

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF KENTUCKY UTILITIES)
COMPANY FOR CERTIFICATES OF PUBLIC)
CONVENIENCE AND NECESSITY AND) CASE NO. 2016-00026
APPROVAL OF ITS 2016 COMPLIANCE PLAN)
FOR RECOVERY BY ENVIRONMENTAL)
SURCHARGE)

In the Matter of:

THE APPLICATION OF LOUISVILLE GAS AND)
ELECTRIC COMPANY FOR CERTIFICATES OF)
PUBLIC CONVENIENCE AND NECESSITY AND) CASE NO. 2016-00027
APPROVAL OF ITS 2016 COMPLIANCE PLAN)
FOR RECOVERY BY ENVIRONMENTAL)
SURCHARGE)

JOINT REBUTTAL TESTIMONY OF
ROBERT M. CONROY
VICE PRESIDENT, STATE REGULATION AND RATES
KENTUCKY UTILITIES COMPANY AND
LOUISVILLE GAS AND ELECTRIC COMPANY

Filed: June 7, 2016

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

2 A. My name is Robert M. Conroy. I am Vice President, State Regulation and Rates, for
3 Kentucky Utilities Company (“KU”) and Louisville Gas and Electric Company
4 (“LG&E”) and an employee of LG&E and KU Services Company, which provides
5 services to LG&E and KU (collectively “Companies”). My business address is 220
6 West Main Street, Louisville, Kentucky, 40202. A complete statement of my
7 education and work experience is attached to this testimony as Appendix A.

8 **Q. What are the purposes of your testimony?**

9 A. My testimony rebuts two assertions made in the testimony of Kentucky Industrial
10 Utility Customers, Inc. (“KIUC”) witness Lane Kollen, namely that the cost of the
11 proposed surface-impoundment closures at the Green River, Pineville, and Tyrone
12 Generating Stations (KU Project 39) do not qualify for recovery through KU’s
13 environmental cost recovery (“ECR”) mechanism, and that the Commission should
14 condition any certificates of public convenience and necessity (“CPCNs”) or other
15 approvals granted for the Companies’ other proposed projects such that the
16 Companies would have to seek additional Commission approval for any cost change
17 of 10% or more or for any material change in the scope of any project. My testimony
18 demonstrates that there is ample support from KRS 278.183 and Commission
19 precedent for the Commission to approve KU’s request to recover Project 39’s cost
20 through KU’s ECR mechanism. It further demonstrates that the Commission’s
21 existing review authority and processes—including the Commission’s statutorily
22 prescribed six-month and two-year ECR review proceedings—provide the
23 Commission adequate oversight of approved ECR projects and their costs, obviating
24 the need for any conditions upon CPCNs granted in these proceedings. In addition,

1 the Companies have a long standing practice of informing the Commission of the
2 progress related to their ECR compliance plans.

3 **Overview of Rebuttal Testimony**

4 **Q. Please provide an overview of the testimony of the other witnesses offering**
5 **rebuttal testimony on behalf of the Companies.**

6 A. In addition to my testimony, the Companies are presenting the rebuttal testimony of
7 three other witnesses. These witnesses and the subjects of their rebuttal testimony
8 are:

- 9 • John N. Voyles, Jr., Vice President, Transmission and Generation Services, presents
10 testimony rebutting Mr. Kollen’s assertion that the Commission should condition any
11 approvals it grants in these proceedings for KU Projects 40, 41, and 42 and LG&E
12 Projects 29 and 30 such that the Companies would have to seek Commission approval
13 for any material modifications in the scope of work or any changes in the cost
14 estimates of 10% or more, noting that compliance with the federal Coal Combustion
15 Residuals (“CCR”) Rule is mandatory, and that the Companies will seek to comply
16 with the CCR Rule at the lowest reasonable cost. Mr. Voyles further argues that
17 accepting Mr. Kollen’s proposal that the Commission deny KU ECR cost recovery
18 for Project 39 (surface-impoundment closures at the Green River, Pineville, and
19 Tyrone Generating Stations) would effectively penalize KU for acting prudently for
20 customers, and that the Commission should therefore reject Mr. Kollen’s
21 recommendation and instead approve ECR cost recovery for KU Project 39 as
22 proposed.
- 23 • Christopher M. Garrett, Director, Rates, presents rebuttal testimony addressing Mr.
24 Kollen’s assertions that the Commission should not permit the Companies to treat

1 their surface-impoundment-closure costs as costs of removal recoverable through
2 depreciation expense, as well as the assertion that the Commission should require the
3 Companies to include the Section 199 tax deduction in their ECR calculations as soon
4 as they anticipates they will be able to take the deduction. Mr. Garrett demonstrates
5 that the Companies' proposed accounting is reasonable and that their treatment of the
6 Section 199 tax deduction has been repeatedly approved by the Commission, the
7 future treatment of which will be subject to Commission review in six-month and
8 two-year ECR review proceedings, eliminating any need for a Commission
9 requirement for the Companies to include the Section 199 tax deduction in their ECR
10 calculations.

11 • John J. Spanos, Senior Vice President, Gannett Fleming Valuation and Rate
12 Consultants, LLC presents rebuttal testimony addressing Mr. Kollen's criticism of
13 using estimates for accounting for surface-impoundment-closure costs as cost of
14 removal charged to accumulated depreciation, as well as Mr. Kollen's proposed
15 amortization timetables for surface impoundments closed under KU Project 39. Mr.
16 Spanos demonstrates that the Companies' proposed accounting is reasonable and that
17 KU's proposed four-year amortization of Project 39 costs is reasonable, in contrast to
18 the unreasonable 10-year amortization Mr. Kollen proposes.

19 **Initial Observations**

20 **Q. Do you have any initial observations concerning the testimony filed by the**
21 **intervenors in these proceedings?**

22 A. I do. Notably, the Attorney General did not cause any testimony to be filed.

23 The sole piece of intervenor testimony filed, Mr. Kollen's testimony on behalf
24 of KIUC, does not contest the need for, or costs of, any of the Companies' proposed

1 2016 ECR Plan projects. This is true even for KU Project 39, which concerns
2 surface-impoundment closures at generating stations that have ceased generation
3 operations; Mr. Kollen argues against ECR cost recovery for the project, but he
4 provides no testimony or other evidence concerning the need for, or cost of, the
5 project. And although Mr. Kollen suggests a different means of recovery for KU
6 Project 39 or different means of calculating ECR recovery for the surface-
7 impoundment-related projects and asks the Commission to add conditions to the
8 CPCNs granted for such projects, he does not contest the fundamental need for, or the
9 projected costs of, the projects. As Mr. Voyles addresses at greater length, the
10 evidence in this proceeding is that all of the Companies' proposed projects are cost-
11 effective, and that the projects required by the CCR Rule are mandatory.

12 **ECR Recovery of KU Project 39 Surface Impoundment Closures Complies with KRS**
13 **278.183 Because the Closures Will Comply with State Regulations Applicable to**
14 **Coal-Combustion Wastes and Byproducts**

15 **Q. What does Kentucky's ECR statute, KRS 278.183, say concerning cost recovery**
16 **related to coal-combustion wastes and byproducts?**

17 A. The relevant part of KRS 278.183(1) states, "[A] utility shall be entitled to the current
18 recovery of its costs of complying with ... those federal, state, or local environmental
19 requirements which apply to coal combustion wastes and by-products from facilities
20 utilized for production of energy from coal" Two things are important to note
21 concerning this statutory provision: (1) it does not state that only unavoidable,
22 mandatory compliance ECR project costs are ECR recoverable; and (2) there is no
23 time limit on when the coal used to produce energy had to be burned for the cost of
24 handling the resulting wastes and byproducts to be ECR recoverable.

1 **Q. How is Mr. Kollen’s request that the Commission deny KU’s requested ECR**
2 **recovery for Project 39 contrary to KRS 278.183(1) and the Commission’s past**
3 **CCR-related ECR orders?**

4 A. Mr. Kollen effectively asks the Commission to amend KRS 278.183(1) to add a
5 requirement that ECR cost recovery for CCR-related projects be available only if the
6 project is unavoidable or mandatory: “If the costs are not mandatory absent a
7 discretionary triggering action, then they should not be recovered through the ECR.”¹
8 KIUC repeated this erroneous position in its response to the Commission Staff’s First
9 Request for Information 1(a), “Environmental costs that are discretionary cannot be
10 recovered in the ECR. Discretionary environmental costs are recoverable in base
11 rates.” With all due respect to this view, it is not what the ECR statute says and is
12 inconsistent with well-established Commission precedent.

13 As noted above, the ECR statute provides ECR cost recovery for the cost of
14 complying with environmental requirements applicable to CCR; the words
15 “mandatory” and “unavoidable” do not appear in the statute: “[A] utility shall be
16 entitled to the current recovery of its costs of complying with ... those federal, state,
17 or local environmental requirements which apply to coal combustion wastes and by-
18 products from facilities utilized for production of energy from coal”² The statute
19 emphatically does not say a utility may have ECR cost recovery only for projects
20 explicitly and unavoidably commanded by a particular environmental regulation or
21 rule. Rather, the statute permits utilities to have ECR recovery of their costs of
22 complying with environmental regulations. Concerning KU Project 39, KU cannot
23 simply heap dirt into the surface impoundments at Green River, Pineville, and Tyrone

¹ Kollen at 8-9.

