COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF LOUISVILLE GAS AND ELECTRIC COMPANY AND KENTUCKY UTILITIES COMPANY FOR APPROVAL OF A SOLAR POWER CONTRACT AND TWO RENEWABLE POWER AGREEMENTS TO SATISFY CUSTOMER REQUESTS FOR A RENEWABLE ENERGY SOURCE UNDER GREEN TARIFF OPTION #3	)))))))	CASE NO. 2020-00016

O R D E R

The matter is before the Commission upon a Petition for Reconsideration and Clarification (Petition) by Louisville Gas and Electric Company (LG&E) and Kentucky Utilities Company (KU), (jointly LG&E/KU or the Companies), which seeks reconsideration and clarification on certain aspects of the May 8, 2020 Order (Final Order) in this matter. Among other things, the Final Order (1) found that Commission approval is not necessary for a portion of a 20-year solar power purchase agreement (PPA); (2) approved two 20-year renewable power agreements (RPA) between KU and Toyota Motor Manufacturing, Kentucky, Inc. (Toyota) and Dow Silicones Corporation (Dow), subject to certain modifications; and (3) ordered certain amendments to LG&E/KU's respective Green Tariff Standard Rate Rider GT (Green Tariff) Option #3. LG&E/KU request reconsideration of the Final Order's Fuel Adjustment Clause (FAC) approach for the PPA and the RPA modifications, and reconsideration and clarification of the Green Tariff modifications. The Attorney General of the Commonwealth of Kentucky, by and through the Office of Rate Intervention (Attorney General), filed a Response to Petition

for Reconsideration and Clarification (Attorney General's Response) addressing issues LG&E/KU raised in their Petition. LG&E/KU filed a Reply to Attorney General's Response to Petition for Reconsideration and Clarification (Reply) in support of their request. The matter now stands submitted for a decision by the Commission.

DISCUSSION

1. FAC Approach

The first issue raised by LG&E/KU for rehearing involves the Final Order's treatment of the PPA assigned to native load as economy energy purchases and the proposed biennial review by the Commission of those purchases through LG&E/KU's FAC. LG&E/KU argue that the Commission's determination that LG&E/KU should perform a process both with and without the PPA energy purchases over the two-year FAC review period to determine the reasonableness of the PPA costs is contrary to Commission precedent.[1] LG&E/KU argue that the Commission-approved methodology for determining "economic" vs. "non-economic" power purchases in the FAC mechanism is already established and readily available, and that the Commission should continue to apply the "highest cost unit calculation" approach when reviewing electric utility fuel costs.[2] LG&E/KU argue that After-the-Fact-Billing (AFB) is an accounting methodology, not a tool that can be used to analyze the cost-effectiveness of the PPA, and thus AFB does not provide an appropriate basis of comparison to determine cost-effectiveness of the PPA purchases.[3] LG&E/KU request that the Final Order be revised to direct the use

[1] Petition at 2-3.

[2] *Id*.

[3] *Id*. at 5.

of the "highest cost unit calculation" to determine the cost-effectiveness of the portion of the PPA allocated to all customers.[4]

The Attorney General states that the Commission's findings in the Final Order seek to ensure that the PPA and RPAs do not negatively affect ratepayers but did not expressly respond to the appropriate FAC review methodology.[5]

Having reviewed the relevant record, the rehearing pleadings, and being otherwise sufficiently advised, the Commission finds that LG&E/KU have established that rehearing is justified on this issue only to the extent that it is necessary to determine the process and burden of proof applicable to the FAC review of nonfirm energy arising under the PPA to serve native load outside of the RPAs. In the limited scope of rehearing on this issue, the Commission will investigate how placing energy arising under the PPA at the "bottom of the generation dispatch stack through the . . . AFB process thus pushing all other resources higher in the stack and displacing the equivalent highest cost resources"[6] is representative of the actual economics and how this process will provide the Commission any actionable information whether the PPA purchases are economic. Additionally, because the Companies' argument for the "highest cost unit calculation" in their rehearing petition discussed determining the economics of energy purchases only "during the reporting expense month," the Commission will use the opportunity of rehearing to determine whether a shorter economic netting period is more appropriate

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[4] *Id*. at 6.

[5] Attorney General's Response at 2.

