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**

POST-HEARING BRIEF OF LOUISVILLE GAS AND ELECTRIC COMPANY AND KENTUCKY UTILITIES COMPANY

Filed: September 30, 2014

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INTRODUCTION

The Kentucky Public Service Commission ("Commission") should approve the application of Louisville Gas and Electric Company ("LG&E") and Kentucky Utilities Company ("KU") (collectively "Companies") as filed in this proceeding. No party has contested that, with the possible exception of the Advanced Metering System ("AMS") customer offering, the Companies' proposed demand-side management and energy efficiency ("DSM-EE") portfolio is economical and should be approved; in fact, intervenors Wallace McMullen and the Sierra Club (collectively "Sierra Club") argue the proposed programs are even more economical than the Companies have reported. Concerning the AMS customer offering, KRS 278.285(1)(h) provides special consideration for such offerings independent of cost-benefit considerations, and the Commission has indicated a special preference for such offerings by requiring LG&E to make a proposal such as the AMS customer offering the Companies are proposing in this proceeding.[1] In addition, the Companies have provided evidence that the AMS offering may provide benefits to customers beyond the informational benefits customers and the Companies will receive. The Commission can therefore approve the entirety of the Companies' proposed DSM-EE portfolio—including AMS—with full confidence that its approval will accord with KRS 278.285 and provide benefits to customers.

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[1] *In the Matter of: Request of Louisville Gas and Electric Company to Cancel and Withdraw the Tariffs for its Responsive Pricing and Smart Metering Pilot Program,* Case No. 2011-00440, Order at 10-11 (March 22, 2012) ("LG&E shall submit a report describing its efforts to develop a new program every three months until it has submitted a dynamic pricing or *smart meter application* for the Commission's consideration[.]")(emphasis added). *See also*, Case No. 2011-00440, Letter to Mr. Jeff DeRouen (April 30, 2014) ("As the Companies have submitted a smart meter application for the Commission's consideration in Case No. 2014-00003, LG&E has satisfied the reporting requirements and no additional reports are planned in response to the Commission's Order in Case No. 2011-00440."). The Companies' AMS proposal is also consistent with the guidance the Commission Staff provided in their report concerning the Companies' 2011 IRP, in which the Companies had stated goals they would pursue in their future smart-technology proposals: "The Staff encourages the pursuit of these goals in the integration of smart meter technology into LG&E's existing system infrastructure." *In the Matter of: 2011 Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company*, Case No. 2011-00140, Staff Report on the 2011 Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company at 24 (Mar. 13, 2013).

The Commission should also grant the Companies' requested continuation of the existing Commission-approved return on equity ("ROE") for equity capital invested in DSM-EE programs. The existing 10.50% ROE is precisely the kind of "positive financial reward" explicitly provided for in KRS 278.285(1)(c) and (2)(b). Moreover, the ROE is the only reward the Companies will receive for the two programs with capital components because the Companies have *not* requested recovery of operation-and-maintenance expenses or incentives for such programs. Therefore, to deny the Companies' requested ROE would be contrary to the General Assembly's clear directive to provide utilities "positive financial rewards" for DSM-EE.

All of the other issues raised in this proceeding are essentially diversions; none of them detract from, and some of them support, the reasons the Commission should approve the Companies' application as filed. For example, acting on intervenor Sierra Club's criticisms of the Companies' cost-benefit analyses—analyses conducted consistent with more than a decade of Commission precedent—would serve only to show the Companies' proposed programs are more economical than the Companies have stated and therefore more worthy of approval. The Companies continue to believe Sierra Club's criticisms are without merit, but the impact of accounting for such criticisms would be to make the Companies' proposed DSM-EE portfolio even more compelling.

Kentucky statutes prevent the Commission from approving any of the intervenors' other proposals.[2] Most of the intervenors' other proposals, e.g., requiring industrial programs, cannot be considered in this proceeding because the Companies have not proposed them in their DSM-EE plan;[3] even Sierra Club's witness agreed that a utility must propose DSM-EE programs for

[2] *See* KRS 278.285(1) ("The commission may determine the reasonableness of demand-side management plans proposed by any utility under its jurisdiction."); KRS 278.285(3); KRS 278.030; KRS 278.170.

[3] KRS 278.285(1) ("The commission may determine the reasonableness of demand-side management plans proposed by any utility under its jurisdiction.").

the Commission to consider them.[4] Intervenor Wal-Mart Stores East, LP, and Sam's East, Inc.'s (collectively "Wal-Mart") request for commercial opt-outs is contrary to KRS 278.285(3), which provides opt-outs only to industrial customers with energy-intensive processes, and intervenor Metropolitan Housing Coalition's ("MHC") proposal that the Companies bill and spend DSM-EE funds by census tract violates KRS 278.285(3), KRS 278.030, and KRS 278.170. The Commission therefore should not approve any of these proposals.

It would be incorrect to infer from the Companies' criticism of the intervenors' proposals in this proceeding that the Companies are unwilling to adapt their DSM-EE portfolio to changing circumstances; the Companies' application in this proceeding demonstrates the Companies' willingness to make such applications before the end of an approved program-plan period when opportunities arise to improve their DSM-EE portfolio. Moreover, the Companies developed the proposed DSM-EE portfolio—and have developed all of their DSM-EE portfolios—with input from their DSM-EE Advisory Group, which includes several of the intervenors. That process has produced the Companies' proposed DSM-EE portfolio, which is solidly economical, worthy of the incentives provided by statute, and beneficial to customers. The Commission should approve it as filed.

ARGUMENT

I. The Commission Should Approve the Companies' Application as Filed Because the Proposed 2015-2018 Program Plan Will Provide Significant Benefits to Customers and Financial Incentives to the Companies Consistent with KRS 278.285

The chief issue before the Commission in this proceeding is whether to approve the Companies' application: "The commission may determine the reasonableness of demand-side management plans proposed by any utility under its jurisdiction."[5] Concerning this chief issue,

[4] Video transcript at 15:05:36 – 15:06:51.
[5] KRS 278.285(1).

there appears to be consensus among the parties that, with the possible exception of the AMS customer offering, the Companies' Proposed 2015-2018 Program Plan is economical, and only one party has questioned in testimony the possible benefits of the AMS customer offering.[6] But that intervenor's concern is misplaced; the Companies have provided evidence that the AMS customer offering will indeed provide informational benefits and may provide other benefits, as well.[7] The final component of the Companies' application, their request to continue the existing Commission-approved ROE for equity capital invested in DSM-EE programs, is reasonable and consistent with the plain language and intent of KRS 278.285(1)(c) and (2) to provide utilities financial rewards for providing economical DSM-EE programming. There are therefore strong reasons for the Commission to approve the Companies' application as filed.

