

**COMMONWEALTH OF KENTUCKY**  
**BEFORE THE PUBLIC SERVICE COMMISSION**

**In the Matter of:**

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

**RESPONSE OF**  
**LOUISVILLE GAS AND ELECTRIC COMPANY**  
**TO METROPOLITAN HOUSING COALITION'S SUPPLEMENTAL DATA**  
**REQUEST REGARDING REBUTTAL TESTIMONY**  
**DATED JUNE 6, 2018**

**FILED: JUNE 14, 2018**





**LOUISVILLE GAS AND ELECTRIC COMPANY**

**Response to Metropolitan Housing Coalition's Supplemental Data Request  
Regarding Rebuttal Testimony  
Dated June 6, 2018**

**Case No. 2017-00441**

**Question No. 1**

**Witness: Gregory S. Lawson**

- Q-1. Concerning the rebuttal testimony of Gregory Lawson, is LG&E aware of the Non-Energy Benefits analyses used in Iowa, Colorado, Oregon, Washington, Vermont, New York, Washington, Utah, Wyoming, New Hampshire, Connecticut, California, Idaho, Rhode Island and the District of Columbia?
- A-1. The Companies are aware that a minority of other states consider Non-Energy Benefits when evaluating DSM-EE programs. The Companies have not reviewed the analyses for the specific states cited above. The Companies are not aware of any legal authority that would permit such quantities to be considered in evaluating DSM-EE programs in Kentucky. See the response to Question No. 2 herein.

**LOUISVILLE GAS AND ELECTRIC COMPANY**

**Response to Metropolitan Housing Coalition's Supplemental Data Request  
Regarding Rebuttal Testimony  
Dated June 6, 2018**

**Case No. 2017-00441**

**Question No. 2**

**Witness: Rick E. Lovekamp**

- Q-2. Please identify the statute, regulation, judicial decision or Commission decision that would prevent the Kentucky Public Service Commission from including use of a non-energy benefit analysis such as those used by the jurisdictions identified in Question 3-1, in determining the costs and benefits of DSM and EE programs?
- A-2. Please see the Commission's July 18, 2008 Order in Case No. 2008-00148 at 5-6:

With regard to Mr. Young's desire to advocate environmental issues in this proceeding, the Commission does not have jurisdiction to give consideration to those matters. As a creature of statute, the Commission's jurisdiction is defined by the Legislature. To that purpose, KRS 278.040(2) states:

The jurisdiction of the commission shall extend to all utilities in this state. The commission shall have exclusive jurisdiction over the regulation of rates and service of utilities, but with that exception nothing in this chapter is intended to limit or restrict the police jurisdiction, contract rights or powers of cities or political subdivisions.

Notably absent from the Commission's jurisdiction are environmental concerns, which are the responsibility of other agencies within Kentucky state government, including the Division for Air Quality within the Energy and Environment Cabinet, which issues air quality permits to coal-burning electric generating facilities in Kentucky. To the extent that Mr. Young seeks to address issues in this proceeding that deal with the impact of air emissions on human health and the environment, this is not the proper venue for those issues to be considered. Therefore, his participation as an intervenor on those grounds is also denied.

Please see the Commission's Dec. 4, 2008 Order in Case No. 2008-00349 at 4:

To the extent that Mr. Young's petition is considered as a request for intervention solely on his own behalf as an environmentalist, his interest in Kentucky Power's DSM matter is for the purpose of "reducing pollution that can harm people and the natural environment." The Commission understands and appreciates Mr. Young's interest as an environmentalist in seeking to reduce pollution, but the Commission has no jurisdiction over the quality of the air he breathes, the "significant health problem" associated with mercury pollution from coal-fired power plants, or "the carbon dioxide released [which] contributes to global warming." As discussed above, the Commission's jurisdiction is limited to the "rates" and "service" of utilities.

In summary, the Commission finds that, to the extent of Mr. Young's interest as an environmentalist in Kentucky Power's DSM application, the issues he seeks to raise relating to the quality of the air and the level of pollution emitted by Kentucky Power's coal-fired plants are beyond the scope of the Commission's jurisdiction. To allow Mr. Young to intervene and to raise issues that are beyond the scope of the Commission's jurisdiction would unduly complicate and disrupt this proceeding.

