

**COMMONWEALTH OF KENTUCKY
BEFORE THE KENTUCKY STATE BOARD
ON ELECTRIC GENERATION AND TRANSMISSION SITING**

In the Matter of:

**In the Matter of the Electronic Application of Song)
Sparrow Solar LLC for a Certificate of Construction)
for an Approximately 104 Megawatt Merchant Electric) Case No. 2023-00256
Generating Facility in Ballard County, Kentucky)
Pursuant to KRS 278.700 and 807 KAR 5:110)**

SONG SPARROW SOLAR LLC’S PETITION FOR CONFIDENTIAL TREATMENT

Song Sparrow Solar LLC (“Song Sparrow Solar”), by counsel, moves the Kentucky Siting Board on Electric Generation and Transmission Siting (the “Siting Board”) for an order granting confidential treatment to certain information and documents filed the response to the Siting Board’s Post-Hearing Data Requests. Specifically, Song Sparrow Solar requests confidential treatment for information contained in documents responsive to Item 3, which requests Song Sparrow Solar’s power purchase agreements (“PPAs”) with Louisville Gas & Electric Company and Kentucky Utilities Company and (collectively, “LGE-KU”). In support of this motion, Song Sparrow Solar states as follows:

Administrative Regulation 807 KAR 5:110, Section 5 sets forth the procedure by which certain information filed with the Commission shall be treated as confidential. Specifically, the party seeking confidential treatment must establish “each basis upon which the petitioner believes the material should be classified as confidential” in accordance with the Kentucky Open Records Act, KRS 61.878. 807 KAR 5:110 Section 5(2)(a)(1).

The Kentucky Open Records Act exempts certain records from the requirement of public inspection. *See* KRS 61.878. In particular, KRS 61.878(1)(c)(1) exempts from disclosure:

Records confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which if openly disclosed would present an unfair commercial advantage to competitors of the entity that disclosed the records.

This exception “is aimed at protecting records of private entities which, by virtue of involvement in public affairs, must disclose confidential or proprietary records to a public agency, if disclosure of those records would place the private entities at a competitive disadvantage.” Ky. OAG 97-ORD-66 at 10 (Apr. 17, 1997). One “obvious disadvantage” is created when proprietary information is disclosed “without the hurdles systematically associated with acquisition of such information about privately owned organizations.” *See Marina Management Service, Inc. v. Commonwealth of Ky., Cabinet for Tourism*, 906 S.W.2d 318, 319 (Ky. 1995). The information and documents referenced below are all confidential and proprietary and the disclosure of which would present an unfair commercial disadvantage to Song Sparrow Solar.

Through Item 3, the Siting Board seeks copies of PPAs. The material terms—including the rates that the Companies will pay for solar energy, liquidated damages terms, financial security requirements, and availability guarantee terms—contained in the PPAs contain proprietary commercial information relating to pricing and other sensitive information that if made publicly available would work a significant competitive disadvantage against Song Sparrow Solar and LGE-KU.

Song Sparrow Solar notes that the confidentiality of these PPAs was also raised in Public Service Commission Case No. 2022-00402. Song Sparrow Solar adopts the arguments presented in LGE-KU’s (1) Joint Petition for Confidential Protection filed on March 1, 2023; (2) Joint Motion for Reconsideration of the Order of August 31, 2023, filed on September 22, 2023; and (3)

Complaint filed on November 2, 2023, in Franklin Circuit Court Civil Action No. 23-CI-01010. A copy of each of these documents is attached hereto, and the arguments therein are incorporated in this Petition as if fully stated herein.

Song Sparrow Solar acknowledges that the Public Service Commission denied confidential protection of these PPAs on the grounds 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.”¹ In addition, the Public Service Commission denied a motion to reconsider this decision, stating:

The designated material relates to information that the Commission needs to be able to fully and specifically address in its evaluation and, if there is a finding that the solar PPAs require prior commission approval under KRS 278.020 and KRS 278.300, in its final determination. Confidential treatment will prevent the transparency necessary for LG&E/KU ratepayers to know what information the Commission relied upon in rendering its final determination.

