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Governor

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Secretary
Energy and Environment Cabinet

Commonwealth of Kentucky
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Michael J. Schmitt
Chairman

Robert Cicero
Vice Chairman

Talina R. Mathews
Commissioner

March 23, 2020

PARTIES OF RECORD

Re: Case No. 2020-00016

Attached is a copy of a memorandum, which is being filed in the record of the above-referenced case. If you have any comments you would like to make regarding the contents of the memorandum, please do so within five days of receipt of this letter.

If you have any questions, please contact Quang D. Nguyen, Assistant General Counsel, at (502) 782-2586.

Sincerely,

Kent A. Chandler
Executive Director

QN

Attachments

**INTRA-AGENCY MEMORANDUM**

**KENTUCKY PUBLIC SERVICE COMMISSION**

**TO:** Case File – Case No. 2020-00016

**FROM:** Quang D. Nguyen, Assistant General Counsel qdn

**DATE:** March 23, 2020

**RE:** Informal Conference of March 10, 2020

Pursuant to an Order issued on March 2, 2020, an informal conference (IC) was held at the Commission's offices in Frankfort, Kentucky, on March 10, 2020. The purpose of the IC was to discuss the legal standards under KRS 278.020 and 278.300 that Louisville Gas and Electric Company and Kentucky Utilities Company (jointly LG&E/KU) must satisfy with respect to the proposed solar purchase power agreement (PPA), particularly with the provisions associated with the 25 percent of energy that will be retained by LG&E/KU to serve their native load. The IC would also discuss apparent inconsistent statements made by LG&E/KU in previous cases and in the instant matter. The attendance sheet for the IC is attached to this memo.

Commission Staff began the discussions by noting that KRS 278.300 requires the Commission to determine, among other things, that the PPA is for some lawful object within LG&E/KU's corporate purposes and is reasonably necessary and appropriate for such purpose. Staff further noted that KRS 278.300 allows the Commission to grant or deny LG&E/KU's application or grant in part with modifications that the Commission may deem necessary and appropriate. Likewise, KRS 278.020 requires a showing of need and an absence of wasteful duplication. Commission Staff expressed concerns whether, pursuant to Commission precedent applying KRS 278.020 and KRS 278.300, LG&E/KU would be able to satisfy their burden of establishing that the PPA is needed with respect to the energy that is to be allocated to LG&E/KU for their native load and whether that portion of the agreement would result in a wasteful duplication of resources.

LG&E/KU provided their agenda for the IC, a copy of which is attached to this memo, and provided a brief but detailed explanation of the genesis of the companies' Green Tariff Option #3, which was proposed and approved in the 2018 rate cases.[1] LG&E/KU stated that the Green Tariff Option #3 arose out of discussions with other state agencies regarding Kentucky's lack of renewable resource alternatives as a barrier to economic development efforts. LG&E/KU informed that the purpose of the Green Tariff Option #3 was, in part, to publicize that LG&E/KU would be open to considering and procuring renewable resources such that companies that have environmental or

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[1] Case No. 2018-00294, *Electronic Application of Kentucky Utilities Company for an Adjustment of Its Electric Rates* (Ky. PSC April 30, 2019) and Case No. 2018-000295, *Electronic Application of Louisville Gas and Electric Company for an Adjustment of Its Electric and Gas Rates* (Ky. PSC April 30, 2019).

sustainability goals and desiring to relocate or expand operations would have an option of considering LG&E/KU's service territory in Kentucky.

Addressing the legal standards, LG&E/KU's position is that the proposed PPA, including the portion reflecting LG&E/KU's share of the renewable energy output, comports with the requirements of KRS 278.020 and KRS 278.300 because LG&E/KU's only obligation under the contract is to purchase the renewable solar energy if the associated solar facility has actually generated such energy and because those as-available energy purchases, based upon the companies' economic analysis, reflect prices that will be least cost over the term of the contract and will generally displace energy from higher cost generation resources. LG&E/KU contend that their economic evaluation of the PPA is consistent with the analysis that was conducted in their pending Integrated Resource Plan,[2] which modeled the impact under various scenarios including the timing of the retirement of LG&E/KU's generating units, fuel prices, $CO_2$ emissions prices, and REC prices. LG&E/KU further responded that the energy purchases from the PPA will not result in any stranded fuel costs and that the agreement is different from the other purchase power agreements that the Commission has reviewed in the past in that the instant agreement exclusively involves energy purchases on an as-available basis with no capacity component. LG&E/KU state that they are always focused on meeting their customers' energy requirements with the lowest cost energy supply and LG&E/KU consider their portion of the energy from the solar power purchase agreement to be least cost energy, which will act as a substitute for higher cost fuel that the companies would otherwise purchase in the future. Lastly, LG&E/KU point out that credit rating agencies attribute zero debt for contracts associated with long-term commitment for energy-only purchases, noting that those agencies focus upon capacity payment obligations which are considered to be debt equivalent. LG&E/KU also point out that Moody's and S&P have expressed concern over the companies' reliance on coal generation and both have referenced the Green Tariff as mitigating this concern and as a mechanism for the companies to reduce reliance on fossil fuel.

