

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF KENTUCKY UTILITIES)	
COMPANY FOR AN ADJUSTMENT OF ITS)	
ELECTRIC RATES AND FOR)	CASE NO. 2016-00370
CERTIFICATES OF PUBLIC CONVENIENCE)	
AND NECESSITY)	

In the Matter of:

APPLICATION OF LOUISVILLE GAS AND)	
ELECTRIC COMPANY FOR AN)	
ADJUSTMENT OF ITS ELECTRIC AND GAS)	CASE NO. 2016-00371
RATES AND FOR CERTIFICATES OF)	
PUBLIC CONVENIENCE AND NECESSITY)	

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

Filed: May 31, 2017

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I. INTRODUCTION

The requests for relief in the applications filed by Kentucky Utilities Company (“KU”) and Louisville Gas and Electric Company (“LG&E”) (collectively, “the Companies”) are the subject of two stipulations which, taken together, represent a unanimous resolution of all issues in these cases (“Unanimous Settlement”). Those stipulations are the culmination of the collective effort of eighteen individual parties each representing varied and unique interests. The resulting Unanimous Settlement reflects meaningful concessions by the Companies compared to their filed positions, including significant reductions to the Companies’ requested revenue increases, withdrawal of the Companies’ request for a Certificate of Public Convenience and Necessity (“CPCN”) for Advanced Metering Systems, changes to rate design, and commitments to support low-income customers, among many other provisions.

The Companies acknowledge and respect the Commission’s duty to ensure that rate case proceedings result in a fair, just, and reasonable outcome, regardless of whether or not a settlement is presented for approval. In these cases, the Companies respectfully submit that the Commission’s duty can be fully met in approving the Unanimous Settlement without modification or condition. The terms of the Unanimous Settlement are comprehensive and transparent, and were negotiated with guidance from Commission Staff. Indeed, the Unanimous Settlement is documented in such a way to allow the Commission to exercise its independent judgment to determine the overall reasonableness of the terms reached. In the judgment of the eighteen parties that have signed and recommended approval of the Unanimous Settlement by the Commission, the settlement is in fact fair, just, and reasonable.¹

¹ When the members represented by the Kentucky Industrial Utility Customers, Inc., the Kentucky School Board Association, Kentucky League of Cities and Kentucky Cable Telecommunications Association are considered, the number of parties represented by these associations supporting the Unanimous Settlement is over a hundred.

The evidence of record further shows the employee benefits provided by the Companies should not be modified by the Commission. The benefits are a critical contributor to the Companies' demonstrated operational excellence. The Companies' management has exercised appropriate judgment in determining the proper level of benefits provided to employees. Notwithstanding the Companies' concern about notice and competency of the Bureau of Labor statistics as evidence, the record demonstrates the Companies' benefits are reasonable and consistent with the marketplace.²

The Companies request that the Commission determine the Unanimous Settlement is a fair, just and reasonable disposition of their rate applications, and approve the Unanimous Settlement without condition or modification.

II. STATEMENT OF FACTS AND PROCEDURAL HISTORY

A. The Companies' Applications

On November 23, 2016, the Companies filed with the Commission their respective applications for increases in base utility rates pursuant to KRS 278.180 and KRS 278.190, which require notice of proposed changes to utility rates and contemplate the opportunity for a hearing on the reasonableness of the new rates.³ The Companies also sought Certificates of Public Convenience and Necessity ("CPCNs") for two proposed projects: the implementation of Advanced Metering Systems ("AMS") and Distribution Automation ("DA"), and other miscellaneous relief associated with the AMS project and the Companies' depreciation rates.

The applications and supporting testimony show the Companies are achieving excellent operating results and providing safe and reliable service to their customers at reasonable rates.

² See LG&E and KU Responses to Post-Hearing DR Nos. 7 and 11 for the Mercer studies regarding welfare and retirement benefit benchmarking.

³ See Case No. 2016-00370, *Application of Kentucky Utilities Company for an Adjustment of Its Electric Rates and for Certificates of Public Convenience and Necessity* ("KU Application"); Case No. 2016-00371, *Application of Louisville Gas and Electric Company for an Adjustment of Its Electric and Gas Rates and Certificates of Public Convenience and Necessity* ("LG&E Application").

Mr. Thompson's testimony highlights a litany of operational areas in which the Companies are performing at a very high level compared to industry benchmarking, including employee and contractor safety, generation reliability, transmission and distribution reliability, and customer satisfaction.⁴ The Companies' operational excellence has been recognized by both residential and business customers, resulting in a clean sweep by the Companies of all J.D. Power customer satisfaction awards for which they were eligible in 2016.⁵ The Companies have been able to achieve this sustained operational success at a cost to customers among the top quartile (*i.e.*, lowest cost) compared to the industry as a whole,⁶ and with a cost of debt among the lowest compared to benchmarked peers.⁷ In short, the Companies have been able to deliver exceptionally safe and reliable service at an exceptional value to their customers.

The applications are supported by the written verified testimony of numerous company witnesses and retained experts.⁸ They are also supported by a complete set of filed exhibits complying with the requirements of 807 KAR 5:001, Sections 14, 15, 16, and 17. As authorized by KRS 278.192(1) and 807 KAR 5:001, Section 16, the Companies' applications for an adjustment of base rates are supported by a twelve-month fully forecasted test period ending June 30, 2018.⁹ The base period for the applications is the twelve-months ending February 28, 2017, fully compliant with the requirements of KRS 278.192(2)(b).¹⁰ The Companies' requests for issuance of CPCNs for the AMS and DA projects were supported by all requirements of 807

⁴ Case No. 2016-00370, Testimony of Paul W. Thompson ("Thompson Direct"), at 4-6.

⁵ Case No. 2016-00370, Rebuttal Testimony of Lonnie E. Bellar ("Bellar Rebuttal"), at 6-7.

⁶ Case No. 2016-00370, Testimony of Kent W. Blake ("Blake Direct"), at 7-8 and Exhibit KWB-1.

⁷ Case No. 2016-00370, Testimony of Daniel K. Arbough ("Arbough Direct"), at 12 and Exhibit DKA-6.

⁸ KU Application, ¶ 9, LG&E Application, ¶ 11.

⁹ KU Application, ¶ 11, LG&E Application, ¶ 13.

¹⁰ *Id.*

KAR 5:001, Section 15. The Companies' applications were determined to have met the minimum filing requirements and were accepted for filing by letter dated December 2, 2016.¹¹

KU's filed position sought an increase in the total cost-based revenue requirement for electric service of \$103.1 million.¹² LG&E's filed position sought an increase in revenue requirement for electric service of \$94.1 million, and an increase in revenue requirement for gas service of \$13.4 million.¹³

B. Intervenors

A total of eleven parties were permitted to intervene in the KU case¹⁴ and a total of thirteen parties were permitted to intervene in the LG&E case¹⁵ pursuant to the requirements of 807 KAR 5:001, Section 4(11)(b).¹⁶ The combined cases involve a total of sixteen unique intervenors. All of the intervenors in both cases provided responsive testimony from their own witnesses. In addition to the eleven witnesses who provided direct written testimony in support of the Companies' applications, a total of thirty-six intervenor witnesses provided responsive testimony in one or both cases. The subjects of the intervenor testimony reflect the broadest possible range of consumer group and customer rate class issues.

¹¹ See Case No. 2016-00370, PSC Letter of Dec. 2, 2016; Case No. 2016-00371, PSC Letter of Dec. 2, 2016.

¹² Case No. 2016-00370, Filing Requirements Update, Schedule A (Apr. 14, 2017).

¹³ Case No. 2016-00371, Filing Requirements Update, Schedule A – Electric Operations (Apr. 14, 2017); Case No. 2016-00371, Filing Requirements Update, Schedule A – Gas Operations (Apr. 14, 2017). The updated revenue requirement figures LG&E filed in April 2017 vary slightly from the figures contained in LG&E's initial application due to a slight reallocation between electric and gas. The total updated revenue requirement (gas and electric) does not vary materially from the initial application.

¹⁴ Attorney General of the Commonwealth of Kentucky, by and through the Office of Rate Intervention (AG), BellSouth Telecommunications, LLC d/b/a AT&T Kentucky (AT&T), Kentucky Cable and Telecommunications Association (KCTA), Kentucky Industrial Utility Customers, Inc. (KIUC), The Kroger Company (Kroger), Kentucky School Boards Association (KSBA), Sierra Club, Alice Howell, Carl Vogel and Amy Waters (Sierra Club), Wal-Mart Stores East, LP (Wal-Mart), Community Action Council for Lexington-Fayette, Bourbon, Harrison and Nicholas Counties, Inc. (CAC), Kentucky League of Cities (KLC), and Lexington Fayette Urban County Government (LFUCG).

¹⁵ AG, AT&T, KCTA, KIUC, Kroger, KSBA, Sierra Club, Wal-Mart, Association of Community Ministries, Inc. (ACM), U.S. Department of Defense and All Other Federal Executive Agencies (DoD), JBS Swift & Co. (JBS), Louisville Metro Government (Louisville Metro), and Metropolitan Housing Coalition (MHC).

¹⁶ Other entities sought intervention but were denied because they did not meet the statutory and regulatory criteria for full intervention. See, e.g., Case No. 2016-00370, Commission Order Denying Motion for Intervention by East Kentucky Power Cooperative, Inc. (Feb. 1, 2017).

C. Written Discovery

These cases are unprecedented in terms of the volume and scope of discovery conducted. In addition to its application and filing requirements, KU responded to 2,548 data requests, including subparts, in seven rounds of discovery, including post-hearing data requests, in Case No. 2016-00370. Likewise, LG&E responded to 2,809 data requests, including subparts, in Case No. 2016-00371. The Companies produced over 38,000 pages of material in response to data requests. The Companies also served discovery on some of the intervenors, primarily seeking underlying data for the positions of the intervenor testimony filed. The result of the extensive discovery practice is an immense record upon which the parties' positions are based and upon which thorough and informed settlement discussions could occur.