A. The Evidence in this Proceeding Demonstrates the Companies' Proposed 2015-2018 Program Plan is Economical; Indeed, Sierra Club Argues the Plan is More Economical than the Companies' Analysis Shows.

There are a number of disputed issues in this proceeding, but the most important issue is not; namely, with the possible exception of the AMS customer offering, no party contests that the Proposed 2015-2018 Program Plan is economical and otherwise complies with all the requirements of KRS 278.285 and should therefore be approved (and only one party has questioned in testimony the possible benefits of the AMS customer offering).[8] There is good reason for this lack of dispute: applying the Commission-required California Standard Practice Manual cost-benefit tests to the proposed portfolio produces excellent results.[9] The portfolio passes the Participant, Utility Cost, and Total Resource Cost tests, and has a Ratepayer Impact Measure ("RIM") score consistent with past Commission approvals of the Companies' DSM-EE

[6] Testimony of Marlon Cummings at 14.
[7] *See, e.g.*, Direct Testimony of David E. Huff at 5-7.
[8] Testimony of Marlon Cummings at 14.
[9] Direct Testimony of Michael E. Hornung at 12.

portfolios.[10] As Sierra Club noted in pre-filed testimony and at hearing, the Utility Cost Test score indicates that the proposed portfolio will create $3 in benefits for every $1 spent.[11] This highly economical portfolio was developed in collaboration with the Companies' EE Advisory Group—including several of the intervenors—which met multiple times in 2012 and 2013 to discuss existing programs and develop proposed programs.[12] The Commission should therefore have no reservation about approving the proposed portfolio as filed (including the AMS for the reasons discussed below).

In fact, the only criticism of the Companies' non-AMS program portfolio cost-benefit analysis in this proceeding is Sierra Club's assertion that the analysis understates the cost-effectiveness of the programs. Mr. Woolf's assertions about how the Companies' cost-benefit analyses should have accounted for non-energy benefits and potential greenhouse-gas ("GHG") regulations—assertions the Companies dispute—would have shown the proposed portfolio to be more economical than the Companies' results show, not less so. This further supports Commission approval for the Companies' proposed portfolio.

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[10] *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. 2011-00134, Order (Nov. 9, 2011); *In the Matter of the Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company Demand-Side Management for the Review, Modification, and Continuation of Energy-Efficiency Programs and DSM Cost Recovery Mechanisms*, Case No. 2007-00319, Order (Mar. 31, 2008).

[11] Testimony of Tim Woolf at 3.

[12] Application at 8. The entities invited to send representatives to attend EE Advisory Group meetings are the Office of the Attorney General, Metropolitan Housing Council, Louisville Metro Air Pollution Control District, University of Kentucky, Kentucky Division for Air Quality, West Louisville Community Ministries, Kentucky Department for Energy Development and Independence, Community Action Council for Lexington-Fayette, Bourbon, Harrison & Nicholas Counties, Kentucky Community Action Council, Kentucky National Energy Education Development Project, Louisville Legal Aid Society, Kentucky Home Builders Association, Association of Community Ministries, Kentucky Industrial Utilities Customers, Kentucky School Board Association, Shelby County Public Schools, Kentucky Resources Council, Kroger, Community Action Kentucky, Partnership for a Green City, Midwest Energy Efficiency Alliance, Louisville Metro Government, and University of Louisville. *See* Companies' Response to the Commission Staff's First Information Request Dated February 17, 2014, Response to Question No. 35 (Mar. 3, 2014).

B. The Commission Should Approve the AMS Customer Offering Because It is Consistent with the Letter and Intent of KRS 278.285(1)(h) and Will Provide Informational Benefits and Potential Savings to Customers.

Among the list of generally applicable criteria KRS 278.285(1) provides for the Commission to consider when determining the reasonableness of utility-proposed DSM-EE programs, KRS 278.285(1)(h) stands out as being issue-specific and applicable to only one kind of proposal: next-generation residential utility meters that can provide customers with information about current utility usage. This unique provision can only be understood to express the General Assembly's desire that such proposals be given special consideration, even preference, as part of a utility's DSM-EE program plan; no other category of potential DSM-EE program receives such special statutory recognition. That is not to say that the Commission should ignore the other KRS 278.285(1) factors, such as costs and benefits, when considering the reasonableness of an advanced-meter proposal like AMS, but it does indicate the statute's, and therefore the General Assembly's, intent that such proposals be given special preference.

The Commission has also expressed its preference that the Companies deploy advanced meters. In its order permitting LG&E to cancel and withdraw its tariff provisions for its Responsive Pricing and Smart Metering Pilot Program, the Commission directed LG&E to "submit a report describing its efforts to develop a new program every three months until it has submitted a dynamic pricing or smart meter application for the Commission's consideration[.]"[13] LG&E stated in an April 30, 2014 letter to the Commission that its application in this proceeding, and particularly the AMS customer offering, satisfied the Commission's requirement.[14] The Companies' AMS proposal is also consistent with the guidance the Commission Staff provided in their report concerning the Companies' 2011 Integrated Resource

[13] *In the Matter of: Request of Louisville Gas and Electric Company to Cancel and Withdraw the Tariffs for Its Responsive Pricing and Smart Metering Pilot Program*, Case No. 2011-00440, Order at 10-11 (March 22, 2012).
[14] Case No. 2011-00440, Letter to Mr. Jeff DeRouen (April 30, 2014).

Plan ("IRP"), in which the Companies had stated goals they would pursue in their future smart-technology proposals: "The Staff encourages the pursuit of these goals in the integration of smart meter technology into LG&E's existing system infrastructure."[15] The AMS offering therefore deserves special consideration by the Commission not only because of the statutory directive of KRS 278.285(1)(h) to do so, but also because of the Commission's own requirement that LG&E file such an application.

