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 APPROVAL OF A SOLAR POWER CONTRACT AND TWO RENEWABLE POWER AGREEMENTS TO SATISFY CUSTOMER REQUESTS FOR A RENEWABLE ENERGY SOURCE UNDER GREEN TARIFF OPTION #3	**)))))))))**	**CASE NO. 2020-00016**

REPLY BRIEF OF KENTUCKY UTILITIES COMPANY AND LOUISVILLE GAS AND ELECTRIC COMPANY

PUBLIC VERSION

Dated: April 22, 2020

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INTRODUCTION

Kentucky Utilities Company and Louisville Gas and Electric Company (collectively "Companies") believe there is a statement in the Attorney General's Response Brief ("Response Brief") that properly frames the issue for decision in this case: "The Commission should approve the 75 MW segment [of the proposed Solar Power Purchase Agreement ("Solar PPA")] under … [Green Tariff] Option #3 but should not approve the 25 MW segment unless it is satisfied that it is beneficial to the ratepayers."[1] In other words, the Response Brief expresses clear approval for 75% of the Solar PPA. Although the Response Brief states concerns regarding the 25% of Solar PPA energy that would serve all customers, an objective examination of the record shows the overwhelming weight of evidence in this proceeding—indeed, the only evidence in this proceeding—concludes that 100% of the Solar PPA is likely to benefit customers when viewed across the entire 20-year contract term and under a broad range of future scenarios. The converse is also true: *not* approving the Solar PPA would likely result in higher energy costs to all the Companies' customers than if the Commission approves the PPA as proposed. Therefore, the Commission should approve this application as filed for its benefits to Toyota, Dow, and all customers.

I. The Fundamental Substantive Question before the Commission Is whether the Solar PPA Will Be Beneficial for Customers, and the Correct Standard to Apply Is Reasonableness and Prudence, Not Guarantees.

As noted above, the Companies and the Response Brief agree substantively on the real question before the Commission: Will the energy from the Solar PPA be financially beneficial for customers?

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[1] Response Brief at 8. The Response Brief's numerous red herring arguments that mislead or distract from this dispositive issue are addressed separately in the Reply Brief's Appendix. These arguments are either based on a logical fallacy or designed to lead the Commission toward a false conclusion and away from considering the record of evidence.

But there are two important areas of disagreement regarding the legal standard the Commission should apply: (1) whether it is appropriate to apply KRS 278.020(1) certificate of public convenience and necessity criteria to an energy-only PPA that will have none of the financial, operational, or maintenance-related impacts of constructing or owning a generating unit; and (2) whether the appropriate standard for showing benefit for customers is (i) a reasonable likelihood of financial benefit based on the best available evidence and forecasting or (ii) essentially a guarantee, a demonstration of absolute certainty that customers will be better off no matter what the future holds.

Regarding the applicability of KRS 278.020(1) criteria of lack of wasteful duplication and need, the Companies demonstrated at length in their first brief why those criteria are inapplicable to the Solar PPA.[2] In short, it is an arbitrary exercise of power to apply the criteria for analyzing the construction of a new generating unit—with all the rate-base, financial, and operating and maintenance impacts and obligations such construction and ownership entail—to an energy-only PPA with no capacity costs, no operating or maintenance obligations, no impact to the Companies' balance sheets or rate base, and, indeed, not even an obligation to pay unless a MWh of energy is delivered.[3] They are entirely different undertakings.

Contra the Response Brief, the Companies are not "seeking a loophole that does not exist";[4] rather, the Companies are advocating for applying criteria that fit the matter at hand. Indeed, the Response Brief concedes there are material differences between the proposed PPA and "[t]he operational and functional implications to ratepayers … from new generation construction."[5] But

[2] Companies' Brief at 9-13.
[3] *See id.*
[4] Response Brief at 5-6.
[5] *Id.* at 6.

the Response Brief then asserts that "operational and functional implications to ratepayers … still exist and must be addressed in order to prove that they are of benefit to ratepayers" while remaining silent about what the "operational and functional implications to ratepayers" are.[6] Indeed, nowhere does the Response Brief articulate any similarity at all between the construction of a new generating unit and entering into an energy-only PPA with no obligation to pay unless energy is actually delivered. The simple reason for this omission is that there is no such similarity.

