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

**In the Matter of:**

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

**POST-HEARING BRIEF OF METROPOLITAN HOUSING COALITION**

Comes the Metropolitan Housing Coalition (MHC), by counsel, and files this post-hearing brief pursuant to the schedule agreed-upon by the parties at the close of the evidentiary hearing. For the reasons stated below, the Metropolitan Housing Coalition respectfully requests that the Commission find that the Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company (hereinafter "LGE/KU") for approval of Demand-Side Management and Energy Efficiency Programs (hereinafter "Application") falls short of being "reasonable" with respect to the: (1) failure to propose and implement demand-side management and energy efficiency programs (DSM/EE programs) for industrial customers, (2) the failure to demonstrate the cost-effectiveness of the proposed "next generation" or "Advanced Metering System" proposal, and (3) the lack of emphasis on investment in programs that are tailored to low- and fixed-income renters and homeowners relative to the contribution from low- and fixed-income ratepayers to DSM/EE funding.

MHC requests that the proposed DSM/EE Plan be approved, (excepting the Advanced Metering System proposal), only on condition that:

(1) LGE/KU be directed to broaden the scope of the Energy Efficiency Potential Study ("EE Potential Study") to include an assessment of utility-sponsored DSM/EE program options that could be developed for industrial customers; and

(2) LGE/KU be directed to evaluate and report to the Commission on whether the DSM/EE programs are adequately serving low-income customers in neighborhoods that contain the oldest, least energy efficient homes and the highest percentage of minority population, and the relationship of DSM program cost recovery from low- and fixed-income residents to the distribution of benefits of the various programs for low- and fixed-income homeowners and renters.

**INTRODUCTION AND STATEMENT OF APPLICABLE LAW**

Commission review of utility demand-side management and energy efficiency programs is governed by KRS 278.285. While the decision by a regulated utility to propose a demand-side management (DSM) program is elective, the plan cannot be approved for implementation, and cost recovery can occur, only where the Commission has made a determination of the "reasonableness" of the plan. KRS 278.285(1).

In full, KRS 278.285 provides as follows:

278.285 Demand-side management plans -- Review and approval of proposed plans and mechanisms -- Assignment of costs -- Home energy assistance programs.

(1) The commission may determine the reasonableness of demand-side management plans proposed by any utility under its jurisdiction. Factors to be considered in this determination include, but are not limited to, the following:

(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;

(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.

(2) A proposed demand-side management mechanism including:

(a) Recover the full costs of commission-approved demand-side management programs and revenues lost by implementing these programs;

(b) Obtain incentives designed to provide financial rewards to the utility for implementing cost-effective demand-side management programs; or

(c) Both of the actions specified may be reviewed and approved by the commission as part of a proceeding for approval of new rate schedules initiated pursuant to KRS 278.190 or in a separate proceeding initiated pursuant to this section which shall be limited to a review of demand-side management issues and related rate-recovery issues as set forth in subsection (1) of this section and in this subsection.

(3) The commission shall assign the cost of demand-side management programs only to the class or classes of customers which benefit from the programs. The commission shall allow individual industrial customers with energy intensive processes to implement cost-effective energy efficiency measures in lieu of measures approved as part of the utility's demand-side management programs if the alternative measures by these customers are not subsidized by other customer classes. Such individual industrial customers shall not be assigned the cost of demand-side management programs.

(4) Home energy assistance programs may be part of a demand-side management program. In considering a home energy assistance program, the commission shall only utilize the criteria set forth in subsections (1)(f) and (3) of this section.

MHC is a nonprofit, nonpartisan membership organization incorporated under the laws of the Commonwealth of Kentucky in 1989 and comprised of over 190 individual members and 200 member organizations. MHC members include representatives of low-income households, private and non-profit housing developers, service providers, financial institutions, labor unions, faith-based and neighborhood groups, as well as other advocacy groups, advocating in a united voice for fair, safe, and affordable housing in the Metro Louisville area. For over two decades, the MHC has utilized the public and private resources of the Metro Louisville community to provide equitable, accessible housing choices for all persons through advocacy, public education, and through support for affordable housing providers.