² KRS 278.183(1).

1 to close them, but rather must comply with the requirements of 401 KAR Chapter 45
2 in closing them, making them eligible for ECR cost recovery. As the testimony of
3 Messrs. Revlett and Voyles showed, closing the KU Project 39 surface
4 impoundments now is indeed prudent. Therefore, the Commission should approve
5 KU's proposal to recover those prudently incurred costs through KU's ECR
6 mechanism.

7 Such approval would be entirely consistent with the Commission's orders for
8 the Companies and other utilities approving ECR recovery of the cost of CCR-related
9 projects that were the most economical means of disposing of CCR produced by
10 generating electricity with coal; as with KU Project 39, those means of disposal were
11 subject to environmental requirements, which in turn made the disposal costs eligible
12 for ECR cost recovery. For example, in the Companies' 2009 ECR Plan cases (Case
13 Nos. 2009-00197 and 2009-00198) the Commission approved five CCR-related
14 projects for KU (two new landfill projects, two surface-impoundment-elevation
15 projects, and a beneficial reuse project) and four CCR-related projects for LG&E
16 (two new landfill projects, one surface-impoundment-elevation projects, and a
17 beneficial reuse project).³ All were cost-effective means of addressing CCR at the
18 Companies' generating stations, and those means had to comply with applicable
19 environmental requirements, making them eligible for inclusion in the Companies'
20 ECR plans and for ECR cost recovery, which the Commission approved.⁴

³ *In the Matter of: 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, Order (Dec. 23, 2009); *In the Matter of: 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, Order (Dec. 23, 2009).

⁴ Case No. 2009-00197, Order at 9 (Dec. 23, 2009); Case No. 2009-00198, Order at 7 (Dec. 23, 2009).

1 Similarly, KU's 2011 ECR Plan included an amendment to Project 29 that
2 proposed to convert the Main Ash Pond at the E.W. Brown Generating Station from a
3 wet-disposal surface impoundment to a dry-disposal landfill with related facilities
4 needed for dry disposal.⁵ There was not a then-applicable environmental regulation
5 requiring the wet-to-dry conversion of the Brown Main Ash Pond, but it was an
6 economical means of addressing the anticipated CCR Rule.⁶ The Commission
7 approved the amended project and ECR recovery of its cost as part of its approval of
8 a settlement agreement in that proceeding even though there was no then-applicable
9 environmental regulation compelling the amended project.⁷ Similarly, as Mr. Revlett
10 stated in his testimony concerning Project 39, one of the reasons KU is proposing to
11 carry out Project 39 now is a concern that future state environmental regulations
12 could mandatorily require closure of the surface impoundments at issue at a greater
13 cost.

14 In addition to the orders discussed above, the Companies are aware of five
15 other Commission orders spanning over 20 years approving ECR recovery of CCR-
16 related project costs.⁸ The Commission approved ECR cost recovery for the projects

⁵ *In the Matter of: Application of Kentucky Utilities Company for Certificates of Public Convenience and Necessity and Approval of Its 2011 Compliance Plan for Recovery by Environmental Surcharge*, Case No. 2011-00161, Order at 6-7 (Dec. 15, 2011).

⁶ *Id.*

⁷ *Id.* at 21-22.

⁸ *In the Matter of: The Application of Kentucky Utilities Company to Assess a Surcharge Under KRS 278.183 to Recover Costs of Compliance with Environmental Requirements for Coal Combustion Wastes and By-Products*, Case No. 93-465, Order (July 19, 1994); *In the Matter of: The Application of Kentucky Utilities Company for Approval of Its 2002 Compliance Plan for Recovery by Environmental Surcharge*, Case No. 2002-00146, Order (Feb. 11, 2003); *In the Matter of: The Application of Louisville Gas and Electric Company for Approval of Its 2004 Compliance Plan for Recovery by Environmental Surcharge*, Case No. 2004-00421, Order (June 20, 2005); *In the Matter of: The Application of Kentucky Utilities Company for a Certificate of Public Convenience and Necessity to Construct Flue Gas Desulfurization Systems and Approval of Its 2004 Compliance Plan for Recovery by Environmental Surcharge*, Case No. 2004-00426, Order (June 20, 2005); *In the Matter of: Application of East Kentucky Power Cooperative, Inc. for a Certificate of Public Convenience and Necessity for Construction of an Ash Landfill at J.K. Smith Station, the Removal of Impounded Ash from William C. Dale*

1 because they were economical and prudent means of addressing CCR, and because
2 the projects had to comply with applicable environmental regulations. So KU's
3 proposed ECR recovery of Project 39's costs is not novel, but rather is entirely
4 consistent with a long line of Commission precedents approving substantively
5 analogous projects.

6 In sum, the Commission's ECR-related orders concerning CCR consistently
7 show that ECR recovery is available for economical, prudent CCR-related projects
8 that must comply with, or that aid in compliance with, applicable environmental
9 regulations. The Commission should therefore reject Mr. Kollen's request and
10 approve KU's request for ECR cost recovery for Project 39, a project the direct
11 testimony of Messrs. Revlett and Voyles showed to be prudent and economical, and
12 which will have to comply with the applicable portions of 401 KAR Chapter 45.

13 **Q. Why is Mr. Kollen incorrect in asserting that KU may not have ECR cost**
14 **recovery for Project 39 because the coal-fired generating units at Green River,**
15 **Pineville, and Tyrone are retired?**⁹

16 A. Yet again Mr. Kollen asks the Commission to read into KRS 278.183(1) a
17 requirement that does not exist, apparently a requirement that only the costs
18 associated with environmental compliance for CCR at active generating stations are
19 eligible for ECR cost recovery.¹⁰ Simply put, there is no such requirement in the
20 statute: "[A] utility shall be entitled to the current recovery of its costs of complying
21 with ... those federal, state, or local environmental requirements which apply to coal

Station for Transport to J.K. Smith and Approval of a Compliance Plan Amendment for Environmental Surcharge Recovery, Case No. 2014-00252, Order (March 6, 2015).

⁹ Kollen at 8.

¹⁰ Kollen at 8 ("In short, Project 39 does not meet the requirements set forth in the statute either for approval in a compliance plan or recovery through the ECR. ... [T]he plants are retired; therefore, they are not utilized for the production of energy from coal.").

1 combustion wastes and by-products from facilities utilized for production of energy
2 from coal”¹¹ To state the obvious, the coal-fired generating units at the Green
3 River, Pineville, and Tyrone Generating stations were indeed “facilities utilized for
4 production of energy from coal,” which is precisely why CCR is disposed of there;
5 the CCR at those facilities did not result from a non-electric coal-burning process.
6 Moreover, KRS 278.183(1) does not place a time limit or other condition on when the
7 coal burned for electricity had to be burned for the cost of addressing the resulting
8 CCR to qualify for ECR cost recovery; no such qualifiers as “recently” or “at active
9 generating stations” appear in the statute. Had the General Assembly desired to add
10 such restrictions to ECR cost recovery, it could easily have drafted them into the
11 statute. But the General Assembly plainly did not do so.

12 Also, this is not a case of first impression for the Commission, which just over
13 a year ago allowed a generating utility to have ECR recovery of costs related to
14 environmental compliance for CCR at a retired generating station. In that case, the
15 Commission approved ECR recovery for East Kentucky Power Cooperative, Inc.’s
16 (“EKPC”) project to move CCR from surface impoundments at the retired William C.
17 Dale Generating Station to a new landfill at the J.K. Smith Generating Station.¹² The
18 Commission did so over the explicit objection of one of EKPC’s member
19 cooperatives and some expressed skepticism of the Attorney General along the exact
20 lines of Mr. Kollen’s assertion, namely that the ECR statute did not permit cost

¹¹ KRS 278.183(1).

¹² *In the Matter of: Application of East Kentucky Power Cooperative, Inc. for a Certificate of Public Convenience and Necessity for Construction of an Ash Landfill at J.K. Smith Station, the Removal of Impounded Ash from William C. Dale Station for Transport to J.K. Smith and Approval of a Compliance Plan Amendment for Environmental Surcharge Recovery*, Case No. 2014-00252, Order (Mar. 6, 2015).

1 recovery for CCR production that “happened a long time ago.”¹³ The Commission
2 stated in response to that objection, “Here, EKPC proposes a plan that would allow it
3 to be in compliance with federal and state environmental requirements applicable to
4 coal-combustion wastes and by-products from facilities utilized for production of
5 energy from coal.”¹⁴ In other words, the Commission did not state that the CCR at
6 the Dale Generating Station was no longer “from [a] facilit[y] utilized for production
7 of energy from coal” just because the station was retired, but rather affirmed that the
8 CCR was indeed “from [a] facilit[y] utilized for production of energy from coal” even
9 though the station was retired. KIUC has provided no compelling reason or evidence
10 for the Commission to depart from its view in that case, which the Commission
11 expressed just over a year ago and was entirely consistent with the plain meaning of
12 KRS 278.183(1).

