

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

JOINT MOTION OF
LOUISVILLE GAS AND ELECTRIC COMPANY
AND KENTUCKY UTILITIES COMPANY
FOR RECONSIDERATION OF THE ORDER OF AUGUST 31, 2023

Pursuant to KRS 278.400, Louisville Gas and Electric Company (“LG&E”) and Kentucky Utilities Company (“KU”) (collectively “Companies”) respectfully move the Kentucky Public Service Commission (“Commission”) to reconsider and to modify its August 31, 2023 Order¹ (“Order”) in this proceeding.

The Order denies in full or in part three of the Companies’ petitions for confidential protection. The Companies respectfully request reconsideration of the Commission’s determinations that certain information included in the solar power purchase agreements (“PPAs”) not be granted confidential treatment.²

The Companies state the following in support of this Joint Motion:

¹ *Electronic Joint Application of Kentucky Utilities Company and Louisville Gas and Electric Company for Certificates of Public Convenience and Necessity and Site Compatibility Certificates and Approval of a Demand Side Management Plan and Approval of Fossil Fuel-Fired Generating Unit Retirements*, Case No. 2022-00402, Order (Ky. PSC Aug. 31, 2023).

² Should the Commission not grant this request for reconsideration, the Companies wish to preserve their rights to object to the Commission’s determination that the requested material not be granted confidential treatment.

I. The Information Relating to Solar PPAs Should Remain Confidential Until the Companies Seek Cost Recovery of the Solar Projects to Protect Negotiating Abilities with Solar Developers and to Prevent Unfair Commercial Advantages.

The Commission denied the Companies' March 1, 2023 petition for confidential treatment of their solar PPAs,³ holding that the Commission "must be able to transparently address the pricing and resultant cost impact in order to provide the public with a meaningful cost-benefit analysis required to analyze the Certification of Public Convenience and Necessity (CPCN) application."⁴ For the same reasons, the Commission denied in part the Companies' March 10, 2023 petition for confidential treatment of data provided in response to Staff's First Request, Items 47(a), 53(b), 69(b), and 90(d), and Joint Intervenors' First Request, Item 40(a) that included solar PPA bid amounts.⁵ Likewise, the Commission denied in part the Companies' May 4, 2023 petition for confidential treatment of information provided in response to Staff's Second Request, Item 81 and Joint Intervenors' Second Request, Items 60(a) and 60(c), which included solar PPA proposals.⁶

In each of the Companies' petitions for confidential treatment involving information relating to solar PPAs, the Companies requested that the information remain confidential for a period of five years. For the following reasons, the Companies' request that the Commission reconsider and modify its Order of August 31, 2023 to protect the information relating to solar PPAs until cost recovery of the purchased energy is sought or the projects are no longer intended to be placed into service.

³ The Companies requested that several commercially sensitive terms within the PPAs remain confidential, including solar energy payment rates, liquidated damages terms, financial security requirements, and availability guarantee terms. *See* Case No. 2022-00402, Joint Petition of Louisville Gas and Electric Company and Kentucky Utility Company for Confidential Protection at ¶ 2 (Ky. PSC filed Mar. 1, 2023).

⁴ Case No. 2022-00402, Order at 4-5 (Ky. PSC Aug. 31, 2023).

⁵ Case No. 2022-00402, Order at 5, 7, 9 (Ky. PSC Aug. 31, 2023).

⁶ Case No. 2022-00402, Order at 12, 14-15 (Ky. PSC Aug. 31, 2023).

A. The terms of multiple solar PPAs include a price-reopener clause, and publicly disclosing these agreements prematurely before the prices are solidified will commercially disadvantage the Companies and their customers.

There are a total of four solar projects associated with the solar PPAs. The contractual terms accompanying three of the solar projects allow the buyer, seller, or both, to initiate negotiations for revision of the solar energy payment rate for a period of time following the satisfaction of certain conditions precedent.⁷ This means that the solar energy payment rates for three of the pending solar projects are subject to change in the future. This also means that if the solar energy payment rates for all four solar projects are immediately publicly disclosed, the Companies and the parties involved in the PPAs will be severely prejudiced in their ability to negotiate an adjustment of the solar energy payment rate in the future. If the solar energy payment rate associated with the solar project whose PPA does not include a price-reopener clause is immediately disclosed, this non-negotiable solar energy payment rate may become a price floor for the other three solar projects. The premature disclosure of these solar energy payment rates will hinder the Companies' ability to negotiate for an adjustment of the solar energy payment rates in the future, which may then result in higher costs passed to customers.