Thus, the Companies simply argue that applying the appropriate legal criteria to the issue before the Commission matters. The Companies propose to acquire relatively small amounts of as-available energy at a fixed price per MWh, nothing more. Contrary to the assertion that the Solar PPA will have "operational and functional implications to ratepayers," the uncontradicted evidence in the record of this proceeding is that the Solar PPA will have no such implications. For that very reason, there is no basis in law or fact to apply the criteria of KRS 278.020(1) to the application at hand, and the Companies explained in their first brief why mechanistically applying KRS 278.020(1) criteria to the Solar PPA is inappropriate.[7]

Regarding the second point of disagreement concerning the legal standard to apply in this proceeding, there is no legal support—certainly the Response Brief cites none—for the proposed guarantee standard, i.e., the Companies must demonstrate to a certainty that the Solar PPA will be a benefit for all customers, at all times, and in every possible future state: "[T]he Commission could … approve the 25 MW segment if the Companies successfully prove that other customers will bear no additional costs."[8] It is an impossible standard, devoid of any support in law, and would result in the Commission never approving another CPCN for any investment, including

[6] *Id.*
[7] Companies' Brief at 9-13, 15, 17, 18.
[8] Response Brief at 3.

investments in environmental control equipment, or the assumption of any obligation or issuance of indebtedness. The actual standard articulated by Kentucky courts, this Commission, and courts in other jurisdictions is one of reasonableness and prudence: "[T]he utility is compensated for all prudent investments at their actual cost when made … , irrespective of whether individual investments are deemed necessary or beneficial in hindsight."[9] In other words, what would a reasonable businessperson do based on the information available at the time?[10]

Applying the KRS 278.300(3) criteria that an evidence of indebtedness must be reasonably necessary and appropriate for the proper performance by a utility of its service to the public, and using a standard of prudence and reasonableness to the 25% of the energy from the Solar PPA at issue, it is clear that the Commission should approve the Solar PPA application. Using the best available evidence in a thorough multivariate analysis, the Companies demonstrated that the Solar

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[9] The Commission established a three-part test which a utility must satisfy for its fuel procurement system to be deemed prudent: "(1) the utility's decision-making should reflect the skill and knowledge of an expert or specialist in the appropriate trade or profession; (2) decisions are presumed to be prudent unless evidence of mismanagement, negligence, or bad faith is discovered; and **(3) decision-making must be viewed under the circumstances existing at the time of the decision without application of hindsight in evaluating the results of the decision**." (emphasis added). *An Investigation into the Fuel Procurement Practices of Kentucky Utilities Company,* Case No. 9631, Order at 5 (Ky. PSC Oct. 31, 1989); *Big Rivers Electric Corporation, et al. vs. Public Service Commission, et al.*, Franklin Circuit Court Case No. 94-CI-01184 (Oct. 20, 1995) ("Basically, the prudence doctrine dictates that if the utility prudently incurs a cost, then that cost is recoverable from ratepayers even if the investment decision does not turn out to be a wise or good one. On the other hand, if the utility imprudently incurs a cost, then those costs may not be passed on to the ratepayers"). *Duquesne Light Co. v. Barasch*, 488 U.S. 299, 309 (1989); *See also Association of Businesses Advocating Tariff Equity v. Public Serv. Comm'n*, 527 N.W.2d 533, 539 (Mich. App. 1994)("As described in Duquesne, under the prudent investment test a utility is compensated for prudent investments at their actual cost when made, regardless of whether the investments proved to be necessary or beneficial in hindsight.").