13 **Q. Does KRS 278.183 contain a requirement that there be a penalty for not**
14 **completing a project for the project to be eligible for ECR recovery?**

15 A. No, the statute does not contain such a requirement. It is not entirely clear why Mr.
16 Kollen included a statement that KU has not asserted there would be penalties under
17 current law if KU does not carry out Project 39 as proposed.¹⁵ But to the extent Mr.
18 Kollen intended to imply a penalty-related requirement for ECR cost recovery, such a
19 requirement simply does not exist.

20 **Q. In addition to his objections to granting KU ECR cost recovery for Project 39**
21 **based on issues related to KRS 278.183(1), Mr. Kollen asserts KU may not**
22 **recover the cost of Project 39 through its ECR mechanism because KRS**

¹³ *Id.* at 12-13.

¹⁴ *Id.* at 13.

¹⁵ Kollen at 9.

1 **278.183(2) precludes KU from including the project in its 2016 ECR Plan.¹⁶ Do**
2 **you agree?**

3 A. No, Mr. Kollen’s assertion concerning the application of KRS 278.183(2) to Project
4 39 is erroneous, as well. KRS 278.183(2) states in relevant part, “Within six (6)
5 months of submittal, the commission shall conduct a hearing to: (a) Consider and
6 approve the plan and rate surcharge if the commission finds the plan and rate
7 surcharge reasonable and cost-effective for compliance with the applicable
8 environmental requirements set forth in subsection (1) of this section[.]” In other
9 words, the Commission must determine if a proposed ECR plan is reasonable and
10 economical and complies with KRS 278.183(1). As I addressed at length above,
11 Project 39 does not run afoul of KRS 278.183(1) as it is actually written, as opposed
12 to how Mr. Kollen mistakenly asks the Commission to amend the law. And as I
13 noted above, the testimonies of Messrs. Revlett and Voyles have demonstrated why
14 Project 39 is reasonable and economical, points Mr. Kollen nowhere contests.
15 Therefore, the Commission may indeed approve Project 39 as part of KU’s 2016 ECR
16 Plan.

17 **Q. What do you conclude about Mr. Kollen’s testimony concerning Project 39?**

18 A. For the reasons stated at length above, I conclude that Mr. Kollen’s arguments against
19 KU’s ECR recovery of Project 39’s costs are contrary to the plain text of KRS
20 278.183 and the Commission’s longstanding precedents concerning ECR cost
21 recovery. I further note that Mr. Kollen makes no assertions concerning the need for,
22 or costs of, the surface-impoundment closures included in Project 39; his only

¹⁶ *Id.* at 7-8.

1 objection is to KU’s ECR cost recovery concerning it.¹⁷ Because those objections are
2 erroneous, I recommend the Commission approve Project 39 and KU’s proposed
3 ECR cost recovery for it, as well as any CPCN the Commission determines is
4 necessary for it.

5 **Because the Statutorily Prescribed Six-Month and Two-Year ECR Reviews**
6 **Already Provide the Commission Adequate Oversight of ECR Projects,**
7 **There Is No Reason to Condition the CPCNs the Commission Grants**
8 **in these Proceedings as Mr. Kollen Suggests**

9 **Q. Why should the Commission reject Mr. Kollen’s recommendation that it**
10 **“condition its approvals [for CCR Rule-related projects] on the Companies**
11 **returning to the Commission for additional review if there is a material change**
12 **in the approach or scope of work for any of the projects and/or if there is a**
13 **change of 10% or more in the estimated cost of a project”?**¹⁸

14 A. Mr. Kollen’s recommendation appears to be based on the incorrect belief that the
15 Companies can avoid compliance with the CCR Rule by retiring the generating
16 stations at issue. For example, Mr. Kollen states, “In addition, in such filings, the
17 Commission should require the Companies to demonstrate that the projects remain
18 economic compared to alternatives, including, but not limited to, retirement of the
19 power plants before the Companies incur significant costs.”¹⁹ But as Mr. Voyles
20 discusses in his rebuttal testimony and as he and Mr. Revlett discussed in their direct
21 testimonies, CCR Rule compliance is not optional; even retiring the generating
22 stations—all at once, today—will not allow the Companies to avoid complying with

¹⁷ Mr. Kollen also states that, if the Commission approves KU’s requested ECR cost recovery for Project 39, the recovery should occur over ten years, not the four years KU has proposed. (Kollen at 5.) Messrs. Garrett and Spanos address that assertion in their rebuttal testimonies. But that position of Mr. Kollen is not an objection to ECR cost recovery for KU Project 39 per se, but rather to the period over which the recovery occurs.

¹⁸ Kollen at 18.

¹⁹ *Id.*

1 the rule. So although it is true that the scope and cost of the CCR Rule projects can
2 change—certainly the cost is likely to change given the conceptual stage of
3 engineering and cost-projection development—there is no way to avoid these
4 obligations. The Companies must close the surface impoundments at issue in KU
5 Projects 40, 41, and 42 and LG&E Projects 29 and 30. The only question is how to
6 do so most economically; as Mr. Voyles states, the Companies will continue to refine
7 their engineering and cost estimates to ensure they comply with the CCR Rule at the
8 lowest reasonable cost.

9 To the extent Mr. Kollen intended only to refer to the process-water facilities
10 as being costs the Companies could avoid if they became uneconomical, it is
11 noteworthy that the process-water-related costs are less than half of the total cost of
12 KU Projects 40, 41, and 42 and LG&E Projects 29 and 30. It is further noteworthy
13 that the testimony of Charles R. Schram in these proceedings demonstrated that all of
14 the process-water facilities are indeed economical.

15 Notwithstanding that the CCR Rule-related surface-impoundment costs
16 cannot be avoided and that the process-water facilities are demonstrably economical,
17 the Companies agree it is reasonable that the Commission have oversight to ensure
18 that their ECR-project expenditures are prudent. But the ECR statute already
19 provides the needed oversight; no conditioning of any approvals the Commission
20 grants in these proceedings is necessary. KRS 278.183(3) provides the Commission
21 six-month and two-year reviews of ECR cost recovery, including the explicit
22 authority to disallow recovery of any amounts not just or reasonable or that the
23 Commission finds to be improper. The Companies are keenly aware of the
24 Commission's oversight authority; in addition to their longstanding commitment to

1 provide safe and reliable service at the lowest reasonable cost, the Companies have no
2 desire to incur imprudent costs the Commission would disallow. In addition, the
3 Companies have a long standing practice of informing the Commission of the
4 progress related to its ECR compliance plans. Therefore, there is no reason to
5 condition any CPCNs or ECR-related approval the Commission grants in these
6 proceedings as Mr. Kollen has recommended; to do so would lead only to an
7 unnecessary multiplicity of proceedings, inefficiently and redundantly using scarce
8 Commission resources for oversight the Commission already has through its six-
9 month and two-year review proceedings under KRS 278.183(3).

10 **Q. Do the Companies routinely reevaluate approved ECR projects during their**
11 **engineering and construction phases to ensure they remain prudent?**

12 A. Certainly, and the Companies have clearly demonstrated that. For example, as I
13 mentioned above, KU sought in its 2011 ECR Plan proceeding to amend its Project
14 29 from the originally approved project in the 2009 ECR Plan case—to raise the dike
15 elevations at the Brown Main Ash Pond—to convert the pond to a dry-disposal
16 landfill due to the anticipated CCR Rule. When it became clear that proceeding with
17 the originally approved project would likely result in making investments the CCR
18 Rule would render useless, KU ceased construction of the approved facility and
19 sought Commission approval for a new course that would meet the CCR Rule's
20 anticipated requirements.

21 The Companies routinely run analyses of that kind when circumstances
22 change materially to ensure they are acting prudently when investing in facilities to
23 serve customers. The Companies will apply this longstanding approach and
24 commitment to prudent investing to KU Projects 40, 41, and 42 and LG&E Projects

1 29 and 30, as they do to all consequential investments, further making Mr. Kollen's
2 proposed conditions upon Commission approvals in these proceedings entirely
3 unnecessary.

4 **Conclusion and Recommendation**

5 **Q. What is your recommendation?**

6 A. I recommend the Commission reject Mr. Kollen's proposal to deny KU ECR
7 recovery of the costs of Project 39, the need for which and cost of which Mr. Kollen
8 did not contest, and the ECR cost recovery for which would be fully consistent with
9 over 20 years of Commission precedent on ECR cost recovery. I further recommend
10 the Commission reject Mr. Kollen's proposal to add conditions to any approvals the
11 Commission grants in these proceedings for KU Projects 40, 41, and 42 and LG&E
12 Projects 29 and 30, which conditions are unnecessary to ensure the Companies act
13 prudently concerning those projects because the Commission already has adequate
14 oversight of the Companies' ECR expenditures and collections through the six-month
15 and two-year review proceedings required by KRS 278.183(3). Instead, I respectfully
16 request the Commission approve all of the Companies' proposed ECR projects, any
17 necessary CPCNs, and ECR cost recovery as the Companies requested in their
18 applications in these proceedings.