As part of its mission, MHC has focused on energy costs as part of fair and affordable housing for many years. The MHC 2008 *State of Metropolitan Housing Report* focused on utility costs and affordable housing, as did the follow-up MHC 2013 report on *How to Lower Utility Costs.* Utility costs are a significant component of affordable shelter and on these issues MHC has done research, effectively advocated for policy changes, represented non-profit affordable housing developers, and worked with local and statewide organizations. MHC has been an active member of the LG&E Customer Care Advisory Group since the program's inception, and is also on the Community Winter Help Board as well as the Affordable Energy Corporation Board.

## ARGUMENT

### I. THE PROPOSED LGE/KU DSM/EE PLAN IS UNREASONABLE FOR FAILING TO INCLUDE DSM/EE PROGRAM OFFERINGS TO INDUSTRIAL CUSTOMERS

While plans for development of demand-side management and energy efficiency programs is not mandated under KRS 278.285, cost recovery for such programs is subject to Commission review, and such plans cannot be approved unless they are found to pass a "reasonableness" test, considering a range of factors, some of which are enumerated in KRS 278.285(1). With respect to industrial customers, the General Assembly provided a mechanism to allow "individual industrial customers with energy intensive processes" to implement "cost-effective energy efficiency measures **in lieu of** measures approved as part of the utility's demand-side management programs if the alternative measures by these customers are not subsidized by other customer classes."

The categorical exclusion of utility-sponsored EE programs for industrial customers by LGE and KU violates the provisions of KRS 278.285(3) in several respects, and cannot be approved as reasonable absent additional actions to address the violations.

First, it is apparent that the General Assembly contemplated that DSM plans submitted under KRS 278.285 *would include* energy-efficiency measures for industrial customers, since otherwise it would have not created an "opt-out" allowing for an *individual* industrial customers with an "energy intensive process" to implement energy efficiency measures "in lieu of" those in the utility DSM/EE Plan if allowed by the Commission to opt out.

Second, it is clear that any exclusion of industrial customers from a DSM/EE Plan approvable under KRS 278.285 can **only** occur on a case-by-case basis, and then, only where (a) the industrial customer has "energy intensive processes," and (b) proposes to implement energy efficiency measures for that customer's facility. The LGE/KU proposal categorically excludes all industrial customers, whether they have energy intensive processes or not, and regardless of whether the industrial customer has implemented any energy efficiency measures.

LGE/KU defends the categorical exclusion of industrial customers from DSM/EE programs on the assumption that many industrial customers would opt out and not participate in such programs. Yet there is no empirical evidence in the record to support these conclusions; rather, there is only anecdotal testimony from Mr. Huff, and the results of a 2012 survey of industrial customers that is of little probative value since it fails to identify specific programs that might be offered, and because the survey failed to differentiate between those energy-intensive industrial customers who can lawfully opt-out, and other industrial customers who have no such choice under KRS 278.285.[1] The premise that a "death spiral" would result because of a high percentage of industrial opt-outs, is purely speculative, since **only** industries that have energy intensive processes can opt out,

[1] The 2012 Survey conducted by LGE/KU of 300 industrial customers, represented only 11% of the 2,965 businesses that, as of March 2014, were receiving electricity under industrial tariffs.

and only **if** approved by the Commission based on an individualized demonstration to the Commission that the industrial customer is implementing non-utility sponsored cost-effective energy efficiency programs.

In responding to the Commission's mandate to develop a study on the potential for energy efficiency measures, LGE/KU defined the scope of the study in a manner that excluded industrial sector programs, choosing instead to limit the EE Potential Study conducted by the Cadmus Group to residential and commercial customers. Mr. Huff admitted that the Commission did not direct the Cadmus EE Potential study to exclude industrial customers, and that the decision to do so was LGE and KU's. Hearing Video Transcript (hereinafter "HVT") at 11:29:34. LGE/KU witness David Huff acknowledged that no study on EE Potential has been done for the industrial sector by Cadmus, HVT at 11:29:40, and that other than anecdotal information gleaned from discussions with industrial customers, no analysis has been done by LGE/KU on the potential for cost-effective energy efficiency programs for industrial customers:

> Q. Other than anecdotal information that you have gleaned from your conversations with industrial customers, is there any empirical basis, a study, a report, an analysis, that has been done by LGE and KU to justify the categorical exclusion of industrial customers from the DSM and EE offerings that the company has developed?
>
> A. Other than what we have presented here, and what I've testified to, we have provided or produced no other analysis.