D. Settlement Conferences and Stipulated Settlement Agreements

1. First Stipulation and Recommendation

On April 12, 13, and 17, 2017, the Companies and all intervenors participated in an informal conference at the Commission's offices, with Commission staff in attendance, for the purpose of discussing settlement of the issues contained within the Companies' applications. At that informal conference, the parties thoroughly discussed the disputed issues at arm's length, each offering distinct viewpoints that fully represented all the customer rate classes served by the Companies and other interests. The voluminous record in these proceedings allowed the parties the opportunity to investigate and understand the positions asserted by the other parties to the case, facilitating substantive exchanges on the merits of various issues during the conference. After many hours over several days, all of the parties to these proceedings, with the exception of AT&T and KCTA, reached an agreement in principle on terms of a settlement. Those terms are

embodied in the Stipulation and Recommendation filed with the Commission on April 19, 2017 (“First Stipulation”).¹⁷

Unlike a “black box” settlement, the First Stipulation provides a “transparent calculation of the revenue requirements agreed upon and recommended by the Stipulating Parties in the total context of all matters addressed in the stipulation.”¹⁸ This approach was undertaken to comply with the direction previously offered by the Commission, as recognized at the outset of the hearing on May 9, 2017, by Chairman Schmitt:

Now, I will say this on behalf of the Commission to counsel for Louisville Gas and Electric, Kentucky Utilities and for all of the parties. We really appreciate the thorough manner in which you prepared the proposed settlement agreements and the way basically you addressed all of the issues that we asked you to, so thank you very much from the Commission, to all of you who participated in that process.¹⁹

In general, the First Stipulation reflects an agreement to increase the annual revenue requirements for the Companies as follows:

Operating Unit	Filed Revenue Requirement	Stipulated Revenue Requirement	Percent of Filed Position
KU Electric	\$103.1M	\$54.9M	53.2%
LG&E Electric	\$94.1M	\$59.4M	63.1%
LG&E Gas	\$13.4M	\$7.5M	56.0% ²⁰

The reduction from the filed revenue requirement comes from a number of sources agreed upon by the parties in the First Stipulation: (1) withdrawal of the CPCN request for AMS and associated cost recovery; (2) reduction in return on equity (ROE) from a filed position of 10.23% to an agreed ROE of 9.75%; (3) lower depreciation rates; (4) reduction to reflect income KU will receive from the refined coal project at Ghent Generating Station; (5) revisions to the

¹⁷ As set forth in detail below, the Companies would later reach a stipulation resolving all issues with AT&T and KCTA, resulting in a unanimous settlement.

¹⁸ Case No. 2016-00370 and 2016-00371, Stipulation Testimony of Kent W. Blake, Chief Financial Officer, Louisville Gas and Electric Company, Kentucky Utilities Company, at 3.

¹⁹ 5/9/17 Video Transcript, at 1:07:16; 5/9/17 Hearing Transcript, at 10.

²⁰ First Stipulation, Section 2.1, 3.1.

Companies' uncollectible debt expense; (6) reduction in outage maintenance expense in the forecasted test year through use of an 8-year normalization period and associated regulatory asset and liability accounting; and (7) application of a "slippage" factor for construction work in progress.²¹ The First Stipulation sets forth in detail the dollar impact of each of these compromises on the overall revenue requirement for electric and gas operations.²²

In addition to a compromise of the as-filed revenue requirement and a full accounting of contributors to that compromise, the First Stipulation also reflects the parties' agreement on revenue allocation and rate design, including proposed revisions to the Companies' tariffs, attached as exhibits to the First Stipulation, and a compromise of the Basic Service Charge for certain rates. The Companies' filed position with respect to the Basic Service Charge was an increase in Rates RS, VFD, RTOD-Demand, and RTOD-Energy from \$10.75 to \$22.00 (KU and LG&E) and an increase in LG&E Gas Rate RGS from \$13.50 to \$24.00.²³ The settled position, as reflected in Section 4.3 of the First Stipulation, is an incremental increase in LG&E and KU Rates RS, VFD, RTOD-Energy, and RTOD-Demand from \$10.75 to \$11.50 effective July 1, 2017, and to \$12.25 effective July 1, 2018. The First Stipulation provides for a single increase in the Basic Service Charge for LG&E Rates RGS and VFD from \$13.50 to \$16.35 effective July 1, 2017.²⁴

The First Stipulation includes other compromises among the Companies and intervenors with respect to curtailable service riders, Rider GLT cost recovery for the LG&E Gas Transmission Modernization and Steel Service Line Replacement Programs, certain pilot rates and related collaboratives, and the Companies' commitment to provide, exclusively out of

²¹ First Stipulation, Sections 2.2, 2.3, 3.2, 3.3.

²² *Id.*

²³ KU Application, LG&E Application, Filing Requirements at Tab 4 in both cases.

²⁴ The increase of the Basic Service Charge for the LG&E gas rates is effectively not an increase at all due to a corresponding reduction in per-customer amounts collected through LG&E's Gas Line Tracker (Rider GLT).

shareholder funds, \$1,450,000 annually in low-income customer support through at least June 30, 2021.

And importantly, the parties to the First Stipulation agreed and recommended to the Commission that:

[E]xcept as modified in this Stipulation and the exhibits attached hereto, the rates, terms and conditions contained in the Utilities' filings in these Rate Proceedings, as well as the Companies' requests for CPCNs for their proposed Distribution Automation project, should be approved as filed.²⁵

2. Second Stipulation and Recommendation

Intervenors AT&T and KCTA, which intervened in the rate cases to protect their interest in pole-attachment issues subject to Rate PSA, were not able to come to agreement with the Companies on these issues during global negotiations resulting in the First Stipulation. However, these parties agreed to resume settlement negotiations at the Commission on April 25, 2017. During the April 25 settlement conference, these parties, negotiating at arm's length and in good faith, were able to come to terms on a compromise regarding the PSA Tariff, which are reflected in the Second Stipulation and Recommendation filed with the Commission on May 1, 2017 ("Second Stipulation"). Commission staff attended this settlement conference as well. As with the First Stipulation, the terms of the Second Stipulation were fully disclosed in the agreement, and thus are completely transparent to the Commission and to customers.

In the Second Stipulation, the Companies, AT&T and KCTA agreed that the existing annual attachment charge of \$7.25 for a wireline facility is fair, just, and reasonable.²⁶ The parties to the Second Stipulation further agreed that \$36.25 is a fair, just, and reasonable annual rate for pole-top wireless facilities. The parties also agreed on certain revisions to the PSA tariff terms and conditions to "appropriately balance an Attachment Customer's need for flexibility

²⁵ First Stipulation, Section 5.8 (emphasis added).

²⁶ Second Stipulation, Section 1.1.

with the public's interest in reliable and safe electric service."²⁷ Furthermore, the parties to the Second Stipulation confirmed in their agreement that they had no objections to the terms of the First Stipulation, except to the extent of any conflict with the PSA Rate Schedules proposed to be revised under the Second Stipulation.²⁸

Later, at the hearing in these cases on May 9, 2017, counsel for all parties to the First and Second Stipulations were present, and each confirmed that they had no objection to the other stipulation.²⁹ Thus, the First Stipulation and Second Stipulation, taken together, comprise the written Unanimous Settlement of all issues in the Companies' filed cases.

E. Hearing

By order entered on May 3, 2017, the Commission acknowledged the efforts of the parties to work collaboratively to achieve settlements in the cases, and put all parties on notice of the witnesses who were required to appear at the hearing beginning on May 9, 2017, "for the purposes of cross-examination of all witnesses and for the consideration of the two recommended settlements."³⁰ The Commission gave all parties the opportunity to designate additional witnesses to appear for cross-examination, but no party did so.

All of the Companies' twelve employee witnesses, and one of its retained experts, Steven Seelye, were called to the stand and offered for cross-examination pursuant to the Commission's May 3, 2017 Order. Seven of those witnesses (Victor Staffieri, Kent Blake, Robert Conroy, Steven Seelye, Lonnie Bellar, David Sinclair, and Greg Meiman) provided live cross-examination testimony, and in some cases, re-direct testimony in response to questions posed by Commission Staff, the Commissioners, and counsel for the various parties. In addition, KIUC

²⁷ Second Stipulation, Section 1.4.

²⁸ Second Stipulation, Section 2.1.

²⁹ 5/9/17 Video Transcript, at 1:04:30; 5/9/17 Hearing Transcript, at 8-9.

³⁰ *See, e.g.* Case No. 2016-00370, Commission Order Regarding Hearing (May 3, 2017), at p.2.

witness Stephen Baron was called to offer testimony regarding his analysis of the Companies' cost of service study performed by Mr. Seelye. KSBA witness Ronald Willhite was also cross-examined regarding two provisions in the First Stipulation dealing with pilot rates for public schools and sports field lighting.

At the conclusion of the evidentiary hearing, all parties affirmatively took an oath to support the Unanimous Settlement, pledging their knowing, voluntary, and informed support of the settlement and "each and every provision" contained therein.³¹

III. ISSUE FOR RESOLUTION

The issue before the Commission is whether it should approve the Unanimous Settlement negotiated and recommended by parties representing every customer interest in the Companies' service territories across the Commonwealth as the fair, just and reasonable disposition of the Companies' rate applications. Respectfully, KU and each of the eleven intervenors in its case, and LG&E and each of the thirteen intervenors in its case, believe the answer is yes, and the Companies request that the Commission enter an order accordingly, for the reasons set forth below.

IV. ARGUMENT

A. The Unanimous Settlement Represents a Fair, Just, and Reasonable Resolution of All Issues in these Proceedings and Should Be Approved by the Commission

As noted earlier, the Companies fully acknowledge that the Commission must exercise its own judgment in determining whether rates proposed in a settlement are fair, just, and reasonable, and cannot delegate that duty to the parties.³² In these proceedings, the Commission's statutory obligation to determine the reasonableness of the Companies'

³¹ 5/10/17 Video Transcript, at 12:00:45; 5/10/17 Hearing Transcript, at 125 – 127.