19 **Q. Does this conclude your testimony?**

20 A. Yes, it does.

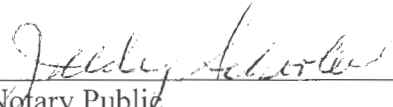
VERIFICATION

COMMONWEALTH OF KENTUCKY)
) SS:
COUNTY OF JEFFERSON)

The undersigned, **Robert M. Conroy**, being duly sworn, deposes and says that he is Vice President, State Regulation and Rates for Kentucky Utilities Company and Louisville Gas and Electric Company and an employee of LG&E and KU Services Company, and that he has personal knowledge of the matters set forth in the foregoing testimony, and that the answers contained therein are true and correct to the best of his information, knowledge and belief.


Robert M. Conroy

Subscribed and sworn to before me, a Notary Public in and before said County and State, this 7th day of June 2016.


Notary Public (SEAL)

My Commission Expires:
JUDY SCHOOLER
Notary Public, State at Large, KY
My commission expires July 11, 2018
Notary ID # 512743

APPENDIX A

Robert M. Conroy

Vice President, State Regulation and Rates
LG&E and KU Services Company
220 West Main Street
Louisville, Kentucky 40202
Telephone: (502) 627-3324

Previous Positions

Director, Rates	Feb 2008 – Jan 2016
Manager, Rates	April 2004 – Feb 2008
Manager, Generation Systems Planning	Feb. 2001 – April 2004
Group Leader, Generation Systems Planning	Feb. 2000 – Feb. 2001
Lead Planning Engineer	Oct. 1999 – Feb. 2000
Consulting System Planning Analyst	April 1996 – Oct. 1999
System Planning Analyst III & IV	Oct. 1992 - April 1996
System Planning Analyst II	Jan. 1991 - Oct. 1992
Electrical Engineer II	Jun. 1990 - Jan. 1991
Electrical Engineer I	Jun. 1987 - Jun. 1990

Professional/Trade Memberships

Registered Professional Engineer in Kentucky, 1995
Financial Research Institutes Advisory Board
Edison Electric Institute - Rates and Regulatory Affairs Committee
Southeastern Energy Exchange - Rates and Regulation Committee

Education

Essentials of Leadership, London Business School, 2004
Masters of Business Administration
Indiana University (Southeast campus), December 1998
Center for Creative Leadership, Foundations in Leadership program, 1998
Bachelor of Science in Electrical Engineering;
Rose Hulman Institute of Technology, May 1987

Board/Community Memberships

Olmsted Parks Conservancy - Board Member

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF KENTUCKY UTILITIES)
COMPANY FOR CERTIFICATES OF PUBLIC)
CONVENIENCE AND NECESSITY AND) CASE NO. 2016-00026
APPROVAL OF ITS 2016 COMPLIANCE PLAN)
FOR RECOVERY BY ENVIRONMENTAL)
SURCHARGE)

In the Matter of:

THE APPLICATION OF LOUISVILLE GAS AND)
ELECTRIC COMPANY FOR CERTIFICATES OF)
PUBLIC CONVENIENCE AND NECESSITY AND) CASE NO. 2016-00027
APPROVAL OF ITS 2016 COMPLIANCE PLAN)
FOR RECOVERY BY ENVIRONMENTAL)
SURCHARGE)

JOINT REBUTTAL TESTIMONY OF JOHN N. VOYLES, JR.
VICE PRESIDENT, TRANSMISSION AND GENERATION SERVICES
KENTUCKY UTILITIES COMPANY AND
LOUISVILLE GAS AND ELECTRIC COMPANY

FILED: JUNE 7, 2016

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

2 A. My name is John N. Voyles, Jr. I am the Vice President of Transmission and
3 Generation Services for Kentucky Utilities Company (“KU”) and Louisville Gas and
4 Electric Company (“LG&E”), and I am an employee of LG&E and KU Services
5 Company, which provides services to LG&E and KU (collectively “the Companies”).
6 My business address is 220 West Main Street, Louisville, Kentucky, 40202. A
7 complete statement of my education and work experience is attached to this testimony
8 as Appendix A.

9 **Q. What are the purposes of your testimony?**

10 A. My testimony rebuts the assertion made in the testimony of Lane Kollen on behalf of
11 Kentucky Industrial Utility Customers, Inc. (“KIUC”) that the Commission should
12 condition any approvals granted for KU’s proposed Projects 40, 41, and 42 and
13 LG&E’s proposed Projects 29 and 30 in these proceedings such that the Companies
14 would have to seek additional Commission approval for any cost change of 10% or
15 more or for any material change in the scope of any project. My testimony shows the
16 projects are economical and necessary—indeed, the surface-impoundment closures
17 cannot be avoided under the federal Coal Combustion Residuals (“CCR”) Rule, and
18 the proposed process-water facilities are necessary to allow the Ghent, Trimble
19 County, E.W. Brown, and Mill Creek Generating Stations to continue to produce
20 electricity from coal.

21 My testimony further shows that the Companies do not stop analyzing the
22 cost-effectiveness of projects for which the Commission grants approval, but rather
23 reevaluate consequential projects when material changes in regulations or other

1 events occur that might alter the cost-benefit analyses previously performed.
2 Relatedly, as engineering, closure plans, and cost estimates progress and mature,
3 variations of the scope and contingency ranges related to the projects narrow, giving
4 the Companies an increasingly accurate view of the projects' costs, which the
5 Companies use to ensure the projects remain economical. Based on the progress of
6 engineering since our applications were filed, I continue to conclude that these
7 projects remain prudent and lowest-reasonable-cost, and that the conditions Mr.
8 Kollen asks the Commission to place on any approvals for Projects 40, 41, and 42
9 (KU) and Projects 29 and 30 (LG&E) are unnecessary and unreasonable.

10 Finally, I note that accepting Mr. Kollen's argument to disallow ECR
11 recovery for Project 39 (surface-impoundment closures at the Green River, Pineville,
12 and Tyrone Generating Stations) would effectively penalize KU for doing what was
13 economically advantageous for its customers, namely retiring the coal units at Green
14 River in October 2015 rather than April 2016 as KU had planned, which prevented
15 Green River from being subject to the requirements of the CCR Rule, in turn reducing
16 costs for customers. I recommend the Commission reject KIUC's argument to
17 penalize KU for acting prudently on its customers' behalf, and approve ECR recovery
18 of the costs of Project 39 as proposed.

19 **Q. Mr. Kollen's testimony recommends that the Commission "condition its**
20 **approvals [for CCR Rule-related projects] on the Companies returning to the**
21 **Commission for additional review if there is a material change in the approach**
22 **or scope of work for any of the projects and/or if there is a change of 10% or**

1 **more in the estimated cost of a project.”¹ Why should the Commission reject**
2 **that recommendation?**

3 A. Mr. Kollen’s recommendation overlooks the involuntary nature of complying with
4 the CCR Rule. As Gary H. Revlett demonstrated in his direct testimony, the CCR
5 Rule requires that the owner or operator of a surface impoundment cease placing
6 CCR waste-streams in, and initiate closure of, a surface impoundment within six
7 months after data analysis shows CCR constituents at statistically significant levels
8 above groundwater-protection standards.² The rule also requires the closure process
9 to be completed within 60 months after it is initiated.³ Yet Mr. Kollen ignores this
10 evidence to contend the Companies could avoid these costs by retiring the generating
11 stations: “In addition, in such filings, the Commission should require the Companies
12 to demonstrate that the projects remain economic compared to alternatives, including,
13 but not limited to, retirement of the power plants before the Companies incur
14 significant costs.”⁴ But retiring the generating stations, even if the Companies ceased
15 operating them immediately, would not allow the Companies to avoid complying
16 with the CCR Rule. Certainly the scope and cost of the CCR Rule projects can
17 change; indeed, the cost is likely to change given the conceptual stage of engineering
18 and cost-projection development. But there simply is no way to avoid these
19 obligations: KU must close the surface impoundments at issue in Projects 40, 41, and
20 42; LG&E must close the surface impoundments at issue in Projects 29 and 30. To
21 ensure we do so prudently and economically, we will continue to refine our

¹ Kollen at 18.

² Revlett KU at 9; Revlett LG&E at 9.

³ *Id.*

⁴ Kollen at 18.

1 engineering, closure plans, and cost estimates to ensure the Companies comply with
2 the CCR Rule at the lowest reasonable cost on a station-by-station basis.

