

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF KENTUCKY)	
UTILITIES COMPANY AND LOUISVILLE GAS)	CASE NO.
AND ELECTRIC COMPANY FOR CERTIFICATES)	2025-00045
OF PUBLIC CONVENIENCE AND NECESSITY)	
AND SITE COMPATIBILITY CERTIFICATES)	

ORDER

On November 20, 2025, Kentucky Utilities Company (KU) and Louisville Gas and Electric Company (LG&E) (jointly, LG&E/KU) filed a motion requesting reconsideration of the Order entered October 28, 2025, regarding the mitigation measures contained within the Appendices A and C, as well as a specific mitigation measure allowing the Executive Director to approve a change of the proposed work plan set forth in the Site Assessment Report (SAR).

LEGAL STANDARD

KRS 278.400, which establishes the standard of review for motions for rehearing, limits rehearing to new evidence not readily discoverable at the time of the original hearings, to correct any material errors or omissions, or to correct findings that are unreasonable or unlawful. A Commission Order is deemed unreasonable only when “the evidence presented leaves no room for difference of opinion among reasonable minds.”¹

¹ *Energy Regulatory Comm’n v. Kentucky Power Co.*, 605 S.W.2d 46 (Ky. App. 1980).

An order can only be unlawful if it violates a state or federal statute or constitutional provision.²

By limiting rehearing to correct material errors or omissions, and findings that are unreasonable or unlawful, or to weigh new evidence not readily discoverable at the time of the original hearings, KRS 278.400 is intended to provide closure to Commission proceedings. Rehearing does not present parties with the opportunity to relitigate a matter fully addressed in the original Order.

Relevant to the request, KRS 278.216(1),³ states that “. . . no utility shall begin the construction of a facility for the generation of electricity capable of generating in aggregate more than ten megawatts (10 MW) without having first obtained a site compatibility certificate from the Commission.” KRS 278.216(2) requires

An application for a site compatibility certificate shall include the submission of a site assessment report as prescribed in KRS 278.708(3) and (4), except that a utility which proposes to construct a facility on a site that already contains facilities capable of generating ten megawatts (10MW) or more of electricity shall not be required to comply with setback requirements established pursuant to KRS 278.704(3). A utility may submit and the commission may accept documentation of compliance with the National Environmental Policy Act (NEPA) rather than a site assessment report.

In Case No. 2014-00113, the Commission found that that language in KRS 278.216 was intended for the Commission to consider the factors set forth in a Site Assessment Report

² *Public Service Comm'n v. Conway*, 324 S.W.3d 373, 377 (Ky. 2010); *Public Service Comm'n v. Jackson County Rural Elec. Coop. Corp.*, 50 S.W.3d 764, 766 (Ky. App. 2000); *National Southwire Aluminum Co. v. Big Rivers Elec. Corp.*, 785 S.W.2d 503, 509 (Ky. App. 1990).

³ The Kentucky legislature passed the statute, and it was signed into law in 2002 and amended in 2003. In 2003, the legislature amended the word “board” to “Commission” in this specific subsection.

(SAR) as well as mitigation measure, when appropriate.⁴ Significantly, KRS 278.216(3) states:

The commission may deny an application filed pursuant to, and in compliance with, this section. **The commission may require reasonable mitigation of impacts disclosed in the site assessment report including planting trees, changing outside lighting, erecting noise barriers, and suppressing fugitive dust,** but the commission shall, in no event, order relocation of the facility. (Emphasis added.)

KRS 278.708(3) and (4), passed in 2002 and subsequently amended in 2014 and 2023, was generally written in reference to merchant generating facilities as opposed to utility owned facilities, state that the SAR shall include (1) a detailed description of the proposed site, including surrounding land uses, legal boundaries of the proposed site, proposed access control to the site, the location of facility buildings, transmission lines, and other structures, the location of use of access ways, internal roads, and railways, compliance with applicable setback requirements as provided under KRS 278.704(2), (3), (4), or (5), and evaluation of the noise levels expected to be produced by the facility; (2) an evaluation of the compatibility of the facility with scenic surroundings; (3) potential changes in property values and land use resulting from the siting, construction, and operation of the proposed facility for property owners adjacent to the site; (4) evaluation of anticipated peak and average noise levels associated with the facility's construction and operation at the property boundary; (5) the impact of the facility's operation on road and rail traffic to and within the facility, including anticipated levels of fugitive dust created

