

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

**In the Matter of:**

<b>KENTUCKY INDUSTRIAL UTILITY</b>	)	
<b>CUSTOMERS, INC.</b>	)	
	)	<b>CASE NO. 2018-00034</b>
<b>COMPLAINANT</b>	)	
	)	
<b>v.</b>	)	
	)	
<b>KENTUCKY UTILITIES COMPANY AND</b>	)	
<b>LOUISVILLE GAS AND ELECTRIC</b>	)	
<b>COMPANY</b>	)	
	)	
<b>DEFENDANTS</b>	)	

**PETITION FOR RECONSIDERATION**  
**AND REQUEST FOR HEARING**

Pursuant to KRS 278.400,<sup>1</sup> Kentucky Utilities Company (“KU”) and Louisville Gas and Electric Company (“LG&E”) (collectively, “Companies”), by counsel, hereby petition the Kentucky Public Service Commission (“Commission”) to reconsider the modifications to the Offer and Acceptance of Satisfaction in its Order dated March 20, 2018 (“Order”), formally recognize that the Order has no force and effect, and allow the Companies to implement the TCJA Surcredit at the levels proposed by the parties to the Offer and Acceptance of Satisfaction. The Companies further request a hearing on the Order’s modification to the capitalization and cost of capital used to calculate the TCJA Surcredits.<sup>2</sup> In the alternative, if the Commission

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<sup>1</sup> KRS 278.400 allows a party to request rehearing of any matters determined by the Commission in any hearing within twenty days after the service of the order. The Companies seek reconsideration of a Commission order that was decided without hearing.

<sup>2</sup> By letter dated March 26, 2018, the Companies provided notice that they were withdrawing from the Offer and Acceptance of Satisfaction pursuant to Section 5.6. That section allows any adversely affected party to withdraw from the Offer and Acceptance of Satisfaction if the Commission does not accept and approve the Offer and Acceptance of Satisfaction in its entirety. *See* Exhibit 1. The Order approving the Offer and Acceptance of Satisfaction (with modifications) is dependent upon on the parties remaining in the agreement. That is no longer the case. As a result, the Order has no force and effect and should be formally recognized as such. However, if the Commission grants rehearing, the Companies remain open to re-executing the Offer and Acceptance of Satisfaction.

denies the Companies' request for reconsideration and a hearing limited to the Commission's modification to the capitalization and cost of capital used to calculate the TCJA Surcredits in the Offer and Acceptance of Satisfaction, the Companies request the Commission to formally recognize that the Order has no force and effect and conduct a complete hearing on the merits of the subject rate complaint. Given the timeframes set forth in the Order, the Companies request expedited review of the Petition and request an order on or before 5:00 p.m. on Wednesday, March 28, 2018.<sup>3</sup>

In support of their petition, the Companies state as follows:

### **BACKGROUND**

The Tax Cuts and Jobs Act ("TCJA") was enacted on December 22, 2017. Despite the adverse consequences on the Companies' cash flows and adverse earnings and cash flow impacts on the Companies' parent company, LG&E and KU and their parent company actively supported the passage of the TCJA, as it is beneficial to customers and the economy. The TCJA is beneficial to customers both in terms of utility rates and their personal or corporate income tax expense and is also beneficial to the economy and economic development.

The Companies anticipated the customers' and the Commission's interest in the effect of the TCJA on their rates and agree the Commission should consider the impact of the changes in the tax law on their existing base rates. However, any objective analysis of the effect of the TCJA must consider all circumstances and factors and is much more complex than the asymmetrical analysis in the Commission's Order suggests.

This case stems from a formal complaint filed by Kentucky Industrial Utility Customers, Inc. ("KIUC") against the Companies on December 21, 2017. KIUC's complaint alleged that the

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<sup>3</sup> If necessary, the Companies are prepared to file a civil action with the Franklin Circuit Court seeking emergency injunctive relief.

Companies' rates were no longer fair, just, and reasonable due to the enactment of the TCJA which reduced the federal corporate tax rate from 35 percent to 21 percent.

In an effort to expedite the return of an appropriate amount of total or net benefits from the TCJA to their customers, the Companies engaged in two informal conferences at the Commission's offices to discuss settlement with KIUC and the Attorney General of the Commonwealth of Kentucky ("AG"), the only intervening party. The Commission Staff supervised and provided input in both informal conferences. On January 29, 2018, the Companies filed testimony and exhibits that included an Offer and Acceptance of Satisfaction. The Offer and Acceptance of Satisfaction was executed by the Companies, KIUC, and the AG.