3 If Mr. Kollen’s argument meant to refer only to the process-water facilities the
4 Companies have proposed to construct as being costs the Companies could avoid if
5 they became uneconomical, I would note that the testimony of Charles R. Schram in
6 these proceedings showed all of the process-water facilities are indeed economical.⁵
7 Mr. Kollen’s testimony also does not present any analysis showing the process-water
8 facilities are not economical or any concerns with Mr. Schram’s analysis. Therefore,
9 in view of the unavoidable nature of CCR Rule compliance costs and the
10 demonstrated cost-effectiveness of the Companies’ proposed process-water systems,
11 KIUC’s proposed conditions on approvals the Commission grants for Projects 40, 41,
12 and 42 (KU) and Projects 29 and 30 (LG&E) are unnecessary and are not supported
13 by the record.

14 **Q. After the Companies receive Commission approval for a project in an**
15 **environmental cost recovery (“ECR”) plan, do they ever reevaluate the project**
16 **to ensure it remains prudent?**

17 A. Absolutely. Throughout the engineering and construction phases of an ECR project,
18 or any other consequential project, the Companies reevaluate the costs and benefits of
19 a project if any material change in conditions occurs. One example of that in the
20 ECR context is the approach KU took concerning the Brown Main Ash pond. KU
21 included in its 2009 ECR Plan a project (Project 29) to increase the dike height of the
22 Brown Main Ash Pond to provide additional CCR disposal capacity, which the

⁵ See Schram KU Exhibit CRS-1 at 11; Schram KU Exhibit CRS-2 at 13; Schram KU Exhibit CRS-3 at 8; Schram LG&E Exhibit CRS-1 at 8; Schram LG&E Exhibit CRS-2 at 8.

1 Commission approved. But when KU later learned that proceeding with the project
2 would likely result in making investments that the proposed CCR Rule would render
3 useless, KU ceased construction of the approved facility and sought Commission
4 approval as part of KU's 2011 ECR Plan for an amendment to Project 29 that would
5 meet the CCR Rule's anticipated requirements by converting the pond to a dry-
6 disposal landfill.

7 And there are numerous other examples. The Companies run similar analyses
8 when circumstances change materially for any consequential project to ensure they
9 are acting prudently when investing in facilities to serve customers. The Companies
10 will do the same for Projects 40, 41, and 42 (KU) and Projects 29 and 30 (LG&E), as
11 they do for all such investments, further making KIUC's proposed conditions upon
12 Commission approvals in these proceedings both unnecessary and contrary to long-
13 standing established business practices and philosophy of KU and LG&E.

14 In addition, I would note in agreement with the rebuttal testimony of Robert
15 M. Conroy that the Commission's existing six-month and two-year reviews of ECR
16 cost recovery, including authority to disallow recovery of any amounts the
17 Commission finds to be improper or imprudent, make KIUC's proposed conditions
18 unnecessary and redundant. We have no desire to make expenditures or investments
19 the Commission would disallow, and we make every reasonable effort to ensure that
20 all of our expenditures and investments, ECR-related and otherwise, are prudent.
21 Adding conditions to the approvals the Commission grants in these proceedings
22 would serve only to add administrative burden to the Commission and the
23 Companies, with no benefit to customers.

1 **Q. How would accepting KIUC’s recommendation to deny KU ECR cost recovery**
2 **for Project 39 effectively penalize KU for making prudent decisions on**
3 **customers’ behalf?**

4 A. As Mr. Revlett noted in his direct testimony, the CCR Rule applies only to CCR
5 disposal facilities at generating stations that generated electricity on or after October
6 19, 2015. At the Green River Generating Station, KU had previously obtained the
7 necessary permissions under the federal Mercury and Air Toxics (“MATS”) Rule to
8 delay retiring Units 3 and 4 until April 2016 to complete necessary transmission
9 projects that preserve system reliability. KU had already determined it was
10 uneconomic to install controls necessary to comply with MATS Rule.⁶ But when KU
11 determined that retiring the Green River units before October 19, 2015, would enable
12 the station not to fall under the CCR Rule’s requirements, thus avoiding long-term
13 monitoring and reporting requirements in the Rule, KU was able to accelerate the
14 transmission projects and changed its plans at Green River, allowing an earlier
15 retirement of the units.

16 But KIUC’s recommendation to disallow ECR cost recovery for Project 39
17 (surface-impoundment closures at Green River, Pineville, and Tyrone) would have
18 the unavoidable effect of penalizing KU for doing the right thing, such as retiring the
19 Green River units in October 2015. Had KU continued to operate Green River Units
20 3 and 4 until April 2016 as originally planned, there would be no question that the
21 Green River surface impoundments would fall under the CCR Rule; KIUC has
22 neither contested the necessity of closing surface impoundments under the CCR Rule,

⁶ See *In the Matter of: Application of Kentucky Utilities Company for an Adjustment of Its Electric Rates*, Case No. 2014-00371, KU Response to Sierra Club’s Initial Data Request No. 26 (Jan. 23, 2015); Case No. 2014-00371, Testimony of Paul W. Thompson at 22 (Nov. 26, 2014).

1 nor has it contested the ECR cost recovery associated with such closures. I
2 respectfully submit to the Commission that it should reject KIUC's contention to
3 penalize KU for doing the right thing for customers; instead, it should allow KU to
4 have ECR cost recovery of Project 39 as proposed.

5 **Conclusion and Recommendation**

6 **Q. What is your recommendation?**

7 A. I recommend the Commission reject KIUC's proposal to add conditions to any
8 approvals the Commission grants in these proceedings for Projects 40, 41, and 42
9 (KU) and Projects 29 and 30 (LG&E), which conditions are unnecessary because the
10 projects' CCR Rule-related compliance costs are unavoidable and because the
11 proposed process-water facilities are indeed economical and appear likely to remain
12 economical. Moreover, as Mr. Conroy addresses in his rebuttal testimony, the
13 Commission's existing six-month and two-year ECR review proceedings give the
14 Commission ample authority and opportunity to review the Companies' ECR
15 spending and collections, and to disallow any amounts the Commission deems
16 imprudent. And the Commission should reject KIUC's argument to penalize KU for
17 prudently closing the CCR impoundments at retired facilities and instead, it should
18 allow ECR cost recovery for Project 39 as submitted. Closing the CCR
19 impoundments under state rules at the retired the Green River units, avoiding long-
20 term federal CCR Rule requirements that would have applied to the station's surface
21 impoundments, results in lower costs for the customers; likewise, lower costs are
22 expected by closing Tyrone and Pineville impoundments at the same time. Therefore,
23 I respectfully ask the Commission to approve all of the Companies' proposed ECR

1 projects, any necessary CPCNs, and ECR cost recovery as the Companies requested
2 in their applications in these proceedings.

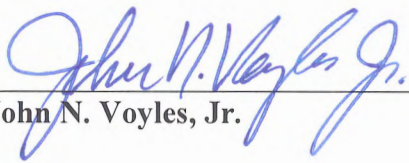
3 **Q. Does this conclude your testimony?**

4 A. Yes it does.

VERIFICATION

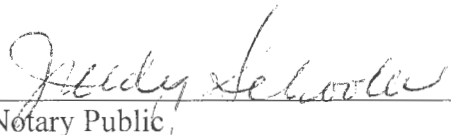
COMMONWEALTH OF KENTUCKY)
) SS:
COUNTY OF JEFFERSON)

The undersigned, **John N. Voyles, Jr.**, being duly sworn, deposes and says that he is Vice President, Transmission and Generation Services for Kentucky Utilities Company and Louisville Gas and Electric Company and an employee of LG&E and KU Services Company, and that he has personal knowledge of the matters set forth in the foregoing testimony, and that the answers contained therein are true and correct to the best of his information, knowledge and belief.



John N. Voyles, Jr.

Subscribed and sworn to before me, a Notary Public in and before said County and State, this 7th day of June 2016.

 (SEAL)

Notary Public

My Commission Expires:
JUDY SCHOOLER
Notary Public, State at Large, KY
My commission expires July 11, 2018

Notary ID # 512743

APPENDIX A

John N. Voyles, Jr.

Vice President, Transmission and Generation Services
Louisville Gas and Electric Company and Kentucky Utilities Company
220 West Main Street
Louisville, Kentucky 40202
(502) 627-4762

Education

Rose-Hulman Institute of Technology, B.S. in Mechanical Engineering - 1976

Previous Positions

LG&E Energy, LLC

October 2010 - Present --Vice President, Transmission and Generation Services

E.ON U.S. LLC

June 2008 – October 2010 --Vice President, Transmission and Generation Services
2003 - 2008 --Vice President, Regulated Generation

LG&E Energy Corp.

February - May 2003 -- Director, Generation Services

Louisville Gas and Electric Company

1998 - 2003 -- General Manager, Cane Run, Ohio Falls and
Combustion Turbines
1996 -1998 -- General Manager, Jefferson County Operations
1991 - 1995 -- Director, Environmental Excellence
1989 - 1991 -- Division Manager, Power Production, Mill Creek
1984 - 1989 -- Assistant Plant Manager, Mill Creek
1982 - 1984 -- Technical and Administrative Manager, Mill Creek
1976 - 1982 -- Mechanical Engineer

Professional Development

Emory Business School -- Management Development Program
Center for Creative Leadership (La Jolla, CA)
University of Louisville -The Effective Executive
Harvard Business School - Finance for the Non-Financial Manager
MIT - Leading Innovation & Growth: Managing the International Energy Co.