Please see also the Commission's Jan. 12, 2009 Order in Case No. 2008-00349 at 3-4:

Mr. Young's stated interest in Kentucky Power's proposed DSM programs in this instance is based on his expressed interest in a clean environment. As the Commission stated in the December 4, 2008 Order denying Mr. Young's request for intervention, our jurisdiction is limited to rates and service of utilities. Issues relating to the environmental impacts of generating electricity have been delegated to other agencies, not to the Commission. Thus, the Commission cannot consider the environmental impact of generating electricity as a factor in establishing rates or rate design.

Please see the Commission's Dec. 16, 2008 Order in Case No. 2008-00409 at 1 and 3-4:

On November 17, 2008, Geoffrey M. Young petitioned the Commission for full intervention in this proceeding. Mr. Young states that he is not a customer of EKPC or any of its member cooperatives, but he asserts that he has a special interest in EKPC's rates and services. He further states that he has a "special interest in the quality of air" he breathes, and that the quality of the air "is likely to affect the amount of money" he will be required to spend in future years to treat health problems that he may suffer because of the coal-fired power plants operated or being built by EKPC. He further states that, as an environmentalist, he has an interest in reducing pollution that can harm people and the natural environment; and that Kentucky's coal-

fired power plants have massive environmental impacts which contribute to "some of the worst air pollution in the Midwest," resulting in high rates of respiratory disease and global warming. Mr. Young further states that he is a resident of Fayette County and that, as a result of the weather patterns in Kentucky, he is forced to breathe potentially harmful pollutants from EKPC's power plants.

...

The Commission understands and appreciates Mr. Young's interest as an environmentalist in seeking to reduce pollution, but the Commission has no jurisdiction over the quality of the air he breathes, the "significant health problem" associated with pollution from coal-fired power plants, or the carbon dioxide released into the atmosphere. As discussed above, the Commission's jurisdiction is limited to the "rates" and "service" of utilities.

In summary, the Commission finds that, to the extent of Mr. Young's interest as an environmentalist in EKPC's rate proceeding, the issues he seeks to raise relating to the quality of the air and the level of pollution emitted by EKPC's coal-fired plants are beyond the scope of the Commission's jurisdiction. To allow Mr. Young to intervene and to raise issues that are beyond the scope of the Commission's jurisdiction would unduly complicate and disrupt this proceeding.

Please see the Commission's Jan 12, 2009 Order in Case No. 2008-00409 at 2-3:

In *Enviropower, LLC v. Public Service Commission of Kentucky*, 2007 WL 289328 (Ky. App. 2007), the Kentucky Court of Appeals clearly recognized the relationship between the Commission's jurisdictional authority under KRS 278.040(2) and the Commission's intervention regulation, 807 KAR 5:001, Section 3(8). The *Enviropower* court cogently explained:

The PSC's exercise of discretion in determining permissive intervention is, of course, not unlimited. First, there is the statutory limitation under KRS 278.040(2) that the person seeking intervention must have an interest in the "rates" or "service" of a utility, since those are the only two subjects under the jurisdiction of the PSC. ...

...

While he [Geoffrey M. Young] asserts that his interest in a clean environment constitutes a special interest in EKPC's rate structure, the record indisputably reflects that Mr. Young is not a customer of EKPC or any of its member cooperatives. As stated in our December 16, 2008 Order, our decisions on intervention are based on the statutory and regulatory criteria set forth in KRS 278.040(2) and 807 KAR 5:001, Section 3(8). Mr. Young's claimed interest in the rate structure, based solely on any potential

impact on the environment of the Commonwealth, is simply too remote to meet those criteria.

Please see the Commission's Dec. 23, 2009 Order in Case Nos. 2009-00197 and 2009-00198 at 8:

The motion to intervene does not state that KWA [Kentucky Waterways Alliance] has an interest in either the rates or service of LG&E and KU, the only two issues that are within the Commission's jurisdiction. To the contrary, KWA states that its interest in these cases is in the "protection of the water quality in the waters of the Commonwealth" and in "abating existing water pollution sources, restoring impaired water bodies and preventing the creation of new or increased sources of water pollution throughout the Commonwealth."