In pertinent part, under the Offer and Acceptance of Satisfaction, the Companies would provide a surcredit ("TCJA Surcredit") to pass the base rate benefits of the TCJA to customers for service rendered beginning April 1, 2018 through billing credits on a per kWh basis for electric customers and per Ccf for gas customers.<sup>4</sup> The Companies calculated the TCJA Surcredit by beginning with KU's and LG&E's adjusted jurisdictional capitalization for the forecasted 12 month test years ending June 30, 2018, as accepted by the Commission in their most recent rate cases. Then, the Companies adjusted jurisdictional capitalization of each utility forward to a new forecasted period from January 1, 2018 to April 30, 2019 to reflect the net benefits of the TCJA. The Companies did so to bring forward the 16-month period for which the impact of TCJA was calculated and reflect the negative impacts of TCJA on their financial conditions.

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<sup>4</sup> KU residential and non-residential customers would receive a per kWh credit of \$(0.00415) and \$(0.00323), respectively. LG&E electric residential and non-residential customers would receive a per kWh credit of \$(0.00444) and \$(0.00344), respectively. The Offer and Acceptance of Satisfaction proposed a credit of \$(0.03384) per Ccf for LG&E gas customers. In response to Question No. 3 of the Commission Staff's First Request for Information dated February 1, 2018, LG&E provided calculations allocating the gas credit between residential and non-residential customers, respectively, for a credit of \$(0.05042) and \$(0.02087) per Ccf and indicated LG&E was willing to implement the TCJA surcredit for gas operations on this basis.

Without notice or a hearing, on March 20, 2018 the Commission issued an order on the Offer and Acceptance of Satisfaction. The Order took issue with the calculation of the TCJA Surcredit and stated: “Since KU/LG&E have recently conducted rate cases based on current test years ending June 30, 2018, the Commission finds that it is not reasonable to utilize forecasted test years extending through April 2019.” Further, the Commission stated: “Use of the forecasted test years as proposed in the Offer and Acceptance of Satisfaction would require the adoption of forecasted adjustments to the capitalizations of KU/LG&E that have not been subjected to the Commission’s investigation and review.”

Despite the parties filing the Offer and Acceptance of Satisfaction nearly two months prior to the Commission issuing the Order, the Order’s analysis fails to include any revenue requirement or earnings analysis or consider the total impact of the TCJA on the Companies. The Order also failed to acknowledge the increase in debt costs for the period over which these reductions in cash from operations must be financed. The Order selectively chose the time periods over which to apply two of the impacts of the TCJA, using the Companies’ forecasted test period from its last base rate case to calculate the impact on the revenue requirement from the change in the federal statutory income tax rate, while using the period from January 1, 2018 to April 30, 2019, to calculate the amortization of excess deferred income taxes resulting from the TCJA. These asymmetrical adjustments to the calculation increased the amount of the TCJA Surcredit by approximately \$26.9 million as shown in the following table under the column entitled, “TCJA Surcredit”:

	Total Tax Reduction \$(Millions)		TCJA Surcredit \$(Millions)		Reduction to Average Residential Bill	
	Commission	Settlement	Commission	Settlement	Commission	Settlement
KU	\$(108.00)	\$(91.29)	\$(86.89)	\$(70.18)	6.1%	5.1%
LG&E Electric	\$(78.91)	\$(68.93)	\$(58.96)	\$(48.99)	6.4%	5.6%
LG&E Gas	\$(16.87)	\$(16.66)	\$(16.50)	\$(16.30)	4.5%	3.0%

The supporting calculations and recalculated TCJA Surcredit amounts are attached as Appendices to the Commission’s Order. Upon request by the Companies’ counsel, the Commission to date has declined to provide the Staff’s Excel files showing the calculations contained in the Appendix C.

