COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC JOINT APPLICATION OF	)	
LOUISVILLE GAS AND ELECTRIC	)	
COMPANY AND KENTUCKY UTILITIES	)	**CASE NO. 2020-00016**
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	)	

PETITION FOR RECONSIDERATION AND CLARIFICATION

Pursuant to KRS 278.400,[1] 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 and clarify the Commission's Order dated May 8, 2020 ("Order").

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

INTRODUCTION

The Companies appreciate the Commission's review of the proposed solar power purchase agreement ("PPA"), the Commission's approval in part of the retail purchase agreements ("RPAs") in this proceeding, and the Commission's finding that KRS 278.020 does not apply to the solar PPA.

[1] 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. In doing so, the Companies expressly reserve their rights under KRS 278.410 to seek judicial review of any aspect of the Order, including those not addressed in this Petition. Their decision not to request in this Petition reconsideration or rehearing on an issue should not be construed or interpreted as acceptance of the lawfulness or reasonableness of the Order's decision on that issue or a waiver of the Companies' right to seek judicial review of the Order's decision on that issue.

But there are several important matters the Companies respectfully ask the Commission to reconsider and clarify. First, the Companies ask the Commission to reconsider the Order's standard of review in the Fuel Adjustment Clause two-year investigations. Secondly, the Companies ask the Commission to reconsider the Order's requirement that the RPAs and the Companies' Green Tariff Option #3 contain no demand-charge offsets. Finally, while the Companies agree with the Order's stated goal of enhancing regulatory certainty for those customers desiring to take service under Companies' Green Tariff Option #3, the Companies request reconsideration and clarification of the Order's proposed modifications of the tariff.

For these and the other reasons set out below, the Companies ask the Commission to reconsider and clarify the Order.

REQUEST FOR RECONSIDERATION OF THE ORDER'S FUEL ADJUSTMENT CLAUSE APPROACH

The Companies ask the Commission to clarify the Order's treatment of the PPA assigned to native load as economy energy purchases and the proposed biennial review by the Commission of those purchases through the Companies' Fuel Adjustment Clause ("FAC").[2] The Order states that the Companies should perform their After-the-Fact Billing ("AFB") process both with and without the PPA energy purchases over the two-year FAC review period to determine the reasonableness of the PPA costs.[3]

A Commission-approved methodology for determining "economic" vs. "non-economic" power purchases in the FAC mechanism is already established and readily available. Rather than creating a new process to determine whether energy purchased under the PPA is appropriate for recovery under 807 KAR 5:056 ("FAC Regulation"), the Commission should continue to apply

[2] Order at 18.
[3] Order at 19.

the well-established “highest cost unit calculation” approach that it has employed for the past two decades when reviewing electric utility fuel costs.

The Commission’s FAC Regulation allows an electric utility to recover the net energy cost of economy energy purchases, exclusive of demand and capacity charge and to recover the actual identifiable fossil and nuclear fuel costs associated with non-economy power purchases.[4] Due to deregulation of the wholesale electric generation market in the 1990s, wholesale suppliers ceased to identify the actual fuel component cost, as well as the demand and capacity components costs and source of the purchased power, potentially undermining the Commission’s uniform treatment of fuel costs.[5] To address these changing conditions in 2002 the Commission clarified the FAC regulation’s treatment of economy energy purchases and non-economy power purchases.[6] It defined economy energy purchases that are recoverable through an electric utility’s FAC as “purchases that an electric utility makes to serve native load, that displace its higher cost of generation, and that have an energy cost less than the avoided variable generation cost of the utility’s highest cost generating unit available to serve native load during that FAC expense

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[4] 807 KAR 5:056, Section 1(3).

