COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JOINT APPLICATION OF LOUISVILLE GAS AND	**)**
ELECTRIC COMPANY AND KENTUCKY UTILITIES	**) CASE NO.**
COMPANY FOR REVIEW, MODIFICATION, AND	**) 2017-00441**
CONTINUATION OF CERTAIN EXISTNG	**)**
DEMAND-SIDE MANAGEMENT AND ENERGY-	**)**
EFFICIENCY PROGRAMS	**)**

INITIAL BRIEF OF METROPOLITAN HOUSING COALITION

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Comes Intervenor Metropolitan Housing Coalition, and in accordance with the *Order* entered by the Public Service Commission (hereinafter "Commission") revising the previously-entered procedural schedule in order to allow for additional discovery followed by two rounds of simultaneous briefs, and submits this Initial Brief in opposition to the *Electronic Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company For Review, Modification, and Continuation Of Certain Existing Demand-Side Management And Energy Efficiency Programs* (hereinafter "Joint Application"). In accordance with the May 31 Commission order, initial briefs are due June 26, 2018.

INTRODUCTION

The submittal and review of Demand-Side Management ("DSM") and Energy Efficiency ("EE") programs in Kentucky is governed by KRS 278.285. In the Joint Application, Louisville Gas and Electric Company and Kentucky Utilities ("LGE/KU") have proposed a plan for DSM and EE measures for 2019-2025 and seek approval of the plan by the Commission.

As noted in the *Joint Application, t*he Commission has "repeatedly expressed its clear policy to promote greater development and deployment of DSM-EE programs." For example, in its February 17, 2011 Final Order in Case No. 2010-00222, the Commission stated:

> The Commission believes that conservation, energy efficiency and DSM, generally, will become more important and cost-effective as there will likely be more constraints placed upon utilities whose

> main source of supply is coal-based generation.
>
> [T]he Commission believes that it is appropriate to strongly encourage Meade, and all other electric energy providers, to make greater effort to offer cost-effective DSM and other energy efficiency programs.[1]

The Commission has repeatedly stated its belief that "DSM, energy efficiency, and conservation are important now and will become more important and cost-effective in the future as more constraints are likely to be placed on utilities that rely significantly on coal-fired generation." (Case No. 2010-00204, PSC Order September 30, 13 2010, p. 14; *see also* Case No. 2010-00222, PSC Order, February 17, 2011, p. 15; Case 14 No. 2008-00408, PSC Order October 6, 2011, p. 22). More recently and more explicitly, the Commission stated "with the potential for huge increases in the costs of generation and transmission as a result of aging infrastructure, low natural gas prices, and stricter environmental requirements, we will strive to avoid taking actions that might disincent energy efficiency." Case No. 2012-00221, December 19-20, 2012, p. 11.

The Joint Application further noted that in the Order issued in the most recent LGE/KU DSM/EE case, the utilities were directed to undertake a study of the potential for savings from DSS and EE program offerings for industrial customers. *Id.* at p. 6.

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[1] *Joint Application* at pp. 5-6, quoting from *In the Matter of Application of Meade County Rural Electric Cooperative Corporation to Adjust Electric Rates*, Case No. 2010-00222, Order at 15-16 (Feb. 17, 2011).

The Joint Application proposes to continue in effect these previously-approved DSM and EE programs for residential and commercial customers:

- Low Income Weatherization Program (WeCare)
- Residential and Small Nonresidential Demand Conservation Program (formerly "Residential Load Management/Demand Conservation Program")
- Large Nonresidential Demand Conservation Program (formerly "Commercial Load Management/Demand Conservation Program")
- Nonresidential Rebates Program (formerly "Commercial Conservation/Commercial Incentive Program")
- School Energy Management Program and
- Advanced Metering Systems Customer Service Offering.

Beginning in 2019, the Joint Application proposes to offer industrial customers DSM program offerings, based on the *Energy Efficiency Industrial Potential Study ("EE Industrial Potential Study")* ordered by the Commission in the 2014 DSM/EE proceeding and undertaken by The Cadmus Group, which study indicated the potential for electricity savings representing 6.7% of baselines sales over a 20-year planning horizon. *Joint Application* at p. 6.

The Joint Application proposes to end these programs:

- Residential Conservation Program/Home Energy Performance Program
- Residential Refrigerator Removal Program
- Customer Education and Public Information Program

Joint Application at 10.