Board/Committee Memberships

Fund for the Arts - Board Member
Ohio Valley Electric Co. (OVEC) - Board member and Executive Committee member
Electric Energy, Inc. - Board member

Edison Electric Institute (EEI) - Committee member Energy Supply Executive Advisory
Committee and the Environment Executive Advisory Committee
Electric Power Research Institute (EPRI) - Chairman, Research Advisory Committee

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

**THE APPLICATION OF KENTUCKY UTILITIES)
COMPANY FOR CERTIFICATES OF PUBLIC)
CONVENIENCE AND NECESSITY AND) CASE NO. 2016-00026
APPROVAL OF ITS 2016 COMPLIANCE PLAN)
FOR RECOVERY BY ENVIRONMENTAL)
SURCHARGE)**

In the Matter of:

**THE APPLICATION OF LOUISVILLE GAS AND)
ELECTRIC COMPANY FOR CERTIFICATES OF)
PUBLIC CONVENIENCE AND NECESSITY AND) CASE NO. 2016-00027
APPROVAL OF ITS 2016 COMPLIANCE PLAN)
FOR RECOVERY BY ENVIRONMENTAL)
SURCHARGE)**

**JOINT REBUTTAL TESTIMONY OF
CHRISTOPHER M. GARRETT
DIRECTOR, RATES
KENTUCKY UTILITIES COMPANY AND
LOUISVILLE GAS AND ELECTRIC COMPANY**

Filed: June 7, 2016

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

2 A. My name is Christopher M. Garrett. I am the Director of Rates for LG&E and
3 KU Services Company, which provides services to Kentucky Utilities Company
4 (“KU”) and Louisville Gas and Electric Company (“LG&E”) (collectively, “the
5 Companies”). My business address is 220 West Main Street, Louisville,
6 Kentucky, 40202. A statement of my education and work experience is attached
7 to this testimony as Appendix A.

8 **Q. What is the purpose of your testimony?**

9 A. The purpose of my testimony is to rebut the assertions made in the testimony of
10 Lane Kollen on behalf of Kentucky Industrial Utility Customers, Inc. (“KIUC”)
11 concerning the recovery of the projected surface-impoundment-closure costs and
12 the alternative recommendation to defer the actual removal costs incurred and
13 subsequently recover the costs through amortization expense over the remaining
14 average service lives of each generation station. I also rebut Mr. Kollen’s
15 recommendation regarding the Section 199 federal tax deduction as unwarranted.

16 **Q. Does Mr. Kollen’s testimony accurately reflect the cost of the ECR projects**
17 **the Companies propose to recover through their ECR Mechanisms?**

18 A. No. As set forth in direct testimony and in supplemental data responses filed
19 April 19, 2016 with the Commission in these cases,¹ the amounts to be recovered
20 through the ECR must be adjusted to reflect the amounts, if any, for the projects
21 already included in existing base rates. The Companies subsequently determined
22 that a 13-month average capital expenditure should be used to be consistent with

¹ KU Supplemental Responses to KPSC Staff Requests for Information Nos. 1, 4, 5, 6 and 7 (April 19, 2016); LG&E Supplemental Responses to KPSC Staff Requests for Information Nos. 1 and 2 (April 19, 2016).

1 the same calculation used for the approved revenue requirement in the
2 Companies' most recent rate case. This, in addition to a formulaic cell reference
3 issue that over-credited the project amount recovered through base rates, caused
4 the amount of the ECR projects to be recovered through the ECR mechanisms to
5 change. Mr. Kollen's testimony does not reflect the correct costs to be recovered
6 through the ECR.

7 **KIUC's Assertions Concerning the Recovery**
8 **of the Closure Costs Are Unreasonable**

9 **Q. Do you agree with Mr. Kollen's assertion that treating pond closures as costs**
10 **of removal recovered through depreciation expense as terminal net salvage**
11 **rather than capital expenditures is a "problem"?**

12 A. Certainly not. The ECR contemplates recovery of the Companies' "costs of
13 complying with ... environmental requirements which apply to coal combustion
14 wastes ... from facilities utilized for production of energy from coal"² Mr.
15 Kollen's attempt to differentiate "capital costs" from "costs of removal" is an
16 attempt to create a distinction without a difference for ECR purposes and place
17 form over substance. The costs of closing the ash ponds are costs of complying
18 with environmental requirements.

19 Treating pond-closure costs as capital expenditures charged to
20 construction work in progress ("CWIP") for ECR recovery purposes would be
21 inconsistent with the actual nature of the closure projects and inconsistent with
22 Generally Accepted Accounting Principles ("GAAP") and the Federal Energy
23 Regulatory Commission ("FERC") Uniform System of Accounts.

² KRS 278.183(1).

1 The Companies’ proposed cost-recovery approach is well supported
2 because impoundment-closure costs are retirement-related costs, not new capital
3 expenditures to extend the life of any facility. Excluding retirement costs until
4 they are incurred, as Mr. Kollen argues, only shifts the recovery of those costs
5 later in the recovery period. This results in the recovery of the retirement costs
6 over a shorter period of time, thus increasing the annual impact on customers
7 during the latter part of the period of recovery. Mr. Kollen’s proposal simply
8 pushes these costs onto future customers who will receive disproportionately less
9 benefit from these generation facilities and unnecessarily pay higher rates.

10 **Q. Do you agree with Mr. Kollen’s assertion that there are “economic penalties”**
11 **associated with the Companies’ proposal?**

12 A. No. First, the accumulated book depreciation reserve is expected to exceed the
13 accumulated closure costs incurred at the retired facilities only in 2016 and 2017.
14 Thereafter, the accumulated closure cost incurred is expected to exceed the
15 accumulated book depreciation reserve making this only a temporary issue.
16 Second, recognition of a deferred tax asset associated with this temporary
17 difference is consistent with GAAP and the natural consequence of using the
18 terminal net salvage approach. The recognition of a deferred tax asset does not
19 result in an increase in total tax expense because any increase in current tax
20 expense is offset by a decrease in deferred tax expense. As I explained in the
21 response to the KIUC data request, which Mr. Kollen failed to quote in his
22 testimony:

1 There is no increase in total tax expense associated with this
2 temporary difference as the increase in current tax expense is offset
3 by a decrease in deferred tax expense.³
4

5 Finally, Mr. Kollen’s testimony ignores the overall impact on rate base in this
6 situation by focusing *solely* on the deferred tax rate base component. Mr. Kollen
7 failed to point out that *total* rate base for Project 39 in 2016 and 2017 is negative
8 and that customers will be credited with the return on or the full carrying charge
9 (i.e., service on debt and equity) on the negative rate base balance.

10 Mr. Kollen’s assertion that there is a “penalty” and it is somehow
11 “permanent” is simply not correct.

12 **Q. Do you agree with the assertion by Mr. Kollen that the four-year period KU**
13 **proposes for the recovery of the closure of the surface impoundments at the**
14 **retired generating stations (ECR Project No. 39) is “unreasonably short”?**

15 A. No. As addressed in the rebuttal testimony of John Spanos, for the closure of the
16 surface impoundments at the retired generating stations, the proposed four-year
17 amortization period is not arbitrary. Like proposed terms for surface
18 impoundments at the active generation stations, the goal of the proposed period is
19 to match as reasonably possible cost-causation with the period of recovery and
20 minimize generational inequities as much as reasonably possible. Mr. Kollen’s
21 proposal to extend the recovery period to 10 years for closure costs at the retired
22 generation stations departs from these principles.

23 **Q. Did Mr. Kollen provide a reasonable basis for his recommended 10-year**
24 **recovery period in response to the Commission’s Request for Information?**

³ Response of Kentucky Utilities Company to Kentucky Industrial Utility Customers, Inc. First Set of Data Requests, No. 1-6(d); Response of Louisville Gas and Electric Company to Kentucky Industrial Utility Customers, Inc. First Set of Data Requests, No. 1-4(d).

1 A. No. In the response, Mr. Kollen simply restates the arguments in his testimony
2 and offers no new support for the KIUC position.

3 **KIUC’s Alternative Recommendation is Flawed and Problematic**

4 **Q. Do you agree with Mr. Kollen’s recommendation that “the Commission**
5 **should direct the Companies to defer the actual costs when incurred and**
6 **allow amortization of the deferred costs over the remaining lives of the**
7 **station”?**

8 A. Although the Companies and Mr. Kollen can agree that for CCR Rule pond
9 closures the appropriate recovery periods are the remaining service lives of the
10 related generating stations, the Companies’ position in their direct testimony (i.e.,
11 KU and LG&E should be allowed for ratemaking purposes to account for the
12 CCR closure costs as cost of removal and charged to the accumulated provision
13 for depreciation), is the most reasonable and appropriate recovery position. As
14 discussed in my direct testimony, this would ensure that these retirement costs are
15 handled in the same manner as all other generating assets. As stated in a data
16 response, although the more appropriate form of recovery is through depreciation,
17 the Companies are open to considering reasonable alternative forms of recovery
18 of their costs through the environmental surcharge mechanism provided they are
19 allowed to earn a recovery of and a return on its closure impoundment costs.⁴ Mr.
20 Kollen’s recommendation, namely that the Commission direct the Companies to
21 defer the actual costs when incurred and allow amortization of the deferred costs

⁴ Response of Kentucky Utilities Company to Kentucky Industrial Utility Customers, Inc. First Set of Data Requests, No. 1-8(f); Response of Louisville Gas and Electric Company to Kentucky Industrial Utility Customers, Inc. First Set of Data Requests, No. 1-6(f).

