COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC JOINT APPLICATION OF) LOUISVILLE GAS AND ELECTRIC) COMPANY & 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

ATTORNEY GENERAL DANIEL CAMERON'S RESPONSE BRIEF

TO LOUISVILLE GAS AND ELECTRIC COMPANY &
KENTUCKY UTILITIES COMPANY

Respectfully submitted,

Daniel Cameron
Attorney General

John G. Horne, II
Lawrence W. Cook
J. Michael West
Assistant Attorneys General
700 Capitol Ave, Suite 20
Frankfort, KY 40601-8204
Phone: (502) 696-5453
Fax: (502) 573-1005
John.Horne@ky.gov
Larry.Cook@ky.gov
Michael.West@ky.gov

Certificate of Service and Filing

Pursuant to the Commission's Orders dated March 17, 2020 and March 24, 2020 in Case No. 2020-00085, and in accord with all other applicable law, Counsel certifies that an electronic copy of the forgoing was served and filed by e-mail to the following. Further, the Attorney General will submit the paper originals of the foregoing to the Commission within 30 days after the Governor lifts the current state of emergency.

Hon. Kendrick Riggs
Hon. Allyson Sturgeon
kendrick.riggs@skofirm.com
Allyson.Sturgeon@lge-ku.com

This 17th day of April, 2020.

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Lawrence W. Cook, Assistant Attorney General

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ATTORNEY GENERAL'S RESPONSE BRIEF

The intervenor in this proceeding, the Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention ("Attorney General"), submits the following for his brief in response to Louisville Gas and Electric Company and Kentucky Utilities Company ("LG&E/KU" or "the Companies") in the above-styled matter.

I. SUMMARY OF ARGUMENT

The Public Service Commission ("Commission") should approve the 75 MW segment of solar energy under the Green Energy Tariff ("GET") Option #3. The Commission should deny LG&E/KU's request for the remaining 25 MW segment, unless LG&E/KU meet their burden of proof and show that ratepayers are not adversely affected. For the reasons enumerated herein, LG&E/KU has a difficult challenge meeting this burden.

II. STATEMENT OF THE CASE

LG&E/KU is proposing to buy 100 MW of electricity from a third party vendor through the mechanism of a Purchase Power Agreement (PPA).[1] Two large industrial customers will purchase seventy-five percent of the electricity under Renewable Power Agreements (RPAs).[2] All native load customers will share the remaining twenty-five percent.[3] LG&E/KU's motivation is twofold. First, it seeks to satisfy two large industrial customers' desire for access to renewable energy.[4] Second, it seeks to diversify its energy portfolio for the purported benefit of residential customers.[5] The 100 MW is not necessary for LG&E/KU to meet its load obligations.[6]

LG&E/KU seek approval of the PPA and RPAs under two separate criteria: first, a 75 MW segment pursuant to their GET Option # 3 and secondly, the remaining 25 MW segment under applicable statutes. The Commission in case Nos. 2018-00294 & 2018-00295 approved the Companies' GET.[7] The Attorney General does not take issue with the PPA or the RPAs as to the 75 MW segment under the GET Option #3. Whether it is wise for industries to spend money on a different energy source is entirely within their respective business judgment. The propriety of converting more than a square mile of prime farmland into solar panels is a question answered by the Kentucky State Board on Electric Generation and Transmission Siting or through the site compatibility certificate - site assessment report under KRS 278.216.[8] The only issue for the

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[1] *See generally* Application, Case No. 2020-00016.
[2] The two industrial customers are Toyota Manufacturing, Kentucky, Inc., (50 MW) and Dow Silicones Corporation (25 MW).
[3] Application, pp. 5-9.
[4] Id. at p. 9.
[5] Id. at p. 10; Sinclair testimony, pp. 8, 16-18, 28; Conroy testimony pp. 8-9.
[6] *See* response to PSC DR 1-5.
[7] *In re: Electronic application of Kentucky Utilities Company for an Adjustment of its Electric rates,* Case No. 2018-00294, Order dated April 30, 2019 sheet no. 69; and *In re: Electronic Application of Louisville Gas and Electric Company for an Adjustment of its Electric and Gas rates,* Case No. 2018-00295, Order dated April 30, 2019, Sheet no. 69, respectively.
[8] A unique aspect to this case is that LG&E/KU will not own the power generating facility. Instead, it will be owned and operated by a third party, Rhudes Creek Solar LLC ("Rhudes Creek"), with whom the PPA is entered. Rhudes

Commission is whether the 25 MW segment of solar energy is in the best interest of the remaining ratepayers.

The Attorney General does question whether the Commission should approve the portion of the PPA concerning the 25 MW segment allocated to remaining ratepayers. As the Commission correctly pointed out in its March 2, 2020 order, statutory requirements mandate a showing of need and absence of wasteful duplication, as well as a lawful object within LG&E/KU's corporate purposes to approve the PPA for the 25 MW segment. This mandated review of the 25 MW segment falls under KRS 278.020 and KRS 278.300. LG&E/KU alone carry the burden to show that these statutes are satisfied.