⁴ Case No. 2014-00113, *Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for Site Compatibility Certificates for the Construction of a Combined Cycle Combustion Turbine at the Green River Generating Station and a Solar Photovoltaic Facility at the E.W. Brown Generating Station* (Ky. PSC Dec. 19, 2014), Order at 2–3.

by the traffic and any anticipated degradation of roads and lands in the vicinity of the facility; and (6) any mitigating measures to be suggested by the utility to minimize or avoid adverse effects identified in the SAR.

REQUEST FOR RECONSIDERATION

In the request, LG&E/KU argued that the Commission should reconsider and rescind the Site Compatibility Certificate mitigation measures imposed by the October 28, 2025 final Order in Appendices C, for Brown 12, and Appendix E, for Mill Creek 6.⁵ LG&E/KU stated that the mitigation measures, Appendices C and E, exceed the Commission's authority under KRS 278.216(3).⁶ In addition, LG&E/KU claimed the mitigation measures were inconsistent with the Commission's recent precedent, citing to Case No. 2022-00402,⁷ and overlooked the realities of constructing generation at existing, operating generating stations.⁸

LG&E/KU argued that, at a minimum, the Commission should reconsider and rescind the condition requiring the companies to obtain the Public Service Commission's Executive Director's approval to approve construction night shifts,⁹ which is *ultra vires*, internally inconsistent, and likely quite costly.¹⁰

⁵ LG&E/KU's Joint Petition for Reconsideration of October 28, 2025 Order (Joint Petition) (filed Nov. 20, 2025).

⁶ Joint Petition at 2.

⁷ Joint Petition at 2.

⁸ Joint Petition at 3.

⁹ The specific mitigation measure at issue in each Appendix reads as follows, using the mitigation measure from Appendix C: "LG&E/KU are required to limit construction activity, process, and deliveries to the times as set forth in the SAR. If LG&E/KU determines a night shift is necessary, LG&E/KU should submit that request to the executive director. The PSC Executive Director is tasked with determining whether that request should be granted."

¹⁰ Joint Petition at 3-4.

DISCUSSION AND FINDINGS

Having considered the request as well as the evidence in the record, the Commission finds that the request should be granted, in part, and denied, in part, as will be discussed below. The mitigation measures are reasonable, supported by the utilities' own site assessment reports, and assist in transparency and accountability. The Commission notes that LG&E/KU did not cite to KRS 278.400 but did allege that the Appendices contained unreasonable terms and, in one case, an unlawful provision. LG&E/KU alleged one recent, prior Commission final Order supported its position.¹¹ However, the Commission would like to put the final Order and the accompanying appendices into perspective.

LG&E/KU quoted language from the final Order in Case No. 2022-00402, a case which addressed a multitude of issues including new generation, retirements, and a site compatibility certificate.¹² The quote used to support LG&E/KU's motion is accurate and is, in fact, the only material language addressing the request for a site compatibility certificate; however, as discussed below, that language does not limit the Commission in imposing mitigation measures. As noted in a footnote in the request, the Commission approved a solar facility for LG&E/KU in Mercer County, Kentucky¹³ after rendering the final Order in Case No. 2022-00402. In spite of arguments advanced here, the final Order

¹¹ Joint Petition at 2.

¹² Case No. 2022-00402, *Electronic Joint Application of Kentucky Utilities Company and Louisville Gas and Electric Company for Certificates of Public Convenience and Necessity and Site Compatibility Certificates and Approval of a Demand Side Management Plan and Approval of Fossil Fuel-Fired Generating Unit Retirements* (Ky. PSC Nov. 6, 2023), Order at 137.