1 over the remaining service lives, is unreasonable for several reasons. First,
2 KIUC's proposal does not fully indicate whether the Companies will earn a return
3 on the closure costs to ensure full cost recovery. Mr. Kollen appears to agree with
4 this regulatory position at least for KU ECR Project 39 when he states at page 11
5 of his testimony:

6 The amortization would be in addition to the return on the closure
7 costs, which could add as much as \$8.1 million (\$77.5 million
8 times 10.15% gross-up rate of return) if the costs were incurred in
9 the first year, all else equal

10
11 And Mr. Kollen, when describing a reason why his recommendation is a better
12 alternative, further states at page 14, line 14, "[I]t provides the Companies full
13 recovery of their actual costs" But the position of KIUC on this essential point
14 is not clear or certain. Any reasonable alternative form of recovery utilizing
15 amortization must provide the Companies with a return on the unamortized
16 balance in addition to the recovery of the amortized amount. The Commission's
17 orders fully support this regulatory treatment for purposes of the ratemaking in the
18 ECR mechanism.⁵ In a previous ECR proceeding, the Commission held:

19 KRS 278.183 specifically provides that a reasonable cost to
20 include in the environmental surcharge is a reasonable
21 return on construction and other capital expenditures.
22 Because the Commission finds that the ash transfer costs
23 should be treated like a capital expenditure, we also find a
24 return on those costs is reasonable and will include the

⁵ *In the Matter of: The Application of Louisville Gas and Electric Company for Approval of Its 2004 Compliance Plan for Recovery by Environmental Surcharge*, Case No. 2004-00421, LG&E's Response to Second Data Requests of Commission Staff Dated February 23, 2005, No. 2-4 (listing orders where the Commission has allowed a return on a deferred debit). *See also In the Matter of: Application of Kentucky Power Company for: (1) A General Adjustment of Its Rates for Electric Service; (2) An Order Approving Its 2014 Environmental Compliance Plan; (3) An Order Approving Its Tariffs and Riders; and (4) An Order Granting All Other Required Approvals and Relief*, Case No. 2014-000396, Order (July 20, 2015).

1 unamortized balance of the deferred costs in the
2 environmental Rate Base.⁶

3 To the extent the KIUC recommendation does not include a return on the
4 unamortized closure cost balance, it is unreasonable, confiscatory and contrary to
5 the Commission's orders. Secondly, the KIUC recommendation is unreasonable
6 because it would require the use of actual costs as and when incurred. In contrast,
7 the Commission has used reasonable estimates for ratemaking for years in rate
8 cases supported by forecasted test periods and has used estimates to approve
9 particular cost items, such as, depreciation and pension expense for many years.
10 The Commission has the full authority under the six-month and two-year reviews
11 to assess the accuracy of the estimated depreciation costs and to true-up the
12 recovery of the estimates to the costs incurred based on whether a project is
13 completed along with the rate of return calculation in each review period. And
14 the KIUC recommendation is also unreasonable as it may result in increased
15 accounting complexities for KU should other regulatory bodies, i.e. the FERC and
16 the Virginia State Corporation Commission require a different cost recovery
17 approach.⁷

18 **Q. Do you agree with Mr. Kollen's recommended multiple amortization**
19 **periods?**

20 A. As discussed, the Companies and Mr. Kollen can agree that for CCR Rule-related
21 surface-impoundment closures the appropriate recovery periods are the remaining

⁶ *In the Matter of: Application of Louisville Gas and Electric Company For Approval Of Its 2004 Compliance Plan For Recovery by Environmental Surcharge*, Case No. 2014-00421 Order, p. 10 (June 20, 2005).

⁷ Response of Kentucky Utilities Company to Kentucky Industrial Utility Customers, Inc., First Set of Data Requests, No. 1-8(f).

1 service lives of the stations. However, the use of so many different amortization
2 periods makes the administration of the ECR mechanisms and the accounting on
3 the Companies' books burdensome and unduly complex. Such multiple
4 amortization periods are unnecessarily complex, making the ECR calculation
5 more complicated, less transparent and administratively burdensome.

6 **Because the Commission Can Adjust the Companies' ECR Charges in**
7 **Its Six-Month and Two-Year ECR Reviews, No Changes Are**
8 **Necessary for the Section 199 Tax Deduction**

9 **Q. Mr. Kollen has asked the Commission to require the Companies "to include**
10 **the federal Section 199 deduction in the calculation of the gross-up factor as**
11 **soon as it is available on either a projected basis or in the periodic true-ups of**
12 **the Companies' ECR recoveries in the six month and two-year review**
13 **proceedings ... preferably as soon as they project that it will be available."**
14 **Is this recommendation warranted?**

15 A. No. The current approach, whereby the rate of return is reviewed in the six month
16 and two-year review proceedings, fully addresses the issue regarding whether the
17 Section 199 deduction is included or excluded. For example, the six-month and
18 two-year review proceedings include a review of *both* the rate of return for the
19 respective review period and the rate of return to be used for future billing
20 periods. The Companies determine whether the Section 199 deduction is included
21 or excluded for the applicable periods based on its most recent projections for the
22 current year in addition to its filed positions for prior years.

23 **Q. Does this conclude your testimony?**

24 A. Yes.

VERIFICATION

COMMONWEALTH OF KENTUCKY)
) SS:
COUNTY OF JEFFERSON)

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


Christopher M. Garrett

Subscribed and sworn to before me, a Notary Public in and before said County and State, this 7th day of June 2016.

 (SEAL)
Notary Public

My Commission Expires:

JUDY SCHOOLER
Notary Public, State at Large, KY
My commission expires July 11, 2018
Notary ID # 512743

APPENDIX A

Christopher M. Garrett

Director, Rates

LG&E and KU Services Company

220 West Main Street

Louisville, Kentucky 40202

(502) 627-3328

Previous Positions:

Director, Accounting and Regulatory Reporting	Dec 2012 – Jan 2016
Director, Financial Planning & Controlling	Feb 2010 – Nov 2012
Manager, Financial Planning	Nov 2007 – Feb 2010
Manager, Corporate Accounting	Jan 2006 – Oct 2007
Manager, Utility Tax	May 2002 – Jan 2006
Tax Analyst, various positions	Aug 1995 – May 2002

Education:

Eastern Kentucky University, Bachelor of Business Administration - Accounting,

1995 Graduated Magna Cum Laude

Certified Public Accountant, Kentucky, 1999

Professional Memberships:

American Institute of Certified Public Accountants (AICPA)

Kentucky Society of Certified Public Accountants (KSCPA)

Civic Activities:

St. Joseph School Board Member

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF LOUISVILLE GAS AND)	
ELECTRIC COMPANY FOR CERTIFICATES OF)	
PUBLIC CONVENIENCE AND NECESSITY AND)	CASE NO. 2016-00027
APPROVAL OF ITS 2016 COMPLIANCE PLAN)	
FOR RECOVERY BY ENVIRONMENTAL)	
SURCHARGE)	

REBUTTAL TESTIMONY OF
JOHN J. SPANOS
ON BEHALF OF
LOUISVILLE GAS AND ELECTRIC COMPANY

Filed: June 7, 2016

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

2 A. My name is John J. Spanos. My business address is 207 Senate Avenue, Camp
3 Hill, Pennsylvania. I am associated with the firm of Gannett Fleming Valuation
4 and Rate Consultants, LLC (“Gannett Fleming”).

5 **Q. Did you previously file direct testimony in this proceeding on behalf of**
6 **Louisville Gas and Electric Company?**

7 A. Yes. My direct testimony presents the depreciation rates for ash ponds recovery
8 for Louisville Gas and Electric Company (“LG&E”), and demonstrates LG&E
9 has recovered only a minimal amount of terminal net salvage cost in base rates for
10 the ash ponds. My direct testimony contains a description of my educational
11 background and professional experience in the field of depreciation.

12 **Q. What is the purpose of your rebuttal testimony?**

13 A. The purpose of my testimony is to rebut certain arguments presented in the
14 testimony of Lane Kollen with the firm of Kennedy and Associates and the
15 witness for the Kentucky Industrial Utility Customers, Inc. (“KIUC”).

16 **Q. Do you agree with the assertion by Mr. Kollen that the Companies’ proposal**
17 **has a “problem” because the costs associated with the ash pond closures are**
18 **“not capital cost and are costs of removal”?**

19 A. No, I do not. Once again I must focus on the definition of depreciation which
20 includes the recovery of the full service value of all assets. This includes the end
21 of life costs such as cost of removal. In many cases these costs occur in similar
22 situations as have occurred in this case for ash ponds.