HVT at 11:30:50-11:31:13.

The sum total of LGE/KU's efforts regarding industrial customers, according to David Huff, is the referral of industrial customers to the Kentucky Pollution Prevention Center. Ironically, while LGE/KU believes that there would be little industrial customer interest in third-party sponsored DSM/EE programs, it recognizes in the next breath that the KPPC has been successful in producing energy efficiency-related saving for the industrial clients that it is able to serve.

According to Mr. Hornung, "As of 3/21/2014, there are 2,965 KU and 380 LG&E customers receiving service under industrial electric tariffs." Response to Sierra Club Supplemental Data Request Question 7. The significance of energy efficiency potential in the industrial sector in Kentucky was recognized by the Energy and Environment Cabinet's Department of Energy Development and Independence report *Kentucky's Action Plan for Energy Efficiency,* May 15, 2013, http://www.communityactionky.org/images/PDF/ActionPlan2013.pdf:

> Given the large percentage of industrial energy usage in Kentucky, the industrial sector offers huge opportunities for energy efficiency programming. Manufacturing is the largest sector in Kentucky's economy, in 2010 accounting for 18 percent of the Gross State Product, nearly half of its electricity use and nearly half of its natural gas use. This sector also faces mounting pressures with increasing energy rates and environmental compliance costs. Energy efficiency is one way to reduce these pressures: it will render Kentucky's manufacturers more competitive; allow them to retain their workforce; increase productivity; and assure that these industries remain in the State and thus continue to contribute to the economy. Thus, while several barriers exist, addressing this sector is

> critical to reducing overall energy use in Kentucky and realizing statewide goals.

Id., at 38.

In light of the significant amount of electricity consumed by the industrial sector in Kentucky and the corresponding significant potential for EE savings, a DSM plan that categorically excludes industrial customers from DSM/EE offerings based on anecdotal information is, on its face, unreasonable, as Sierra Club witness Wolff noted:

> Q. In your experience, it is reasonable for a utility to forego development of a demand management and EE program for one of the three main sectors of their ratepayers – the industrial sector, 30% of their load, based on anecdotal information gleaned from conversations with some of their industrial customers?
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> A. No, I would expect that at least the company would provide some quantitative data indicating what the cost would be, who would opt out, how the death spiral might or might not happen, whether the programs would be cost-effective or not, so that we all had some evidence before us to make that call.
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> Q. So you think a study similar to the one that was commissioned from Cadmus for the residential and commercial sectors would be prudent?
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> A. Yes, and as I said in my testimony, I would recommend a few improvements to that but yes that concept of studying it and understanding it better is absolutely spot on.

HVT at 15:32:28 – 33:30.

A categorical exemption of industrial customers from the utility's DSM/EE Plan is arbitrary, capricious, and fundamentally inconsistent with KRS 278.285(3), and requires that any approval of the remainder of the DSM/EE Plan be conditioned on resolving the incompatibility of the Plan with KRS 278.285(3) by undertaking a study of the EE Potential for industrial customers in the Commonwealth, and revising the DSM/EE Plan to incorporate EE measures found to be cost-effective.[2,3]

## 2. THE PROPOSAL FOR NEXT GENERATION METERING FAILS TO MEET THE REQUIREMENTS OF KRS 278.285(1) AND SHOULD BE DISALLOWED

One of the new programs in the DSM/EE Plan that has been proposed, is a program to "deploy Advanced Metering Systems"[4], which are defined in the proposed tariff as:

> Advanced Metering Systems
>
> The Advanced Metering Systems offering is designed to provide energy consumption data to customers on a more frequent basis than is traditionally available through monthly billing. The Program employs advanced meters to communicate hourly consumption data to customers through a website.

Application, p. 32, Exhibit RMC-1.

