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 TO ATTORNEY GENERAL'S RESPONSE TO PETITION FOR RECONSIDERATION AND CLARIFICATION

Kentucky Utilities Company ("KU") and Louisville Gas and Electric Company ("LG&E") (collectively, "Companies"), by counsel, hereby reply to the Response of the Attorney General's Office of Rate Intervention ("AG") to the Companies' Petition for Reconsideration and Clarification.

The Response asserts an erroneous standard for review of any investment or commitment. It argues that the Companies must demonstrate that the proposed renewable purchase power agreement ("PPA") will not subject ratepayers to **any risk**, no matter how small, and that the PPA will result in cost savings in **all instances**. The Response fails to cite any legal authority for this proposition and counsel's review of Commission decisions failed to identify any decisions in which the Commission has held that a utility must guarantee a successful outcome to a procurement, investment or commitment proposal in all instances.

The standard that the Commission must employ to evaluate a fuel or power procurement decision is a least cost, most reasonable standard, namely will the utility's decision result in the least cost, best value for ratepayers. Kentucky courts have held that the Commission is "required

to consider … the reasonableness of the costs in comparison with other alternatives."[1] The Commission itself has stated that " 'least cost' is one of the fundamental principles utilized when setting rates that are fair, just and reasonable."[2] It has further declared that the Commission "is responsible for ensuring that utilities provide safe and reliable electric service at the least cost"[3] and that "Kentucky's generators are required to provide a least-cost resource mix while balancing cost-effectiveness with reliability and environmental concerns."[4]

The record of this proceeding is uncontradicted and clearly demonstrates that the PPA with Rhudes Creek Solar, LLC is a least cost option and is likely to produce significant savings for the Companies' ratepayers. The Companies' analyses show that the PPA will likely reduce energy costs for all customers over the PPA's term. Their analyses demonstrate that purchases under almost all scenarios considered will result in savings over the PPA's term. Notably out of the 42 scenarios, there are only six scenarios in which the PPA does not result in savings over the 20-year term of the contract: four assume zero renewable energy certificate ("REC") prices for the entire 20-year term; and the remaining two assume average REC prices of just $2 for 20 years beginning in 2022.[5] Based on the experience to date, such low or non-existent REC prices are not reasonably likely to occur as the Companies received over $10 on average for each Brown Solar REC in 2019, and current forward markets indicate significantly higher pricing than $2 per REC.[6] Given current

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1 *Kentucky Industrial Utility Customers, Inc. v. Kentucky Public Service Commission*, 504 S.W.3d 695 (Ky. App. 2016) at 709.

2 *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 (Ky. PSC June 28, 2010) at 5.

3 *Application of Kentucky Power Company For: (1) A General Adjustment of Its Rates For Electric Service; (2) An Order Approving Its 2014 Environmental Compliance Plan; (3) An Order Approving Its Tariffs And Riders; and (4) An Order Granting All Other Required Approvals and Relief*, Case No. 2014-00396 (Ky. PSC Jun. 22, 2015) at 34.

4 *Consideration of the Requirements of the Federal Energy Policy Act of 2005 Regarding Fuel Sources and Fossil Fuel Generation Efficiency*, Administrative Case No. 2007-00300 (Ky. PSC Aug. 25, 2009) at 11-12.

5 Sinclair Testimony Exhibit DSS-2 ("2019 Resource Assessment") at 23-24.

6 *Id.* at 23.

market conditions, it is only reasonable to expect that the six scenarios in which the PPA and related REC revenues might slightly increase net present value for revenue requirements ("NPVRR"), on the whole, are less likely than the 42 scenarios in which PPA and related REC revenues would decrease NPVRR. Even under the worst-case scenario, the increase in the Companies' annual fuel cost was insignificant when compared to the Companies' overall fuel and purchased power costs.

The Response's assertion that the Companies must guarantee with absolute certainty that savings will result from the PPA, or any fuel or power procurement decision, is unrealistic. To counsel's knowledge and based on counsel's research, no regulatory commission imposes such a standard. Generally, a utility's fuel and power procurement decision-making must be prudent and reasonable. It must reflect the skill and knowledge of an expert or specialist in the appropriate trade or profession and must be viewed under the circumstances existing at the time of the decision with the goal of achieving the least costly result.[7] No person or entity, governmental or non-governmental, possesses a crystal ball that enables it to predict future events with 100 percent accuracy and thus eliminate all risk to the public. As current events clearly show, every business decision contains an element of risk as no one can reasonably predict a natural disaster, terrorist attack or pandemic, the stock market and the effects of such events on the economy and financial markets.

[7] *An Investigation into the Fuel Procurement Practices of Kentucky Utilities Company*, Case No. 9631 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.").