Additionally, the Joint Application noted that despite having been approved in their current form through the end of 2018, LGE/KU changed certain program offerings in advance of Commission review and approval, those being

- Revising the incentive level to $0 for the Residential Incentives Program for qualifying purchases made after March 31, 2018
- Ceasing the issuance of energy profiles under the Smart Energy Program effective April 1, 2018

Joint Application at 9.

LGE/KU ground their proposals with respect to curtailing and ending certain programs, on two studies: first, the Cadmus study *Residential and Commercial Energy and Efficiency Potential Study ""EE Residential and Commercial Potential Study"* and a second Cadmus-generated report captioned *Louisville Gas & Electric/Kentucky Utilities Company DSM Program Review ("Program Review").* *Joint Application* at p. 7.

In proposing the reductions on DSM and EE offerings, the *Joint Application* notes that it did not rely solely on the two studies, but instead "took into account" the recommendations for modifying or ending certain programs in conjunction with its own assessment of the cost-effectiveness of measures based on "achievable potential." Finally, the *Joint Application* offers the justification that "significant changes in market conditions relevant to DSM-EE programming have made it more challenging for utility-run DSM-EE programs to be cost-effective[,]" specifically identifying increased customer adoption of energy efficiency measures and declining avoided costs of energy and capacity" as justifying "a substantial reduction in the Companies' DSM-EE offerings." *Joint Application* at pp. 7-8.

As far as what constitutes "cost-effectiveness," the *Joint Application* utilized "the industry-standard cost-benefits tests set out in the California Standard Practice Manual" which the *Joint Application* asserts were mandated for use by the Commission in the April 27, 1998 Order *In the Matter of the Joint Application of the Members of the Louisville Gas And Electric Company Demand-Side Management Collaborative For The Review, Modification, and Continuation of the Collaborative, DSM Programs, and Cost Recovery Mechanism,* Case No. 1997-00083. *Joint Application* at p. 10. In prefiled direct testimony, however, the Companies noted that the California Standard Practice Manual tests are not the "only reasonable means of determining cost-effectiveness," and that other considerations can justify continuation of a program notwithstanding the failure to "pass" the limited cost-effectiveness screening tests. *See: Direct Testimony of Gregory S. Lawson,* at pp. 17-19.

Finally, the *Joint Application* exempts from any cost-benefit analysis, their "Advanced Metering Systems Customer Service Offering," relying on their interpretation of KRC 278.285(1)(h) and this Commission's Order approving the 2014 DSM/EE offerings. *Joint Application* at p. 10.

In the pages that follow, the Metropolitan Housing Coalition argues that the cost-effectiveness methodology used in the *Joint Application* is inadequate since it excludes, without rational basis, consideration of non-energy benefits, thus skewing the analysis in a manner that understates the benefits associated with DSM and EE measures. MHC seeks an Order from the Commission directing that the analyses utilized by the Joint Applicants to end or curtail DSM and EE offerings be revised in order to account for those non-energy benefits that are capable of being monetized and measured, and that once the true cost and benefits are ascertained, that the Companies be required to supplement their filing with respect to programs proposed for termination or curtailment.[2]

Additionally, MHC argues that this Commission should revisit the question of whether advanced meter systems are exempted from the statutory requirement of demonstrating that costs exceed benefits, and that the Companies should be required to demonstrate that the benefits outweigh the costs for continuation of the AMS program.

Further, MHC argues that the Commission should direct the Companies to commission a study on the distribution of the benefits of the DSM and EE programs within the residential customer class, and in particular, whether

[2] MHC does not ask that those program offerings proposed for continuation be reassessed inasmuch as the benefits were determined to outweigh the costs even using the more restrictive tests applied in this case by LGE/KU.

the array of DSM and EE offerings adequately address the specific needs of low- and fixed-income residents, including those in protected classes under the fair housing laws, and those in rental units.

Finally, MHC supports continuation of the WeCare and other DSM-EE programs, and the proposed expansion of DSM-EE offerings to industrial customers.

ARGUMENT

I. The Assessment Of Cost-Effectiveness Of DSM and EE Programs Should Include Societal Benefits And Avoided Costs

In response to a data request from the Metropolitan Housing Coalition, LGE-KU explained the justification for not including "societal" or so-called "non-energy" benefits in the calculation of whether a DSM or EE offering should be continued:

> Q-1 With respect to LG&E's assessment of the cost and benefit of the current DSM programs, and the decision to curtail continue, or eliminate individual DSM programs for residential customers,
>
> …..
>
> c. Did LG&E use the Societal Cost Test?
>
> A-1 No.

