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February 9, 2016

VIA HAND DELIVERY and ELECTRONIC FILING

Jeff DeRouen
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, KY 40601

RE: *The Application of Kentucky Utilities Company for Certificates of Public Convenience and Necessity and Approval of Its 2016 Compliance Plan for Recovery by Environmental Surcharge, Case No. 2016-00026*

The Application of Louisville Gas and Electric Company for Certificates of Public Convenience and Necessity and Approval of Its 2016 Compliance Plan for Recovery by Environmental Surcharge, Case No. 2016-00027

Dear Mr. DeRouen:

Please accept this letter as the response of Kentucky Utilities Company (“KU”) and Louisville Gas and Electric Company (“LG&E”) (collectively the “Companies”), through their counsel, to the February 5, 2016 letters from Commission Staff advising that the Companies’ Applications were rejected because of “filing deficiencies pursuant to KRS 322.340” and stating that the time period under KRS 278.183 will not commence until such information is filed with the Commission.

The Companies respectfully submit that their January 29, 2016 filings complied with the requirement cited in the Commission Staff’s February 5 letters. The Companies appreciate this opportunity to address what appears to be a misunderstanding about what the Companies have submitted and reach a complete understanding of the type of information the Commission Staff expects with applications for certificates of public convenience and necessity (“CPCN”) going forward. The Companies always desire to provide the Commission with the information it needs to perform to duties under KRS Chapter 278. Arriving at a practical understanding of the kind of engineering information Commission Staff needs, resolving the deficiencies, and maintaining an ongoing constructive regulatory relationship are all of great importance.

The February 5, 2016 Deficiency Letters

The Companies believe the asserted deficiency in these proceedings is inconsistent with Kentucky law concerning when a registered engineer must sign, seal, and date a document. Such formalities are required only when a registered engineer is certifying a document, yet certification is not required in these proceedings. Moreover, the Companies do not represent that any engineering documents included in their Applications or supporting materials are certified. Contrary to this understanding of the legal requirements in Kentucky concerning the necessity for an engineer's stamp, seal, or signature, the deficiency letters state, "Filing deficiencies pursuant to: (1) KRS 322.340 - Engineering plans, specifications, drawings, plats and reports for the proposed construction or extension prepared by a registered engineer, must be signed, sealed, and dated by an engineer registered in Kentucky." This description, however, does not reflect the Commission's regulation pertaining to when a document prepared by a registered engineer must be signed, sealed, and dated. The relevant Commission regulation, 807 KAR 5:001, Sec. 4(13), states, "Each report, specification, drawing, and plan that a professional engineer or professional land surveyor prepared and that is filed with the commission shall contain the seal or stamp and signature of that professional engineer or land surveyor *in accordance with KRS 322.340.*" (Emphasis added.) In turn, KRS 322.340 provides:

- (1) Each professional engineer or professional land surveyor shall, upon licensure, obtain a seal or stamp of the design authorized by the board, bearing his or her name, license number, and the words "Licensed Professional Engineer" or "Licensed Professional Land Surveyor."
- (2) Use of the stamp, seal, or signature in an electronic transaction shall be conducted in accordance with administrative regulations promulgated by the board under KRS 322.290(13).
- (3) The seal or stamp, signature, and the date shall be used *to provide certification* for all reports, specifications, drawings, and plans, if presented to a client or any public or governmental agency. Reproduction of original signatures shall be adequate to meet the requirements of this subsection.

(Emphasis added.) Note that subsection (3) states that a seal or stamp, signature, and date are necessary when "provid[ing] certification"; the statute does not require the use of a seal or stamp, signature, and date when an engineer is *not* providing certification. Therefore, on the plain language of the Commission's own regulation, the engineering materials provided in support of the Companies' Applications do not require a registered engineer's seal or stamp, signature, and date, and the Companies' Applications are not deficient.

This view finds further support in the regulation the Kentucky Board of Licensure for Professional Engineers and Land Surveyors promulgated under KRS Chapter 322 concerning engineers' use of seals and signatures. That regulation, 201 KAR 18:104, contemplates that some engineering materials will be certified, and therefore require a seal or stamp, signature, and date,

and others will not be certified, and therefore will not require those items. For example, the regulation defines a “document” to be “a report, specification, drawing, plan, or plat in physical form pertaining to engineering or land surveying *that requires certification* by application of a seal or stamp, a signature, and a date.”¹ The qualifying language “that requires certification” plainly implies that there can be “report[s], specification[s], drawing[s], plan[s], or plat[s] in physical form pertaining to engineering” that do not require certification, and therefore do not require stamps, seals, signatures, or dates. Likewise, the regulation states, “A licensee may electronically transmit an electronic document without affixing a digital signature if there is inserted the following language in lieu of an image of a seal or stamp, signature, and date: ‘This shall not be considered a certified document.’”² Thus, Kentucky’s regulations on the need for professional engineers to apply a stamp or seal, signature, and date are clear that such formalities are required only when the engineering material at issue is to be certified.