[6] LG&E/KU's Response to Commission Staff's First Request for Information (Staff's First Request), Item 10.

than the two-year review established in the Final Order.[7] The Commission's position on the economics and recovery of the energy arising from the PPA allocated to native load is that the PPA energy is not economic if, on a net basis, it is displacing cheaper electricity, and thus will not be recoverable for that review period absent some other compelling reason.

In their Reply, the Companies claim that "[t]he record of this proceeding is uncontradicted and clearly demonstrates that the PPA . . . is a least cost option and is likely to produce significant savings for the Companies' ratepayers."[8] The Commission made no such findings in its Final Order in this matter. To make such a finding would prejudge the Commission's actual review of the economics in later FAC proceedings. To the extent that a finding is required, the Commission will now make findings of fact as to the weight it provides the evidence that LG&E/KU claim "clearly demonstrates . . . the PPA . . . is a least cost option."[9]

LG&E/KU's analysis of 42 scenarios was purposefully and unnecessarily screened in such a way that the analysis was divorced from LG&E/KU's own planning data, and the actual choices and management decisions ultimately facing the utilities. First, the only resources LG&E/KU reviewed for "least cost" energy were renewable sources.[10] Second, the Companies' modeling assumed only a zero and high future CO_2 price, without sufficient explanation as to why those assumptions were reasonable and without

[7] Petition at 3–4.

[8] Reply at 2.

[9] *Id*.

[10] Direct Testimony of David S. Sinclair (Sinclair Testimony) at 5.

providing evidence as to the likelihood or expectation of a price on CO_2.[11] Last, in considering "the timing of the retirement of the Companies' generating units," the Companies inexplicably used both long (65 year) and short (55 year) asset lives, ignoring the actual planned depreciable lives customers have paid tens-of-thousands of dollars to be determined and the Commission recently approved base rates to reflect.[12] Thus, the analysis cannot accurately be deemed an evaluation of least-cost energy, but instead an evaluation of least-cost renewable energy proposals premised upon untested assumptions and assumptions at odds with the case record in recent proceedings. LG&E/KU is on notice that the Commission will depend on the *actual* economics of the energy arising under the PPA, net of *actual* REC sales, to determine the appropriateness of cost recovery from native customers.

2. RPA Modifications

LG&E/KU argue that the Final Order's RPA modifications, which require all demand offsets be removed from the RPAs, will likely result in net economic harm to LG&E/KU's customers and the Commonwealth of Kentucky.[13] LG&E/KU state that the Final Order could have the unintended consequence of changing the economics of Green Tariff Option #3 participation to drive larger customers to construct behind-the-meter renewable generating facilities, which would shift an even greater amount of fixed costs to nonparticipants.[14] LG&E/KU further argue that larger customers have many options to

[11] Sinclair Testimony, Exhibit DSS-2.

[12] Sinclair Testimony at 15–16, Exhibit DSS-2 at 8 of 44.

[13] Petition at 6.

[14] *Id*. at 6–7.

reduce their demand charges and many already utilize cost-minimizing strategies.[15] LG&E/KU request that the Commission reconsider the modifications to remove the demand-charge offsets because the RPAs as proposed balance the risk of cost shifting to nonparticipants.[16]

The Attorney General states that "the Commission correctly put into place checks and balances to ensure that Toyota and Dow were able to meet their private corporate goals without risk to other ratepayers."[17] The Attorney General is opposed to any provisions of the RPAs that allow fixed cost recovery to shift to nonparticipants, including the proposed demand-charge offsets.[18]

As an initial matter, the Commission notes that evidence in the case record supports its determination that the RPAs will result in cost shifting and that, in their Petition, LG&E/KU acknowledge the cost shift, stating reductions in demand "shift[s] the costs for legacy assets among customers in future rate proceedings."[19] The Companies state that Dow and Toyota "are not looking for a subsidy,"[20] yet as proposed, that is exactly the result of the RPAs. Toyota and Dow will receive a subsidy because nonfirm energy produced by the solar facility offsets Toyota's and Dow's demand, resulting in a shift in cost recovery of fixed assets in subsequent rate proceedings from Toyota and

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[15] *Id*. at 7.

[16] *Id*.

[17] Attorney General's Response at 2.

[18] *Id*. at 1.

[19] Petition at 8.

[20] *Id*. at 8.

