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**

<u>POST-HEARING BRIEF OF KENTUCKY UTILITIES COMPANY AND LOUISVILLE GAS AND ELECTRIC COMPANY</u>

Dated: November 12, 2020

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INTRODUCTION

The Kentucky Public Service Commission ("Commission") has approved the application of Louisville Gas and Electric Company ("LG&E") and Kentucky Utilities Company ("KU") (collectively "the Companies") to enter into a 20-year agreement with Rhudes Creek Solar, LLC for the purchase of the output of a 100 MW solar generation facility to be built in Hardin County, Kentucky ("Solar PPA").[1] The Commission has also approved two related renewable power agreements ("RPAs") that ensure two large Kentucky employers, Toyota Motor Manufacturing, Kentucky, Inc. ("Toyota") and Dow Silicones Corporation ("Dow"), will pay the cost and receive the benefit of 50% and 25% of the Solar PPA, respectively, which will enable these two important Kentucky companies to advance their corporate renewable energy goals.[2]

The Companies have proposed to use the remaining 25% of the Solar PPA to serve all of their Kentucky customers. In granting limited rehearing "to determine the process and burden of proof applicable to the FAC [Fuel Adjustment Clause] review of nonfirm energy arising under the PPA to serve native load outside of the RPAs,"[3] the Commission clearly stated its position concerning the 25% of the Solar PPA to serve native load customers: "[T]he PPA energy is not economic if, on a net basis, it is displacing cheaper electricity, and thus will not be recoverable for that review period absent some other compelling reason."[4]

The Companies heard the Commission's clear directive. That is why the Companies proposed in their Joint Testimony on Rehearing an approach to ensure that their native load customers will receive *all* of the 20-year net benefits of the 25% portion of the Solar PPA that will serve them, which approach will also ensure that customers will not be harmed by the Solar PPA

[1] Order (May 8, 2020).
[2] *Id.*
[3] Order on Rehearing at 3 (June 18, 2020).
[4] *Id.* at 4.

if it proves to be uneconomical across its 20-year term.[5] In other words, the Companies' proposal places all of the 20-year net downside risk of the Solar PPA on the Companies' shareholders, and it gives customers all of the 20-year Solar PPA upside potential for fuel savings. The Companies therefore urge the Commission to approve the Companies' rehearing proposal, which will enable the Companies to move forward with the Solar PPA for the benefit of all customers, including Toyota and Dow, two of Kentucky's largest employers and investors.

ARGUMENT

I. The History of the Solar PPA, RPAs, and the Companies' Proposal Regarding Cost Recovery for the Solar PPA Energy Serving Native Load Customers Shows the Companies Have Diligently Pursued These Contracts, Promptly Filed this Application, and Been Responsive to the Commission's Directives.

The history of the Solar PPA, RPAs, and the Companies' current proposal regarding Solar PPA energy to serve native load customers shows that the Companies diligently pursued these contracts and acted quickly to seek Commission approval. It further demonstrates the reasonableness of the Companies' proposal on rehearing to ensure all customers benefit from the Solar PPA, and in particular how the Companies' proposal is responsive to the Commission's input and directives in this proceeding.

After Dow approached the Companies in late May 2019 to discuss how to obtain renewable energy using the Companies' Green Tariff Option #3, the Companies contacted Toyota, which had previously discussed its renewable energy interests with the Companies.[6] The Companies then held discussions and RPA negotiations with Toyota and Dow from July 2019 through January 2020 about the possibility of a single PPA to serve both customers.[7] Although Dow was consistently interested in 25 MW under the PPA, Toyota expressed interest in a range of PPA

[5] Companies' Joint Testimony on Rehearing (Sept. 18, 2020).
[6] Companies' Response to Commission Staff's Post-Hearing DR No. 2(c) (Nov. 12, 2020).
[7] *Id.*

capacities, including capacities greater than 50 MW, and did not finalize its decision for 50 MW until January 2020.[8] The Companies presented a 25 MW RPA to Dow on December 27, 2019, which it approved on January 10, 2020; the Companies likewise presented a 50 MW RPA to Toyota in January 10, 2020, shortly after Toyota finalized its decision to pursue 50 MW. Toyota approved its RPA on January 13, 2020. Just ten days later on January 23, 2020, the Companies filed their application in this proceeding, seeking approval of the 100 MW Solar PPA, the two RPAs for Toyota and Dow, and FAC treatment for the cost and Renewable Energy Certificate ("REC") revenues associated with the 25% of the Solar PPA to serve native load customers.[9] Therefore, the Companies moved as swiftly as reasonably possible to seek the Commission's approval after the Solar PPA and RPAs became final.