³² Case No. 2016-00370, Commission Order Regarding Hearing (May 3, 2017), at p. 2.

applications is entirely consistent with approval of the Unanimous Settlement as filed. Because the terms of the Unanimous Settlement have been meticulously documented in the First and Second Stipulations, the Commission has concrete and objective support of great probative value for the reasonableness of the provisions contained therein. The Commission should approve the Unanimous Settlement because it represents a fair, just, and reasonable resolution of these cases and because the Commission, based upon the terms of the Unanimous Settlement, can independently verify from the record that this outcome is in fact achieved.

The process used to arrive at the settlement was likewise fair, just, and reasonable. The Unanimous Settlement was the result of four days of negotiations and hard-won concessions among the intervenors and the Companies, each representing varied and diverse customer interests – all with the guidance provided by Commission Staff. In the end, all parties determined that the Unanimous Settlement was fair and reasonable to their respective stakeholders.

The Attorney General, who has a statutory responsibility to represent all customers in Commission proceedings,³³ actively participated in negotiations and has approved the Unanimous Settlement. All intervenors representing various business interests in the Commonwealth, including KIUC, Wal-Mart, Kroger, and JBS Swift, have approved the Unanimous Settlement. Those intervenors representing the interests of low-income individuals, CAC, MHC, and ACM, have approved the settlement as fair to the groups they serve. Intervenors representing the unique interests of municipalities and local governments, KLC, Louisville Metro, and LFUCG, have all approved the settlement. KSBA has participated and approved the settlement on behalf of the public schools it serves. The Sierra Club, representing the interests of conservation and energy efficiency, has approved the settlement. So too has the

³³ KRS 367.150(8).

Department of Defense, representing its interests and those of all federal executive agencies, and AT&T and KCTA, representing the interests of telecommunications companies seeking to add infrastructure to the Companies' utility poles. That the terms of the Unanimous Settlement serve all of these disparate interests is a strong testament to the consideration given to it and, ultimately, its reasonableness.

Approval of the Unanimous Settlement as submitted also promotes the longstanding public policy encouraging compromises of disputes.³⁴ "It is a universal rule that compromises between individuals of their contentions affecting their legal rights are favored by the law."³⁵ In doing so, the Commission independently evaluates proposed settlements when determining the outcome of a particular case.³⁶ The Companies respectfully request the Commission to apply the same standard here, to recognize the value of the current settlement and approve it as submitted.

³⁴ The Commission has long recognized the value of settled outcomes to complex disputes. *See, e.g., 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 (Dec. 15, 2011), at 22 and *In the Matter of: Application of Louisville Gas & Electric Company for Certificates of Public Convenience and Necessity and Approval of Its 2011 Compliance Plan for Recovery by Environmental Surcharge*, Case No. 2011-00162, Order (Dec. 15, 2011), at 17 ("The Commission is very encouraged by the scope and breadth of the terms of the Settlement Agreement and we compliment the parties to this matter on the results they were able to achieve."); *In the Matter of: Joint Application of PPL Corporation, E.ON AG, E.ON US Investments Corp., E.ON U.S. LLC, Louisville Gas and Electric Company, and Kentucky Utilities Company for Approval of an Acquisition of Ownership and Control of Utilities*, Case No. 2010-00204, Order (Sep. 30, 2010), at 10 ("The Commission has thoroughly reviewed the Settlement Agreement and finds that it truly does represent diverse interests and divergent points of view, as stated in the agreement. We are very encouraged by the scope and breadth of the terms of the Settlement Agreement and wish to compliment the Applicants and intervenors on the results they were able to achieve."); *In the Matter of: Joint Application of Duke Energy Corporation, Cinergy Corp., Duke Energy Ohio, Inc., Duke Energy Kentucky, Inc., Diamond Acquisition Corporation, and Progress Energy, Inc., for Approval of the Indirect Transfer of Control of Duke Energy Kentucky, Inc.*, Case No. 2011-00124, Order (Aug. 2, 2011), at 7 ("The Commission has thoroughly reviewed the Settlement Agreement and we compliment the Applicants and the AG on the results they achieved.").

³⁵ *Lincoln-Income Life Ins. Co. v. Kraus*, 132 S.W.2d 318, 320 (Ky. 1939).

³⁶ *See, e.g., In the Matter of: Application of Kentucky Utilities Company for an Adjustment of Its Electric Rates*, Case No. 2012-00221, Order (Dec. 20, 2012), at 7 ("Our analysis indicates that a reasonable range for KU's ROE is 9.6 percent to 10.6 percent, with a mid-point of 10.1 percent. The 10.25 percent ROE agreed upon by the parties to the Settlement falls within this ROE range."); *In the Matter of: Application of Louisville Gas and Electric Company for an Adjustment of Its Electric and Gas Rates, a Certificate of Public Convenience and Necessity, Approval of Ownership of Gas Service Lines and Risers, and a Gas Line Surcharge*, Case No. 2012-00222, Order (Dec. 20, 2012), at 9 ("Our analysis indicates that a reasonable range for LG&E's ROE is 9.6 percent to 10.6 percent, with a mid-point of 10.1 percent. The 10.25 percent ROE agreed upon by the parties to the Settlement falls within this ROE range."); *See also, In the Matter of: An Adjustment of the Gas and Electric Rates, Terms, and Conditions of*

The consideration given for the Unanimous Settlement by the Companies encompasses not only what was expressly set forth in the settlement, but also those portions of the Companies' requests left unmodified by the Unanimous Settlement.³⁷ That includes, but is not limited to, the capital projects and spending contemplated in the Companies' business plans (e.g., the transmission upgrades and the extension of LG&E's gas distribution system in Bullitt County), the Companies' request for a CPCN for the Distribution Automation project, and the balance of the Companies' cost of providing service, including existing and planned methods and levels of compensation and benefits to their employees. The agreement of all intervenors to recommend approval of the remaining portions of the Companies' applications, in addition to the stipulated provisions reflected in the Unanimous Settlement, was a material inducement for the Companies to agree to the Unanimous Settlement and was the foundation upon which the negotiated terms were built.

The Commission should approve the Unanimous Settlement as submitted because of the care and consideration taken to ensure that its terms were transparent and could be independently evaluated by the Commission, and because the process used to arrive at the settlement was fully transparent. Approval of the Unanimous Settlement also serves the longstanding policy of encouraging settlement of disputes. It should be approved because the consideration the Companies gave in exchange for the concessions in it is significant. It should also be approved because the Commission can independently verify based on the record its reasonableness. But

Louisville Gas and Electric Company, Case No. 2003-00433, Order (June 30, 2004), at 69; *In the Matter of: An Adjustment of the Electric Rates, Terms, and Conditions of Kentucky Utilities Company*, Case No. 2003-00434, Order at 60 (June 30, 2004); Case No. 2008-00251, Order (Feb. 5, 2009), at 9-10; Case No. 2008-00252, Order at 10 (Feb. 5, 2009); *In the Matter of: Application of Kentucky Utilities Company for an Adjustment of Base Rates*, Case No. 2009-00548, Order (July 30, 2010), at 33; *In the Matter of: Application of Louisville Gas and Electric Company for an Adjustment of Electric and Gas Base Rates*, Case No. 2009-00549, Order (July 30, 2010), at 35; Case No. 2014-00371, Order (June 30, 2015), at 7; Case No. 2014-00372, Order (June 30, 2015), at 7-8.

³⁷ First Stipulation, Section 5.8 ([E]xcept as modified in this Stipulation and the exhibits attached hereto, the rates, terms and conditions contained in the Utilities' filings in these Rate Proceedings, as well as the Companies' requests for CPCNs for their proposed Distribution Automation project, should be approved as filed.).

above all else, the Commission should approve the Unanimous Settlement because it is a fair, just, and reasonable outcome of these proceedings.

B. Cost Recovery for Benefits offered to the Companies' employees should not be disallowed by the Commission

One week before the hearing, Commission Staff issued its Sixth Request for Information to the Companies. The focus of those discovery requests was the cost to the Companies and their employees of certain welfare benefits (health, dental, life, and disability insurance) and retirement benefits. The Companies filed their responses three days later and the May 9, 2017 hearing began just two business days later. At the hearing, there was a continued examination on the same welfare and retirement benefits. Based on the content of the discovery requests, questions at the hearing and post-hearing data requests, the Commission appears to suggest that: (1) based on data from the Bureau of Labor Statistics ("BLS"), utility employees should pay 21 percent of the cost for single health care and dental coverage and 32 percent for family health care and dental coverage; (2) utilities should not pay for any long term disability coverage for their employees; (3) utilities should provide a maximum \$50,000 of life insurance coverage for their employees; and (4) retirement benefits being offered to some utility employees are excessive.³⁸

Despite the fact that the Companies' applications had been pending since November 2016 and they had already responded to an unprecedented level of discovery, the Sixth Request for Information was the first time the Companies were made aware that there may be a specific concern with the level of certain benefits offered to their employees, a concern that was

³⁸ As discussed in detail in Section IV. B. 3. of this brief, the BLS data is not trustworthy evidence, which the Bureau of Labor admits on its website where it states: "[a]lthough NCS [National Compensation Survey] compensation measures have many uses, their limitations must be kept in mind. The data are subject to sampling error, which may cause deviations from the results that would be obtained if the actual records of all establishments could be used. Nonsampling error is present in surveys as well."

confirmed on the first day of the hearing during cross-examination. In fact, early in the case, the Companies provided a listing of all the benchmarking studies the Companies rely upon in making compensation and benefits decisions in response to a Commission Staff data request.³⁹ The Companies offered to make those studies available for review if desired, but no one asked for such review. Additionally, no intervenor proposed a disallowance of any of the benefits in question and the Unanimous Settlement recommends full approval of the proposed benefits levels.⁴⁰ The Companies would have reconsidered many of the components of the Unanimous Settlement, or the overall agreement itself, had they been aware of the Commission's concern with benefits levels or of a possible disallowance of the recovery of those benefits.

