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 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**

REBUTTAL TESTIMONY OF ROBERT M. CONROY

VICE PRESIDENT, STATE REGULATION AND RATES
KENTUCKY UTILITIES COMPANY AND
LOUISVILLE GAS AND ELECTRIC COMPANY

Filed: August 9, 2023

1 **Q. Please state your name, position, and business address.**

2 A. My name is Robert M. Conroy. I am the Vice President of State Regulation and Rates
3 for Kentucky Utilities Company ("KU") and Louisville Gas and Electric Company
4 ("LG&E") (collectively "Companies") and an employee of LG&E and KU Services
5 Company, which provides services to KU and LG&E. My business address is 220
6 West Main Street, Louisville, Kentucky 40202.

7 **Q. What are the purposes of your testimony?**

8 A. The purposes of my testimony are to address: (1) the status of the Companies' request
9 for a declaratory ruling regarding Purchase Power Agreements and the oversight and
10 cost recovery thereof; (2) cost recovery of retired assets; (3) the timing of the
11 Companies' requests in this case relative to applicable environmental regulations; (4)
12 the cost to customers of the Companies' proposals; and (5) the status of a cap on
13 eligibility for distributed generation.

14 **Q. Please describe the Companies' request for a declaratory ruling regarding the**
15 **PPAs set forth in their December 22, 2022 Joint Application.**

16 A. As explained in the Companies' December 22, 2022 Joint Application and in my Direct
17 Testimony of the same date, the Companies are in the process of entering into non-firm
18 energy-only Purchase Power Agreements ("PPAs") for the output from four solar
19 facilities with a combined capacity of 627 MW. Commission precedent exists holding
20 that Commission approval is not necessary for the Companies to enter into non-firm
21 energy-only PPAs. In Case No. 2020-00016, the Commission addressed whether
22 Commission approval was required for the Companies' entry into a similar PPA with
23 Rhudes Creek Solar, LLC. The Commission held that Commission approval was not

1 required. Therefore, in this case, the Companies have cited that decision and have
2 asked the Commission to follow its own precedent in declaring that Commission
3 approval is not required for the Companies' entry into the four PPAs.

4 **Q. Ms. Medine claims the Commission has denied the Companies' request in their**
5 **December 22, 2022 Application for a declaratory ruling regarding those PPAs. Is**
6 **that accurate?**

7 A. No. The Commission has not ruled on the Companies' request for a declaratory ruling.
8 It is possible that Ms. Medine misconstrued the Commission's January 6, 2023 Order.
9 At p. 3 of that Order, the Commission stated that KRS 278.300 could apply to the
10 approval of PPAs and that KRS 278.300 contemplates a decision within 60 days after
11 an application unless the Commission needs to extend that deadline. The Commission
12 further stated that it could not complete its investigation within 60 days, so it was
13 extending the deadline for a decision on all issues in the case until November 6, 2023.

14 **Q. Is the Companies' request for a declaratory ruling still pending?**

15 A. Yes, as noted above, the Commission did not and has not acted on the Companies'
16 request for a declaration.

17 **Q. Do the Companies believe a declaratory ruling should be issued as requested in**
18 **their December 15, 2022 Joint Application?**

19 A. Yes. The Companies believe the Commission should adhere to its own recent
20 precedent and declare that Commission approval is not necessary for entry into the four
21 PPAs.

22 **Q. Ms. Medine also says the Commission should have ongoing jurisdiction, oversight,**
23 **and regulatory review of solar PPAs. If the Companies' request for a declaratory**