1 **Q. Do you agree with the assertion by Mr. Kollen that the Companies’ proposal**
2 **has a “problem” because the costs associated with the ash pond closures are**
3 ***estimated costs of removal?***

4 A. No, I do not. The development of all depreciation components, including cost of
5 removal are estimations until all assets are finally retired and all costs incurred.
6 This includes the life components, gross salvage and cost of removal. This is
7 described in the National Association of Regulatory Utility Commissioners
8 (“NARUC”) sublocation Public Utility Depreciation Practices (referred to as the
9 “NARUC Manual”), pages 51 and 52:

10 Common to all age-life methods is an estimate of service life and an
11 apportionment of expense to each year or accounting period so that the
12 total cost is recovered over the life of the asset. Generally the depreciation
13 base adjusted for any estimated net salvage is used as the total sum to be
14 recovered. In straight-line unit accounting, the estimated life is used as a
15 divisor to directly determine the dollars to charge as expense. In group
16 accounting and for mass property accounts, the charge to expense is
17 computed by first determining a depreciation rate. It is common practice
18 to express this as an annual percent. To determine expense, the rate is
19 then applied to the depreciation base each year or accounting period. As
20 additions and retirements take place, the rate is applied to the revised
21 balances. Adjustments to the rate are made to conform to shorter
22 accounting periods. For example, with monthly accounting, one-twelfth
23 the annual rate may be applied to each month’s balance.

24 The age-life methods take several forms. In the simple straight-line
25 form, the rate is held constant and changes are made only when revised
26 estimate of life or net salvage occur. In the sinking fund method, an
27 annuity rate is used and interest on the accumulation of depreciation is
28 added. In the declining balance method, a constant rate is used but it is
29 applied to the net plant. In the sum-of-the-years-digits method, the rate
30 varies with age resulting in recording more expense in early life and less
31 in later life.

32 In all these methods, two estimates are required, one of service life and
33 the other of net salvage, each of which is the subject of a subsequent
34 chapter. With these estimates plus a judgment selection of the precise
35 method to be used, it is apparent that the cost assignable to each
36 accounting period is also an estimate. The estimate can be improved by
37 using objective statistical studies, comparative analysis with like plant,

1 and periodic reviews that take into consideration both historical
2 experience and, to the extent possible, future expected circumstances. All
3 these aid in producing reasonably accurate results, particularly where large
4 numbers of units of plant are involved. Because the end result is
5 necessarily still an estimate of the future, some form of periodic review
6 has become accepted practice in most depreciation work. Factors causing
7 retirement do change, and “accurate” estimates made at one time may no
8 longer hold true a few years later.

9 Because reasonable estimates at any time are attainable, and age-life
10 methods directly meet the depreciation objective, age-life methods are
11 favored by all accounting, regulatory, and tax depreciation plans.
12 Departures from age-life methods require specific justification, such as
13 extraordinary obsolescence or consumption not related to age.
14

15 Therefore, the standard depreciation practice is to calculate depreciation
16 rates and expense based on the estimated full service value over the remaining life
17 of the facility. This includes the estimated end of life components such as cost of
18 removal.

19 **Q. Do you agree with the assertion by Mr. Kollen that the Companies’ proposal**
20 **has a “problem” because the estimated costs associated with the ash pond**
21 **closures are reflected as “terminal net negative salvage”?**

22 A. No, I do not. Closures of ash ponds are the final costs associated with the ash
23 ponds at the end of their useful life. This is the true meaning for terminal net
24 salvage for assets with a life span of concurrent date of retirement at a location.

25 The NARUC Manual, page 141:

26 The life span method is the least complex method of computing
27 service life of property for depreciation purposes and may be applied to
28 individual units of property. A life span group contains units that will
29 concurrently retire in a specific number of years after placement. For life
30 span groups, there may be interim additions and retirements; however, all
31 plant will be subject to a final retirement. Unlike mass property groups,
32 life span groups often contain a small number of large units, such as an
33 electric power generation unit or a telephone central office.

34 The NARUC Manual, page 161:

1 The life span categories consist generally of fairly long-life, structure-
2 like plant, such as buildings, power plants, and telephone central office
3 switching equipment. While each building or equipment installation might
4 experience a number of modifications or additions subsequent to the date
5 of its initial installation, each unit will retire in its entirety at the same
6 time.

7 For buildings, the possibility of reuse will vary from building to
8 building depending upon a variety of factors, including its age at final
9 retirement, its size, the neighborhood in which it is located, and the
10 possibility for reuse by the utility itself. For other life span categories,
11 there may be some market outside the company for finally retired material,
12 but frequently the reuse market is internal. When the particular model of
13 equipment is current, reuse possibilities are high, but when it becomes
14 obsolete, reuse may be negligible. The equipment at each installation
15 should be considered from the standpoint of expected age at retirement
16 and the possibility of reuse based on expected future company policy.
17 Such future policy might be expected to have some semblance to past
18 policy regarding the reuse of the same or similar type of equipment.

19 Net salvage associated with final retirements must be composited with
20 interim net salvage resulting from expected piecemeal retirements in order
21 to develop an estimate of future net salvage. Therefore, in order for the life
22 span method to be applied properly, individual records of additions and
23 retirements associated with each building and large installation must be
24 maintained. Such records allow for data on interim and final retirements,
25 gross salvage, and the cost of removal to be separately identified. This
26 facilitates their analysis in the process of estimating future interim and
27 final net salvage.

28 Therefore, as described by the NARUC Manual, the ash pond closure
29 costs are associated with final retirement and are true terminal net salvage. The
30 ash ponds have a concurrent date of retirement and these costs relate to the end of
31 the ash ponds useful life.

32 **Q. Please respond to Mr. Kollen’s argument that the LG&E “proposal**
33 **represents a dramatic increase in the terminal net salvage value”?**

34 **A.** This change as referenced by Mr. Kollen is due to new requirements or
35 regulations to handle ash ponds in the manner proposed in this filing. These
36 closure costs are high and were not anticipated when the ash ponds were first

1 installed. Changes in expected costs have occurred throughout the utility industry
2 and once estimated are recovered over the remaining life of the asset group.

3 **Q. Do you agree with Mr. Kollen’s argument that the Companies’ proposal**
4 **suffers from a conceptual weakness because the terminal net salvage values**
5 **will be recovered before they are incurred?**

6 **A.** No, I do not. As is the case with proper depreciation recovery practices, the entire
7 service value is recovered systematically and rationally over the service life of the
8 asset class. The service value of all assets are not incurred equally each year they
9 are in service. The asset cost is incurred at the beginning of useful life,
10 betterments occur occasionally throughout the life cycle and cost of removal
11 occurs at the end of life. Some costs are known when placed into service at age 0,
12 however most costs are estimated until actually incurred many years later. The
13 utilization of the remaining life method and periodic depreciation studies insures
14 continual correcting of estimated costs to actual costs until all costs are incurred
15 and recovered. The terminal net salvage component of ash ponds is no different
16 than all other components of the service value or the removal of all other types of
17 assets. For example, a distribution pole incurs costs when placed into service and
18 the net salvage (gross salvage minus cost of removal) is estimated and recovered
19 through rates until the pole is actually removed and final costs incurred.

20 **Q. Do you agree with Mr. Kollen’s argument that the Companies’ proposal**
21 **suffers from a conceptual weakness because it will “result in significant**
22 **increases in the approved depreciation rates that will not be revised to true-**

1 **up projected costs to actual cost unless and until the depreciation rates are**
2 **reset in a future ECR or base rate proceeding”?**

3 A. No, I do not. First, the increased depreciation rates are an aspect of the overall
4 increased service value which requires recovery systematically and rationally over
5 the remaining useful life. Second, the recovery of ash ponds are no different than
6 any other asset in that their recovery stays constant in between filings. Third,
7 Louisville Gas and Electric has consistently reviewed depreciation rates on a four
8 or five-year basis in order to reassess depreciation rates based on new information
9 or regulation.

10 **Q. Does this conclude your testimony?**

11 A. Yes.

VERIFICATION

COMMONWEALTH OF PENNSYLVANIA)
) SS:
COUNTY OF CUMBERLAND)

The undersigned, **John J. Spanos**, being duly sworn, deposes and says that he is Senior Vice President for Gannett Fleming Valuation and Rate Consultants, LLC, that he has personal knowledge of the matters set forth in the foregoing testimony and exhibits, and the answers contained therein are true and correct to the best of his information, knowledge and belief.

John J. Spanos
John J. Spanos

Subscribed and sworn to before me, a Notary Public in and before said County and Commonwealth, this 3rd day of June 2016.

[Signature] (SEAL)
Notary Public

My Commission Expires:
February 20, 2019

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
Cheryl Ann Rutter, Notary Public
East Pennsboro Twp., Cumberland County
My Commission Expires Feb. 20, 2019
MEMBER, PENNSYLVANIA ASSOCIATION OF NOTARIES