Response to Metropolitan Housing Coalition First Set of Data Requests Dated January 28, 2018 at pp. 2-3.

When asked in that same data request to "explain the basis for choosing to use the California Standard Practice Model in assessing costs and benefits of various DSM measures, the Companies responded that :

> The Commission requires the use of the Ratepayer Impact Measurement ("RIM"), Total Resource Cost ("TRC"), Participant, and Utility Cost Tests prescribed in the California Standard Practice Manual: "Any new DSM program or change to an existing DSM program shall be supported by…[t]he results of the four traditional DSM cost/benefit tests." [citation to Case 1997-00083 Order at p. 20 omitted]. The California Standard Practice Manual is the most widely recognized and utilized guidance on cost effectiveness testing across the industry.

Id., A-1j at p. 3.

When asked whether the cost-benefit analysis included the use of the "expanded externalities of the 2001 update of the California Standard Practice Model in the area of Total Resource Cost Test" the Companies responded that "no externalities were included in the cost / benefit analysis." *Id.* A-1n at p. 3. When asked whether LG&E used a "Societal Test as described in the updated California Standard Practice Manual," and if not to explain why not, the Companies responded by referencing the answer cited above to Question 1-J, and added:

> In addition, the Societal Cost Test include externalities as benefits. These "non-energy" benefits do not affect utility rates or service, and the Commission has previously declined to take such benefits into account. [citation omitted]. The Companies have previously stated that they do not believe that current law permits the Commission to account for such externalities when evaluating DSM-EE programs. [citation omitted].

Id., A-1o, p. 3.

On this basis, LG&E acknowledged that it justified the exclusion of any consideration of the effect of DSM and EE measures on avoidance of greenhouse gas emissions, noting that:

> [t]he Companies exclude GHG emission costs as a benefit in the cost-effectiveness testing because there are presently no such costs to avoid, as there is no legally binding value or price currently assigned to carbon emissions in Kentucky, and the Companies do not anticipate there will be one through 2025."

Response to Metropolitan Housing Coalition First Set of Data Requests Dated January 28, 2018 at p.13.

Similarly, when asked whether, in determining the costs and benefits of DSM and of energy-efficiency measures, LG&E considered the benefit that such measures have in reducing morbidity and mortality associated with public exposure to particulate emissions from power generation, and whether it had quantified such benefits, the Companies responded "No. Please see responses to Question Nos. 1-1(n) and (o)." *Id.* at p. 14.

The Companies' justification for selecting only part of the California Standard Practice Manual for use in determining cost-effectiveness, while selectively ignoring and excluding benefits recognized in that manual as being "non-energy" or "societal," is on shaky ground both legally and analytically.

First, there is nothing in the April 27, 1998 Order *In the Matter of the Joint Application of the Members of the Louisville Gas And Electric Company Demand-Side Management Collaborative For The Review, Modification, and Continuation of the Collaborative, DSM Programs, and Cost Recovery*

Mechanism, Case No. 1997-00083, that would preclude the consideration of so-called externalities, avoided costs, and societal benefits, such as avoided climate impacts and respiratory/pulmonary disease associated with emissions from fossil-fueled generation, and insulation of customers from fuel-price volatility due to more efficient energy use. The Commission's Order in that case did not *preclude* the application of other cost-effectiveness tests to justification of the selection or elimination of a DSM or EE measure; rather the Commission established a baseline for justification of selection of such measures *while allowing* for adoption of measures notwithstanding that the proposed measure might "fail" one or more of the four tests. The Commission ordered that:

> Any new DSM program or change to an existing DSM program shall be supported by:
>
> a. The results of the four traditional DSM cost/benefit tests. Any proposed program failing a test shall be accompanied by written documentation justifying the need for the program.

Order, Case No. 1997-00083 at pp. 20.

The Commission did not preclude consideration or adoption of a proposed program simply because it failed one of the four traditional tests; rather it contemplated that other documentation could justify the need for the program.

