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Commissioner

January 30, 2017

Talina R. Mathews  
Executive Director  
Public Service Commission  
P.O. Box 625  
Frankfort, KY 40602

Re: Case No. 2016-00370  
Electronic Application of Kentucky Utilities Company for an Adjustment  
of its Electric Rates and for Certificates of Public Convenience and  
Necessity

Dear Dr. Mathews:

At the conclusion of the January 23, 2017 oral argument in the above-referenced case on the issue of East Kentucky Power Cooperative, Inc.'s ("EKPC") motion to intervene, the Commission requested EKPC and Kentucky Utilities Company ("KU") to submit to the Commission's General Counsel proposed Findings of Fact and Conclusions of Law. Both EKPC and KU delivered their respective versions by electronic mail, with a copy to all parties of record, on January 25, 2017, and KU subsequently delivered in the same manner a corrected version on January 26, 2017. The electronic mail from EKPC and KU, along with their respective Findings of Fact and Conclusions of Law along with KU's errata, are attached hereto for filing into the record of this case.

Sincerely,

Richard G. Raff  
General Counsel

RGR/ph  
Enclosure  
cc: Parties of Record

## Nguyen, Quang D (PSC)

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**From:** Evan Buckley <ebuckley@gossamfordlaw.com>  
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**Cc:** Mark David Goss; David Samford  
**Subject:** Kentucky Public Service Commission -- Case No. 2016-00370 (KU CPCN/Rate Adjustment)  
**Attachments:** EKPC\_Proposed Findings and Conclusions\_M\_Intervene\_170125.pdf

Good afternoon,

Please find attached East Kentucky Power Cooperative's proposed Findings of Fact and Conclusions of Law concerning its Motion for Leave to Intervene in the above-referenced matter. Please do not hesitate to contact me if you have any issue accessing same.

Thanks,



**M. Evan Buckley**

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**COMMONWEALTH OF KENTUCKY**  
**BEFORE THE PUBLIC SERVICE COMMISSION**

In the Matter of:

ELECTRONIC APPLICATION OF KENTUCKY	)	
UTILITIES COMPANY FOR AN ADJUSTMENT OF	)	Case No. 2016-00370
ITS ELECTRIC RATES AND FOR CERTIFICATES	)	
OF PUBLIC CONVENIENCE AND NECESSITY	)	

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**EAST KENTUCKY POWER COOPERATIVE, INC.'S  
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW  
CONCERNING ITS MOTION FOR LEAVE TO INTERVENE**

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Comes now East Kentucky Power Cooperative, Inc. ("EKPC"), by counsel, and consistent with the directive of the Kentucky Public Service Commission ("Commission") at the conclusion of the hearing held January 23, 2017, on EKPC's Motion for Leave to Intervene ("Motion") and the Objection thereto of Kentucky Utilities Company ("KU"), hereby tenders the following proposed Findings of Fact and Conclusions of Law.

**FINDINGS OF FACT**

1. EKPC is a Kentucky rural electric cooperative corporation and a public utility as defined in KRS 278.010(3)(a). EKPC provides wholesale electricity to its sixteen (16) Owner-Member distribution cooperatives, which in turn serve customers in eighty-seven (87) Kentucky counties.

2. KU is a Kentucky corporation and a public utility as defined in KRS 278.010(3)(a). KU provides wholesale and retail electricity to customers in seventy-seven (77) Kentucky counties.

3. On November 23, 2016, KU filed its Application and supporting documents in this matter.<sup>1</sup> Among other relief, KU requested authority to increase its electric rates to support its forecasted spending during the twelve month test period ending June 30, 2018.<sup>2</sup>

4. According to its Application, KU plans to invest \$206 million in its transmission system during the period July 1, 2016 through June 30, 2018.<sup>3</sup> KU's Application further reveals that its Transmission System Improvement Plan ("Transmission Plan"), which generally describes the types and costs of transmission improvements KU plans to make during the period 2017-2021, is expected to result in approximately \$429.5 million in spending by KU.<sup>4</sup> According to KU, these costs are necessary because, *inter alia*, "[m]uch of [KU and LG&E's] transmission infrastructure is old and at or near the end of its usable life[.]" and because "[t]he consequences of transmission equipment failure, particularly where no redundancy exists to quickly restore the system, can have a substantial impact on customers."<sup>5</sup>

5. This Commission has previously observed that EKPC "is heavily interconnected with KU due to the contiguous nature of their respective service territories and joint use of transmission facilities."<sup>6</sup> EKPC owns fifty-five (55) distribution substations that are connected to the KU/LG&E transmission system, and together the utilities share fifty-four (54) free-flowing

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<sup>1</sup> KU's sister company, Louisville Gas and Electric Company ("LG&E"), is presently seeking similar relief in Case No. 2016-00371, *In the Matter of the Electronic Application of Louisville Gas and Electric Company for an Adjustment of its Electric and Gas Rates and for Certificates of Public Convenience and Necessity* (filed Nov. 23, 2016). EKPC has not sought intervention in Case No. 2016-00371.

<sup>2</sup> KU's Application, p. 7.

<sup>3</sup> KU's Application, Tab 14, Testimony of Paul W. Thompson, p. 28.

<sup>4</sup> KU's Application, Tab 14, Testimony of Paul W. Thomason, at Exhibit PWT-2, p. 4.

<sup>5</sup> KU's Application, Tab 14, Testimony of Paul W. Thompson, p. 28.

<sup>6</sup> Administrative Case No. 387, *In the Matter of A Review of the Adequacy of Kentucky's Generation Capacity and Transmission System* (Ky. P.S.C. Dec. 20, 2001) (Order at pp. 24, 58).

tie lines.<sup>7</sup> In many instances, EKPC and KU each “serve the other’s retail customers,”<sup>8</sup> according to EKPC, over 66,000 end-use customers in its territory rely directly on KU transmission.<sup>9</sup>

6. On December 21, 2016, EKPC filed its Motion seeking intervention herein, to which KU filed an Objection on December 28, 2016. EKPC then filed a Reply in further support of its Motion on January 3, 2017, and KU filed a Sur-Reply (and motion requesting leave to file same) on January 6, 2017. Pursuant to Order entered January 17, 2017, the Commission heard oral argument on the contested intervention on January 23, 2017.