[5] Noting these developments, the Commission stated:

> [T]hese new market conditions, when coupled with the increasing use of purchased power to meet native load requirements, will lead to disparate treatment of purchased energy costs. Some electric utilities are treating energy purchases that supplement, but do not displace native generation, as economy purchases and seeking recovery of the total purchase cost through their FACs. Some electric utilities, no longer receiving billing information that identifies the fuel portion of their non-economy power purchases, are treating the entire purchase as a fuel cost. Other electric utilities, also lacking detailed billing information, are attempting to estimate the cost of the fuel portion of such transactions based on historic billing information. As a result, uniform treatment of fuel costs is being eroded creating the potential for recovery of non-fuel related costs through FACs.

An Examination by the Public Service Commission of the Application of the Fuel Adjustment Clause of American Electric Power Company from May 1, 2001 to October 31, 2001, Case No. 2000-00495-B (Ky. PSC May 2, 2002) at 3.

[6] *An Examination by the Public Service Commission of the Application of the Fuel Adjustment Clause of American Electric Power Company from May 1, 2001 to October 31, 2001*, Case No. 2000-00495-B (Ky. PSC May 2, 2002); *An Examination by the Public Service Commission of the Application of the Fuel Adjustment Clause of East Kentucky Power Cooperative, Inc. from May 1, 2001 to October 31, 2001*, Case No. 2000-00496-B (Ky. PSC May 2, 2002).

month." Similarly, it defined non-economy purchases as "purchases made to serve native load that have an energy cost greater than the avoided variable cost of the utility's highest cost generating unit available to serve native load during the FAC expense month" and found that an electric utility could "recover through its FAC only the lower of the actual energy cost of the non-economy purchased energy or the fuel cost of the highest cost generating unit available to be dispatched to serve native load during the reporting expense month."[7]

For over 18 years, the Commission has consistently applied this approach to electric utilities when reviewing the operation of their FACs. In 2015, it subsequently affirmed this approach in Cases No. 2014-00226[8] and No. 2014-00229,[9] declaring that it had not modified "the requirement that . . . [a] utility recover through the FAC <u>only the lower</u> or the actual energy cost of the non-economy purchased energy or the fuel cost of its highest cost generating unit available to be dispatched to serve native load during the reporting expense month."[10] More recently, after an extensive review of the Companies' application of "highest cost unit calculation" and determination that the calculation continued to be reasonable and consistent with the FAC Regulation, the Commission again affirmed this approach.[11]

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[7] *An Examination by the Public Service Commission of the Application of the Fuel Adjustment Clause of American Electric Power Company from May 1, 2001 to October 31, 2001*, Case No. 2000-00495-B (Ky. PSC May 2, 2002) at 4-5; *An Examination by the Public Service Commission of the Application of the Fuel Adjustment Clause of East Kentucky Power Cooperative, Inc. from May 1, 2001 to October 31, 2001*, Case No. 2000-00496-B (Ky. PSC May 2, 2002) at 4-5. As to what constitutes the "highest cost generating unit available," see *An Examination by the Public Service Commission of the Application of the Fuel Adjustment Clause of Duke Energy Kentucky, Inc. from November 1, 2013 to April 30, 2014*, Case No. 2014-00229 (Ky. PSC Jan. 30, 2015) at 6 ("The phrase 'highest cost generating unit available to be dispatched' means that the highest-cost unit is available to be dispatched, but is not required to have been dispatched in order to be considered the highest-cost unit.").

[8] *An Examination by the Public Service Commission of the Application of the Fuel Adjustment Clause of East Kentucky Power Cooperative, Inc. from November 1, 2013 to April 30, 2014*, Case No. 2014-00226 (Ky. PSC Jan. 30, 2015).

[9] *An Examination by the Public Service Commission of the Application of the Fuel Adjustment Clause of Duke Energy Kentucky, Inc. from November 1, 2013 to April 30, 2014*, Case No. 2014-00229 (Ky. PSC Jan. 30, 2015).

[10] *Id.* at 5.