The Companies themselves have acknowledged in this proceeding that the justification for and approval of DSM and EE measures is not limited to the "four traditional" tests, noting that the California Standard

Practice Manual tests are not the "only reasonable means of determining cost-effectiveness," and that other considerations can justify continuation of a program notwithstanding the failure to "pass" the limited cost-effectiveness screening tests. In the *Direct Testimony of Gregory S. Lawson,* the Companies acknowledged that failure or passage of the four tests was not determinative of the cost-effectiveness of a measure, due to considerations not included in those tests:

> Why are the Companies proposing programs in the DSM-EE portfolio that do not pass the cost-benefit tests?
>
> A. The Companies are proposing to continue some programs that do not pass the cost benefit test, but are nevertheless reasonable, for reasons that are not accounted for within cost-effectiveness screening. The WeCare Program serves a need among the low-income population in the Companies' service territories. Although the WeCare Program does not pass the California cost-effectiveness tests, it serves some of the Commonwealth's most vulnerable customers and the Companies are proposing to continue administering this program. Mr. Huff provides additional testimony regarding the importance of continuing the WeCare Program.
>
> The Residential and Small Nonresidential Demand Conservation Program and the Large Nonresidential Demand Conservation Program are not currently cost-effective under the California cost-effectiveness tests because of very low avoided capacity costs. But as Mr. Huff describes in his testimony, these Demand Conservation Programs provide reliability benefits that merit their continued operation as cost-effective at the levels proposed by the Companies.

Direct Testimony of Gregory S. Lawson, at pp. 18-19.

The Companies thus acknowledge what the Commission has allowed for in the earlier Order – that the fours traditional cost tests are not the only bases on which a DSM or EE program can be justified, and that there are other "reasonable" bases for such approval notwithstanding.

Unfortunately, the Companies have been selective (and arbitrary) in their consideration of so-called "externalities," "avoided costs," and "societal benefits;" discounting them when the continuation of such programs would compete with greater utilization of their excess generation capacity, while touting such benefits and relying on them when seeking Commission approval of new capital generation projects. LG&E refuses to consider the benefits of greenhouse gas emission reduction in determining whether DSM or EE measures should be continued; claiming that such an "externality" is beyond the Commission's power to consider.

Yet in defending the proposal to construct a 10 mW solar array in the Public Service Commission Case 2014-00002 as the best and least-cost option to "meet customer needs while at the same time complying with recently enacted and anticipated air quality regulations in the most cost-effective manner," the Companies relied significantly on the ability of the projects to reduce greenhouse gas emissions and to avoid compliance costs with respect to greenhouse gas emissions. The Chief Operating Officer of Louisville Gas and Electric Company made these observations under oath to justify the approval:

> Both the Green River {Natural Gas Combined Cycle] and the Brown Solar Facility will broaden and further diversify the Companies' fuel supply sources and reduce future greenhouse gas emissions.
>
> . . . .
>
> The Companies believe it is prudent at this time to construct a facility to expand their renewable energy sources. A number of developments have enabled the Companies, for the first time, to present a feasible proposal to the Commission for a solar generation facility. The declining price of solar panels, available federal tax credits, and renewable energy certificates have helped create this opportunity.… These developments, along with the increased likelihood of carbon constraints, have created a reasonable opportunity for the Companies to add a renewable source to their generation portfolio and gain the valuable experience that will result from constructing and operating that source.

Direct Testimony of Paul W. Thompson, Chief Operating Officer, Kentucky Utilities Company and Louisville Gas and Electric Company, Case No. 2014-00002, at pp. 5, 6.

Thus, according to the sworn testimony of the COO for LG&E/KU, the possibility of carbon constraints and the reduction in future greenhouse gas emissions have tangible value that should be considered in the Commission's regulatory decisionmaking on rates and service.

Other testimony in that case indicated that expanding solar generation produced benefits:

> Given the increasing likelihood of carbon constraints, the ability to sell renewable energy credits, and the availability of federal tax credits if a solar facility is operational by the end of 2016, the Companies believe a solar facility will be a prudent fuel-diverse addition to the generation portfolio and will reduce future greenhouse gas emissions.

Id. at p. 8.

In describing the factors that led to the decision to construct the combined-cycle gas facility as well as the solar arrays, the LG&E/KU witness in charge of energy supply and analysis gave these factors as being key to the decision:

> [The] decision was reached after an extensive process that considered: (1) the Companies' load forecast and the uncertainty associated with it; (2) the impact of the Companies' demand-side management ("DSM") programs on future generation resource needs; (3) the potential for future regulation of greenhouse gas ("GHG") emissions by the U.S. Environmental Protection Agency ("EPA"); (4) the issuance and evaluation of a Request for Proposals ("RFP") for capacity and energy to replace the retired generation facilities and meet future load growth; and (5) the uncertainty associated with future natural gas prices.