7. EKPC and KU have sought and been granted intervention in each other’s proceedings on a number of occasions, most often asserting an interest in examining the impacts, if any, that various proposed transmission alterations would have on the intervening utility and its customers.<sup>10</sup>

8. Intervention in Commission proceedings is governed by 807 KAR 5:001 Section 4(11). Under subsection (b) of that regulation, intervention shall be granted if a prospective party “has a special interest in the case that is not otherwise adequately represented” or if the

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<sup>7</sup> EKPC Motion, p. 2.

<sup>8</sup> Case No. 2012-00169, *In the Matter of the Application of East Kentucky Power Cooperative, Inc. to Transfer Functional Control of Certain Transmission Facilities to PJM Interconnection, LLC* (Ky. P.S.C. June 13, 2012) (Order granting KU/LG&E’s requested intervention, at p. 3).

<sup>9</sup> EKPC Reply, p. 4, n. 11 and accompanying exhibit.

<sup>10</sup> See Case No. 2012-00169, *In the Matter of the Application of East Kentucky Power Cooperative, Inc. to Transfer Functional Control of Certain Transmission Facilities to PJM Interconnection, LLC* (Ky.P.S.C. June 13, 2012); Case No. 2000-00095, *In the Matter of Application of PowerGen, plc to Acquire Louisville Gas and Electric Company and Kentucky Utilities Company* (Ky.P.S.C. Apr. 18, 2000); Case No. 2001-00104, *In the Matter of Joint Application of E.ON AG, PowerGen plc., LG&E Energy Corp., Louisville Gas and Electric Company, and Kentucky Utilities Company for Approval of an Acquisition* (Ky.P.S.C. Jun. 8, 2001); see also Case No. 2015-00267, *In the Matter of the Application of East Kentucky Power Cooperative, Inc. for Approval of the Acquisition of Existing Combustion Turbine Facilities form Bluegrass Generation Company, LLC at the Bluegrass Generating Station in LaGrange, Oldham County, Kentucky and for Approval of the Assumption of Certain Evidences of Indebtedness* (Ky.P.S.C. Aug. 14, 2015).

“intervention is likely to present issues or to develop facts that assist the commission in fully considering the matter without unduly complicating or disrupting the proceedings.”

9. EKPC asserts a special interest in this matter based on the heavily-interconnected character of EKPC’s and KU’s respective transmission systems. Because KU’s Transmission Plan involves substantial expenditures that may directly impact some 66,000 end-use customers within the EKPC system of cooperatives, EKPC seeks intervention to ensure that the transmission investments made across the KU system are accomplished in a reasonable and nondiscriminatory manner that improves reliability and performance not only for KU’s end-use customers, but also for the cooperative end-use customers who depend on KU transmission. EKPC has represented that its interest in this proceeding is limited to issues concerning the prudence of KU’s proposed investments in transmission, and that it does not extend to issues of rate design or rate recovery.<sup>11</sup>

10. No existing party to this case has asserted an interest similar to that held by EKPC, particularly as it concerns KU’s transmission spending and its impact on EKPC’s system and ultimate consumer base.

11. EKPC is uniquely positioned and qualified to contribute to this matter due to its exceptional knowledge and experience with the transmission infrastructure and service at issue. The limited nature of EKPC’s proposed involvement in this proceeding, coupled with the Commission’s inherent ability to control its own docket, strongly suggest that EKPC’s intervention herein will result in no undue complication or disruption.

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<sup>11</sup> EKPC Reply, p. 4.

### CONCLUSIONS OF LAW

1. Pursuant to KRS 278.040(2), the Commission's jurisdiction extends to the rates and service of all utilities in Kentucky. The performance of KU's transmission system and its proposed expenditures related thereto are jurisdictional to the Commission.

2. The substance of the matters presented in a case, rather than its style, control whether intervention is appropriate based on a prospective intervenor's asserted interest. The relevant scope of inquiry in this case is sufficiently broad to allow an examination by interested parties of KU's plans to address its transmission system's reliability, integrity, and service.

3. EKPC has a special interest in this case as it concerns KU's proposed investment in its transmission system, and that interest is not otherwise adequately represented. The Commission agrees that EKPC's participation in this case should be limited to the prudence of KU's transmission expenditures, and that it should not extend to issues of rate design or rate recovery.

4. EKPC's intervention herein is likely to present issues or to develop facts that assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings.

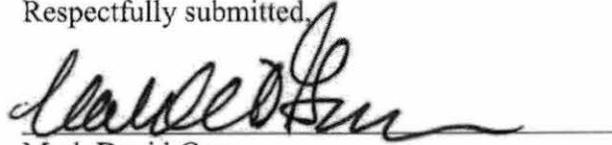
5. KU's Motion for Leave to File Sur-Reply should be granted.

6. EKPC's Motion for Leave to Intervene should be granted.

6. *[Alternatively]* The prudence of KU's proposed investments in its transmission system, including the details of its proposed Transmission Plan, should be a matter bifurcated from the instant case and addressed in a separate proceeding to be established by subsequent Order of the Commission. EKPC shall be made a party to that proceeding. EKPC's Motion for Leave to Intervene in this matter is thus denied, without prejudice, as moot.

This 25<sup>th</sup> day of January, 2017.