If the Commission determines the 25 MW segment is likely to pose increased costs to the Companies' other ratepayers, then it should deny the application. The Commission could structure a disapproval in one of several ways. The Commission could approve the PPA for the 75 MW segment under the GET Option #3, while disapproving the 25 MW segment. Alternatively, the Commission could either: 1) approve the PPA for the 75 MW segment and conditionally approve the 25 MW segment, if LG&E/KU find a customer willing to purchase it for the same twenty-year period; or 2) approve the 25 MW segment if the Companies successfully prove that other customers will bear no additional costs. If at any time during the PPA's effective period that situation should change, the Commission should exercise its authority to take such additional actions, as it deems prudent to protect ratepayers from all such increased costs.

Creek is organized under the laws of Delaware and is wholly owned by ibV Energy Partners, LLC headquartered in Miami, Florida. Rhudes Creek will have to obtain necessary approvals to construct and operate the facility independent of this current case. Application, pp. 5-7.

III. ARGUMENT

A. The 75 MW Segment Appropriately Falls Under GET Option # 3.

Currently, the Companies own or otherwise have access to approximately 8,000 MW of electric generating capacity,[9] roughly 65% of which comes from coal-fired generation.[10] Only 8.4 MW is solar generation.[11] The Companies advocated in their recent rate cases that a GET is a mechanism for large commercial or industrial customers (e.g., Google, Amazon, Walmart etc.) to meet their own corporate sustainability objectives of supporting renewable generation for their own consumption and having the energy from specific resources delivered to their particular facilities.[12] It is commonly known that many Fortune 500 corporations have adopted board-approved policies mandating their companies' transition to all renewable energy consumption by a date certain.

Prior to the current GET, the Companies had separate tariffs in place for a green energy program, a solar share program, and a business solar program.[13] Those programs allowed customers in any class (residential, commercial or industrial) to claim the environmental attributes of a renewable energy project through the purchase of Renewable Energy Certificates ("RECs").[14] The GET, however, provided a new third option to high-end users, by meeting those customers' renewable energy goals through RPAs wherein the utility acquires power from a renewable generator and resells the exact same resource to a particular customer or group of customers.[15] By

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[9] Case No. 2018-00348, *In Re: Electronic 2018 Integrated Resource Plan of Louisville Gas & Electric Co. and Kentucky Utilities Co.*, Application vol. 1, p. 8-1.
[10] Id. at p. 8-7.
[11] Id. (the Companies' total solar capacity will expand to 11 MW upon the completion of the Solar Share program. Id.).
[12] Case Nos. 2018-00294 and 2018-00295, direct testimony of Lonnie E. Bellar, pp. 33-34.
[13] Id., direct testimony of Robert Conroy, pp. 21-22.
[14] Id., direct testimony of Lonnie E. Bellar, pp. 33-34.
[15] Id. at 34.

making more green energy options available, especially to high-end users, the Companies' goal was to attract new economic growth and development.[16]

The Attorney General does not dispute the Companies' assertions that the 75 MW segment falls within their approved GET Option #3. If high-end users wish to pay additional sums for renewable energy to fulfill a business model it is their prerogative to do so. But the excess costs associated with such a choice may not be shunted onto the remaining ratepayers.

B. *The Remaining 25 MW Segment of the Proposed PPA's Energy Does Not Fall Under GET Option #3, So, it Must Satisfy KRS 278.020 and 278.300.*

The Commission should not approve the PPA's remaining 25 MW segment if it is unnecessary or results in additional costs to ratepayers. The Companies alone bear the burden to show that KRS 278.020 (showing of need and absences of wasteful duplication) and 278.300 (lawful object within LG&E/KU corporate purpose) are satisfied. Under KRS 278.020 the Companies must show that the PPA's 25 MW segment is necessary to serve native load, and that this segment would not result in a wasteful duplication of resources. Likewise, KRS 278.300 allows the Commission to grant or deny LG&E/KU's application in whole or in part with such modifications that the Commission may deem necessary and appropriate.

The Commission is wise to look at the 25 MW segment under the purview of their applicable statues including KRS 278.020 and KRS 278.300. The arguments LG&E/KU make apply differently as to the 75 MW versus the 25 MW segments of the PPA and RPAs. The 25 MW segment must stand-alone; LG&E/KU cannot piggyback it onto the 75MW segment, which as the Attorney General concedes is allowed under the GET Option #3. LG&E/KU's argument that the statutes are not applicable to a purchase power arrangement is seeking a loophole that does not

[16] Id.

exist in order to justify the 25 MW segment. The operational and functional implications to ratepayers may be different from new generation construction but they still exist and must be addressed in order to prove that they are of benefit to ratepayers. Therefore, it is appropriate to apply KRS 278.020(1) need and wasteful duplication criteria in order to determine whether the Companies have satisfied the requirement of KRS 278.300.

The Companies described the contract's economic impact through the testimony of David Sinclair, at Table 2.[17] Table 2 utilizes fuel price, CO2 emission price, unit life scenarios and levelized REC prices. Each of these scenarios is predicated on estimated future projections. The Companies concede a range of possibilities between costs versus savings to the average residential customer.[18] In doing so, the Companies admit there is a possibility that ratepayers will have to pay for the 25 MW segment.