Direct Testimony of David S. Sinclair, Vice President, Energy Supply and Analysis, Kentucky Utilities Company and Louisville Gas And Electric Company, Case No. 2014-00002, at p. 4.

The Companies have thus suggested that the benefits of reduction in price volatility, and of reduction in greenhouse gas emissions, have measurable value that should be considered by the Commission.

With respect to the Companies' position on the possibility of greenhouse gas regulation, Mr. Sinclair testified in that case that:

> Q. You have previously testified that regulation of CO2 was essentially "unknown and unknowable." Has your position changed?
>
> A. Somewhat. As I said, the future remains highly uncertain regarding CO2 regulation in the U.S. Many people believe that the Clean Air Act is not really suited for regulating CO2 emissions and that new legislation is needed from Congress. Given the current climate in Washington, it is hard to envision bipartisan support for GHG legislation. Second, court challenges continue related to past

> actions taken by EPA to regulate CO_2 emissions and threats of future litigation are being made should EPA press ahead on regulations for existing power stations. In this environment, much remains unknown about if, when, and how CO_2 might be regulated in the future. However, the Companies feel that enough is known that the risk of future CO_2 regulations should be part of a 30-year analysis related to the next generation resource and that a resource should be economically robust with or without future CO_2 regulations. I would add, however, that there is not enough known about the potential for CO_2 regulations to evaluate material changes to the Companies' existing generation fleet.

Id. at p. 24-25.

In order to account for uncertainty regarding the pricing of carbon emissions, the company considered a range of values rather than simply discounting the benefits as being "externalities." *Id.* at p. 25.

In fact, the Companies argued that the consideration of greenhouse gases should be the determining factor in approving a proposal acknowledged to not otherwise have been the least-cost option:

> I would point out that the Companies are recommending the construction of a NGCC unit and a solar facility, both of which become more economically attractive the greater the weight one places on future CO_2 emission costs.
>
> While the Brown Solar Facility is not a lowest reasonable cost resource absent REC prices greater than $57/REC, as can be seen in Tables 35, 36, and 37 in the Resource Assessment, the Companies are proposing to move forward with the project because (i) it is a prudent hedge against both GHG regulations and natural gas price risk; (ii) it will reduce the Companies' GHG emissions; (iii) it affords the Companies the opportunity gain operational experience with an intermittent renewable resource; and (iv) it does not materially add to revenue requirements over the next 30 years.

Id. at p. 27.

Thus, what the Companies argued should tip the scales in favor of a solar and a natural gas plant over continuation of a coal-fired generating facility, were the "societal," "avoided cost," and "externality" considerations of a prudent hedge against greenhouse gas regulations and natural gas price risk, and the intrinsic value or reduction in GHG emissions by the companies.

Similarly, in the 2013 LG&E and KU Resource Assessment in Case No. 2104-00002, the Companies justified the investment in this way:

> Given the increasing likelihood of CO2 constraints and the ability to sell Renewable Energy Certificates ("RECs"), the Companies also recommend building a 10 MW solar facility at the existing E.W. Brown station. The solar facility is a prudent hedge against both GHG regulations and natural gas price risk, it will reduce GHG emissions, it affords the Companies the opportunity to gain operational experience with a solar PV resource, and it does not materially add to revenue requirements over the next 30 years.

2013 LG&E and KU Resource Assessment, Exhibit DSS-1 to the testimony of David Sinclair, Case No. 2014-00002 at p. 2.

The testimony of John Voyles on behalf of LG&E/KU further underscores that reduction of greenhouse gas emissions is a tangible, measurable benefit within a utility system in the Commonwealth that the Commission both can and should consider:

> Given the increased likelihood of carbon constraints, the Companies believe the Brown Solar Facility will be a valuable addition to their generation portfolio[.]

Direct Testimony of John Voyles, Jr., Vice President, Transmission and Generation Services, Kentucky Utilities Company and Louisville Gas and Electric Company, Case No. 2014-00002 at p. 12.

In sum, the Companies cannot credibly argue that this Commission lacks the authority to consider, when determining whether to approve or disapprove a DSM or EE program, the benefits and value of reductions in greenhouse gas emissions and reduction in vulnerability to fuel price volatility. By the Companies' own sworn representations, these issues ***do*** have a real potential to affect rates and service, and are squarely within the Commission's jurisdiction to consider when evaluating approval of the continuation or termination of utility programs and investments.