Respectfully submitted,



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### **CERTIFICATE OF SERVICE**

The undersigned certifies that this document was served via electronic mail on this 25<sup>th</sup> day of January, 2017, upon the following:

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## Nguyen, Quang D (PSC)

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**Subject:** Case No. 2016-00370: Kentucky Utilities Company  
**Attachments:** ProposedFindingsOfFactAndConclusionsOfLaw.pdf; ProposedFindingsOfFactAndConclusionsOfLaw.docx

Mr. Raff:

Pursuant to Chairman Schmitt's directive at the 1/23/2017 hearing in the above-referenced matter and to your e-mail message of 1/24/2017, attached are Kentucky Utilities Company's Proposed Findings of Fact and Conclusions of Law for the Commission's consideration in the disposition of the Motion for Intervention of East Kentucky Power Cooperative, Inc. The document is provided in Microsoft Word format and Portable Document Format.

A copy of this e-mail message with attachments has been sent to Counsel for East Kentucky Power and to all other counsel of record in this proceeding.

Sincerely,



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COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

**In the Matter of:**

APPLICATION OF KENTUCKY UTILITIES )	
COMPANY FOR AN ADJUSTMENT OF ITS )	
ELECTRIC RATES AND FOR )	CASE NO. 2016-00370
CERTIFICATES OF PUBLIC )	
CONVENIENCE AND NECESSITY )	

**KENTUCKY UTILITIES COMPANY'S PROPOSED FINDINGS OF  
FACT AND CONCLUSIONS OF LAW**

Pursuant to the Commission's direction at the January 23, 2017 hearing on East Kentucky Power Cooperative, Inc.'s Motion for Intervention, Kentucky Utilities Company ("KU"), by counsel, respectfully submits its Proposed Findings of Fact and Conclusions of Law for the Commission's consideration in the disposition of the Motion for Intervention of East Kentucky Power Cooperative, Inc.

**PROPOSED FINDINGS OF FACT**

1. Kentucky Utilities Company ("KU") owns and operates facilities that are used in connection with the generation, transmission and distribution of electricity to or for the public, for compensation, for lights, heat, power, and other uses.

2. KU provides retail electric service to approximately 519,000 retail customers in 77 Kentucky counties.

3. To provide retail electric service, KU operates a transmission and distribution network that is present in 77 counties and covers approximately 4,567 circuit miles.<sup>1</sup>

4. In addition to providing retail electric service in Kentucky, KU provides wholesale electric service to the cities of Barbourville, Bardstown, Bardwell, Berea, Corbin, Falmouth, Frankfort, Madisonville, Nicholasville, Paris, and Providence; provides retail electric

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<sup>1</sup> Testimony of Paul W. Thompson at 22 (filed Nov. 23, 2016).

service in Virginia under the name of Old Dominion Power Company; and provides wholesale transmission services to other electric utilities, including East Kentucky Power Cooperative Corporation, Big Rivers Electric Cooperative Corporation, Tennessee Valley Authority and Owensboro Municipal Utilities and Kentucky Municipal Power Agency.

5. KU provides wholesale transmission services to other electric utilities under the provisions of its Open Access Transmission Tariff which is filed with the Federal Energy Regulatory Commission (“FERC”). KU has no rate schedule or tariff on file with the Kentucky Public Service Commission (“Commission”) regarding the provision of wholesale transmission service.

6. On November 23, 2016, KU applied to the Commission for a 6.4 percent increase in its base rates for retail service by filing revised tariffs pursuant to KRS 278.180. KU’s application also seeks a Certificate of Public Convenience and Necessity (“CPCN”) for the full deployment of Advanced Metering Systems across its Kentucky service territory, and a CPCN for its Distribution Automation project. KU supported its application for proposed rate adjustment with a 12-month forecasted test period ending June 30, 2018. Finding an investigation was necessary to determine the reasonableness of the proposed rates, the Commission pursuant to KRS 278.190 suspended the operation of the proposed rates and initiated this proceeding.

7. In its application, KU forecasted capital expenditures of \$149.2 million on transmission reliability and resiliency improvements from the period from July 1, 2016 to June 30, 2018. These improvements involve the replacement of defective line equipment (e.g., wood poles, cross-arms, and insulators); overhead lines; circuit breakers; protection and control systems; improvements to line sectionalizing; underground cable; control houses; switches; and

miscellaneous substation equipment.<sup>2</sup> In support of these forecasted test period expenditures, KU provided its *Transmission System Improvement Plan* for 2017-2021 which details KU's five-year plan to improve its transmission system.

8. The forecasted expenditure of \$149.2 million is the aggregate cost of numerous transmission reliability and resiliency improvement projects for the period from July 1, 2016 to June 30, 2018 and represents approximately 2.4 percent of KU's total net utility plant as of December 31, 2015.<sup>3</sup> When considered on an individual basis, each of proposed improvement projects represents less than one percent of KU's net utility plant.

9. In its application, KU did not request a CPCN for the transmission reliability and resiliency improvements that it expects to make between July 1, 2016 and June 30, 2018 or for any Commission approval of those improvements. KRS 278.020(2).

10. East Kentucky Power Cooperative ("EKPC") is a rural electric cooperative that organized pursuant to KRS Chapter 279.

11. EKPC owns and operates facilities that are used in connection with the generation and transmission of electricity to its 16 member cooperatives.

12. Each of EKPC's member cooperatives purchases power from EKPC to serve persons located within each member's retail certified territory.

13. EKPC does not provide retail electric service or directly serve the customers of its member cooperatives.

14. To transmit electric power from its generation facilities to its member cooperatives at certain delivery points, EKPC uses its own transmission lines and purchases wholesale transmission services from KU to deliver EKPC's power over KU's transmission lines

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<sup>2</sup> *Id.* at 27.

<sup>3</sup> KU's net utility plant as of December 31, 2015 was \$ 6,232,156,913. *Report of Kentucky Utilities Company to the Kentucky Public Service Commission for the Year Ending December 31, 2015* at 15 of 190.

to EKPC's distribution cooperatives for delivery through their distribution system or directly to the customers of the distribution cooperatives.

