COMMONWEALTH OF KENTCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC JOINT APPLICATION OF KENTUCKY UTILITIES COMPANY AND LOUISVILLE GAS AND ELECTRIC COMPANY FOR APPROVAL OF AN OPTIONAL SOLAR SHARE PROGRAM RIDER	))))	CASE NO. 2016-000274

MOTION FOR REHEARING

Comes now Gerald M. Karem, by counsel, and moves the Commission to grant rehearing of its Orders denying his motion to intervene and approving Applicants' solar generation tariff, both of which were issued November 4, 2016, in the instant case.

Movant realizes that he did not file a timely motion to intervene according to the Commission's procedural schedule. However, the first notice issued in this case was published in *The Sentinel-News*, the local newspaper in Shelby County, on August 24, 2016, five days after the deadline set out in the Commission's procedural order for intervention. Of course, Movant did not receive a copy of that order in the first place and the notice published by Applicants made no mention of any proposed land acquisition, facility construction, or new transmission lines. Anyone reading the notice would be informed of a voluntary tariff for which the Applicant was seeking approval and nothing more. Why should anyone not particularly interested in solar generation pay any further attention to this matter as the tariff by its terms is wholly voluntary?

Therein lies the primary problem with this case and the manner in which it has been hurriedly handled, ostensibly so that the Applicant can make an advertising deadline. No application for a certificate of convenience and necessity has ever been filed in this matter. This is a highly important issue which Movant seeks to bring to the Commission's attention and which merits rehearing in this matter regardless of whether he complied with the Commission's procedural schedule.

KRS 278.020(2) provides that, "No person, partnership, public or private corporation, or combination thereof, shall … begin the construction of any plant, equipment, property, or facility for furnishing to the public any of the services enumerated in KRS 278.010, except retail electric suppliers for … ordinary extensions of existing systems in the usual course of business, until that person has obtained a certificate that public convenience and necessity require the service or construction." If one merely reads the words of the statute, it would seem apparent that nothing about this project is an extension in the ordinary course of business of the Applicants' solar facility at its Brown generating facility near Burgin, Kentucky, more than 50 miles away.

However, nothing in the utility world is ever so simple. Perhaps while quietly acknowledging the absurdity of the proposition, the Commission in its Orders resorts to KRS 278.216 and states that because the construction proposed by Movant does not involve generation in excess of ten megawatts, a certificate of convenience and necessity is not needed. In the first instance, it should be noted that KRS 278.216 discusses site compatibility certificates, not certificates of convenience and necessity which are required by KRS 278.020(2). Regardless of whether the Commission is precluded from issuing a site compatibility certificate, it still has a

duty to determine if the public convenience and necessity are served by the proposed construction.

(There is also the interesting question of how Section 276 should now be applied to Applicants' project and how it would apply should Applicant decide to expand past the presently proposed 4 megawatt capacity. If movant decides in the future to use the thirty-five acres it proposes to purchase to the fullest extent possible and add 7 megawatts or more of capacity, will the Commission then be looking at an 11 megawatt facility, almost half of which is already in place, and be asked to determine the suitability of the site after the horse is long since out of the barn or will Applicants have free rein to enlarge and extend the facility as far as they wish in small increments with no review whatsoever on this property and any other contiguous or nearby property they may decide to purchase by agreement or condemnation in the future?)

Then there is KAR 807:001, Section 15(3). "Extensions in the ordinary course of business. A certificate of public convenience and necessity shall not be required for extensions that do not create wasteful duplication of plant, equipment, property, or facilities, or … will not result in increased charges to its customers." Contrary to the position of the Commission and the Applicants, Movant asserts that, under the language of this regulation, the Commission must require an application for a certificate of convenience and necessity. It must do so for two reasons.

In the first instance, it is clear from the tariff proposed by Applicants that there will be increased charges to its customers. That customers will incur these charges voluntarily does not

lessen the fact that the charges of those agreeing to accept service under the tariff will be paying higher rates for service than they would otherwise incur. The regulation says nothing about charges being voluntary, or coerced, or accepted grudgingly. The only condition relating to charges which would allow Applicants' project to be considered in the ordinary course of business is that the will not be increased.

Further, to be exempt from applying for a certificate under the regulation, the extension must not "…create wasteful duplication of plant, equipment, property, or facilities[.]" In this instance, there has been no showing that the proposed construction will not in fact involve wasteful duplication of property. Apparently all that is required to construct a solar generating facility is bare land exposed to sunlight. Further, as proposed by the Applicant, such a facility can be constructed in increments. Applicants already has constructed a solar facility at their Brown generating facility in Burgin. East Kentucky Power Cooperative has recently proposed constructing such a facility at its generating station in Winchester (In the Matter of: Application of East Kentucky Power Cooperative, Inc., for Issuance of a Certificate of Public Convenience and Necessity, Approval of Certain Assumption of Evidences of Indebtedness and Establishment of a Community Solar Tariff, Case No. 2016-00269). Since it had no need to pull anything over on anyone, East Kentucky properly filed for a certificate. While the Commission may or may not be precluded from determining if the site proposed by the Applicant is compatible, it is not only not precluded, it is obligated to determine if an additional site is needed at all. Of all the property currently owned by Applicants, is there no vacant land it already owns which could be used for this purpose without the necessity of buying more and building a costly transmission

line which would itself be duplicative if the facility could be constructed where such a line would be unneeded? Why should land and wire be needlessly added to Applicants' rate base?

Finally, the Commission should reconsider the basic question of public convenience and necessity as those words are commonly understood. This proposal has virtually nothing to do with generating power. Rather, it is strictly a public relations exercise, amounting to a 35 acre billboard touting the Applicants' supposed interest in renewable energy sources. What part of public convenience, let alone necessity, requires the public to bear the cost of this unnecessary exercise in self-promotion? Nothing other than the desire for publicity suggests that the facility needs to be built along an interstate highway, especially over four miles away from the nearest exit from that highway. To the extent that public convenience and necessity are somehow served by Applicants' desire to advertise, there are many more less costly and less intrusive methods of bringing their devotion to renewable energy to the public's attention.

Joseph Heller's famous novel "Catch 22" and the wildly successful movie based upon it were hilarious because they were fiction. In the instant case, the Applicants have worked diligently to craft a Catch 22 for Movant and his neighbors. They live in a rural part of Shelby County where fine homes are surrounded by large lots and small farms, primarily devoted to raising Saddlebred horses. They have invested considerable sums and are justly proud of their neighborhood. Their situation would also be amusing if it were fiction. Who wouldn't chuckle at the proposition that constructing a 35 acres solar facility from scratch more than 50 miles away from a similar facility was an extension in the ordinary course of business of the first

facility? Who wouldn't have a grudging admiration for a utility which would propose locating such a thing in a pristine rural area and suggest it would be an asset to its neighbors?

This situation is not amusing because it is not fiction. Movant and his many neighbors did not receive any notice of a requirement to intervene until after the deadline had passed and that notice did not mention any kind of construction. The Commission has the discretion to rescind its orders, grant intervention to Movant and any of his neighbors who have finally learned what's going on, and place this matter on its docket for a hearing at which the necessity of constructing this facility on newly purchased land can be properly addressed. Movant respectfully demands that it do so.

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Respectfully submitted,

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