There is a significant distinguishing feature in the present Siting Board case involving Song Sparrow Solar. In contrast to LGE-KU’s case before the Public Service Commission that was decided on the standards set forth in KRS 278.020 and KRS 278.300, Song Sparrow Solar’s Siting Board case will be decided on the standards set forth in KRS 278.710. Notably, there is no requirement in KRS 278.710 requiring the Siting Board to consider whether a proposed facility has a purchase power agreement and, if so, its underlying terms. In addition, the Siting Board has frequently issued decisions approving construction certificates for solar-energy generating facilities without any discussion of a PPA in the final order.²

¹ *Kentucky Utils. Co. and Louisville Gas & Elec. Co.*, Case No. 2022-00402 at 5 (Ky. PSC Aug. 31, 2023).

² *See, e.g., Pine Grove Solar LLC*, Case No. 2022-00262 (K.S.B. May 26, 2023).

Moreover, Song Sparrow also respectfully submits that the Public Service Commission's rationale for denying confidential protection in Case No. 2022-00402 is not supported by the Kentucky Open Records Act. Although the General Assembly has clearly indicated its policy supporting the free and open examination of public records,³ it explicitly carved out an exception for confidential or proprietary records that are confidentially or required to be disclosed to an agency, which if openly disclosed would permit an unfair commercial advantage to competitors.⁴ The Open Records Act does not allow a public agency to disclose this type of record even if the public has an interest in how the agency made its determination.

Song Sparrow Solar notes that it is publicly filing copies of the PPAs with redacted material terms and also is confidentially submitting the unredacted copies of the PPAs.

For the foregoing reasons, Song Sparrow Solar respectfully requests confidential treatment of the material terms of the PPAs for an indefinite amount of time or until otherwise publicly disclosed. In addition, in order to reduce the likelihood of subsequent litigation, Song Sparrow Solar encourages the Siting Board to consider waiting to render a decision on this Petition until after a decision is rendered Franklin Circuit Court Case No. 23-CI-01010 and all subsequent appeal periods have expired.⁵


³ See KRS 61.871.

⁴ KRS 61.878(1)(c)(1).

⁵ Pursuant to 807 KAR 5:110, Section 5)(3), the PPAs would remain confidential while this Petition is pending.

RESPECTFULLY SUBMITTED,

STURGILL, TURNER, BARKER & MOLONEY, PLLC



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Counsel for Song Sparrow Solar, LLC

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)

JOINT PETITION OF
LOUISVILLE GAS AND ELECTRIC COMPANY
AND KENTUCKY UTILITIES COMPANY
FOR CONFIDENTIAL PROTECTION

Louisville Gas and Electric Company (“LG&E”) and Kentucky Utilities Company (“KU”) (collectively “Companies”) petition the Public Service Commission of Kentucky (“Commission”) pursuant to 807 KAR 5:001 Section 13 to grant confidential protection for certain commercially sensitive the solar power purchase agreements (“PPAs”) the Companies are providing into the record of the case herewith. In support of this Joint Petition, the Companies state as follows:

Confidential or Proprietary Commercial Information (KRS 61.878(1)(c)(1))

1. The Kentucky Open Records Act exempts from disclosure certain records which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records.¹ Public disclosure of the information identified herein would, in fact, prompt such a result for the reasons set forth below.

2. The Companies are providing copies of five fully executed solar PPAs for four total solar projects (one project involves two PPAs, one for each of the Companies). The

¹ KRS 61.878(1)(c)(1).

highlighted portions of the PPAs state the agreed upon rates that the Companies will pay for solar energy, liquidated damages terms, financial security requirements, and availability guarantee terms that are commercially sensitive and should be afforded confidential protection. Publicly disclosing such terms would likely to reduce the willingness of the PPA counterparties and similar entities to contract or otherwise transact business with the Companies in the future. Public disclosure of pricing information will also place the Companies at a considerable disadvantage when negotiating future contracts, all to the detriment of the Companies customers. Furthermore, public disclosure would provide insight into the Companies' evaluation of bids for such contracts to the detriment of the Companies and their ratepayers. In sum, the public disclosure of this information would create precisely the kind of competitive harm KRS 61.878(1)(c)(1) intends to prevent. Thus, KU and LG&E request confidential protection for the highlighted commercially sensitive terms of the five solar PPAs.

Confidential Information Subject to this Petition

3. The information for which the Companies are seeking confidential treatment is not known outside of LG&E and KU, their consultants with a need to know the information, and the Companies' counsel, and the counterparty to each PPA. It is not disseminated within LG&E and KU except to those employees with a legitimate business need to know and act upon the information. Also, it is generally recognized as confidential and proprietary information in the energy industry. The counterparty to each PPA considers the information to be confidential and proprietary, the disclosure of which would be harmful to their business interests.