15. When EKPC purchases wholesale transmission services from KU, it uses KU transmission facilities to deliver EKPC generated or purchased power to EKPC-member cooperatives' distribution facilities in exchange for the transmission services fee set forth in KU's Open Access Transmission Tariff on file with the FERC. KU and EKPC are the only parties to the transaction. KU provides transmission services only and does not sell electric power to any EKPC member cooperative or to any customer of an EKPC-cooperative member as part of this service. When providing transmission service to EKPC, KU assess any charge or fee for such service to an EKPC-member cooperative or any customer of an EKPC-member cooperative.

16. EKPC has moved to intervene in this proceeding. It bases its request for intervention on "its unique and substantial interest in the transmission service and rates of KU"<sup>4</sup> and states that the purpose of its intervention in this proceeding is to "scrutinize the investments KU/LG&E propose to make in their electric transmission infrastructure"<sup>5</sup> and "to assure that KU's investment in its transmission system is adequate and non-discriminatory so as to assure that the EKPC customers served by KU's transmission system are not disadvantaged by KU's transmission investment decisions."<sup>6</sup>

17. EKPC has not contested or set forth any objection to KU's proposed rates or any of the other requests for relief set forth in KU's application.

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<sup>4</sup> EKPC Motion to Intervene at ¶ 6 (filed Dec. 21, 2016).

<sup>5</sup> *Id.*

<sup>6</sup> EKPC Reply In Support of Motion for Leave to Intervene at ¶ 4 (filed Jan. 3, 2017).

18. EKPC may seek review of the KU's wholesale transmission service from the FERC.<sup>7</sup>

### **PROPOSED CONCLUSIONS OF LAW**

1. Except for the Attorney General,<sup>8</sup> no person has a statutory right to intervene in a Commission proceeding. Intervention is permissive and is within the Commission's sound discretion. *Inter-County Rural Electric Cooperative Corporation v. Public Service Commission of Kentucky*, 407 S.W.2d 127, 130 (Ky. 1966).

2. The Commission's discretion to permit intervention is subject to two limitations. "[T]he person seeking intervention must have an interest in the 'rates' or 'service' of a utility." *EnviroPower, LLC v. Public Service Commission of Kentucky*, No. 2005-CA-001792-MA (Ky. App. Feb. 2, 2007) at 9. He must also demonstrate either (1) a special interest in the proceeding which is not otherwise adequately represented in the case, or (2) that intervention is likely to present issues or develop facts that will assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings. 807 KAR 5:001, Section 4(11)(b).

3. The only issues presented by KU's application are the reasonableness of its proposed rates and conditions of service for retail electric service and the need for the deployment of its Advanced Metering Systems and for the implementation of its Distribution Automation project.

4. EKPC has failed to identify any interest in any KU rate or service is within the Commission's jurisdiction. EKPC's stated purpose for intervention is "to assure that KU's investment in its transmission system is adequate and non-discriminatory so as to assure that the EKPC customers served by KU's transmission system are not disadvantaged by KU's

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<sup>7</sup> 16 U.S.C § 825e.

<sup>8</sup> See KRS 367.150(8)(b).

transmission investment decisions.”<sup>9</sup> EKPC has not stated any interest in KU’s proposed retail rates, its proposed revisions to its conditions of providing retail electric service, the proposed construction projects for which KU has sought a CPCN, or any other relief that KU has requested in its Application.

5. The Commission has jurisdiction over the rates and services of utilities in Kentucky. KRS 278.040(2).

6. KU is a “utility” as defined in KRS 278.010(3).

7. As KU is a utility, the Commission has jurisdiction over KU’s rates and services. KRS 278.040(2).

8. Federal law, however, preempts state regulation of “the transmission of electric energy in interstate commerce” or “the sale of electric energy at wholesale in interstate commerce” and vests regulatory authority over those matters in the FERC. 16 U.S.C. § 824; *New York v. FERC*, 535 U.S. 1 (2002).

9. The Commission has previously recognized this preemption and acknowledged that the Commission’s jurisdiction extends only to issues of retail electric rates and service and does not extend to issues related to a jurisdictional electric utility’s provision of wholesale transmission service. See *Investigation Into the Membership of Louisville Gas and Electric Company and Kentucky Utilities Company in the Midwest Independent Transmission System Operator, Inc.*, Case No. 2003-00266 (Ky. PSC Oct. 2, 2003) at 2 (“The Commission’s regulatory authority over LG&E and KU is limited to their respective rates and service for retail customers. Issues relating to the wholesale transmission of electric energy over facilities owned

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<sup>9</sup> *Supra* note 4.

by an investor-owned utility and the rates for that transmission have always been under FERC jurisdiction.”).<sup>10</sup>

10. While the Commission may examine KU’s proposed transmission improvement expenditures as to their effect on retail rates and service, the Commission has no jurisdiction to consider how should KU operates its wholesale transmission system or whether KU has adequately funded and maintained its transmission facilities to provide reasonable and reliable **wholesale transmission service** to its **wholesale transmission service customers** such as EKPC; to determine if additional transmission facilities are necessary to support its **wholesale transmission service**, or to determine, if additional facilities or improvements to support its **wholesale transmission service** are necessary, the nature and character of such facilities or improvements. Such issues are within the exclusive jurisdiction of the FERC.<sup>11</sup>

11. Accordingly the Commission lacks jurisdiction over KU’s wholesale transmission service.

12. While KRS 278.020(1) permits the Commission to consider the possible interstate benefits resulting from the proposed construction or modification of electric transmission facilities when considering an application for a CPCN to construct an electric transmission line, the current proceeding does not involve such an application. KU has not applied for a CPCN to construct a transmission line. KU is proposing to invest additional capital to replace and upgrade its existing transmission system to maintain and improve reliability and resiliency. As KU has

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<sup>10</sup> See also *Application of AEP Kentucky Transmission Company, Inc. for a Certificate of Public Convenience and Necessity Pursuant to KRS 278.020 to Provide Wholesale Transmission Service in the Commonwealth*, Case No. 2011-00042 (Ky. PSC June 10, 2013) at 7 (holding that the provision of wholesale transmission service is not a “regulated service within the parameters of the Commission’s jurisdiction under KRS Chapter 278.”).

