his testimony. Therefore, the Companies both cannot support Ms. Hinko's proposal as a matter of law and believe it would be potentially counterproductive.

Q. May the Companies accommodate Wal-Mart Stores East, LP and Sam's East, Inc.'s ("Wal-Mart") request to extend opt-outs to all non-residential customers?

A. No. KRS 278.285 (3) permits only industrial customers to opt out of a utility's DSM/EE programs. Wal-Mart witness Kenneth Baker proposes the Companies allow certain commercial customers to opt-out of the Companies' DSM/EE programming, and thus

[7] *Id*.
[8] *See e.g., In the Matter of Adjustment of the Rates of Kentucky-American Water Company,* Case No. 2004-00103, Order at 82-84 (Feb. 28, 2005).

avoid paying DSM/EE charges.[9] This proposal is proscribed by statute and therefore requires statutory amendment by the Kentucky Legislature. Mr. Baker further suggests that the Companies' reliance on the North American Industry Classification System ("NAICS") is an unreasonable method for determining customer status as an industrial customer. The Commission has repeatedly approved the Companies' definition of industrial customers for DSM/EE purposes, and the Companies maintain the reasonableness of determining industrial statutes based on the NAICS; further, the NAICS is but one of two reasonable metrics by which the Companies determine industrial status. The Companies' tariff defines industrial customers not only as those meeting specific NAICS sections, but also those "primarily engaged in a process or processes that create or change raw or unfinished materials into another form or product …."[10] Wal-Mart does not meet either industrial classification. Likewise, Wal-Mart would not be considered an industrial entity under definitions used by the Energy Information Agency or in Kentucky's statutes.[11]

Q. May the Companies accommodate Wal-Mart's request to extend opt-outs to non-residential customers with an aggregate annual energy usage over 15 million kWh?

[9] Baker Testimony at 2; Baker Supplemental Testimony at 1-2.

[10] *See* KU P.S.C. No. 16, First Revision of Original Sheet No. 86; LG&E P.S.C. No. 9, First Revision of Original Sheet No. 86.

[11] *See* Energy Information Administration, Electric Power Monthly, April 2014 ("Industrial sector: An energy consuming sector that consists of all facilities and equipment used for producing, processing, or assembling goods. The industrial sector encompasses the following types of activity: manufacturing (NAICS codes 31-33); agriculture, forestry, and hunting (NAICS code 11); mining, including oil and gas extraction (NAICS code 21); natural gas distribution (NAICS code 2212); and construction (NAICS code 23). Overall energy use in this sector is largely for process heat and cooling and powering machinery, with lesser amounts used for facility heating, air conditioning, and lighting. Fossil fuels are also used as raw material inputs to manufactured products. Note: This sector includes generators that produce electricity and/or useful thermal output primarily to support the abovementioned industrial activities."; KRS 56.440(6) ("'Industrial entity' means any corporation, partnership, person, or other legal entity, whether domestic or foreign, which will itself or through its subsidiaries and affiliates construct and develop a manufacturing, processing, or assembling facility on the site of an industrial development project financed pursuant to this chapter[.]").

A. No. KRS 278.285 (3) permits only individual industrial customers to opt-out of a utility's DSM/EE program, regardless of their annual energy use. Moreover, Mr. Baker's aggregated usage proposal, expanding the opt-out to entities whose facilities have an aggregate usage over an annual-energy-use threshold of 15 million kWh per year, ignores regulatory restrictions and traditional rate-making principles. The Companies must treat one meter as one customer,[12] and are further justified in doing so by the cost-of-service differences between providing service to a single location and multiple locations.

Moreover, the revised proposal Mr. Baker presents in his Supplemental Testimony is internally inconsistent.[13] As I note above, only industrial customers may opt out of DSM/EE programs and charges, and the meter aggregation Mr. Baker has proposed violates well-established Kentucky regulations and Commission policy. So if the Companies were to modify the definition of "industrial" to include individual Wal-Mart stores, no Wal-Mart stores would be able to participate in commercial DSM/EE programs; however, as Mr. Baker has now testified, Wal-Mart stores in both Companies' service territories participate in commercial DSM/EE programs.[14] If any of Wal-Mart's stores are to continue to participate in these programs, the Companies must continue to classify all of Wal-Mart's stores as commercial customers, all of which are subject to DSM/EE charges, and for which KRS 278.285(3) neither provides nor permits an opt-out.

Q. What do you recommend to the Commission?

A. I continue to recommend that the Commission approve the Proposed DSM/EE Program Plan as filed. The Companies have engaged in rigorous DSM/EE analysis and planning

[12] 807 KAR 5:041 §9(2).
[13] Baker Supplemental Testimony at 1-2.
[14] *Id.* at 1.

to ensure programs are consistent with regulatory requirements, encourage customer participation, and provide opportunities for customers to equitably contribute to and benefit from the Companies’ DSM/EE offerings.

Q. Does this conclude your testimony?

A. Yes, it does.

VERIFICATION

COMMONWEALTH OF KENTUCKY	)	
	)	**SS:**
COUNTY OF JEFFERSON	)	

The undersigned, **Robert M. Conroy**, being duly sworn, deposes and says that he is Director - Rates for LG&E and KU Services Company, and that he has personal knowledge of the matters set forth in the foregoing testimony, and that the answers contained therein are true and correct to the best of his information, knowledge and belief.

Robert M. Conroy

Subscribed and sworn to before me, a Notary Public in and before said County and State, this 16th day of June 2014.

____________________(SEAL)
Notary Public

My Commission Expires:

SUSAN M. WATKINS
Notary Public, State at Large, KY
My Commission Expires Mar. 19, 2017
Notary ID # 485723