

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF KENTUCKY UTILITIES)	
COMPANY FOR CERTIFICATES OF PUBLIC)	CASE NO.
CONVENIENCE AND NECESSITY AND)	2016-00026
APPROVAL OF ITS 2016 COMPLIANCE PLAN)	
FOR RECOVERY BY ENVIRONMENTAL)	
SURCHARGE)	

ORDER

On January 29, 2016, Kentucky Utilities Company ("KU") filed an application, pursuant to KRS 278.020(1), KRS 278.183, and 807 KAR 5:001, Sections 14 and 15, requesting four Certificates of Public Convenience and Necessity ("CPCN"), approval of an amended environmental compliance plan, and a declaratory ruling that CPCNs are not needed to close three surface impoundments at generating stations previously closed. One CPCN is for Project 36, the construction of Phase II of the landfill at the E.W. Brown Generating Station ("Brown"); one CPCN each is for Projects 40, 41, and 42, consisting of surface-impoundment-related construction and new process-water systems at the Ghent Generating Station ("Ghent"), the Trimble County Generating Station ("Trimble County"), and at Brown, respectively. According to KU, the surface-impoundment-related construction, consisting of closing five surface impoundments at Ghent, two at Trimble County and one at Brown, is necessary to comply with the U.S. Environmental Protection Agency's ("EPA") Disposal of Coal Combustion Residuals from Electric Utilities final rule ("CCR Rule"), while the new process-water systems are

required to continue operating those generating stations without the surface impoundments.

KU also requests a declaratory ruling that CPCNs are not required for the proposed closure of surface impoundments, or ash ponds, at the Green River Generating Station ("Green River"), Pineville Generating Station ("Pineville"), and Tyrone Generating Station ("Tyrone"). In the alternative, KU requests a CPCN for the closures at Green River, Pineville, and Tyrone Generating Stations if the Commission finds that those ash pond closures require a CPCN. KU's request for approval of its amended environmental compliance plan ("2016 Plan") is for the purpose of recovering the costs of the proposed new and amended projects through the environmental surcharge mechanism. Lastly, KU requests approval of the proposed environmental surcharge tariff; the proposed environmental surcharge monthly filing forms; the recovery of the requested overall rate of return, including the return on equity ("ROE"); and the proposed depreciation rates for purposes of calculating the environmental cost recovery.

KU's application was initially deemed to be deficient, but the filing deficiency was cured, and the application was accepted for filing on February 9, 2016. Upon review of KU's application, the Commission found that an investigation would be necessary to determine the reasonableness of the application. Accordingly, the Commission issued an Order on February 26, 2016, establishing a procedural schedule that provided for, among other things, two rounds of discovery on KU's application and accompanying pre-filed direct testimonies, an opportunity for the filing of intervenor testimony, discovery on intervenor testimony, and an opportunity for KU to file rebuttal testimony.

An information session and public meeting was held in Lexington, Kentucky, on May 26, 2016 for the purpose of receiving public comments on the 2016 Plan and associated environmental surcharge requests submitted by KU.

The Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention ("AG") and Kentucky Industrial Utility Customers, Inc. ("KIUC") sought, and were granted, intervention in this matter.

On May 2, 2016, the Commission issued an Order scheduling a hearing in this matter to be held on June 14, 2016. Pursuant to a subsequent Order issued on June 6, 2016, an informal conference was held on June 9, 2016, at the Commission's offices in Frankfort, Kentucky. The purpose of the informal conference was to discuss the issues in this matter and to allow the parties to engage in settlement discussions. As a result of the discussions held at the informal conference, the parties were able to negotiate a unanimous settlement agreement that is intended to resolve all the issues in the case. On June 13, 2016, KU filed a motion requesting leave to file testimony in support of the Settlement Agreement, Stipulation and Recommendation ("Settlement Agreement"). The settlement testimony also contained, as an exhibit, the Settlement Agreement and exhibits. The Settlement Agreement is attached to this Order as an Appendix. A formal hearing was held as previously scheduled on June 14, 2016. KU filed responses to post-hearing data requests on June 21, 2016, and filed its post-hearing brief on June 28, 2016.

KU'S 2016 ENVIRONMENTAL COMPLIANCE PLAN

KU asserts that the proposed projects contained in KU's 2016 Plan would enable KU to comply with certain environmental laws and regulations, such as the Clean Air

Act (“CAA”), the CCR Rule, the Mercury and Air Toxics Standards (“MATS Rule”), and other environmental regulations that apply to KU’s generating facilities.¹ KU notes that the CCR Rule, which became effective on October 19, 2015, establishes detailed and more stringent design, monitoring, operating, corrective action, closure, and post-closure requirements for landfills and surface impoundments to address environmental and safety risks associated with the disposal and storage of coal combustion residuals (“CCR”).² The CCR Rule applies to new and existing CCR landfills and surface impoundments.³ The CCR Rule does not apply to ash ponds and landfills that have already closed or inactive impoundments at plants no longer producing electricity.⁴

Among other things, the CCR Rule requires the installation of monitoring wells and the collection of groundwater data to determine if statistically significant increases of CCR constituents have occurred.⁵ If the groundwater monitoring detects concentrations of CCR constituents in the groundwater that exceed groundwater protection standards, closure of the impoundment must be initiated within six months from the date of the data analysis.⁶ This single provision is a primary driver for the timing of KU’s closure plans.⁷ According to KU, waiting for a triggering event to precipitate the closure of the surface impoundments would jeopardize the operation of

¹ Application at 12; *See also* Direct Testimony of Gary H. Revlett (“Revlett Testimony”) at 2.

² Revlett Testimony at 4–5.

³ *Id.* at 5.

⁴ *Id.*

⁵ *Id.* at 6.

⁶ *Id.* at 7.

⁷ *Id.* at 8.

KU's generation fleet and the reliability of its system. KU avers that complying with the CCR Rule preemptively allows it to schedule the construction in such a way as to minimize system disturbances while maintaining compliance with the CCR Rule.

KU states that the MATS Rule regulates the emission of mercury and other hazardous air pollutants from coal- and oil-fired electric utility steam-generating units.⁸ The MATS Rule requires the use of maximum achievable control technology within the electric utility industry.⁹ The MATS Rule compliance date is April 16, 2015, but could be extended for one year under certain circumstances.¹⁰ KU notes that the supplemental technologies included in KU's 2016 Plan will provide operational flexibility when compared to the current use of powdered activated carbon ("PAC") injections.¹¹

Although the projects proposed in KU's 2016 Plan are not aimed at complying with regulations associated with the Clean Power Plan ("CPP") or the Effluent Limitation Guidelines and Standards for the Steam Electric Power Generating Point Source Category ("ELG"),¹² KU maintains that certain of the emission reductions and changes to the effluent discharges of process waters achieved by the proposed projects may ultimately help KU comply with these new rules. In evaluating the proposed projects, KU asserts that it looked to optimize its 2016 Plan by finding economical means of

⁸ *Id.* at 10.

⁹ *Id.*

¹⁰ *Id.*

¹¹ Direct Testimony of R. Scott Straight ("Straight Testimony") at 4–9; *See also* Revlett Testimony at 21–24.

¹² The CPP, which the United States Environmental Protection Agency announced in August 2015, contains the first-ever national standards that address carbon dioxide emissions from both new and existing power plants. The ELG, which was published in final form in November 2015, regulates process wastewater discharges from power plants operating as utilities.

complying with the CCR Rule and MATS Rule in a manner consistent with the CPP and ELG.¹³

The total capital cost of the eight proposed projects in the 2016 plan is estimated to be approximately \$677.7 million.¹⁴ Of the estimated total capital cost of these proposed projects, KU seeks to recover through the ECR mechanism \$667.4 million, which represents the amounts that are not already being recovered through base rates.¹⁵ KU noted that the proposed projects were the result of intensive assessment and ongoing engineering effort by KU's Project Engineering group and outside engineering firms.¹⁶ First, KU developed order-of-magnitude estimates regarding the compliance expenditures that would be required for each generating unit to meet the regulatory requirements.¹⁷ Next, KU's Generation Planning group performed analyses to determine if all of the compliance equipment and investments would be the lowest-reasonable-cost alternatives to achieve compliance with the applicable regulations.¹⁸ The Generation Planning group also determined for each generating unit whether it would be more cost-effective to put in place the suite of compliance facilities established or to retire the unit. According to KU, its 2016 Plan reflects a cost-effective means for complying with the applicable regulations.¹⁹

¹³ Direct Testimony of John N. Voyles, Jr. ("Voyles Testimony") at 10.

¹⁴ Voyles Testimony at 3.

¹⁵ Direct Testimony of Christopher M. Garrett ("Garrett Testimony") at 3.

¹⁶ Voyles Testimony at 12.

¹⁷ *Id.* at 13.