<sup>11</sup> See *The 2008 Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company*, Case No. 2008-00148 (Ky. PSC July 18, 2008) at 4 (noting that the operation of the LG&E/KU transmission system is governed by the Companies’ Open Access Transmission Tariff which “is a matter directly under the jurisdiction of the Federal Energy Regulatory Commission”).

not made such application, consideration of any arguments regarding such benefits or related matters is not permissible.

13. EKPC's intervention cannot be based upon the premise that KU's proposed transmission reliability and resiliency improvement projects require a CPCN. KRS 278.020(2) exempts those improvement projects from any requirement to apply for a CPCN. It provides that the replacement or upgrading of any existing electric transmission line shall be considered an ordinary extension of an existing system in the usual course of business and shall not require a CPCN. KU's forecasted capital expenditures of \$149.2 million on transmission reliability and resiliency improvements clearly involve the replacement or upgrading of existing transmission lines.

14. Assuming arguendo that KRS 278.020(2) is not applicable to the present case and that KRS 278.020(1) governs whether KU's transmission reliability and resiliency improvements required a CPCN, the Commission must review each improvement individually and not consider the improvement projects in aggregate to determine if the improvements are ordinary extensions in the usual course of business.<sup>12</sup> Given that the size of each of the proposed improvements in relation to KU's net utility plant is very small, that each improvement was intended to replace an antiquated or obsolete existing facility, and its individual cost would not have a material effect on rates, each improvement meets the regulatory definition of an "extension in the ordinary course."<sup>13</sup>

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<sup>12</sup> See *Clark Energy Cooperative, Inc.: Alleged Failure to Comply with Commission Regulations*, Case No. 2012-00219 (Ky. PSC Nov. 20, 2012) at 2 ("The Commission has determined that each construction project contained in a CWP [Construction Work Plan] should be analyzed on an individual basis to determine whether that individual project is exempt from the requirement in KRS 278.020(1) to obtain a CPCN."). See also PSC Staff Opinion 2012-014 (July 16, 2012).

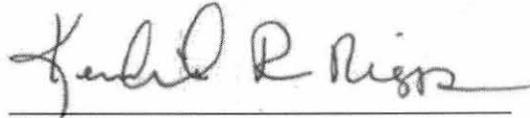
<sup>13</sup> See 807 KAR 5:001, Section 15(3) (A certificate of public convenience and necessity shall not be required for extensions that do not create wasteful duplication of plant, equipment, property, or facilities, or conflict with the existing certificates or service of other utilities operating 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

15. EKPC's intervention in this matter will unduly complicate and disrupt proceeding by introducing an issue – wholesale transmission service – over which the Commission has no jurisdiction and which is unrelated to KU's proposed rates and conditions of service, the facilities for which KU seeks a CPCN, or any other relief that KU has requested in its Application.

16. EKPC has failed to satisfy the statutory and regulatory prerequisites for intervention in this matter as it has failed to demonstrate an interest in KU's retail rates and service and that its intervention in this proceeding will not unduly complicate and disrupt this proceeding. Its motion for intervention should be denied.

Dated: January 25, 2017

Respectfully submitted,



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sufficient capital outlay to materially affect the existing financial condition of the utility involved, or will not result in increased charges to its customers.”).

## Nguyen, Quang D (PSC)

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**From:** Riggs, Kendrick R. <kendrick.riggs@skofirm.com>  
**Sent:** Thursday, January 26, 2017 5:10 PM  
**To:** Raff, Richard G (PSC)  
**Cc:** Nguyen, Quang D (PSC); Vinsel, Nancy (PSC); 'mdgoss@gossamfordlaw.com'; 'david@gossamfordlaw.com'; 'ebuckley@gossamfordlaw.com'; Goodman, Rebecca (KYOAG); Cook, Larry (KYOAG); 'Allyson.Sturgeon@lge-ku.com'; Sara.Veeneman@lge-ku.com; 'MKurtz@bkllawfirm.com'; 'kboehm@bkllawfirm.com'; 'jkylercohn@bkllawfirm.com'; 'rrnoore@stites.com'; 'BatesandSkidmore@gmail.com'; 'dbarberi@lexingtonky.gov'; 'abrown2@lexingtonkv.gov'; 'jgraham@lexingtonky.gov'; Todd Osterloh (tosterloh@sturgillturner.com); 'childerslaw81@gmail.com'; 'casey.roberts@sierraclub.org'; 'matthew.miller@sierraclub.org'; 'jgardner@sturgillturner.com'; 'Lzielke@zielkefirm.com'; 'jtheriot@zielkefirm.com'; 'ggillespie@sheppardmullin.com'; 'pwerner@sheppardmullin.com'; 'cross@sheppardmullin.com'; 'crwinn@waterslawgroup.com'; 'dparker@spilmanlaw.com'; 'bnaum@spilmanlaw.com'; 'charris@spilmanlaw.com'; 'GDutton@goldbergsimpson.com'; 'lross@klc.org'; 'mmalone@hdmfirm.com'; 'bmay@hdmfirm.com'; Crosby, W. Duncan; Ingram III, Lindsey; Braun, Monica; Wuetcher, Gerald  
**Subject:** RE: Case No. 2016-00370: Kentucky Utilities Company  
**Attachments:** Errata ProposedFindingsOfFactAndConclusionsOfLaw.pdf; Errata ProposedFindingsOfFactAndConclusionsOfLaw.DOCX

Mr. Raff

Please find in the attached Word and PDF files an errata of Kentucky Utilities Company's Proposed Findings of Fact and Conclusions of Law for the Commission's consideration in the disposition of the Motion for Intervention of East Kentucky Power Cooperative, Inc. At page 4 in paragraph no. 15 in the Findings of Fact, I inadvertently omitted the phrase "does not" from the fourth full sentence beginning on the third line from the bottom of the paragraph. The sentence corrected for the mistake reads: "When providing transmission service to EKPC, KU does not assess any charge or fee for such service to an EKPC-member cooperative or any customer of an EKPC-member cooperative." I apologize for my oversight.