As set forth in more detail below, the benefits offered to employees have been made available for years with the Commission's full knowledge and at least implicit approval via the Companies' historic rate cases in which those benefits have never been disallowed in whole or in part. The Commission has correctly deferred to the Companies' sound business judgment, subject to the overall reasonableness of the costs, in offering the levels of benefits they do so that they can treat their employees fairly, attract and retain an adequate work force, minimize turnover, and, most importantly, have these employees provide safe and reliable service to customers at a reasonable cost. There is no basis for departure from the longstanding approval of these sound business practices here.

1. The benefits the Companies provide to their employees are a critical contributor to the Companies' demonstrated operational excellence and are market competitive

Although a rate case necessarily requires a detailed scrutiny of a utility's operations and expenses, there remains the broader focus on reliable and safe service. Uncontroverted metrics

³⁹ PSC 1-35 in both cases.

⁴⁰ First Stipulation, Section 5.8.

prove that the Companies are delivering both.⁴¹ What is remarkable, however, is that the Companies provide this service while having among the *lowest* operation and maintenance expense per megawatt hour in the *country* based on information contained in FERC filings from 2011 to 2015.⁴²

The impact of these accomplishments on the Companies' customers cannot be understated: *the Companies' Kentucky ratepayers are receiving above-average service at below-average costs.* Mr. Blake testified at the hearing that the main catalyst for this phenomenon is the Companies' employees.⁴³ If not for the skilled performance in demanding, physical, and around-the-clock conditions by employees, these successes would not be possible. Likewise, if not for attracting and retaining highly specialized employees that perform the many sophisticated tasks required to successfully and jointly operate two vertically integrated electric utilities and a gas distribution utility, these achievements are not feasible.

The Companies' overall compensation and benefits packages to employees are reasonable and competitive within the market, total costs to customers are relatively low compared to the industry, and performance is excellent. As discussed in greater detail in Section IV. B. 4. of this brief, the evidence from Mercer demonstrates the Companies' welfare benefits and retirement offerings are consistent with those offered by other utilities, Kentucky companies, and general industry.⁴⁴ There is, therefore, no reason to disallow recovery of costs attributable to any of these benefits. To do so could risk the continued delivery of above-average service at below-average costs. Any reduction in benefits resulting from cost disallowance would, at a

⁴¹ Case No. 2016-00370, Thompson Direct, at 4-6.

⁴² Case No. 2016-00370, Blake Direct, at 7-8 and Exhibit KWB-1; 5/10/17 Hearing Transcript, at 9:45; 5/10/17 Hearing Transcript, at 32.

⁴³ 5/10/17 Video Transcript, at 9:48:00; 5/10/17 Hearing Transcript, at 34-35.

⁴⁴ See LG&E and KU Responses to Post-Hearing DR Nos. 7 and 11 for the Mercer studies regarding welfare and retirement benefit benchmarking.

minimum, negatively harm employee morale and recruitment efforts. The maximum adverse effect is unknown, but could result in the loss of valued, hard-to-replace employees.⁴⁵

The Companies are proud to not have had a work stoppage or strike in many years.⁴⁶ The absence of labor disruptions in providing critical utility service is an indicator of the Companies' business judgment and fairness in the collective bargaining process. The stakes of a labor disruption for a public utility are much higher than in other industries in the sense that lives and businesses depend on continuously available utility service. In addition to the absence of labor disruptions, the Companies' manageable turnover⁴⁷ and excellent performance results⁴⁸ are evidence of a well-run business and are not indicative of benefit offerings being excessive.

2. The Companies' management has exercised appropriate judgment in determining the proper level of benefits provided to employees

The Commission should presume the exercise of good faith in the Companies' judgment when evaluating the level of benefits offered to employees.⁴⁹ Decisions on the level of compensation and benefits provided to employees are inherently dependent on managerial experience, knowledge, and discretion. Indeed, few areas within the Companies are as closely connected to the business judgment of their managers than employee compensation and benefits. Such decisions require intimate knowledge of the Companies' operations, industry trends,

⁴⁵ See the Companies' responses to Staff's Fourth Request for Information, Question 1 ("As for benefits, LG&E and KU Energy provides an array of benefits designed to attract, retain and develop a diverse and high-caliber workforce."); 5/10/17 Video Transcript, at 10:15:00; 5/10/17 Hearing Transcript, at 56.

⁴⁶ 5/9/17 Video Transcript at 3:33:00; 5/10/17 Hearing Transcript, at 99-100.

⁴⁷ See Case No. 2016-00370, KU Response to PSC Post Hearing DR, No. 17

⁴⁸ See Exhibit KWB-1 to Blake Direct.

⁴⁹ See, e.g., *West Ohio Gas Co. v. Public Utilities Comm'n of Ohio*, 294 U.S. 63, 72 (1935) ("Good faith is presumed on the part of the managers of a business. In the absence of a showing of inefficiency or improvidence, a court will not substitute its judgment for theirs as to the measure of a prudent outlay."); *Union Carbide Corp. v. Public Serv. Comm'n*, 428 N.W.2d 322, 328 (Mich. 1988) ("The power to fix and regulate rates, however, does not carry with it, either explicitly or by necessary implication, the power to make management decisions."); *Public Serv. Comm'n v. Ely Light & Power Co.*, 393 P.2d 305, 311 (Nev. 1964) (internal citation omitted) ("It is the commission's duty to regulate rates but not to manage the utility's business."); *Georgia Power Co. v. Georgia Public Serv. Comm'n*, 85 S.E.2d 14, 19 (Ga. 1954) (internal citations omitted) ("The Commissioners are not the managers of this company, but their function is to regulate and disapprove any dishonest or clearly inefficient conduct and practice by the utility. Public regulation must not supplant private management.").

employee demographics, union circumstances, and the labor market. These thoughtful decisions play an important part in driving employee performance toward achieving the Companies' goals to the ultimate benefit of the customer. When the Commission's power to regulate intersects with the exercise of managerial discretion, as in the case of determining the level of employee benefits, a regulated utility's business judgment should not be disturbed unless it is demonstrated by affirmative evidence of probative value that the utility's actions are *unreasonable*.⁵⁰

The Commission has consistently recognized the near century-old legal principle that a utility's management decisions are presumed to be reasonable.⁵¹ The presumption of reasonableness operates unless it can be shown by record evidence that management has acted *unreasonably*, inefficiently, or has abused its discretion.⁵² Where no record evidence challenges the presumption of reasonableness of a particular expense, that expense should not be disallowed by the Commission.⁵³ It is well established under Kentucky law that an administrative agency's decision can pass judicial review only if the determination has a residuum or a sufficient amount of competent evidence which by itself is legally sufficient to support the findings.⁵⁴

Here, as set forth in detail throughout this brief, there is not a residuum of evidence, and in fact there is *no* evidence of record, which demonstrates that the Companies' management has

⁵⁰ *Ely Light & Power*, 393 P.2d at 323.

⁵¹ See, e.g., *In the Matter of: Application of Water Service Corp. of Kentucky for an Adjustment of Rates*, Case No. 2010-00476, Order (Nov. 23, 2011), at 11; *In the Matter of: Proposed Adjustment of the Wholesale Water Service Rates of the City of Pikeville*, Case No. 2002-00022, Order (Oct. 18, 2002), at 9.; *In the Matter of: City of Newport v. Campbell County Kentucky Water District and Kenton County Water District No. 1*, Case No. 89-014, Order (Jan. 31, 1990), at 6; *In the Matter of National-Southwire Aluminum Company v. Big Rivers Electric Corp. et al*, Case No. 89-375, Order (Jan. 31, 1990), at 5-6.

⁵² *In the Matter of: An Examination by the Public Service Commission of the Application of the Fuel Adjustment Clause of Kentucky Utilities Company from May 1, 2001 to October 31, 2001*, Case No. 2000-00494-B, Order (Jan. 28, 2003), at 10.

⁵³ C.f. *In the Matter of: Proposed Adjustment of the Wholesale Service Rates of Hopkinsville Water Environment Authority*, Case No. 2009-00373, Order (Aug. 9, 2010), at 2 (citing *West Ohio Gas*, 294 U.S. at 72) ("As a utility's operating expenses are presumed to be reasonable and the record contains no evidence to challenge this presumption, our determination is based upon [the utility's] actual operating expenses during the test period.").

⁵⁴ *Big Sandy Community Action Program v. Chaffins*, 502 S.W.2d 526, 530 (Ky. 1973); *Drummond v. Todd County Bd. of Educ.*, 349 S.W.3d 316, 321 (Ky. App. 2011).

acted unreasonably or has abused its discretion in offering certain levels of medical, dental, long-term disability, life insurance, and retirement benefits to its employees. No intervenor questioned these expenses or put forth any proof that they were in any way unreasonable. In the absence of any such evidence, the presumption that the Companies' management has acted reasonably in providing benefits to their employees has not been rebutted and the judgment of the Companies' management must not be disturbed. The Companies have shown that they regularly review marketplace information regarding benefits, track union contracts for evolution of benefits being offered, and consider cost to customers in making benefits decisions.⁵⁵ Additionally, they have not observed results one would expect to see if benefits were too rich,⁵⁶ and they adjust benefits in a timely manner when it is prudent to do so in accordance with commitments made to employees.⁵⁷

In summary, the record provides a sound basis for the reasonable approach the Companies take in setting benefits made available to employees and that approach was confirmed by Mercer as producing results consistent with the marketplace. The Commission should not substitute its judgment for that reasonable approach, particularly where there is no evidence of record that the Companies' judgment on benefits offered to their employees is unreasonable or constitutes an abuse of discretion.