In their application in this proceeding, the Companies provided evidence and analysis showing that the Solar PPA would likely reduce net energy costs for native load customers across a wide range of fuel prices, REC prices, and other relevant variables.[10] Because the 25% of the Solar PPA for native load customers appeared highly likely to provide net benefits across the PPA's 20-year term, the Companies proposed to use their FACs to recover the related costs as the functional equivalent of economy energy purchases and to return the related REC-sale revenues.[11]

The Commission's May 8, 2020 order approved the proposed Solar PPA and RPAs with modifications. The order further stated that the Commission would not pre-approve cost recovery for the 25% of the Solar PPA to serve native load; rather, the order stated the Commission would treat Solar PPA energy used to serve native load as economy energy, using FAC two-year reviews

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[8] *Id.*

[9] Application (Jan. 23, 2020); Testimony of Robert M. Conroy at 9 (Jan. 23, 2020) (addressing recovery of costs and returning REC revenues via FAC).

[10] *See, e.g.,* Testimony of David S. Sinclair Exh. DSS-2 (Jan. 23, 2020).

[11] Application (Jan. 23, 2020); Testimony of Robert M. Conroy at 9 (Jan. 23, 2020) (addressing recovery of costs and returning REC revenues via FAC). *See also* Companies' Brief at 20 (Apr. 9, 2020) ("The Companies' acquisition of the renewable energy to meet the needs of all customers is the functional equivalent of economy energy purchases.").

to determine whether the energy was economical by having the Companies run after-the-fact billing ("AFB") with and without the Solar PPA.[12]

The Companies sought reconsideration and clarification of several issues, including the FAC cost recovery and AFB review approach set out in the May 8, 2020 order.[13] The Companies noted that the AFB could not perform the requested cost-comparison function, with and without the Solar PPA, and requested the Commission use its long-established highest-cost-unit FAC review methodology for energy under the Solar PPA in two-year FAC review proceedings.[14]

The Commission then issued its June 8, 2020 order on rehearing, granting rehearing on this issue and stating clearly the Commission's position that Solar PPA energy serving native load customers is not economical if its cost (net of REC-sale revenue) is greater than the cost of the energy it displaces.[15]

The Companies carefully reviewed the Commission's orders in this proceeding and worked to create a proposal that would ensure that the Solar PPA would only help, not harm, customers on a cumulative basis over the 20-year PPA term. The Companies first outlined the proposal in the August 25, 2020 informal conference in this proceeding, then they refined and finalized it in their Joint Testimony on Reconsideration, which the Companies' witnesses discussed with the Commission during the October 27, 2020 hearing. That is the proposal the Companies respectfully ask the Commission to approve.

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[12] Order at 17-19 (May 8, 2020).
[13] Companies' Petition for Reconsideration and Clarification (June 10, 2020).
[14] *Id.*
[15] Order on Rehearing at 4 (June 18, 2020) ("[T]he PPA energy is not economic if, on a net basis, it is displacing cheaper electricity, and thus will not be recoverable for that review period absent some other compelling reason.").

II. The Companies' Proposal in Their Joint Testimony on Rehearing Holds Customers Harmless for Any Net Costs of the Solar PPA Over 20 Years and Ensures They Will Receive All Net Benefits Over 20 Years.

As discussed fully in their Joint Testimony on Rehearing, the Companies propose to use existing FAC two-year review processes, a new Solar PPA Adjustment Clause, and related deferral accounting to ensure customers are not harmed by, and can only benefit from, the Solar PPA on net over the PPA's 20-year term.[16] This amounts to the Companies' shareholders taking all of the net downside risk of the Solar PPA for native load customers while giving customers all of the net fuel-savings upside across 20 years.

In short, the Companies propose that in each FAC two-year review, they will perform a calculation that will begin with the cost of all the Solar PPA energy purchased and collected from native load customers through the FAC.[17] The Companies will subtract from that amount all of the Solar PPA-related REC-sale revenues returned to customers through the FAC to arrive at the net cost of Solar PPA energy for the two-year review period.[18] The Companies will then calculate the avoided cost of energy for the Solar PPA energy supplied to native load customers over the two-year period.[19] The Companies will calculate the avoided cost by looking at each hour of the review period and multiplying the amount of Solar PPA energy allocated to native load in that hour times the production cost of the highest-cost unit that *actually produced energy* and was stacked to native load in that hour (***not*** the highest-cost unit *available* to produce energy in that hour) and then summing all of those hourly values across the two-year review period.[20]

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[16] Companies' Joint Testimony on Rehearing (Sept. 18, 2020).
[17] *Id.* at 7-8.
[18] *Id.*
[19] *Id.*
[20] *Id.* at 7-8 and 10-16.

For example, if in a given hour 10 MWh of energy was allocated to native load customers under the Solar PPA, and if in that same hour the highest-cost unit that *actually produced energy* and was stacked to native load *in that hour* had a production cost of $25/MWh, then the avoided energy cost for that hour would be $250 (10 MWh x $25/MWh). The Companies would sum all of the hourly values and compare the total avoided energy cost to the net cost of the Solar PPA for the FAC two-year review period. If the avoided cost exceeded the Solar PPA net cost, then the Solar PPA was net beneficial for the period by the amount of the difference, which benefit customers would already have received in the form of lower fuel charges through the FAC for that two-year period. If, on the other hand, the avoided cost was less than the Solar PPA's net cost for that period, the Solar PPA was net detrimental by the amount of the difference.