How does one know the fixed prices in the PPA for the next 20 years will be competitive with fossil fuels or even other forms of renewables in the next 5, 10, or 15 years? 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. 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 Virginia to satisfy that state's new comprehensive renewable energy mandate. 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. Moreover, the Companies say that the power from the PPA is not likely to add additional off-systems sales.[19]

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[17] Sinclair testimony page 17. See also Companies' response AG DR 2-19.
[18] Companies' response to AG DR 2-19.
[19] Companies' response to AG DR 3-1(e).

As a result, the Companies cannot guarantee that the 25 MW segment under the PPA will not pose increased costs to ratepayers. In fact, the Companies admit that the 25 MW segment will be recovered through base rates.[20] 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.[21] Furthermore, LG&E/KU admit they are not shying away from opportunities to increase renewable generation at a modest incremental cost.[22] They admit it is uncertain that the 75 MW segment under the PPA will even reduce future electricity costs to Toyota or Dow.[23] Since even the 75 MW segment of the PPA has such uncertainties, how can the Companies be certain that the remaining segment will pose no additional costs to ratepayers? 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.[24]

The Companies admit that solar cannot work without the reliability of energy generated by fossil fuels.[25] While at the same time, they acknowledge the energy produced under the proposed solar contracts will likely displace energy from coal generation.[26] This further illustrates that the 25 MW segment of solar constitutes wasteful and unnecessary duplication, unlike the 75 MW segment, which specific customers are purchasing to satisfy their corporate preference for a certain form of energy. When the sun is not shining (a frequent occurrence in Kentucky), Toyota and Dow will be dependent upon the exact same coal and natural gas plants everyone relies on to get their

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[20] Conroy Testimony p. 8 lines 19-20.
[21] See responses to AG DR 3-1 (e), AG DR 3-5, and Sinclair testimony, pp. 17-18.
[22] Sinclair testimony p. 5, line 20 thru p. 6, line 1.
[23] Sinclair testimony p. 28, lines 1-2.
[24] Response AG DR 2-21.
[25] Sinclair testimony p. 13, lines 1-3.
[26] Sinclair testimony p. 18, lines 8-10.

electricity. The Companies recognize the need for fossil fuels to ensure reliability and admit that solar is unable to duplicate such reliability. Clearly, the 25 MW segment is a luxury and not a necessity to the reliability of the Companies' native load obligation.

In fact, the Companies further acknowledge they 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.[27] Therefore, LG&E/KU's attempt to satisfy KRS 278.020(1) by arguing reasonable alternatives were considered is misplaced. There is no need for alternatives when Toyota and Dow, or other willing industrial customers, can pay for 100% of the cost as envisioned under the GET Option #3. Ratepayers should not be subject to the risk of increased costs to pay for an unnecessary energy source. The 25 MW segment added to native load is clearly a wasteful duplication of resources. Ratepayers should not shoulder the risk of unnecessary cost or wasteful duplication.

Disapproving the 25 MW segment does not prevent Toyota, Dow or any other industrial customer from obtaining renewable energy. Currently, the Companies are meeting the energy needs of all its customers, including the two industrial customers at issue. Even if the Commission does not approve the application, the Companies will continue to be able to meet the needs of all their customers.[28] Energy realized from the PPA will be additional capacity.[29] The Commission should approve the 75 MW segment under the GET Option #3 but should not approve the 25 MW segment unless it is satisfied that it is beneficial to the ratepayers.

C. *Additional Safeguards Should be Added if the Commission Approves the 25 MW Segment.*

If the Commission decides to approve the 25 MW segment, the Attorney General suggests

[27] Sinclair testimony p. 6, lines 9-10.
[28] Companies' response PSC DR 2-1 (a).
[29] Companies' response AG DR 3-5.

that the Companies be required to file periodic reports with the Commission to show that ratepayers are benefiting from the PPA. The Companies contend that the PPA is not economical for just the 75 MW segment and implore the Commission to approve the entire 100 MW under the PPA. However, the value of solar energy should stand on its own and not have to be subsidized by ratepayers. Periodic reporting would ensure that ratepayers are not subsidizing Toyota and Dow by paying for unnecessary energy in order to make the PPA economical.

IV CONCLUSION

The Attorney General agrees with the Companies that the 75 MW segment should be approved under the GET Option #3. But ratepayers should not bear uncertain and unnecessary risk. The uncertainty of whether ratepayers would bear any costs regarding the 25 MW segment means the Commission should either: a) disapprove the PPA in its entirety; b) condition approval on the Companies finding another industrial customer(s) willing to enter a RPA for the 25 MW; or c) approve only the 75 MW segment and deny the 25 MW segment. Alternatively, if the Commission is persuaded that other ratepayers will bear no additional costs over the twenty-year period of the PPA, it should condition any approval of this matter on the submission of periodic reports by the Companies demonstrating the economic justification and by cautioning that it will exercise its authority to reopen this docket if ratepayer costs increase.