Regarding the renewable energy procurement process associated with the Green Tariff Option #3, which allows certain eligible customers to purchase renewable power via a special contract, LG&E/KU explained that the RFP for renewable resources was issued in early 2019 before the Green Tariff was approved so that the companies could evaluate the potential for local renewable energy to reduce customers' energy costs. LG&E/KU informed that the issuance of the renewable RFP was independent of the Green Tariff Option #3 and done in order to obtain pricing and other relevant information on renewable resources. LG&E/KU stated that it restricted the RFP to energy-only without any fixed capacity payment obligation to limit any impact to the companies' balance sheet. LG&E/KU further stated that it also restricted the RFP to intermittent resources because a request for the lowest energy price from all generation resources, both dispatchable and non-dispatchable, would have resulted in responses that included a fixed capacity cost.

[2] Case No. 2018-00348, *Electronic 2018 Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company* (filed Oct. 19, 2018).

LG&E/KU noted that once it evaluated the responses to the RFP and selected the developer based upon favorable economics, the process of negotiating the PPA and customer renewable power agreements (RPA) was done one step at a time over a two to three month period and that LG&E/KU needed the PPA in place before Toyota and Dow could have certainty and be amenable to those terms. In essence, LG&E/KU informed that they had to marry the terms of the RPAs and PPA, with consideration of the renewable developer's RFP response and the two customers' goals. LG&E/KU further indicated that they had been in discussions with other customers for the remainder of the 25 MW as well as discussion of opportunities under their Business Solar program, but that ultimately no other customers were willing to acquire the remaining 25 MW within the timeframe necessary to execute the PPA.

In light of the fact that the PPA will allocate the energy produced from the associated solar facility to Toyota Manufacturing (energy associated with 50 MW), Kentucky, Inc., Dow Silicones Corporation (energy associated with 25 MW), and to LG&E/KU (energy associated with 25 MW), Commission Staff also inquired LG&E/KU of the impact to the PPA should the Commission approve only certain portions of the PPA but not the agreement in its entirety. LG&E/KU informed that any modification of the PPA would most likely result in the developer modifying the terms of the agreement, which would then have to be reviewed and agreed to by Dow and Toyota.

LG&E/KU expressed that their practice at the Commission and their dealings with Commission Staff and the Commission is to be as transparent as possible and to provide the necessary information to assist the Commission Staff and the Commission in its review of any LG&E/KU proposal. LG&E/KU stated that they will file supplements to discovery responses to help clarify the record and provide additional detailed information regarding the Green Tariff Option #3 and the PPA to resolve any perceived inconsistencies in their statements made in prior cases.

There being no further discussion, the IC was then adjourned.

Attachment

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 |

**Informal Conference – March 10, 2020**

Please sign in:

| NAME | REPRESENTING |
|---|---|
| [illegible] | PSC |
| Mary Whitaker | PSC |
| John Rogness | PSC |
| Daniel Hinton | PSC |
| Keegan Arnold | PSC |
| Tina Frederick | PSC |
| [illegible] | S&O for LG&E/KU |
| Dan Arbough | LG&E/KU |
| Allyson Sturgeon | LG+E/KU |
| David S. Sinclair | LG+E/KU |
| Robert Conroy | LG+E/KU |
| Rick Lovekamp | LG+E/KU |

| NAME | REPRESENTING |
| --- | --- |
| JOHN CROCKETT | LGE-KU |
| John Horne | KY OAG |
| Larry Cook (via Phone) | KY OAG |
| Kent Chandler | PSC |

**COMMONWEALTH OF KENTUCKY**

**BEFORE THE PUBLIC SERVICE COMMISSION**

**In the Matter of:**

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

**Agenda for March 10, 2020 Informal Conference**

1. Purpose of the Green Tariff in 2018 rate case
2. Reason for issuance of the Renewable RFP
   a. Economics of energy from the outcome of RFP
3. Impact of PPA on Company's balance sheet
   a. Favorable response by the market following announcement of the PPA
   b. Energy only, no fixed capacity payments
4. Clarification of Companies' data responses
   a. Staff Data Request 2-2(d)(1)
   b. Staff Data Request 2-4/Case No. 2018-00294-AG 2-57(d)
   c. Staff Data Request 2-8/Case No. 2018-00294-AG 1-170(c)
5. Absence of Wasteful Duplication
6. Need
   - Not capacity/reserve margin
   - Low cost, level priced energy for customers

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