[11] *An Examination by the Public Service Commission of the Application of the Fuel Adjustment Clause of Kentucky Utilities Company from May 1, 2015 to October 31, 2015*, Case No. 2016-00003 (Ky. PSC July 7, 2016); *An Examination by the Public Service Commission of the Application of the Fuel Adjustment Clause of Louisville Gas and Electric Company from May 1, 2015 to October 31, 2015*, Case No. 2016-00004 (Ky. PSC July 7, 2016).

Use of "highest cost unit calculation" approach has several advantages. The approach is straightforward and efficient, and yields an objective calculation. Used in the last 36 Commission proceedings to review each Company's FAC, it is a time-tested proven approach. Moreover, within the last three years, the Commission, following an extensive review of the Companies' methodology for determining the highest cost available unit, found each Company's calculation of the highest cost generation unit reasonable and consistent with the FAC Regulation. After this review, the Commission reaffirmed the use of this methodology. Use of "the highest cost unit calculation" approach avoids the unnecessary expenditure of time and resources necessary to develop, test and deploy an alternative approach, and perhaps more importantly, the risk associated with contentious proceedings involving the application of a new and unknown method.

AFB, in contrast, is not a tool that can be used to analyze the cost-effectiveness of the PPA and does not provide an appropriate basis of comparison to determine cost-effectiveness of the PPA. Indeed, a two-year retrospective analysis using the AFB process the Order proposes simply is not practicable or workable.

The Companies' AFB process is not a production cost model or a means for running counterfactual scenarios retrospectively. Instead, AFB is an accounting methodology performed on the first business day of each month for the prior expense month. The AFB process has been used since the LG&E and KU merger in 1998[12] to determine the amount of costs assigned to off-system sales and thus excluded from fuel cost recovery and to determine fuel savings when the Companies sell power to each other.[13] For each hour, AFB stacks after the fact all energy sources,

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[12] *Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for Approval of Merger*, Case No. 97-300, Testimony of Ronald L. Willhite at 15-18 (filed July 14, 1997) and Testimony of Wayne T. Lucas at 6-11 (filed July 14, 1997).

[13] *An Examination of the Application of the Fuel Adjustment Clause of Kentucky Utilities Company from November 1, 2013 through April 30, 2014* and *An Examination of the Application of the Fuel Adjustment Clause of Kentucky*

both generation and purchases, from lowest incremental cost to highest incremental cost on a megawatt-by-megawatt basis. Each Company is assigned the lowest-priced energy to serve its native load, while the highest incremental costs each hour are allocated to off-system sales.[14] Because the purpose of the AFB process is to allocate actual costs to off-system sales and to determine the fuel cost savings allocation between KU and LG&E, not to evaluate counterfactual scenarios, an analysis using AFB cannot be used to evaluate the overall cost-effectiveness of the PPA.

In sum, the "highest cost unit calculation" approach provides a readily available Commission-approved and familiar basis of comparison for determining the cost-effectiveness of the portion of the PPA allocated to all customers. The Order should be clarified to use this standard of review of the native load segment of the PPA in the FAC biennial reviews.

REQUEST FOR RECONSIDERATION OF RPA MODIFICATION TO ELIMINATE PEAK AND INTERMEDIATE DEMAND CHARGE OFFSETS

The Companies understand and appreciate the Commission's desire to ensure that other customers are not adversely affected by the RPAs. The Companies, therefore, must respectfully point out that requiring all demand offsets be removed from the RPAs will likely result in net economic harm to the Companies' customers and the Commonwealth. The Order's no-demand-charge-offset requirement, though intended to protect other customers from the potential reallocation of fixed generation charges in future rate proceedings, could have the opposite effect. It could increase the exposure of other customers to reallocated fixed transmission and distribution charges if large customers choose to construct their own renewable generating facilities behind the

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Utilities Company from November 1, 2012 through October 31, 2014, Case Nos. 2014-00227 and 2014-00452, Order (Ky. PSC Aug. 11, 2015).

[14] *Id.* See also Presentation of AFB process at: https://psc.ky.gov/pscscf/2014%20cases/2014-00452//20150330_PSC_IC%20Memo.pdf.

meter, which would further reduce demand-charge revenues from those large customers. Because of what the Companies believe to be an unintended consequence of that requirement, the Companies respectfully ask the Commission to reconsider it and instead approve the PPA as originally proposed.