¹³ Case No. 2023-00361, *Electronic Joint Application of Kentucky Utilities Company and Louisville Gas and Electric Company for a Site Compatibility Certificate for the Construction of a Solar Facility in Mercer County, Kentucky* (Ky. PSC July 12, 2024), Order, Appendix.

in that matter contained mitigation measures as an Appendix, and LG&E/KU did not file a request for reconsideration. In fact, the Commission ordered the following:

Pile driving should be limited to Monday through Saturday, 8:00 a.m. to 6:00 p.m. and other loud construction activities, such as the use of heavy equipment, should be limited to Monday through Saturday, 7:30 a.m. to 7:30 p.m., unless a deviation is granted by the executive director of the Commission, in writing, upon a showing of good cause by LG&E/KU.¹⁴

Likewise, although not referenced by LG&E/KU in this request for reconsideration, the final Order issued in Case No. 2024-00082 contained mitigation measures associated with the Commission's approval of the construction of the battery energy storage system (BESS) at the E.W. Brown Generation Station (Brown Station) for LG&E.¹⁵ As part of that final Order, the Commission discussed the Site Assessment Report (SAR) and included mitigation measures to ensure that the construction did not negatively impact the area surrounding Brown Station.¹⁶ LG&E did not file a motion for reconsideration in that matter. Many of the same measures implemented in this matter were also ordered in that case including notification of the start of construction to surrounding landowners, requirements to minimize noise and dust, even at an operating generating facility.¹⁷ In Case No. 2024-00082 and Case No. 2023-00361 the Commission required LG&E/KU to submit any site plan changes for evaluation and approval, if necessary, and notification

¹⁴ Case No. 2023-00361, (Ky. PSC July 12, 2024), Order, Appendix, mitigation measure 8.

¹⁵ Case No. 2024-00082, *Electronic Application of Louisville Gas and Electric Company for a Site Compatibility Certificate for the Construction of a Battery Energy Storage System Facility at E.W. Brown Generating Station in Mercer County, Kentucky* (Ky. PSC Nov. 26, 2024), Order, Appendix.

¹⁶ Case No. 2024-00082, (Ky. PSC Nov. 26, 2024), Order, Appendix.

¹⁷ Case No. 2024-00082, (Ky. PSC Nov. 26, 2024), Order, Appendix.

of the commencement of construction. However, the mitigation measures were tailored to each individual project and each SAR.

In addition, there have been at least two other applications for Site Compatibility Certificates recently, and in both, the Commission attached an Appendix with specific mitigation measures, neither of which had any motions for rehearing or clarification filed.¹⁸ In one of those final Orders, the Commission included mitigation measures for a current operating generation facility, the Spurlock Generating Station.¹⁹

In this matter, LG&E/KU filed two SARs, each for the proposed Brown 12 NGCC²⁰ and the proposed Mill Creek 6 NGCC.²¹ As part of the examination of this matter, the Commission reviewed the SARs including the cumulative assessment mitigation summary in each report.²² As noted in the discussion of the Order,²³ most of the mitigation measures listed in the Appendices were discussed or specifically outlined in the SARs. For example, as set forth in the Order, the Brown 12 SAR noted “[a]lthough the roadway capacities surrounding the facility are sufficient to handle the construction and operation of the NGCC Unit, consistent with KU’s existing protocols, carpooling and

¹⁸ Case No. 2024-00310 *Electronic Application of East Kentucky Power Cooperative, Inc. for 1) A Certificate of Public Convenience and Necessity to Construct a New Generation Resource; 2) A Site Compatibility Certificate; and 3) Other General Relief* (Ky. PSC May 5, 2025); Case No. 2024-00370 *Electronic Application of East Kentucky Power Cooperative, Inc. for 1) Certificates of Public Convenience and Necessity to Construct a New Generation Resources; 2) for a Site Compatibility Certificate Relating to the Same; 3) Approval of Demand Side Management Tariffs; and 4) Other General Relief* (Ky. PSC July 3, 2025).

¹⁹ Case No. 2024-00370, (Ky. PSC July 3, 2025), final Order.

²⁰ Natural gas combined cycle.

²¹ Application (filed Feb. 28, 2025), Exhibit 5; Application, Exhibit 6.

²² Application, Exhibit 5, Cumulative Assessment Mitigation Summary beginning at 5-1; Application, Exhibit 6, Cumulative Assessment Mitigation Summary beginning at 5-1.

²³ Order, (Ky. PSC Oct. 28, 2025) at 83-97, 104-121.

other trip reduction measures in the area will continue to be encouraged to the extent feasible.”²⁴ This parallels paragraph 15 of Appendix C.