Dow to LG&E/KU's nonparticipating customers.[21] When Toyota's and Dow's demand are reduced by the energy produced by the solar facility coincident with their usage, the rates they are assigned in later rate cases will include a smaller allocation of fixed costs, namely production assets. These production assets, in the form of thousands of megawatts of fossil fuel generation, were built for and exist to serve the Companies' customers, including the significant demand Dow and Toyota have represented for decades. Nevertheless, the Companies now, upon rehearing, argue for the Commission to ignore these eventual cost shifts in the name of economic development.[22] The Companies' attempt to use the ratemaking scheme set forth by the legislature to propose this type of corporate welfare, solely to accommodate entities' internal goals, is misplaced and inappropriate, and it sends the wrong message to customers. Approving the Companies' request in this regard would not result in fair, just, or reasonable rates. The Commission will not reconsider its requirement that the instant RPAs contain no demand-charge offset. In fact, the Commission will take this opportunity to make explicit what its previous Order noted implicitly: special contracts and tariffs used to provide energy for specified customers should not allow for an avoidance by those customers of costs that do not vary with usage. As explained in more detail below, the Commission's decision on this matter is consistent with decades of precedent, proper ratemaking to ensure fair, just, and reasonable rates and with the Companies' statements, positions, and sworn testimony over the years.

[21] Sinclair Testimony at 10.

[22] Petition at 9.

The Commission's finding is also consistent with its precedent regarding cost shifting in PPAs. The Commission recently denied a PPA because the alleged savings under the agreement were actually cost shifts to remaining customers, with the cost shift derived from a party to the agreement "avoid[ing] costs that were incurred on its behalf . . . to the detriment of" remaining customers.[23] Due to the cost shifting, the Commission found the agreement was not fair, just, and reasonable and that it was "unjustly discriminatory."[24] That matter was analogous to the one at hand, whereby the PPA was tendered in an attempt to comply with a tariff. In that proceeding, the Commission also found that Chapter 278 requires "that whenever the Commission finds that any practice or service employed by a utility is not fair, just, or reasonable, or unjustly discriminates, the Commission can establish a just and reasonable practice to be followed in the future."[25] Accordingly, in this proceeding, the Commission made modifications to the RPAs and directed the Companies to amend their Green Tariff Option #3 moving forward.

LG&E/KU raise a new issue in rehearing, arguing that the Commission should ignore eventual cost shifts for agreements under Green Tariff Option #3 because the RPAs are akin to economic development rates (EDR).[26] The Companies' argument ignores that, for three decades, the Commission required utilities to satisfy certain preconditions in order to provide special rates for economic development purposes. In Administrative Case No. 327, the Commission examined and determined "guidelines

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[23] Case No. 2018-00050, *Electronic Application of South Kentucky Rural Electric Cooperative Corporation for Approval of Master Power Purchase Agreement and Transaction Thereunder* (Ky. PSC Sept. 27, 2018) at 33.

[24] *Id*.

[25] *Id*.

[26] Petition at 8-10.

regarding economic development rates," which are discounts "offered to large commercial and industrial customers, which is intended to stimulate the creation of new jobs and capital investment both by encouraging existing customers to expand their operations and by improving the likelihood that new large commercial and industrial customers will locate in Kentucky."[27] Assuming *arguendo* that the RPAs were EDRs, the record is devoid of any evidence to support compliance with the Commission's long-held requirements for EDRs. LG&E/KU provided only unsupported, conclusory statements regarding ratepayer benefits from the cost shifting, and only did so in seeking rehearing.[28] Further, LG&E/KU have not provided any additional evidence pertaining to its argument that RPAs should be treated as EDRs that, even with reasonable diligence, could not have been offered during the pendency of this matter, nor did LG&E/KU address why this issue was not raised during the pendency of this case.[29] This is especially so given that LG&E/KU noted the resulting cost shifts from the RPAs during the pendency of this matter.

Next, LG&E/KU argue that, if the Commission does not allow Dow and Toyota to offset some demand that results in a known subsidy, the Commission opens up the door for industrial customers to install "renewable generating facilities behind the meter," thus allowing for a larger, but uncertain, demand offset.[30] The Commission made a conscious decision on this matter in its Final Order. The Commission's standing position on this issue is reflected in the tariffs and orders approving the number of green tariffs other

[27] Administrative Case No. 327, An *Investigation Into the Implementation of Economic Development Rates by Electric and Gas Utilities* (Ky. PSC Sept. 24, 1990), Order at 1.

[28] Petition at 7–9.

[29] KRS 278.400.