[10] *City of Cincinnati v. Public Utils. Comm'n*, 620 N.E.2d 826, 830 (Oh. 1993)("We adopt the definition of a prudent decision, which is in accord with that used in other jurisdictions, as 'one which reflects what a reasonable person would have done in light of conditions and circumstances which were known or reasonably should have been known at the time the decision was made.' The standard contemplates a retrospective, factual inquiry, without the use of hindsight judgment, into the decision-making process of the utility's management."); *Matter of National Fuel Gas Distrib. Corp. v. Public Serv. Commn. of the State of N.Y.,* 947 N.E.2d 115, 120 (Ct. App. NY 2011)("**A utility's decision is prudent if it acted reasonably based on the information that it had and the circumstances that existed at the time**. A decision may be viewed as prudent even though a different course of action would ultimately have been more advantageous to the utility or its ratepayers. In this regard, hindsight is irrelevant to a prudence analysis because the utility must make a determination that addresses its business prospectively. Thus, if more than one course of action was reasonable at the time of decision making, the utility may choose among them. The PSC cannot overturn a prudent decision by a utility because it believes that another course of action would have been preferable.")(emphasis added).

PPA is likely to reduce customers' fuel costs (net of revenues from sales of Renewable Energy Certificates ("RECs")) across 42 of the most likely future states modeled.[11] The Companies have been equally transparent that in six modeled scenarios the net impact to customers would be slightly adverse, but only in a few scenarios in which REC prices are zero or $2 for the entire 20-year term of the PPA. Such scenarios are unlikely at best: Historical solar REC prices have been, and current forward solar REC prices are, well above $2—usually multiples of that amount.[12] Based on these results, it is the Companies' business judgment that the Solar PPA is indeed in all customers' best interests.

This is precisely the kind of thinking and risk-based analysis the Companies apply when considering other business decisions: Based on what can be known and the best information available about possible future states of the world, what course of action is likely to result in the best outcome for customers in the long run? For example, the Companies use these kinds of long-term, multivariate analyses when considering generation options (such as constructing Cane Run Unit 7[13]) and whether or what kinds of environmental control equipment to construct (such as the construction of flue gas desulfurization, selective catalytic reduction, and particulate matter control

[11] Sinclair Testimony Exhibit DSS-2 ("2019 Resource Assessment").
[12] *Id.* at 23-24.
[13] *Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for a Certificate of Public Convenience and Necessity and Site Compatibility Certificate for the Construction of a Combined Cycle Combustion Turbine at the Cane Run Generating Station and the Purchase of Existing Simple Cycle Combustion Turbine Facilities from Bluegrass Generation Company, LLC in LaGrange, Kentucky*, Case No. 2011-00375, 2011 Resource Assessment, Exhibit DSS-1 to Direct Testimony of David S. Sinclair (filed on Sept. 15, 2011).

system equipment[14]). As a matter of sound business judgment, utilities must look beyond the present to the future needs of their customers.[15]

That is why the repeated expressions of concern in the Response Brief about uncertainty and risk are entirely misplaced. The Response Brief states numerous times that the Companies cannot know with certainty and cannot guarantee that the Solar PPA will be a benefit to all customers at all times no matter what the future holds.[16] Indeed the Companies cannot do so, but neither can anyone else because nobody knows precisely what the future holds. Therefore, a guarantee-type standard that requires absolute certainty to proceed is neither legally supportable nor practicable, and the Commission should not apply it to the Solar PPA.[17]

Though the Companies cannot know the future, what can be done is exactly what the Companies have done here; namely, to propose a prudent course of action based on the best information available at the time and a multivariate analysis across a broad range of future scenarios. Based on that information and analysis—which is the only evidence in this record—the Solar PPA is reasonable and prudent because it is likely to provide financial benefits for all customers, and the Commission should approve it in its entirety. It is equally clear that based on the same information and analysis that denying approval to the Solar PPA as proposed is likely to

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[14] *Application of Kentucky Utilities Company for Approval of its 2020 Compliance Plan for Recovery by Environmental Surcharge*, Case No. 2020-00060, and *Application of Louisville Gas and Electric Company for Approval of its 2020 Compliance Plan for Recovery by Environmental Surcharge*, Case No. 2020-00061, Analysis of 2020 Environmental Compliance Plan Projects, Exhibit SAW-1 to Direct Testimony of Stuart A. Wilson (filed on Mar. 31, 2020); *Application of Kentucky Utilities Company for Certificates of Public Convenience and Necessity and Approval of its 2011 Compliance Plan for Recovery by Environmental Surcharge*, Case No. 2011-000161, and *Application of Louisville Gas and Electric Company for Certificates of Public Convenience and Necessity and Approval of its 2011 Compliance Plan for Recovery by Environmental Surcharge*, Case No. 2011-00162, 2011 Air Compliance Plan, Exhibit CRS-1 to Direct Testimony of Charles R. Schram (filed on June 1, 2011).