¹⁸ *Id.*

¹⁹ *Id.*

KU's proposed projects are described as follows:

Project 36

Project 36 involves constructing Phase II of the landfill at Brown ("Brown Landfill"), which is currently necessary to remain in compliance with the Special Waste Landfill Permit issued by the Kentucky Division of Waste Management ("KDWM").²⁰ The Special Waste Landfill Permit set forth a ten-foot height limit for each successive phase of lateral expansion such that the volume of CCR disposed in each phase is no more than ten feet higher than adjoining phase(s).²¹ Accordingly, Phase I of the Brown Landfill is designed to be ten feet high, with a CCR capacity of approximately 540,000 cubic yards.²² KU anticipates that, based on historical production at the Brown Landfill, Phase I will be at capacity as early as the second quarter of 2018, or at the latest in 2019.²³ Phase II construction would entail regrading of the clay subgrade to prepare the site for installation of the liner and leachate collection system necessary for ongoing CCR disposal.²⁴ KU states construction will commence in 2017 and is expected to be completed within one year, with anticipated commercial operation prior to the end of 2018.²⁵ KU further states that this will allow it time to review conditions that may affect

²⁰ *Id.*

²¹ *Id.* at 14.

²² *Id.*; and Direct Testimony of Charles R. Schram ("Schram Testimony") at 11.

²³ Voyles Testimony at 14; *See also* Schram Testimony at 12 (projected CCR total for Brown from 2016-2019 is 593,000 cubic yards).

²⁴ Voyles Testimony at 13.

²⁵ *Id.* at 15.

the projected timing of Phase II, while still allowing adequate time to complete construction of Phase II so as to avoid any operational impact on the Brown units.²⁶

The estimated total capital cost to construct Phase II of the Brown Landfill is \$11.9 million.²⁷ In its economic analysis of the Brown Landfill Phase II, KU evaluated the proposal against two other alternatives: transporting the Brown CCR to beneficial-use markets and transporting the CCR to the nearest municipal landfill.²⁸ KU ruled out transporting the CCR to beneficial-use markets because Brown's fly ash, bottom ash, and gypsum are currently not marketable due to unacceptable product specification and the high transportation costs stemming from lack of access to barge transportation at Brown.²⁹ Regarding the alternative of transporting the CCR to the nearest landfill,³⁰ KU's economic analysis indicated that the proposed Phase II construction is the lower-cost alternative by \$4.2–\$4.5 million, on a present-value revenue requirement ("PVRR") basis, across all three gas price scenarios (low, mid, and high).³¹

²⁶ *Id.*

²⁷ Schram Testimony at 10.

²⁸ *Id.* at 12.

²⁹ Schram Testimony, Exhibit CRS-1 at 5–6.

³⁰ For this alternative, KU assumed the total cost of the tipping fee along with the associated CCR handling and transportation costs to be \$38.21/ton. Although the closest municipal landfill to Brown is approximately 29 miles from the station, the cost assumption is the one used by KU in Case No. 2015-00194, *Investigation of Kentucky Utilities Company's and Louisville Gas and Electric Company's Respective Need for and Cost of Multiphase Landfills at the Trimble County and Ghent Generating Stations* (Ky. PSC Dec. 15, 2015), and reflects a shorter distance of 14 miles which is the distance from the Trimble County Station to the Valley View Municipal Solid Waste Landfill.

³¹ Schram Testimony, Exhibit CRS-1 at 5–6.

Projects 37 and 38

Project 37 consists of improvements to the wet flue gas desulfurization (“WFGD”) systems at Ghent Unit 2 to further reduce sulfur dioxide (“SO₂”) emissions at the unit in order to comply with the MATS Rule.³² The current WFGD system on Ghent Unit 2 removes slightly over 90 percent of SO₂ emissions from the flue gas before it is released into the air.³³ The MATS Rule requires a 97 percent emissions removal rate. The improvements to the Ghent Unit 2 WFGD are described as follows:

KU is proposing improvements to the WFGD system on Ghent Unit 2 that cumulatively will improve the sulfur dioxide removal efficiency by increasing the effective liquid-to-gas contact. KU plans to install new technology spray nozzles that will increase the liquid-to-gas contact surface area through a finer and more concentrated spray droplet, as well as install “wall rings” which are attachments to the WFGD’s module walls near the spray nozzle and spray cone areas. The wall rings reduce “leakage” of flue gas up the module walls caused by the pressure drop of the nozzle sprays by forcing the flue gas flow through the nozzle spray cone areas. Increasing the contact area of the limestone slurry with the flue gas essentially increases the effective liquid-to-gas ratio.³⁴

The total estimated capital cost for Project 37 is approximately \$7 million.³⁵ In its economic analysis of Project 37, KU evaluated the proposal against three other alternatives: (1) status quo (comply using dispatch modifications only); (2) use reagent to improve SO₂ removal rate; and (3) burn lower-sulfur coal.³⁶ The dispatch

³² Straight Testimony at 2.

³³ *Id.* at 4.

³⁴ *Id.* at 4 and 5.

³⁵ Schram Testimony at 20.

³⁶ *Id.*, Exhibit CRS-2 at 5–6.

modification approach includes the costs of modifying Ghent Unit 2's dispatch so that it does not produce more than 20 percent of the station's total generation, which would effectively reduce Ghent Unit 2's capacity by approximately 110 megawatts ("MW")³⁷ when the other three Ghent units are operating at full load.³⁸ The costs associated with dispatch modification include increased production costs.³⁹

The reagent alternative involves the injection of a reagent into Ghent Unit 2's scrubber liquor.⁴⁰ The estimated capital cost of this alternative is approximately \$1.4 million.⁴¹ The estimated annual cost of the reagent is approximately \$1.3 million and is assumed to escalate at an annual rate of 2 percent.⁴²

The use of lower-sulfur coal alternative would increase Ghent Unit 2's annual expense by approximately \$11 million.⁴³

KU utilized a two-phase analysis to determine which alternative was the most economical. The first phase involved an extended analysis to evaluate the proposed Project 37 against the alternatives that employed the use of a reagent and lower-sulfur coal. This extended analysis was required to assess the impact of these alternatives' tradeoffs between operations and maintenance ("O&M") expenses and capital costs in

³⁷ Ghent Unit 2's net summer rating is 493 MW.

³⁸ Ghent Unit 1's net summer rating is 474 MW; Ghent Unit 3's net summer rating is 485 MW; and Ghent Unit 4's net summer rating is 465 MW.

³⁹ Schram Testimony, Exhibit CRS-2 at 5.

⁴⁰ *Id.* at 6.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

the longer-term, i.e., over a 30-year period.⁴⁴ The least-cost of these alternatives was then compared to the cost of the status quo alternative based on operations through 2021.⁴⁵

The first phase analysis indicates that Project 37 was the least-cost alternative, with a present value revenue requirement that is \$13.6 million more favorable than the reagent alternative and \$165.6 million more favorable than the lower-sulfur coal alternative.⁴⁶ KU noted that the additional capital costs associated with the WFGD modification project were more than offset by the higher O&M or fuel costs associated with the other two alternatives.⁴⁷

The second phase analysis indicates that Project 37 was the lowest-reasonable-cost alternative for complying with the MATS Rule as compared to the status quo option. This analysis indicated that Project 37 is the lower cost alternative between \$37 million and \$68 million, on a PVRR basis, across all three gas price scenarios (low, mid, and high).⁴⁸

Project 38 consists of supplemental injection systems on all four Ghent units to further reduce mercury emissions from the station in order to comply with the National Ambient Air Quality Standards for 2.5 micron particulate matter and the MATS Rule for mercury emissions.⁴⁹ Project 38 involves a supplemental alternative to using PAC

⁴⁴ *Id.* at 7.

⁴⁵ *Id.*

⁴⁶ *Id.* at 8.

⁴⁷ *Id.* at 7.

⁴⁸ Schram Testimony at 21.

⁴⁹ *Id.*, Exhibit CRS-2 at 9.

injection for capturing mercury in the baghouse of each of the four Ghent units.⁵⁰ A phenomenon called mercury reemission can occur from the PAC injection process that could result in excessive mercury emissions.⁵¹ To reduce the occurrence of mercury reemission, KU plans to install equipment to apply coal and flue gas desulfurization (“FGD”) additives to capture mercury in the station’s gypsum.⁵² Project 38 would require a \$10 million investment in equipment to store and inject the additives, but this cost would be lower than the cost of PAC.⁵³ KU also asserts that the addition of a mercury-control injection system would make the Ghent CCR more marketable as beneficial-use products because it would enable KU to have greater control over where the mercury is captured.⁵⁴

KU’s economic analysis of Project 38 shows that the total cost of the coal and FGD additives is approximately \$0.30/per megawatt hour lower than the cost of PAC.⁵⁵ KU contends that the O&M savings associated with the coal and FGD additives more than offsets the revenue requirements associated with the cost of the mercury-control injection system and the payback period for Project 38 is between three to five years.⁵⁶

⁵⁰ *Id.*

⁵¹ Direct Testimony of Robert M. Conroy (“Conroy Testimony”) at 7.

⁵² *Id.*

⁵³ *Id.* at 8.

⁵⁴ Straight Testimony at 9.

⁵⁵ Schram Testimony at 22.