Another example is mitigation measure 16 which was based on the Brown 12 SAR statement: “Additionally, KU has a working practice with the nearby city of Burgin, to restrict non-personnel vehicles from traveling through Burgin to the extent feasible. KU will continue to work with their existing engineering, procurement and construction (EPC) contractor(s) to continue this practice to ensure potential traffic effects within the city of Burgin continue to be minimized.”²⁵

The Mill Creek 6 SAR also noted that:

[b]est management practices will be used during construction to limit fugitive dust emissions. Measures will include watering unpaved roadways, daily sweeping/maintenance of paved roadways, limiting the area of open excavation/grading areas, and providing temporary cover for soil stockpiles. Standard erosion and soil stabilization measures will also be employed throughout the NGCC’s construction phase. These strategies are anticipated to be incorporated in site’s KPDES BMP Plan that will be amended to include the construction operations and disturbances.²⁶

The Commission expects LG&E/KU to abide by the recommendations of their consultant and as such, included a corresponding mitigation measure 19.²⁷

However, as mentioned in the Order, a few additional mitigation measures were added to ensure transparency and accountability. The Commission held two public

²⁴ Application, Exhibit 5 at 3-33; Corresponding mitigation measure is set forth in Appendix C, Mitigation Measure 15.

²⁵ Application, Exhibit 5 at 3-29, 2-20.

²⁶ Application, Exhibit 6 at 3-36.

²⁷ Order (Ky. PSC Oct. 28, 2025), Appendix E.

meetings²⁸ and numerous public comments²⁹ were filed, mainly opposing these projects, or portions thereof. The Commission included reasonable mitigation measures to ensure that the surrounding area's residents, as well as the public, were kept informed and minimally impacted by the projects.³⁰ In addition, the measures attempt to ensure the public's safety in part by requiring the site to be gated and to be locked when not in use.³¹ The measures also require an Emergency Response Plan to be developed in conjunction with local authorities.³²

LG&E/KU specifically argued that several measures are duplicative and unnecessary.³³ However, the Commission feels it is necessary to require certain safety measures be observed as well as compliance with the National Electrical Safety Code. LG&E/KU has expressed the belief that it has met these standards. However, the measures set forth are for future construction projects, during which LG&E/KU shall remain compliant and the mitigation measures ensure the Commission has fulfilled its obligations to the public in this regard.

²⁸ Order (Ky. PSC June 26, 2025).

²⁹ The Public Comments for this case are available at psc.ky.gov.

³⁰ For example, Brown 12 mitigation measure 12 "LG&E/KU shall notify residents and businesses, if any, within 2,400 feet of the Project boundary about the construction plan, the noise potential, any mitigation plans, and its Complaint Resolution Program referred to in Item 20 of this Appendix, at least one month prior to the start of construction." Mill Creek 6 Mitigation Measure 12 "LG&E/KU shall notify residents and businesses, if any, within 2,400 feet of the Project boundary about the construction plan, the noise potential, any mitigation plans, and its Complaint Resolution Program referred to in Item 20 of this Appendix, at least one month prior to the start of construction."

³¹ Order (Ky. PSC Oct. 28, 2025), Appendix C, mitigation measures 6, 7, and 8; Order (Ky. PSC Oct. 28, 2025), Appendix E, mitigation measures 6 and 7.

³² Order (Ky. PSC Oct. 28, 2025), Appendix C, mitigation measure 5; Order (Ky. PSC Oct. 28, 2025), Appendix E, mitigation measure 5.

³³ Joint Petition at 3.

The Commission notes that LG&E/KU reached a Stipulation³⁴ in this case with several of the parties.³⁵ As part of that Stipulation, the parties included certain terms related to Commission's acceptance of the agreement. The Commission accepted the Stipulation with modifications.³⁶ The Commission's final Order triggered Section 8.6 of the Stipulation which includes the following (1) giving notice of withdrawal to all other Parties and (2) timely filing for rehearing or appeal.³⁷ Here, the Commission finds that LG&E/KU did not file anything of record to withdraw from the Stipulation nor did they reference KRS 278.400 in the request. The Commission further finds that no other party filed a response nor filed to withdraw from the Stipulation. Considering the complexity of the case, the favorable outcome for LG&E/KU, and the nature of this request, LG&E/KU will not be unduly burdened by complying with conditions its own consultants put forth in the record.