[15] *Central Louisiana Electric Co. v. Louisiana Public Service Com.*, 508 So. 2d 1361, 1368 (La. 1987) ("As a matter of sound business judgment, utilities must build beyond their immediate needs. If their investments are provident and are made both in good faith and in the best interests of the area served, they plainly belong in the rate base.").

[16] Response Brief at 7, 9.

[17] Such a guarantee standard would be inconsistent with the approach the Commission has used to approve PPAs in the past, *infra* p. 17, note 47.

result in higher energy costs to all of the Companies' customers than if the Commission approves the PPA.

II. The Response Brief's Criticisms of the Companies' "Future Projections" Are Unfounded.

The Response Brief criticizes the Companies' Solar PPA analysis for being "predicated on estimated future projections."[18] Yet it is not clear how a future-facing analysis rather than a purely historical analysis could be otherwise; the Companies and most other jurisdictional utilities have used estimated future projections for both planning purposes and to support their business decisions before this Commission for some decades. Except for its exclusive focus on renewable energy and its preference for new generation projects, the Renewable Request For Proposals ("RFP") was no different from previous RFPs and the analytical methods and data used to analyze the results were no different than previous analyses submitted to, and accepted by, this Commission.[19] Not to consider the future when making such a business decision would be imprudent.

The Response Brief also states, "The Companies concede a range of possibilities between costs versus savings to the average residential customer."[20] That is true, and the Companies have not suggested otherwise; they have asserted neither that there is only one possible future state of the world, nor that the Solar PPA will provide benefits to all customers at all times in all possible

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[18] *Id.* at 6.
[19] *See, e.g., Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for Certificates of Public Convenience and Necessity for the Construction of a Combined Cycle Combustion Turbine at the Green River Generating Station and a Solar Photovoltaic Facility at the E.W. Brown Generating Station,* Case No. 2014-00002, Order at 10-11 (Ky. PSC Dec. 19, 2014); *Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for a Certificate of Public Convenience and Necessity and Site Compatibility Certificate for the Construction of a Combined Cycle Combustion Turbine at the Cane Run Generating Station and the Purchase of Existing Simple Cycle Combustion Turbine Facilities from Bluegrass Generation Company, LLC in LaGrange, Kentucky,* Case No. 2011-00375, Order at 18 (Ky. PSC May 3, 2012). *See also* 807 KAR 5:058 Integrated Resource Plan.
[20] Response Brief at 6.

states of the world for the next 20 years. What the Companies' multivariate, multi-scenario analysis shows is that the outcomes for an average residential customer range from a benefit of $[redacted] per year assuming a levelized REC price of $[redacted] to a cost of $[redacted] per year assuming no REC revenue at all.[21] As noted above, historical solar REC pricing and current forward markets indicate significantly higher pricing than $2 per REC, making a zero REC revenue scenario unlikely.[22] Therefore, it is not adequate for the Response Brief simply to assert that the Commission should not approve the Solar PPA merely because there is a range of possible outcomes; using a range of possible outcomes is sound utility planning. Rather, the Commission should consider the likelihood of the various outcomes in conjunction with the benefit or cost associated with each outcome in determining whether the Solar PPA is likely to be a net benefit or cost.

III. The Commission's Existing FAC Reporting Requirements Are Adequate to Ensure Transparency regarding the Proposed Solar PPA, but the Companies Do Not Object to Reasonable Additional Reporting Requirements.