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**From:** Wuetcher, Gerald

**Sent:** Wednesday, January 25, 2017 5:04 PM

**To:** Raff, Richard (PSC)

**Cc:** [QuangD.Nguyen@ky.gov](mailto:QuangD.Nguyen@ky.gov); Vinsel, Nancy (PSC) ([Nancy.Vinsel@ky.gov](mailto:Nancy.Vinsel@ky.gov)); 'mdgoss@gosssamfordlaw.com'; 'david@gosssamfordlaw.com'; 'ebuckley@gosssamfordlaw.com'; 'Rebecca.Goodman@ky.gov'; 'Larry.Cook@ky.gov'; 'Allyson.Sturgeon@lge-ku.com'; 'Sara.Veeneman@lge-ku.com'; 'MKurtz@bkllawfirm.com'; 'kboehm@bkllawfirm.com'; 'jkylercohn@bkllawfirm.com'; 'rrnoore@stites.com'; 'BatesandSkidmore@gmail.com'; 'dbarberi@lexingtonky.gov'; 'abrown2@lexingtonkv.gov'; 'jgraham@lexingtonky.gov'; Todd Osterloh ([tosterloh@sturgillturner.com](mailto:tosterloh@sturgillturner.com)); 'childerslaw81@gmail.com'; 'casey.roberts@sierraclub.org'; 'matthew.miller@sierraclub.org'; 'jgardner@sturgillturner.com'; 'Lzielke@zielkefirm.com'; 'jtheriot@zielkefirm.com'; 'ggillespie@sheppardmullin.com'; 'pwerner@sheppardmullin.com'; 'cross@sheppardmullin.com'; 'crwinn@waterslawgroup.com'; 'dparker@spilmanlaw.com'; 'bnaum@spilmanlaw.com'; 'charris@spilmanlaw.com'; 'GDutton@goldbergsimpson.com'; 'lross@klc.org'; 'mmalone@hdmfirm.com'; 'bmay@hdmfirm.com'; Riggs, Kendrick R.; Crosby, W. Duncan; Ingram III, Lindsey; Braun, Monica

**Subject:** Case No. 2016-00370: Kentucky Utilities Company

Mr. Raff:

Pursuant to Chairman Schmitt's directive at the 1/23/2017 hearing in the above-referenced matter and to your e-mail message of 1/24/2017, attached are Kentucky Utilities Company's Proposed Findings of Fact and Conclusions of Law for the Commission's consideration in the disposition of the Motion for Intervention of East Kentucky Power Cooperative, Inc. The document is provided in Microsoft Word format and Portable Document Format.

A copy of this e-mail message with attachments has been sent to Counsel for East Kentucky Power and to all other counsel of record in this proceeding.

Sincerely,



**Gerald E. Wuetcher**

Counsel to the Firm

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859-550-3894 Mobile

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Lexington, KY 40507-1801

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The following message, and any documents or previous e-mails attached to it, may contain confidential information protected by the attorney-client privilege. If it was sent to you in error, do not read it. Please inform the sender that you received it and then delete it. Thank you.

**COMMONWEALTH OF KENTUCKY**  
**BEFORE THE PUBLIC SERVICE COMMISSION**

**In the Matter of:**

<b>APPLICATION OF KENTUCKY UTILITIES</b>	)	
<b>COMPANY FOR AN ADJUSTMENT OF ITS</b>	)	
<b>ELECTRIC RATES AND FOR</b>	)	<b>CASE NO. 2016-00370</b>
<b>CERTIFICATES OF PUBLIC</b>	)	
<b>CONVENIENCE AND NECESSITY</b>	)	

**KENTUCKY UTILITIES COMPANY'S PROPOSED FINDINGS OF  
FACT AND CONCLUSIONS OF LAW**

Pursuant to the Commission's direction at the January 23, 2017 hearing on East Kentucky Power Cooperative, Inc.'s Motion for Intervention, Kentucky Utilities Company ("KU"), by counsel, respectfully submits its Proposed Findings of Fact and Conclusions of Law for the Commission's consideration in the disposition of the Motion for Intervention of East Kentucky Power Cooperative, Inc.

**PROPOSED FINDINGS OF FACT**

1. Kentucky Utilities Company ("KU") owns and operates facilities that are used in connection with the generation, transmission and distribution of electricity to or for the public, for compensation, for lights, heat, power, and other uses.

2. KU provides retail electric service to approximately 519,000 retail customers in 77 Kentucky counties.

3. To provide retail electric service, KU operates a transmission and distribution network that is present in 77 counties and covers approximately 4,567 circuit miles.<sup>1</sup>

4. In addition to providing retail electric service in Kentucky, KU provides wholesale electric service to the cities of Barbourville, Bardstown, Bardwell, Berea, Corbin, Falmouth, Frankfort, Madisonville, Nicholasville, Paris, and Providence; provides retail electric

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<sup>1</sup> Testimony of Paul W. Thompson at 22 (filed Nov. 23, 2016).

service in Virginia under the name of Old Dominion Power Company; and provides wholesale transmission services to other electric utilities, including East Kentucky Power Cooperative Corporation, Big Rivers Electric Cooperative Corporation, Tennessee Valley Authority and Owensboro Municipal Utilities and Kentucky Municipal Power Agency.

5. KU provides wholesale transmission services to other electric utilities under the provisions of its Open Access Transmission Tariff which is filed with the Federal Energy Regulatory Commission (“FERC”). KU has no rate schedule or tariff on file with the Kentucky Public Service Commission (“Commission”) regarding the provision of wholesale transmission service.