In the Commission's August 31, 2023 Order, the Commission cited Case No. 2020-00016, in which the Commission previously denied the Companies' petition for confidential treatment of a solar energy payment rate.⁸ The present request is distinguishable from the request in Case No. 2020-00016 due to the existence of the price-reopener clauses in the PPAs in this proceeding. The circumstances of this proceeding are more analogous to evaluating bids that have yet to be fully

⁷ The contractual terms accompanying the fourth solar project do not allow for negotiation of the solar energy payment rate.

⁸ See *Electronic 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, Order at 3 (Ky. PSC May 8, 2020).

accepted; the negotiable nature of the solar energy payment rates is what creates a unique need to delay public disclosure of this information.

To balance the prevention of prejudicial commercial harm and the Commission's goal of transparently addressing the pricing, the Companies request that the solar energy payment rates contained in PPAs associated with each of the four solar projects remain confidential only until the Companies seek recovery of the cost.⁹

B. The solar developers object to the premature public disclosure of their agreements because it would harm their ability to negotiate solar-related contracts with other utilities or customers.

In addition to the Companies' objections to the Commission's determination that certain information related to solar PPAs be denied confidential treatment, the solar developers strongly object to the immediate disclosure of their commercially sensitive information. Because solar development continues to be an emerging field, the commercial terms involved in solar contracts have yet to mature into standard terms. Solar contracts often involve extensive negotiations of commercial terms that may be generally standardized in other industries, such as in contracts involving the purchase of coal. Coal contracts, in comparison, have had more time to develop and mature because of coal's iterative presence in the energy industry, resulting in more contract terms that may be considered "boilerplate" or standard in the negotiation phase. Solar contracts have not matured to the same degree.

Because of the incipient nature of solar contracts, public disclosure of commercially sensitive terms permits an exceptionally unfair commercial advantage to competitors of solar developers in contravention of KRS 61.878(1)(c)(1). Attached as Exhibits A, B, and C are letters

⁹ Alternatively, if the solar projects are no longer scheduled to move forward at any point in time, the solar energy payment rates could then be publicly disclosed.

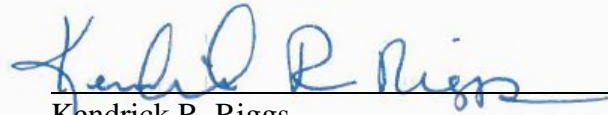
from BrightNight, LLC, ibV Energy Partners, and Clearway Energy Group discussing the additional concerns of these solar developers.

The Companies request that the Commission reconsider its determination of denying confidential protection to all information related to solar PPAs in view of the distinctive context of solar contracts and specifically request such information not be disclosed until the cost is proposed for recovery.

WHEREFORE, Louisville Gas and Electric Company and Kentucky Utilities Company respectfully request that the Commission reconsider and modify the findings in its August 31, 2023 Order regarding the confidential treatment of solar PPA information and grant confidential protection of the solar PPA information until cost recovery of the energy purchased is sought.

Dated: September 22, 2023

Respectfully submitted,




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

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 22, 2023, and that there are currently no parties in this proceeding that the Commission has excused from participation by electronic means.



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

BrightNight, LLC
515 N. Flagler Drive
Suite P200
West Palm Beach, FL 33401

EXHIBIT A



VIA ELECTRONIC MAIL

September 20, 2023

LG&E and KU Energy LLC
Mr. Charles R. Schram
Director – Power Supply
chuck.schram@lge-ku.com

Dear Mr. Schram,

On behalf of GGSO, LLC, the owner of the Gage Solar Power Project and the Seller of renewable carbon-free power to Louisville Gas and Electric Company and Kentucky Utilities Company under a Power Purchase Agreement dated February 24, 2023, and also on behalf of GGSO's parent company, BrightNight, LLC, please receive this letter regarding the August 31 Order issued by the Kentucky Public Service Commission in Case 2022-00402.

It is deeply concerning to BrightNight that the PSC determined that a solar project developer's proprietary pricing information in a solar project PPA must be publicly disclosed, and that such disclosure does not create a competitive disadvantage for the solar project developer *vis-à-vis* other solar developers, as well as other sources of power generation. In contrast, the PSC determined in its Order that projected prices for fossil fuel purchases are too sensitive to be publicly disclosed. BrightNight expects the same treatment for its confidential and proprietary information as is afforded other generators.