3. The Companies were not adequately notified that BLS data could be used as a basis for reducing cost recovery for the Companies' benefits to employees, and use of such data, which is not competent evidence, would violate the Companies' due process rights

Until a week before the hearing – specifically upon receipt of the Commission's Sixth Set of Data Requests on May 2, 2017 – the Companies had no notice that BLS data could be

⁵⁵ 5/9/17 Video Transcript, at 3:07; 5/9/17 Hearing Transcript, at 83.

⁵⁶ 5/10/17 Video Transcript, at 9:56; 5/10/17 Hearing Transcript, at 40.

⁵⁷ LG&E and KU Responses to Commission Staff Post-Hearing Data Request 7-17; 5/10/17 Video Transcript, at 9:58; 5/10/17 Hearing Transcript, at 42.

possibly used as a basis for modifying the level of cost recovery for costs attributable to benefits offered to employees. The Companies acknowledge that in a recent rate case filing by Kenergy, the Commission signaled its intention to more closely scrutinize labor and benefits expenses as a general proposition.⁵⁸ As a result, the Companies filed with their applications the salary and benefits information highlighted in the *Kenergy* Order. However, the Commission's specific views concerning the appropriate level of employee benefits and related premium cost-sharing based on BLS data were not communicated in any of the Commission's first five sets of data requests, nor were these specific issues raised by any of the intervenors, either in testimony, data requests or in settlement negotiations.⁵⁹ Had the claim based on the BLS data been raised earlier, the Companies would have had the opportunity to develop proof regarding the reliability of that data and why it is inappropriate for use as the single data point in setting the Companies' benefits.

Neither the BLS tables nor the information contained therein are competent or trustworthy evidence, and therefore they should not be considered in determining whether the employer cost and level of particular benefits provided to the Companies' employees are reasonable. First, the BLS has disclaimed the trustworthiness of its own data, noting that "[a]lthough NCS [National Compensation Survey] compensation measures have many uses, their limitations must be kept in mind. The data are subject to sampling error, which may cause

⁵⁸ *In the Matter of: Application of Kenergy Corp. for a General Adjustment in Rates*, Case No. 2015-00312, Order (Sept. 15, 2016), at 14-15 ("Recognizing growing concerns over compensation levels with increasing electric bills, the Commission believes that employee compensation and benefits need to be more sufficiently researched and studied. The Commission will begin placing more emphasis on evaluating salary and benefits as they relate to competitiveness in a broad marketplace. Future rate applications will be required to include a salary and benefits survey that is not limited exclusively to electric cooperatives, electric utilities, or other regulated utility companies. The study must include local wage and benefit information for the geographic area where the utility operates and must include state data where available.") Notably, on page 14 of Order, the Commission also stated: "The Commission shares the AG's concern regarding Kenergy's compensation of employees and the benefits package available to Kenergy employees. However, there is no basis in the record of this case to justify a determination that Kenergy's wage increases and benefits package are not reasonable.")

⁵⁹ Although the Commission Staff's Fourth Request for Information sought information related to welfare and retirement benefits, there was no indication that BLS data would be a guide for setting the levels of those benefits.

deviations from the results that would be obtained if the actual records of all establishments could be used. Nonsampling error is present in surveys as well.”⁶⁰ In addition, the data in the BLS tables should not be considered competent because it is classically double hearsay, insofar as the data represents reports by surveyed employers that is aggregated by the Department of Labor. And as evidence in the form of double hearsay, it cannot be considered in these proceedings as proof of the truth or accuracy of the BLS data.⁶¹ No exception applies to save this double hearsay. The hearsay exception for public records and reports does not apply because, as set forth above, there are “circumstances indicat[ing] lack of trustworthiness” of these records.⁶²

Likewise, there are no indicia of trustworthiness of this data that would except it from the hearsay exclusion on the basis that it constitutes “factual findings resulting from an investigation made pursuant to authority granted by law.”⁶³ For example, there is no custodian or expert proffering this data who can testify to the process used in generating the reports, the assumptions made, the sampling methodology, its accuracy, or its applicability to the Companies’ benefit determinations. Instead, the information from BLS tables was introduced into the proceedings by the Commission itself to establish alleged median benchmarks for benefits offered to employees nationwide. In the absence of any evidence reflecting on the trustworthiness of the BLS data and in light of the BLS’s own stated limitations regarding its use, the data is hearsay and should not be considered.

⁶⁰ Bureau of Labor Statistics Handbook of Methods, Ch. 8, National Compensation Measures, available at: <https://www.bls.gov/opub/hom/pdf/homch8.pdf>, p. 18.

⁶¹ See KRE 801; 802. The Companies recognize that the Commission is not bound by the Kentucky Rules of Evidence pursuant to KRS 278.310. However, the Commission has recognized that it may look to the rules of evidence as advisory in nature. *In the Matter of: Petition of Windstream Kentucky East, LLC for Arbitration of an Interconnection Agreement with New Cingular Wireless PCS, LLC d/b/a AT&T Mobility*, Case No. 2009-00246, Order (Nov. 24, 2009), at 7. The hearsay rules contained within the Kentucky Rules of Evidence serve as persuasive authority on the competency of the BLS tables here.

⁶² KRE 803(8).

⁶³ KRE 803(8).

For the same reasons, data from BLS tables is not the type of information for which the Commission may take administrative notice. In a recent case, the Commission noted that it was not subject to KRS 13B.090(5), which authorizes administrative agencies to “take official notice of facts which are not in dispute, or of generally-recognized technical or scientific facts within the agency’s specialized knowledge.”⁶⁴ However, the Commission has on occasion taken administrative notice of certain basic facts, for example, the identity of the corporate parent of an applicant⁶⁵ or that a large snowstorm occurred on a certain date and caused outages among utility customers.⁶⁶

Information in BLS tables containing aggregated statistics for employee benefits is not of the same character as information which has been previously recognized by the Commission as subject to administrative notice. As set forth above, the accuracy and reliability of the BLS information is not beyond question, nor is it a matter of generally-recognized fact among the public. In fact, there are serious questions about the trustworthiness of BLS data, and therefore, taking administrative notice of the BLS data violates a fundamental due process right of the Companies. The Commission itself recognized this problem in a proceeding involving Kenergy Corporation. There, the Commission refused KIUC’s request to take administrative notice of testimony in another regulatory proceeding regarding the forecasted price of aluminum.⁶⁷ In so ruling, the Commission stated:

KIUC has not shown that those forecasted aluminum prices are accurate and not in dispute. Taking administrative notice as requested by KIUC would violate the

⁶⁴ *In the Matter of: Joint Application of Kenergy Corp. and Big Rivers Electric Corporation for Approval of Contracts and for a Declaratory Order*, Case No. 2013-00221, Order (Aug. 14, 2013), at 25.

⁶⁵ *In the Matter of: Application of Duke Energy Kentucky, Inc. to Amend its Demand-Side Management Programs*, Case No. 2015-00277, Order (Feb. 12, 2016), at 1, fn 1.

⁶⁶ *In the Matter of: Licking Valley Rural Electric Cooperative Corporation; Alleged Failure to Comply with 807 KAR 5:006, Section 26*, Case No. 2010-00226, Order (Jul. 7, 2010), at 2.

⁶⁷ Case No. 2013-00221, Order (August 14, 2013), at 25-26.

procedural due process rights of the other parties to this case by denying them an opportunity to cross-examine the forecast set forth in the proffered testimony.⁶⁸

Here, any reliance on BLS information in these cases would be done without the support of any expert who could lay the foundation for its accuracy or its applicability to the Companies' benefits, and is therefore improper. And, as discussed above, BLS has disclaimed the trustworthiness of its own data. There are dozens of variables that affect the reliability of the sampling performed to obtain these results, all of which are wholly unknown to the Commission and the parties in these cases. As such, the BLS statistics are not manifestly reliable and are not appropriately subject to administrative notice.

Finally and more fundamentally, the *Kenergy* case cited above notes that consideration of evidence that is not inherently reliable and upon which no party had the right to cross-examine amounts to a denial of due process. This principle is well established under federal and Kentucky law:

A party is entitled, of course, to know the issues on which decision will turn and to be apprised of the factual material on which the agency relies for decision so that he may rebut it. Indeed, the Due Process Clause forbids any agency to use evidence in a way that forecloses an opportunity to offer a contrary presentation.⁶⁹

Here, introduction of the BLS statistics as the final authority on the reasonableness of benefits, with no prior notice or opportunity to examine or dispute the reliability or applicability of such statistics, amounts to a violation of the Companies' due process rights. They had no opportunity to test the reliability of these statistics at the hearing or in preparing their respective cases for hearing. Accordingly, these statistics may not be used as evidence for supporting a determination disallowing the cost of any of the Companies' employee benefits.

⁶⁸ *Id.*

⁶⁹ *Utility Reg. Comm'n v. Kentucky Water Serv. Co.*, 642 S.W.2d 591, 593 (Ky. App. 1982) (quoting *Ohio Bell Telephone Co. v. Pub. Utilities Comm'n*, 301 U.S. 292 (1937)).

4. Benefits offered by the Companies are Reasonable and Market Competitive

The record confirms that the holistic process the Companies use in setting benefits has been successful in ensuring that the employee benefits offered are consistent with the competitive marketplace. In responding to post hearing data requests, the Companies provided studies prepared by their employee benefits consultant, Mercer.⁷⁰ Mercer provides, among many other services, global consulting services to employers emphasizing a holistic approach to benefits design. The Mercer studies show benchmarking of welfare and retirement benefits based on benefits provided by more than 1,000 other employers in Mercer's proprietary benefits databases.