⁵⁶ *Id.*

Project 39

Project 39 involves the closure of ash ponds at the retired Green River, Pineville, and Tyrone Generating Stations in accordance with state law for the closure of special waste landfills.⁵⁷ In particular, three ash ponds will be closed at Green River, one at Pineville, and one at Tyrone.⁵⁸ Although these ash ponds are not subject to the CCR Rule because the coal-fired units at Green River, Pineville, and Tyrone were retired as of the effective date of the CCR Rule, KU asserts that closing these ash ponds at this time is a prudent decision. KU contends that closure would reduce the risk of potential environmental releases and potential citizen lawsuits arising from the CCR contained within the ash ponds.⁵⁹ Closing the ash ponds at this time would also minimize cost escalation as demand for engineering, construction, and materials could increase as other utilities begin entering the market to close surface impoundments under the CCR Rule and other states' laws.⁶⁰ KU states that by closing these ash ponds at the same time as the ash ponds at Ghent, Trimble County, and Brown (Projects 40, 41, and 42), it could take advantage of economies of scale that could result in potential cost savings.⁶¹ Lastly, KU notes that the ash ponds could be required to close under the ELG.⁶²

KU proposes to close the three ash ponds at Green River by 2019, with the CCR stored in the SO₂ Pond being excavated and the Main Ash Pond and the Ash Treatment

⁵⁷ Voyles Testimony at 16.

⁵⁸ *Id.*

⁵⁹ *Id.* at 17.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.* at 18.

Basin #2 being capped and closed. The projected total capital cost for the closure of the Green River ash ponds is approximately \$56.8 million.⁶³

KU proposes to close the Ash Treatment Basin at Pineville by regrading the ash and putting a cap on the basin. KU anticipates that the Pineville ash pond would be closed by 2019.⁶⁴ The projected total capital cost for the closure of the Pineville ash pond is approximately \$8 million.⁶⁵

KU also proposes to close the Ash Treat Basin at Tyrone by 2019.⁶⁶ The closure would entail regrading the ash and putting a cap on the basin.⁶⁷ The projected total capital cost for the closure of the Tyrone ash pond is approximately \$13.1 million.⁶⁸

KU asserts that the closure of these impoundments is construction in the ordinary course of business for which a CPCN is not required.⁶⁹ KU asserts that because the total capital cost of Project 39 of \$77.9 million is less than 1.5 percent of KU's current net utility rate base, the proposed ash pond closures in Project 39 do not meet the financial materiality criterion triggering the CPCN requirement.⁷⁰ In the event the

⁶³ Voyles Testimony, Exhibit JNV-1 with Errata correction.

⁶⁴ Voyles Testimony at 19.

⁶⁵ Voyles Testimony, Exhibit JNV-1.

⁶⁶ Voyles Testimony at 20.

⁶⁷ *Id.*

⁶⁸ *Id.*, Exhibit JNV-1.

⁶⁹ Conroy Testimony at 15.

⁷⁰ *Id.*

Commission disagrees, KU requests a CPCN for each generating station's ash pond closure plan.⁷¹

Projects 40, 41, and 42

Projects 40, 41, and 42 involve the closure of ash ponds and the construction of process-water systems at Ghent, Trimble County, and Brown, respectively.⁷² KU contends that these projects are necessary for compliance with the CCR Rule while supporting continued operation of the generating units at those stations.⁷³ Specifically, KU proposes to close five ash ponds at Ghent, two ash ponds at Trimble County, and one ash pond at Brown, all by 2023.⁷⁴ KU notes that these ash ponds are required to be closed under the CCR Rule because they failed to comply with the applicable structural and location requirements set forth in the CCR Rule and because they cause a statistical increase in CCR constituents in the groundwater above applicable groundwater protection standards.⁷⁵

In developing the closure plans for each of these ash ponds, KU notes that it seeks to balance these challenging factors: compressed compliance deadlines; optimizing existing properties at each station site; timing of closures to support ongoing operations; and assessing how the closures can be conducted in the lowest-reasonable-cost manner to comply with the CCR Rule.⁷⁶

⁷¹ *Id.*

⁷² Voyles Testimony, Exhibit JNV-1.

⁷³ Voyles Testimony at 22.

⁷⁴ *Id.*

⁷⁵ *Id.* at 23.

⁷⁶ *Id.*

The estimated total capital cost of Project 40 is \$364.2 million.⁷⁷ In its economic analysis of Project 40,⁷⁸ KU evaluated the costs of continuing to operate the Ghent units through 2021 against the cost of retiring the Ghent units in 2019 and purchasing replacement capacity.⁷⁹ KU's economic analysis indicated that the PVRR associated with operating the Ghent units with the proposed capital projects contained in Project 40 through 2021 is \$278 million to \$574 million lower than compared to the retire/replace alternative.⁸⁰ Thus, according to KU, even if the Ghent units were assumed to cease operation after 2021, Project 40 is the lowest reasonable cost.⁸¹

The estimated total capital cost of Project 41 is \$105.3 million.⁸² In its economic analysis, KU evaluated the proposed Project 41 against the following two alternatives: (1) retire the Trimble County units in 2019 and purchase replacement capacity and (2) convert the Trimble County units to operate on natural gas.⁸³ KU's economic analysis indicated that the PVRR of Project 41 is \$495 million to \$2.9 billion favorable as compared to retiring the Trimble County units and replacing the capacity and is \$478 million to \$4 billion favorable as compared to the conversion alternative.⁸⁴

⁷⁷ *Id.* at 29.

⁷⁸ KU's economic analysis of Project 40 also took into account those costs associated with the Ghent facility contained in Projects 37 and 38. See Schram Testimony, Exhibit CRS-2 at 11.

⁷⁹ Schram Testimony, Exhibit CRS-2 at 11.

⁸⁰ *Id.* at 13.

⁸¹ *Id.*

⁸² Voyles Testimony at 31.

⁸³ Schram Testimony, Exhibit CRS-3 at 6.

⁸⁴ *Id.* at 8.

The estimated total capital cost of Project 42 is \$101.3 million.⁸⁵ In its economic analysis,⁸⁶ KU evaluated the following two alternatives to Project 42: (1) retire the Brown coal units in 2019 and purchase replacement capacity either through a purchase power agreement for two 201-MW simple-cycle combustion turbine units (“402-MW SCCT”) or a purchase power agreement for one 368-MW natural gas combined cycle unit and one 201-MW simple cycle combustion turbine unit (“569-MW NGCC/SCCT”); and (2) convert the Brown coal units to operate on natural gas.⁸⁷ KU’s economic analysis indicated that compared to the retire/replace and conversion alternatives, Project 42 was \$153 million favorable to \$5 million unfavorable on a PVRR basis.⁸⁸ Only one out of 12 results favor the retirement alternative: the 402-MW SCCT replacement alternative was slightly favorable under low gas prices, but unfavorable under mid and high gas prices.⁸⁹ KU contends that Project 42 is the lowest-reasonable-cost alternative, noting that the range of results for the replacement alternatives do not provide compelling evidence of a clear and likely economic advantage to retiring the Brown coal units in 2019 and replacing the capacity.⁹⁰

SETTLEMENT AGREEMENT

As a result of the June informal conference, KU filed on June 13, 2016, a unanimous Settlement Agreement which is characterized as addressing all matters at

⁸⁵ Voyles Testimony at 32.

⁸⁶ KU’s economic analysis of Project 42 also took into account those costs associated with the proposed construction of Phase II of the Brown landfill as contained in Projects 36. See Schram Testimony, Exhibit CRS-1 at 7.

⁸⁷ Schram Testimony, Exhibit CRS-1 at 7.

⁸⁸ *Id.* at 11.

⁸⁹ Schram Testimony at 16.

⁹⁰ *Id.* at 18–19.

issue in this proceeding and representing a fair, just, and reasonable resolution of all the issues in this proceeding.

Article I of the Settlement Agreement addresses how KU is to recover the costs of the surface-impoundment closures and continuing expenditures, such as, groundwater monitoring at KU's active and retired generating stations through its ECR mechanism. Article II addresses the Section 199 federal tax deduction and its effect on its ECR mechanism. Article III states KU's continuing commitment to inform the Commission of any material changes in cost or scope of the approved ECR projects. Article IV addresses all other relief requested in KU's application and recommends that Commission approval be granted, including the continuation of KU's ECR ROE of 10 percent.

Article I, Section 1.1, provides that for Projects 40, 41, and 42 in KU's 2016 ECR Plan, KU will amortize over 25 years, on a non-levelized basis, its actual surface-impoundment-closure costs as they are incurred on each project to comply with the federal CCR final Rule. These costs will not include costs related to the process-water facilities included in each project; process-water facilities costs will be capitalized, depreciated, and earn a return as other ECR capital projects. As monthly costs are actually incurred for impoundment closures and CCR Rule compliance, those incurred costs will be added to the total amount being amortized and collected through the ECR mechanism. The monthly amortization amounts will be billed beginning with and including the expenses for the month of July 2016 and ending with June 2041. In addition, the unamortized actual costs incurred for the projects' non-process-water components will become part of KU's ECR rate base, and earn and recover the rate of

return applicable to ECR unamortized balances. The modified ES Forms 2.00 and 2.10 that provide for this approach are exhibits to the Settlement Agreement.

Article I, Section 1.2, provides that KU will amortize actual incurred costs for Project 39, the closed Green River, Pineville, and Tyrone Generating Stations' surface-impoundment closures, on a non-levelized basis over ten years, with monthly costs to be collected through KU's ECR mechanism. Those monthly amortization amounts will be billed beginning with and including the expenses of July 2016 and ending with June 2026. The financial treatment of these projects will be the same as that of the surface-impoundment closures at KU's active generating stations, with the unamortized balance of KU's actual incurred costs for these projects included in its ECR rate base, and allowed to earn the full rate of return applicable to ECR rate base on the unamortized balance for recovery.