In addition to considering the benefits of DSM and EE programs on mitigating greenhouse gas emissions and on reducing future compliance costs associated with control of such emissions, other effects of a warming climate on residential customers should be considered in valuing the benefits of continuation of DSM and EE programs that mitigate contributions of greenhouses gases. As noted in the Hinko Testimony, the City of Louisville recognizes the direct link between utility costs and health impacts from a warming environment:

> The additional heat in the urban core leads to costlier utility bills but also serious health issues- it's a real danger to vulnerable Louisville residents. The hotter air exacerbates the effect of air pollution; Louisvillians with asthma or other respiratory problems in the UHI-affected areas are put at risk." '"We know that too often the ZIP code where you are born can correlate with negative health outcomes. That's unacceptable", said Mayor Greg Fischer. "In addition, the added heat causes citizens and businesses to run their air-conditioning longer and higher, which drives up energy costs for citizens and businesses."'

Direct Testimony of Cathy Hinko, at p. 13, quoting from the Louisville Urban Heat Island Project website.

Failing to include externalities has a disproportionately negative impact on people in fair housing and public accommodation protected categories and may violate federal law under the 2015 U.S. Supreme Court decision of *Texas Department of Housing and Community Affairs et al. v. Inclusive Communities Project, Inc., et al.,* 576 U.S.___.

The selective exclusion by the Companies of the avoided costs of compliance with environmental regulations and program participant non-energy benefits in the cost benefit analysis significantly understates the benefits of energy efficiency. By understating and undervaluing the benefits, many of the Companies' proposals to end certain DSM and EE program offerings may miss significant opportunities to reduce customer costs. Including the best available estimates, or a range of values, of the costs of compliance with anticipated future environmental regulations requiring reduced emissions of greenhouse gases (GHG), in their avoided cost estimates, and including the best available estimates of participant non-energy benefits, in both the Participant and the Total Resource Cost (TRC) tests, would make the cost and benefits analysis more accurate in terms of the true benefits of the DSM and EE service offerings to residential customers.

2. MHC Supports The Proposal For Continuation Of the WeCare Home Energy Assistance Program

MHC notes with approval the comments of the Association of Community Ministries regarding the importance of the WeCare program for the Companies' most-vulnerable ratepayers. The utility of other DSM and EE programs for this most fragile subset of the residential ratepayer class is significantly lower than for those in more affluent, owner-occupied dwelling-owning residential ratepayers, and extending the WeCare program provides tangible benefits from that DSM-EE program to that population where other offerings are not applicable or available due to limited means and housing status.

The continuation of the WeCare program is also essential pending the development of a study (as discussed in the following section of this brief) of the distribution of DSM and EE program benefits within the residential customer class, since as noted both in the Direct Testimony of Cathy Hinko and in comments of the ACM, it is among the few programs within the DSM and EE array that benefit low- and fixed-income renters and ratepayers.

In answer to a question in his prefiled direct testimony, Company representative Gregory S, Lawson supported the continuation of the WeCare program, noting that though it did not "pass" the cot-effectiveness screening tests of the California Standard Practice Manual tests, those tests are not the "only reasonable means of determining cost-effectiveness," and that other considerations can justify continuation of a program notwithstanding. See: *Direct Testimony of Gregory S. Lawson*, at pp. 17-19. MHC concurs that the four tests are not the only justification for adoption and continuation of DSM and EE programs, as this Commission has previously noted in the April 27, 1998 Order in Case No. 1997-00083 at p. 20.

MHC believes that there is an additional, and more fundamental reason for continuation of an effective program notwithstanding the "test result," which is that the General Assembly exempted this and other Home Energy Assistance Programs from the "cost and benefit analysis and other justification" required of other demand-side management programs and measures[.]" KRS 278.285 specifically provides that "[h]ome energy assistance programs may be part of a demand-side management program[,]" and that "[i]n considering a home energy assistance program, the commission *shall* only utilize the criteria set forth in subsections (1)(f) and (3) of this section." Those criteria are the extent to which customer representatives and the Atorney General's office have been involved in developing the DSM plan (Subsection (1)(f)) and the limitation on assignment of the cost of DSM programs to the class or classes of customers that benefit from the programs. (Subsection 3). The requirement for a cost and benefit analysis and justification is inapplicable as a criteria for approval of a home energy assistance programs, as a matter of law.