The Order directs the Companies to begin billing the TCJA Surcredit as increased by the Commission’s Order by approximately \$26.9 million for services rendered on or after April 1, 2018.<sup>5</sup>

### **PETITION FOR RECONSIDERATION**

The Companies petition for reconsideration and request a hearing on the modification to the Offer and Acceptance of Satisfaction. The petition and request for hearing is necessary because the Commission’s Order has numerous legal and factual errors, including the modified amount of the TCJA Surcredit. Notwithstanding their Section 5.6 notice and its impact on the force and effect of the Order,<sup>6</sup> the Companies request authority to implement the TCJA Surcredit

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<sup>5</sup> See Footnote No. 4 at page 3 *infra*.

<sup>6</sup> Section 5.6 of the Offer and Acceptance of Satisfaction, as approved by the Commission provides, in pertinent part: “If the Commission does not accept and approve this Offer and Acceptance of Satisfaction in its entirety, then any adversely affected Party may withdraw from this Offer and Acceptance of Satisfaction within the statutory periods provided for rehearing and appeal of the Commission’s order by (1) giving notice of withdrawal to all other Parties and (2) timely filing for rehearing or appeal.” By letter dated, March 26, 2018, LG&E and KU give notice under Section 5.6 of the Offer and Acceptance of Satisfaction of their withdrawal.

at the levels proposed in the Offer and Acceptance of Satisfaction pending the issuance of a Final Order on Reconsideration and without prejudice to the outcome of the hearing.<sup>7</sup>

The Order Violates Procedural Due Process and Kentucky Statutes

In issuing its Order modifying the Offer and Acceptance of Satisfaction, the Commission denied the Companies procedural due process by failing to identify the use of estimated capitalization and cost of debt consistent with the terms of the TCJA Surcredit in the calculation of refund amount as an issue and failing to hold a hearing on the issue.

Procedural due process is required by the Due Process Clauses of the Fifth and Fourteenth Amendments to the U.S. Constitution and Section 2 of the Kentucky Constitution. When the government seeks to deprive a person of a liberty or property interest, procedural due process requires the person must first be given adequate notice, the opportunity to be heard, and a neutral adjudicator.<sup>8</sup> The principal case interpreting the procedural due process requirements of the U.S. Constitution as they apply to utility commission proceedings is *Ohio Bell Telephone Co. v. Public Utilities Commission of Ohio*.<sup>9</sup> *Ohio Bell* requires that a ratemaking commission's procedures afford three rights to the parties before it: (1) the right to know what the issues are in the case; (2) the right to timely notice of the opposing evidence in the record; and (3) the right to a decision based on evidence in the record, so that meaningful judicial review is possible.<sup>10</sup> Particularly, *Ohio Bell* states that a party is entitled 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."<sup>11</sup> Kentucky decisions, applying the holding in *Ohio Bell* have similarly held that

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<sup>7</sup> See Footnote No. 4 at page 3 *infra*. The Companies request for authority to implement the TCJA Surcredit at the levels proposed in the Offer and Acceptance of Satisfaction referenced above includes implementing the TCJA surcredit for LG&E's gas operations as modified by the Commission's Order.

<sup>8</sup> See, e.g., *Bd. of Regents v. Roth*, 408 U.S. 564 (1972).

<sup>9</sup> 301 U.S. 292 (1937).

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

<sup>11</sup> *Id.*

the Commission must provide a utility notice of the issues under consideration and give the utility a meaningful opportunity to be heard.<sup>12</sup>

To satisfy procedural due process, notice must be “reasonably calculated” in order to afford the parties “an opportunity to present their objections.”<sup>13</sup> A party must not only be given notice of the issues and evidence against it, but the notice must occur sufficiently far in advance of the hearing to allow the party a meaningful opportunity to test, explain, or rebut the evidence.<sup>14</sup>

In *Utility Regulatory Commission v. Kentucky Water Service Co.*, the Kentucky Court of Appeals remanded an order of the Utility Rate Commission (the Commission’s predecessor) because the utility was denied due process.<sup>15</sup> In *Kentucky Water*, the Commission issued an order granting a rate increase that was less than the utility requested because it disagreed with an accounting practice of the utility.<sup>16</sup> The utility was not notified of the Commission’s issue with its accounting practice until after its rate case hearing.<sup>17</sup> The utility moved for rehearing but the Commission denied its motion.<sup>18</sup> Then, the utility sought judicial review in Franklin Circuit Court.<sup>19</sup> In finding that the utility had been denied due process of law, the Court of Appeals explained that the utility had no opportunity to present evidence defending its accounting