The amortization approach agreed to by the parties produces reduced rate impacts in the initial years of the projects' cost recovery, a consideration of importance to the parties. For instance, a KU average residential customer, using 1,146 kilowatt hours per month, will realize a reduction of \$1.96 per month in 2016 under the agreed settlement approach as compared to KU's originally proposed depreciation treatment. Such bill-impact-reduction estimations are attached to the Conroy Settlement Testimony as page1 of Exhibit RMC-3.

According to the parties, Article I reflects significant compromises by all the parties to these proceedings. KU initially proposed to depreciate project costs for the active generating stations over their remaining lives, and use the same approach for Project 39 except over a four-year term. KIUC proposed amortizing actual incurred

costs over the average remaining service lives of the active generating stations and opposed any ECR recovery for Project 39, but asked for a ten-year amortization period if the Commission were to approve the ECR cost recovery was approved.

Article II commits KU to continue its current practice concerning the Section 199 federal tax deduction by reviewing the availability of the deduction to reduce ECR revenue requirements and whether it should be reflected in prospective ECR rates during KU's six-month and two-year ECR review proceedings. This agreed-to approach serves to ensure that the Section 199 deduction is appropriately considered and reflected in KU's ECR mechanism.

In Article III, KU commits to continuing its practice of updating the Commission of any material changes in the scope or cost of its ECR projects in addition to the information provided in the six-month and two-year review proceedings. Also, KU commits to notifying the AG and KIUC when notification is given to the Commission.

Article IV provides that, except as indicated in the Settlement Agreement and its exhibits, all of the relief requested by KU in its application in this proceeding, as modified by KU's errata and other filings should be approved as filed, including without limitation the following:

1. Granting KU a CPCN to construct Phase II of the landfill at Brown;
2. Declaring that no CPCN is required for any portion of KU Project 39 (surface-impoundment closures at the Green River, Pineville, and Tyrone Generating Stations);

3. Granting CPCNs for Projects 40, 41, and 42 to conduct CCR Rule compliance actions and construct new process-water systems at Ghent, Brown, and Trimble County;

4. Except as modified by the Settlement Agreement, approving KU's 2016 plan for purposes of recovering its costs through the ECR mechanism as proposed in its application, including the requested 10 percent ROE;

5. Approving KU's ECR tariff provisions for recovery of costs of KU's 2016 Plan effective for bills rendered on and after August 31, 2016 (i.e., beginning with the expense month of July 2016); and

6. Approving KU's proposed environmental surcharge ("ES") monthly filing forms as filed, except as modified by the Settlement Agreement in Exhibit 2, which accounts for the non-levelized amortization approach.

LEGAL STANDARDS

CPCN

The Commission's standard of review regarding a CPCN is well settled. No utility may construct or acquire any facility to be used in providing utility service to the public until it has obtained a CPCN from this Commission.⁹¹ To obtain a CPCN, the utility must demonstrate a need for such facilities and an absence of wasteful duplication.⁹²

"Need" requires:

[A] showing of a substantial inadequacy of existing service, involving a consumer market sufficiently large to make it

⁹¹ KRS 278.020(1).

⁹² Kentucky Utilities Co. v. Pub. Serv. Comm'n, 252 S.W.2d 885 (Ky. 1952).

economically feasible for the new system or facility to be constructed or operated.

[T]he inadequacy must be due either to a substantial deficiency of service facilities, beyond what could be supplied by normal improvements in the ordinary course of business; or to indifference, poor management or disregard of the rights of consumers, persisting over such a period of time as to establish an inability or unwillingness to render adequate service.⁹³

“Wasteful duplication” is defined as “an excess of capacity over need” and “an excessive investment in relation to productivity or efficiency, and an unnecessary multiplicity of physical properties.”⁹⁴ To demonstrate that a proposed facility does not result in wasteful duplication, we have held that the applicant must demonstrate that a thorough review of all reasonable alternatives has been performed.⁹⁵ Selection of a proposal that ultimately costs more than an alternative does not necessarily result in wasteful duplication.⁹⁶ All relevant factors must be balanced.⁹⁷ The statutory touchstone for ratemaking in Kentucky is the requirement that rates set by the Commission must be fair, just, and reasonable.⁹⁸

⁹³ *Id.* at 890.

⁹⁴ *Id.*

⁹⁵ Case No. 2005-00142, *Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for the Construction of Transmission Facilities in Jefferson, Bullitt, Meade, and Hardin Counties, Kentucky* (Ky. PSC Sept. 8, 2005).

⁹⁶ See *Kentucky Utilities Co. v. Pub. Serv. Comm'n*, 390 S.W.2d 168, 175 (Ky. 1965). See also Case No. 2005-00089, *The Application of East Kentucky Power Cooperative, Inc. for a Certificate of Public Convenience and Necessity to Construct a 138 kV Electric Transmission Line in Rowan County, Kentucky* (Ky. PSC Aug. 19, 2005).

⁹⁷ Case No. 2005-00089, *East Kentucky Power Cooperative, Inc.* (Ky. PSC Aug. 19, 2005), Final Order at 6.

⁹⁸ KRS 278.190(3).

ECR Mechanism

KRS 278.183(1), commonly known as the Environmental Surcharge Statute, provides, in pertinent part, as follows:

Notwithstanding any other provision of this chapter, effective January 1, 1993, a utility shall be entitled to the current recovery of its costs of complying with the Federal Clean Air Act as amended and those federal, state, or local environmental requirements which apply to coal combustion wastes and by-products from facilities utilized for production of energy from coal in accordance with the utility's compliance plan as designated in subsection (2) of this section. These costs shall include a reasonable return on construction and other capital expenditures and reasonable operating expenses for any plant, equipment, property, facility, or other action to be used to comply with applicable environmental requirements set forth in this section. Operating expenses include all costs of operating and maintaining environmental facilities, income taxes, property taxes, other applicable taxes and depreciation expenses as these expenses relate to compliance with the environmental requirements set forth in this section.

The Environmental Surcharge Statute allows a utility to recover its qualifying environmental costs through a ratemaking procedure which is an alternative to the filing of a general rate case under KRS 278.190. The Environmental Surcharge Statute specifies: (1) the categories of costs that can be recovered by surcharge; (2) the procedures which must be followed by a utility to obtain approval of its environmental plan and surcharge; (3) the procedures and evidentiary standard to be applied by the Commission in reviewing applications for approval of an environmental plan and rate charge; and (4) the mandatory filing requirements and periodic reviews of an approved surcharge. The Commission must consider the plan and the proposed rate surcharge, and approve them if it finds the plan and rate surcharge to be reasonable and cost-effective. As part of the consideration of an environmental plan and surcharge, the

Commission is required by KRS 278.183(2)(b) to “[e]stablish a reasonable return on compliance-related capital expenditures.”

FINDINGS

Having reviewed the record and being otherwise sufficiently advised, the Commission finds that KU has sufficiently established a need for the proposed projects contained in its 2016 Plan in order to achieve compliance with the CAA, as amended, the MATS Rule, and the CCR Rule. The Commission also finds that the proposed projects contained in KU's 2016 Plan are the lowest-reasonable-cost alternatives to achieve compliance with the relevant environmental statute and regulations. The Commission notes that KU's economic analyses of the individual projects in its 2016 Plan contain reasonable assumptions and alternatives, and are based on appropriate methodologies. We further note that KU's economic analyses showed that the proposed environmental projects are the lowest-reasonable-cost alternatives. The Commission finds that the proposed projects will not result in wasteful duplication of similar or alternative facilities or construction. Thus, the Commission finds that KU's 2016 Plan as amended to recover the costs of the pollution-control construction through its ECR Surcharge tariff is reasonable.

Therefore, the Commission concludes that the installation of supplemental mercury-related control technologies, which allows the use of the most-cost-effective additive injections in order to mitigate mercury emissions, the impoundment-related closure construction, and the construction of new process-water systems are required under applicable environmental regulations in order to assure meeting those

regulations, and that the proposed environmental compliance construction projects are the least-cost reasonable solution in meeting those requirements.

Accordingly, the Commission finds that, except for the provision discussed below, the remaining provisions of the Settlement Agreement and its attached exhibits, are reasonable and should be accepted on matters of the accounting treatment, timing, and recovery of costs involved in the proposed environmental compliance projects of the case. The Commission, however, based on the analysis that follows, finds that the provisions concerning the declaration that no CPCNs are required for Project 39 and the 10 percent ROE are not reasonable and these two provisions should therefore be modified.

CPCN Requirement for Project 39

KRS 278.020(1) requires a utility to obtain a CPCN from the Commission before beginning construction of any project except for service connections and those projects deemed to be “ordinary extensions of existing systems in the usual course of business.” 807 KAR 5:001, Section 15(3), sets forth the following parameters for those projects that should be considered ordinary extensions of existing systems in the usual course of business.

A certificate of public convenience and necessity shall not be required for extensions that do not create wasteful duplication of plant, equipment, property, or facilities, or conflict with the existing certificates or service of other utilities operating in the same area and under the jurisdiction of the commission that are in the general or contiguous area in which the utility renders service, and that do not involve sufficient capital outlay to materially affect the existing financial condition of the utility involved or, will not result in increased charges to its customers.