LGE/KU is asking some $5.7 million dollars to support this program, HVT at 11:33:44. LGE/KU acknowledges that it did not apply any of the "four traditional DSM tests" on the proposal,[5] even while acknowledging that

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[2] Wal-Mart seeks a categorical exclusion from the LGE/KU DSM/EE programs, but such a categorical exclusion is inconsistent with the statute, which limits any opt-out to industrial customers with energy intensive processes, and provides no such exclusion for commercial ratepayers.
[3] There is also an equity issue in allowing categorical non-participation by industrial customers, since unlike non-participating residential and commercial customers who are gaining the benefit of DSM/EE programs, industrial customers make no contribution to supporting DSM/EE programs yet gain the benefit of deferred investment in new generating capacity.
[4] Direct Testimony of Michael Hornung at p. 10.
[5] "The Companies performed the four traditional DSM/EE cost-benefit tests for each of the programs in the Proposed DSM/EE Program Plan

the Commission "explicitly requires utilities to apply" the four tests for any new DSM program or change to an existing DSM program.[6]

The failure to provide any cost-benefit assessment of the proposal to deploy up to 10,000 Advanced Metering Systems (5,000 in each service area) requires that the Commission disapprove the proposed program. David Huff acknowledged that the availability of the program is limited to "maybe 1%" of the residential and commercial ratepayers taking service under the RS and GS tariffs. HVT at 11:34:41-53.

LGE/KU appears to be of the mistaken belief that the specific reference to such systems in KRS 278.285(1)(h)[7] somehow exempts the utility from the obligation to support a proposed advanced metering system program with cost and benefit analyses, [8] but the statute is clear in

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except the Advanced Metering Systems[.]" Direct Testimony of Michael Hornung at pp. 11-12.

[6] Direct Testimony of Michael Hornung, at pp. 10-11.

[7] Subsection (1)(h) provides in full that: "(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."

[8] LGE/KU Witness Huff responded to Data Request 10 from the Attorney General that, in his opinion, "the DSM statute requires the Commission to consider the use of advanced meters in DSM plans, a consideration requirement that is separate and distinct from the statute's cost-benefit considerations" and that this "separate statutory requirement for the Commission to consider such proposals indicates the cost-benefit tests used for other DSM programs may not be appropriate for advanced meters." In truth, KRS 278.285(1)(b) requires cost and benefit analysis for **each and all** of the components of a DSM/EE plan, and in no fashion exempts advanced meter systems from the obligation. Where the General Assembly intended to exempt a DSM/EE program from one or more provisions of KRS 278.285(1), it did so explicitly, as with the home

**requiring** that such a program be supported with cost and benefit analysis, as well as any other justification, as is required for all proposed DSM/EE programs by KRS 278.285(1)(b). The proposed Advanced Metering System is part of the LGE/KU DSM/EE Plan, and as such, pursuant to KRS 278.285(1)(b), in order to be determined to be reasonable by the Commission, the program must be supported by "[t]he cost and benefit analysis and other justification for specific demand-side management programs and measures included in a utility's proposed plan[.]" KRS 278.285(1)(b). This subsection admits to no exemption for programs proposed under KRS 278.285(1)(h).

LGE/KU attempted to justify the decision not to evaluate the AMS program using the benefit-cost metrics in answer to Data Request Question 10 posed by the Attorney General's office concerning the Advanced Metering Systems and why the TRC or other California benefit-cost metrics were not calculated. The answer given was that the program benefits were uncertain and unknown because "they will depend on what customers do with the enhanced consumption information from advanced meters and the associated web portal." Answer to AG Data Request Q. 10. LGE/KU further responded that "unlike other DSM programs that deploy measures with reasonably predictable energy or demand savings, the customers who receive the advanced

energy assistance programs. KRS 278.285(4). No additional exemptions from KRS 278.285(1)(b) can or should be implied.

meters will dictate entirely the degree of savings in ways the Companies cannot reasonably foresee." Respectfully, all DSM/EE measures are voluntary with the customer, and in all such cases, it is the customer whose action or inaction (for example, installing the CFL bulb or following up on recommendations from an energy audit) always dictates the degree of savings. If the installation of AMS systems is so unpredictable that the use of such systems elsewhere has not provided any empirical basis for assessing the value of such a program here in the LGE/KU service area, the remedy is to select a more robust DSM measure rather than to sidestep a cost-benefit assessment.