Kentucky’s law in this matter is fully consistent with well-established engineering-industry standards and practices. The treatise Principles of Applied Civil Engineering Design, published by the American Society of Civil Engineers, in Chapter 12.1 “Common Practice of Drawing Certification” states in part:

Only final drawings and record drawings (formerly referred to as as-built drawings) must be certified before submission to the client. *Draft drawings or drawings that are issued for review purposes do not require certification. In fact, certifying drawings that are not finalized can convey the false impression that the drawings are complete.* Most states require that draft drawings or review drawings indicate that they are preliminary and not suitable for construction. Similarly, design drawings for a study, a feasibility design, or a conceptual design do not require certification. Therefore, a large callout, “PRELIMINARY-NOT FOR CONSTRUCTION,” is usually added to those drawings.³

(Emphasis added). This professional authority and the applicable Kentucky law discussed above demonstrate that there are numerous circumstances when an engineer’s stamp, seal, or signature are not required, and that there is not a single prescribed means of indicating that an engineering document is not final or otherwise does not require a stamp, seal, or signature. In addition, these authorities are consistent in stating that only final or record drawings *require* certification. Therefore, the lack of an engineer’s stamp, seal, or signature on the engineering materials the Companies supplied in their Applications is not contrary to engineering-industry standards, but rather is fully consistent with them, as well as Kentucky law.

¹ 201 KAR 18:104 Sec. 1(2) (emphasis added).

² 201 KAR 18:104 Sec. 4(1).

³ <http://ascelibrary.org/doi/abs/10.1061/9780784407127.ch12> (last visited February 8, 2016)

The Miscommunication on When Are Engineering Drawings Certified

In the case of the documents the Companies supplied in support of their Applications in these proceedings, none claims to be certified, and the Companies have not claimed any is certified. For all of the engineering drawings at issue it is plain on the face of each item or in the context in which each item appears that it is conceptual or preliminary; they are not final, ready-for-construction, or certified. And that is sensible and reasonable: The Companies are not asking the Commission to approve specific final building plans as meeting a construction code or the like; rather, the Companies are providing preliminary engineering materials that are essentially illustrative so the Commission may understand and determine if the proposed projects will indeed serve the public convenience and necessity and qualify for cost recovery through the Companies' ECR mechanisms. Because the provided engineering materials did not need to be certified, the Companies and their engineering vendors fully complied with KRS 322.340 and the applicable regulations, and therefore complied with 807 KAR 5:001 Sec. 4(13).

It is important to note that if engineering documents were required to be certified before they could be filed in proceedings like these—that is to say, that they be construction-ready drawings and related documents—customers could be harmed and the Companies would be forced to take large and unnecessary financial risks. The Companies' major construction projects that require CPCNs require years of engineering work and millions of dollars—often tens of millions of dollars before construction-ready plans are issued to the Companies by their engineering vendors. And due to the complexity and magnitude of the construction projects the Companies must undertake to provide safe and reliable service, the Companies are often months or years into construction—and have invested hundreds of millions of dollars—before they receive all of the construction-ready documents for all parts of a large project. Equipment and systems must be purchased to develop and complete the “for construction” drawings because of the interdependence of these components with the ultimate design of the facility. The scale of developing such “for construction” drawings is significant. Some large projects involve literally tens of thousands of construction-ready engineering documents, such as the construction of Cane Run Unit 7 (approximately, 10,000 drawings) and the air compliance construction for the Mill Creek Generating Station (approximately 41,000 drawings). Thus, if the Companies could not come to the Commission before having all construction-ready engineering documents in hand, they would be forced to take exceedingly large financial risks before having any assurance of cost recovery, and they would be forced to violate Kentucky's CPCN statute by beginning construction or making significant equipment purchases without Commission authority just to ensure they could meet a CPCN-application filing requirement. The Companies are confident the Commission does not intend such an impractical result.