Please see the Commission's June 10, 2011 Order in Case No. 2011-00140 at 5:

Under the Commission's IRP regulation, a utility must disclose the actions it will need to take to meet the provisions of the Clean Air Act. However, the inclusion of that information does not grant the Commission jurisdiction, either explicitly or implicitly, over issues of environmental externalities, such as air and water pollution as referenced by Mr. Young, or land pollution. All of those issues are under the jurisdiction of other state and federal agencies.

To the best of the Companies' knowledge, the Commission has not revised or retreated from its support of the unpublished Kentucky Court of Appeals opinion in *EnviroPower, LLC v. Public Service Commission of Kentucky*, 2007 WL 289328 (Ky. App. 2007), and it has not recanted its position that environmental externalities, which would include by definition non-energy benefits, are outside its jurisdiction. Indeed, consistent with this approach is the Commission's Nov. 14, 2014 Final Order in Case No. 2014-00003, which declined to take into account non-energy benefits in the Companies' most recent DSM-EE program-portfolio application, albeit not on the same grounds: "The Commission disagrees with including the cost of non-energy factors and benefits, since these are not yet fully known."<sup>1</sup>

In sum, the Commission, consistent with Kentucky's courts' holdings, has held that the Commission is a creature of statute, and may therefore exercise authority only within the boundaries of its statutorily granted jurisdiction, namely the rates and service of utilities. By definition, non-energy benefits do not affect utility rates or service; if they did, they

---

<sup>1</sup> *In the Matter of: Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for Review, Modification, and Continuation of Existing, and Addition of New, Demand-Side Management and Energy-Efficiency Programs*, Case No. 2014-00003, Order at 26 (Nov. 14, 2014)

would be energy-related benefits. But because they do not affect the Companies' rates or service, the Commission may not account for them or require the Companies to do so.

**LOUISVILLE GAS AND ELECTRIC COMPANY**

**Response to Metropolitan Housing Coalition's Supplemental Data Request  
Regarding Rebuttal Testimony  
Dated June 6, 2018**

**Case No. 2017-00441**

**Question No. 3**

**Witness: Rick E. Lovekamp**

- Q-3. Does LG&E participate in the Plant for the Planet effort specifically referencing the United Nations Environment Program (UNEP) to plant trees around the world?
- A-3. LG&E and KU launched their Plant for the Planet grant program in 2009, which has resulted in planting more than 38,000 trees to date. The grants fund tree-plantings by nonprofit or government entities. The Plant for the Planet program is modeled after the United Nations Environment Program's (UNEP) Plant for the Planet: Billion Tree Campaign. See <https://lge-ku.com/environment/plants-and-wildlife/tree-planting-grants> and <https://www.courier-journal.com/story/sponsor-story/lge-ku/2017/10/17/breath-fresh-air/106731854/>.

The Companies have also funded a seedling giveaway program since 1981, through which the Companies have donated more than 750,000 seedlings. See <https://lge-ku.com/environment/plants-and-wildlife/planting-trees>.

In addition, the Companies are supporters of the Reforest the Bluegrass program, and have donated more than \$25,000 to it.

Note that the Companies fund these efforts with shareholder funds, and do not include them as operating expenses to be recovered through base rates.

**LOUISVILLE GAS AND ELECTRIC COMPANY**

**Response to Metropolitan Housing Coalition's Supplemental Data Request  
Regarding Rebuttal Testimony  
Dated June 6, 2018**

**Case No. 2017-00441**

**Question No. 4**

**Witness: Rick E. Lovekamp**

- Q-4. Did LG&E read the history of the UNEP to know that this program arose from a concern for the ill effects of global climate change?
- A-4. See response to Question No. 3. The Companies are broadly aware of the UNEP program. The history of that program does not bear on the matters within the Commission's jurisdiction, which, as the Commission itself has stated, does not extend "either explicitly or implicitly, over issues of environmental externalities, such as air and water pollution ... or land pollution. All of those issues are under the jurisdiction of other state and federal agencies."<sup>2</sup>

---

<sup>2</sup> Case No. 2011-00140, Order at 5 (June 10, 2011).