KU argues that the estimated \$77.9 million total cost for Project 39 does not materially affect KU's existing financial condition and, thus, the proposed project should be exempt from the CPCN requirement. The Commission disagrees and finds that Project 39's estimated total capital cost is both significant and would materially impact KU's existing financial condition. Because these costs, if approved, would be recovered through the ECR mechanism, the Commission also finds that Project 39 would result in increased charges to KU's customers. Accordingly, the Commission declares that CPCNs are required for Project 39.

Based on the discrete nature of the proposed surface impoundment closures at three separate generating stations, the Commission will grant KU one CPCN per generating station for the impoundment closures at Green River, Pineville, and Tyrone.

Return on Equity

Article IV of the Settlement Agreement provides for KU's 2016 Plan to earn the 10 percent ROE as approved by the Commission on June 30, 2015, for use in ECR billings in Case No. 2014-00371.⁹⁹ For the reasons discussed below, the Commission finds this aspect of the settlement to be unreasonable for the purpose of calculating the return on KU's 2016 Plan, and that it should be modified. Although the Commission found a 10 percent ROE to be reasonable in Case No. 2015-00411¹⁰⁰ for calculating KU's ECR charges for its 2011 Environmental Compliance Plan, the Commission is not bound by that previous approval in setting a reasonable ROE for the 2016 Plan

⁹⁹ Case No. 2014-00371, *Application of Kentucky Utilities Company for an Adjustment of Its Electric Rates* (Ky. PSC June 30, 2015).

¹⁰⁰ Case No. 2015-00411, *An Examination by the Public Service Commission of the Environmental Surcharge Mechanism of Kentucky Utilities Company for the Six-Month Billing Period Ending October, 31, 2015* (Ky. PSC Mar. 16, 2016).

investment. As stated on page 10 of KU's and Louisville Gas and Electric Company's ("the Companies") Post-Hearing Brief ("Brief"), the Commission "must exercise its own judgment in evaluating the evidence and law in these proceedings."

The controlling statute, KRS 278.183(2)(b), provides that when a new environmental compliance plan is filed, the Commission must "[e]stablish a reasonable return on compliance-related capital expenditures." In light of the sustained downward trend in electric utility ROE awards as exhibited by the Regulatory Research Associates ("RRA") reports introduced at the public hearing in this matter,¹⁰¹ the Commission finds a 10 percent ROE to be at an unnecessarily high level to compensate investors for the risk in investing in the Companies and their new ECR projects on an ongoing basis.

The 10 percent ROE was found to be reasonable by the Commission in June 2015 in Case No. 2014-00371¹⁰² based on a substantial record, which included expert testimony filed by KU and the intervening parties over the six-month period of November 2014 through April 2015. Since that time, capital markets changed sufficiently for the Commission to have approved a 9.7 percent ROE for the Accelerated Service Line Replacement Program ("ASRP") of Duke Energy Kentucky, Inc. ("Duke Kentucky") in Case No. 2015-00210.¹⁰³ The Commission notes that in that proceeding, it was the request of Duke Kentucky to use its most recent Commission approved ROE of 10.375 percent from Duke Kentucky's 2009 gas rate case to calculate the return on

¹⁰¹ PSC – Exhibits 3–6.

¹⁰² Case No. 2014-00371, *Kentucky Utilities Company* (Ky. PSC June 30, 2015).

¹⁰³ Case No. 2015-00210, *Application of Duke Energy Kentucky, Inc. for a Certificate of Public Convenience and Necessity Authorizing the Implementation of an Accelerated Service Line Replacement Program, Approval of Ownership of Service Lines, and a Gas Pipeline Replacement Surcharge* (Ky. PSC Feb. 2, 2016).

its proposed ASRP.¹⁰⁴ As a result of a settlement by Duke Kentucky and the AG in that case, the Commission approved as reasonable a 9.7 percent ROE in February 2016.

The Companies' testimony did not include an analysis of current economic conditions, nor did it address any of the traditional ROE methodologies, such as Discounted Cash Flow, Capital Asset Pricing Model, Risk Premium, or Comparable Earnings. As stated numerous times in their Brief, the 10 percent ROE was approved by the Commission relatively recently in June 2015. However, over 12 months have passed since that time and, as noted above, the Environmental Surcharge Statute requires the Commission to establish a reasonable return on environmental expenditures. In approving a 10 percent ROE in June 2015 in KU's last rate case, the Commission was unaware that a new environmental compliance plan would be filed in 2016. Thus, the Commission finds it appropriate in this case to consider the RRA reports that were included in the record and described by the Companies' Brief, at page 29, in determining the ROE to now be authorized as reasonable considering the ROE expected by investors for the investment of new capital and the nature of the rate recovery under the Environmental Surcharge Statute.

The Companies described in their Brief the documents introduced by Staff at the public hearing, and explained why they believe it is inappropriate to rely on ROE awards by Commissions in other jurisdictions in cases involving electric. The Commission has stated in previous Orders that we do not rely on individual returns awarded in other states in determining the appropriate ROE for Kentucky jurisdictional utilities. However, we have also stated that we find it reasonable to expect that other

¹⁰⁴ See Case No. 2009-00202, *Application of Duke Energy Kentucky, Inc. for an Adjustment of Rates* (Ky. PSC Dec. 29, 2009).

state commissions, each with its own attributes, are evaluating expert witness testimony which uses the same or similar cost-of-equity models as those presented by parties participating in Kentucky rate proceedings, and reaching conclusions based on the data provided in the records of individual cases. Here, no cost-of-equity models were presented by any party and, thus, we find it reasonable to consider the ROEs as reported by RRA as indicative of current economic market indicators for ROE.

The RRA reports are not exhaustive in terms of presenting complete information concerning all utility rate case decisions, as pointed out in the Companies' Brief. The reports do, however, summarize the conclusions reached by other commissions, as well as this Commission, as to reasonable ROEs, and contain explanatory reference points as to individual circumstances, all of which are available to investors. To the extent that investors' expectations are influenced by such publications, and we believe they are, we also find it appropriate to use that information to put their expectations in context.

While we do not rely on the specific ROE awards summarized by the RRA reports, we take note of the simple fact that average annual ROE awards by state public service commissions have been steadily declining since 2009, as shown on page 3 of the Major Rate Case Decisions—Calendar 2015 report entered into the record by Staff at the hearing. Whether Virginia State Corporate Commission ("VSCC") awards are included or not, the average ROE authorized electric utilities in 2015 was lower than that for 2014, and the average annual awards for both years were below 10 percent (9.85 percent in 2015 compared to 9.91 in 2014, including VSCC awards reflecting

statutorily mandated ROE premiums; and 9.58 percent in 2015 excluding VSCC awards, down from 9.76 percent in 2014).¹⁰⁵

The RRA Major Rate Case Decisions – January – March 2016 report provided by Staff at the hearing show that in the first quarter of 2016, the inclusion of VSCC awards caused the average ROE for electric utilities to increase to 10.26 percent. Excluding those awards, however, the average first quarter ROE award is 9.68 percent. The point out that the 9.85 percent ROE award for Indianapolis Power and Light Company (“IPL”), which was contained in the January – March 2016 report, was actually reduced by the Indiana Utility Regulatory Commission from 10 percent due to mismanagement. The Commission notes that increasing IPL’s ROE from 9.85 to 10 percent in the first quarter 2016 ROE results would produce a first quarter average ROE of 9.75 percent, excluding VSCC awards.

The Commission is relying on the RRA information discussed above for two conclusions regarding a reasonable ROE award for KU’s 2016 Plan in this proceeding. First, when statutory ROE premiums that are awarded to some utilities in Virginia are excluded, as investors would be able to do with the information provided, there is a clear trend of average ROE awards below 10 percent. Second, despite quarterly averages that occasionally are higher than those for the directly preceding quarter, the annual trend has been for decreasing ROE awards. Page 3 of the January – March 2016 report shows quarterly averages through 2016. Taking simple 12 month averages of quarterly ROE awards for the 12 months ended March 31 each year shows that 12-month averages were approximately 10 percent at March 31 of 2013 and 2014, and

¹⁰⁵ Virginia statutes authorize the State Corporation Commission to approve additional ROE basis points for certain generation projects.

then decline to 9.96 percent for the 12 months ended March 2015 and to 9.75 percent for the 12 months ended March 2016. These averages reflect all awards reported, including Virginia. The Commission agrees with the Companies that these averages are composed of a range of ROE awards, some of which are 10 percent or more. The Commission does not agree, in light of the trends represented by this information, that it should now approve a 10 percent ROE as was granted in a utility's last rate because it has been our tradition or usual practice, or out of a sense of expediency. Doing so would be contrary to the mandate under the Environmental Surcharge Statute to establish a reasonable return on compliance expenditures.

In spite of the Companies' numerous references to the Commission's long-standing practice of using a utility's last base rate case ROE in establishing reasonable ECR cost pursuant to KRS 278.183, the Response to Information Requested at Hearing Held on June 14, 2016, Item 2, is evidence that the last base rate case ROE has not been exclusively used for that purpose. The response to Item 2 provides a chart showing the 10.10 percent ROE found by the Commission to be reasonable for 2011 environmental compliance plans. The ROEs established by the settlement in Case No. 2011-00161¹⁰⁶ were 10.63 percent for projects and items in the 2009, 2006, and 2005 environmental compliance plans, as established in a previous base rate case proceeding, and 10.10 percent for projects and items in the 2011 environmental compliance plans, *unless prospectively changed by a future Commission Order*.¹⁰⁷ The 10.10 percent to which the parties agreed and the Commission approved was

¹⁰⁶ Case No. 2011-00161, *Application of Kentucky Utilities Company for Certificates of Public Convenience and Necessity and Approval of Its 2011 Compliance Plan for Recovery by Environmental Surcharge* (Ky. PSC Dec. 15, 2011), Final Order.

