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November 6, 2009

RECEIVED

NOV 06 2009

PUBLIC SERVICE  
COMMISSION

**VIA HAND DELIVERY**

Jeff DeRouen  
Executive Director  
Kentucky Public Service Commission  
211 Sower Boulevard  
Frankfort, KY 40601

**RE: Louisville Gas and Electric Company and Kentucky Utilities Company 2009  
Application for Approval of Purchased Power Agreements and Recovery of  
Associated Costs**  
**Case No. 2009-00353**

Dear Mr. DeRouen:

Enclosed please find and accept for filing the original and ten copies of Kentucky Utilities Company's and Louisville Gas and Electric Company's Motion for Reconsideration in the above-referenced matter. Please confirm your receipt of this filing by placing the stamp of your Office with the date received on the enclosed additional copies and return them to me in the enclosed self-addressed stamped envelope.

For the reasons stated in Kentucky Utilities Company's and Louisville Gas and Electric Company's Motion for Reconsideration, the request to establish a procedural schedule is withdrawn.

Should you have any questions, please do not hesitate to contact me.

Yours very truly,



Kendrick R. Riggs

KRR:ec  
Enclosures  
cc: Parties of Record

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COMMONWEALTH OF KENTUCKY

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BEFORE THE PUBLIC SERVICE COMMISSION

NOV 06 2009

PUBLIC SERVICE COMMISSION

In the Matter of:

LOUISVILLE GAS AND ELECTRIC )  
COMPANY AND KENTUCKY UTILITIES )  
COMPANY 2009 APPLICATION FOR )  
APPROVAL OF PURCHASED POWER )  
AGREEMENTS AND RECOVERY OF )  
ASSOCIATED COSTS )

CASE NO. 2009-00353

**MOTION OF KENTUCKY UTILITIES COMPANY AND  
LOUISVILLE GAS AND ELECTRIC COMPANY FOR RECONSIDERATION**

Pursuant to KRS 278.400, Kentucky Utilities Company (“KU”) and Louisville Gas and Electric Company (“LG&E”) (collectively, “Companies”) respectfully move the Kentucky Public Service Commission (“Commission”) to reconsider and to modify its October 21, 2009 Order (“Order”) in this proceeding. The Order denies the Companies’ application for a surcharge mechanism to recover the costs of the contracts the Companies have negotiated to purchase the output of the 99 MW Grand Ridge Phase I and the 10.5 MW Grand Ridge Phase IV wind farms (collectively, the “Wind Power Contracts”). At the same time, the Order provides for review of the contracts themselves pursuant to KRS 278.300. However, without guaranteed recovery of the costs of the Wind Power Contracts (including associated transmission costs), the Companies cannot reasonably and prudently proceed with those contracts. The Companies therefore respectfully request that the Commission either: (1) reconsider its determination that such surcharge mechanisms can be considered only in the context of full base rate cases, modifying its October 21, 2009 Order to allow for the consideration of the requested surcharge mechanism in this proceeding; or (2) reconsider its finding that the Companies have not shown good cause to waive the base rate case requirements under 807 KAR 5:001 § 10, and allow this

proceeding to go forward without compliance with these requirements or a base rate case proceeding of any kind.

Recovery of the costs of the Wind Power Contracts by surcharge is imperative due to the magnitude of the contemplated financial commitment. Consequently, if the Commission does not allow the consideration of the complete relief requested in the application, including the proposed surcharge mechanism in this proceeding, the Companies cannot accept the regulatory risks of entering into the contract. This is especially so given the positions of the consumer representatives in this case who have made clear their objection to the need for and price of the Wind Power Contracts.

**I. The Companies' Going Forward with the Wind Power Contracts is Contingent Upon Receiving Surcharge Recovery of All Associated Costs.**

The Commission should reconsider its decision chiefly because it would be neither good utility practice nor sound regulatory policy for the Companies to encumber themselves, without advance assurance of cost recovery, with obligations of the magnitude imposed by the Wind Power Contracts. These obligations involve a 20-year contractual commitment that will cost more than \$525 million over the life of the contracts and that will exceed by \$100 million the traditional least cost analysis for which current legal authority provides near assurance of recovery.