The Commission should reconsider the no-demand-charge-offset requirement because it negates one of the RPAs' chief benefits—to all customers, not just Toyota Motor Manufacturing, Kentucky, Inc. ("Toyota") and Dow Silicones Corporation ("Dow"). If a large customer installs its own renewable generating facility behind its meter, it will presumably pay lower demand charges in *all* periods, not just the intermediate and peak periods. The RPAs as proposed, however, do not provide a demand-charge offset for the base period, thereby preserving those revenues for the benefit of all other customers. The Order's no-demand-charge-offset requirement eliminates this crucial benefit; any large customer desiring renewable energy could construct its own generating facility behind the meter to receive *full* demand-charge offsets for itself. This is not a hypothetical concern. Today, for example, as a result of numerous self-generation options, the U.S. Army military base at Fort Knox, Kentucky has the ability to be a zero net energy facility producing as much energy as it uses and has the capability to run without external power. Encouraging large customers by policy decisions to self-generate their own power can result in reduced demand-charge revenues during all time periods (base, intermediate and peak), which would have to be recovered from all customers in subsequent rate cases.

All large customers desire to control their costs by paying lower demand charges in all periods, not just the intermediate and peak periods. And all customers have the ability to self-generate, shift load across different demand periods, reduce consumption to avoid peak demands, shut down all or a portion of their operations, or install more efficient equipment to minimize peak

usage. In fact, many customers closely monitor their own demand in the various time periods and adjust their operations in order to incur the lowest possible demand charges in the peak and intermediate period. This type of efficiency practice is supported by Kentucky's Energy and Environmental Cabinet.[15] All of these actions potentially shift the costs for legacy assets among customers in future rate proceedings. Commission policy on this issue must balance the consequences of these facts and not unduly increase the exposure of other customers to reallocated fixed transmission and distribution charges.

As proposed, the RPAs' Section 2.7(e) strikes the best balance between the recovery of legacy generation costs and ongoing transmission and distribution costs from RPA customers, who have the right to generate their own energy, and the remaining all-requirement customers so that all customers bear their fair share of the costs to generate and deliver energy. This balance mitigates the unintended consequence of the no demand-charge offset requirement on the remaining customers.

The no-demand-charge-offset requirement would also communicate that the economics of renewable deals through utilities in Kentucky may not be as attractive as other areas of the country. This message will place the Commonwealth at a disadvantage when competing for business expansions and locations. It is the wrong message to send to the customers in this proceeding, Toyota and Dow, which are significant employers and taxpayers, and to all other large customers in Kentucky and those considering locating here. These customers are not looking for a subsidy. Rather, these customers want to operate their businesses efficiently to compete in the world economy, minimize their peak consumption, efficiently use their energy and pay their share of the cost of utility service.

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[15] Indeed customers routinely replace light bulbs with LED lighting, appliances with more high efficiency appliances and increase insulation. These actions can also impact consumption during intermediate and peak demand periods.

Economic development always remains vitally important to the Commonwealth, particularly in these challenging times, and load growth would benefit the Companies' customers by increasing demand-charge revenues which recover more fixed costs.

This message is also at odds with both the Commission's recent order approving its own initiative for economic-development-driven gas line expansions and with what is possibly the best means of aiding all the Companies' existing customers, namely attracting new large customers to the Companies' service territories.[16] This mix of messages will only create confusion and uncertainty about the Commonwealth's position on economic development.

Particularly in these challenging times, it is vital for Kentucky to be as attractive as possible for economic development, which brings not just increased electric load and revenues, but also jobs and tax revenues. Although it is not the only component of economic development, approving the RPAs as proposed would be an important step in the right direction by letting current and potential customers know Kentucky is open for green business.

