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**

WALLACE MCMULLEN AND SIERRA CLUB'S OPPOSITION TO LOUISVILLE GAS AND ELECTRIC COMPANY AND KENTUCKY UTILITIES COMPANY'S MOTION TO SUBMIT THE CASE FOR DECISION ON THE RECORD

Wallace McMullen and the Sierra Club (collectively, the "Sierra Club") respectfully submit this opposition to Louisville Gas and Electric Company and Kentucky Utilities Company's (the "Companies") Motion to Submit the Case for Decision on the Record (the "Motion"). The Companies fail to cite any statutory or regulatory standard by which the Commission should decide when to conduct a hearing, and instead cite extensively to the practice of a federal agency whose precedent does not bind this Commission. As explained more fully in Sierra Club's request for an evidentiary hearing, which Sierra Club incorporates by reference, a hearing is necessary to serve the public interest and protect the substantial rights of the parties. *See* 807 KAR 5:00l § 9. In an attempt to avoid a hearing on their proposed 2015-2017 DSM/EE Program Plan, the Companies mischaracterize the record by attempting to transform disputed issues of fact into mere policy or legal disputes that can be resolved through briefing. However, numerous material facts remain contested, and conducting an evidentiary

hearing would help resolve these outstanding issues of material fact.[1] For these reasons, the Companies' Motion should be denied, and the Commission should conduct an evidentiary hearing in this matter.

I. THE COMPANIES' MOTION FAILS TO IDENTIFY THE PROPER LEGAL STANDARD FOR DECIDING WHETHER TO CONDUCT A HEARING.

The Companies never cite a statute or regulation for the legal standard governing the Commission's decision to conduct an evidentiary hearing in a proceeding to review a DSM plan. The Companies cite only a single Kentucky authority, *see* Motion at 1, a Commission Order nearly 20 years old, which has no applicability to this case. In the 1996 Order cited by the Companies, the Commission held that a hearing was not required because the entire dispute between the parties could be resolved through ruling on a single legal issue. *In re Barnett v. S. Anderson Water Dist.*, Case No. 95-397 (Mar. 28, 1996). The Companies cannot seriously contend that this case can be disposed of by the Commission ruling on a single legal issue. This case does present a legal issue concerning the Commission's authority to consider all benefits, including non-energy benefits, of energy efficiency in determining the reasonableness of DSM/EE plans.[2] However, as explained more fully below, many disputed issues of fact also remain, rendering the 1996 Order cited by the Companies inapposite.

The Companies dwell on the standard used by the Federal Energy Regulatory Commission ("FERC"), *see* Motion at 1-2, which, as the Companies surely know, is not binding on this Commission. Nowhere do the Companies explain why the Commission should look to FERC's precedent rather than to its own rules. And the Commission's rules are clear: the

[1] The Companies mistakenly suggest that any party who requests a hearing is asking for a "lengthy and costly hearing" and is not respecting the time of the Commission. To the contrary, a hearing can be limited to the discrete issues that remain in dispute. Sierra Club appreciates the time and resources required for a hearing but given the critical issues that remain contested, conducting a hearing is the most productive way to enable the Commission to decide the case on a complete evidentiary record.

[2] This distinct legal issue should be addressed in post-hearing or other briefing.

Commission "shall conduct a hearing" if "a request for a hearing has been made," unless "a hearing is not required by statute, is waived by the parties in the case, or is found by the commission to be unnecessary for protection of substantial rights or not in the public interest." 807 KAR 5:00l § 9(1).

II. THE COMPANIES MISCHARACTERIZE DISPUTED ISSUES OF FACTS AS POLICY OR LEGAL ISSUES.

After correctly noting that there are some legal issues disputed by the parties, the Companies reach the erroneous conclusion that all the issues in dispute must be legal issues. This is not the case. The list below identifies some of the factual issues that Sierra Club and the Companies continue to dispute, even after direct and rebuttal testimony and the informal conference.

- Did the Companies accurately calculate the cost-effectiveness figures for the EE and DSM programs they considered?
- Did the Companies accurately calculate the benefits of the EE and DSM programs they considered?
    - Did the Companies include the benefits of avoiding the cost of all applicable environmental regulations?[3]
        - In particular, did the Companies calculate the benefit of avoiding the cost to comply with carbon regulations? [4]
- Do the results of the Companies' survey of industrial customers state that a substantial number of industrial customers are likely to participate in EE and/or DR programs that could be offered by the Companies?[5]

[3] *Compare* Direct Testimony of Tim Woolf at 14-17 *with* Rebuttal Testimony of Michael Hornung at 1-2.

[4] *Compare* Direct Testimony of Tim Woolf at 33-36 *with* Rebuttal Testimony of Michael Hornung at 2-5.