Moreover, the Companies are increasingly subject to environmental requirements that have tight deadlines for compliance, and customers' safe, reliable, and lowest-reasonable-cost service can be at risk without timely compliance. In many circumstances it simply would not be practicable for the Companies to complete all of the necessary engineering to receive even the first construction-ready engineering documents before applying to the Commission for CPCN authority due to the length of time required to conduct a thorough CPCN proceeding. For example, the federal CCR Rule requires a utility to cease disposing of CCR in a surface impoundment no later

than six months after the impoundment triggers a closure requirement. If the Companies were required to have all construction-ready engineering documents in hand before even filing CPCN applications for the required construction—particularly for the process-water systems needed to allow the affected stations to continue to operate—customers’ safe, reliable, and lowest-reasonable-cost service could be in jeopardy due to the length of time required for CPCN proceedings. Again, the Companies are confident the Commission does not intend such an impractical result.

Also, to the extent the purpose of the Commission’s regulation on this topic, 807 KAR 5:001 Sec. 4(13), is to ensure that engineering materials are supplied by reputable engineers and that the Commission and others may have discovery related to that work during the case if desired, the engineering materials the Companies supplied in and in support of their Applications fully satisfy that purpose. All of the materials the Companies’ own personnel have not produced clearly state which engineering firm produced them.

The Companies have researched the Commission’s publicly-available orders since 1980 in which the Commission has referred to KRS 322.340 as a basis for declaring a utility’s application to be deficient. Our research has failed to discover any instance in which the Commission rejected an application because the application contained documents that were preliminary in nature and lacked an engineer’s stamp or other indicia of certification.⁴ Based on our review of these orders, the Commission’s actions were based upon the lack of critical documents or the lack of the professional engineer’s stamp or seal on documents that were certified as in final form. In the present cases, the documents at issue are preliminary in nature, and are not represented as being certified by an engineer. Additionally, we believe the Application and related materials in Case No. 2014-00258 are relevant.⁵ In that case, the utility submitted engineering specifications and drawings for the proposed project that were, according to the utility, only at a “60% level of detail.” The Commission found those documents to be acceptable and processed the case.

⁴ The Companies acknowledge that the Commission has previously required that the professional engineer who prepares a “preliminary engineering report” to apply his or her stamp or seal to the report. *See, e.g.,* Case No. 92-117. *The Application of Waco Water Districts Madison County, Kentucky, for a Certificate of Public Convenience and Necessity* (Ky. PSC Apr. 29, 1992) at 6. A preliminary engineering report, however, is used as final engineering report in the context of regulating the water industry. It is not the same as a preliminary engineering document in the context of setting the conceptual scope in the electric utility industry. For water and sewer utilities, “preliminary engineering report” is a term of art. It is a “planning document required by many state and federal agencies as part of the process of obtaining financial assistance for development of drinking water, wastewater, solid waste, and stormwater projects. . . [that] describes the proposed project from an engineering perspective, analyzes alternatives to the proposal, defines project costs, and provides information critical to the underwriting process.” *See* Rural Utilities Service Bulletin 1780-2 (Apr. 4, 2013) *available at* http://www.rd.usda.gov/files/UWP_Bulletin_1780-2.pdf (last visited Feb. 7, 2016). *See also* 807 KAR 5:069, Section 2(4) (which addresses water and sewer utility projects financed with Rural Development funds). These “preliminary engineering reports” are actually planning documents in final form and play a significant role in funding decisions. They are therefore fundamentally different than the preliminary or conceptual engineering materials included in the Companies’ applications in these proceedings, the latter of which are not in any sense final, and are subject to further revision.

⁵ *See The Application of Kentucky-American Water Company for a Certificate of Convenience and Necessity Authorizing the Construction of Richmond Road Station Filter Building Improvements*, Case No. 2014-00258, Application at 4 (July 31, 2014).

The Commission's Regulation of the Companies' Engineering Drawings

Although the February 5, 2016 letters did not include the rationale, the deficiency findings are contrary to Commission Staff's prior practice in examining previous filings the Companies have made. The Companies have submitted Applications and Direct Testimony over the last several years that have included as attachments the same type of preliminary or conceptual engineering maps and drawings at issue in Commission Staff's February 5, 2016 letters. In each of those cases the Commission has found the subject Application met the minimum filing requirements, and thus was not deficient pursuant to KRS 322.340.