This economic development consideration is not merely hypothetical. Two major employers in the Commonwealth—Toyota and Dow—have expressed their desire to add green energy to their total energy mix in Kentucky by entering in the RPAs as proposed. Dow's Global Director of its Energy & Climate Change Business submitted a letter into the record that described the importance of Dow's Carrollton, Kentucky silicone production facility that employs 465

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[16] *Electronic Investigation of a Pilot Program for Economic Development Extensions of Service of Gas Local Distribution Companies*, Case No. 2020-00001, Order at 1, 2 (Ky. PSC Jan. 24, 2020) ("The Commission, through this administrative case will establish a pilot program . . . It is the Commission's intention that this Pilot Program will encourage economic development in the Commonwealth . . . There are several desirable sites in Kentucky well-suited for industrial and commercial development except that there is no existing natural gas service at the site. The lack of existing natural gas distribution places Kentucky at a disadvantage when seeking to attract businesses to the potential economic development sites. Extending gas service to a prospective economic development site would provide an additional incentive for a business to locate to the site."). The Commission approved the proposed Pilot Program in its May 4, 2020 Order.

people, Dow's global interest in increasing its renewable energy portfolio, and ended by stating, "We hope the Commission's review agrees that the development of ***this solar array is a crucial enabler for manufacturing in Kentucky***."[17] Toyota is one of the largest employers in the state; and it has a supplier base equally as large in Kentucky because of Toyota's presence. The Order's no-demand-charge-offset requirement fundamentally alters the economics of the RPAs, and could prevent this "crucial enabler for manufacturing in Kentucky" from coming into existence. That is the wrong message to send to these strategically-important employers in Kentucky, as well as others already in Kentucky and those who might otherwise locate here.

Therefore, the Companies respectfully ask the Commission to reconsider the Order's no-demand-charge-offset requirement and instead approve the RPAs as proposed.

REQUEST FOR RECONSIDERATION AND CLARIFICATION OF GREEN TARIFF MODIFICATIONS

The Order requires the Companies to make certain modifications to the present Green Tariff for the purpose of establishing "regulatory certainty" for industrial customers wishing to use renewable energy sources.[18] Though the Companies agree with the Order's stated goal of enhancing regulatory certainty for those customers, the Order's proposed modifications require reconsideration and clarification if the Companies are to successfully implement the Order's intent.

The requirement that "multiple facilities can aggregate consumption" appears to be at odds with 807 KAR 5:041, Section 9(2), which provides that a "utility shall regard each point of delivery as an independent customer and meter the power delivered at each point." The regulation prohibits "combining meter readings . . . taken at separate points."[19] Assuming the aggregation of

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[17] Letter from Edward J. Stones, Global Director, Dow Energy & Climate Change Business (Apr. 23, 2020) (emphasis added).
[18] Order at 23.
[19] *Air Liquide Large Industries v. Kentucky Power Co.*, Case No. 2012-00351, Order at 4-5, 7 (Ky. PSC Feb. 11, 2013) (807 KAR 5:041, Section 9(2) "unequivocally requires an electric utility . . . to treat each point of delivery as an independent customer and to meter the power delivered at each point of delivery.").

consumption is not inconsistent with the Commission's regulations, the Order does not set forth the limits, if any, on consumption aggregation. Such aggregation of multiple accounts should be required **only for the purpose** of meeting the minimum threshold requirement for a customer to participate in the Green Tariff Option #3. The aggregation of a customer's consumption should be limited to a customer's accounts for facilities at the same geographical location. The Companies request the Commission confirm their interpretation of the Order on this point.

The required tariff modification pertaining to a customer's "choice" of the type of renewable energy source raises similar questions regarding the Commission's intent. It is unclear whether the proposed provision merely requires that Green Tariff Option #3 clearly describe the extent of a customer's rights to select the type of renewable energy to be supplied and the facility that will supply that energy or if the Order restricts or otherwise limits the Companies' authority to select the renewable resource and the facility that will supply the energy. The Order's language is open to the interpretation that the Companies must defer to the customer's preference for a specific type of renewable energy but may reserve to themselves the final decision regarding the selection of a specific generating facility. The Companies request the Commission confirm their interpretation that the final decision regarding the selection of a specific generating facility is reserved to the Companies.