If the Commission approves the Solar PPA, the Response Brief advocates for additional reporting requirements for the Companies and that the Commission "caution[ ] that it will exercise its authority to reopen this docket if ratepayer costs increase."[23] The Companies do not believe that additional reporting is necessary due to the extensive reporting already required for FAC matters, and the Solar PPA's costs and REC-sale revenues will pass through the Companies' FACs regarding the 25% of the energy from the Solar PPA that would serve all customers.[24] That aside, the Companies do not object to reasonable additional reporting requirements, such as providing

[21] Companies' Response to AG 2-19.
[22] 2019 Resource Assessment at 23.
[23] Response Brief at 9.
[24] The Response Brief erroneously states, "In fact, the Companies admit that the 25 MW segment will be recovered through base rates." (Response Brief at 7). As noted in Section IV of the Appendix hereto, Robert M. Conroy stated at page 9 of his testimony in this proceeding, "The energy purchased under the Solar Power Contract will be treated as a purchase power expense that is recovered through the Companies' fuel adjustment clauses.".

solar array performance data, information about energy purchases and sales made under the Solar PPA and related RPAs, and REC sale information, if the Commission believes having such additional information would be useful when considering PPAs in the future.

But the Commission should refrain from couching any approval in the form of a potential disallowance based on a hindsight review as the Response Brief advocates. The cost of the proposed Solar PPA is known; it is a fixed price per MWh PPA. What could change are factors outside the Companies' control, including other fuel prices, customer energy needs, weather, relevant environmental regulations, and REC prices. The Companies have modeled those variables and presented their analysis and results. If the Commission agrees with the Companies that it would be prudent to enter into the Solar PPA as proposed based on the evidence and analysis available today, there would be neither a reason nor a legal ground to cloud the approval with the prospect of reopening the matter.

IV. The Solar PPA Is a Single, Unitary Contract that Merits Approval in Its Entirety.

The Response Brief suggests the Commission could approve 75% of the Solar PPA to serve Toyota and Dow under the Companies' Green Tariff Option No. 3 while disapproving the remaining 25% or conditioning the approval on the Companies finding another industrial customer(s) willing to enter a RPA for the 25 MW.[25] But the Solar PPA is a single, unitary contract; its provisions do not contemplate moving forward with 75% of the proposed facility or the uncertainty of finding another industrial customer willing to enter into a RPA for the 25 MW under the same terms contained in the rest of the contract. It is uncertain whether or when the

[25] *See, e.g.*, Response Brief at 9.

Companies would be able to negotiate a contract for a smaller facility or an additional customer on terms that would be available to all the affected parties.[26]

To be clear, the Companies are not asking the Commission to approve a contract that would benefit Toyota and Dow at the expense of other customers; rather, the Companies are advocating a Solar PPA that the evidence in this proceeding shows is likely to benefit all customers and make the Companies' service territories and the Commonwealth more attractive to companies with sustainability targets. The Companies believe the Solar PPA as proposed is good for all customers, economic development, and the Commonwealth. The Commission should approve the entire 100 MW purchase without conditions.

CONCLUSION

In sum, all parties agree that the Solar PPA is appropriate and reasonable insofar as it would serve Toyota and Dow under Green Tariff Option No. 3. The fundamental substantive question before the Commission is whether the Solar PPA is prudent with regard to all customers. The Companies' analysis—the only evidence in this proceeding—shows that across 42 of the most likely scenarios studied, the Solar PPA will be financially beneficial to all customers; across the remaining six scenarios that are less likely, the Solar PPA would result in a modest net cost. The Companies respectfully submit that these results demonstrate that the Solar PPA is reasonable and prudent, and therefore deserves Commission approval.

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[26] Intra-Agency Memorandum, Kentucky Public Service Commission, filed on March 23, 2020, at 3 ("… Commission Staff also inquired LG&E/KU of the impact to the PPA should the Commission approve only certain portions of the PPA but not the agreement in its entirety. LG&E/KU informed that any modification of the PPA would most likely result in the developer modifying the terms of the agreement, which would then have to be reviewed and agreed to by Dow and Toyota.").

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Respectfully submitted,

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APPENDIX

I. The Response Brief's Criticisms of the Companies' Including Carbon Pricing Scenarios in their Analysis of the Solar PPA Are Contrary to the Commission Staff's Recommendations in Recent Integrated Resource Plan Cases.