- Did the Market Potential Study prepared by Cadmus accurately calculate the level of cost-effective, achievable energy efficiency in the LG&E/KU service territory?[6]

Sierra Club reserves the right to supplement this list should the Commission require a list of genuine issues of material fact in advance of an evidentiary hearing.

CONCLUSION

For the foregoing reasons, Sierra Club respectfully requests that the Commission deny the Companies' motion and grant Sierra Club's motion to conduct an evidentiary hearing in this matter.

Dated: July 7, 2014

Respectfully submitted,

JOE F. CHILDERS
JOE F. CHILDERS & ASSOCIATES
300 Lexington Building
201 West Short Street
Lexington, Kentucky 40507
859-253-9824
859-258-9288 (facsimile)
childerslaw81@gmail.com

Of counsel:

Jill Tauber
Earthjustice
Washington, DC Office
1625 Massachusetts Avenue, NW, Suite 702
Washington, DC 20036-2212
(202) 667-4500
jtauber@earthjustice.org

[5] *Compare* Direct Testimony of Tim Woolf at 33-36 *with* Rebuttal Testimony of David Huff at 1-4.

[6] *Compare* Direct Testimony of Tim Woolf at 14-17 *with* Rebuttal Testimony of Michael Hornung at 10-12 .

Matthew Gerhart
Earthjustice
705 Second Ave., Suite 203
Seattle, WA 98104
(206) 343-7340
mgerhart@earthjustice.org

Susan Laureign Williams
Sierra Club
50 F Street, N.W., 8th Floor
Washington, DC 20001
(202) 548-4597
laurie.williams@sierraclub.org

CERTIFICATE OF SERVICE

I hereby certify that Sierra Club's July 7, 2014 electronic filing is a true and accurate copy of the Wallace McMullen and Sierra Club's Opposition to Louisville Gas and Electric Company and Kentucky Utilities Company's Motion to Submit the Case for Decision on the Record, to be filed in paper medium; and that on July 7, 2014, the electronic filing has been transmitted to the Commission, and that one copy of the filing will be delivered to the Commission, that no participants have been excused from electronic filing at this time, and electronic mail notification of the electronic filing is provided to the following:

Dennis G. Howard II, Esq.
Lawrence W. Cook, Esq.
Angela M. Goad, Esq.
Heather Napier, Esq.
Office of the Attorney General
1024 Capital Center Drive, Suite 200
Frankfort, KY 40601-8204
Dennis.Howard@ag.ky.gov
Larry.Cook@ag.ky.gov
Angela.Goad@ag.ky.gov
Heather.Napier@ag.ky.gov

Allyson KI. Sturgeon, Esq.
Senior Corporate Attorney
LG&E and KU Energy, LLC
220 West Main Street
Louisville, KY 40202
Allyson.Sturgeon@lge-ku.com

Rick Lovekamp
Manager Reg. Affairs
LG&E and KU Energy, LLC
220 West Main Street
Louisville, KY 40202
Rick.Lovekamp@lge-ku.com

Edwin R. Staton
Vice President, State Regulation and Rates
LG&E and KU Energy, LLC
220 West Main Street
Louisville, KY 40202
Ed.Staton@lge-ku.com

Michael L. Kurtz, Esq.
Kurt J. Boehm, Esq.
Jody Kyler Cohn, Esq.
Boehm, Kurtz & Lowry
36 East Seventh Street, Suite 1510
Cincinnati, OH 45202
mkurtz@BKLlawfirm.com
kboehm@BKLlawfirm.com
jkylercohn@BKLlawfirm.com

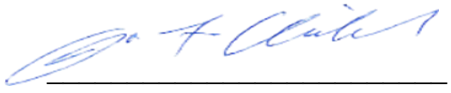
Iris G. Skidmore, Esq.
Bates & Skidmore
Attorneys at Law
415 W. Main St., Suite 2
Frankfort, KY 40601
Batesandskidmore@gmail.com

Eileen Ordover, Esq.
Lisa Kilkelly, Esq.
Legal Aid Society, Inc.
416 W. Muhammad Ali Blvd, Suite 300
Louisville, KY 40202
EOrdover@laslou.org
LKilkelly@laslou.org

Don C. A. Parker
Tai C. Shadrick
Spilman Thomas & Battle, PLLC
300 Kanawha Blvd, East
Charleston, WV 25301
dparker@spilmanlaw.com
tshadrick@spilmanlaw.com

Derrick Price Williamson
Spilman Thomas & Battle, PLLC
1100 Bent Creek Blvd., Suite 101
Mechanicsburg, PA 17050
dwilliamson@spilmanlaw.com

W. Duncan Crosby, III
Kendrick Riggs
Joseph Mandlehr
Stoll Keenon Ogden, PLLC
2000 PNC Plaza
500 West Jefferson Street
Louisville, KY 10202
duncan.crosby@skofirm.com
joseph.mandlehr@skofirm.com
kendrick.riggs@skofirm.com



JOE F. CHILDERS