But the Commission should approve the AMS customer offering not just because of these special statutory and Commission preferences, but also because of the benefits AMS will provide. For program participants, benefits will include receiving an advanced meter capable of providing hourly usage data through a Web interface.[16] Participating customers can use this enhanced information to more accurately understand, and therefore control, their energy usage as they improve their understanding of which devices and behaviors use the most energy. Moreover, the Companies' AMS customer offering will enable the Companies to propose time-of-day ("TOD") rates for AMS participants in future base-rate cases, which could increase the potential benefits of the program to participants by allowing them to shift usage to lower-priced TOD periods.[17]

In addition, this small, targeted offering will produce informational benefits to the Companies to determine where, if, or when additional advanced-meter deployments would be prudent, and it might provide operational savings of different kinds depending on the concentration or dispersion of participating customers.[18] These potential operational savings and

[15] *In the Matter of: 2011 Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company*, Case No. 2011-00140, Staff Report on the 2011 Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company at 24 (Mar. 13, 2013).
[16] Direct Testimony of David E. Huff at 6.
[17] Video transcript at 11:42:30 – 11:43:00.
[18] Direct Testimony of David E. Huff at 7.

informational benefits are consistent with DNV-KEMA's smart-meter potential study for the Companies' service territories, which suggested that this kind of relatively small-scale offering could provide net benefits in the Companies' service territories at this time.[19] At hearing, the Companies committed to provide informational updates to the Commission about the AMS offering's progress and results if approved, so the offering will provide informational benefits to the Commission, as well.[20] Therefore, the AMS customer offering will provide real informational benefits to the Commission, the Companies, and their customers, and may provide savings to participating customers through reduced energy usage and potentially to all customers through operational efficiencies. These benefits, obtained at relatively low cost (just $5.7 million total capital and operating expense across all four years of the proposed program plan),[21] coupled with the special statutory consideration given to such programs, give the Commission more than adequate grounds for approving the AMS customer offering as proposed.

In pre-filed testimony, Association of Community Ministries, Inc. ("ACM") witness Marlon Cummings expressed concern about the AMS offering because of the relatively low home-internet-access rates among low-income customers,[22] a concern echoed by counsel for MHC at hearing.[23] But as noted at hearing, there are multiple free means by which low-income customers may obtain internet access, which should help mitigate the concern.[24]

Also, the legal standard in this proceeding is "reasonableness," not perfect equity; requiring all programs to be equally useful and accessible to all customers in all circumstances is an unlawful standard that would result in having no DSM-EE programs at all. For example, the

[19] Application Exhibit DEH-1 at 1.
[20] Video transcript at 12:52:08-12:52:16.
[21] Direct Testimony of Michael E. Hornung at 14.
[22] Testimony of Marlon Cummings at 14-15.
[23] Video transcript at 11:48:30 – 11:48:45.
[24] Video transcript at 11:48:45 – 11:49:05.

Companies' residential load control program is one of the most successful and economical DSM-EE programs the Companies offer; with a RIM score above 1.0, the program provides even non-participants with a positive return for every dollar invested.[25] But as MHC's testimony notes, not every residential customer has a central air conditioning system, which is currently the only kind of residential air conditioning eligible for the program.[26] Yet surely it would be unreasonable to forego the benefits of such a program simply because not every customer can participate in it. Likewise, a perfect-equity standard would require curtailing or ending the Companies' Low-Income Weatherization program ("WeCare"), which provides services only to low-income customers and which is the Companies' second-largest DSM-EE program by budget, because it is not available to non-low-income customers;[27] this illustrates how a standard of perfect equity would disallow a long-standing and widely-accepted DSM-EE program, and demonstrates why the Commission should reject the standard. Similarly, the Commission should refuse to apply such a standard to the AMS customer offering, which, though perhaps not equally accessible to all customers in all circumstances, will provide informational benefits and may provide savings that should not be foregone.

C. The Commission Should Approve Continuing the Current Commission-Approved Return on Equity for DSM-EE Programs Because It Provides the Positive Financial Rewards for DSM-EE Contemplated by KRS 278.285.

Kentucky's DSM-EE statute twice states that the Commission may find reasonable and approve a utility's DSM-EE proposals, which may include "incentives designed to provide positive financial rewards to a utility to encourage implementation of cost-effective demand-side management programs."[28] These statutory provisions are clear that the Commission should not

[25] Direct Testimony of Michael E. Hornung at 12.
[26] Testimony of Cathy Hinko at 6.
[27] Rebuttal Testimony of Michael E. Hornung at 13.
[28] KRS 278.285(1)(c) - (2)(b).

just permit ordinary cost recovery and ROEs for DSM-EE investments, but rather should provide positive financial incentives to encourage such investments. In fact, the Commission has done so repeatedly in the Companies' DSM-EE cases, permitting the Companies to earn an incentive of 5% of their DSM-EE-program non-capital expenditures.[29] Therefore, continuing the existing 10.50% ROE for the Companies' DSM-EE programs is consistent with KRS 278.285's clear guidance and the Commission's long-established practice concerning providing utilities a financial incentive to implement DSM-EE programs.

Moreover, because the Companies are not currently seeking any incentive for operating and maintenance costs in capital projects, the ROE is the only incentive the Companies receive for such programs. Therefore, the Commission should approve continuing the existing 10.50% ROE for DSM-EE programs.

II. The Intervenors' Remaining Critiques and Proposals Are Without Merit

The intervenors' remaining points raised in pre-filed testimony and at hearing fall into two categories: (1) critiques of the Companies' cost-benefit analyses that are incorrect or contrary to statute or Commission precedent, which critiques, if implemented, would only enhance the cost-effectiveness of the Companies' proposed DSM-EE portfolio; and (2) proposals to require the Companies to alter their DSM-EE programs or administration in ways contrary to statute. Such critiques and proposals should not affect the Commission's approval of the Companies' proposed DSM-EE portfolio in this proceeding.

[29] *See, e.g., 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. 2011-00134, Order (Nov. 9, 2011); *In the Matter of: Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for Review, Modification, and Continuation of Energy Efficiency Programs and DSM Cost Recovery Mechanisms*, Case No. 2007-00319, Order (Mar. 31, 2008).

A. The Companies Correctly Excluded Non-Energy Benefits from their DSM-EE Cost-Benefit Analysis Because Such Factors Are Outside the Commission's Jurisdiction, Do Not Affect the Companies' Costs or Benefits, and Are Not Included in the Commission-Required Cost-Benefit Tests.

The Commission has held, consistent with Kentucky's courts' holdings, 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.[30] By definition, non-energy benefits ("NEBs") 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. The Companies therefore correctly excluded them from their cost-benefit analyses in this proceeding, and the Commission should refuse to require including them in future DSM-EE cost-benefit analyses.

