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November 24, 2009

**VIA HAND DELIVERY**

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

**RECEIVED**

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**PUBLIC SERVICE  
COMMISSION**

**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 Louisville Gas and Electric Company's and Kentucky Utilities Company's Reply in Support of Their Motion to Reconsider 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.

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**  
**BEFORE THE PUBLIC SERVICE COMMISSION**

**In re the Matter of:**

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

**REPLY OF LOUISVILLE GAS AND ELECTRIC COMPANY  
AND KENTUCKY UTILITIES COMPANY  
IN SUPPORT OF THEIR MOTION TO RECONSIDER**

Louisville Gas and Electric Company and Kentucky Utilities Company (collectively, the “Companies”) state as follows for their Reply in Support of their Motion to Reconsider those portions of the Commission’s October 21, 2009 Order (the “October 21 Order”) in which it stated it would not consider in this case a rate surcharge that would enable the Companies to recover the costs of agreements to purchase energy from wind farms located in LaSalle County, Illinois (the “Wind Power Contracts”):

**ARGUMENT**

At this point, little remains to be said with reference to the cramped view of Commission authority shared by Attorney General of Kentucky (“AG”) and Kentucky Industrial Utility Customers, Inc. (“KIUC”). The Companies’ position is equally clear: the Commission has plenary authority to determine which procedural vehicle will enable it to set “fair, just and reasonable” rates pursuant to KRS 278.030. The public interest will be well served in this case if the Commission uses its authority to consider the proposed surcharge separately from irrelevant base rate case issues.

The Companies have previously filed their arguments that, pursuant to the reasoning of *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 (Ky. App., November 7, 2008),<sup>1</sup> the Commission need not conduct a full base rate case in order to examine a surcharge that will pass through to customers only the utility's "fluctuating" cost with "no additional profit." *Id.*, Slip Op. at 12. Those arguments need not be repeated. However, certain inaccuracies contained in the Response of Joint Movants Attorney General of Commonwealth of Kentucky and KIUC to E.ON Companies' Motion to Reconsider ("AG and KIUC Response") require correction.

First, the AG and KIUC misstate the Court of Appeals' holding in *Stumbo*, saying that "The Court of Appeals ruled that 'the PSC cannot authorize the imposition of a surcharge...without specific statutory authorization'" [AG and KIUC Response, at 2].<sup>2</sup> What the Court of Appeals actually said was "the PSC cannot authorize the imposition of a surcharge *for the main replacement program proposed by Duke* without specific statutory authorization." *Stumbo*, Slip Op. at 12 (emphasis added). The words the AG and KIUC omit from the quotation change the meaning of the sentence and, indeed, the meaning of the *Stumbo* opinion itself. While the Court of Appeals held that Duke could recover for its main replacement program by means of a surcharge only if a statute expressly so states, such a statute is not necessary in other instances.

The Court of Appeals went on to describe those instances and to *set them apart* from long-term capital improvement programs for which the court held that, absent a statute to the

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<sup>1</sup> Discretionary Review by the Kentucky Supreme Court has been granted. See 2009-SC-000134; 2009-SC-000150.

<sup>2</sup> The AG and KIUC cite to page 13 of the Court of Appeals' opinion, which contains no such sentence. The sentence, containing the key modifying phrase omitted by KIUC and the AG, appears on page 12 of the Slip Opinion.

contrary, rate recovery is available only in a general rate case. Duke’s “proposed capital expenditure is amenable to the test-year review concept to be followed in a general rate case,” the court explained. *Id.*, Slip Op. at 12. Such a long-term capital improvement is, however, “unlike a fuel adjustment clause that permits the utility to pass the fluctuating fuel prices to its customers but from which it makes no additional profit.” *Id.* Substitute the words “wind energy” for “fuel” in that sentence, and it describes the tracking mechanism proposed here.

Whether the power source is wind or coal or gas, the “fluctuating” costs the utility must recover for obtaining it are not amenable to review via a general rate increase; and, as the court in *Stumbo* put it, when a cost is “not amenable to review via a general rate increase . . . the courts have held the authority to approve such rates *outside the general rate procedure* to be within the regulatory commission’s *implied authority*.” *Id.*, Slip Op. at 11 (emphasis added). The Court of Appeals was explicit: the Commission possesses the necessarily implied authority to set “fair, just and reasonable” rates outside the “general rate procedure” when the facts require it to do so. The AG and KIUC argue a redacted version of *Stumbo*, for they do not discuss these key portions of the opinion. Instead, they continue to quote dicta from the now-superseded opinion of the Franklin Circuit Court [AG and KIUC Response at 2].

The AG and KIUC also err in doubting the necessity of the Wind Power Contracts. They claim that the costs of the Wind Contracts are “self imposed” since the companies are “not required to buy wind power” [AG and KIUC Response at 3]. Although the Companies have previously explained the importance of the Wind Power Contracts, it is worth stating once again that, in fact, federal renewable portfolio standards are imminent. The Companies must begin to diversify. Otherwise, they and their ratepayers could be put at a serious disadvantage when

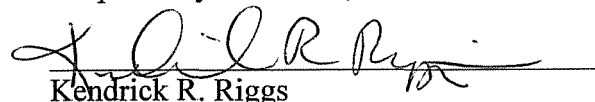
standards are mandated, deadlines are declared, and the Companies must obtain renewable power on much shorter notice in what will almost certainly be a seller's market.

**Conclusion**

For the foregoing reasons, the Companies respectfully request that the Commission reconsider its October 21, 2009 Order in this proceeding, and find that either: (1) the Commission may consider and approve a cost-recovery surcharge in this proceeding; or (2) for good cause shown, the general rate case filing requirements of 807 KAR 5:001 § 10 should be waived and the Commission may consider and approve a cost-recovery surcharge in this proceeding. As expressed in the Petition for Reconsideration, if the Commission does not afford 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 Wind Power Contracts. 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.

Dated: November 24, 2009

Respectfully submitted,



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Counsel for Louisville Gas and Electric  
Company and Kentucky Utilities Company

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing was served on the following persons on the 24th of day of November 2009, United States mail, postage prepaid:

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