Under both the Commission's prior decision in *In the Matter of the Joint Application of the Members of the Louisville Gas and Electric Company Demand-Side Management Collaborative for the Review, Modification, and Continuation of the Collaborative, DSM Programs, and Cost Recovery Mechanism, Case No. 1997-00083,* Order at 20 (Apr. 27, 1998), and the plain language of KRS 278.285(1)(b), the proposed Advanced Metering System proposal should be disapproved as not being reasonable as proposed due to a lack of demonstration that the program is cost-effective as a DSM measure.

There is a second reason why the proposal should be rejected; which is the inequity of requiring the entire residential class of LGE and KU customers to finance a voluntary program available only to 1% of the customers of either utility. To put a finer point on MHC's concern, the ability of a customer to access the data generated by the proposed AMS depends entirely on internet access, so that low- and fixed-income ratepayers lacking internet access are being asked to finance a program of limited-to-no utility to them. Using the criterion in KRS 278.285(1)(g) which directs the Commission, in determining "reasonableness," to consider "[t]he extent to which the plan provides programs which are available, affordable, and useful to all customers[,]" not being "available" or "useful" to low- and fixed-income ratepayers lacking internet access.

It is apparent that LGE/KU has not evaluated the extent to which internet access is available to low- and fixed-income ratepayers in the LGE and KU service areas. Witness Huff testified that "the Advanced Metering System is offering the customer that view through the web or web access so they will need some access to the internet or to the web."HVT at 11:48:25. Huff indicated that he "would not speculate what access low-income have or don't have[.]" HVT at 11:48:50.

> Q. As part of the design of this model did LGE and KU or any consultants for them look at the degree to which fixed and low-income folks within the service area have web access?
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> A. I do not recall a study where we looked specifically for low-income access to the web.
>
> Q. Or fixed income?
>
> A. Or fixed income.

HVT at 11:49:04 – 37.

The Commission may take official notice of the report issued by the U.S. Census Bureau titled *Computer and Internet Access in the United States,* (May 2013) http://www.census.gov/prod/2013pubs/p20-569.pdf, which reports that nationally, based on 2011 data, for households with incomes of less than $25,000 only 49.8% had internet access from some location, and for households between $25,000 and $50,000, only 63.7% had such access, as compared with over 86% for households with incomes of $100,000 or greater. Id., p.5. Additionally, the racial and ethnic gap between white and minority populations regarding internet access continues. Id. Table 3, p. 7. According to that U.S. Census Bureau report, Kentucky ranks significantly higher than the national average in percentage of individual households with no internet connectivity. Id., p. 10. It is unfair to low- and fixed-income households to ask that they foot the tab (and in fact a higher percentage of the tab, given that the DSM surcharge is volumetrically imposed) for a program available to only 1% of the residential and commercial ratepayers, and which is less likely to be useful to them than to more affluent ratepayers.

Finally, the proposed AMS program appears to be ineffective as a DSM measure, standing alone, since unlike the "responsive pricing" pilot, the proposed AMS program does not provide energy usage data in "real-time"[9] and provides no incentive, such as time-of-day pricing, for shifting demand in response to the data. The **only** value that LGE/KU could identify (yet could not quantify) was "more granular data:"

> Q. If there is no incentive for shifting your load, your demand under this AMS proposal, what is the value of knowing two days later what your energy usage was on an hourly basis as opposed to getting your bill on a monthly basis?
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> A. What we know is that some customers value having a more granular look at their energy usage. We also know that because they can see that more granular look, even if its two days in arrears, they generally know kind of what went on; what happened was somebody in the house did the lights get left on and then they can start making decisions that save energy and offset energy usage on an ongoing basis.

HVT at 11:43:03 – 55.

As a proposed DSM measure, the AMS program fails to satisfy the factors outlined in KRS 278.285(1)(a) and (1)(g) and should rejected.[10]

### 3. LGE/KU SHOULD BE DIRECTED TO STUDY THE EXTENT TO WHICH THE PROPOSED DSM/EE PROGRAMS PROVIDE VALUE TO LOW- AND FIXED-INCOME RATEPAYERS, BARRIERS TO GREATER PARTICIPATION IN SUCH PROGRAMS, AND MEASURES THAT CAN BE TAKEN TO BETTER ALIGN CONTRIBUTIONS TO DSM/EE FUNDING WITH PROGRAM BENEFITS

[9] Witness Huff testified that the data would be 48 hours "in arrears" before it would be available on the web. HVT at 11:40:50.

