

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF DUKE ENERGY KENTUCKY,)	
INC. FOR APPROVAL TO TRANSFER)	
FUNCTIONAL CONTROL OF ITS)	
TRANSMISSION ASSETS FROM THE)	CASE NO.
MIDWEST INDEPENDENT TRANSMISSION)	2010-00203
SYSTEM OPERATOR TO THE PJM)	
INTERCONNECTION REGIONAL)	
TRANSMISSION ORGANIZATION AND)	
REQUEST FOR EXPEDITED TREATMENT)	

O R D E R

Pending before the Commission are two motions filed by the Midwest Independent Transmission System Operator, Inc. ("MISO"): one requesting the Commission to take administrative notice of filings made by the parties to this case or by the Commission at the Federal Energy Regulatory Commission ("FERC") in Docket No. ER10-1562-000; the other requesting that Duke Energy Kentucky, Inc. ("Duke Kentucky") be compelled to more fully respond to MISO's second data request.

INTRODUCTION

On May 20, 2010, Duke Kentucky filed its application, pursuant to KRS 278.218, for approval to transfer functional control of its transmission assets from MISO to PJM Interconnection, L.L.C. ("PJM"). Full intervention was requested by, and granted to, MISO and PJM. The Commission established a procedural schedule that directed Duke Kentucky to file direct testimony and provided for discovery of Duke Kentucky, an opportunity for intervenors to file testimony, discovery of intervenors, and a hearing.

Duke Kentucky filed its testimony as directed and discovery was conducted, but none of the intervenors filed testimony.

In addition to needing approval from the Commission for the proposed transfer of control of transmission assets from MISO to PJM, Duke Kentucky and its parent, Duke Energy Ohio, Inc. ("Duke Ohio"), need approval of FERC. Duke Kentucky and Duke Ohio filed a joint application at FERC for approval of the transfer of control. That application was designated as FERC Docket No. ER10-1562-000, and MISO, PJM, and the Commission intervened in that FERC case.

MOTION FOR ADMINISTRATIVE NOTICE

MISO requests that the Commission take administrative notice of all filings made by the parties to this case or by the Commission in the FERC case in which Duke Kentucky and Duke Ohio request FERC to approve the transfer of functional control of transmission assets. MISO further requests that this notice be limited to accepting as true the fact that the filings were made at FERC and to the content of the filings, but not to accept as true any fact, argument, or conclusion included in any FERC filing. MISO states that information requests in this case have referenced filings in the FERC case and that Duke Kentucky has already filed in this case two filings it made at FERC. The taking of administrative notice, MISO asserts, will obviate the need to duplicate the FERC filings for inclusion in the Commission's record and will assist the parties and the Commission by allowing efficient reference to, and use of, the FERC filings.

MISO supports its request to take administrative notice by citing KRS 13B.090(5), which authorizes administrative agencies to "take official notice of facts

which are not in dispute,” as well as Kentucky case law that allows courts to take judicial notice of public records.¹

Based on a review of MISO’s motion, the Commission finds that MISO has not sufficiently shown either a need to take administrative notice of all documents filed by the parties and the Commission in the FERC case or the relevancy of those documents to the decision to be made in this case under KRS 278.218. As noted in MISO’s motion, two documents filed in the FERC case have already been filed in the record here by Duke Kentucky in response to information requests. To the extent that MISO wants to refer to additional FERC documents at the hearing, it may do so and, at that time, may renew its request for administrative notice of the documents so referenced.

MOTION TO COMPEL

MISO’s second motion seeks to compel Duke Kentucky to more fully respond to MISO’s second set of data requests. In response to MISO’s motion, Duke Kentucky filed, on October 18, 2010, a revised response to two items in the data requests. On October 21, 2010, it filed additional responses to other items in the data request. An informal conference was held at the Commission’s offices on October 21, 2010, and MISO’s motion to compel and Duke Kentucky’s responses were among the subjects discussed. As a result of those discussions, Duke Kentucky filed supplemental responses to MISO’s second data request on October 27 and 28, 2010.

Based on a review of MISO’s motion to compel and Duke Kentucky’s revised, additional, and supplemental data responses, the Commission finds that Duke Kentucky

¹ The Commission notes that its hearings are exempt from the procedures set forth in KRS Chapter 13B. See KRS 13B.020(3)(d)3.a.

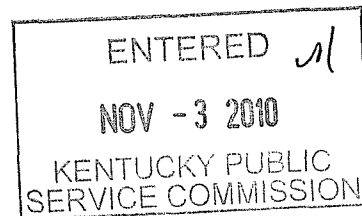
has now fully responded. Therefore, MISO's motion to compel should be denied as moot.

IT IS THEREFORE ORDERED that:

1. MISO's motion to take administrative notice of filings made by the parties and the Commission in FERC Docket No. ER10-1562-000 is denied without prejudice.

2. MISO's motion to compel Duke Kentucky to more fully respond to MISO's second set of data requests is denied as moot.

By the Commission



ATTEST:


Executive Director

Keith L Beall
Esquire
P.O. Box 4202
Carmel, IN 46082-4202

Katherine K Yunker
John B. Park
Yunker & Park, PLC
P.O. Box 21784
Lexington, KY 40522-1784

Honorable Jason R Bentley
Attorney at Law
McBrayer, McGinnis, Leslie & Kirkland PLLC
305 Ann Street
Suite 308
Frankfort, KY 40601

Denise Foster
PJM Interconnection, LLC
955 Jefferson Avenue
Valley Forge Corporate Center
Norristown, PA 19403-2497

Jacquelynn Huges
PJM Interconnection, LLC
955 Jefferson Avenue
Valley Forge Corporate Center
Norristown, PA 19403-2497

Jeanne Kingery
Duke Energy Business Services, Inc.
155 East Broad Street, 21st Floor
Columbus, OH 43215

Anita M Schafer
Senior Paralegal
Duke Energy Kentucky, Inc.
139 East 4th Street, R. 25 At II
P. O. Box 960
Cincinnati, OH 45201

Amy B Spiller
Associate General Counsel
Duke Energy Kentucky, Inc.
139 East 4th Street, R. 25 At II
P. O. Box 960
Cincinnati, OH 45201