As prudent managers of their business, the Companies included in the Wind Power Contracts certain clauses that allow the Companies to withdraw from the contracts if the Companies do not receive satisfactory regulatory orders. If the Companies do not receive the requested relief, including approval of the Wind Power Contracts and the proposed surcharge

mechanism to recover the contracts' costs, they cannot accept the regulatory risks associated with such a contractual commitment.<sup>1</sup>

The Companies believe it would be appropriate to proceed with the Wind Power Contracts for the reasons stated in their application. The contracts would, if approved with appropriate cost recovery in place, constitute a measured, but significant and pioneering step forward in upgrading the Companies' renewable energy portfolio. The Companies believe that this step is a reasonable one that should be taken; however, the Companies also believe that taking such a step without approval of the specific cost recovery and other regulatory relief would be entirely too risky under the current circumstances. Consequently, the Companies respectfully request the Commission to evaluate carefully the arguments presented herein and to reconsider its October 21, 2009 Order in this proceeding.

## **II. The Commission Has the Necessary Authority to Approve the Companies' Proposed Surcharge Outside of a General Rate Case.**

The Companies respectfully contend that the Commission does indeed have the legal authority required to authorize the surcharge the Companies have proposed in this proceeding outside of a general rate case. Moreover, the Commission's exercise of that authority in this instance is eminently reasonable: the surcharge proposed herein is merely a pass-through mechanism (like the fuel adjustment clause and the gas supply clause), and raises none of the concerns usually addressed in general base rate cases.<sup>2</sup>

The Kentucky Court of Appeals recently held that the Commission has authority to approve separate rate mechanisms that are "fluctuating" or are not amenable to review *via* a

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<sup>1</sup> The Companies nevertheless will continue to investigate renewable resources and when appropriate present further proposals in the future for the Commission's consideration.

<sup>2</sup> The Companies have in the past expressed an interest in earning a return on certain purchased power contracts, and though that is not their intent concerning these Wind Power Contracts, they may seek to earn a return on purchased power contracts in the future. See *In re the Matter of: An Investigation of the Energy and Regulatory Issues in Section 50 of Kentucky's 2007 Energy Act*, Adm. Case No. 2007-00477, Testimony of Lonnie E. Bellar, pp. 4-5.

general rate increase; in that same decision, the Court held that the Commission may approve a non-traditional rate mechanism due to “unique” facts.<sup>3</sup> The Commission’s October 21, 2009 Order in this proceeding misapplied that opinion, holding that because the surcharge the court addressed was proposed in the context of a general rate case, “[t]he issue before the Court in that case was limited to the Commission’s authority to establish a surcharge for the recovery of capital costs as part of a general rate case, not in the absence of a rate case.”<sup>4</sup> But the court’s opinion is not so limited. In fact, the court expressly observes:

What can be gleaned from those cases approving fuel adjustment clauses and *National-Southwire* is that each court’s approval was based on the unique facts of the case. The subject of the rate increase was not amenable to review via a general rate increase; thus, to set a “fair, just, and reasonable” rate required by statute, the courts have held the authority to ***approve such rates outside the general rate procedure to be within the regulatory commission’s implied authority.***<sup>5</sup>

The surcharge the Companies have proposed in this proceeding fits squarely within the category of surcharges the Commission has authority to approve. First, renewable energy resources generally, and wind power specifically, cannot be started with the flip of a switch. As a result, the month-to-month costs of the Wind Power Contracts will inevitably be volatile and outside of the Companies’ control. Second, the Companies will bear Locational Marginal Pricing (“LMP”) risk between the two ends of the point to point transmission service procured from PJM, making the transmission costs associated with the Wind Power Contracts similarly volatile and outside of the Companies’ control. Third, the proposed surcharge contains no profit margin or other financial incentive for the Companies: it would act merely as a cost pass-

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<sup>3</sup> See *Kentucky Public Service Commission and Duke Energy Kentucky Inc., f/k/a The Union Light, Heat and Power Company, v. Commonwealth of Kentucky, ex rel. Greg Stumbo*, Case No. 2007-CA-001635-MR (November 7, 2008), Slip op. at 10-11(citing *National-Southwire Aluminum Co.* 785 S.W.2d 503 [Ky. App. 1990]).

<sup>4</sup> October 21, 2009 Order at 6.

<sup>5</sup> *Kentucky Public Service Commission and Duke Energy Kentucky Inc., f/k/a The Union Light, Heat and Power Company, v. Commonwealth of Kentucky, ex rel. Greg Stumbo*, Case No. 2007-CA-001635-MR (November 7, 2008), Slip op. at 11(citing *National-Southwire Aluminum Co.* 785 S.W.2d 503 [Ky. App. 1990]).

through mechanism, and only of the incremental costs that are not already included in existing base rates.

