COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF LOUISVILLE GAS AND ELECTRIC COMPANY FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND APPROVAL OF ITS 2011 COMPLIANCE PLAN FOR RECOVERY BY ENVIRONMENTAL SURCHARGE	))))))	CASE NO. 2011-00162

O R D E R

Pending before the Commission is Kentucky Industrial Utility Customers, Inc.'s ("KIUC") motion to compel Louisville Gas and Electric Company ("LG&E") to fully answer certain items contained in KIUC's First Set of Data Requests to LG&E. In particular, KIUC seeks to compel LG&E's answers to Item Nos. 7(b)–(d), 8(b), 9, 12, and 15. Those Items provide as follows:

- Item 7. Refer to the PPL Corporation presentation on May 11, 2011 to the Deutsche Bank Conference available on the PPL website.

  b. On page 7 of that presentation entitled "Regulated Rate Base Growth," the presentation shows LKE (LG&E and KU) growth from $6.7 billion in 2011 to $10.4 billion in 2015. Please provide the underlying support for these projections at the most detailed level available, including, but not limited to, all financial statement projections.

  c. On page 12 of that presentation entitled "Capital Expenditures," the presentation shows "LKE ECR" capital expenditures of $0.2 billion in 2011, $0.7 billion in 2012, $0.8 billion in 2013, $0.8 billion in 2014, and $0.5 billion in 2015, or a total of $3.0 billion over the five year period. Please provide the underlying support for these projections at the most detailed level available including, but not limited to, all financial statement projections.

d. On page 12 of that presentation entitled "Capital Expenditures," the presentation shows "LKE base" capital expenditures of $0.4 billion in 2011, $0.5 billion in 2012, $0.6 billion in 2013, $0.7 billion in 2014, and $0.9 billion in 2015, or a total of $3.1 billion over the five year period. Please provide the underlying support for these projections at the most detailed level available including, but not limited to, all financial statement projections.

- Item 8. Refer to the PPL Corporation presentation on October 31-November 3, 2010 at the EEI Financial Conference available on the PPL website.

  b. Please provide the underlying support for these projections at the most detailed level available, including, but not limited to, all financial statement projections.

- Item 9. Please provide a copy of the Company's most recent projected financial statements developed for budgeting and/or financial forecasting purposes for 2011 and each of the next five years. Provide all assumptions, data, and computations, including electronic spreadsheets with formulas intact.

- Item 12. Please describe each source of short term debt presently available to PPL Corp. Provide the maximum amount of each such source; the uses to which such funds from each such source are limited, if any; the terms and conditions of borrowing from each such source, including, but not limited to, the basis for the interest rate (e.g., prime plus x%, 1 month LIBOR), annual fees and expenses in dollars and as a percentage of outstanding borrowing on average over the most recent twelve months; and a copy of the relevant agreements for each such source.

- Item 15. Please provide a copy of all studies that address PPL Corp.'s financing requirements and plans in 2011 and the next five years, including, but not limited to, financing the Company's environmental compliance costs.

LG&E filed a response to each of the above referenced items, stating its objection to disclosing the information requested by KIUC. LG&E's objection stated that the information requested was not relevant to the issues raised in this case, that information concerning financial projections is not discoverable when a utility is not seeking to recover costs based upon forecasted or estimated expenses, and that its

parent corporation, PPL Corp., is not providing any financing to LG&E with regard to the environmental compliance projects proposed in this case.

KIUC's motion to compel asserts that the information requested is relevant to the issues in this case and properly discoverable. In particular, KIUC argues that information used to develop financial projections of LG&E's regulated rate base growth and future capital expenditures, including those related to the environmental cost recovery surcharge, may lead to the discovery of additional information relating to the costs associated with LG&E's 2011 Environmental Compliance Plan and is thus discoverable. KIUC also argues that information relating to PPL Corp.'s ability to assist in financing LG&E's environmental compliance costs is relevant to this proceeding because it may affect the terms of LG&E's financing.

In response, LG&E asserts that it should not be required to "disclose speculative financial projections as part of an environmental surcharge proceeding in which no forecasted expenses have been sought by [LG&E]." LG&E relies upon *KIUC v. Kentucky Utilities Co.*, 983 S.W.2d 493 (Ky. 1998) for the proposition that evidence of an electric utility's overall financial condition is not relevant to proceedings involving an environmental surcharge. LG&E also relies upon several past Commission rulings for the proposition that financial projections are not relevant when a utility is not seeking to recover forecasted costs. LG&E maintains that it is not seeking to recover the forecasted costs of the projects proposed in its environmental compliance plans, as KRS 278.183(2) limits recovery pursuant to the surcharge to actual costs incurred.

