

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

**ATTORNEY GENERAL’S INITIAL BRIEF**

Comes now the Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention (the “Attorney General”), and hereby submits his initial brief in the above-styled matter.

**STATEMENT OF THE CASE**

Louisville Gas & Electric and Kentucky Utilities (the “Companies”) filed a joint application seeking the review, modification, and continuation of certain existing demand-side management and energy efficient programs on December 6, 2017. The Attorney General petitioned for intervention and was granted the same on January 23, 2018. Multiple other parties also petitioned for and were granted intervention.<sup>1</sup> Two rounds of data requests were completed and intervenors had the opportunity to offer direct testimony. Following the submission of intervenor testimony, the Commission granted a motion by the Companies which permitted them to offer rebuttal testimony without disturbing the procedural schedule.

Per the procedural schedule, on April 26, 2018, the Companies requested that the Commission decline to hold an evidentiary hearing and instead decide the issues based upon the

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<sup>1</sup> Kentucky Industrial Utility Customers (“KIUC”) on January 23, 2018; Metropolitan Housing Coalition (“MHC”) on January 23, 2018; and Wal-Mart Stores East, LP and Sam’s East, Inc. (“Walmart”) on February 14, 2018.

record. Walmart and the Attorney General declined to request a hearing. MHC requested a hearing, or in the alternative another round of discovery limited to the rebuttal testimony followed by the simultaneous filing of briefs and responses. The Companies filed a response to MHC's request, in which they did not object to further limited discovery followed by briefs if the case were then submitted on the record without an evidentiary hearing. On May 31, 2018, the Commission issued an order granting MHC's alternative request for additional discovery limited to the Companies' rebuttal testimony followed by two rounds of simultaneous briefs, while also reserving the right to schedule a formal hearing upon its own motion.<sup>2</sup>

## **ARGUMENT**

### **I. Capacity Valuation**

In response to the Attorney General's questions on capacity valuation, the Companies' response was clear—it does not assign monetary value to capacity.<sup>3</sup> Since they do not have a recognized need for capacity, the Companies set the value of their avoided cost of capacity utilized to evaluate future demand reductions at \$0/kW.<sup>4</sup> The Companies currently forecast that their capacity in 2019 will be “approximately 100 MW above the current target reserve margin range of 16 to 21 percent.”<sup>5</sup> This puts the Companies on pace to likely increase the reserve margin in the Integrated Resource Plan to be filed later this year.<sup>6</sup> Despite this, they maintain that they do not have significant excess capacity projected through 2021, and that the capacity is not unused—

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<sup>2</sup> PSC Order, *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*, Case No. 2017-00441 (May 31, 2018).

<sup>3</sup> Companies' Responses to the Attorney General's Supplemental Data Requests, Case No. 2017-00441, at 13–14 (March 7, 2018).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 6.

<sup>6</sup> *Id.*

the entirety of their generating capacity is available for customer use.<sup>7</sup>

The Companies have also given no indication that they are considering joining an RTO, only that they are undertaking a “current ongoing analysis” and will provide the results of this study to the Commission by the end of 2018.<sup>8</sup> The Companies cited an RTO membership study they completed in 2012, which they maintain demonstrated it was not in ratepayers’ interest to join.<sup>9</sup> Additionally, the Companies stated that they already have access to capacity markets without having membership in an RTO.<sup>10</sup>

The decision to not assign monetary value to capacity impacts the overall cost-effectiveness of the entirety of the Companies’ DSM/EE programming. As such, the Attorney General is interested to see the results of the Companies’ ongoing analysis and encourages the Commission to require the Companies to continue to study and evaluate the net benefits of joining an RTO, which would allow them to monetize excess capacity through market auctions in a more regular and cost-effective manner for the benefit of ratepayers. Additionally, the Commission should ensure the Companies are consistent on the issue of the value of capacity. The Companies should not be allowed to assign zero monetary value for capacity in this matter to ensure certain DSM/EE programs fail, while conversely arguing some untapped capacity value in another matter in order to prop up a different application. For instance, in the Companies’ rebuttal testimony in Case No. 2018-00005, Mr. John P. Malloy dedicated an entire section to how “Avoided Capacity Cost Is a Potential Benefit of AMS.”<sup>11</sup> Avoided capacity either has a value or it does not. If the

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<sup>7</sup> *Id.* at 14.

<sup>8</sup> *Id.* at 13–14.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> Rebuttal Testimony of John P. Malloy, *Electronic Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for a Certificate of Public Convenience and Necessity for Full Deployment of Advanced Metering Systems*, at 6–7 (June 15, 2018).

Companies insist on basing applications before the Commission on a specific value, they should be transparent and consistent about what that value is.