The Companies also request reconsideration of the requirement that Green Tariff Option #3:

> set forth the credits for the avoided cost of the base fuel per MWh, the FAC equal to the renewable energy delivered, and the avoided cost of variable environmental surcharge equal to the delivered renewable energy for each participating agreement and state that credits cannot exceed marginal cost of energy delivered.[20]

[20] Order at 23.

The apparent objective of this modification is to ensure only costs that vary with energy consumption are offset by renewable energy purchased under the Green Tariff. If this is the intended purpose, then the proposed modification requires the Companies to consider the revenues avoided by an RPA that are related to fixed costs as revenues for purposes of calculating their Environmental Cost Recovery ("ECR") Surcharge. It also requires the Companies to exclude from their calculation of their FAC and ECR Surcharge the revenues avoided by an RPA that are related to variable costs. For the same reasons supporting the Companies' request for the Commission to reconsider the Order's no-demand-charge-offset requirement and instead approve the RPAs as proposed, the Companies request the Commission clarify this modification should not be included in the Green Tariff Option #3.

Finally, for the same reasons set forth above for reconsidering the Order's modifications to the RPA, the Companies request reconsideration of the Order's directive that Green Tariff Option #3 contain a methodology that ensures "participants do not shift costs to nonparticipants and participants will continue to pay for legacy assets through fixed and variable charges." Such a methodology will discourage the consideration of renewable energy, will make the Companies' service territory less attractive to new businesses and will discourage existing customers from expanding or maintaining their existing operations in the Commonwealth, and will thus adversely affect all of the Companies' customers.

CONCLUSION

As Dow's Global Director of its Energy & Climate Change Business stated, "[T]his solar array is a crucial enabler for manufacturing in Kentucky."[21] By reconsidering its Order and rescinding the Order's no-demand-charge-offset requirement for the RPAs and Green Tariff

[21] Letter from Edward J. Stones, Global Director, Dow Energy & Climate Change Business (Apr. 23, 2020).

Option #3, as well as clarifying the terms of FAC recovery and the other Green Tariff modifications, the Commission can assist two vitally important Kentucky employers—Toyota and Dow—in achieving their green energy targets while also protecting other customers. Moreover, it will communicate to large customers already in Kentucky and those considering locating here that the Commonwealth is open for green business, aiding in needed economic development and potential load growth for the benefit of all Kentuckians. Therefore, the Companies respectfully ask the Commission to reconsider and clarify the Order as requested.

WHEREFORE, Kentucky Utilities Company and Louisville Gas and Electric Company respectfully request the Commission reconsider its Order and clarify the issues addressed herein.

Dated: May 29, 2020

Respectfully submitted,

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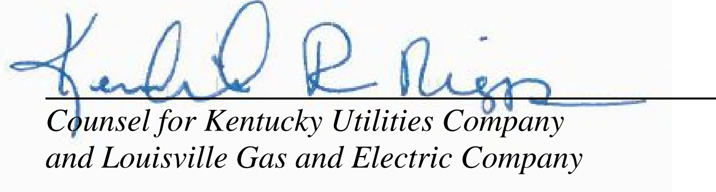
CERTIFICATE OF SERVICE

In accordance with 807 KAR 5:001, Section 8, I certify that the electronic filing of this Petition for Reconsideration and Clarification filed by Kentucky Utilities Company and Louisville Gas and Electric Company is a true and accurate copy of the same document being filed in paper medium; that the electronic filing was transmitted to the Public Service Commission on May 29, 2020; that there are currently no parties that the Public Service Commission has excused from participation by electronic means in this proceeding; and that within 30 days following the end of the state of emergency announced in Executive Order 2020-215 this Response in paper medium will be delivered to the Public Service Commission.



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