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<sup>12</sup> *Utility Regulatory Comm’n v. Ky. Water Serv. Co.*, 642 S.W.2d 591, 592 (Ky. App. 1982) (“Due process requires, at a minimum, that persons forced to settle their claims of right and duty through the judicial process be given a meaningful opportunity to be heard. No hearing in the constitutional sense exists where a party does not know what evidence is considered and is not given an opportunity to test, explain or refute.”). *See also Ky. Am. Water Co. v. Commonwealth*, 847 S.W.2d 737, 741 (Ky. 1993) (“Under Due Process, the AG and the City were entitled to know what evidence is being considered and are entitled to an opportunity to test, explain and/or refute that evidence.”); *Public Service Comm’n v. Warren Cnty. Water Dist.*, 642 S.W.2d 594 (Ky. App. 1982) (holding that Commission denied utility right to a meaningful opportunity to be heard because utility was not apprised prior to the issuance of the final order of the issue under consideration and the action contemplated).

<sup>13</sup> *Mullane v. Central Hanover Bank & Trust Co.*, 339 U. S. 306, 314 (1950).

<sup>14</sup> *Kentucky Water*, 642 S.W.2d at 593 (“Indeed, the Due Process Clause forbids any agency to use evidence in a way that forecloses an opportunity to offer a contrary presentation.”).

<sup>15</sup> *Id.* at 594.

<sup>16</sup> *Id.* at 592.

<sup>17</sup> *Id.* at 593.

<sup>18</sup> *Id.* at 592.

<sup>19</sup> *Id.*

practice as the utility was led to believe that its current practice was appropriate by the Commission's failure to raise the issue.<sup>20</sup>

Procedural due process also requires a hearing. Even if a party receives sufficient notice and is aware of the issues against it, the party must be able to confront the evidence and present refuting evidence.<sup>21</sup> Kentucky's highest court has specifically held that "[c]onstitutional due process requires a fair and open hearing as a prerequisite to an order reducing rates of a public utility."<sup>22</sup> In that case, the court held that the Commission had no power to enter an order reducing rates because it had not completed a public hearing.<sup>23</sup>

The Commission denied the Companies procedural due process by failing to notify the Companies of the Commission's concern with the use of estimated capitalization and cost of debt consistent with the terms of the TCJA Surcredit in the calculation of the TCJA Surcredit and by failing to hold a hearing on the issue. First, like the utility in *Kentucky Water*, the Companies were denied due process because they received no notice of this concern. The Commission Staff served two requests for information upon the Companies; neither questioned the use of estimated capitalization and cost of debt consistent with the terms of the TCJA Surcredit in the Companies' calculation. The Companies were unaware of the Commission's concern before receiving the Order on March 20, 2018. Second, the Commission denied the Companies due process by the Commission's failure to hold a hearing on this matter. The Companies were given no opportunity to confront and address the Commission's concern. Because they were given neither notice nor an opportunity to be heard, the Companies were denied due process.

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<sup>20</sup> *Id.* at 593.

<sup>21</sup> In *Kaelin v. City of Louisville*, the Kentucky Supreme Court considered whether the right of cross-examination is required in a trial-type adjudicatory hearing before an administrative body in Kentucky and concluded that it was. 643 S.W.2d 590 (Ky. 1982).

<sup>22</sup> *Mayfield Gas Co. v. Public Service Comm'n*, 259 S.W.2d 8 (Ky. 1953). See also *Hicks v. Ky. Unemployment Ins. Comm'n*, 390 S.W.3d 167 (Ky. App. 2013) ("Due process requires, at a minimum, that persons forced to settle their claims of right and duty through the judicial process be given a meaningful opportunity to be heard.").

<sup>23</sup> *Id.*



Additionally, the Commission's Order violates a laundry list of Kentucky statutes by failing to provide the Companies with a hearing and sufficient notice of the rate change. KRS Chapter 278 requires a hearing before an order affecting rates or service is issued.<sup>24</sup> The Commission also failed to provide the requisite notice to the Companies of the rate change as KRS 278.180 requires.<sup>25</sup> These statutes are designed to ensure the due process required by the U.S. and Kentucky Constitutions.