## **II. Stakeholder Involvement in DSM Programs**

One of the factors to be considered in the Commission’s determination of the reasonableness of a utility’s demand-side management programs, stakeholder input, is codified in Kentucky statute:

The extent to which customer representatives and the Office of the Attorney General have been involved in developing the plan, including program design, cost recovery mechanisms, and financial incentives, and if involved, the amount of support for the plan by each participant, provided however, that unanimity among the participants developing the plan shall not be required for the commission to approve the plan.<sup>12</sup>

The Companies have instituted a DSM “Advisory Group,” and held multiple meetings with the involved stakeholders through a process as described in the instant application.<sup>13</sup> However, the mere presence of customer group representatives and the Attorney General at these meetings and their contributions to an ongoing discussion is not enough to describe their involvement as “full participation” in the development of the demand-side management plan. The Companies were asked about the extent of the stakeholders’ input in a data request, and whether any of the advisory group members had either voting or veto power, to which they responded that “they cannot and

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<sup>12</sup> KRS 278.285(f).

<sup>13</sup> Louisville Gas and Electric Company’s and Kentucky Utilities Company’s Joint Application Seeking Approval of the Proposed 2019-2025 Demand-Side Management and Energy Efficiency Program Plan and the Proposed Cost Recovery Tariffs, *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*, Case No. 2017-00441, at 8 (December 6, 2017).

should not delegate decision-making responsibility to advisory or collaborative group participants.”<sup>14</sup> Furthermore, the Companies went on to state that they:

believe the role of their advisory and collaborative groups is to share information and views with the Companies . . . . but it should be noted that the Companies receive input in a variety of means from customers such as through JD Power and Bellomy surveys, PSC complaints, [sic] direct customer interaction such as through call centers.<sup>15</sup>

Since the Companies treat the input from its advisory and collaborative groups on demand side management the same as all other customer input, the Commission should consider the resulting program to be one in which the customer representatives and the Attorney General were peripherally involved, but were not able to help meaningfully develop. The statutory language allows the Commission to consider the level of support stakeholders have for the program, if they were involved. As such, the Commission should encourage the Companies and other utilities to more fully and formally integrate the opinions and discussion results from the collaborative and advisory groups into the final program.<sup>16</sup>

If the Companies insist on only proposing to the Commission what they deem as reasonable, with little to no consideration of stakeholder input as required by statute, then the

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<sup>14</sup> KU and LG&E Responses to the Attorney General’s Supplemental Data Requests, *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*, Case No. 2017-00441, at 12 (March 7, 2018).

<sup>15</sup> *Id.*

<sup>16</sup> Other electric utilities in Kentucky have held votes through their DSM collaboratives. See Duke Energy Kentucky, Inc.’s Annual Cost Recovery Filing for Demand Side Management, *Electronic Annual Cost Recovery Filing for Demand Side Management by Duke Energy Kentucky, Inc.*, Case No. 2017-00427, at 2 (November 15, 2017) (Duke Kentucky’s Application referencing the voting process and which members of the Collaborative had already voted on their agreement with the DSM/EE Application while others abstained and reserved the right to vote at a later date.)

Companies are by definition failing to comply with the plain reading of the law. On this point, the Attorney General is concerned that the Companies are not taking collaborative or advisory groups—either those agreed to by the Companies and codified in Commission Order or required by statute—seriously. In order to have a DSM/EE offering that reflects the stakeholder contributions envisioned by the legislature, the Commission must provide guidance to the Companies so that moving forward those customers who pay for and participate in the programs have some meaningful input into their design.

### **III. Walmart’s Request for Opt-out**

The Attorney General does not feel compelled to express an opinion on the issue of whether the industrial opt-out as proposed by the Companies properly applies to Walmart. However, the Attorney General does wish to highlight the likely result if Walmart is allowed to opt out. Simply, the remaining tariff classes of customers will collectively bear the cost shift of Walmart’s exit through increased expenses. Walmart states that if allowed to opt out, benefits such as reduced overall energy costs through reduced demand and increased system reliability through more energy efficient installations flow through to all customers at no cost.<sup>17</sup> However, it is speculative to assume that these benefits, if realized, will fully offset the increased costs due from the shift. Walmart is in a unique position with the means and the infrastructure to continue its own demand side management on a scale the other members of the various commercial classes cannot match. The end result of a Walmart opt out is inherently inequitable for those customers who cannot opt out.

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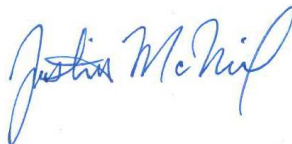
<sup>17</sup> Direct Testimony and Exhibit of Kenneth E. Baker on Behalf of Wal-Mart Stores East, LP and Sam’s East, Inc., Case No. 2017-00441, at 13-14 (March 21, 2018).

## CONCLUSION

The Attorney General considers much of the Companies' DSM/EE program as worthwhile and cost-effective, and would like to see sustained and enhanced support for programs targeted toward low-income customers. He remains concerned however, with the inevitable cost shift if Walmart is allowed to opt out of the program, the Companies' approach to capacity valuation, and with the Companies' continued disregard for facilitating the degree of stakeholder involvement in DSM program development as envisioned by Kentucky law. Going forward, the Attorney General would ask the Commission to consider a renewed focus on ratepayer perspective and involvement in the development of the demand side management programs. The purpose of DSM/EE is to benefit customers, not the Companies.

Respectfully submitted,

ANDY BESHEAR  
ATTORNEY GENERAL



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