¹⁰⁷ *Id.* at 17. [Emphasis added.]

established through the process of discovery, after the filing of expert testimony regarding ROE. The italicized language in the Commission's Order sends the clear message that the Commission may not always choose to rely on ROEs established in previous proceedings in exercising its judgment as to reasonable cost for new ECR plans pursuant to KRS 278.183.

Irrespective of the agreement by the parties that a 10 percent ROE is appropriate for the 2016 Plan, the Commission finds no basis to continue use of that ROE for monthly automatic cost recovery under that plan, particularly considering the economic climate now facing Kentucky ratepayers. For purposes of setting an ROE for the 2016 Plan, it is not necessary to establish an upper and lower range of reasonableness. The only requirement is to set a specific ROE which is largely guaranteed, by the operation of the ECR mechanism, through the recovery of environmental compliance costs and investments with practically no regulatory lag. The Commission takes note of the Duke Energy ASRP ROE approved in February of this year, as well as the previously mentioned trends in electric utility ROE awards since KU filed its application and the Commission issued its final order in Case No. 2014-00371.¹⁰⁸

After weighing all the evidence of record, including that presented at the hearing, the Commission finds KU's required ROE for purposes of the 2016 ECR and related monthly surcharge filings to be 9.8 percent. Despite the Commission's finding that a reasonable ROE is one that is lower than the 10 percent to which the parties agreed, this should not be considered as a discount to account for the diminished risk of cost

¹⁰⁸ Case No. 2014-00371, *Kentucky Utilities Company* (Ky. PSC June 30, 2015).

disallowance, as the Companies' Brief theorizes,¹⁰⁹ nor as a ROE reduction due to mismanagement,¹¹⁰ and it is not intended to, nor can it, be punitive.¹¹¹ The Commission's finding as to a reasonable ROE is simply a reflection of current economic conditions, investor expectations, and our statutory duty under KRS 278.183(2)(b).

In summary, based on its review of the provisions of the Settlement Agreement and the exhibits attached thereto and the record in this proceeding, including intervenor testimony, data responses, and information presented at the public hearing, the Commission finds that the provisions of the Settlement Agreement are in the public interest and should be approved with two exceptions. These exceptions are the CPCNs required for Project 39 and the ROE to be used in KU's 2016 Plan and monthly ECR filings for that plan, as discussed above. The Settlement Agreement is the product of arm's-length negotiations among knowledgeable, capable parties. Approval of the Settlement, except for the provisions relating to the declaration that no CPCN is required for Project 39 and the ROE, is based solely on the reasonableness of the other provisions in total and does not constitute precedent on any of those other issues except as specifically provided for therein.

IT IS THEREFORE ORDERED that:

1. KU is granted a CPCN for Project 36, the construction of Phase II of the landfill at Brown as described in KU's application.

¹⁰⁹ Brief at 32.

¹¹⁰ *Id.* at 27–28.

¹¹¹ *Id.* at 28, fn 83.

2. KU is granted a CPCN for Project 40 which consists of the closure of five surface impoundments and construction of a process-water system at Ghent as described in KU's application.

3. KU is granted a CPCN for Project 41 which consists of the closure of two surface impoundments and construction of a process-water system at Trimble County as described in KU's application.

4. KU is granted a CPCN for Project 42 which consists of the closure of one surface impoundment and construction of a process-water system at Brown as described in KU's application.

5. KU's request for a declaratory order that no CPCNs are needed for the closure of surface impoundments at Green River, Pineville, and Tyrone is denied.

6. KU is granted three CPCNs for Project 39, one each for the closure of surface impoundments at Green River, Pineville, and Tyrone.

7. KU's 2016 Plan, consisting of Projects 36, 37, 38, 39, 40, 41 and 42, is approved.

8. The proposed revisions and additions to KU's monthly ES forms are approved as modified by the Settlement Agreement with the effective date of the revisions approved as requested.

9. KU shall use a 9.8 percent ROE in the ECR mechanism for the 2016 Plan.

10. All provisions of the Settlement Agreement attached hereto and incorporated herein as the Appendix, except as set forth in ordering paragraphs 5 and 9, are approved.

11. Within ten days of the date of this Order, KU shall file with the Commission revised tariff sheets setting out Rate Schedule ECR as approved herein and reflecting that it was approved pursuant to this Order.

12. KU shall promptly file with the Commission a notice and supporting analysis in the event that a new or revised environmental requirement impacts any facility in service or under construction.

13. KU shall submit status update reports on the construction and implementation of the proposed projects contained in its 2016 Plan every three months from the date of this Order. Such reports shall include, among other things, detailed information regarding the amount spent to date, the amount spent during the reporting period, the projected budget for the next reporting period, the total projected costs each of the projects contained in the 2016 Plan, construction activities that occurred during the reporting period, and the construction activities for the next reporting period.

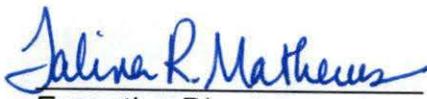
14. Any documents filed in the future pursuant to ordering paragraphs 12 and 13 herein shall reference this case number and shall be retained in the utility's general correspondence files.

15. The Executive Director is delegated authority to grant reasonable extension of time for the filing of any documents required by ordering paragraph 13 of this Order upon KU's showing of good cause.

By the Commission

ENTERED
AUG 08 2016
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:


Executive Director

Case No. 2016-00026

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2016-00026 DATED **AUG 08 2016**

SETTLEMENT AGREEMENT, STIPULATION AND RECOMMENDATION

This Settlement Agreement, Stipulation, and Recommendation (“Settlement Agreement”) is entered into this 13th day of June 2016 by and between Kentucky Utilities Company (“KU”) and Louisville Gas and Electric Company (“LG&E”) (collectively, “the Utilities”); Attorney General of the Commonwealth of Kentucky, by and through the Office of Rate Intervention (“AG”); and Kentucky Industrial Utility Customers, Inc. (“KIUC”) (collectively, “Parties”).

WITNESSETH:

WHEREAS, on January 29, 2016, KU filed with the Kentucky Public Service Commission (“Commission”) its Application *In the Matter of: The Application of Kentucky Utilities Company for Certificates of Public Convenience and Necessity and Approval of Its 2016 Compliance Plan for Recovery by Environmental Surcharge*, and the Commission has established Case No. 2016-00026;

WHEREAS, on January 29, 2016, LG&E filed with the Commission its Application *In the Matter of: The Application of Louisville Gas and Electric Company for Certificates of Public Convenience and Necessity and Approval of Its 2016 Compliance Plan for Recovery by Environmental Surcharge*, and the Commission has established Case No. 2016-00027 (Case Nos. 2016-00026 and 2016-00027 are hereafter collectively referenced as the “ECR Proceedings”);

WHEREAS, on February 5, 2016, the Commission Staff issued deficiency letters to the Companies concerning their applications in the ECR Proceedings, which deficiencies the Companies cured on February 9, 2016, as reflected by a letter in each of the ECR Proceedings from the Commission Staff dated February 16, 2009;

WHEREAS, the Commission has granted full intervention in the ECR Proceedings to the AG and KIUC;

WHEREAS, a prehearing informal conference for the purpose of discussing settlement, attended by representatives of the Parties and the Commission Staff took place on June 9, 2016, at the offices of the Commission, during which a number of procedural and substantive issues were discussed, including potential settlement of all issues pending before the Commission in the ECR Proceedings;

WHEREAS, all of the Parties hereto unanimously desire to settle all the issues pending before the Commission in the ECR Proceedings;

WHEREAS, the adoption of this Settlement Agreement as a fair, just, and reasonable disposition of the issues in this case will eliminate the need for the Commission and the Parties to expend significant resources litigating these ECR Proceedings, and eliminate the possibility of, and any need for, rehearing or appeals of the Commission's final orders herein;

WHEREAS, it is understood by all Parties hereto that this Settlement Agreement is subject to the approval of the Commission, insofar as it constitutes an agreement by all Parties to the ECR Proceedings for settlement;

WHEREAS, all of the Parties, who represent diverse interests and divergent viewpoints, agree that this Settlement Agreement, viewed in its entirety, is a fair, just, and reasonable resolution of all the issues in the ECR Proceedings; and

WHEREAS, the Parties believe sufficient and adequate data and information support this Settlement Agreement, and further believe the Commission should approve it;

NOW, THEREFORE, for and in consideration of the promises and conditions set forth herein, the Parties hereby stipulate and agree as follows:

ARTICLE I. AMORTIZATION OF SURFACE-IMPOUNDMENT-CLOSURE COSTS

1.1. Concerning the Utilities' amended compliance plan for purposes of recovering the costs of new pollution control facilities through their respective Environmental Cost Recovery ("ECR") Surcharge tariff provisions ("2016 ECR Plans"), for KU Projects 40, 41, and 42 and LG&E Projects 29 and 30, each Utility will amortize on a non-levelized basis over 25 years the actual surface-impoundment-closure costs incurred and CCR Rule compliance costs incurred (including groundwater monitoring costs) of each project; such costs will not include costs related to the process-water facilities included in each project. The monthly amortization amounts to be collected through each Utility's ECR mechanism will be billed over a total of 300 expense months beginning with and including the expense month of July 2016 and ending with and including the expense month of June 2041. Each Utility will include the unamortized balance of such actual costs in its ECR rate base and will be entitled to earn and recover the full rate of return applicable to ECR rate base on all such unamortized balances.