[30] Petition at 6–7.

utilities have in the Commonwealth that ensure there is no shift in fixed costs for a customer who wants additional renewable energy.[31] The Commission is not required to weigh every decision it makes in the text of an order, particularly on an issue that the utility did not raise in its Case in Chief. Behind the meter generation has been available to Dow and Toyota in a number of forms for decades. As evidenced by the responses to the RFP in this matter, economies of scale as a result of a larger projects chosen by the Companies to fulfill multiple requests compared to a small behind the meter project for each customer means that smaller projects will be inherently more expensive per MWh.[32] Additionally, the Companies provided no evidence of the likelihood, or even the economics, of the current proposal verses behind the meter alternatives. In their attempt to ensure the Commission does not miss the forest for the trees, LG&E/KU state, "The Order will limit load growth that would benefit the Companies' customers by increasing demand-charge revenues which recover more fixed costs and may have the unintended

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[31] *See* Case No. 2007-00126, *Notice of Big Rivers Electric Corporation of Change in Rates, and Joint Application of Jackson Purchase Energy Corporation, Kenergy Corp. and Meade County Rural Electric Cooperative Corporation to Change Rates to Reflect Change in Wholesale Rates* (Ky. PSC July, 19, 2007); Case No. 2017-00179, *Electronic Application of Kentucky Power Company for (1) A General Adjustment of Its Rates for Electric Service; (2) An Order Approving Its 2017 Environmental Compliance Plan; (3) An Order Approving Its Tariffs and Riders; (4) An Order Approving Accounting Practices to Establish Regulatory Assets and Liabilities; and (5) An Order Granting All Other Required Approvals and Relief* (Ky. PSC Jan. 18, 2018); Case No. 2019-00271, *Electronic Application of Duke Energy Kentucky, Inc. for 1) An Adjustment of the Electric Rates; 2) Approval of New Tariffs; 3) Approval of Accounting Practices to Establish Regulatory Assets and Liabilities; and 4) All Other Required Approvals and Relief* (Ky. PSC Apr. 27, 2020); and Case No. 2019-00378, *Electronic Tariff Filing of East Kentucky Power Cooperative, Inc. to Implement a New Green Energy Option for Non-Residential Retail Customers* (Ky. PSC Mar. 25, 2020). *See also* Big Rivers Electric Corporation, RRES – Renewable Resource Energy Service, PSC KY No. 27, Original Sheet Nos. 57-58; Duke Energy Kentucky, Inc., Green Source Advantage, KY PSC Electric No. 2, Original Sheet No. 87; East Kentucky Power Cooperative, Inc., Rate H – Wholesale Renewable Energy Program, PSC No. 35, First Revised Sheet Nos. 36–38; and Kentucky Power Company, Rider RPO – Renewable Power Option, PSC KY No. 11, First Revised Sheet Nos. 31-1 – 31-2.

[32] Sinclair Testimony at 7.

effect of placing a greater share of those costs on remaining ratepayers."[33] Although made with considerable confidence, such an assertion is supported by no evidence of record. LG&E/KU provided no evidence pertaining to this issue that, even with reasonable diligence, could not have been offered during the pendency of this matter, nor did LG&E/KU explain why it did not raise this issue prior to rehearing.[34] The policy the Companies seek for the Commission to adopt is specious and myopic. The Commission's statutory obligation extends to all customers, not a few.

For the reasons set forth above, the Commission finds that LG&E/KU's request for rehearing on the RPA modifications should be denied. LG&E/KU failed to raise these issues during the pendency of this matter and failed to provide additional evidence that, even with reasonable diligence, could not have been offered during the pendency of this case. There is no basis for the Commission to grant rehearing or modify or vacate its previous Order on this subject. The Commission's finding that the RPAs should be modified is supported by substantial evidence and is consistent with Commission precedent, and therefore is reasonable and lawful.

Having denied rehearing on this issue, the Commission must also address certain representations made by LG&E/KU that are of concern. First, LG&E/KU presented inconsistent statements regarding the role of capacity in regard to the RPAs and the reasonableness of demand offsets from non-firm energy. LG&E/KU represented that they have "generation capacity to meet customer demand,"[35] that the RPAs and PPA are for

[33] Reply at 5.

[34] KRS 278.400.