To the extent that ratepayers require additional protection against financial risk, the Companies in their Petition for Reconsideration and Clarification have proposed that such protection already exists with the application of the Commission's "highest cost unit calculation" approach to energy purchases made pursuant to the PPA. This methodology is a tried and tested methodology that protects ratepayers from any unreasonable purchased power costs. The Attorney General's Response does not address this issue.

Given the nature of the proposed PPA, the Response's demand that ratepayers be immunized from all financial risk is asymmetrical and result-oriented. The Companies and their shareholders receive *no* monetary benefit from the proposed transaction. All savings in the form of lower fuel and purchased power costs (and REC sale proceeds) are promptly passed through the Companies' fuel adjustment clauses to the Companies' ratepayers. The Response contends however that all benefits from the transaction, i.e., lower energy costs, be passed on to ratepayers without ratepayers bearing any of the transaction's limited and immaterial risks. The Response's argument is contrary to longstanding Commission precedent that a utility should be compensated for its business risk by earning an appropriate return.[8]

Notwithstanding its undue emphasis on ratepayer risk, the Response ignores the risks to ratepayers from the Commission's mandated revisions to the retail purchase agreements that will likely impede the Commonwealth's economic development. As more fully detailed in the Companies' Petition for Reconsideration and Clarification, the Order's mandated revisions are likely to discourage two responsible and strategically-important corporate citizens of this Commonwealth from expanding operations in Kentucky and thus strengthening Kentucky's

[8] *See, e.g., General Adjustment of Electric Rates of Kentucky Utilities Company*, Case No. 8177 (Ky. PSC Sept. 11, 1981 (noting that any shift in risk between utility shareholders and utility ratepayers requires a corresponding change in the return on equity) at 21.

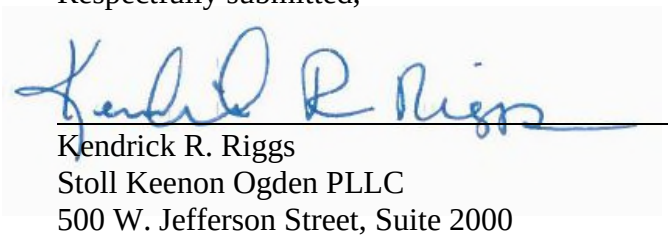
economy. The Order sends the wrong message to the business community inside and out of Kentucky and will discourage businesses that want to operate their facilities efficiently to compete in the world economy, minimize their peak consumption, efficiently use their energy and pay their share of the cost of utility service from locating their operations in Kentucky. The Order will limit load growth that would benefit the Companies' customers by increasing demand-charge revenues which recover more fixed costs and may have the unintended effect of placing a greater share of those costs on remaining ratepayers.

In conclusion, the PPA will allow the Companies to reduce their fuel and purchase power costs and will likely produce substantial savings for all ratepayers. The Companies' decision to enter the PPA is reasonable and prudent and is consistent with their statutory obligations to furnish adequate, efficient and reasonable service at fair, just and reasonable rates.[9] Moreover, their decision is consistent with longstanding Commission precedent regarding the allocation of the financial risks and benefits of fuel procurement and purchase power agreements between utilities and their ratepayers.

[9] KRS 278.030.

Dated: June 10, 2020

Respectfully submitted,



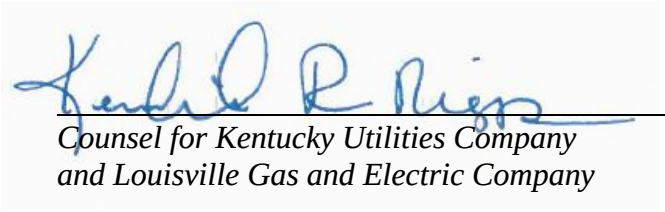
Kendrick R. Riggs
Stoll Keenon Ogden PLLC
500 W. Jefferson Street, Suite 2000
Louisville, KY 40202-2828
Telephone: (502) 333-6000
kendrick.riggs@skofirm.com

Allyson K. Sturgeon
Managing Senior Counsel
Regulatory and Transactions
Sara V. Judd
Senior Corporate Attorney
LG&E and KU Services Company
220 W. Main Street
Louisville, KY 40202
Telephone: (502) 627-2088
allyson.sturgeon@lge-ku.com

Counsel for Kentucky Utilities Company and Louisville Gas and Electric Company

CERTIFICATE OF SERVICE

In accordance with 807 KAR 5:001, Section 8, I certify that the electronic filing of this Reply 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 June 10, 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.



Counsel for Kentucky Utilities Company
and Louisville Gas and Electric Company