**LOUISVILLE GAS AND ELECTRIC COMPANY**

**Response to Metropolitan Housing Coalition's Supplemental Data Request  
Regarding Rebuttal Testimony  
Dated June 6, 2018**

**Case No. 2017-00441**

**Question No. 5**

**Witness: Gregory S. Lawson**

- Q-5. Did LG&E explore a Demand Side Program that would include planting trees? If so please provide any analysis of such a program component.
- A-5. The Companies worked with Cadmus to explore any and all cost effective options in the most recent DSM-EE filing based on potential studies and program review. No tree program was included in this DSM-EE filing because of the various unknown variables that impact cost effectiveness such as time to mature, location, care and feeding, and storms. Those concerns quickly eliminated tree planting at the technical potential level.

**LOUISVILLE GAS AND ELECTRIC COMPANY**

**Response to Metropolitan Housing Coalition's Supplemental Data Request  
Regarding Rebuttal Testimony  
Dated June 6, 2018**

**Case No. 2017-00441**

**Question No. 6**

**Witness: Rick E. Lovekamp**

- Q-6. Is LG&E aware that the case cited on page 10, footnote 11, was in reference to the ability of a party to intervene and had nothing to do with setting boundaries of what can be in a test for cost/benefit analysis?
- A-6. The Companies assume the reference is to page 10 of the Rebuttal Testimony of Gregory S. Lawson. The text to which the footnote attaches states, "The Commission has previously recognized that its jurisdiction extends only to the rates and service of utilities ...." The footnote in question states:

*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 at 4 (Oct. 17, 2012) (quoting *Enviro Power, LLC v. Public Service Commission of Kentucky*, 2007 WL 289328 at 3 (Ky. App. 2007) (not to be published) ("[R]ates' or 'service' ... are the only two subjects under the jurisdiction of the PSC.")).*

In short, the footnote precisely supports the premise of the clause to which it was attached, and therefore was an appropriate citation.

The Companies would also note that the premise of this question is flawed. As the response to Question No. 2 above demonstrates, it is misleading to assert that the grounds for intervention and limits on the Commission's jurisdiction are unrelated. The Commission stated in its Jan 12, 2009 Order in Case No. 2008-00409 at 2-3:

*In *Enviro Power, LLC v. Public Service Commission of Kentucky*, 2007 WL 289328 (Ky. App. 2007), the Kentucky Court of Appeals clearly recognized the relationship between the Commission's jurisdictional authority under KRS 278.040(2) and the Commission's intervention regulation, 807 KAR 5:001, Section 3(8). The *Enviro Power* court cogently explained:*

The PSC's exercise of discretion in determining permissive intervention is, of course, not unlimited. First, there is the statutory limitation under KRS 278.040(2) that the person seeking intervention must have an interest in the "rates" or "service" of a utility, since those are the only two subjects under the jurisdiction of the PSC. ...

Therefore, it was appropriate to cite to a Commission opinion, which in turn cited to an unpublished Kentucky Court of Appeals opinion, describing the clear statutory limitations on the Commission's jurisdiction. Those limitations unambiguously apply to the criteria the Commission may consider in formulating cost-benefit tests for DSM-EE programs; there is no statutory or other legal warrant for the Commission to exceed its jurisdictional limitations—which it has repeatedly acknowledged regarding environmental impacts and concerns—by embedding factors in DSM-EE cost-benefit analyses that the Commission could not explicitly consider in any other context.

**LOUISVILLE GAS AND ELECTRIC COMPANY**

**Response to Metropolitan Housing Coalition's Supplemental Data Request  
Regarding Rebuttal Testimony  
Dated June 6, 2018**

**Case No. 2017-00441**

**Question No. 7**

**Witness: Rick E. Lovekamp**

- Q-7. Does LG&E contend that Public Service Commission is without power to determine the cost/benefit of a DSM program and to decide whether and to what extent that cost can be recovered from the ratepayer?
- A-7. Within the Commission's jurisdiction and legal authority, which Kentucky statutes prescribe and delimit, the Commission may determine the cost-benefit ratio(s) of a DSM-EE program and decide whether and to what extent a utility may recover the program's cost from customers.