#### Factual Errors Appear to Exist in the Order's Calculations in Appendix C

Next, the Companies believe factual errors appear to exist in the Order's calculation of the TCJA Surcredit amounts, but have been unable to obtain the spreadsheets to confirm the accuracy of the Commission's calculations. Particularly, the Companies believe the calculations of the effective tax rates and tax gross up in the Order have several errors. Counsel for the Companies has requested the spreadsheets in Excel format from the Commission to determine

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<sup>24</sup> KRS 278.260(1) ("No order affecting the rates or service complained of shall be entered by the commission without a formal public hearing."); KRS 278.260(3) ("The complainant and the person complained of shall be entitled to be heard in person or by an attorney and to introduce evidence."); KRS 278.270 ("Whenever the commission, upon its own motion or upon complaint as provided in KRS 278.260, **and after a hearing had upon a reasonable notice**, finds that any rate is unjust, unreasonable, insufficient, unjustly discriminatory or otherwise in violation of any of the provisions of this chapter, the commission shall by order prescribe a just and reasonable rate to be followed in the future.") (Emphasis added). *See also* 807 KAR 5:001, Section 9(1) ("Unless a hearing is not required by statute, is waived by the parties in the case, or is found by the commission to be unnecessary for protection of substantial rights or not in the public interest, the commission shall conduct a hearing if: (a) An order to satisfy or answer a complaint has been made and the person complained of has not satisfied the complaint; or (b) A request for hearing has been made.")

<sup>25</sup> KRS 278.180 provides: "Except as provided in subsection (2) of this section, no change shall be made by any utility in any rate except upon thirty (30) days' notice to the commission, stating plainly the changes proposed to be made and the time when the changed rates will go into effect. However, the commission may, in its discretion, based upon a showing of good cause in any case, shorten the notice period from thirty (30) days to a period of not less than twenty (20) days. **The commission may order a rate change only after giving an identical notice to the utility.** The commission may order the utility to give notice of its proposed rate increase to that utility's customers in the manner set forth in its regulations." (Emphasis added).

While the Companies agreed in their Offer and Acceptance of Satisfaction to a proposed rate reduction to take effect on April 1, 2018, the Commission imposed a material modification and ordered a larger reduction by almost \$27 million. (The Companies requested that an order approving the Offer and Acceptance of Satisfaction be approved no later than February 16, 2018.) Under the statute, a compulsory reduction cannot become effective prior to April 19, 2018.

the errors. To date, the Commission has declined to provide the Excel files to the prejudice of the Companies.

The Commission Lacked Authority to Modify  
the Offer and Acceptance of Satisfaction

Under the Commission’s own regulation, it does not have the authority to modify the Offer and Acceptance of Satisfaction. 807 KAR 5:001, Section 20(5) provides that a defendant may satisfy the complaint with the acceptance of the offer by the complainant and the approval of the commission. The regulation makes no provision for the modification of the defendant’s accepted offer. In another complaint case, the Commission proposed modifications to a settlement agreement,<sup>26</sup> stating: “If the parties cannot agree to the [modifications] . . . , the Settlement Agreement shall be denied and the terms of the Settlement Agreement shall not be deemed binding upon the parties.”<sup>27</sup> In doing so, the Commission recognized that it was limited by its own regulation to accepting and denying the settlement and could not unilaterally modify the settlement. The Order’s modification to capitalization and cost of debt disregards the Commission’s regulation.

The Commission’s Modification of the Offer  
and Acceptance of Satisfaction Was Arbitrary

The Commission’s modification to the Offer and Acceptance of Satisfaction to reject the use of the forecasted period for January 1, 2018 to April 30, 2019 was arbitrary. Kentucky’s highest court has stated: “Unless action taken by an administrative agency is supported by substantial evidence it is arbitrary.”<sup>28</sup>

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<sup>26</sup> *In the Matter of: Charles and Carolyn Pope, et al. v. Nicholas County Water District*, Case No. 91-281, Order at 4 (Ky. PSC Dec. 6, 1991).

<sup>27</sup> *Id.*

<sup>28</sup> *American Beauty Homes Corp. v. Louisville & Jefferson Cnty. Planning & Zoning Comm’n*, 379 S.W.2d 450, 456 (Ky. 1964) (citing *Thuman v. Meridian Mut. Ins. Co.*, 345 S.W.2d 635 (Ky. 1961)).