[10] There is a question as to whether the AMS meets the description of a "next-generation residential utility meter," since, unlike the pilot time-of-day program that provided an in-home display of current electricity use in real-time and without the necessity of web access, the proposed AMS has a two-day information lag and requires internet access. KRS 278.285(1)(h) contemplates that "Next-generation residential utility meters" will provide "residents with amount of current utility usage [and] its cost[.]" Providing information on electricity usage fully two days after the use occurs is not "current."

The prefiled Direct Testimony of MHC Director, Cathy Hinko reflects the organization's concern that the DSM program offerings are not available to many low- and fixed-income ratepayers, and that more effort is needed to assure that the availability of such programs is more commensurate with the degree to which low-income homeowners and renters are contributing to the funding of the DSM/EE programs. While her testimony was mistakenly characterized by a utility witness as suggesting that money collected within a census tract would need to be spent in that census tract, in truth Ms. Hinko's testimony speaks to the availability and affordability of DSM/EE measures for those living in poverty, and raises important questions of proportionality and equity between low- and fixed-income households and other households in the utility service areas:

> As can be seen in the maps, the location of older homes coincides closely with the location of poverty in Louisville. Also clear is that 70% of rental units those built before 1980. As charts and maps below will show, programs that are not useful to rental units will have a significant disparate impact on people in fair housing protected classes and on those in poverty. Yet, they may be some of the biggest contributors to the DSM program as their units may not be as energy efficient as newer built units. Air conditioning is considered a needed part of utilities and is recognized by the United State Department of Housing and Urban Development as a cost that is included in utilities supported by assistance payments. Air conditioning is operated by electricity, and it is the homes in low-income areas that primarily use window units. This fact makes them ineligible for some of the DSM programs - particularly the more expensive programs – yet they are even more in need of energy-efficient weatherization as well as newer and more efficient appliances.
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> Q. The Commission's review of the proposed increase in DSM charges and the use of the funds is focused on whether and on

> what terms approval of the proposals will be "consistent with the public interest." Are there specific areas that could be addressed by the Commission that would, in your view, make the plan more consistent with the public interest?
>
> A. Yes. First of all, any charge that is volumetric will have a disproportionate effect on low-income households. The amount of electricity used is not less because of their modest incomes, but in fact may be more because appliances are old, the homes do not have new HVAC, but may have old air conditioning window units, and the homes are not energy efficient and are harder to cool and heat. A volumetric charge will use up an even higher percentage of income for low-income households.
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> Using a rational basis that allows DSM funds to be spent proportional to DSM fees collected by LG&E/KU by census tract (using the most recent American Community Survey) would improve return for dollar for at least two reasons: this is the low-hanging fruit for yielding savings in usage, since as leaky homes and inefficient appliances are remedied, it will make payment of bills easier and reduce ancillary charges associated with late payments and cut-offs. The studies from the All Seasons Assurance Program have proven that if bills are affordable to low-income households, they will pay them.
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> People in protected classes under the Fair Housing Act disproportionately live in low-income areas. A lack of attention to the way the programs can be used by different populations may literally be depriving poor children of basic needs, especially poor African American children. Renters now occupy 38% of all occupied units in Louisville Metro/Jefferson County- up from 33% of all occupied units in just one year (2013 State of Metropolitan Housing Report, Metropolitan Housing Coalition).
>
> DSM programs need to ensure that renters are able to access the programs, particularly in light of the impact on fair housing protected classes as well as income levels.

Hinko Direct Testimony, at 5-7.

Specifically, Ms. Hinko identified the need for better understanding whether DSM/EE programs such as appliance rebates, advanced metering, and load control, are available as a practical matter to low-income residents, and whether the programs are potentially discriminatory in their utility and availability to low-income ratepayers, particularly those in rental units:

> As you can see from the charts above, (2013 State of Metropolitan Housing Report, Metropolitan Housing Coalition) African Americans, who make up 20% of households in Jefferson County, represent 34% of renters and only 11% of owners. So, for instance, the rebate programs are not going to be used by renters and/or by low-income persons. So that program, while seeming to be racially neutral, in fact, is not neutral in opportunity for use. That does not mean it should be discarded, only that it is imperative to view the entire DSM program from the standpoint of who contributes and who can access the individual programs.