1 **ruling is granted, would that somehow mean the Commission would not have**
2 **regulatory oversight of solar PPAs?**
3 A. No, not at all. Under Commission precedent, the Commission does not have to approve
4 the Companies' entry into the four proposed PPAs. But once entry has occurred, the
5 Commission has ongoing jurisdiction, oversight, and regulatory review of those PPAs.
6 The Commission has the authority to examine and decide whether and how cost
7 recovery of payments the Companies make under the four PPAs should happen. In
8 Case No. 2020-00016 referenced above, the Commission concluded that cost recovery
9 should be addressed as part of the Companies' Fuel Adjustment Clause ("FAC")
10 proceedings.
11 **Q. Mr. Kollen provided testimony regarding PPAs when he testified that cost**
12 **recovery for PPAs should not be addressed through the FAC procedure; rather,**
13 **he testifies that a separate PPA rider should be used for cost recovery, or, absent**
14 **that, cost recovery should be through base rates. Do you agree with him?**
15 A. As established in Case No. 2020-00016, for the 25 MW portion of the non-firm energy-
16 only PPA from Rhudes Creek Solar, LLC that will serve all native load customers, the
17 Companies plan to include the energy and the cost recovery, net of REC sales revenue,
18 in the FAC as noted above. However, given the significant increase in the solar
19 resources proposed in this proceeding, the use of a separate rider may have merit as an
20 alternative means of cost recovery. Such a rider could provide a forum for updates on
21 the status and cost of such resources prior to contractual commitments, providing a
22 final prudency check before cost recovery is approved. Specifics of how such a rider

1 would be developed and the implications of its impact on the FAC, After-the-Fact
2 billing, and the Off-System Sales adjustment clause would have to be considered.

3 **Q. Mr. Kollen also asks the Commission to clarify the Companies' Retired Asset**
4 **Recovery Rider ("RARR") so that, if Ghent 2 is retired as requested, the rate**
5 **recovery methodology for Ghent 2 is addressed in this proceeding. Do you agree**
6 **with him?**

7 A. The Companies agree it is permissible for the Commission to consider in this
8 proceeding rate recovery through the RARR if Ghent 2 is retired as requested.
9 Paragraph 5.3 of the Stipulation the Commission approved in Case Nos. 2020-00349
10 and 2020-00350 addressed the retirements of Mill Creek 1 and 2 and Brown 3 and the
11 recovery of the remaining undepreciated net book value of those assets through the
12 RARR using an agreed-upon rate recovery methodology. That Stipulation did not
13 include Ghent 2. However, the RARR tariff does not limit its application to the three
14 units noted in the Stipulation. As the Companies have stated in discovery in this case
15 and above, the rate recovery methodology for Ghent 2 in the RARR could be
16 determined in this proceeding subject to Commission approval, although it would
17 require separate filings setting forth specific costs associated with retiring Ghent 2.[1]

18 **Q. What is Ms. Medine's position on how to address the remaining book value related**
19 **to retired assets?**

20 As noted at page 14 of her testimony, Ms. Medine states that "In a number of
21 jurisdictions, the Commissions revise the depreciation period to "match" the expected
22 operating plant lives thereby increasing short-term rates but reducing or eliminating the

[1] See the response to AG-KIUC 3-18(c).

1 stranded cost component." That is exactly what the Companies had proposed in the
2 applications for a change in base rates in Case Nos. 2020-00349 and 2020-00350
3 previously referenced. The Companies had proposed to adjust depreciation rates for
4 Mill Creek 1, Mill Creek 2 and Brown 3 to align with the then expected retirement
5 years of 2024, 2028, and 2028, respectively. However, the intervenors were opposed
6 to the impact such a change in depreciation rates would have on retail rates which led
7 to the establishment of the RARR in the stipulation.

8 **Q. Ms. Medine claims it would be premature to approve the Companies' certificate**
9 **of convenience and necessity ("CPCN") in this case because of the "uncertainty**
10 **regarding costs and compliance requirements under Good Neighbor Rule . . . and**
11 **the revisions to Section 110(b) and 110(d) of the Clean Air Act." Do you agree**
12 **with that?**

13 A. No. The Companies have a history of proposing significant investments to *coal-fired*
14 generation to comply with looming environmental regulations so that they can work
15 timely to achieve compliance in a least cost fashion and the Commission has approved
16 such investments. When environmental control investment to coal-fired facilities is the
17 least cost means of complying with ever-changing environmental compliance
18 regulations, even when those regulations are not final, the Companies have proposed
19 such investment and the Commission has approved it. The KCA has never intervened
20 in those proceedings. Indeed, the KCA has never intervened in any of the Companies'
21 cases in which environmental control investment has been proposed to coal-fired
22 generation. Ms. Medine's testimony demonstrates no knowledge of these regulatory
23 proceedings. Here, the Companies' proposed portfolio is driven by a single goal:

1 reliable service at least cost. It is only when that goal demands investment in something
2 other than coal-fired generation has the KCA alleged bias. In any event, the Good
3 Neighbor Plan ("GNP") is final, and, although it is being legally challenged, the
4 Companies must act now to achieve compliance.