The Mercer study on welfare benefits shows the following: (1) the Companies' employees pay a greater percentage of premium amounts for medical benefits than employees of other utilities, Kentucky companies, and the general industry, and the Companies' dental benefits are generally aligned with the percentages in the Mercer study; (2) all of the entities in Mercer's database offer employer-provided long-term disability benefits and only a small fraction (7 percent of utilities, 0 percent of Kentucky companies, and 8 percent of general industry companies) require employees to share in the cost of that coverage through contributions to premiums; and, (3) nearly all utilities (95 percent), all Kentucky companies, and nearly all general industry (99 percent) offer life insurance and none of them require employees to contribute any payment towards the cost of such insurance – and the Companies offer less than the median maximum benchmarked coverage level. Thus, the Companies' welfare benefits offerings are consistent with other utilities, Kentucky companies, and general industry.

⁷⁰ LG&E and KU Responses to Post-Hearing DR Nos. 7 and 11 for the Mercer studies regarding welfare and retirement benefit benchmarking.

The Mercer study regarding retirement benefits also shows that the Companies are consistent with the marketplace. For utilities, Kentucky companies, and general industry whose employees are accruing benefits in a closed or active defined benefit pension plan (the Companies' pension plan is closed), nearly all of them (98 percent, 100 percent, and 95 percent, respectively) provide a matching 401(k) contribution for those employees. The study also shows that for utilities, Kentucky companies, and general industry who have employees who participate only in a savings plan for new hires, nearly all of them (90 percent, 100 percent, and 82 percent, respectively) provide both matching and non-matching contributions on behalf of those employees. Thus, as with welfare benefits, the Companies' retirement benefits are also consistent with the other utilities, Kentucky companies, and general industry.

(a) Medical and Dental Benefits

Medical and dental benefits are provided to employees via the Companies' *self-insured* health care plan.⁷¹ The cost of those benefits (along with the cost for all other benefits) was provided in response to PSC 1-42 in both cases. The Companies have provided detailed descriptions of all employee benefits made available to employees, including medical and dental benefits.⁷² The Companies have also provided the employee premium amounts required for varying types of coverage⁷³ and have explained that the Companies' health care plan requires both coordination of benefits if a participant is covered by another group plan and co-pays.⁷⁴ The Companies have explained that their health care plan's self-insured status provides the ability to better control overall health care costs (such as the Companies' wellness efforts and lower premiums for participation in biometric screenings, for example) that would not

⁷¹ A copy of the Medical Plan was attached to PSC 1-40 in both cases.

⁷² KU AG 1-68 and LG&E AG 1-68.

⁷³ KU AG 1-70 and LG&E AG 1-70.

⁷⁴ KU AG 1-217 and LG&E AG 1-217.

necessarily exist in an insured environment.⁷⁵ This has resulted in the Companies' health care cost increases lagging behind the national average.⁷⁶

Along with their Applications, the Companies explained their process in determining health care benefit levels and the division of premium payments:

Since 2001, LG&E-KU has participated in healthcare benchmarking surveys to ensure our medical benefits are in alignment. Our survey comparisons include national and local employers as well as utilities. Adjustments are made in premiums and plan structure in order to keep benefits in line with benchmarks. Benchmark data, medical claim information and medical trend data is utilized in structuring plan offerings and medical premiums. A separate study for Mercer is attached, reflecting relevant national, local, general industry and utility benchmark data.⁷⁷

At the hearing, the Companies provided further evidence that the medical and dental benefits offered to their employees are consistent with industry trends.⁷⁸ Over time, the Companies have moved more of the cost of those benefits to employees in order to keep them market competitive.⁷⁹

In response to PSC 1-35 in both cases, which requested "all wage, compensation, and employee benefits studies, analysis, or surveys conducted since the utility's last rate case," the Companies identified 16 different compensation and benefits surveys in which they participate and utilize in setting compensation and benefits. Due to volume and the proprietary nature of those surveys, the Companies offered to make those surveys available for review at the Commission's convenience. Neither the Commission nor any other party has requested review of the surveys. As set forth above, no intervenor recommended an adjustment to the Companies' requested medical and dental benefits expense, and the Unanimous Settlement recommends full

⁷⁵ Response to Post-Hearing DR No. 7.

⁷⁶ *Id.*

⁷⁷ KU Application, LG&E Application, Filing Requirements at Tab 60 in both cases.

⁷⁸ 5/10/17 Video Transcript, at 9:50; 5/10/17 Hearing Transcript, at 35-36.

⁷⁹ *Id.*

recovery of those expenses. Thus, the record reflects that the Companies have met their burden of proof as to the reasonableness of those benefits and the Mercer study on welfare benefits described above and attached to the Companies' post-hearing data responses confirms that reasonableness.⁸⁰

(b) Retirement Benefits

For retirement benefits, the Companies provide to employees hired before January 1, 2006 participation in a defined benefit pension plan (Pension Plan) under which they receive a defined monthly benefit at retirement.⁸¹ Effective January 1, 2006, the Companies closed the Pension Plan to any employees hired on or after that date yet continued to allow accrual of benefits for those already participating in the Pension Plan. For employees hired on or after January 1, 2006, the Companies implemented the Savings Plan Retirement Income Account (RIA) which is a component of the defined contribution plan.⁸² Under the RIA, the Companies contribute defined amounts to an employee's account based on compensation and years of service.⁸³ Thus, employees receive a portion of their retirement benefit either through the Pension Plan or the RIA, depending on their hire date.

The Companies also allow all employees to choose to defer a portion of their own compensation up to certain Internal Revenue Service limits to the defined contribution plan. Whether they do so is a decision made by each individual employee. To encourage employees to save for retirement, the Companies provide a 401(k) Savings Plan Company Match program (Company Match) to all contributing employees in the defined contribution plan. The Mercer study on retirement benefits described above shows that such a matching program is highly

⁸⁰ LG&E and KU Responses to Post-Hearing DR Nos. 7 and 11 for the Mercer studies regarding welfare and retirement benefit benchmarking.

⁸¹ KU PSC 4-6; LG&E PSC 4-6.

⁸² KU PSC 4-6; LG&E PSC 4-6.

⁸³ KU PSC 4-6; LG&E PSC 4-6.

prevalent among utilities, Kentucky companies, and general industry.⁸⁴ Furthermore, the total matches provided by the Companies are generally *less* than the total percentage the Commission recently approved as reasonable in a recent case.⁸⁵ As a result, the percentage of defined contribution amounts the Companies provide are generally *less* than what the Commission approved earlier this month and the majority of the Companies' employees are receiving less than authorized in that order.⁸⁶

As to the reasonableness of the levels of the retirement benefits describe above, Mr. Blake testified as follows at the hearing:

The fact that the Company has offered a defined benefit plan as well as encouraging employees to save for their own retirement by providing a match up to a certain limit has been in effect at our Company for decades now. And I don't think we're alone in that. I think many of our competitors with which we compete for talent have done the same, whether that be the utility industry or similar industries that we draw talent from.⁸⁷

As set forth above, the results of the Mercer study fully support this conclusion with objective benchmarking data. Thus, the Companies' proof is that the level of all employee benefits, including both welfare benefits and retirement benefits, is reasonable and necessary to attract and retain a sufficient workforce. As for the retirement benefits, they are also offered so that employees are able to retire at a reasonable age should they choose. Certainly, age-appropriate retirements reduce on-the-job injury costs, health care expenses, and safety concerns.

⁸⁴ See the Companies' Response to PSC Post Hearing DR No. 11 for the Mercer study regarding retirement benefit benchmarking.

⁸⁵ In that case, the Commission approved a flat 6 percent non-matching contribution made by the employer which is similar in concept and design to the 3 - 7 percent RIA Annual Contributions the Companies make. The Commission also approved a 4 percent matching contribution made by the employer which is similar in concept and design to the Company Match. In total, the Commission approved a 10 percent defined contribution by the employer. *See In the Matter of: Application of Farmers Rural Electric Cooperative Corporation for an Increase in Retail Rates*, Case No. 2016-00365, Order (May 12, 2017) ("*Farmers RECC*"). For the Companies, the total defined contribution (when combining RIA Annual Contribution and Company Match) ranges from 7.2 percent to 11.2 percent

⁸⁶ *Farmers RECC*, Case No. 2016-00365, Order (May 12, 2017).

⁸⁷ 5/10/17 Video Transcript, at 9:52; 5/10/17 Hearing Transcript, at 37.

As Mr. Blake testified, the 401(k) matching contributions have been made for years with the Commission's knowledge and approval and, based on that, some 3600 employees and their families have planned their retirements based on those benefits. In Case No. 2003-00434, the Commission's Order⁸⁸ specifically recognized and approved the requested level of 401(k) Company Match. Likewise, in all recent rate cases, the Companies included as one of their filing requirements their FERC Form 1s which disclose the 401(k) Company Match amounts.⁸⁹ Both Companies have done so since at least their 2003 rate cases.⁹⁰ The 401(k) Company Match has also been disclosed in response to data requests.⁹¹

It is clear that the Commission has known about the 401(k) Company Match for years and has, at least implicitly, approved it in setting rates that included that expense. The Companies have relied on those approvals and have continued to make the 401(k) Company

⁸⁸ *In the Matter of: An Adjustment of the Electric Rates, Terms, and Conditions of Kentucky Utilities Company*, Case No. 2003-00434, Order (June 30, 2004), at 31.

⁸⁹ For example, in the Companies' 2014 rate cases, the Companies provided their FERC Form 1, which stated, "Substantially all employees of KU are eligible to participate in a 401(k) deferred savings plan. Employer contributions to the plans were \$6 million for the years ended December 31, 2013 and 2012." LG&E has made similar disclosures in its minimum filing requirements.