3. The Commission Should Require The Companies To Commission A Study Regarding The Utility Of The Proposed Array of DSM and EE Programs To Low- and Fixed-income Residential Ratepayers In Order To Assure That The Criteria of KRS 278.285(1)(e) and (g) Are Satisfied

In her Direct Testimony, MHC Director Cathy Hinko expressed concern, as she did in the previous DSM/EE case in 2014, that "the funds collected from low-income neighborhoods and/or neighborhoods with concentrations of people in protected categories (as defined for fair housing) [for DSM and EE Programs] are returned to those neighborhoods." *Direct Testimony of Cathy Hinko* at p. 4. As she had in the previous DSM/EE case, Hinko questioned whether many of DSM and EE program offerings by LGE and KUZ satisfied the criteria of being available, affordable, and useful to low- and fixed-income renters and homeowners.

She noted that energy costs are of particular concern for low-income households, noting a 1998 national study showed that the average household spends only about 2 percent of their income on electricity whereas low-income households spend about 8 percent of their total income on electricity and very low-income households (those living at less than half of the federal poverty level) spend 23 percent. See Oppenheim, J.(1998). Access to Utility Service, National Consumer Law Center, 1998 Supplement, pp.30-31. *Id.* at p. 4. She presented statistical evidence concerning the gap between housing and utility cost (utilities are part of the Fair Market Rent calculation) as a way to explain why Louisville

Kentucky had the seventh highest eviction rate (5.3%) of the largest fifty Metropolitan Statistical Areas in the United States. Salvati, Chris.2017 "Rental Insecurity: the threat of Evictions to America's Renters." *Id.* at 5.

Hinko further noted that DSM is one potential mechanism of making sure that families, the elderly and disabled and low-wage workers can be stable by controlling cost, yet in her testimony reviewing the decline in electricity usage between 2011 and 2017, she noted that the most dramatic decreases occurred in wealthier parts of the county. Hinko questioned whether it was the in ability of these areas to participate in several of the DSM programs or some other explanation. *Id.* at pp. 9-10.

On behalf of MHC, Hinko reviewed several graphics reflecting areas of high poverty and racial segregation (and for which we have zoning maps showing the square footage to be considerably less per residence than in affluent areas that are 98% white) and where gas heat predominates, posting that those are the areas disproportionately in need of programs lowering energy usage.

To address the disproportionate imposition of costs relative to the benefits available to low- and fixed-income customers, MHC proposed that an assessment should be done to determine the amount of money coming from low-income neighborhoods in DSM charges with a concomitant study on where the DSM money is spent, and of the availability, affordability, and usefulness of the DSM and EE offerings to low- and fixed-income customers. Director Hinko posited that the public utility should be cognizant of and should seek to provide program offerings in a manner that does not have a disparate impact on minorities, people who are disabled and female headed households with children. *Id.* at 15. She noted that the new program that allows people to track usage on their computer seems to ignore the technology gap in low income households, and that rebates for appliances are beyond the financial capability of low-income people.

Despite having been presented these concerns in this and previous DSM/EE case filings, the Companies yet have failed to capture and maintain information regarding the distribution of the benefits of the DSM and EE programs across spatial, housing, and economic status. The failure to do so renders the Commission's duty to apply the KRS 278.285(1)(e) and (g) criteria in determining the "reasonableness" of a DSM plan unachievable in any meaningful sense.

KRS 278.285(1)(e) and (g) reflect a concern by the General Assembly that there be some parity between the assignment of the costs of DSM and EE programs, and the benefits of such programs within a customer base. KRS 278.285(1)(e) requires that the Commission consider, in determining the "reasonableness" of a DSM plan, "[w]hether the plan results in any unreasonable prejudice or disadvantage to any class of customers." Inasmuch as the costs of DSM programs are directed to be applied only to that class or classes of customers that benefit from the programs, pursuant to KRS 278.285(3), KRS 278.285(1)(3) should be read not as surplusage, but as reinforcing that if a member of a customer class (ie. a low, middle, or upper class residential customer) is required to pay for the program, there should be a showing that they fairly benefit from the DSM program. To date, neither Company has collected and speciated the data in a manner that would allow this question to be answered with respect to whether the array of DSM and EE programs are "available, affordable, and useful" to low- and fixed-income residential customers relative to their contribution to the program funding.

Even if one were to read KRS 278.285(1)(e) as being limited to a consideration by the Commission as to whether a DSM program for residential, commercial, or industrial customers unreasonably prejudices or disadvantages the other two groups of ratepayers, there is no doubt that KRS 278.285(1)(g) demands that the distribution of benefits and costs within a customer category be "available, affordable, and useful," since the statutory criteria demands consideration of "[t]he extent to which the plan provides programs which are available, affordable, and useful **to all customers[.]"** Absent information speciating the distribution of benefits, the availability, and utility of each DSM and EE program to low- and fixed-income ratepayers, the Commission is deprived of the data needed to make a reasonable judgment that this statutory precondition to approval has been satisfied.