Notably, even in Massachusetts, a state Mr. Woolf touts as a gold-standard for DSM-EE analysis, accounting for NEBs was outside the jurisdiction of the Department of Public Utilities ("DPU") until explicit statutory changes occurred to permit such considerations.[31] In an opinion Mr. Woolf cited from the witness stand at hearing, the Supreme Judicial Court of Massachusetts reversed a decision by the DPU that required a utility to consider the "value of environmental externalities beyond the range of its statutory authority."[32] It took fourteen years for

[30] *See, e.g., In the Matter of: Application of Louisville Gas and Electric Company for an Adjustment of Its Electric and Gas Rates, a Certificate of Public Convenience and Necessity, Approval of Ownership of Gas Service Lines and Risers, and a Gas Line Surcharge*, Case No. 2012-00222, Order at 4 (Oct. 17, 2012) (quoting *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.").

[31] *See Massachusetts Electric Company v. Department of Public Utilities*, 419 Mass. 239 (Ma. 1994).

[32] *Id.* at 250.

Massachusetts to enact a statute broadening the DPU's jurisdiction sufficiently for it to begin accounting for NEBs.[33] Kentucky has not yet provided the Commission such authority.

Kentucky is hardly alone in not having provided such authority; as Mr. Woolf testified at hearing, states that take NEBs into account are a distinct minority.[34] And there is a good reason for Kentucky's position to be the majority position concerning NEBs; namely, because there is no end to them. As Mr. Woolf's pre-filed testimony shows, the number and kinds of NEBs apparently attributable to otherwise humble DSM-EE measures is limited only by the imagination.[35] Although the Companies do not doubt that their DSM-EE programs create some amount of non-energy benefits—as well as non-energy costs, which Mr. Woolf ignores—it strains credulity to accept that "improved student performance" is a plausible benefit of such programs, yet that is an NEB Mr. Woolf would have this Commission take into account.[36] The Commission should continue to follow its historical practice and refuse to account for such indirect and tangential items that do not affect the Companies' rates or service. Whether the Commission has the authority to impose policy decisions like "improved student performance" on the Companies' customers is clearly a matter for the General Assembly.

B. The Companies Appropriately Accounted for Possible Future Greenhouse-Gas Regulations in their DSM-EE Cost-Benefit Analyses.

At hearing, the topic of the U.S. Environmental Protection Agency's ("EPA") recently proposed Clean Power Plan was repeatedly addressed by intervenors in an attempt to show the Companies should be implementing more DSM-EE measures to account for carbon-dioxide emissions limits; for example, Mr. Woolf described the Clean Power Plan as a "reasonably anticipated future regulation" that the Commission and the Companies should take into account

[33] Mass. Gen. Laws ch. 25, § 22 (b).
[34] Video transcript at 14:54:10-14:54:47.
[35] Woolf Testimony at 18.
[36] *Id*.

when analyzing the Companies' proposed DSM-EE portfolio.[37] But the Clean Power Plan is anything but "reasonably anticipated," at least in any way that can sensibly be included in DSM-EE cost-benefit analyses today. Notably, the EPA touted in its proposed rulemaking the flexibility that states would have to comply with the rule,[38] and used four "building blocks" to arrive at its proposed GHG emissions limit for each state, only one of which is energy efficiency.[39] But the EPA has not prescribed the means by which states must meet the applicable emissions limits; it may be possible for a state to comply without any increases in energy efficiency. So the energy-efficiency levels the EPA assumed in creating its proposed GHG emissions limits are not intended to be hard and fast goals states must achieve, but rather are one of four primary inputs to how EPA arrived at its proposed emissions limits.[40] This inherent flexibility in the proposed Clean Power Plan undermines any assertion that it is a "reasonably anticipated future regulation" the Companies or Commission can intelligently incorporate in current cost-benefit analyses.

But the EPA has given even more reasons to question the degree to which the Clean Power Plan's energy-efficiency assumptions can be characterized as "reasonably anticipated." EPA Administrator Gina McCarthy herself recently—as recently as September 25, 2014—highlighted the likelihood of changes to the proposed rule, stating, "[T]here's going to be

[37] Video transcript at 14:43:00-14:44:18.
[38] *See, e.g.,* http://www2.epa.gov/carbon-pollution-standards/fact-sheet-clean-power-plan-overview (last visited Sept. 29, 2014).
[39] *See, e.g.,* https://www.federalregister.gov/articles/2014/06/18/2014-13726/carbon-pollution-emission-guidelines-for-existing-stationary-sources-electric-utility-generating#h-68 (last visited Sept. 29, 2014).
[40] *Id.*

changes between proposal and final, because we listen …."[41] The Administrator further stated, "[Y]ou may see adjustments in state levels. You may see adjustments in the framework …."[42] When the administrator of an agency issuing a rule makes public remarks like these about the rule it just issued, it would seem unreasonable, not reasonable, to make significant investment decisions based on the draft regulation.

Also, the EPA's proposed rulemaking has asked for comments not just on the energy-efficiency assumptions the EPA actually used, but also on whether it might be more appropriate to use decreased assumptions about how much energy efficiency states might actually be able to achieve.[43] Decreasing those assumptions seems entirely reasonable in view of the EPA's own documents' concession that there is only "limited empirical data" to support the reasonableness of the energy-efficiency assumptions underlying the proposed Clean Power Plan.[44]

In addition to the reasons the EPA itself has given not to treat the proposed Clean Power Plan as a "reasonably anticipated future regulation," actions taken by the Kentucky General Assembly, the Kentucky Attorney General, and others cast serious doubt on whether the Clean Power Plan will be implemented at all, or what form it will take and what impact it will have if it is implemented. During the 2014 regular session, the Kentucky General Assembly enacted, and the governor signed into law, House Bill 388, which requires pro-coal criteria for GHG-

[41] Video of EPA Administrator Gina McCarthy speaking to Resources for the Future on September 25, 2014 ("RFF Video") at 0:36:41-0:36:49, *available at* http://www.rff.org/Events/Pages/A-Conversation-with-EPA-Administrator-Gina-McCarthy.aspx (last visited Sept. 29, 2014); Transcript of RFF Video at 15, *available at* http://www.rff.org/Documents/Events/RFF-Sept25-GinaMcCarthyPLF.pdf (last visited Sept. 29, 2014). *See also* Laura Barron-Lopez, *EPA chief says to expect 'changes' in final climate rule*, The Hill (Sept. 25, 2014), http://thehill.com/policy/energy-environment/218975-epa-chief-says-to-expect-changes-in-final-climate-rule.