The Response Brief criticizes the Companies' analysis for considering possible future greenhouse gas emission costs: "A carbon tax is a non-existent hypothetical and the Commission should therefore either not consider it, or give it little weight when determining whether potential ratepayer benefits exceed known costs."[27] Notably, the Companies' analysis shows that carbon pricing is not the primary driver of whether the Solar PPA is likely to be a net benefit or cost; having a carbon cost of some kind makes the Solar PPA more beneficial, but having zero carbon cost alone does not make the Solar PPA a net cost.[28] Moreover, the Companies have included carbon-pricing scenarios in their analyses, and particularly in their Integrated Resource Planning analyses, for years now—and have done so in accordance with the Commission Staff's recommendations.[29] Therefore, there is no reason for the Commission to discount the Companies' analysis of the Solar PPA because it includes zero-carbon-pricing and carbon-pricing scenarios; indeed, including those scenarios shows the robustness of the analysis.

II. KU Does Not Have Obligations under Recent Virginia Renewable Energy Mandates.

The Response Brief states regarding renewable energy mandates in Virginia, "Additionally, the Companies' explanation of whether RECs will in fact reduce ratepayer costs for the 25 MW segment lacks sufficient details, including whether they will have to utilize RECs in

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[27] Response Brief at 6.
[28] *See* 2019 Resource Assessment at 23-24.
[29] *See, e.g.,* Case No, 2008-00148, PSC Staff Report on LG&E and KU's Integrated Resource Plan at 14 ("LG&E/KU should continue to examine and report on the potential impact of increasing competition and future environmental requirements (specifically carbon capture and sequestration and other greenhouse gas mitigation requirements) and how these issues are incorporated into future load forecasts.").

Virginia to satisfy that state's new comprehensive renewable energy mandate."[30] In fact, the Companies addressed REC sales at length and in multiple places in the record, and the Response Brief fails to identify how this extensive evidence is lacking in detail in any way. Perhaps more importantly, KU's Virginia operations are exempt from the new renewable energy mandate to which the Response Brief refers.[31]

The Response Brief goes on to assert, "No explanation is given of the expected amount of monies the 25 MW might generate through RECs and what they could mean to the average customer."[32] In fact, the Companies addressed REC sales at length,[33] and what REC sales "could mean to the average customer" is irrelevant in isolation; the question is whether the cost of the solar energy *net* of REC revenues produces a lower or higher fuel cost than customers would have paid absent energy from the Solar PPA. That is a question the Companies have addressed with respect to residential customers, and the answer is that the outcomes for the average residential customer range from a benefit of $[redacted] per year assuming a levelized REC price of $[redacted] to a cost of $[redacted] per year assuming no REC revenue at all.[34] As noted above, historical solar REC pricing and current forward markets indicate significantly higher pricing than $2 per REC, making a zero REC revenue scenario unlikely.[35]

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[30] Response Brief at 6.

[31] The Virginia Clean Economy Act (Senate Bill 851 and its counterpart House Bill 1526) was signed into law by Virginia Governor Northam on April 11, 2020. The Virginia Clean Economy Act primarily modifies the Virginia Electric Utility Regulation Act ("VEURA") and mandates a timeline for conversion to renewable energy for Dominion Energy Virginia and American Electric Power. The Virginia Clean Economy Act with limited exceptions does not affect KU's exemption from VEURA contained in 56-580(G) and thus, only certain portions of the Act apply to KU. *See, e.g.*, Va. Code § 56-596.2 requiring all investor-owned utilities to develop a proposed program of energy conservation measures; Section 1 of Chapter 803 expanding the pilot programs for third party power purchase agreements to all investor-owned utilities; Va. Code § 56-594 changing net metering requirements.

[32] Response Brief at 6.

[33] *See, e.g.*, 2019 Resource Assessment at 19-21.

[34] Companies' Response to AG 2-19.

[35] 2019 Resource Assessment at 23.

III. The Companies' Solar PPA Analysis Does Not Contemplate Additional Off-System Sales, and Any Additional Off-System Sales Would Be Added Benefits of the Solar PPA.

The Response Brief states, "Moreover, the Companies say that the power from the PPA is not likely to add additional off-systems sales."[36] Although the statement is true, the Companies' analysis does not depend on or assume additional off-system sales.[37] The benefit of the Solar PPA is that it (net of REC revenues) displaces higher-cost generation, not that it frees up additional energy to be used for off-system sales. Any additional off-system sales the Solar PPA enabled would be an added benefit of the Solar PPA.