⁹⁰ *In the Matter of: An Adjustment of the Gas and Electric Rates, Terms, and Conditions of Louisville Gas and Electric Company*, Case No. 2003-00433, Filing Requirement 807 KAR 5:001 Section 10(6)(l) (Ky. Pub. Serv. Comm'n Dec. 29, 2003); *KU Case No. 2003-00434, Filing Requirement 807 KAR 5:001 Section 10(6)(m)* (Ky. Pub. Serv. Comm'n Dec. 29, 2003); *In the Matter of: Application of Kentucky Utilities Company for an Adjustment of Base Rates*, Case No. 2008-00251, Filing Requirement 807 KAR 5:001 Section 10(6)(l) (Ky. Pub. Serv. Comm'n July 29, 2008); *In the Matter of: Application of Louisville Gas and Electric Company for an Adjustment of its Electric and Gas Base Rates*, Case No. 2008-00252, Filing Requirement 807 KAR 5:001 Section 10(6)(l) (Ky. Pub. Serv. Comm'n July 29, 2008); *In the Matter of: Application of Kentucky Utilities Company for an Adjustment of Base Rates*, Case No. 2009-00548, Filing Requirement 807 KAR 5:001 Section 10(6)(l) (Ky. Pub. Serv. Comm'n Jan. 29, 2009); *In the Matter of: Application of Louisville Gas and Electric Company for an Adjustment of its Electric and Gas Base Rates*, Case No. 2009-00549, Filing Requirement 807 KAR 5:001 Section 10(6)(l) (Ky. Pub. Serv. Comm'n Jan. 29, 2009); *In the Matter of: Application of Kentucky Utilities Company for an Adjustment of its Electric Rates*, Case No. 2012-00221, Filing Requirement 807 KAR 5:001 Section 10(6)(l) (Ky. Pub. Serv. Comm'n June 29, 2012); *In the Matter of: Application of Louisville Gas and Electric Company for an Adjustment of its Electric and Gas Rates, a Certificate of Public Convenience and Necessity, Approval of Ownership of Gas Lines and Risers, and a Gas Line Surcharge*, Case No. 2012-00222, Filing Requirement 807 KAR 5:001 Section 10(6)(m) (Ky. Pub. Serv. Comm'n June 29, 2012); *In the Matter of: Application of Kentucky Utilities Company for an Adjustment of its Electric Rates*, Case No. 2014-00371, Filing Requirement 807 KAR 5:001 Section 16(7)(i) (Ky. Pub. Serv. Comm'n Nov. 26, 2014); *In the Matter of: Application of Louisville Gas and Electric Company for an Adjustment of its Electric and Gas Rates*, Case No. 2014-00372, Filing Requirement 807 KAR 5:001 Section 16(7)(i) (Ky. Pub. Serv. Comm'n Nov. 26, 2014)

⁹¹ See Case No. 2008-00251, KU's response to PSC 1-50.

Match available to 3600 employees to date. As Mr. Blake testified at the hearing as to the gravity of disallowing retirement benefits:

We don't make changes to our retirement plans abruptly, on a whim. So we would have to be very thoughtful about that implied contract that we have with our existing employees. We would be concerned about massive turnover, adverse impacts on operations, and our ability to run the Company as effectively as we have in the past.⁹²

(c) Life and Long Term Disability Insurance Benefits

The Companies provide to their employees certain life and long term disability coverage. As with health care benefits, the Companies rely on benchmark information in calibrating the levels of life and long term disability benefits on a regular basis. The Mercer study regarding welfare benefits, again, confirms that the Companies' life and disability benefits are perfectly consistent with the marketplace.⁹³ The Companies have provided descriptions of these coverages at several places in the record.⁹⁴ The cost of those benefits was provided in response to PSC 1-42. Employees are not required to contribute to the costs of these coverages.⁹⁵ For life insurance, the Companies provide two times the annual base salary up to a maximum of \$150,000 for LG&E bargaining unit employees and two times the annual base salary up to a maximum of \$300,000 for all other LG&E and KU employees.⁹⁶ For the current workforce, the median amount of coverage is \$150,000 for the non-bargaining unit employees.⁹⁷ For long term disability insurance, disabled employees may receive the equivalent of 60 percent of base

⁹² 5/10/17 Video Transcript, at 10:15; 5/10/17 Hearing Transcript, at 56.

⁹³ LG&E and KU Responses to Post-Hearing DR Nos. 7 and 11 for the Mercer studies regarding welfare and retirement benefit benchmarking.

⁹⁴ PSC 4-1, New Hire Enrollment Guide, p. 18; KU AG 1-68 and LG&E AG 1-68; and PSC 6-1.

⁹⁵ PSC 6-1(e-f).

⁹⁶ PSC 6-1(g); PSC 4-1, New Hire Enrollment Guide, p. 18.

⁹⁷ PSC 6-1(g).

monthly rate of pay with reductions being made for receipt of benefits from other sources.⁹⁸ At the hearing, Mr. Meiman explained why the Companies offer life and disability coverage:

The fact that we are a utility and the folks are dealing with . . .very dangerous situations in their normal day-to-day work, disability is one of those benefits to give them some comfort to the folks that we're asking to work 24/7, 365 days per year. Their families can have some degree of comfort that we're taking care of them in the unfortunate event something happens In HR, our job is to attract and retain the people we need.⁹⁹

At the hearing, disability coverage was discussed and questions were raised about whether it is appropriate to provide more than \$50,000 worth of life coverage. As for the level of life coverage that should be provided, the Commission recently relied on tax rules that require the inclusion of the cost of life coverage in excess of \$50,000 in the gross income of an employee.¹⁰⁰ However, the Companies respectfully submit that tax rules governing an employee's gross income have nothing to do with the more important issue – whether the entire package of compensation and benefits offered to employees is adequate to attract and retain a sufficient workforce, motivate employees, and encourage them to achieve the strong operational performance the Companies have demonstrated. The line drawn by Congress for including a benefit as income bears no relationship to whether the benefit is so generous as to be unfair to ratepayers, and in the Companies' business judgment, the levels of life coverage provided are a necessary part of achieving their operational objectives.

In sum, there is no competent evidence of record that these employee benefits are unreasonable or arbitrary. The Companies are in the best position to make determinations concerning employee benefits, balancing their need to attract a talented workforce, retain quality employees, and provide safe and reliable service to ratepayers at the lowest possible cost. The

⁹⁸ KU AG 1-68 and LG&E AG 1-68.

⁹⁹ 5/9/17 Video Transcript, at 3:08; 5/9/17 Hearing Transcript, at 83.

¹⁰⁰ 26 U.S.C. § 79.

Mercer studies prove that the Companies' welfare and retirement benefits offerings are aligned with the marketplace. The results of the Companies' performance demonstrate the value of their workforce. The Commission should not modify any of these benefits.

C. The Residential Basic Service Charges Proposed in the First Stipulation Are Reasonable in the Context of the Total Settlement and Are Supported by Evidence in the Record of these Proceedings

The proposed stepped increases to the Companies' electric residential Basic Service Charges from their current level of \$10.75 per month to \$11.50 per month beginning July 1, 2017, and then to \$12.25 per month beginning July 1, 2018, are reasonable in the context of the global settlement of all issues in these proceedings and are supported by record evidence in these proceedings.¹⁰¹ The Companies presented cost-of-service evidence in these proceedings supporting their initial request to increase their electric residential Basic Service Charges to \$22.00 per month, which evidence showed that the actual customer-specific, non-variable cost to serve each residential customer exceeded \$22.00 per month.¹⁰² None of the load-forecasting or cost-of-service issues raised by KIUC witness Baron materially affected the Companies' evidence supporting this position.¹⁰³ Witnesses for the AG and Sierra Club presented testimony supporting maintaining electric residential Basic Service Charges at their current levels,¹⁰⁴ though Mr. Seelye presented evidence that correctly applying the intervenors' approaches to calculating customer-related costs would result in increased Basic Service Charges, perhaps

¹⁰¹ First Stipulation, Section 4.3.

¹⁰² Case No. 2016-00370, Direct Testimony of Steven Seelye ("Seelye Direct KU"), Exh. WSS-2; Case No. 2016-00371, Direct Testimony of Steven Seelye ("Seelye Direct LG&E"), Exhs. WSS-2 and WSS-7.

¹⁰³ Attachments to KU Supplemental Response to Commission Staff's First Request for Information No. 53 (Mar. 28, 2017); Attachments to LG&E Supplemental Response to Commission Staff's First Request for Information No. 53 (Mar. 28, 2017).

¹⁰⁴ Case No. 2016-00371, Direct Testimony of Jonathan Wallach, at 4-16; Case No. 2016-00370, Direct Testimony of Glenn Watkins, at 51-64; Case No. 2016-00371, Direct Testimony of Glenn Watkins, at 50-63.

above the levels proposed by the Companies.¹⁰⁵ Other intervenors also stated opposition to increasing the Companies' electric residential Basic Service Charge.¹⁰⁶ In addition, as Mr. Seelye noted during his live testimony, there is a degree of customer opposition to increases in customer charges that do not vary with usage;¹⁰⁷ certainly a number of public commenters in these proceedings have expressed opposition to such an increase.¹⁰⁸ Therefore, taking into account the totality of the evidence in the record of these proceedings, as well as the ratemaking concept of rate continuity, and in the context of the global settlement of these proceedings, the two-step increase in electric residential Basic Service Charges presented in the First Stipulation is reasonable.

The increased gas residential Basic Service Charge for LG&E proposed in the First Stipulation (\$16.35) is effectively not an increase at all, but merely reflects rolling into that charge certain Gas Line Tracker cost recovery that is already collected on a per-customer basis.¹⁰⁹ LG&E's evidence supported a charge as high as \$24.05 per month,¹¹⁰ and the AG presented testimony supporting maintaining the charge at its current level (\$13.50).¹¹¹ Other intervenors also stated opposition to increasing LG&E gas residential Basic Service Charge.¹¹² Therefore, taking into account the totality of the record evidence on this issue, as well as the ratemaking concept of rate continuity, and in the context of the Unanimous Settlement reached in

¹⁰⁵ Case No. 20106-00370, Rebuttal Testimony of Steven Seelye, at 34-39; Case No. 2016-00371, Rebuttal Testimony of Steven Seelye, at 37-42.