[42] RFF Video at 0:42:54-0:42:58, *available at* http://www.rff.org/Events/Pages/A-Conversation-with-EPA-Administrator-Gina-McCarthy.aspx (last visited Sept. 29, 2014); Transcript of RFF Video at 17, *available at* http://www.rff.org/Documents/Events/RFF-Sept25-GinaMcCarthyPLF.pdf (last visited Sept. 29, 2014).

[43] *See* https://www.federalregister.gov/articles/2014/06/18/2014-13726/carbon-pollution-emission-guidelines-for-existing-stationary-sources-electric-utility-generating#h-68 (last visited Sept. 29, 2014).

[44] *See* http://www2.epa.gov/sites/production/files/2014-06/documents/20140602tsd-ghg-abatement-measures.pdf at page 5-37, (last visited Sept. 29, 2014).

emissions-compliance standards at power plants under federal regulation.[45] On August 1, 2014, the Kentucky Attorney General and 11 other attorneys general filed a suit to enjoin the EPA from finalizing the Clean Power Plan.[46] On September 9, 2014, fifteen governors issued a letter to President Obama arguing the proposed Clean Power Plan is illegal and asking the President to have his administration withdraw the proposal.[47] All of these actions cast doubt on whether the Clean Power Plan will be finalized, as well as on what form it might take if it is finalized and when it might become final.

This great uncertainty surrounding the proposed Clean Power Plan highlights the dubiousness of Mr. Woolf's characterization of energy efficiency as a "no-regrets" solution to any satisfying future GHG regulation;[48] it is entirely possible to make regrettable energy-efficiency investments based on faulty assumptions about the contours of future regulations, particularly when it is not necessary to make such investments today. The Companies' witness Michael Hornung explained this succinctly in his pre-filed Rebuttal Testimony:

> If a long-lived DSM/EE measure that is uneconomical absent CO_2 pricing can be deployed rapidly to respond to impending CO_2 pricing (if any should arise), it would be uneconomical to deploy the measure today; the better approach is to wait until CO_2 pricing, if any, is known before making a potentially uneconomical investment. For example, if a hypothetical long-lived DSM/EE measure requires an total up-front investment of $10, can be deployed in less than a year, will produce lifetime benefits of $8 in a no-$CO_2$-pricing world, and will produce lifetime benefits of $12 in a CO_2-pricing world, and assuming CO_2 pricing will be known with certainty by 2019 (for 2020 implementation, as Synapse

[45] *See* http://www.lrc.ky.gov/record/14RS/HB388.htm (last visited Sept. 29, 2014).
[46] *See* http://www.latimes.com/business/la-fi-epa-lawsuit-20140805-story.html (last visited Sept. 29, 2014).
[47] *Available at* http://governor.alabama.gov/assets/2014/09/RGA-Letter-to-POTUS.pdf (last visited Sept. 29, 2014).
[48] Video transcript at 14:45:12-14:45:30.

> Energy Economics, Inc. forecasts),[49] the sound financial course is to wait until the fate of CO_2 pricing is known to decide whether to deploy the measure, not to deploy it today. *No net benefits are foregone by waiting*.[50]

The Sierra Club itself made a nearly identical point in a recent proceeding in Utah concerning proposed investments in environmental controls on a coal-fired generating unit: "It makes no sense to spend ratepayer money on what the Company believes future regulations will require, when clarification of actual requirements is just around the corner."[51] Likewise here, it makes no sense to *over*-invest in DSM-EE based on mere assumptions about what the final Clean Power Plan might require, and more importantly what Kentucky's state implementation plan might require of the Companies. The better course is to approve the Companies' proposed DSM-EE portfolio now and allow GHG regulation to develop to the point that the Companies can intelligently incorporate its impacts in their DSM-EE planning.

This mode of planning, which the Companies have consistently used in accordance with past Commission-approved DSM-EE plans, is also in accordance with guidance the Commission Staff provided in its report on the Companies' 2011 IRP.[52] In that report, the Staff stated, "The scope and depth of their [the Companies'] reserve margin analysis, as well as the supply-side and demand-side screening analyses, are well developed and informative."[53] Notably, the Staff's Report states that the Companies should include potential greenhouse-gas costs in supply-side modeling—which the Companies did in their 2014 IRP, which in turn affected the avoided cost

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[49] *See* Synapse Energy Economics, Inc., 2012 Carbon Dioxide Price Forecast dated October 4, 2012, page 3, *available at* https://www.idahopower.com/pdfs/AboutUs/PlanningForFuture/irp/2013/OctMtgMaterials/SynapseReportCO2Forecast.pdf (last visited Sept. 29, 2014).

[50] Hornung Rebuttal Testimony at 3-4 (emphasis in original).

[51] *See In the Matter of the Application of Rocky Mountain Power for Authority to Increase its Retail Electric Utility Service Rates in Utah and for Approval of its Proposed Electric Service Schedules and Electric Service Regulations*, Docket No. 10-035-124, Sierra Club Petition to Intervene at 5 (March 25, 2011).

[52] *In the Matter of: 2011 Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company*, Case No. 2011-00140, Staff Report on the 2011 Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company (Mar. 13, 2013).

[53] *Id.* at 44.

of capacity in their DSM-EE analyses at issue in this case—but the report does *not* state that the Companies should model potential greenhouse-gas costs in their DSM-EE planning.[54] Instead, the report compliments the Companies' DSM-EE analysis as "well developed and informative."[55] The Companies followed this guidance, as well as Commission precedent, in conducting the analyses they have presented in this case.

Finally, the very fact of the current proceeding shows that the Companies routinely engage in DSM-EE analysis and are ready and willing to revise their DSM-EE portfolio to adapt to changes in technology, regulations, and customer participation. As noted above, the Companies did not have to file their application in this proceeding; *most of their programs were already approved through 2018*. But the Companies saw an opportunity to improve their portfolio before the end of the approved program plan, so they applied to the Commission to do so. The Companies will do the same to account for GHG regulations if or when they and their impacts on the Companies become reasonably knowable.