Most recently, in Case No. 2014-00002,⁶ the Companies submitted their Joint Application on January 17, 2014. That Joint Application requested a CPCN for the construction of a new generating unit at the Green River Generating Station and a new solar photovoltaic facility at the Brown Generating Station. Exhibits 3 and 5 to the Joint Application were conceptual engineering maps and diagrams for the proposed Green River and Brown facilities, respectively. Those exhibits are highly similar in content, scope and purpose to the engineering documents at issue in the February 5, 2016 letters. They did not have an engineer's stamp, seal or signature, but, as in the current case, the responsible engineering firm was identified. By letter of January 28, 2014, the Commission found that the Joint Application in Case No. 2014-00002 met the Commission's minimum filing requirements, and, therefore, was *not* deficient.

As in Case No. 2014-00002, the Commission has reached the same "no deficiency" conclusion regarding similar engineering documents in other recent cases the Companies have filed. In Case No. 2011-00375,⁷ in which the Companies requested a CPCN to construct Cane Run Unit 7, Exhibits 1 and 2 to the Companies' September 15, 2011 Joint Application consisted of the same type of engineering documentation at issue here. Those exhibits did not include an engineer's stamp, seal or signature, yet the Commission found them to be sufficient. While in Case No. 2011-00375, the Commission issued a deficiency letter on September 26, 2011 on the issue of whether the Companies submitted the necessary permits with their Joint Application, it later rescinded that deficiency upon supplemental consideration.

⁶ *Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for Certificates of Public Convenience and Necessity for the Construction of a Combined Cycle Combustion Turbine at the Green River Generating Station And A Solar Photovoltaic Facility At The E.W. Brown Generating Station.*

⁷ *Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for a Certificate of Public Convenience and Necessity and Site Compatibility Certificate for the Construction of a Combined Cycle Combustion Turbine at the Cane Run Generating Station and the Purchase of Existing Simple Cycle Combustion Turbine Facilities From Bluegrass Generation Company, LLC in Lexington, Kentucky.*

In the Companies' most recent ECR cases (Case No. 2011-00161 for KU and 2011-00162 for LG&E),⁸ the Companies submitted the same type of engineering documentation at issue (again, without an engineer's stamp, seal or signature). That documentation was attached as Exhibit JNV-3 to John Voyles' Direct Testimony in each case. In those cases, although the Commission issued deficiency letters on the issue of the required number of paper copies, the Commission found no deficiency relating to the engineering documents themselves.

Finally, in the Companies' 2009 ECR cases, the Companies filed numerous engineering documents, many of which are similar to those provided in the present cases, including engineering reports, topographic maps, and drawings of planned construction.⁹ As is true in the Companies' 2016 ECR cases, all engineering documents related to proposed construction were preliminary or conceptual. None of those documents appear to have been certified or to contain an engineer's stamp or seal, yet the Commission provided no-deficiency letters in both proceedings one week after the Companies filed their Applications.¹⁰

In short, the Companies have complied with 807 KAR 5:001 Sec. 4(13) in every sense, and that compliance—which occurred on the filing date, January 29, 2016—will allow the Commission to fully and fairly carry out its responsibilities in this case. It will also allow all intervenors to have a full and fair opportunity to review, have discovery of, and offer their own evidence concerning the Companies' proposals. Therefore, the Companies' Applications are not deficient, and the Commission should deem them accepted for filing as of January 29, 2016.

Alternatively, the Requested Information Is Submitted to Cure the Asserted Deficiencies

Without waiver of or prejudice to this position, the Companies are enclosing with this letter copies of the nine documents filed with their Applications, which were identified by Commission Staff as the source of the deficiency letters and now contain the seal or stamp, signature, and the date of a registered engineering licensed in the Commonwealth of Kentucky. In accordance with the Commission's regulation concerning cases with electronic filing procedures, the Companies will file with the Commission within two business days a paper copy of this entire filing, including in each proceeding one original paper document that includes an engineer's stamp or seal,

⁸ *Application of Kentucky Utilities for Certificates for Public Convenience and Necessity and Approval of Its 2011 Compliance Plan for Recovery by Environmental Surcharge; Application of Louisville Gas and Electric Company for Certificates for Public Convenience and Necessity and Approval of Its 2011 Compliance Plan for Recovery by Environmental Surcharge.*

⁹ *In the Matter of the Application of Kentucky Utilities Company for Certificates of Public Convenience and Necessity and Approval of Its 2009 Compliance Plan for Recovery by Environmental Surcharge*, Case No. 2009-00197, Application, Maps tab pages 2-7; Testimony of John N. Voyles at 34; Testimony of John N. Voyles Exhibits JNV-8 through JNV-12; Testimony of Charles R. Schram Exhibit CRS-3 at 12; Testimony of Charles R. Schram Exhibit CRS-4 at 14, 16, and 18 (June 30, 2009). *In the Matter of the Application of Louisville Gas and Electric Company for a Certificate of Public Convenience and Necessity and Approval of Its 2009 Compliance Plan for Recovery by Environmental Surcharge*, Case No. 2009-00198, Application, Maps tab pages 2-3; Testimony of John N. Voyles at 31; Testimony of John N. Voyles Exhibits JNV-7 through JNV-9; Testimony of Charles R. Schram Exhibit CRS-2 at 14, 16, and 18 (June 30, 2009).