¹⁰⁶ See, e.g., Case No. 2016-00370, Direct Testimony of Malcolm Ratchford, at 12-13; Case No. 2016-00371, Direct Testimony of Marlon Cummings, at 9 and 28; Case No. 2016-00371, Direct Testimony of Cathy Hinko, at 20.

¹⁰⁷ 5/9/17 Video Transcript, at 3:53:08; 5/9/17 Hearing Transcript, at 115.

¹⁰⁸ See, e.g., Case No. 2016-00370, Public Comment of William H. Wheeler (May 8, 2017); Case No. 2016-00371, Public Comment of Nancy Hines (May 12, 2017).

¹⁰⁹ See Case No. 2016-00371, Direct Testimony of Robert Conroy, at 61-62; Case No. 2016-00371, Direct Testimony of Christopher Garrett, at 39-43.

¹¹⁰ See Case No. 2016-00371, Direct Testimony of Steven Seelye, at 62-63.

¹¹¹ See Case No. 2016-000371, Direct Testimony of Glenn Watkins, at 80-81.

¹¹² See, e.g., Case No. 2016-00371, Direct Testimony of Marlon Cummings, at 9 and 28; Case No. 2016-00371, Direct Testimony of Cathy Hinko, at 20.

these proceedings, the proposed increase in LG&E's gas residential Basic Service Charge presented in the First Stipulation is reasonable.

D. The Companies' Load Forecasting Methodology Is Reasonable, as Is the Settled Revenue Allocation

The reasonableness of the settled revenue allocation (and therefore the proposed rates) in these proceedings depends on the reasonableness of the various cost-of-service studies in the record, which in turn depend on the reasonableness of the forecasted load data used in the various studies. The Companies believe their forecasted load data, as corrected to address a spreadsheet error and to make a minor methodological change concerning peak-load forecasting for one customer, is reasonable and reliable for cost-of-service purposes.¹¹³ Indeed, although KIUC witness Baron appeared to call into question the entirety of the Companies' load forecast during his live testimony,¹¹⁴ his Supplemental Testimony filed less than a month earlier stated the Companies' load forecasting effectively supported the reasonableness of that forecasting with respect to all rate classes but two: "[T]his methodology might be appropriate for a broadly diversified rate class with thousands or hundreds of thousands of customers (for example, the residential class), it does not work with a rate class such as FLS with a single customer or even a rate class with a relatively few very large customers like the RTS rate class."¹¹⁵

Moreover, Mr. Baron's testimony provided no alternative forecasting methodology, and provided no support for any claim of error regarding Rate RTS, focusing instead solely on the reasonableness of the projected peak load forecasted for the Companies' single Rate FLS customer.¹¹⁶ The Companies subsequently filed a discovery response and testimony

¹¹³ See, e.g., KU Supplemental Response to Commission Staff's First Request for Information No. 53 (Mar. 28, 2017); LG&E Supplemental Response to Commission Staff's First Request for Information No. 53 (Mar. 28, 2017).

¹¹⁴ 5/10/17 Video Transcript, at 10:20:08; 5/10/17 Hearing Transcript Day, at 60.

¹¹⁵ Case No. 2016-00370, Supplemental Testimony of Stephen Baron, at 6.

¹¹⁶ See *id.* at 6-8.

demonstrating the reasonableness of the forecasted peak load for the sole Rate FLS customer, showing the forecasted peak was consistent with the clear trend in the customer's historical load, and further showing that the peak about which Mr. Baron complained had no impact on KIUC's cost-of-service study or on the Companies' cost-of-service studies.¹¹⁷ Indeed, the spreadsheet error that Mr. Baron identified in the Companies' original forecasted load data, which he claimed made any cost-of-service study based upon it "not reliable," ultimately had little impact on the cost-of-service studies previously submitted.¹¹⁸ In fact, after the Companies corrected the spreadsheet error and re-ran their cost-of-service studies, as did other intervenors, the directional results of the studies did not change, and no party's revenue allocation recommendation changed materially.¹¹⁹ In short, the Companies' correct load forecast in these proceedings is reasonable, and the one error the Companies corrected ultimately had no material impact on the parties' positions and negligible impact on their cost-of-service studies.

The reasonableness of the Companies' corrected load forecast in turn supports the reliability of the results of the various cost-of-service studies filed in these proceedings. There are clear differences of opinion about which cost-of-service methodology most appropriately reflects the costs the different rate classes create and should bear, but those are methodological and philosophical differences, not concerns about execution errors in the studies themselves. The studies are therefore reliable for the Commission's consideration; they should not be

¹¹⁷ See Case No. 2016-00370, Supplemental Rebuttal Testimony of Steven Seelye; KU Response to Commission Staff's Fifth Request for Information No. 1; LG&E Response to Commission Staff's Fifth Request for Information No. 1.

¹¹⁸ Case No. 2016-00370, Direct Testimony of Stephen Baron, at 16.

¹¹⁹ See Case No. 2016-00370, Rebuttal Testimony of Steven Seelye, at 26-33; Case No. 2016-00371, Rebuttal Testimony of Steven Seelye, at 26-33; Case No. 2016-00370, Supplemental Rebuttal Testimony of Glenn Watkins, at 4-8; Case No. 2016-00371, Supplemental Rebuttal Testimony of Glenn Watkins, at 4-8; Case No. 2016-00370, Supplemental Testimony of Ronald Willhite, at 3; Case No. 2016-00371, Supplemental Testimony of Ronald Willhite, at 3; Case No. 2016-00371, Supplemental Testimony of Neal Townsend; Case No. 2016-00370, Supplemental Testimony of Gregory Tillman; Case No. 2016-00370, Supplemental Testimony of Jeffrey Pollock, at 2-4.

disregarded as Mr. Baron has asserted.¹²⁰ And the reasonableness of the settled revenue allocation, which Mr. Baron and his employer, KIUC, support, is in turn supported by the various cost-of-service studies filed in these proceedings. The Commission can therefore have great confidence in approving the settled revenue allocations and resulting rates as being supported by the record of these proceedings and as being fair, just, and reasonable in the total context of the Unanimous Settlement of these cases.

E. Pilot Rates for Schools and Sports Field Lighting

At the close of evidence in the hearing on these cases, the Commission directed certain parties, including the Companies, to brief the issue of whether Sections 4.7 and 4.11 of the First Stipulation, dealing with pilot rates for sports field lighting and public schools, respectively, violate KRS 278.035, and whether the Companies would object to expanding the scope of Section 4.11 of the First Stipulation to non-public schools. Per the Commission's request, the Companies have set forth their position on these issues in a separate brief to be filed with the Commission. In short, the Companies do not believe that either provision in the First Stipulation violates KRS Chapter 278. To the extent the Commission disagrees with respect to rates SPS and STOD, the Companies do not object to modifying the First Stipulation to allow schools not covered by KRS 160.325 to participate in the pilot rates, subject to approval without further modification of the proposed revenue-related caps and all other rates, terms, and conditions already contained in the First Stipulation.

V. CONCLUSION

The Unanimous Settlement reached by the Companies and the sixteen intervenors representing diverse interests in these cases is a fair, just, and reasonable resolution of all the issues presented herein. The Unanimous Settlement is structured in way that allows the

¹²⁰ See Case No. 2016-00370, Supplemental Testimony of Stephen Baron, at 3.

Commission to exercise its independent judgment as to each component and to fulfill its statutory duty to ensure a fair, just, and reasonable outcome to these proceedings. The parties to the Unanimous Settlement recommended to the Commission that all aspects of the Companies' case filing not specifically addressed in the stipulations, including the level of benefits provided to the Companies' employees, should be approved as filed. Those benefits are part and parcel of the agreement and the consideration given by the Companies in reaching the settlement. They are also competitive, reasonable, and selected pursuant to the sound business judgment of the Companies' management, which the Commission should not second-guess, and are otherwise fully supported by the record in these cases.

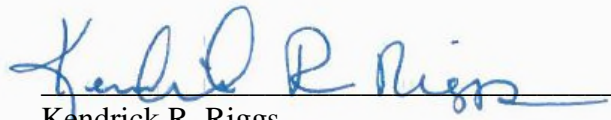
With regard to LG&E's proposed \$27.6 million, 10-12 mile Bullitt County gas pipeline project, LG&E has provided evidence fully supporting the project and believes the project does not require a CPCN because it qualifies as an "ordinary extension of [its] existing [gas distribution] system in the usual course of business." KRS 278.020(1). And in the course of the proceeding, LG&E provided the information necessary to support the award of a CPCN.¹²¹ LG&E requests the Commission determine that no CPCN is required for the Bullitt County gas pipeline project, or, in the alternative, should the Commission determine a CPCN is required, to award LG&E this authority in compliance with KRS 278.020(1) and 807 KAR 5:001, Section 15(2).

For these reasons, Kentucky Utilities Company and Louisville Gas and Electric Company ask the Commission to issue final orders by June 30, 2017, approving the Unanimous Settlement as a fair, just, and reasonable disposition of the issues in these cases without modification or condition.

¹²¹ Case No. 2017-00371, LG&E DR PSC 3-26 and LG&E DR PSC 7-14.

Dated: May 31, 2017

Respectfully submitted,



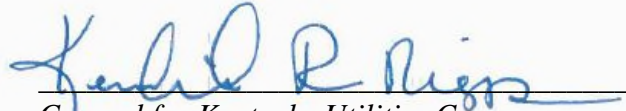
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CERTIFICATE OF COMPLIANCE

This is to certify that Kentucky Utilities Company's and Louisville Gas and Electric Company's May 31, 2017 electronic filing of their Post-Hearing Brief is a true and accurate copy of the same document being filed in paper medium; that the electronic filing has been transmitted to the Commission on May 31, 2017; that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding; and that an original and six copies, in paper medium, of the Post-Hearing Brief are being mailed by U.S. First Class Mail, postage prepaid, to the Commission on May 31, 2017.



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