Below is a non-exhaustive list of factors that the PSC overlooked when reaching its decision in the Order:

1. Solar project developers exist in an evolving and competitive market – disclosure of proprietary information allows a competitor to benefit from a developer's investment;
2. The commercial and other terms of solar PPAs reflect the innovation of today's solar project developers which lead to creative pricing structures – solar project PPAs can't be compared to one another like standard form offtake agreements from thermal plants;
3. Allocations of risks such as supply chains, interest rates and consumer demand are carefully balanced in today's solar project PPAs, therefore parties agree to adjust prices based on how those risks materialize in the future;
4. Exposing a solar project developer's innovative and proprietary information through arbitrary public disclosure mandates creates concerns about revealing that information in future RFPs;
5. Disclosing proprietary information about a project puts a solar project developer at a disadvantage when negotiating for equipment, construction services, and financing options;
6. Disclosure to the public of a solar project developer's proprietary pricing information is unnecessary to ensure competitive pricing under a well-designed RFP process.



To be clear, BrightNight has no objections and fully agrees that commercial terms of a fully-effective PPA must be disclosed as part of a well-functioning regulatory rate-setting process. However, the solar PPAs that are subject to the Order have not yet reached that important stage.

Surely the PSC can foresee the chilling effect the premature disclosure of highly sensitive commercial information will have on the future of solar project development in Kentucky. We at BrightNight can only wonder what message the PSC is trying to send to proponents of carbon-free energy projects and the citizens of Kentucky by setting such a precedent.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Duane K. Duclaux". The signature is fluid and cursive.

Duane K. Duclaux
General Counsel

EXHIBIT B



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ibV Energy Partners
777 Brickell Ave., Ste 500
Miami, FL 33131
USA

www.ibvenergy.com

Documents Mailing
ibV Energy Partners
3445 Seminole Tr. Ste 259
Charlottesville, VA 22911

September 19, 2023

Louisville Gas & Electric and Kentucky Utilities

Attn: Mr. Chuck Schram, Director of Power Supply
220 W Main St, Louisville
Kentucky, 40202

From
Timothy C. Kim, CEO
(p) 786.575.8005
(e) timothy.kim@ibvenergy.com

Subject Objection to the Disclosure of Unredacted Power Purchase Agreements (PPA)

Dear Mr. Schram,

We understand that the Kentucky Public Service Commission ("KYPSC") is requesting from Louisville Gas & Electric and Kentucky Utilities ("LG&E and KU") the full unredacted PPAs between LG&E and KU and projects currently in development by ibV Energy Partners LLC ("We" or "Company"), namely Rhudes Creek Solar, LLC, Nacke Pike Solar, LLC and Grays Branch Solar, LLC ("the Projects").

We are firmly against public disclosure of these PPAs.

Our Company fully respects the KYPSC and its process. However, disclosing the unredacted PPAs to a public entity equates to, among other things, a public disclosure of highly confidential and proprietary information as it relates to price strategy and negotiated terms of the Projects. We also strongly believe that a public disclosure is in violation of the confidentiality clause found in each PPA.

Furthermore, an unredacted disclosure may jeopardize the projects' development, in addition to causing harm to our Company, since:

1. We develop in a competitive solar market and must keep the Company's pricing confidential; this is critical considering that no two developers price the same.
2. Commercial terms are evolving in the marketplace and not all PPAs are alike.
3. PPA terms are subject to reopening negotiations as development processes carry on and the market environment changes.
4. KYPSC, as a public entity, is subject to certain 'sunshine' laws and therefore our information is likely to be used against us in future negotiations.
5. The Projects are not yet commercial and therefore vulnerable to external pressure during the current development phase.

For all these reasons, public disclosure is premature, and such disclosure could be a factor in deterring us – and many other developers – from responding to future LG&E and KU RFPs.

Sincerely,

A handwritten signature in black ink, appearing to read 'TC Kim', written over a horizontal line.

Timothy C. Kim
CEO

EXHIBIT C

Song Sparrow Solar LLC
4900 N. Scottsdale Rd.
Scottsdale, AZ 85251



September 20, 2023

LG&E and KU Energy LLC
Attn: Charles R. Schram, Director – Power Supply
220 W. Main Street
Louisville, KY 40202

Dear Mr. Schram:

Clearway Energy Group (“Clearway”), on behalf of its affiliate Song Sparrow Solar LLC (“Song Sparrow”), is writing to express its concerns about the Kentucky Public Service Commission’s (“KY PSC’s”) order dated August 31, 2023, in Case 2022-00402, and to request a rehearing of the order. In its order, the KY PSC denied the LG&E/KU petition to maintain confidentiality for the key commercial terms of the Power Purchase Agreements (“PPAs”) for solar projects that were contracted through the request for proposals issued by LG&E/KU in 2022.