4. The Commission has given confidential treatment to similar information in previous cases.² The Companies acknowledge that the Commission has previously denied confidentiality for PPA pricing.³ But the Companies respectfully ask the Commission to reconsider that position here, noting that the price differences in the PPAs at issue here demonstrate keeping such information confidential can affect pricing and terms.

5. The Companies will disclose the confidential information, pursuant to a confidentiality agreement, to intervenors with a legitimate interest in this information and as required by the Commission.

6. If the Commission disagrees with this request for confidential protection, it must hold an evidentiary hearing (a) to protect the Companies' due process rights and (b) to supply the Commission with a complete record to enable it to reach a decision with regard to this matter.⁴

7. The Companies are filing with the Commission one electronic copy that identifies with redactions the information for which confidential protection is sought. In accordance with the Commission's March 24, 2020 and July 22, 2021 Orders in Case No. 2020-00085, the Companies will upload the unredacted copy noting the confidential information with highlighting to its encrypted file-share site for the Commission's retrieval. Access to the encrypted file-share site has been provided to intervenors upon request pursuant to a confidentiality agreement.

² See, e.g., *Electronic 2018 Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company*, Case No. 2018-00348, Order (Ky. PSC Nov. 16, 2018) (granting confidential protection to information that would disadvantage the Companies in negotiating power contracts).

³ See, e.g., *Electronic Application of Big Rivers Electric Corporation for Approval of Solar Power Contracts*, Case No. 2020-00183, Order at 2-3 (Ky. PSC Mar. 25, 2021); *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 2-3 (Ky. PSC May 8, 2020).

⁴ *Utility Regulatory Commission v. Kentucky Water Service Company, Inc.*, 642 S.W.2d 591, 592-94 (Ky. App. 1982).

8. For all requests for confidential protection, the Companies request that confidential protection be granted for five years due to the sensitive nature of the information at issue.

WHEREFORE, Louisville Gas and Electric Company and Kentucky Utilities Company respectfully request that the Commission grant confidential protection for all of the information described herein.

Dated: March 1, 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 March 1, 2023, and that there are currently no parties in this proceeding that the Commission has excused from participation by electronic means.

A handwritten signature in blue ink, appearing to read "Gerald R. Nigro". The signature is written in a cursive style and is positioned above a horizontal line.

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

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.

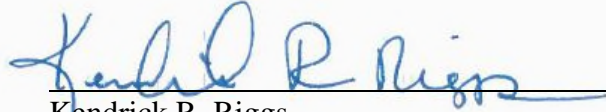
from BrightNight, LLC, ibV Energy Partners, and Clearway Energy Group discussing the additional concerns of these solar developers.

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,



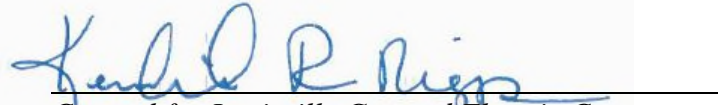
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CERTIFICATE OF SERVICE

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.



Kenneth R. Riggs
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.

BrightNight, LLC
KY PSC Case 2022-00402
LGE-KU Letter
Page 2 of 2



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".

Duane K. Duclaux
General Counsel

EXHIBIT B



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USA

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September 19, 2023

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

Louisville Gas & Electric and Kentucky Utilities
Attn: Mr. Chuck Schram, Director of Power Supply
220 W Main St, Louisville
Kentucky, 40202

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

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**COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
DIVISION _____
CIVIL ACTION NO. 23-CI-_____**

03270-6

KENTUCKY UTILITIES COMPANY
LOUISVILLE GAS AND ELECTRIC COMPANY

APPELLANTS/PLAINTIFFS

V.

COMPLAINT

PUBLIC SERVICE COMMISSION OF KENTUCKY

APPELLEES/DEFENDANTS

Serve: Hon. Linda C. Bridwell
Executive Director
Public Service Commission of Kentucky
P.O. Box 615
Frankfort, Kentucky 40602-0615

Serve: Hon. Daniel Cameron
Attorney General of Kentucky
700 Capital Avenue, Suite 118
Frankfort, Kentucky 40601

HON. DANIEL CAMERON, ATTORNEY GENERAL OF THE
COMMONWEALTH OF KENTUCKY, by and through
HIS OFFICE OF RATE INTERVENTION

Serve: Hon. Daniel Cameron
Attorney General of Kentucky
700 Capital Avenue
Suite 118
Frankfort, Kentucky 40601

KENTUCKY INDUSTRIAL UTILITY CUSTOMERS, INC.