6. On November 23, 2016, KU applied to the Commission for a 6.4 percent increase in its base rates for retail service by filing revised tariffs pursuant to KRS 278.180. KU’s application also seeks a Certificate of Public Convenience and Necessity (“CPCN”) for the full deployment of Advanced Metering Systems across its Kentucky service territory, and a CPCN for its Distribution Automation project. KU supported its application for proposed rate adjustment with a 12-month forecasted test period ending June 30, 2018. Finding an investigation was necessary to determine the reasonableness of the proposed rates, the Commission pursuant to KRS 278.190 suspended the operation of the proposed rates and initiated this proceeding.

7. In its application, KU forecasted capital expenditures of \$149.2 million on transmission reliability and resiliency improvements from the period from July 1, 2016 to June 30, 2018. These improvements involve the replacement of defective line equipment (e.g., wood poles, cross-arms, and insulators); overhead lines; circuit breakers; protection and control systems; improvements to line sectionalizing; underground cable; control houses; switches; and

miscellaneous substation equipment.<sup>2</sup> In support of these forecasted test period expenditures, KU provided its *Transmission System Improvement Plan* for 2017-2021 which details KU's five-year plan to improve its transmission system.

8. The forecasted expenditure of \$149.2 million is the aggregate cost of numerous transmission reliability and resiliency improvement projects for the period from July 1, 2016 to June 30, 2018 and represents approximately 2.4 percent of KU's total net utility plant as of December 31, 2015.<sup>3</sup> When considered on an individual basis, each of proposed improvement projects represents less than one percent of KU's net utility plant.

9. In its application, KU did not request a CPCN for the transmission reliability and resiliency improvements that it expects to make between July 1, 2016 and June 30, 2018 or for any Commission approval of those improvements. KRS 278.020(2).

10. East Kentucky Power Cooperative ("EKPC") is a rural electric cooperative that organized pursuant to KRS Chapter 279.

11. EKPC owns and operates facilities that are used in connection with the generation and transmission of electricity to its 16 member cooperatives.

12. Each of EKPC's member cooperatives purchases power from EKPC to serve persons located within each member's retail certified territory.

13. EKPC does not provide retail electric service or directly serve the customers of its member cooperatives.

14. To transmit electric power from its generation facilities to its member cooperatives at certain delivery points, EKPC uses its own transmission lines and purchases wholesale transmission services from KU to deliver EKPC's power over KU's transmission lines

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<sup>2</sup> *Id.* at 27.

<sup>3</sup> KU's net utility plant as of December 31, 2015 was \$ 6,232,156,913. *Report of Kentucky Utilities Company to the Kentucky Public Service Commission for the Year Ending December 31, 2015* at 15 of 190.

to EKPC's distribution cooperatives for delivery through their distribution system or directly to the customers of the distribution cooperatives.

15. When EKPC purchases wholesale transmission services from KU, it uses KU transmission facilities to deliver EKPC generated or purchased power to EKPC-member cooperatives' distribution facilities in exchange for the transmission services fee set forth in KU's Open Access Transmission Tariff on file with the FERC. KU and EKPC are the only parties to the transaction. KU provides transmission services only and does not sell electric power to any EKPC member cooperative or to any customer of an EKPC-cooperative member as part of this service. When providing transmission service to EKPC, KU does not assess any charge or fee for such service to an EKPC-member cooperative or any customer of an EKPC-member cooperative.

16. EKPC has moved to intervene in this proceeding. It bases its request for intervention on "its unique and substantial interest in the transmission service and rates of KU"<sup>4</sup> and states that the purpose of its intervention in this proceeding is to "scrutinize the investments KU/LG&E propose to make in their electric transmission infrastructure"<sup>5</sup> and "to assure that KU's investment in its transmission system is adequate and non-discriminatory so as to assure that the EKPC customers served by KU's transmission system are not disadvantaged by KU's transmission investment decisions."<sup>6</sup>

17. EKPC has not contested or set forth any objection to KU's proposed rates or any of the other requests for relief set forth in KU's application.

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<sup>4</sup> EKPC Motion to Intervene at ¶ 6 (filed Dec. 21, 2016).

<sup>5</sup> *Id.*

<sup>6</sup> EKPC Reply In Support of Motion for Leave to Intervene at ¶ 4 (filed Jan. 3, 2017).

18. EKPC may seek review of the KU's wholesale transmission service from the FERC.<sup>7</sup>

### **PROPOSED CONCLUSIONS OF LAW**

1. Except for the Attorney General,<sup>8</sup> no person has a statutory right to intervene in a Commission proceeding. Intervention is permissive and is within the Commission's sound discretion. *Inter-County Rural Electric Cooperative Corporation v. Public Service Commission of Kentucky*, 407 S.W.2d 127, 130 (Ky. 1966).

2. The Commission's discretion to permit intervention is subject to two limitations. "[T]he person seeking intervention must have an interest in the 'rates' or 'service' of a utility." *EnviroPower, LLC v. Public Service Commission of Kentucky*, No. 2005-CA-001792-MA (Ky. App. Feb. 2, 2007) at 9. He must also demonstrate either (1) a special interest in the proceeding which is not otherwise adequately represented in the case, or (2) that intervention is likely to present issues or develop facts that will assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings. 807 KAR 5:001, Section 4(11)(b).

3. The only issues presented by KU's application are the reasonableness of its proposed rates and conditions of service for retail electric service and the need for the deployment of its Advanced Metering Systems and for the implementation of its Distribution Automation project.

4. EKPC has failed to identify any interest in any KU rate or service is within the Commission's jurisdiction. EKPC's stated purpose for intervention is "to assure that KU's investment in its transmission system is adequate and non-discriminatory so as to assure that the EKPC customers served by KU's transmission system are not disadvantaged by KU's

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<sup>7</sup> 16 U.S.C § 825e.