1.2. For KU Project 39, KU will amortize on a non-levelized basis over 10 years the actually incurred costs of the project, with monthly amortization amounts to be collected through KU's ECR mechanism for a total of 120 expense months beginning with and including the expense month of July 2016 and ending with and including the expense month of June 2026. KU will include the unamortized balance of such actual costs in its ECR rate base and will be entitled to earn and recover the full rate of return applicable to ECR rate base on the unamortized balance.

1.3. As with all ECR projects, ECR cost recovery as described in Paragraphs 1.1 and 1.2 above will be adjusted or eliminated to account for base-rate roll-ins or project elimination; however, no ECR base-rate roll-in or project elimination will affect the period over which the

unamortized balances will be recovered or the Utilities' right to recovery of, and a full rate of return on, all such unamortized balances.

1.4. The depreciation rates proposed by the Utilities in their applications and the associated requests for approval by the Commission are withdrawn.

ARTICLE II. SECTION 199 TAX DEDUCTION

2.1. The Utilities will continue their current practice concerning the Section 199 federal tax deduction by reviewing the use of the deduction and determining whether the deduction would be available to reduce ECR revenue requirements and should be reflected in prospective ECR rates in six-month and two-year ECR review proceedings held before the Commission. Nothing in this provision is intended to bind any of the Parties or the Commission concerning any position they might take concerning the Section 199 deduction in any of the Utilities' six-month or two-year ECR review proceedings.

ARTICLE III. REPORTING TO THE COMMISSION CONCERNING THE UTILITIES' 2016 ECR PLANS

3.1. The Utilities commit to continue their current practice of updating the Commission if and when material changes occur to the scope or cost of approved ECR projects in addition to the information the Utilities ordinarily provide in their six-month and two-year ECR review proceedings. If the Utilities determine a change sufficiently material to merit notifying the Commission occurs concerning one or more of their respective 2016 ECR Plan projects, the Utilities commit to notify the Parties within a reasonable time following the Utilities' notification of the Commission. The Utilities further commit to make reasonable efforts to invite the Parties to attend any meetings the Utilities have with the Commission or Commission Staff for providing updates concerning any 2016 ECR Plan projects.

**ARTICLE IV. ALL OTHER RELIEF TO BE GRANTED AS REQUESTED IN THE
UTILITIES' APPLICATIONS**

4.1. The Parties agree that, except as modified in this Settlement Agreement and the exhibits attached hereto, all of the relief requested in the Utilities' filings in the ECR Proceedings (as corrected by the Utilities' errata and other filings in the ECR Proceedings) should be approved as filed, including without limitation the following:

(A) Granting KU a certificate of public convenience and necessity ("CPCN") to construct Phase II of the Brown landfill;

(B) A declaration that no CPCN is required for any portion of KU Project 39 (surface-impoundment closures at the Green River, Pineville, and Tyrone Generating Stations);

(C) Granting the Utilities CPCNs to conduct federal Coal Combustion Residuals ("CCR") Rule compliance construction and construct new process water systems at the Ghent, E.W. Brown, Trimble County, and Mill Creek Generating Stations (KU Projects 40, 41, and 42 and LG&E Projects 29 and 30);

(D) Except as modified by this Settlement Agreement in Article I, approving the Utilities' 2016 ECR Plans for purposes of recovering their costs through the Utilities' respective ECR mechanisms as proposed in the Utilities' applications in the ECR proceedings, including the Utilities' requested 10.00% return on equity as approved by the Commission for use in the Utilities' ECR billings in the Commission's final orders dated June 30, 2015, in Case Nos. 2014-00371 and 2014-00372;

(E) Approving the Utilities' respective ECR tariff provisions for recovery of the costs of the Utilities' 2016 ECR Plans effective for bills rendered on and after August 31, 2016 (i.e., beginning with the expense month of July 2016); and

(F) Approving the Utilities' proposed environmental surcharge ("ES") monthly filing forms as filed, except as modified by this Settlement Agreement in Exhibit 1 (KU's revised ES Forms 2.00 and 2.10) and Exhibit 2 (LG&E's revised ES Forms 2.00 and 2.10), which account for the non-levelized amortization approach addressed in Article I of this Settlement Agreement.

ARTICLE V. MISCELLANEOUS PROVISIONS

5.1. Except as specifically stated otherwise in this Settlement Agreement, entering into this Settlement Agreement shall not be deemed in any respect to constitute an admission by any of the Parties that any computation, formula, allegation, assertion or contention made by any other party in these ECR Proceedings is true or valid.

5.2. The Parties hereto agree that the foregoing stipulations and agreements represent a fair, just, and reasonable resolution of the issues addressed herein and request the Commission to approve the Settlement Agreement.

5.3. Following the execution of this Settlement Agreement, the Parties shall cause the Settlement Agreement to be filed with the Commission on or about June 14, 2016, together with a request to the Commission for consideration and approval of this Settlement Agreement effective for bills rendered on and after August 31, 2016 (i.e., beginning with the expense month of July 2016) by issuing an order on or before July 29, 2016.

5.4. Each of the Parties waives all cross-examination of the other Parties' witnesses unless the Commission disapproves this Settlement Agreement, and each party further stipulates and recommends that the Notice of Intent, Notice, Application, testimony, pleadings, and responses to data requests filed in the ECR Proceedings be admitted into the record. The Parties stipulate that after the date of this Settlement Agreement they will not otherwise contest the

Utilities' proposals, as modified by this Settlement Agreement, in the hearing of the ECR Proceedings regarding the subject matter of the Settlement Agreement, and that they will refrain from cross-examination of the Utilities' witnesses during the hearing, except insofar as such cross-examination is in support of the Settlement Agreement.

5.5. This Settlement Agreement is subject to the acceptance of, and approval by, the Commission. The Parties agree to act in good faith and to use their best efforts to recommend to the Commission that this Settlement Agreement be accepted and approved.

5.6. If the Commission issues an order adopting this Settlement Agreement in its entirety and without additional conditions, each of the Parties agrees that it shall file neither an application for rehearing with the Commission, nor an appeal to the Franklin Circuit Court with respect to such order.

5.7. If the Commission does not accept and approve this Settlement Agreement in its entirety, then: (a) any or all of the Parties may withdraw from this Settlement Agreement, and any withdrawing Party shall not be bound by any of the provisions herein, though any such withdrawals shall not preclude any or all of the Parties from advocating any position contained in this Settlement Agreement; (b) any of the Parties may request a hearing on any or all of the issues in the ECR Proceedings; and (c) neither the terms of this Settlement Agreement nor any matters raised during the settlement negotiations shall be binding on any withdrawing Party or be construed against any withdrawing Party.

5.8. All Parties agree to keep confidential all communications among any of the Parties concerning this Settlement Agreement, including without limitation all communications related to negotiating this Settlement Agreement. This provision will survive any withdrawal from this Settlement Agreement pursuant to Article 5.7 above or any action by the Commission,

and will be binding upon all Parties, including any Parties withdrawing from this Settlement Agreement.

5.9. If the Settlement Agreement is voided or vacated for any reason after the Commission has approved the Settlement Agreement, none of the Parties will be bound by the Settlement Agreement except as stated in Article 5.8 above.

5.10. The Settlement Agreement shall in no way be deemed to divest the Commission of jurisdiction under Chapter 278 of the Kentucky Revised Statutes.

5.11. The Settlement Agreement shall inure to the benefit of and be binding upon the Parties hereto and their successors and assigns.

5.12. The Settlement Agreement constitutes the complete agreement and understanding among the Parties, and any and all oral statements, representations or agreements made prior hereto or contained contemporaneously herewith shall be null and void and shall be deemed to have been merged into the Settlement Agreement.

5.13. The Parties hereto agree that, for the purpose of the Settlement Agreement only, the terms are based upon the independent analysis of the Parties to reflect a fair, just, and reasonable resolution of the issues herein and are the product of compromise and negotiation.

5.14. The Parties hereto agree that neither the Settlement Agreement nor any of the terms shall be admissible in any court or commission except insofar as such court or commission is addressing litigation arising out of the implementation of the terms herein or the approval of this Settlement Agreement. This Settlement Agreement shall not have any precedential value in this or any other jurisdiction.

5.15. The signatories hereto warrant that they have appropriately informed, advised, and consulted their respective Parties in regard to the contents and significance of this Settlement

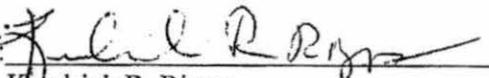
Agreement and based upon the foregoing are authorized to execute this Settlement Agreement on behalf of their respective Parties.