[35] LG&E/KU's Response to Commission Staff's Second Request for Information (Staff's Second Request), Item 1(a).

the acquisition of “as-available, non-firm energy,”[36] and that the purpose of the RFP that resulted in the PPA was for “lower cost energy that could displace energy on a non-firm basis from the Companies’” current assets.[37] As explained by David S. Sinclair, the PPA does not include capacity, “but [rather] a purchase of non-firm, economy energy”[38] and that “[n]on-firm energy cannot be counted on to reliably serve load.”[39] LG&E/KU previously stated that “absent further retirements, they do not have a need for new capacity”[40] through at least the next decade, and, by LG&E/KU’s own admission, under the agreements pursuant to Green Tariff Option #3, “[a] customer cannot replace any capacity.”[41] Yet, in their proposed RPAs and again on rehearing, the Companies are adamantly supporting that customers under Green Tariff Option #3 offset their demand charges related to fixed generation, in other words capacity, with nonfirm energy produced under the PPA. The Companies’ proposal is to effectively offset apples with oranges.

The Companies created Green Tariff Option #3 to be available only to the largest industrial users. Tariff provisions and contracts that allow only the largest users of a system to participate, designed with knowledge that a cost shift will *certainly* incur, all to

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[36] LG&E/KU’s Response to Staff’s First Request, Item 5(d).

[37] Sinclair Testimony at 6.

[38] *Id*. 8.

[39] *Id*. at 12.

[40] Case No. 2018-00348, *Electronic 2018 Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company*, LG&E/KU’s Response to Attorney General’s Supplemental Request for Information Dated November 25, 2019 (Ky. PSC Dec. 12, 2019) Item 2.

[41] Case No. 2020-00016 (Ky. PSC Mar. 2, 2020) Order, Appendix C, Case No. 2018-00294, Kentucky Utilities Company’s Response to Attorney General’s Supplemental Data Requests for Information Dates, Item 57(b).

guard against a *possibility* a cost shift might occur is not something the Commission will approve in this proceeding. The initial stated purpose of Green Tariff Option #3 was to "allow customers to engage with the Companies to consider entering in to renewable energy purchase agreements to supply some or all of the customer's energy needs."[42] The Companies stated that "Green Tariff Option #3 is targeted at customers who desire utility scale renewable options . . . that will support adding new renewable resources to the grid,"[43] but later noted that the option is only "an initial step in . . . attracting or supporting large companies that have corporate sustainability goals and targets."[44] The Commission agrees with the need for green tariffs, which is why it approved green tariffs proposed by the Companies' and numerous other utilities. What the Commission will not approve are proposals that permit cost shifts to accommodate customers' choices when the costs shifts are not merely *de minimis*, particularly where the opportunity to participate is limited to a small number of customers within defined classes and the cost shifts occur to nonparticipants in numerous classes. This is exactly what the Companies have proposed. The Companies negotiated agreements with Dow and Toyota, two of the only handful of customers who can even participate under Green Tariff Option #3, in order to meet corporate sustainability goals. In discussing the "savings" those companies will potentially receive, Mr. Sinclair noted, "Regardless of the bill impact, both Toyota and Dow will make progress toward meeting their corporate sustainability goals, which each

[42] Case No. 2020-00016 (Ky. PSC Mar. 2, 2020) Order, Appendix A, Case No. 2018-00294 & 2018-00295, Direct Testimony of Robert M. Conroy, at 22.

[43] Case No. 2020-00016 (Ky. PSC Mar. 2, 2020) Order, Appendix, Case No. 2018-00294, Kentucky Utilities Company's Response to Attorney General's Initial Data Requests for Information Dates, Item 170.

[44] LG&E/KU Response to Staff's Second Request, Item 3(b).

considers an important objective."[45] Dow and Toyota's goals are commendable, but they are not reason enough to permit agreements that result in an increase in costs to families, schools, churches, and other businesses.

Furthermore, the Commission notes the Companies' changed position on cost shifting. The Companies have expended a significant amount of time, effort, and money arguing against cost shifting, particularly in regards to alleged cost shifting from customers who install renewable generation. For instance, in LG&E/KU's 2018 rate cases LG&E/KU witness Steve Seelye expressed concern regarding the shifting of fixed cost "to customers who have *not* installed distributed generation technology" when proposing to increase the residential customer charge.[46] In the Commission's 2019 net metering docket, the Companies suggested that "[t]he Commission should continue to adhere to its well-established position that customers should not subsidize other customers' choices."[47] Yet, here the Companies are, on rehearing, asking for exactly that.