<sup>8</sup> See KRS 367.150(8)(b).

transmission investment decisions.”<sup>9</sup> EKPC has not stated any interest in KU’s proposed retail rates, its proposed revisions to its conditions of providing retail electric service, the proposed construction projects for which KU has sought a CPCN, or any other relief that KU has requested in its Application.

5. The Commission has jurisdiction over the rates and services of utilities in Kentucky. KRS 278.040(2).

6. KU is a “utility” as defined in KRS 278.010(3).

7. As KU is a utility, the Commission has jurisdiction over KU’s rates and services. KRS 278.040(2).

8. Federal law, however, preempts state regulation of “the transmission of electric energy in interstate commerce” or “the sale of electric energy at wholesale in interstate commerce” and vests regulatory authority over those matters in the FERC. 16 U.S.C. § 824; *New York v. FERC*, 535 U.S. 1 (2002).

9. The Commission has previously recognized this preemption and acknowledged that the Commission’s jurisdiction extends only to issues of retail electric rates and service and does not extend to issues related to a jurisdictional electric utility’s provision of wholesale transmission service. *See Investigation Into the Membership of Louisville Gas and Electric Company and Kentucky Utilities Company in the Midwest Independent Transmission System Operator, Inc.*, Case No. 2003-00266 (Ky. PSC Oct. 2, 2003) at 2 (“The Commission’s regulatory authority over LG&E and KU is limited to their respective rates and service for retail customers. Issues relating to the wholesale transmission of electric energy over facilities owned

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<sup>9</sup> *Supra* note 4.

by an investor-owned utility and the rates for that transmission have always been under FERC jurisdiction.”).<sup>10</sup>

10. While the Commission may examine KU’s proposed transmission improvement expenditures as to their effect on retail rates and service, the Commission has no jurisdiction to consider how should KU operates its wholesale transmission system or whether KU has adequately funded and maintained its transmission facilities to provide reasonable and reliable **wholesale transmission service** to its **wholesale transmission service customers** such as EKPC; to determine if additional transmission facilities are necessary to support its **wholesale transmission service**, or to determine, if additional facilities or improvements to support its **wholesale transmission service** are necessary, the nature and character of such facilities or improvements. Such issues are within the exclusive jurisdiction of the FERC.<sup>11</sup>

11. Accordingly the Commission lacks jurisdiction over KU’s wholesale transmission service.

12. While KRS 278.020(1) permits the Commission to consider the possible interstate benefits resulting from the proposed construction or modification of electric transmission facilities when considering an application for a CPCN to construct an electric transmission line, the current proceeding does not involve such an application. KU has not applied for a CPCN to construct a transmission line. KU is proposing to invest additional capital to replace and upgrade its existing transmission system to maintain and improve reliability and resiliency. As KU has

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<sup>10</sup> See also *Application of AEP Kentucky Transmission Company, Inc. for a Certificate of Public Convenience and Necessity Pursuant to KRS 278.020 to Provide Wholesale Transmission Service in the Commonwealth*, Case No. 2011-00042 (Ky. PSC June 10, 2013) at 7 (holding that the provision of wholesale transmission service is not a “regulated service within the parameters of the Commission’s jurisdiction under KRS Chapter 278.”).

<sup>11</sup> See *The 2008 Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company*, Case No. 2008-00148 (Ky. PSC July 18, 2008) at 4 (noting that the operation of the LG&E/KU transmission system is governed by the Companies’ Open Access Transmission Tariff which “is a matter directly under the jurisdiction of the Federal Energy Regulatory Commission”).

not made such application, consideration of any arguments regarding such benefits or related matters is not permissible.

13. EKPC's intervention cannot be based upon the premise that KU's proposed transmission reliability and resiliency improvement projects require a CPCN. KRS 278.020(2) exempts those improvement projects from any requirement to apply for a CPCN. It provides that the replacement or upgrading of any existing electric transmission line shall be considered an ordinary extension of an existing system in the usual course of business and shall not require a CPCN. KU's forecasted capital expenditures of \$149.2 million on transmission reliability and resiliency improvements clearly involve the replacement or upgrading of existing transmission lines.

14. Assuming *arguendo* that KRS 278.020(2) is not applicable to the present case and that KRS 278.020(1) governs whether KU's transmission reliability and resiliency improvements required a CPCN, the Commission must review each improvement individually and not consider the improvement projects in aggregate to determine if the improvements are ordinary extensions in the usual course of business.<sup>12</sup> Given that the size of each of the proposed improvements in relation to KU's net utility plant is very small, that each improvement was intended to replace an antiquated or obsolete existing facility, and its individual cost would not have a material effect on rates, each improvement meets the regulatory definition of an "extension in the ordinary course."<sup>13</sup>

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<sup>12</sup> See *Clark Energy Cooperative, Inc.: Alleged Failure to Comply with Commission Regulations*, Case No. 2012-00219 (Ky. PSC Nov. 20, 2012) at 2 ("The Commission has determined that each construction project contained in a CWP [Construction Work Plan] should be analyzed on an individual basis to determine whether that individual project is exempt from the requirement in KRS 278.020(1) to obtain a CPCN."). See also PSC Staff Opinion 2012-014 (July 16, 2012).

<sup>13</sup> See 807 KAR 5:001, Section 15(3) (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

15. EKPC's intervention in this matter will unduly complicate and disrupt proceeding by introducing an issue – wholesale transmission service – over which the Commission has no jurisdiction and which is unrelated to KU's proposed rates and conditions of service, the facilities for which KU seeks a CPCN, or any other relief that KU has requested in its Application.

16. EKPC has failed to satisfy the statutory and regulatory prerequisites for intervention in this matter as it has failed to demonstrate an interest in KU's retail rates and service and that its intervention in this proceeding will unduly complicate and disrupt this proceeding. Its motion for intervention should be denied.

Dated: January 25, 2017

Respectfully submitted,

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sufficient capital outlay to materially affect the existing financial condition of the utility involved, or will not result in increased charges to its customers.”).

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