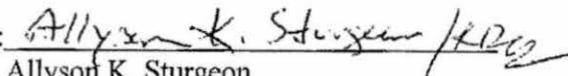
5.16. The Parties hereto agree that this Settlement Agreement is a product of negotiation among all Parties hereto, and no provision of this Settlement Agreement shall be strictly construed in favor of or against any party. Notwithstanding anything contained in the Settlement Agreement, the Parties recognize and agree that the effects, if any, of any future events upon the operating income of the Utilities are unknown and this Settlement Agreement shall be implemented as written.

5.17. The Parties hereto agree that this Settlement Agreement may be executed in multiple counterparts.

IN WITNESS WHEREOF, the Parties have hereunto affixed their signatures.

Kentucky Utilities Company and
Louisville Gas and Electric Company

By: 
Kendrick R. Riggs

By: 
Allyson K. Sturgeon

Attorney General for the Commonwealth of
Kentucky, by and through the Office of Rate
Intervention

HAVE SEEN AND AGREED:

By: _____
Lawrence W. Cook
Rebecca W. Goodman

Kentucky Industrial Utility Customers, Inc.

HAVE SEEN AND AGREED:

By: Michael L. Kurtz

Michael L. Kurtz

Kurt J. Boehm

Jody M. Kyler Cohn

400001.152778/1351196.8

**KENTUCKY UTILITIES COMPANY
ENVIRONMENTAL SURCHARGE REPORT**

Revenue Requirements of Environmental Compliance Costs
For the Expense Month of

Determination of Environmental Compliance Rate Base

	Environmental Compliance Plan	
Eligible Pollution Control Plant		
Eligible Pollution CWIP Excluding AFUDC		
Subtotal		
Additions:		
Inventory - Emission Allowances per ES Forms 2.31, 2.32, 2.33 and 2.34		
Less: Allowance Inventory Baseline		
Net Emission Allowance Inventory		
Cash Working Capital Allowance		
Net Unamortized Closure Cost Balance - Active Stations		
Net Unamortized Closure Cost Balance - Retired Stations		
Subtotal		
Deductions:		
Accumulated Depreciation on Eligible Pollution Control Plant		
Pollution Control Deferred Income Taxes		
Pollution Control Deferred Investment Tax Credit		
Subtotal		
Environmental Compliance Rate Base		

Determination of Pollution Control Operating Expenses

	Environmental Compliance Plan	
Monthly Operations & Maintenance Expense		
Monthly Depreciation & Amortization Expense		
Monthly Taxes Other Than Income Taxes - Eligible Plant		
Monthly Taxes Other Than Income Taxes - Closure Costs		
Amortization of Monthly Closure Costs - Active Stations		
Amortization of Monthly Closure Costs - Retired Stations		
Monthly Emission Allowance Expense from ES Forms 2.31, 2.32, 2.33 and 2.34		
Add KU Current Month TC2 Emission Allowance Expense reported on ES Form 2.31, 2.32, 2.33 and 2.34		
Less Monthly Emission Allowance Expense in base rates		
Net Recoverable Emission Allowance Expense		
Monthly Surcharge Consultant Fee		
Construction Monitoring Consultant Fee		
Total Pollution Control Operations Expense		

Determination of Beneficial Reuse Operating Expenses

	Environmental Compliance Plan
Total Monthly Beneficial Reuse Expense	
Adjustment for Beneficial Reuse in Base Rates (from ES Form 2.61)	
Net Beneficial Reuse Operations Expense	

Proceeds From By-Product and Allowance Sales

	Total Proceeds	Amount in Base Rates	Net Proceeds
	(1)	(2)	(1) - (2)
Allowance Sales			
Scrubber By-Products Sales			
Total Proceeds from Sales			

ES FORM 2.10

KENTUCKY UTILITIES COMPANY
ENVIRONMENTAL SURCHARGE REPORT
Plant, CWIP & Depreciation Expense

For the Month Ended:

(1) Description	(2) Eligible Plant In Service	(3) Eligible Accumulated Depreciation	(4) CWIP Amount Excluding AFUDC	(5) Eligible Net Plant In Service	(6) Unamortized ITC as of	(7) Deferred Tax Balance as of	(8) Monthly Depreciation Expense	(9) Monthly Property Tax Expense
				(2)-(3)+(4)				
2009 Plan: Project 28 - Brown 3 SCR Project 29 - ATB Expansion at E.W. Brown Station (Phase II) Project 30 - Ghent CCP Storage (Landfill- Phase I) Project 31 - Trimble County Ash Treatment Basin (BAP/GSP) Project 32 - Trimble County CCP Storage (Landfill - Phase I) Project 33 - Beneficial Reuse								
Subtotal Less Retirements and Replacement resulting from implementation of 2009 Plan								
Net Total - 2009 Plan:								
2011 Plan: Project 29 - Brown Landfill (Phase I) Project 34 - E.W. Brown Station Air Compliance Project 35 - Ghent Station Air Compliance								
Subtotal Less Retirements and Replacement resulting from implementation of 2011 Plan								
Net Total - 2011 Plan:								
2016 Plan: Project 36 - Brown Landfill (Phase II) Project 37 - Ghent 2 WFGD Improvements Project 38 - Supplemental Mercury Control Project 40 - Ghent New Process Water Systems Project 41 - Trimble County New Process Water Systems Project 42 - Brown New Process Water Systems								
Subtotal Less Retirements and Replacement resulting from implementation of 2016 Plan								
Net Total - 2016 Plan:								
Net Total - All Plans:								

Note 1: Trimble County projects for the 2009 Plan are proportionately shared by KU at 48% and LG&E at 52%

Note 2: Project 29 as approved in the 2009 ECR Plan recovers costs associated with the Brown Aux Pond (Phase II). In the 2011 Plan, Project 29 was amended to recover costs associated with the conversion of the Brown Main Ash Pond to the Brown Landfill (Phase I)

**LOUISVILLE GAS AND ELECTRIC COMPANY
ENVIRONMENTAL SURCHARGE REPORT**

Revenue Requirements of Environmental Compliance Costs
For the Expense Month of

Determination of Environmental Compliance Rate Base

	Environmental Compliance Plan	
Eligible Pollution Control Plant		
Eligible Pollution CWIP Excluding AFUDC		
Subtotal		
Additions:		
Inventory - Emission Allowances per ES Forms 2.31, 2.32, 2.33 and 2.34		
Cash Working Capital Allowance		
Net Unamortized Closure Cost Balance		
Subtotal		
Deductions:		
Accumulated Depreciation on Eligible Pollution Control Plant		
Pollution Control Deferred Income Taxes		
Subtotal		
Environmental Compliance Rate Base		

Determination of Pollution Control Operating Expenses

	Environmental Compliance Plan
Monthly Operations & Maintenance Expense	
Monthly Depreciation & Amortization Expense	
less investment tax credit amortization	
Monthly Taxes Other Than Income Taxes - Eligible Plant	
Monthly Taxes Other Than Income Taxes - Closure Costs	
Amortization of Monthly Closure Costs	
Monthly Emission Allowance Expense from ES Forms 2.31, 2.32, 2.33 and 2.34	
Monthly Surcharge Consulting Fees	
Construction Monitoring Consultant Fee	
Total Pollution Control Operations Expense	

Determination of Beneficial Reuse Operating Expenses

	Environmental Compliance Plan
Total Monthly Beneficial Reuse Expense	
Adjustment for Beneficial Reuse in Base Rates (from ES Form 2.61)	
Net Beneficial Reuse Operations Expense	

Proceeds From By-Product and Allowance Sales

	Total Proceeds	Amount in Base Rates	Net Proceeds
	(1)	(2)	(1) - (2)
Allowance Sales			
Scrubber By-Products Sales			
Total Proceeds from Sales			

ES FORM 2.10

LOUISVILLE GAS AND ELECTRIC COMPANY
ENVIRONMENTAL SURCHARGE REPORT
Plant, CWIP & Depreciation Expense

For the Month Ended:

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
Description	Eligible Plant In Service	Eligible Accumulated Depreciation	CWIP Amount Excluding AFUDC	Eligible Net Plant In Service	Deferred Tax Balance as of	Monthly ITC Amortization Credit	Monthly Depreciation Expense	Monthly Property Tax Expense
				(2)-(3)+(4)				
2009 Plan:								
Project 22 - Cane Run CCP Storage (Landfill - Phase I) [CANCELLED]								
Project 23 - Trimble County Ash Treatment Basin (BAP/GSP)								
Project 24 - Trimble County CCP Storage (Landfill - Phase 1)								
Project 25 - Beneficial Reuse								
Subtotal								
Less Retirements and Replacement resulting from implementation of 2009 Plan								
Net Total - 2009 Plan:								
2011 Plan:								
Project 26 - Mill Creek Station Air Compliance								
Project 27 - Trimble County Unit 1 Air Compliance								
Subtotal								
Less Retirements and Replacement resulting from implementation of 2011 Plan								
Net Total - 2011 Plan:								
2016 Plan:								
Project 28 - Supplemental Mercury Control								
Project 29 - Mill Creek New Process Water Systems								
Project 30 - Trimble County New Process Water Systems								
Subtotal								
Less Retirements and Replacement resulting from implementation of 2016 Plan								
Net Total - 2016 Plan:								
Net Total - All Plans:								

Note 1: Trimble County projects for the 2009 Plan are proportionately shared by KU at 48% and LG&E at 52%.

Note 2: Effective with the September 2012 expense month, Project 22 is cancelled and the previous CWIP balance is included on ES Form 2.50 as an expense for the September 2012 expense month.

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