Serve: CT Corporation System
306 West Main Street, Suite 512
Frankfort, Kentucky 40601

KENTUCKY COAL ASSOCIATION, INC.

Serve: Tucker Davis
880 Corporate Drive #101
Lexington, Kentucky 40503

Presiding Judge: HON. THOMAS DAWSON WINGATE (648243)

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AM LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT

03270-6

Serve: Queenie Averette
Jefferson County Judge/Executive
527 West Jefferson Street
Louisville, Kentucky 40202

Serve: Mike O'Connell
Jefferson County Attorney
Jefferson Hall of Justice
401 S. 6th Street
Louisville, Kentucky 40202

LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT

Serve: Mary Diane Hanna
Fayette County Judge/Executive
200 East Main Street
Lexington, Kentucky 40507

Serve: Susan Speckert
Commissioner of Law
200 East Main Street
Lexington, Kentucky 40507

MERCER COUNTY FISCAL COURT

Serve: Sarah Steele
Mercer County Judge/Executive
207 West Lexington Street
Harrodsburg, Kentucky 40330

METROPOLITAN HOUSING COALITION, INC.

Serve: Anthony P. Curtis
933 Taylorsville Road, Suite 4A
Louisville, Kentucky 40205

MOUNTAIN ASSOCIATION FOR COMMUNITY
ECONOMIC DEVELOPMENT, INC. d/b/a
MOUNTAIN ASSOCIATION

Serve: Peter Hille
433 Chestnut Street
Berea, Kentucky 40403

KENTUCKIANS FOR THE COMMONWEALTH, INC.

Serve: Heather Mahoney
131 North Mill Street
London, Kentucky 40741

Presiding Judge: HON. THOMAS DAWSON WINGATE (648243)

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KENTUCKY SOLAR ENERGY SOCIETY, INC.

Serve: John Boone
1450 Hunter Drive
Lancaster, Kentucky 40444

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WALMART, INC.

Serve: CT Corporation System
306 West Main Street, Suite 512
Frankfort, Kentucky 40601

SIERRA CLUB, INC.

Serve: National Registered Agents, Inc.
306 West Main Street, Suite 512
Frankfort, Kentucky 40601

Plaintiffs Kentucky Utilities Company (“KU”) and Louisville Gas and Electric Company (“LG&E”) (collectively, “the Companies”), by counsel, and for their Complaint, state as follows:

Introduction

1. This action is brought pursuant to KRS 278.410 for review of the Public Service Commission of Kentucky’s (“Commission”) Order of August 31, 2023 in Commission Case No. 2022-00402 (“Order”) and the Commission’s Order on Rehearing of October 10, 2023 (“Rehearing Order”) in the same proceeding. The Commission’s refusal to grant confidential treatment to limited portions of four solar power purchase agreements for a limited period of time is unlawful, unreasonable, and injurious to the Companies’ customers.

Jurisdiction and Venue

2. Pursuant to KRS 278.410, this Court has subject matter jurisdiction over this action. Pursuant to KRS 278.410, venue lies in this Court. Notice is being given to all parties of record in Commission Case No. 2022-00402 as required by KRS 278.410(1) by making each party to those Commission proceedings a party to this action and by serving each such party with a summons and this Complaint. This action is timely commenced in accordance with KRS

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278.410(1). By separate filing, the Companies will timely designate the record on appeal in accordance with KRS 278.420(2).

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Parties

3. The Companies are corporations organized under the laws of the Commonwealth of Kentucky. KU's principal place of business is One Quality Street, Lexington, Kentucky 40507. LG&E's principal place of business is 220 West Main Street, Louisville, Kentucky 40202. The Companies are sister companies and are operating subsidiaries of LG&E and KU Energy LLC. KU is engaged in the electric generation, transmission, and distribution business and LG&E is engaged in the electric generation, transmission, and distribution business and gas transportation and distribution business. KU and LG&E are the applicants in Case No. 2022-00402. The Companies are subject to the Commission's jurisdiction pursuant to KRS 278.040(2).

4. The Commission is an agency of the Commonwealth of Kentucky and is a body corporate with the power to sue and to be sued in its corporate name. Pursuant to KRS 278.040, the Commission has the statutory duty to regulate utilities and to enforce the provisions of KRS Chapter 278. It has exclusive jurisdiction over the rates and service of utilities. Its offices are located at 211 Sower Boulevard, Frankfort, Kentucky 40601.