C. The Companies' Avoided-Capacity Cost Appropriately Reflects the Possibility of Carbon Regulation.

When the Companies analyze their DSM-EE programs and opportunities, they do so in conjunction with their IRP analysis. During the IRP and generation-planning analysis, the Companies forecast demand, the potential need for additional generation assets, and if necessary, determine which generation asset would provide the most cost-effective solution to demand under a variety of circumstances. In the Companies' most recent IRP analysis, carbon prices were included as a certain scenario; thus, the Companies considered the potential for carbon regulation in the IRP's identification of the Companies' next generating unit.[56] The Companies

[54] *Id.* at 41.
[55] *Id.* at 44.
[56] Hornung Rebuttal Testimony at 2.

used the cost-of-capacity associated with the IRP-identified next generating unit in their DSM-EE analysis to evaluate program offerings and determine the Companies' economic and achievable DSM-EE potential.[57] This is the correct avoided cost of capacity to use in such analyses, a cost of capacity that has been appropriately affected by the potential for carbon regulation.

D. The Companies' Avoided-Capacity Cost Properly Serves as a Cap on Customer-Incentives Because Customers Participating in DSM-EE Already Receive the Incentive of Avoided Energy Costs Through Reduced Energy Use.

The Companies' accurately determined avoided-capacity cost is the appropriate cap on the incentives the Companies should be willing to pay their customers to engage in DSM-EE programming. Contrary to the Sierra Club's assertions,[58] there is no need to include the avoided cost of energy in the incentives; the Companies' customers already have a conservation-incentive in the form of volumetric energy, DSM-EE, and environmental cost recovery charges. For the vast majority of DSM-EE eligible customers, the volumetric charges also include a significant portion of the Companies' fixed costs, creating yet another incentive for customers to engage in independent and Company-sponsored DSM-EE measures.[59] If future carbon regulations increase the cost of electricity, these customers will be further incentivized to engage in independent and utility-sponsored DSM-EE programs.

[57] *Id.*
[58] *See* Testimony of Tim Woolf at 43-44.
[59] Robert M. Conroy provided testimony in the Companies' 2012 rate cases that showed how much fixed cost was being recovered through energy charges rather than fixed basic service charges. At the time, the total amount of such fixed-cost recovery through variable energy charge was over $90 million across both Companies. The Companies' current residential monthly basic service charge ($10.75) is still markedly less than the Companies' cost-of-service studies indicated it should be ($18.12 for LG&E electric, $18.82 for KU). *See In the Matter of: Application of Louisville Gas and Electric Company for an Adjustment of Its Electric and Gas Rates, a Certificate of Public Convenience and Necessity, Approval of Ownership of Gas Service Lines and Risers, and a Gas Line Surcharge*, Case No. 2012-00222, Testimony of Robert M. Conroy at 45 (June 29, 2012); *In the Matter of: Application of Kentucky Utilities Company for an Adjustment of Its Electric Rates*, Case No. 2012-00221, Testimony of Robert M. Conroy at 30-31 (June 29, 2012).

E. KRS 278.285(1) Prevents the Commission from Considering in this Proceeding DSM-EE Proposals Other Than Those Proposed by the Companies.

KRS 278.285(1) clearly limits the Commission's authority in this proceeding to reviewing for reasonableness the proposals made by the Companies: "The commission may determine the reasonableness of demand-side management plans proposed by any utility under its jurisdiction." This limit on the Commission's authority means the Commission may not require the Companies to extend, expand, or even offer DSM-EE programs; the Commission must focus only on the proposal before it.[60] The Commission appears to have accepted this view, further evidenced by the Commission's recognition that its jurisdiction over utilities' rates and service does not empower the Commission to substitute its managerial judgment for the judgment of a utility's management, but rather constrains the Commission to use cost disallowance as the means of correcting a utility's misjudgment.[61]

The Sierra Club has erroneously pointed to a single Commission order as authority for the Commission to exceed its statutory authority and require the Companies to engage in DSM-EE programs the Companies have not proposed or do not desire to continue.[62] What actually occurred in the case Sierra Club cites is that LG&E—of its own volition—proposed to add a

[60] In 2009, SB 51 was introduced to expressly permit the Commission to order a utility to file a DSM plan. (*See* http://www.lrc.ky.gov/record/09RS/SB51.htm, last visited Sept. 29, 2014). The General Assembly's refusal to enact this legislation is evidence of legislative intent to limit the Commission's authority to review DSM plans, not require them.

[61] Case Nos. 89-014, 89-029, and 89-179, Order at 18-20 (Jan. 31, 1990) ("The Commission's powers are purely statutory. … Such action amounts to the Commission's selection of Campbell District's water supplier, which is clearly a management decision. A regulatory commission lacks the power to make such decisions. … Where costs associated with a management decision are found to be unreasonably and imprudently incurred, the only available remedy to protect a utility's ratepayers from that management decision is to disallow the cost in excess of that found reasonable when establishing new rates."). *See also* Case No. 2005-00089, Order at 6 and 8-9 (Aug. 19, 2005) and Order at 4-5, 6-7 (Nov. 9, 2005).

[62] Wallace McMullen and Sierra Club's Reply to Companies' Joint Response to Hearing Requests and Opposition to Motion to Submit the Case for Decision on the Record ("Sierra Club Reply") at 7-8, quoting *In the Matter of: Joint Application of Louisville Gas and Electric Company, Metro Human Needs Alliance, People Organized and Working for Energy Reform, Kentucky Association for Community Action, and Jefferson County Government for the Establishment of a Home Energy Assistance Program*, Case No. 2001-00323, Order at 4 (Jan. 29, 2002).

Home Energy Assistance ("HEA") charge under KRS 278.285(4).[63] The Commission rejected LG&E's HEA proposal as not conforming to the requirements of KRS 278.285 and made another HEA proposal for LG&E to consider: "Accordingly, based on the evidence of record, the Commission will approve a modified HEA program, *subject to acceptance by LG&E* …."[64] LG&E then filed a petition for rehearing that largely rejected the Commission's proposal and made a revised HEA proposal.[65] And it was LG&E's proposal on rehearing that the Commission approved; the Commission did not claim to exercise authority to impose upon LG&E the Commission's own HEA proposal, although the Commission did impose certain reporting and administrative requirements as a condition of approval.[66] Certainly this Commission precedent shows that the Commission may reject utility DSM-EE proposals as unreasonable, and that the Commission may propose alternatives for utilities to consider, but it does not stand for the proposition that the Commission may compel utilities to engage in DSM-EE programs they have not proposed or agreed to operate.[67]