As support for its action, the Order offered only the following:

Since KU/LG&E have recently concluded rate cases based on current test years ending June 30, 2018, the Commission finds that it is not reasonable to utilize forecasted test years extending through April 2019. Use of the forecasted test years as proposed in the Offer and Acceptance of Satisfaction would require the adoption of forecasted adjustments to the capitalizations of KU/LG&E that have not been subjected to the Commission's investigation and review.

In contrast, in the 1986 tax reform act review proceedings, the Commission recognized that there was no limitation on the information to be considered in determining the effects of the tax reform.<sup>29</sup> The Order offers no additional evidence as to why the Commission rejected the Companies' calculations. If the Commission required additional investigation or review of the forecasted adjustments, the Commission should have requested information and held a hearing to confront the issue.

In addition to the Order not being supported by substantial evidence, the Order's modification of the Offer and Acceptance of Satisfaction is arbitrary for several additional reasons. First, in modifying the Offer and Acceptance of Satisfaction, the Order selectively chose time periods for which to calculate the impacts of the TCJA but no consideration is given for regulatory lag when addressing any other adverse impacts from the TCJA or otherwise on the Companies' overall costs of capital. The Order's analysis used the forecasted test year from the Companies' last rate cases even though the TCJA was only in effect for the second half of the test period. Notably, the forecasted test years in the Companies' 2016 rate cases did not assume a change in tax law and included the assumption that bonus depreciation would remain in place. The effect of the Order's selective modification is that regulatory lag is addressed for the cost-reducing components of the TCJA, but no consideration is given for regulatory lag when

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<sup>29</sup> *In the Matter of: The Effects of the Federal Tax Reform Act of 1986 on the Rates of Continental Telephone Company of Kentucky*, Case No. 9799, Order at 5 (Ky. PSC June 11, 1987).

addressing any of the adverse impacts of the TCJA on the Companies' overall costs. This disparate treatment fails to fairly address both the positive and negative or the total impacts of the TCJA.

Second, the Commission ignored that the Companies must entirely finance the TCJA Surcredits and rate mechanism reductions attributable to the TCJA given its net operating loss carryforward. Put simply, TCJA amounts to be returned to customers through the surcredits and mechanisms are a reduction in cash revenues received from customers without a corresponding reduction in cash expenses. The cash reduction in revenues through the TCJA Surcredit and changes to other rate mechanisms are due to non-cash savings. The TCJA will also result in incremental cash taxes paid by the Companies as a result of the elimination of bonus tax depreciation. Thus, the Companies will have costs associated with financing the increased TCJA Surcredit amount that the Commission did not consider.

Third, the Commission's modifications ignore the current market cost of debt for the period over which the TCJA Surcredit applies. Financing costs have increased since the Companies' last base rate cases and the modifications do not consider this impact.

The Parties considered such updates reasonable as they were not significant and covered the same time period being afforded the positive TCJA impacts for customers, that being from the effective date of the TCJA until such time as it is reflected in base rates. In doing so, the Offer and Acceptance of Satisfaction reasonably presents the total or net impact of the TCJA and matches the time period during which both the TCJA and the TCJA surcredits are in effect. Because the Order's modification to the Offer and Acceptance of Satisfaction do not consider these impacts and is not based on substantial evidence, it is arbitrary.

Notwithstanding their Section 5.6 notice, the Companies remain willing to implement the TCJA Surcredit at the level agreed to in the Offer and Acceptance of Satisfaction, effective with services rendered on and after April 1, 2018, pending the outcome of hearing on the Commission's modification to the Companies' use of estimated capitalization and cost of debt consistent with the terms of the TCJA Surcredit in the calculation of the TCJA Surcredit.<sup>30</sup>

### **ALTERNATIVE REQUEST**

In the alternative, if the Commission denies the Companies' request for a hearing limited to the Commission's modification of the Offer and Acceptance of Satisfaction, the Companies request the Commission formally recognize that the Order has no force and effect and grant a complete hearing on the merits of KIUC's complaint.<sup>31</sup> If reconsideration and hearing are not granted, the Companies will not implement the TCJA Surcredit at the level agreed to in the Offer and Acceptance of Satisfaction.

Pursuant to Section 5.6, written notice of withdrawal was given to KIUC and the AG on March 26, 2018. The notice releases the Companies from the modified Offer and Acceptance of Satisfaction and billing of TCJA Surcredits.