MHC requests that the Commission direct LGE/KU to commission a study and report to the Commission on whether the DSM/EE program offerings are adequately serving low- and fixed-income homeowners and renters, particularly those in neighborhoods that contain the oldest, least energy efficient homes and the highest percentage of minority population, and whether the offerings are "available, affordable, and useful" to low- and fixed- income renters and homeowners. MHC requests that the evaluation include an assessment of the amount of DSM/EE funding collected from low- and fixed-income individuals and neighborhoods relative to the distribution of benefits of the various programs to those populations.

<u>4. The Continuation of The AMS Program Should Be Subject To A Cost and Benefits Analysis Pursuant To KRS 278.285(1)(b)</u>

Among the programs that the *Joint Application* proposes for continuation is the Advanced Meter Systems Customer Service Offering. *Joint Application* at p. 9. The *Joint Application* notes that unlike the other DSM-EE offerings, this program was not subject to cost-benefit analysis, ostensibly due to the language of KRS 278.285(1)(h). Specifically, the *Joint Application* notes that "[t]he companies are not relying on the cost-benefits test to support their Advanced Metering Systems Customer

Service Offering consistent with KRS 278.285(1)(h) and the Commission's 2014 approval of the offering." *Joint Application* at p. 10.

The failure to provide any cost-benefit assessment of the proposal to deploy up to 10,000 Advanced Metering Systems (5,000 in each service area) requires that the Commission disapprove the proposed program. David Huff acknowledged in the 2014 DSM filing that the availability of the program is limited to "maybe 1%" of the residential and commercial ratepayers taking service under the RS and GS tariffs.

LGE/KU rests its' position on a reading that the specific reference to such systems in KRS 278.285(1)(h) somehow exempts the utility from the obligation to support the proposed program with cost and benefit analyses. Yet the statute is clear in requiring that such a program be supported with cost and benefit analysis, as well as any other justification. The proposal to continue the Advanced Metering System is part of the LGE/KU DSM/EE Plan, and as such, pursuant to KRS 278.285(1)(b), in order to be determined to be reasonable by the Commission, the program must be supported by "[t]he cost and benefit analysis and other justification for specific demand-side management programs and measures included in a utility's proposed plan[.]" KRS 278.285(1)(b). This subsection admits to no exemption for programs proposed under KRS 278.285(1)(h). In stark contrast to the implied exemption that the Companies attempt to read into the statute, where the General Assembly intended to exempt a type of DSM or EE offering from the cost and benefits analysis of KRS 278.285(1)(b), it did so explicitly. *See: KRS 278.285(3).*

There is a second reason why the proposal to continue the program should be rejected; which is the inequity of requiring the entire residential class of LGE and KU ratepayers to finance a voluntary program available only to 1% of the customers of either utility. To put a finer point on MHC's concern, the ability of a customer to access the data generated by the proposed AMS depends entirely on internet access, so that low- and fixed-income ratepayers lacking internet access are being asked to finance a program of limited-to-no utility to them. Using the criterion in KRS 278.285(1)(g) which directs the Commission, in determining "reasonableness," to consider "[t]he extent to which the plan provides programs which are available, affordable, and useful to **all** customers[,]" the program is neither being "available" to or "useful" to low- and fixed-income ratepayers lacking internet access.

LGE/KU has not evaluated the extent to which internet access is available to low- and fixed-income ratepayers in the LGE and KU service areas, nor has it studied the availability and utility to such ratepayers, and for these reasons, the proposal does not satisfy the criteria of KRS 278.285(1)(b), (1)(e) and (1)(g). It is unfair to low- and fixed-income households to ask that they foot the tab for a program available to only 1% of the residential and commercial ratepayers, and which is far less likely to be useful to them than to more affluent and net-connected ratepayers within the residential customer base.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that electronic version of the INITIAL BRIEF OF INTERVENOR METROPOLITAN HOUSING COALITION 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 June 26, 2018; 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 (6) copies in paper medium of the INITIAL BRIEF OF METROPOLITAN HOUSING COALITION TESTIMONY will be filed with the Commission within two business days of June 26, 2018.

Tom FitzGerald