As noted above, LG&E/KU has previously been subject to a mitigation measure delegating a review to the Commission's Executive Director. LG&E/KU did not object to that Order. However, the Commission merely wanted to ensure that LG&E/KU followed

³⁴ KU-LGE Joint Stipulation Testimony, Exhibit 1, Stipulation and Recommendation (filed July 29, 2025).

³⁵ Louisville Metro County Government and Lexington Fayette Urban County Government (LFUGC) did not oppose and took no position on the Settlement. The Joint Intervenors and Sierra Club did not sign on to the Stipulation.

³⁶ Order (Ky. PSC Oct. 28, 2025).

³⁷ Stipulation and Recommendation at 11.

their consultants' report³⁸ and minimized nighttime activity at both construction sites. LG&E/KU should construct its projects as set forth in the SARs; however, the Commission will grant LG&E/KU's request to remove the requirement for the Executive Director to approve nighttime activities. Specifically, Appendix C mitigation measure 10 reads,

LG&E/KU are required to limit construction activity, process, and deliveries to the times as set forth in the SAR. If LG&E/KU determines a night shift is necessary, LG&E/KU should submit that request to the executive director. The PSC Executive Director is tasked with determining whether that request should be granted.

The Commission strikes everything after the first sentence so mitigation measure 10 will read "LG&E/KU are required to limit construction activity, process, and deliveries to the times as set forth in the SAR."

Mitigation measure 10 in Appendix E states:

LG&E/KU are required to limit construction activity, process, and deliveries to the times as set forth in the SAR. If LG&E/KU determines a night shift is necessary, LG&E/KU should submit that request to the executive director. The PSC Executive Director is tasked with determining whether that request should be granted.

The Commission strikes all but the first sentence and mitigation measure 10 in Appendix E should now read, "LG&E/KU are required to limit construction activity, process, and deliveries to the times as set forth in the SAR."

Additionally, in reviewing the mitigation measures in each Appendix, the Commission identified an error in Appendix C. Mitigation measure 20 reads as follows:

³⁸ The SAR contained the following "[s]pecifically, the HRSG Stack and GT Inlet Filter will be equipped with silencers, and both the gas compressors and the single-shaft powertrain will be housed within enclosed buildings, which will attenuate noise. As a result, while the worst-case assessment suggests that the NGCC Unit may exceed the applicable USEPA sound level limits at Location 3 during nighttime hours, these noise control measures are expected to effectively minimize the noise, making it unlikely that the limits will actually be surpassed."

Prior to construction, LG&E/KU shall maintain a Complaint Resolution Plan to address any complaints from community members about the Brown 12 construction. LG&E/KU shall also submit annually a status report associated with its Complaint Resolution Plan, providing, among other things, the individual complaints, how LG&E/KU addressed those complaints, and the ultimate resolution of those complaints identifying whether the resolution was to the complainant's satisfaction. LG&E/KU shall submit a final report within 30 days after commencement of electric generation, referencing the monitoring case number and filed in that case record.³⁹ (Emphasis added.)


The Commission, on its own motion, finds that mitigation measure 20 language: “referencing the monitoring case number and filed in that case record” should be stricken and replaced with “referencing post-case correspondence and this case number.”

IT IS THEREFORE ORDERED that:

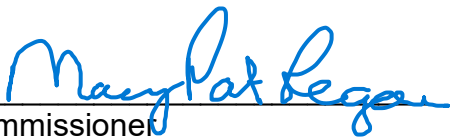
1. LG&E/KU's request for clarification is granted, in part, and denied, in part.
2. LG&E/KU's request to strike Appendix C and Appendix E is denied.
3. LG&E/KU's request to strike the requirement for approval of the Commission Executive Director in Appendix C and Appendix E is granted.
4. The final Order in this matter is amended as set forth above.
5. The remainder of the October 28, 2025 Order not in conflict with this Order remains in effect.
6. This case is closed and removed from the Commission's docket.

³⁹ Order (Ky. PSC Oct. 28, 2025) Appendix C, mitigation measure 20.