5 **Q. You note it is not unusual in cases before the Commission for utilities to face**
6 **having to make decisions on compliance even when the compliance requirements**
7 **are uncertain, not final, or subject to future change. Can you provide some**
8 **specific examples?**

9 A. Yes. The interplay between the timelines provided in a rule for compliance and the
10 time needed for good utility decision making often drives utilities to begin
11 implementation of its compliance plan before a regulatory deadline. One relevant
12 example occurred in 2011 when the Companies had to proceed with compliance plans
13 in the midst of uncertainty over what was required under EPA's proposed National
14 Emission Standards for Hazardous Air Pollutants or the "HAPs Rule." The Companies
15 sought CPCN authority to construct, and environmental surcharge recovery of the cost
16 of, particulate matter control systems or "baghouses" to comply with EPA's HAPs
17 Rule. LG&E requested CPCN authority to invest approximately $1.4 billion in the
18 construction of baghouses and related pollution control facilities for the generating
19 units at the Mill Creek generation station and Trimble County Unit 1. Similarly, KU
20 sought CPCN authority to invest approximately $1.0 billion in the construction of
21 baghouse and related pollution control facilities for the generating units at the Brown
22 and Ghent generation stations. At the time of the decision in the ECR cases, because
23 EPA had not issued the final HAPs rule, a consumer group objected to the request for

1 CPCN authority and ECR recovery on the grounds that the requirements of the final
2 HAPs rule were uncertain, urging the Commission to delay the decision. The
3 Companies countered this position, pointing out the need to act now to ensure timely
4 compliance and the risk of having to pay higher costs caused by market demand for
5 labor and materials in the industry to construct similar facilities under the deadline.
6 The Companies further assured the Commission by committing to promptly notify the
7 Commission in the event that a future revision in the HAPs rule impacted the approved
8 baghouse projects and further acknowledged that they would not use the authority to
9 make imprudent investments. The Commission granted the CPCNs and approved the
10 ECR recovery for the baghouse projects and related pollution control facilities.[2]

11 The Companies also had to proceed in 2020 with compliance plans in the midst
12 of similar uncertainty over what was required under EPA's effluent limitation
13 guidelines ("ELGs") for Clean Water Act compliance. After EPA's 2015 ELGs
14 became final, EPA granted a petition for reconsideration and announced a plan to
15 reconsider certain ELG requirements and potentially promulgate different standards in
16 2020. Despite the uncertainty over which version of the ELGs would ultimately apply,
17 the Commission approved the expenditures necessary for compliance with the 2015
18 ELGs at Mill Creek and Trimble County generation stations.[3] The same is true for
19 Ghent's ELG compliance costs.[4]

[2] *Application of Louisville Gas and Electric Company for Certificates of Public Convenience and Necessity and Approval of its 2011 Compliance Plan for Recovery by Environmental Surcharge*, Case No. 2011-00162, Order (December 15, 2011); *Application of Kentucky Utilities Company for Certificates of Public Convenience and Necessity and Approval of its 2011 Compliance Plan for Recovery by Environmental Surcharge*, Case No. 2011-00161, Order (December 15, 2011);

[3] *Application of Louisville Gas and Electric Company for Approval of its 2020 Compliance Plan for Recovery by Environmental Surcharge*, Case No. 2020-00061, Order (September 29, 2020).

[4] *Application of Kentucky Utilities Company for Approval of its 2020 Compliance Plan for Recovery by Environmental Surcharge*, Case No. 2020-00060, Order (September 29, 2020).

1 These examples demonstrate that the assertion that utilities should alter or
2 abandon their compliance plans based upon a stay of the underlying rule is often
3 inconsistent with good utility decision making and reasonable industry practice.
4 Moreover, they show that the Companies have an established record of seeking
5 approval from the Commission for environmental compliance strategies that ultimately
6 prove to be prudent investments. Although nobody can know the future with perfect
7 precision, I believe the Companies' proposals in this proceeding are based on robust
8 analysis of current and reasonably foreseeable environmental requirements that, if
9 approved by the Commission, will prove to be prudent in hindsight, as well.