5. Daniel Cameron, Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention ("Attorney General"), is a constitutional officer of the Commonwealth of Kentucky. His office is located at 700 Capital Avenue, Suite 118, Frankfort, Kentucky 40601. By Order of the Commission dated November 30, 2022, the Attorney General was granted full intervention as a party in Commission Case Nos. 2022-00402.

6. Kentucky Industrial Utility Customers, Inc. ("KIUC") is a non-profit corporation organized under the laws of the Commonwealth of Kentucky. Its principal place of business is

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Boehm, Kurtz & Lowry, LLP, 36 East Seventh Street, Suite 1510, Cincinnati Ohio 45202. By Order of the Commission dated January 26, 2023, KIUC was granted full intervention as a party in Commission Case Nos. 2022-00402.

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7. Kentucky Coal Association, Inc. (“KCA”) is a corporation organized under the laws of Kentucky. Its principal office is located at 880 Corporate Drive, Suite 101, Lexington, Kentucky 40503. By Order of the Commission dated February 7, 2023, KCA was granted full intervention as a party in Commission Case No. 2022-00402.

8. Louisville/Jefferson County Metro Government (“Louisville Metro”) is a consolidated local government established under KRS Chapter 67C. Its address is 527 West Jefferson Street, Louisville, Kentucky 40202. By Order of the Commission dated February 7, 2023, Louisville Metro was granted full intervention as a party in Commission Case No. 2022-00402.

9. Lexington-Fayette Urban County Government (“LFUCG”) is an urban county government established under KRS Chapter 67A. Its address is 200 East Main Street, Lexington, Kentucky 40507. By Order of the Commission dated February 7, 2023, LFUCG was granted full intervention as a party in Commission Case No. 2022-00402.

10. Mercer County Fiscal Court (“Mercer”) is a fiscal court established under KRS Chapter 67. Its address is 207 W. Lexington Street, Harrodsburg, Kentucky 40330. By Order of the Commission dated February 7, 2023, Mercer was granted full intervention as a party in Commission Case No. 2022-00402.

11. Metropolitan Housing Coalition, Inc. (“MHC”) is a non-profit corporation organized under the laws of the Commonwealth of Kentucky. Its principal office is P.O. Box

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4533, Louisville, Kentucky 40204-4533. By Order of the Commission dated February 7, 2023, MHC was granted full intervention as a party in Commission Case No. 2022-00402. 03270-6

12. Kentuckians for the Commonwealth, Inc. (“KFTC”) is a non-profit corporation organized under the laws of the Commonwealth of Kentucky. Its principal office is located at 131 North Mill Street, London, Kentucky 40741. By Order of the Commission dated February 7, 2023, KFTC was granted full intervention as a party in Commission Case No. 2022-00402.

13. Kentucky Solar Energy Society, Inc. (“KYES”) is a non-profit corporation organized under the laws of the Commonwealth of Kentucky. Its principal office is located at 1450 Hunter Drive, Lancaster, Kentucky 40444. By Order of the Commission dated February 7, 2023, KYES was granted full intervention as a party in Commission Case No. 2022-00402.

14. Mountain Association (“MA”) is an assumed name for Mountain Association for Community Economic Development, Inc., which is a non-profit corporation organized under the laws of the Commonwealth of Kentucky. Its principal office is located at 433 Chestnut Street, Berea, Kentucky 40403. By Order of the Commission dated February 7, 2023, MA was granted full intervention as a party in Commission Case No. 2022-00402.

15. Walmart, Inc. (“Walmart”) is a corporation organized under the laws of the State of Delaware. Its principal office is located at 702 SW 8th Street, Bentonville, Arkansas 72716. By Order of the Commission dated February 8, 2023, Walmart was granted full intervention as a party in Commission Case No. 2022-00402.

16. Sierra Club, Inc. (“Sierra Club”), is a non-profit corporation organized under the laws of the State of California. Its principal office is located at 2101 Webster Street, Suite 1300, Oakland, California 94612. By Order of the Commission dated February 9, 2023, Sierra Club was granted full intervention as a party in Commission Case No. 2022-00402.