The Companies would track the net benefits and costs of the Solar PPA across the full 20-year term of the PPA by using the proposed Solar PPA Adjustment Clause and associated deferral accounting, which would adjust the F(m) component of the FAC following each two-year review case to ensure that native load customers are never worse off than they would have been without the Solar PPA and that they receive any net economic benefits across the 20-year PPA term.[21] The Companies would distribute any net uneconomical amount to customers through the FAC in the first billing month following the Commission's final order in a two-year FAC review proceeding. Similarly, the Companies would collect any previously distributed amounts through the FAC in the first billing month following the Commission's final order in a FAC two-year review proceeding finding the Solar PPA was economical in that period.

This approach achieves all of the goals stated in the Commission's orders in this proceeding, as well as concerns raised during the informal conference and formal hearing. First

[21] *See id.* at 16-18 and Exhs. A and B (Sept. 18, 2020).

and foremost, it ensures customers are always made whole during any two-year period in which the Solar PPA is uneconomical while also ensuring they receive the full net benefit of the Solar PPA across its 20-year term. Second, it maintains the finality of FAC two-year review proceedings by using a separate mechanism, the Solar PPA Adjustment Clause, to track and import into FAC calculations the Solar PPA's cumulative net costs and benefits without changing the Companies' FAC tariff provisions or running afoul of FAC regulations. Third, it ensures customers can benefit from the Solar PPA while also making certain the Companies can be made whole for distributed amounts if the Solar PPA proves to be economical over time. In other words, the proposed approach ensures customers will enjoy the full net benefits of the Solar PPA over the 20-year period of the contract term.

III. Any Approach that Does Not Account for the Cumulative Economics of the Solar PPA Over Its Full 20-Year Term Risks Penalizing the Companies for Entering Into a Transaction That Can Only Benefit All Customers.

Any approach that does not involve tracking and accounting for the cumulative net costs and benefits of the Solar PPA across its entire 20-year term risks penalizing the Companies by providing benefits to customers in excess of those the Solar PPA actually creates. The 20-year Solar PPA scenarios the Companies recently provided in response to the Commission Staff's Post-Hearing Data Request No. 1, as well as the scenario data the Companies provided with their application, show that in most of the scenarios modeled there will be one or more two-year periods, primarily in the early years of the contract, in which the Solar PPA will be uneconomical; the Companies anticipate that could occur and are willing to bear that risk by making customers whole. But the vast majority of the scenarios modeled show subsequent two-year periods in which the Solar PPA becomes net beneficial—indeed, in many cases significantly net beneficial—overcoming the earlier periods of net cost. The Companies are willing and able to accept the risk of net costs, but if later (or earlier) periods provided net benefits, the Companies should be able to recover amounts returned to customers through the FAC for prior disallowances during net-cost periods.

In other words, the Companies are proposing a 20-year Solar PPA, not ten two-year PPAs; the Companies' analysis shows, and the Companies believe, the Solar PPA will be net beneficial across its full 20-year term, not in each and every two-year term. Again, the Companies' proposal is to ensure customers receive the full 20-year net benefits of the Solar PPA; the Companies are willing to make customers whole during any two-year periods in which the *cumulative* economics of the Solar PPA are net detrimental. This approach ensures fair and reasonable treatment for customers and the Companies while still placing all net downside risk with the Companies and giving all net upside potential (fuel savings) to customers. Conversely, any approach that does not account for the cumulative economics of the Solar PPA across 20 years risks harming the Companies for entering into a transaction that can only benefit all customers, including Toyota and Dow, and could result in the transaction not proceeding at all.

CONCLUSION

The Solar PPA and the Companies' proposed approach to cost recovery using the FAC, AFB, a new Solar PPA Adjustment Clause, and related deferral accounting will ensure customers can only benefit from the Solar PPA across its 20-year term. Indeed, the benefits of the Companies proposal are many: Customers will benefit from the potential for (and the likely reality of) fuel savings and a more diverse energy portfolio; Toyota and Dow will benefit by advancing their corporate renewable energy initiatives, which is a benefit for Kentucky by giving them an additional incentive to remain and expand here; and the Companies will benefit by helping their customers achieve their goals, increasing their satisfaction and potentially enticing others to become the Companies' customers. Although the Companies do not believe their proposal is a template for future transactions under their Green Tariff Option #3, it is a beneficial solution to the issues presented in this proceeding.

Therefore, the Companies respectfully ask the Commission to approve as soon as possible but before the end of the year the Companies' proposed cost-recovery approach using FAC two-year review proceedings, a new Solar PPA Adjustment Clause, and related deferral accounting so the Companies can advance the Solar PPA and begin moving toward benefits for all customers.

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

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 November 12, 2020 electronic filing of their Post-Hearing 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 November 12, 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