10 **Q. Has the Companies' performance in the prior environmental cases noted above**
11 **further demonstrated the prudence of the Companies' actions?**

12 A. Absolutely. In the 2011 ECR Plan proceedings noted above (Case Nos. 2011-00161
13 and 2011-00162), the Commission approved the estimated $2.4 billion investment in
14 the projects in Orders dated December 15, 2011 and established a construction
15 monitoring process with the use of Vantage Consulting, LLC ("Vantage"). As noted
16 in the Commission's Orders, the construction monitoring consisted of all phases of the
17 projects, including the Companies' management plans, engineering processes,
18 procurement plans, construction, startup, commissioning, in-service verification, and
19 closeout. The Companies provided quarterly reports and had ongoing meetings with
20 Vantage over the five year period of construction. Upon completion of the engagement
21 with Vantage, the Commission issue a letter to the Companies (attached as Rebuttal
22 Exhibit RMC-1) in which it stated:

23 "The original estimated capital cost of the projects totaled $2.301 billion.
24 The final estimated total cost of the projects is $2 billion. The projects,

> which will be completed well under budget, within original schedules, and with an outstanding safety record, must be considered very successful by any standard. Commission Staff expresses its appreciation for the Companies' efforts in keeping Vantage and Staff informed regarding the progress of the environmental projects, and appreciates the professional manner in which the Companies have assisted this review."

In the 2020 ECR Plan proceedings noted above, Case Nos. 2020-00061 and 2020-00062, the Commission required the continuation of quarterly progress reports on the over $400 million investments, although without the need for a third party consultant. The Companies provide the Commission details on the progress of the projects on an ongoing quarterly basis and are currently expected to be well under the estimated original costs primarily due to the ability to get out ahead of the market peak in securing an EPC contractor and ELG equipment technology vendor.

Q. Ms. Medine alleges an inappropriate PPL Corporation bias inherent in the Companies' proposed portfolio based on the Companies' alleged refusal to perform a rate impact study of the portfolio. Is that a fair criticism?

A. Mr. Crockett addresses that general bias allegation in more detail in his rebuttal testimony, but on the issue of a rate impact study, it is neither required nor appropriate in this proceeding. So, no, it is not a fair criticism. In the context of a CPCN proceeding, the issue is whether there is a need for the proposed investment, whether an applicant has considered reasonable alternatives to meet that need, and whether the proposed alternative is reasonable in terms of cost. Cost is measured by reviewing and comparing the present value revenue requirements of the various alternatives over a reasonable long timeframe, which the Companies have calculated and submitted for their proposed supply-side investments, *not* by performing a full-blown rate impact study based on total cost of service for a specific rate year and for a specific customer

1 class. Given the fact that the Companies' rates are cost-based, present value revenue
2 requirements are essentially a rate impact analysis providing appropriate coverage of
3 the life-cycle of the investment. Finally, cost recovery for the proposed investment is
4 not decided in CPCN cases; it comes later in general rate cases.[5]

5 **Q. At page 25 of her testimony, KCA witness Ms. Medine asserts that Senate Bill 4**
6 **requires the Commission to consider residential rate impacts in this case. Do you**
7 **agree with this assertion?**

8 A. No. The focus of Senate Bill 4 is the standard that must be met for a utility to retire a
9 fossil fuel-fired electric generating unit. Senate Bill 4 sets forth various requirements
10 to meet that standard, but a residential rate impact study is not one of them. On the
11 issue of the effect on customers of retiring a unit, Senate Bill 4 requires only that the
12 proposed retirement will not harm "ratepayers by causing the utility to incur any *net*
13 incremental costs to be recovered from ratepayer that could be avoided by continuing
14 to operate the electric generating unit proposed for retirement in compliance with
15 applicable law" (emphasis added). As explained in the Companies' May 10, 2023 Joint
16 Application and Mr. Bellar's and Mr. Wilson's testimony in support thereof, the
17 proposed retirements satisfy the entirety of Senate Bill 4's requirements, including the
18 "harm to ratepayers" requirement. That requirement is met by measuring the net
19 present value revenue requirements of the proposed replacement generation, not by
20 conducting a rate impact analysis.

