

**COMMONWEALTH OF KENTUCKY**  
**BEFORE THE PUBLIC SERVICE COMMISSION**

**In the Matter of:**

<b>ELECTRONIC JOINT APPLICATION OF</b>	)	
<b>KENTUCKY UTILITIES COMPANY AND</b>	)	
<b>LOUISVILLE GAS AND ELECTRIC</b>	)	
<b>COMPANY FOR CERTIFICATES OF</b>	)	
<b>PUBLIC CONVENIENCE AND NECESSITY</b>	)	
<b>AND SITE COMPATIBILITY</b>	)	<b>CASE NO. 2022-00402</b>
<b>CERTIFICATES AND APPROVAL OF A</b>	)	
<b>DEMAND SIDE MANAGEMENT PLAN AND</b>	)	
<b>APPROVAL OF FOSSIL FUEL-FIRED</b>	)	
<b>GENERATING UNIT RETIREMENTS</b>	)	

**MOTION TO TAKE ADMINISTRATIVE NOTICE**

Kentucky Utilities Company and Louisville Gas and Electric Company, by counsel, hereby move the Kentucky Public Service Commission (“Commission”) to take administrative notice of the Joint Comments of Electric Reliability Council of Texas, Inc. (“ERCOT”), Midcontinent Independent System Operator, Inc. (“MISO”), PJM Interconnection, L.L.C. (“PJM”), and Southwest Power Pool, Inc. (“SPP”) in U.S. Environmental Protection Agency (“EPA”) docket no. EPA-HQ-OAR-2023-0072, *New Source Performance Standards for Greenhouse Gas Emissions from New, Modified, and Reconstructed Fossil Fuel-Fired Electric Generating Units; Emission Guidelines for Greenhouse Gas Emissions from Existing Fossil Fuel-Fired Electric Generating Units; and Repeal of the Affordable Clean Energy Rule*. The Joint Comments were marked during hearing on August 29, 2023 as LG&E-KU Hearing Exhibit 1, a copy of which is attached hereto. EPA posted the Joint Comments at Regulations.gov at the page <https://www.regulations.gov/comment/EPA-HQ-OAR-2023-0072-0673>, and they are directly available for download from Regulations.gov at [https://downloads.regulations.gov/EPA-HQ-OAR-2023-0072-0673/attachment\\_1.pdf](https://downloads.regulations.gov/EPA-HQ-OAR-2023-0072-0673/attachment_1.pdf).

The Companies would note that though the Joint Comments are dated August 8, 2023, the Regulations.gov site indicates that EPA did not post the Joint Comments to the site until August 14,<sup>1</sup> five days *after* the Companies filed their rebuttal testimony. EPA’s posting delay prevented the Companies’ witnesses from including the Joint Comments in their rebuttal testimony exhibits.

At hearing, counsel for Sierra Club objected to the admission of the Joint Comments, which objection the Chairman sustained, though the Chairman indicated that the Commission would entertain a motion to take administrative notice of the Joint Comments. The Companies believe it is fully appropriate for the Commission to take administrative notice of the Joint Comments because it would be consistent with the admission into the record of numerous other important third-party documents and testimony that relies on the content and credibility of such documents, much of which is hearsay under the Kentucky Rules of Evidence.<sup>2</sup> For example, the testimony of Sierra Club witness Michael Goggin explicitly cites numerous MISO and PJM documents in making his claims that those entities have capacity to support the Companies’ needs,<sup>3</sup> and he cites other third parties’ documents to support capacity-related assertions concerning MISO, PJM, and SPP.<sup>4</sup> The Joint Comments are no more hearsay than those documents themselves or Mr. Goggin’s testimony relying upon them; Mr. Goggin has not claimed to have any authority to speak for MISO, PJM, NERC, or other third-party whose documents he has cited.

To be clear, the Companies are *not* moving to strike Mr. Goggin’s testimony on this topic as inadmissible hearsay. Rather, the Companies respectfully ask the Commission to take administrative notice of the Joint Comments, which are publicly available on a website maintained

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<sup>1</sup> See <https://www.regulations.gov/comment/EPA-HQ-OAR-2023-0072-0673> (“Comment submitted by Electric Reliability Council of Texas, Inc. (ERCOT) et al. Posted by the Environmental Protection Agency on Aug 14, 2023”).

<sup>2</sup> KRE 801(c): “‘Hearsay’ is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.”

<sup>3</sup> See Goggin Testimony at footnotes 8, 10, 16, 21, 22, and 26.

<sup>4</sup> See *id.* at footnotes 9, 13, 18, 19, 20, and 23.

by the federal government—and the authenticity of which has not been challenged—because doing so would be entirely consistent with the admission into evidence of Mr. Goggin’s testimony asserting that the very same ISOs and RTOs who authored and submitted the Joint Comments have adequate capacity for the Companies to rely upon for years to come. The Companies further respectfully submit that the Commission should want to take notice of what those ISOs and RTOs have said about their own capacity concerns as recently as August 8, 2023.

Dated: September 1, 2023

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

In accordance with the Commission's Order of July 22, 2021 in Case No. 2020-00085 (Electronic Emergency Docket Related to the Novel Coronavirus COVID-19), this is to certify that the electronic filing has been transmitted to the Commission on September 1, 2023, and that there are currently no parties in this proceeding that the Commission has excused from participation by electronic means.



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*Counsel for Kentucky Utilities Company and  
Louisville Gas and Electric Company*