PUBLIC SERVICE COMMISSION


Chairman


Commissioner


Commissioner

ATTEST:

 RP
Executive Director



*Angela M Goad
Assistant Attorney General
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KY 40601-8204

*Byron Gary
Kentucky Resources Council, Inc.
Post Office Box 1070
Frankfort, KY 40602

*John Horne
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KY 40601-8204

*Ashley Wilmes
Kentucky Resources Council, Inc.
Post Office Box 1070
Frankfort, KY 40602

*Honorable David Edward Spenard
Strobo Barkley PLLC
239 South 5th Street
Ste 917
Louisville, KY 40202

*Joshua Smith
Sierra Club
2101
Webster St. , Suite 1300
Oakland, CA 94612

*Honorable Allyson K Sturgeon
Vice President and Deputy General Counsel-
LG&E and KU Energy LLC
220 West Main Street
Louisville, KY 40202

*Honorable W. Duncan Crosby III
Attorney at Law
Stoll Keenon Ogden, PLLC
2000 PNC Plaza
500 W Jefferson Street
Louisville, KY 40202-2828

*Kristin Henry
Staff Attorney
Sierra Club Environmental Law Program
2101 Webster Street
Suite 1300
Oakland, CA 94612

*Audrey Ernstberger
Kentucky Resources Council, Inc.
Post Office Box 1070
Frankfort, KY 40602

*Thomas J FitzGerald
Counsel & Director
Kentucky Resources Council, Inc.
Post Office Box 1070
Frankfort, KY 40602

*Larry Cook
Assistant Attorney General
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KY 40601-8204

*Bethany Baxter
Childers & Baxter PLLC
300 Lexington Building, 201 West Sho
Lexington, KY 40507

*James W Gardner
Sturgill, Turner, Barker & Moloney, PLLC
333 West Vine Street
Suite 1400
Lexington, KY 40507

*Michael West
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KY 40601-8204

*Honorable William H May, III
Attorney at Law
Hurt, Crosbie & May PLLC
The Equus Building
127 West Main Street
Lexington, KY 40507

*Jody Kyler Cohn
Boehm, Kurtz & Lowry
425 Walnut Street
Suite 2400
Cincinnati, OH 45202

*Honorable Michael L Kurtz
Attorney at Law
Boehm, Kurtz & Lowry
425 Walnut Street
Suite 2400
Cincinnati, OH 45202

*William H May, III
Hurt, Deckard & May
The Equus Building
127 West Main Street
Lexington, KY 40507

*Joe F. Childers
Childers & Baxter PLLC
300 Lexington Building, 201 West Sho
Lexington, KY 40507

*Honorable Matthew R Malone
Attorney at Law
Hurt, Deckard & May
The Equus Building
127 West Main Street
Lexington, KY 40507

*Nathaniel Shoaff
Sierra Club
2101
Webster St. , Suite 1300
Oakland, CA 94612

*Louisville Gas and Electric Company
820 West Broadway
Louisville, KY 40203

*Rick E Lovekamp
Manager - Regulatory Affairs
LG&E and KU Energy LLC
220 West Main Street
Louisville, KY 40202

*Sara Judd
Senior Corporate Attorney
LG&E and KU Energy LLC
220 West Main Street
Louisville, KY 40202

*Robert Conroy
Vice President, State Regulation and Rates
LG&E and KU Energy LLC
220 West Main Street
Louisville, KY 40202

*Toland Lacy
Office of the Attorney General
700 Capital Avenue
Frankfort, KY 40601

*Rebecca C. Price
Sturgill, Turner, Barker & Moloney
155 East Main Street
Lexington, KY 40507

*Tony Mendoza
Staff Attorney
Sierra Club Environmental Law Program
2101 Webster Street
Suite 1300
Oakland, CA 94612

*Randal A. Strobo
Strobo Barkley PLLC
239 South 5th Street
Ste 917
Louisville, KY 40202

*M. Todd Osterloh
Sturgill, Turner, Barker & Moloney, PLLC
333 West Vine Street
Suite 1400
Lexington, KY 40507

*Simon Mahan
Southern Renewable Energy Association
11610 Pleasant Ridge Road
Suite 103
Little Rock, AR 72223

*Kentucky Utilities Company
220 W. Main Street
P. O. Box 32010
Louisville, KY 40232-2010