Thus, many of the issues raised throughout this proceeding, and focused on at the hearing, may merit discussion but must not affect the approval of the Companies' Application. For example, Sierra Club recommends that the Commission approve the Companies' proposed DSM-EE Program Plan, but then asks the Commission to require the Companies to do more than proposed.[68] The Commission may approve or deny in whole or in part the Companies'

[63] Case No. 2001-00323, Order at 1-4 (Dec. 27, 2001).
[64] *Id.* at 21 (emphasis added).
[65] Case No. 2001-00323, Order at 1-2 (Jan. 29, 2002).
[66] *Id.* at 2-3.
[67] The Sierra Club Reply cited at n.38 above also contains a footnote describing two other Commission orders in which the Commission approved only part of the DSM-EE programs or authority the utilities requested. (Sierra Club Reply at 8 n.5.) But the Companies do not dispute the Commission's authority to approve as reasonable all or only part of what the Companies have proposed; rather, the Companies believe Kentucky's statutes are clear that the Commission's authority does not extend to ordering utilities to engage in DSM-EE programming not proposed by, or at least agreed to by, the utilities themselves.
[68] Direct Testimony of Tim Woolf at 48-49.

Application, but may not grant Sierra Club's request by requiring the Companies to do more than proposed in this proceeding.

1. The Companies' decision to not offer industrial DSM-EE programs is supported by the industrial customers' statutory opt-out right, which an appreciable number of industrial customers have indicated they would exercise.

KRS 278.285(3) provides that industrial customers may opt out of approved DSM-EE programs and avoid paying DSM-EE charges. The Companies conducted a survey to determine industrial-customer interest in utility-sponsored DSM-EE programs; survey results indicated that a significant number of opt-outs would occur.[69] In addition, the Companies regularly discuss DSM-EE opportunities with their industrial customers through their Account Representatives and the EE Advisory Group, the latter of which was instrumental in developing the Companies' Proposed DSM-EE Program Plan and of which the Kentucky Industrial Utilities Customers is a member.[70] These ongoing discussions with industrial customers have indicated a lack of sufficient interest in utility-sponsored DSM-EE programs. Because the industrial customer class is a relatively small customer base and DSM-EE programs require funding from a large customer base, industrial-customer opt-outs would both reduce the funds available, and increase the DSM-EE charges to the remaining participating customers. This process could result in a domino effect, further encouraging more and more industrial customers to opt-out of the DSM-EE charges. Kentucky Power's experience in Kentucky shows it is possible to establish industrial DSM-EE programs and have zero participation,[71] contrary to Sierra Club witness Mr. Woolf's

[69] *See* Companies' Response to Wallace McMullen and Sierra Club's second request for information question 8.
[70] *See* Companies' Response to Commission's first request for information question 35.
[71] *In the Matter of: Application of Kentucky Power Company in Connection with the Transfer of an Undivided Fifty Percent Interest in the Mitchell Generation Station and Certain Related Relief,* Case No. 2012-00578, Video Transcript at 12:35:50 – 12:37:03 (July 11, 2013). *See also* Case No. 2012-00578, Transcript of July 11, 2103, Volume II at 394 ln. 20 – 395 ln. 15 (Aug. 12, 2013), *available at* http://psc.ky.gov/PSCSCF/2012%20cases/2012-00578/20130812_Kentucky%20Power%20Company_Transcript_Volume%20II.pdf.

assertion at hearing that the "death spiral" of industrial DSM-EE programs cannot happen.[72] And when those death spirals occur, as one did for Kentucky Power's industrial DSM programs, industrial customers that have not opted out still must pay the costs for the programs none of them are using until the utility terminates the programs, a point Mr. Woolf conceded at hearing.[73]

Furthermore, the Sierra Club's criticism ignores independent measures implemented by the Companies' industrial customers, including cost-effective operational choices made within their rate schedules. The Companies have also worked closely with the Kentucky Pollution Prevention Center ("KPPC"), which assists Kentucky's industries by providing technical services that help lower operating costs through waste reduction and energy efficiency.[74] Although it was proposed at hearing that these efforts, and the Companies' personnel assisting therein, could be used to support industrial DSM-EE programs, it is important to remember that KPPC is a government-funded organization not subject to the Commission-required cost-benefit analysis; thus, it is unclear whether these efforts are cost-effective and suitable for utility-sponsored DSM-EE programs.

2. The Companies' decision to terminate certain programs is justified by cost-benefit testing.

The Companies propose allowing certain programs to expire because they have reached the end of their useful life, as determined by the Companies' rigorous cost-benefit analysis. The Sierra Club desires that these programs be continued yet provides absolutely no quantitative analysis indicating that these programs could continue to be cost-effective; Mr. Woolf admitted at hearing that he could have, but did not, perform any cost-benefit analysis in this proceeding,

[72] Video transcript at 16:17:55 – 16:18:12.
[73] *See* Video transcript at 15:07:00 – 15:07:30 and 15:56:23-15:59:05. *See also* KRS 278.285(3).
[74] Huff Rebuttal Testimony at 3.

and did not know what bill impact his proposals would have.[75] Instead, Sierra Club simply submitted argumentative testimony on the policy encouraging almost unlimited increases in DSM-EE programs. However, certain aspects of these programs that were shown to be cost-effective are proposed to be continued. For example, the Companies will continue to offer opportunities for residential and commercial customers to participate in programs with HVAC components, including the Home Energy Rebate program and Commercial Rebate Program.[76]

F. The Commission Should Reject Wal-Mart's Request to Expand Industrial Opt-Outs.

Wal-Mart witness Kenneth Baker proposes the Companies allow certain non-residential customers to opt-out of the Companies' DSM-EE programs.[77] But KRS 278.285(3) states that only industrial customers with energy-intensive processes may opt out of applicable DSM-EE programs. Whatever the merits of Wal-Mart's proposal to allow certain non-industrial customers to opt out of DSM-EE programs, only the General Assembly, not the Commission, can grant the relief Wal-Mart seeks, which requires amending KRS 278.285(3).[78]

In addition, Wal-Mart stores do not meet either industrial classification used by the Companies and approved by the Commission, or those used by the Energy Information Agency