In sum, the Companies' proposed surcharge meets even the limited criteria provided by the Court of Appeals to approve a stand-alone surcharge mechanism. No general rate case is required. Pursuant to KRS 278.180, as a matter of law, the surcharge tariff could be allowed to go into effect within thirty days with no KRS 278.190 procedures at all. The Commission should uphold its own authority under the statutes to determine "just and reasonable" rates pursuant to KRS 278.030. It certainly should not limit its own authority beyond the restrictions the Court of Appeals imposed. The Companies respectfully request that the Commission reconsider its October 21, 2009 Order and hold that it may indeed consider the Companies' proposed surcharge in this proceeding.

**III. The Companies Have Shown Good Cause for the Commission to Waive the Rate Case Filing Requirements of 807 KAR 5:001 § 10.**

Even if surcharge mechanisms of the kind the Companies propose herein could be considered only in the context of general rate case proceedings, the Commission should reconsider the finding in the October 21, 2009 Order that the Companies did not show good cause to waive the rate case filing requirements of 807 KAR 5:001 § 10. The Companies have indeed shown such good cause. As stated above and in the Companies' Application, recovery of the cost of the Wind Power Contracts themselves, as well as of the associated transmission costs and adjustments, under the proposed surcharge will not create the potential for double recovery of costs. This is so because the cost of the Wind Power Contracts themselves, as well as of the associated transmission costs and adjustments are entirely incremental costs to the costs already included in existing base rates. For that reason alone, requiring the Companies to go to the considerable time and expense of filing a full-scale general rate case just to seek approval of a

pure cost-recovery surcharge would be an unnecessary and unproductive use of resources. Conserving the Commission's and the Companies' resources under such conditions alone is good cause to waive the filing requirements of 807 KAR 5:001 § 10.

The Companies respectfully take exception to the Commission's determination that "compliance with those requirements is essential to the investigation to determine whether or not it is reasonable to authorize a surcharge for the recovery of wind power costs."<sup>6</sup> The costs are clearly incremental to the costs already included in base rates. Therefore, an investigation in the adequacy of base rates would not serve a useful purpose. The Companies also respectfully take exception with the Commission's determination that "[t]o justify the authorization of a surcharge to recover a particular category of costs, such as those for wind power, a utility must first demonstrate, among other things, that its existing rates are insufficient to recover all of its reasonable costs, including those proposed to be recovered by surcharge."<sup>7</sup> Such a demonstration should not be required, where, as here, the application shows that the costs are entirely incremental to the costs included in base rates and that the nature of the costs (*i.e.*, large, volatile and beyond the Companies' control) are not amenable to base rate recovery. The joint application successfully makes this demonstration. Recovery of costs associated with the Wind Power Contracts through base rates creates too much regulatory risk of under- or over-recovery and continuous and contentious controversy.

Moreover, as stated above and in the Companies' Application, recovery by surcharge is critical to avoid any risk to or attrition of the earnings of the Companies. If the Companies do not receive approval of the Wind Power Contracts and assurance of cost recovery via surcharge, prudence dictates that they not go forward with the contracts due to the regulatory risks. Given

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<sup>6</sup> Order, page 6

<sup>7</sup> Order, pages 6-7

the time constraint involved, and in view of the fact that the costs to be recovered are entirely incremental to the costs already included in existing base rates, the Companies respectfully ask the Commission to reconsider and to modify its October 21 Order to find that there is indeed good cause to waive the rate case filing requirements of 807 KAR 5:001 § 10. The Companies' proposed surcharge mechanism should be considered in this proceeding.

#### **IV. Conclusion**

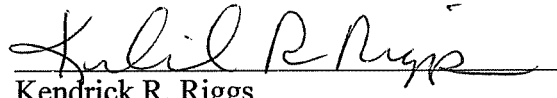
The Wind Power Contracts present the Commission an opportunity to approve a renewable energy agreement. Renewable energy is a concept that has garnered growing interest from policy makers. The Wind Power Contracts will provide a start to the Companies in addressing the all-but-inevitable imposition of a federal or state RPS in the near future. As previously stated, the Companies under the current regulatory environment cannot proceed with the Wind Power Contracts without the specific relief requested in their applications. Absent that assurance, the regulatory risks are entirely too great.

**WHEREFORE**, Kentucky Utilities Company and Louisville Gas and Electric Company respectfully request that the Commission reconsider its October 21, 2009 Order in this proceeding, and modify it to find that either: (1) the Commission may indeed consider and approve a cost-recovery surcharge in this proceeding; or (2) the Companies have shown good cause for the Commission to waive the general rate case filing requirements of 807 KAR 5:001 § 10, allowing the Commission to consider and approve a cost-recovery surcharge in this proceeding.



Dated: November 6, 2009

Respectfully submitted,



Kendrick R. Riggs

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**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing Motion for Reconsideration was served via U.S. mail, first-class, postage prepaid, this 6th day of November 2009 upon the following persons:

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