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Factual Background

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17. On December 15, 2022, KU and LG&E filed an Application with the Commission in Case No. 2022-00402 seeking Certificates of Public Convenience and Necessity (“CPCN”) for construction of electric generation facilities and approval of an energy efficiency plan, among other things. Additionally, and most relevant to the Companies’ appeal, the Companies sought a declaratory order that their entry into power-purchase agreements (“PPAs”) for the output of four solar generation facilities does not require Commission approval, consistent with prior Commission precedent.

18. On March 1, 2023, the Companies filed the four solar PPAs with the Commission. On March 10, 2023, the Companies filed the responses to their request for proposals for energy and capacity which included all the solar PPA bid amounts. On May 4, 2023, the Companies filed discovery responses which included the solar PPA bid amounts. These three filings were made pursuant to petitions for confidential protection arguing that the rates and certain other information was commercially sensitive which if openly disclosed would permit an unfair competitive advantage to competitors under KRS 61.878(1)(c)(1) to the detriment of the Companies’ customers. The petitions for confidential protection were not opposed by any party. Access to this information was provided throughout the proceeding to every party pursuant to confidentiality agreements.

19. On August 31, 2023, the Commission denied the Companies’ March 1, 2023 petition for confidential treatment of their solar PPAs,¹ holding that the Commission “must be able to transparently address the pricing and resultant cost impact in order to provide the public with a

¹ 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).

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meaningful cost-benefit analysis required to analyze the Certification of Public Convenience and Necessity (CPCN) application.”² For the same reasons, the Commission denied in part the Companies’ March 10, 2023 petition for confidential treatment of data that included solar PPA bid amounts.³ Likewise, the Commission denied in part the Companies’ May 4, 2023 petition for confidential treatment of information provided in response to discovery, which included solar PPA proposals.⁴

20. On September 22, 2023, the Companies sought reconsideration of the August 31, 2023 Order denying confidential protection for the requested solar PPA information. The Companies’ petition for rehearing was not opposed by any party to the proceeding.

21. On October 10, 2023, the Commission issued an Order denying the Companies’ request for reconsideration, holding: “The reason for denying confidential treatment in the August 31, 2023 Order remains the same: The Commission must be able to address the PPA pricing and cost impact with transparency,” despite the fact that every party to the proceeding was provided access to the information.⁵

Assignment of Error

Count I: Error of Law in Violation of Kentucky Open Records Act that is Unlawful, Unreasonable, and Arbitrary

22. The Companies restate and allege all the foregoing allegations as if set forth in full.

23. The Kentucky Open Records Act requires that all public records “be open for inspection by any person, except as otherwise provided by KRS 61.870 to 61.884.”⁶ In its Order, the Commission recognizes that “KRS 61.878(1)(c)(1) provides an exception to the requirement

² Case No. 2022-00402, Order at 4-5 (Ky. PSC Aug. 31, 2023).

³ Case No. 2022-00402, Order at 5, 7, 9 (Ky. PSC Aug. 31, 2023).

⁴ Case No. 2022-00402, Order at 12, 14-15 (Ky. PSC Aug. 31, 2023).

⁵ Case No. 2022-00402, Order at 5 (Ky. PSC Oct. 10, 2023).

⁶ KRS 61.872(1).

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for public disclosure of records that are generally recognized as confidential and proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records.”⁷ The Commission’s failure to apply this statute is an error of law.

24. In its Order and Rehearing Order, the Commission does not opine on whether the disclosure of the solar PPA information would permit an unfair commercial advantage to competitors of the solar providers, instead relying only on its opinion that the denial of confidential treatment will allow for transparency. The Kentucky Open Records Act does not provide that the exception in KRS 61.878(1)(c)(1) only applies if the competitive harm outweighs the need for transparency. Competitive harm pursuant to KRS 61.878(1)(c)(1) either exists or it does not and the Companies respectfully request that this Court determine whether the solar PPA information meets the standard for confidential protection in KRS 61.878(1)(c)(1) without reading an additional requirement into the statute to balance the need for confidential protection with the desire for transparency. The Commission’s interpretation of KRS 61.878 is an error of law.

25. In numerous other orders, the Commission has recognized that competitive harm pursuant to KRS 61.878(1)(c)(1) exists from the public disclosure of similar or comparable information and has granted confidential protection to such information. The Commission’s interpretation of KRS 61.878 in this instance is arbitrary and capricious when compared to the Commission’s other orders granting confidential protection pursuant to competitive harm pursuant to KRS 61.878(1)(c)(1).