[75] Video transcript at 14:22:30 – 14:23:12, 14:57:00 – 14:57:15.
[76] Proposed DSM/EE Program Plan at 57.
[77] Baker Direct Testimony at 2.
[78] *Clark v. Riehl*, 230 S.W.2d 626, 628-629 (Ky. 1950) ("Courts should be extremely careful to accord to the Legislature the power to exercise those matters of discretion which are preserved to it by the Constitution. Thus the wisdom or folly of Legislative enactments, within constitutional bounds, may not be weighed in judicial construction of a statute free of ambiguity.").

or in Kentucky's statutes.[79] Furthermore, Mr. Baker's proposal to aggregate non-residential customer's usage to meet a proposed opt-out threshold ignores the plain language of KRS 278.285, which allows only industrial customers to opt-out, the requirement of 807 KAR 5:041 §9(2) that one meter be treated as one customer, and the cost-of-service differences between providing service to a single location and multiple locations.[80] But third and perhaps most importantly, Mr. Baker's supplemental testimony recognizes that many of Wal-Mart's stores in the Companies' service territory participate in the Companies' DSM-EE programs.[81] In other words, many of the Wal-Mart facilities Mr. Baker initially argued should be treated as industrial customers with opt-out rights are in fact participating today in commercial DSM-EE programs. But Mr. Baker has provided no explanation or evidence showing why the Wal-Mart facilities not currently participating in DSM-EE programs should be categorized any differently than those currently using the Companies' commercial DSM-EE programs. And Wal-Mart cannot have it both ways; either its facilities are industrial customers (notwithstanding their not meeting any applicable definition of "industrial"), in which case they must cease participating in the commercial DSM-EE programs in which they currently participate, or they are in fact commercial customers, in which case they may continue to participate in their current DSM-EE programs and pay the applicable DSM-EE charges.

[79] *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[.]").

[80] Baker Direct Testimony at 7-8.

[81] Baker Supplemental Testimony at 1.

G. The Commission Should Reject Metropolitan Housing Coalition's Request for DSM-EE Collection and Spending by Census Tract and Non-Volumetric Charges.

KRS 278.285(3) requires the Commission to apportion DSM-EE-program costs across the rate classes, and not the census tracts, that benefit from the programs. Although MHC's counsel may disagree, MHC witness Cathy Hinko's proposal is an attempt to redistribute income on a basis completely independent of cost-of-service differences between customers; the Commission has repeatedly held that it "is not statutorily empowered to create a special rate class to redistribute income."[82] Ms. Hinko's census-tract proposal is therefore proscribed by statute, beyond the authority of the Commission, and inconsistent with KRS 278.030, which requires just and reasonable rates and classifications, and KRS 278.170, which prohibits rate discrimination. Ms. Hinko also opposes volumetric charges as disproportionally affecting low-income customers; but volumetric DSM-EE charges are justified by the resulting incentive to consume less energy. Non-volumetric charges would reduce this incentive and penalize customers with low consumption. Ms. Hinko raised identical concerns regarding the Companies' 2011 DSM-EE application.[83] The Companies opposed the proposal and the Commission denied the request;[84] there is no reason to depart from that holding in this proceeding.

[82] *See* Case No. 1998-00426, Order at 109 (Jan. 7, 2000); Case No. 1998-00474, Order at 108 (Jan. 7, 2000) ("The Commission recognizes that some customers have financial problems that make it difficult to pay the full amount of their utility bills on a regular basis. Existing programs such as LIHEAP and Wintercare provide assistance to those customers via assistance measures that are funded through tax dollars or through voluntary contributions by utilities and utility customers. These programs operate by redistributing income in order to assist low-income customers in paying their utility bills. *The Commission is not statutorily empowered to create a special rate class to redistribute income*.")(emphasis added); *See also In the Matter of Adjustment of the Rates of Kentucky-American Water Company*, Case No. 2004-00103,Order at 82-84 (Feb. 28, 2005).

[83] *See In the Matter of: Joint Application of Louisville Gas and Electric Co. and Kentucky Utilities Co. for Review, Modification, and Continuation of Existing, and Addition of New Demand-Side Management and Energy Efficiency Programs,* Case No. 2011-00134, Direct Testimony of Cathy Hinko on Behalf of Metropolitan Housing Coalition (July 25, 2010).

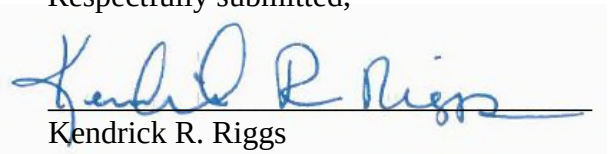
[84] *See* Case No. 2011-00134, Rebuttal Testimony of David Huff and Michael Hornung (August 29, 2011); and Order (Nov. 9, 2011).

CONCLUSION

The Companies' Proposed DSM-EE Program Plan represents years of rigorous analysis and stakeholder involvement, and will result in increasingly cost-effective DSM-EE programming. The parties to the proceeding agree that the Companies' Application should be approved, though some concerns were raised regarding the AMS Program and requested ROE. However, the Companies reiterate that the AMS Program is contemplated by statute and will provide benefits to the Companies and its customers. Similarly, the ROE requested is contemplated by statute and will ensure the Companies continue to receive reasonable incentives to engage in cost-effective DSM-EE programming. In determining the reasonableness of the Companies' proposal, the remaining concerns should not affect the Commission's decision to approve the Application. Specifically, the Commission lacks the authority, and there is no current need, to require increased spending on speculative regulations and unknown technological improvements; to do so makes no sense when these developments can be quickly accounted for once better known and understood. Because the programs are subject to ongoing review and periodic maintenance, the Companies will continue to seek additional opportunities for cost-effective DSM-EE measures. Approval of the Proposed DSM-EE Program Plan is merely the next of many steps in the Companies' DSM-EE efforts.

Dated: September 30, 2014

Respectfully submitted,



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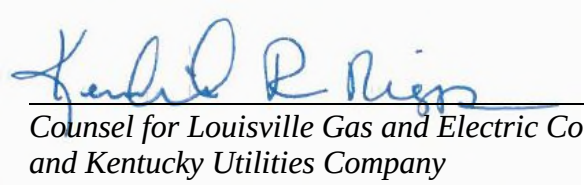
CERTIFICATE OF SERVICE

This is to certify that Louisville Gas and Electric Company and Kentucky Utilities Company's September 30, 2014 electronic filing of the above and foregoing Post-Hearing Brief of Louisville Gas and Electric Company and Kentucky Utilities Company 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 Louisville Gas and Electric Company and Kentucky Utilities Company is being mailed to the Commission on September 30, 2014.



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