IV. Insofar as the Solar PPA Would Serve All Customers, the Companies Have Proposed to Recover the Cost of the Solar PPA and Return Related REC-Sale Revenues through their FACs, Not Base Rates.

The Response Brief misstates how the Companies propose to recover the cost of the Solar PPA and return REC sale revenues to customers: "In fact, the Companies admit that the 25 MW segment will be recovered through base rates."[38] On the contrary, the Companies have clearly stated that Solar PPA energy costs and related REC sale revenues will flow through their Fuel Adjustment Clauses, not base rates.[39] For this reason, it is unclear why the Response Brief states, "Even though fuel costs for the proposed 25 MW segment will obviously be zero, it is just as obvious that potential savings to the Fuel Adjustment Clause (FAC) charges are subject to the harsh, unpredictable variability of solar availability."[40] This is incorrect as applied to the Companies and their customers; the "fuel cost" to the Companies of the Solar PPA will not be

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[36] Response Brief at 6.
[37] Sinclair Testimony at 19.
[38] Response Brief at 7.
[39] Conroy Testimony at 9 ("The energy purchased under the Solar Power Contract will be treated as a purchase power expense that is recovered through the Companies' fuel adjustment clauses.").
[40] Response Brief at 7.

zero, but rather the fixed price per MWh stated in the Solar PPA, which will then be flowed through to customers—along with REC sale revenues—through the Companies' Fuel Adjustment Clauses.

V. The Response Brief Mischaracterizes the Companies' Testimony Regarding the Companies' Willingness to "Increase Renewable Generation at a Modest Incremental Cost."

The Response Brief mischaracterizes the Companies' testimony and its proposal when it asserts, "LG&E/KU admit they are not shying away from opportunities to increase renewable generation at a modest incremental cost."[41] The cited portion of the Companies' testimony states, "The Companies issued the Renewable RFP to systematically assess the cost of acquiring renewable energy delivered to its transmission system in order to either reduce customers' energy costs or increase renewable generation at a modest incremental cost …."[42] The same testimony went on to state, "The Companies are always seeking ways to lower their cost of providing energy to their customers, regardless of generating technology. So long as renewable generation permits the Companies to lower their energy costs, they will seek to add more renewable generation."[43] After the Companies conducted their renewable request for proposals and subsequent negotiations, they arrived at the proposed Solar PPA, which the Companies' analysis shows is likely to produce net benefits for customers in total across the 20-year PPA term in most and the most likely scenarios studied.[44] To be clear, the Companies are not proposing or advocating that the Commission approve the PPA on the expectation that it will be a net "modest incremental cost" to all customers; to the contrary, the Companies' analysis shows it is likely to be an incremental benefit.

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[41] Response Brief at 7.
[42] Sinclair Testimony at 5.
[43] *Id.* at 11-12.
[44] *See* 2019 Resource Assessment at 23-24.

The Companies have addressed the Response Brief's assertions about uncertainty and guaranties generally above, but the Companies would be remiss not to address directly this assertion, "The uncertainties are simply too numerous and the Companies are seeking to force the ratepayers to take a financial gamble on 25 MW of unnecessary solar power based upon their own economic analysis, a gamble the Companies are not asking their shareholders to take."[45] There are two points to address. First, the Response Brief attempts to make the Solar PPA appear to be a greater risk or inherently subject to greater uncertainties than any other fuel contract or generation analysis. That simply is not the case. The *sole* additional uncertainty is whether REC prices are zero or $2 for the entire 20-year term of the PPA, which seems unlikely given historical and forward solar REC prices are well above $2.[46] Otherwise, all the same variables and considerations are essentially the same as those the Companies would seek to consider when conducting other robust supply-side analyses.

