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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

OCT 01 2009
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COMMISSION

In the Matter of:

LOUISVILLE GAS AND ELECTRIC COMPANY)
AND KENTUCKY UTILITIES COMPANY 2009)
APPLICATION FOR APPROVAL OF) CASE NO. 2009-00353
PURCHASED POWER AGREEMENTS)
AND RECOVERY OF ASSOCIATED COSTS)

REPLY OF JOINT MOVANTS ATTORNEY GENERAL OF COMMONWEALTH
OF KENTUCKY AND KIUC TO EON COMPANIES' RESPONSE TO JOINT
MOVANTS' MOTION TO DISMISS OR HOLD IN ABEYANCE

Come now the Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention, and Kentucky Industrial Utility Customers, Inc. [hereinafter jointly referred to as "Joint Movants"], and hereby renew and incorporate by reference their original Motion to Dismiss or Hold in Abeyance filed in the above-styled matter with the Commission on September 4, 2009, as if fully set forth herein. Further, Joint Movants state as follows for their reply to the response of Louisville Gas & Electric Co. and Kentucky Utilities Co. [hereinafter jointly referred to as the "Companies"] to the Joint Movants' Motion to Dismiss the above-styled action, or alternatively to hold it in abeyance:

The Companies, in a novel interpretation of *Kentucky Public Service Commission and Duke Energy Kentucky, Inc., f/k/a The Union Light, Heat & Power Company v. Commonwealth Of Kentucky, Ex Rel. Greg Stumbo, 2007-CA-001635-MR*, would have the Commission believe that the ruling in that case is inapplicable to any extra-base rate case cost recovery mechanism that does not have a profit

component, in other words, if there is no profit for the company in the mechanism, then the holding does not apply. Of course, they are unable to cite the Commission to any specific language contained in the Court of Appeals' Order which would support their interpretation because the holding, quite simply, contains no such language. The Court of Appeals ruled that "the PSC cannot authorize the imposition of a surcharge...without specific statutory authorization." Slip Op. at p. 13. In his Opinion and Order that led to the Court of Appeals ruling, Judge Sheppard was more forceful: "...[T]here is no inherent authority to perform interim single-issue rate adjustments because such a mechanism would undermine the statutory scheme...[F]inding the PSC to have authority to review any single expenditure outside the context of a rate case would create a means to circumvent the general rate case mechanism created by KRS 278.190.... Outside a general rate case there is no context in which to consider any expense." Franklin Circuit Court Slip Op. at pp. 6-7. The ruling from both Courts is clear: any surcharge -- whether for wind power, health care costs, or Xerox paper -- not specifically authorized by statute *is unlawful*.

Ironically, the Companies have yet to address the inescapable conclusion that should they receive approval to purchase 109.5 MW and an estimated 295,000 MWh of wind power annually, the Companies would then have a like amount of excess power to sell off-system where the profits are maintained by shareholders in-between rate cases. Given the economies of its operations, it is highly unlikely the Companies will limit the generation output from its Trimble

#2 plant, which will likely become the most efficient base load unit in the Companies' fleet.¹ It is axiomatic that the Companies cannot withhold that much power from production, and of necessity it must go somewhere. Thus, when the Companies sell to the off-system markets the excess power produced by their own fleet, the Companies then would in fact be earning a profit from the contemplated purchase of wind power.

Finally, the majority of the argument in Joint Movants' Motion to Dismiss squarely addressed the Companies' Motion For Declaratory Ruling Or In The Alternative For Waiver Of Certain Filing Requirements. The sole forum for addressing the issues raised in the Companies' Motion (and, for that matter, for all issues having any bearing on the underlying facts) is in the context of a base rate case. Until such time as the Kentucky Supreme Court has full opportunity to rule on the legality of the non-statutorily based, profit motivated, single issue cost recovery mechanism the Companies seek, the Commission cannot rule on either the Companies' Motion or the merits of the now-filed application.

Without a wind power surcharge, the Companies must rely on the traditional rate case process to recover the costs at issue and no waiver of the standard filing

¹ This unit, which will come on line in a few months, is the newest addition to the Companies' fleet. Whether the power that the Companies would sell off-system as a result of purchasing the wind generated power would come directly from Trimble Unit 2 or any other unit in their fleet is immaterial. It merely points out that several years ago, the Companies' ratepayers were tagged with the future responsibility of paying for this unit on the premise that the power it generated would be used for the ratepayers. The filing of the instant case now changes this understanding in a fundamental manner such that the Companies' shareholders will profit at the ratepayers' expense. If the Commission grants the approval to the instant Application, the Joint Movants will seek to reduce the amount the Companies seek from their ratepayers by a comparable sum in their next base rate case.

requirements should be given. An annual rate increase of \$11.04 and \$8.52, or 1.3% and 1.0% for the average KU and L&GE residential customer respectively, deserves full Commission consideration and review. This is especially true when the Companies candidly admit that the wind power will be \$108,300,000 more expensive than traditional energy resources.²

WHEREFORE, the Attorney General and KIUC respectfully jointly request that the Commission DISMISS the Companies' Motion and the subject petition without prejudice until such time as the Kentucky Supreme Court has opportunity to fully rule on the legality of the relief sought by Applicants, or in the alternative hold this matter in abeyance.

² Application, p. 12.

Respectfully submitted,

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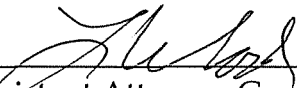
Certificate of Service and Filing

Counsel certifies that an original and ten photocopies of the foregoing were served and filed by hand delivery to Jeff Derouen, Executive Director, Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601; counsel further states that true and accurate copies of the foregoing were mailed via First Class U.S. Mail, postage pre-paid, to:

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this 1st day of October, 2009.



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