Green Tariff Option #3 was approved solely to allow the Companies to provide renewable energy to customers willing to pay for it. The Commission did not approve the tariff for the purpose of reducing costs for certain customers at the expense of others under the guise of economic development. The economics of providing renewable electricity to accommodate specific customer preferences will be what they are, but the

[45] Sinclair Testimony at 28.

[46] Case Nos. 2018-00294 & 2018-00295, Direct Testimony of William Steven Seelye (Sept. 28, 2018) at 20 (emphasis original).

[47] Case No. 2019-00256, *Electronic Consideration of the Implementation of the Net Metering Act*, Comments of Kentucky Utilities Company and Louisville Gas and Electric Company (Ky. PSC Oct. 15, 2019) at 4–5.

costs must be borne by participants themselves. The evidence in the record does not indicate that Dow and Toyota are aware or are explicitly seeking the cost shift presented by the RPAs. The Commission expects that, due to the complexities of ratemaking, Dow and Toyota do not understand that any of the "savings" or economics of the RPAs come at the expense of nonparticipating customers. Nevertheless, to allow LG&E/KU's proposed cost shift sends the wrong message to customers, both current and future. Kentucky is open for green business, but not at the expense of those businesses' neighbors.

3. Requirements of Green Tariff Option #3

LG&E/KU request clarification of the Final Order's requirement to make certain modifications to LG&E/KU's Green Tariff. LG&E/KU state that the modification to allow multiple facilities to aggregate consumption appears to violate 807 KAR 5:041, Section 9(2).[48] LG&E/KU argues that such aggregation of multiple accounts should be required only for the purpose of meeting the minimum threshold requirement for a customer to participate in the Green Tariff Option #3 and that the aggregation of a customer's consumption should be limited to a customer's accounts for facilities at the same geographical location.[49] LG&E/KU request that the Commission confirm their interpretation of the Order on this point.

LG&E/KU also request clarification of the extent that the modifications related to customers' choice of the renewable resource type because they believe it is unclear whether the intent of the modification was to require Green Tariff Option #3 to clearly

[48] Petition at 10–11.

[49] *Id*. at 11.

describe the customer's right to select a type of renewable energy or to limit LG&E/KU's authority to select a specific facility.[50] LG&E/KU state that they interpret the Final Order as requiring them to defer to the customer's preference for resource type, but not the specific facility. LG&E/KU request confirmation of this interpretation.

Finally, LG&E/KU take issue with the Green Tariff Option #3 modifications to prevent cost shifting to nonparticipants. Specifically, LG&E/KU argue against the modifications to "set forth the credits for the avoided cost of the base fuel per MWh, the FAC equal to the renewable energy delivered, and the avoided cost of variable environmental surcharge equal to the delivered renewable energy for each participating agreement and state that credits cannot exceed marginal cost of energy delivered"[51] and the requirement to establish a methodology that ensures "participants do not shift costs to nonparticipants and participants will continue to pay for legacy assets through fixed and variable charges."[52] LG&E/KU argue that these provisions will discourage the consideration of renewable energy and will adversely affect their customers for the same reasons that they oppose the RPA modifications to remove the demand-charge offsets.[53]

The Attorney General does not address the issues related to the Green Tariff Option #3 modifications set forth in the Final Order.

The Commission finds that LG&E/KU have established that rehearing is justified on the issue of aggregation to investigate LG&E/KU's argument that it is contrary to 807

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[50] *Id*.

[51] *Id*. at 11, citing Final Order at 23.

[52] *Id*. at 12, citing Final Order at 23

[53] *Id*. at 12.

KAR 5:041, Section 9(2). The Commission clarifies that the intent of the aggregation is to allow a single customer the ability to aggregate usage from multiple locations to meet the minimum monthly billing load threshold for Green Tariff Option #3. This is similar to aggregation provisions contained in the renewable energy tariffs of East Kentucky Power Cooperative, Inc.,[54] Kentucky Power Company,[55] and Duke Energy Kentucky, Inc.[56] Additionally, LG&E/KU have previously stated their intent for customers with multiple accounts/locations to participate in Green Tariff Option #3 and that the renewable energy will be allocated to those accounts by contract.[57] Thus, the Commission's determination on this issue will provide the Companies an opportunity to draft tariff language to accommodate their previously stated intent.