Second, the Companies are proposing a carefully analyzed PPA, not an unconsidered "gamble." The Companies have devoted significant time and effort to study a proposal, negotiate a contract, and present what they believe is likely to be a net benefit to customers, *something that is of no direct benefit to the Companies' shareholders at all*. And if the new standard for approving PPAs or any other proposal is that the proposing utility must guarantee that customers will benefit in every possible future state of the world, the cost of utility service will necessarily increase because it will strongly disincentivize seeking new cost-saving opportunities and would effectively require utilities to write insurance policies against every new proposal. Moreover, such a guarantee

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[45] Response Brief at 7.
[46] 2019 Resource Assessment at 23.

standard would be inconsistent with the approach the Commission has used to approve PPAs in the past.[47]

VI. Far from Being an Unnecessary "Luxury," the Proposed Solar PPA Is Likely to Reduce Customers' Costs in Totality over the 20-Year PPA Term, thus Satisfying the KRS 278.020(1) Criteria of Necessity and Avoiding Wasteful Duplication.

The Response Brief calls the Solar PPA a "luxury" that is unnecessary and wastefully duplicative because the Companies "already possess adequate supply side resources to meet existing native load and that the entire 100 MW of solar is unnecessary to meet a need for reliability or capacity."[48] The Companies have not asserted that the Solar PPA is prudent or necessary because they lack adequate generating capacity; rather, it is likely to reduce customers' energy costs (net of REC sales) in totality over the 20-year PPA term. As the Companies discussed at length in their first brief, the KRS 278.020(1) criteria of necessity and avoidance of wasteful duplication do not require that the lights will go out if the proposal is not approved.[49] Instead, least-cost principles apply to the analysis. For example, in a case involving a biomass purchase power agreement, the Court of Appeals held that the Commission was "required to consider … **the reasonableness of the costs in comparison with other alternatives**."[50] The Commission itself has stated that "'least cost' is one of the fundamental principles utilized when setting rates

[47] *See Verified Application of Louisville Gas and Electric Company and Kentucky Utilities Company for a Declaratory Order and Approval Pursuant to KRS 278.300 for a Capacity Purchase and Tolling Agreement*, Case No. 2014-00321; *Verified Application of Louisville Gas and Electric Company for an Order Pursuant to KRS 278.300 and for Approval of Long-Term Purchase Contract*, Case No. 2011-00099; *Verified Application of Kentucky Utilities Company for an Order Pursuant to KRS 278.300 and for Approval of Long-Term Purchase Contract,* Case No. 2011-00100; *Application of Louisville Gas and Electric Company for an Order Pursuant to KRS 278.300 and for Approval of Long-Term Purchase Contract,* Case No. 2004-00396.
[48] Response Brief at 8.
[49] Companies' Brief at 13-18.
[50] *Kentucky Industrial Utility Customers, Inc. v. Kentucky Public Service Commission*, 504 S.W.3d 695, 709 (Ky. App. 2016)(emphasis added).

that are fair, just, and reasonable,"[51] and that the principle of least cost is "embedded in KRS 278.020(1)."[52] And the Commission has previously declared: "All jurisdictional electric utilities should be intent on delivering electricity at the lowest possible cost."[53] Therefore, the Solar PPA is neither a "luxury" nor unnecessary or wastefully duplicative; instead, it is entirely consistent with the Companies' obligation to provide lowest-reasonable-cost service to its customers, and the Commission should approve it on those grounds.

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[51] *Application of Kentucky Power Company for Approval of Renewable Energy Purchase Agreement for Wind Energy Resources between Kentucky Power Company and FPL Illinois Wind, LLC*, Case No. 2009-00545, Order at 5 (Ky. PSC June 28, 2010).

[52] *Id*.

[53] *Consideration and Determination of the Appropriateness of Implementing a Ratemaking Standard Pertaining to the Purchase of Long-Term Wholesale Power by Electric Utilities*, Adm. Case No. 350, Order at 5 (Ky. PSC Oct. 25, 1993).

<u>**CERTIFICATE OF COMPLIANCE**</u>

In accordance with 807 KAR 5:001 Section 8(7), this is to certify that Louisville Gas and Electric Company's and Kentucky Utilities Company's April 22, 2020 electronic filing of their Reply Brief is a true and accurate copy of the document being filed in paper medium; that the electronic filing has been transmitted to the Commission on April 22, 2020; 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 filing will be filed with the Commission within 30 days of the end of the state of emergency declared in Executive Order 2020-215.

Counsel for Louisville Gas and Electric Company and Kentucky Utilities Company