**WHEREFORE**, Kentucky Utilities Company and Louisville Gas and Electric Company respectfully request the Commission:

1. Grant reconsideration of its Order and hold a hearing on the Commission's modifications to the Offer and Acceptance of Satisfaction;
2. Formally recognize that the Order has no force and effect;

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<sup>30</sup> See Footnote No. 7 at page 6 *infra*.

<sup>31</sup> The Commission has previously scheduled hearings following the withdrawal of a party from a settlement agreement. See *i.e.*, *In the Matter of: Rate Application of Western Kentucky Gas Company*, Case No. 95-010, Order (Ky. PSC Sept. 1, 1995).

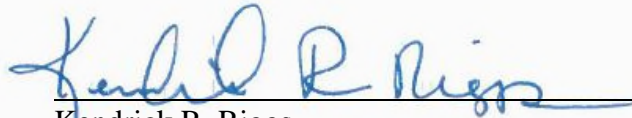
3. Notwithstanding their Section 5.6 notice, grant the Companies authority to implement the TCJA Surcredit at the levels proposed in the Offer and Acceptance of Satisfaction pending the issuance of a Final Order on Reconsideration and without prejudice to the outcome of the hearing;

4. In the alternative, formally recognize that the Order has no force and effect and establish a procedural schedule and conduct a complete hearing of the on the merits of KIUC's complaint; and

5. For all other relief to which they may be entitled.

Dated: March 26, 2018

Respectfully submitted,



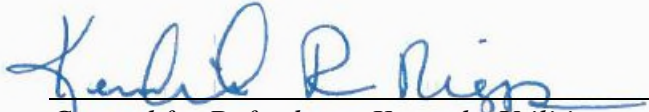
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*Counsel for Defendants, Kentucky Utilities  
Company and Louisville Gas and Electric Company*

**CERTIFICATE OF SERVICE**

This is to certify that Kentucky Utilities Company's and Louisville Gas and Electric Company's March 26, 2018 electronic filing of its *Petition for Reconsideration and Request for Hearing* 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 March 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 in paper medium of the *Petition for Reconsideration and Request for Hearing* is being mailed to the Commission on March 26, 2018, by first class United States mail, postage prepaid.



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*Kenneth R. Nepp*  
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Company and Louisville Gas and Electric Company



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March 26, 2018

**VIA REGULAR MAIL AND ELECTRONIC MAIL**

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**RE: Kentucky Utilities Company's and Louisville Gas and Electric Company's Notice  
of Withdrawal from Offer and Acceptance of Satisfaction**

Dear Counsel:

On March 20, 2018, the Public Service Commission (“Commission”) approved with a material modification the Offer and Acceptance of Satisfaction entered into by Kentucky Utilities Company (“KU”), Louisville Gas and Electric Company (“LG&E”) (collectively, “Companies”), the Attorney General for the Commonwealth of Kentucky, and Kentucky Industrial Utility Customers, Inc. The Commission’s Order made a material modification to the Tax Cut and Jobs Act Surcredit proposed by the Offer and Acceptance of Satisfaction. The Commission’s Order approved Section 5.6 of the Offer and Acceptance of Satisfaction.

Section 5.6 allows an adversely affected party to withdraw from the Offer and Acceptance of Satisfaction if the Commission does not accept and approve the Offer and Acceptance of Satisfaction in its entirety. KU and LG&E are exercising their right to withdraw from the Offer and Acceptance of Satisfaction. This letter provides notice of the Companies’ withdrawal.

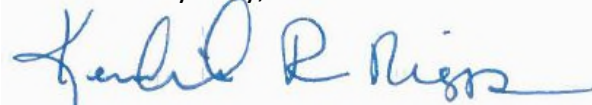


March 26, 2018

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The Companies will be filing a Petition for Reconsideration and Request for Hearing with the Commission today. Notwithstanding their Section 5.6 notice, the Companies will request authority from the Commission by March 28, 2018 to implement the three Tax Cuts and Jobs Act Surcredits at the levels proposed in the Offer and Acceptance of Satisfaction for services rendered on and after April 1, 2018, while this proceeding is pending and without prejudice to their rights.

Yours very truly,



Kendrick R. Riggs

KRR:mew

cc: Gwen Pinson, Executive Director  
Kentucky Public Service Commission  
211 Sower Boulevard  
Frankfort, Kentucky 40602