Having reviewed the relevant record, the rehearing pleadings, and being otherwise sufficiently advised, the Commission finds that LG&E/KU have established that rehearing is justified on the issue of resource identification and selection to the extent that LG&E/KU require clarification of the intent of this provision. The Commission clarifies that the intent

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[54] East Kentucky Power Cooperative, Inc., Rate H – Wholesale Renewable Energy Program, PSC No. 35, First Revised Sheet Nos. 36–38. "The minimum renewable energy capacity to be purchased, supplied, or secured by EKPC in the agreement should be 1 MW. . . . Retail members having multiple services across the EKPC system may aggregate consumption and renewable energy totals into a single agreement."

[55] Kentucky Power Company, Rider RPO – Renewable Power Option, PSC KY No. 11, First Revised Sheet Nos. 31-1 through 31-2. "Customers who wish to directly purchase the electrical output and all associated environmental attributes from a renewable energy generator may contract bilaterally with the Company under Option B. Option B is available to customers taking metered service under the Company's I.G.S., and C.S.-I.R.P. tariffs, or multiple L.G.S. tariff accounts with common ownership under a single parent company that can aggregate multiple accounts to exceed 1000 kW of peak demand."

[56] Duke Energy Kentucky, Inc., Green Source Advantage, KY PSC Electric No. 2, Original Sheet No. 87. "Eligibility for the Program is limited to nonresidential customers with a minimum Maximum Annual Demand of 1,000 kW or a minimum aggregated Maximum Annual Demand at multiple Kentucky service locations of 5,000 kW."

[57] Case No. 2018-00294, Kentucky Utilities Company's Response to Attorney General's Initial Requests for Information Dates, Item 170(g).

of the customer's input in the type of renewable resource is to allow customers the ability to specify the renewable energy resource *type* when participating in Green Tariff Option #3, but that LG&E/KU, subject to Commission approval, have the ultimate authority to select the specific resource. The Commission's intent is consistent with LG&E/KU's previous statements on this issue, namely that "customer[s] can have input into the type of renewable resource so long as there is a market to procure the requested generation,"[58] and that "[t]he Compan[ies] ha[ve] no interest in limiting the type of renewable resource choices of its customers under Option #3."[59]

For the number of reasons stated above, particularly section 2 of this Order, the Companies' request for rehearing regarding the cost shifting and methodology modifications to the Green Tariff Option #3 are denied. As explained above, the Commission will not allow the Green Tariff Option #3 to be designed to shift fixed-cost recovery to nonparticipants. This requirement should be noted clearly in the Companies' tariffs.

IT IS HEREBY ORDERED that:

1. LG&E/KU's motion for rehearing is granted in part and denied in part as discussed in the findings herein.

2. Rehearing is granted to address the methodology applied during the FAC review.

3. Rehearing on the RPA modifications is denied.

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[58] Case No. 2020-00016 (Ky. PSC Mar. 2, 2020) Order, Appendix C, Case No. 2018-00294, Kentucky Utilities Company's Response to Attorney General's Supplemental Data Requests for Information Dates, Item 57(a).

[59] *Id*.

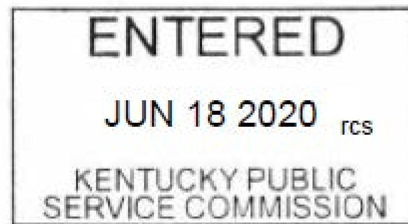
4. Rehearing on the modifications to Green Tariff Option #3 is granted for the limited purpose of determining whether the May 8, 2020 Order is contrary to 807 KAR 5:041, Section 9(2), and to address energy source identification and selection.

5. Rehearing on the modifications to Green Tariff Option #3 regarding cost shifting is denied.

6. The procedural schedule set forth in the Appendix to this Order shall be followed for the processing of this matter on rehearing.

7. All other provisions of the Final Order not in conflict with this Order shall remain in full force and effect.

By the Commission



ATTEST:

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Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 2020-00016 DATED JUN 18 2020

All initial requests for information to LG&E/KU
shall be filed no later than 07/09/20

LG&E/KU shall file responses to initial requests
for information no later than 07/17/20

All supplemental requests for information to
LG&E/KU shall be filed no later than 08/04/20

LG&E/KU shall file responses to
supplemental requests for information no later than... 08/14/20

LG&E/KU or any Intervenor shall request either a hearing or that
the case be submitted for decision based on the record no later than 08/21/20

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