21 **Q. Do you agree with her contention that the proposed portfolio will increase rates?**

[5] See the response to KCA 1-68 and KCA 2-46.

1 A. The Companies have stated that it is likely that residential rates will change between
2 2026 and 2035 for many reasons, including, but not limited to, capital investments.
3 The Companies have also indicated that the capital investments proposed in this case,
4 taken alone, are likely to increase rates. But Ms. Medine *omits* the most fundamental
5 fact relating to a possible increase in rates. If the Companies' proposed portfolio is
6 approved, any increase in rates will be lower than would otherwise be the case based
7 on the Companies' present value calculations modeling that portfolio as compared to
8 all other reasonable alternatives,[6] including the various alternatives intervenors have
9 proposed.

10 **Q. Joint Intervenors witness Andy McDonald addresses the Companies' offering net**
11 **metering even when net metering reaches 1% of their annual peak (p. 7). Ms.**
12 **Sommer also addressed that issue (p. 24) as a way to manage solar execution.**
13 **Have the Companies decided whether they will stop offering net metering if it**
14 **reaches the 1% level as described in KRS 278.466(1)?**

15 A. As explained in the response to PSC 1-37, the Companies' tariffs do not have a 1% cap
16 on distributed generation eligible for service under Rider NMS-2. As for whether the
17 Companies will stop offering net metering if the 1% level stated in KRS 278.466(1) is
18 reached, the Companies have not made that decision. The Companies will address that
19 issue once they reach close to the 1% level which they currently are not.[7]

20 **Q. Does this conclude your testimony?**

21 A. Yes, it does.

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[6] See the response to KCA 3-23.
[7] See the response to Lex/Lou Metro 2-8.

VERIFICATION

COMMONWEALTH OF KENTUCKY)
)
COUNTY OF JEFFERSON)

The undersigned, **Robert M. Conroy**, being duly sworn, deposes and says that he is Vice President, State Regulation and Rates for Kentucky Utilities Company and Louisville Gas and Electric Company and an employee of LG&E and KU Services Company, and that he has personal knowledge of the matters set forth in the foregoing testimony, and that the answers contained therein are true and correct to the best of his information, knowledge, and belief.

Robert M. Conroy

Subscribed and sworn to before me, a Notary Public in and before said County and State, this 7th day of August 2023.

Notary Public

Notary Public ID No. KYNP61560

My Commission Expires:

November 9, 2026

Matthew G. Bevin
Governor

Charles G. Snavely
Secretary
Energy and Environment Cabinet

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Michael J. Schmitt
Chairman

Robert Cicero
Vice Chairman

Daniel E. Logsdon Jr.
Commissioner

February 13, 2017

Christopher M. Garrett
LG&E and KU Energy LLC
220 West Main Street
P.O. Box 32010
Louisville, KY 40232

Re: Construction Monitoring of the 2011 ECR Compliance Plans for Louisville Gas & Electric and Kentucky Utilities Company

Dear Mr. Garrett,

On January 20, 2017, the Kentucky Public Service Commission received from you the 21st quarterly update and final report summarizing the 2011 ECR Compliance Plans for Louisville Gas & Electric Company (LG&E) and Kentucky Utilities Company (KU) (jointly "the Companies").

The Companies' environmental compliance plans were approved by the Commission in Case Nos. 2011-00161 (KU) and 2011-00162 (LG&E). In approving the environmental compliance plans, the Commission found it appropriate to utilize the assistance of an external consultant, to monitor and report the progress of the construction of the approved projects. The selected consultant, Vantage Consulting, LLC, has submitted its final report regarding the projects.

The original estimated capital cost of the projects totaled $2.301 billion. The final estimated total cost of the projects is $2 billion. The projects, which will be completed well under budget, within original schedules, and with an outstanding safety record, must be considered very successful by any standard. Commission Staff expresses its appreciation for the Companies' efforts in keeping Vantage and Staff informed regarding the progress of the environmental projects, and appreciates the professional manner in which the Companies have assisted this review.

Sincerely,

Daryl E. Newby
Director, Financial Analysis