¹⁰ Case No. 2009-00197, Letter from Director, Division of Filings (July 6, 2009); Case No. 2009-00198, Letter from Director, Division of Filings (July 6, 2009).

signature, and date for each of the documents cited as deficient by Commission Staff. They are tendered for purposes of curing the asserted deficiencies in the Applications.

In the alternative, if the Commission now determines to apply KRS 322.340(5) for the first time to these preliminary engineering documents supporting the Companies' CPCN and ECR Applications in these cases, the Companies request the Commission find the deficiencies cured and deem them accepted for filing as of January 29, 2016. Accepting the Applications as filed as of January 29, 2016 avoids the substantial and irrevocable prejudice to the Companies' rights under KRS 278.183 and fully mitigates the prejudiced caused by the first time application of this standard to such information in the Companies' filings.

In closing, the Companies desire to completely resolve this issue with Commission Staff. The Companies respectfully request a technical conference in these cases or a technical meeting with Commission Staff this Friday, February 12 or as soon thereafter as reasonably possible at the Commission's offices to allow the Companies' engineers and Commission Staff engineers discuss the differences on when engineering drawings are certified and how the Companies can provide Commission Staff with engineering drawings and other information in an acceptable form and content in the future. The purpose of the meeting is not to discuss the arguments against the deficiencies or the history of the regulation of the Companies filings. The purpose of the meeting is to achieve a common understanding of the process used by the Companies to prepare their engineering drawings in the electric generating industry and arrive at an acceptable understanding of how such information is to be submitted in future cases. The Companies are committed to working with Commission Staff to achieve a practical common understanding of this particular issue and to avoid any similar misunderstandings in the future.

Yours very truly,



Kendrick R. Riggs

KRR: ec

cc: Hon. Michael L. Kurtz (w/ enclosures)
Boehm Kurtz and Lowery

Hon. Lawrence W. Cook (w/enclosures)
Assistant Attorney General

Enclosures (9) exhibits with certified documents

- *KU 2016 - The Application of Kentucky Utilities Company for Certificates of Public Convenience and Necessity and Approval of Its 2016 Compliance Plan for Recovery by Environmental Surcharge, Case No. 2016-00026*
 - Application, Exhibit 3, Brown Ash Pond Phase Two Drawing
 - Exhibit JNV-3 Coal Combustion Residual Pond Closure Evaluation: Green River Generating Station, Attachment 1 Proposed Conceptual Alternative CCR Closure
 - Exhibit JNV-4 Coal Combustion Residual Pond Closure Evaluation: Pineville Generating Station, Attachment 1 Proposed Conceptual Alternative CCR Closure
 - Exhibit JNV-5 Coal Combustion Residual Pond Closure Evaluation: Tyrone Generating Station, Attachment 1 Proposed Conceptual Alternative CCR Closure
 - Exhibit JNV-6 Coal Combustion Residual Pond Closure Evaluation: Ghent Generating Station, Attachment 1 Proposed Conceptual Alternative CCR Closure
 - Exhibit JNV-7 Coal Combustion Residual Pond Closure Evaluation: Trimble County Generating Station, Attachment 1 Proposed Conceptual Alternative CCR Closure
 - Exhibit JNV-8 Coal Combustion Residual Pond Closure Evaluation: Brown Generating Station, Attachment 1 Proposed Conceptual Alternative CCR Closure
- *LG&E 2016 - The Application of Louisville Gas and Electric Company for Certificates of Public Convenience and Necessity and Approval of Its 2016 Compliance Plan for Recovery by Environmental Surcharge, Case No. 2016-00027*
 - Exhibit JNV-3 Mill Creek Mgmt. Facilities Plan, Attachment 1 Proposed Conceptual Alternative CCR Closure
 - Exhibit JNV-4 Trimble County Mgmt. Facilities Plan, Attachment 1 Proposed Conceptual Alternative CCR Closure