Clearway shares the same concerns voiced by LG&E/KU in its petition for confidential protection of March 1, 2023, about disclosing sensitive PPA commercial terms. We would like to provide more detail about why public disclosure of confidential contract terms will be detrimental to LG&E/KU, Clearway and other renewable energy developers that have executed PPAs through the 2022 RFP, future renewable energy procurement efforts in Kentucky, and electric utility ratepayers in Kentucky.

As LG&E/KU understands from its most recent RFP, there are many renewable energy developers that are actively developing utility-scale projects in Kentucky. These developers, including Clearway, are often required to participate in competitive procurement processes to obtain long-term offtake contracts. Once a renewable energy project is awarded a PPA by a utility, a lengthy negotiation process between the developer and the utility begins. Because each renewable energy project has its own unique characteristics, and because each project developer has its own requirements for a PPA, the final negotiated agreements can vary greatly from project to project, even if several projects are contracting with the same utility. Commercial terms such as price, security requirements, availability guarantees, and liquidated damages are highly sensitive terms subject to these negotiations, and public disclosure of these key terms would commercially harm a developer. Renewable developers rely on the utility PPA counterparty to maintain the confidentiality of developer and project information during

the negotiating process, and of the PPA itself once a final agreement is executed. It is of utmost importance to Clearway to ensure that key commercial terms in its contracted PPAs with LG&E/KU are confidential.

Clearway has participated in the regulatory approval process for various projects in numerous jurisdictions. It is a common requirement for public utilities to provide executed PPAs to regulatory agencies, and PPAs normally have a provision that allows for regulatory disclosure as a specific exception to confidentiality requirements. These disclosures typically involve filing the entire PPA under seal, and then publicly filing a version of the PPA with redactions of key commercial terms. It is highly unusual for a state PSC to make entire PPA documents public, especially before the project under contract has even begun construction or operation, without protecting the utility and developer by redacting the key commercial terms in the PPA.

Public disclosure of key commercial terms in PPAs by the KY PSC will have a number of negative effects on developers, utilities and Kentucky ratepayers, including:

- **Clearway and other renewable energy developers**
 - Disclosure of key commercial terms can allow for an unfair comparison between PPAs that does not account for the interplay between price and other contract provisions – “apples to oranges” comparisons.
 - Unique and creative contract terms that are utilized by a developer will be revealed to its competitors, eliminating any unique advantage a developer might hold.
 - The public disclosure of PPA terms during the early and mid-stages of project development can have an impact on the developer’s ability to effectively negotiate with contractors and suppliers that support project development and construction. If contractors and suppliers have insight into PPA prices, deadlines, and penalties they can use that information to the disadvantage of the project during contract negotiations. This could ultimately lead to developers submitting higher prices in an RFP to protect against higher construction costs.
 - Negotiated PPA terms in the LG&E/KU PPA’s will be seen by other utility customers across the country and could reduce a developer’s negotiating position for projects in other U.S. markets.

- **LG&E/KU**
 - If the KY PSC sets the precedent of disclosing unredacted PPAs entered by LG&E/KU and other Kentucky utilities just months after the agreements are executed, it could have a chilling effect on interest by renewable

energy developers to start the development of new projects in the state. Developers will be leery of entering into contracts that will be made public prior to the completion of development and construction and may decide to deploy their limited capital in other regions where, in most all cases, there is not a risk of public contract disclosure.

- A pullback by renewable energy developers in Kentucky will result in RFPs that receive less interest and bids in RFPs, meaning a less competitive market for Kentucky utilities or, even worse, a lack of enough projects for LG&E/KU and other Kentucky utilities to meet their renewable energy targets.
 - The impacts on project developers like Clearway, noted above, could put LG&E/KU at risk of needing to re-negotiate PPAs or even terminate PPAs if the public disclosure of sensitive commercial terms has material impacts on the development and construction of solar projects.
- **Kentucky utility ratepayers**
 - The impacts to developers and LG&E/KU noted above could result in:
 - Fewer low-cost renewable energy projects for the utility to procure, resulting in higher priced PPAs and higher rates for utility customers.
 - A lack of sufficient renewable energy resources for Kentucky to reach its clean energy goals.

For the reasons described above, Clearway supports LG&E/KU's request for a rehearing of the KY PSC's August 31 order to continue to pursue its request to provide confidential treatment for the PPAs submitted in Case 2022-00402. As it has done in other cases, the KY PSC should only make redacted versions of the PPAs available publicly. If the KY PSC feels it must disclose the PPAs in their entirety, Clearway believes this should occur no sooner than the date that the solar energy projects become operational.

Thank you for your consideration of Clearway's request. Please contact me with any questions.

Regards,



Valerie Wooley
Sr. Vice President – Origination
Clearway Energy Group LLC