Id. at 7.

> Neighborhoods that have large numbers of multi-family housing tend to be low-income and are not only racially concentrated, but are concentrations of people in other protected classes. Since these neighborhoods have smaller lot sizes, they also are concentrations of residential users, each paying for utilities. The earlier maps show that low-income neighborhoods are also where older housing exists with less energy efficient rehabilitation of homes. So there are a lot of people paying and with high volume usage.
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> Perhaps an example will illustrate, although this is taken from the 2000 census, so the numbers are not updated. From the chart below we see that zip code 40242 had a median household income of $52,406 and was 95% white as compared to zip code 40211, which had a median household income of $21,906 and was 95% African American. A volumetric increase would take more than twice the percentage of a family's income in the 40211 zip code, so that the amount of money spent in 40211 should be twice what is spent in 40242. Certainly, a discussion of proportionality is imperative. The following is from The State of Fair Housing in Louisville: Impediments and Improvements, Metropolitan Housing Coalition, 2010)
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> Q. How can this concern be addressed?

> MHC believes that distribution of DSM funds should be proportional to the impact on the neighborhood expressed as a percentage of DSM program income received from the neighborhood. More households, each paying the DSM charge, are in low-income neighborhoods. Yet the least amount of energy savings programs are implemented there.
>
> MHC believes that an assessment should be done to determine the amount of money coming from low-income neighborhoods in DSM charges with a concomitant study on where the DSM money is spent. At the least, the public utility should be cognizant of delivering funds in a manner that does not have a disparate impact on minorities, people who are disabled and female headed households with children. The new program that allows people to track usage on their computer seems to ignore the technology gap in low income households. That new program, combined with rebates for appliances beyond the financial capability of low-income people and not used by landlords of lower-rent areas, may result in inequity. Certainly, more study should go into the programs before approval.

Id. at 8-10.

Two of the factors for determining whether a proposed DSM/EE plan is "reasonable," speak to equity issues. KRS 278.285(1)(e) asks "[w]hether the plan results in any unreasonable prejudice or disadvantage to any class of customers," and KRS 278.285(1)(g) directs the Commission to consider "[t]he extent to which the plan provides programs which are available, affordable, and useful to all customers[.]" As has been discussed earlier, the Advanced Metering System program, available to only 1% of the LGE/KU residential and commercial customers, is functionally unavailable for those lacking internet access, who are more likely to be low-income and minority ratepayers. The appliance rebate programs are, as noted by Ms. Hinko, of little value to low-income customers who cannot afford the capital cost of new, energy efficient, major appliances. The load control program, which functions to control cycling of central air conditioning units, provides no opportunity for direct participation and accrual of rebate benefits by low-income and fixed-income ratepayers relying on window AC units.

MHC requests that the Commission direct LGE/KU to evaluate and report to the Commission on whether the DSM/EE program offerings are adequately serving low- and fixed-income homeowners and renters, particularly those in neighborhoods that contain the oldest, least energy efficient homes and the highest percentage of minority population. MHC requests that the evaluation include an assessment of the amount of DSM/EE funding collected from low- and fixed-income individuals and neighborhoods relative to the distribution of benefits of the various programs to those populations.

Respectfully submitted,

Tom FitzGerald
Kentucky Resources Council, Inc.
P.O. Box 1070
Frankfort, KY 40602
(502) 875-2428
FitzKRC@aol.com

*Counsel for Intervenor Metropolitan Housing Coalition*

**CERTIFICATE OF SERVICE**

This is to certify that Metropolitan Housing Coalition's September 30, 2014 electronic filing of the POST-HEARING BRIEF OF METROPOLITAN HOUSING COALITION is a true and accurate copy of the same document being filed in paper medium; that the electronic filing has been transmitted to the Commission on September 30, 2014; that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding; and that an original and one copy in paper medium of the POST-HEARING BRIEF OF METROPOLITAN HOUSING COALITION is being mailed to the Commission on September 30, 2014.

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Tom FitzGerald