26. The Companies explained in their Motion for Reconsideration that they request the solar PPA information remain confidential only until cost recovery of the purchased energy is sought by the Companies or the projects are no longer intended to be placed in service. Thus, the

⁷ Order at 3.

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Companies seek protection only for a limited time period. When the Companies are ready to seek cost recovery from customers, the solar PPA information will be publicly disclosed for full transparency. To the extent this Court believes it must balance the clear statutory language with a desire to ensure transparency, the short time period for which the Companies are requesting the information be protected should ensure transparency.

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27. The Companies' petitions explained to the Commission why the disclosure of the solar PPA information would permit an unfair commercial advantage to (1) the Companies; (2) their customers; and (3) competitors of the solar providers. First, the terms of three of the four solar PPAs include a price-reopener clause, which allows 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.⁸ 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 will likely become a price floor for the other three solar agreements. 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 the Companies' customers.

28. Second, 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

⁸ The contractual terms accompanying the fourth solar project do not allow for negotiation of the solar energy payment rate.

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information. The Companies attached as Exhibits A, B, and C to their Motion for Reconsideration letters from solar developers discussing these concerns and reiterating the need for confidential protection for the confidential terms in the solar PPAs. Because solar development is an emerging industry in Kentucky, 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.

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29. The Commission did not address these reasons why the solar PPA information meets the standard in KRS 61.878(1)(c)(1) in its Order and Rehearing Order, instead relying solely on the purported need for transparency. This conclusory transparency rationale has no principal limitations; if the Commission finds that all information needs to be public for transparency, it eviscerates the confidentiality process already in place and writes the exceptions to the Open Records Act out of the statute. Because no substantial evidence exists to support the Commission's position and the only existing evidence supports the Companies' position, the denial of confidential protection is unlawful, unreasonable, and arbitrary. The reversal of the Commission is appropriate because the confidential solar PPA information meets the standard in KRS 61.878(1)(c)(1) and for the following reasons.

Customers Will Be Harmed by the Disclosure of this Information

30. The Companies appeal the denial of confidential protection to protect their customers' interests. The Companies have explained, as supported by the solar developers, that disclosure will likely cause higher prices, which will be passed on to customers.

31. The Companies appeal this determination for their customers, who are likely to be disadvantaged by way of higher prices if the confidential terms in the solar PPAs are disclosed.

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Procedures are in Place to Ensure Transparency

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32. The Company respectfully disagrees that disclosure of the PPAs will undermine the transparency necessary for the Company's customers to know the information relied upon in the Commission's decision. At all times since filing the solar PPAs, the Commission and Commission Staff had access to the confidential version of the solar PPAs. The Attorney General, who by statute represents and advocates for customer interests, has had access to the confidential information at all times throughout the case after signing a confidentiality agreement. Eleven other intervening parties, representing a variety of commercial, industrial, residential, and environmental interests, also had access to the confidential information after signing a confidentiality agreement.

33. To the extent this Court believes it must balance the clear statutory language with a desire to ensure transparency, the access to the confidential information by the Commission, Commission Staff, Attorney General, and fifteen other parties representing a variety of customer interests, should ensure transparency.

No Party Objected to the Confidential Protection of this Information

34. As further support for the confidentiality of the solar PPA information, no party has objected to the protection of this information. No party objected to any of the Companies' Petitions for Confidential Protection requesting protection for the solar PPA information. No party objected to the Companies' Motion for Reconsideration. Every party had full and complete access to and use of the solar PPA information throughout the course of the case.

35. As a final matter, the Company respectfully requests that the Court find the unanimous support by the parties in Commission Case No. 2022-00402 for the confidentiality of the solar PPA information persuasive.

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36. For these reasons, the Commission’s Orders of August 31, 2023, and October 10, 2023, as to its findings regarding the confidentiality of the solar PPA information are unlawful, unreasonable, and arbitrary.

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WHEREFORE, the Companies request an Order from the Court that:

1. Finds the Commission’s denial of the Companies’ requested protection of the confidential solar PPA information was unlawful, unreasonable, and arbitrary as contrary to the Kentucky Open Records Act;
2. Enjoins and prohibits the Commission from any action to enforce the Commission’s unlawful determination made in the Orders of August 31, 2023, and October 10, 2023 concerning the confidentiality of the solar PPAs; and
3. Any other relief to which KU and LG&E may be entitled.

Respectfully submitted,

/s/ Kendrick R. Riggs

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