Moreover, LG&E contends that the financial projections sought by KIUC contain highly confidential documents, such as a five-year plan that LG&E has developed

depicting a range of financial projections regarding many components of the company's business, as well as a ten-year plan. Such plans would include reports that identify financial assumptions concerning LG&E's best guesses as to future regulatory disposition of rate applications. Disclosure of such documents to an intervenor, even under a confidentiality agreement, would cause irreparable damage to LG&E because the intervenor could potentially use such information to its advantage in future rate proceedings. This would, in turn, cause LG&E to minimize its robust projection processes in the future.

In its reply, KIUC counters that the environmental compliance plan proposed by LG&E is based on multi-year cost projections through the year 2016. At the very least, KIUC contends that discovery of financial projections through 2016 is appropriate. KIUC argues that information concerning financial projections for LG&E's regulated rate base growth and future capital expenditures, particularly those related to the company's environmental recovery capital expenditures, is relevant because it is reasonably likely to lead to the discovery of admissible evidence regarding LG&E's proposed environmental compliance plan and its costs. Regarding information related to financing, KIUC notes that the financing of LG&E's proposed environmental projects can occur on at least three levels: 1) at PPL Corp.; 2) at the intermediate holding company that owns LG&E; and 3) at LG&E. Additionally, PPL Capital Funding, a PPL Corp. affiliate, could obtain financing available to other subsidiaries. KIUC asserts the disclosure of the financing information is necessary because it affects the costs that will be incurred by LG&E.

In its sur-reply, LG&E reiterated its position that "[s]peculative internal budget projections relating to the total operations of [LG&E] and the debt available to [its] parent company have no place here." Again citing to *KIUC v. Kentucky Utilities Co.*, LG&E argues that the Kentucky Supreme Court has defined the scope of an environmental surcharge case to specifically exclude the utility's overall financial condition from consideration.

In its reply to LG&E's sur-reply, KIUC contends that the matter at bar does not involve cost recovery, but rather a request to obtain approval to construct various environmental pollution control projects and approval of LG&E's proposed environmental compliance plan. KIUC asserts that LG&E used multi-year projections through 2016 to describe the rate impacts of the proposed environmental compliance projects. Thus, according to KIUC, discovery through at least 2016 is appropriate.

Having reviewed the pleadings and being otherwise sufficiently advised, the Commission finds that LG&E's application seeks approval of a revised environmental compliance plan and rate surcharge pursuant to KRS 278.183, and to construct environmental control facilities pursuant to KRS 278.020(1). KRS 278.310 provides that the Commission is not bound by the technical rules of legal evidence, and the applicability of the Kentucky Rules of Civil Procedure ("CR") is limited to civil actions in the Court of Justice.[1] However, in adjudicating discovery disputes of this nature, we find it appropriate to consider CR 26.02(1), which delineates the scope of discovery in judicial proceedings. CR 26.02(1) authorizes "discovery regarding any matter, not

[1] See CR 1 and *Inter-County Rural Electric Cooperative Corp., et al. v. Public Service Commission, et al.*, 407 S.W.2d 127, 130 (Ky. 1966).

privileged, which is relevant to the subject matter," including information "inadmissible at the trial if [it] appears reasonably calculated to lead to the discovery of admissible information."

Considering the scope of the issues raised in LG&E's application, KIUC is entitled to discovery with respect to information related to the estimated costs of LG&E's proposed Environmental Compliance Plan, including those cost projections through 2016. The Commission notes that LG&E's Environmental Compliance Plan is based upon multi-year projections through 2016. Therefore, information used to develop financial projections related to LG&E's proposed environmental cost recovery capital expenditures and environmental rate base is relevant and discoverable.

The Commission also finds that the information used to develop financial projections that are not limited to environmental compliance, such as LG&E's regulated rate base growth and future overall capital expenditures, is outside the scope of issues to be considered in an Environmental Compliance Plan and rate surcharge under KRS 278.183. In addition, such information is also outside the scope of issues to be considered in determining the need for, and the absence of wasteful duplication from, constructing new environmental facilities under KRS 278.020(1). Therefore, such information is not relevant to any issues in this case, does not appear to be reasonably calculated to lead to the discovery of relevant information, and is not subject to discovery in this case.

The Commission further finds that PPL Corp. is not a utility subject to the Commission's jurisdiction and is under no obligation to assist LG&E in financing the proposed projects in LG&E's 2011 Environmental Compliance Plan. Thus, the

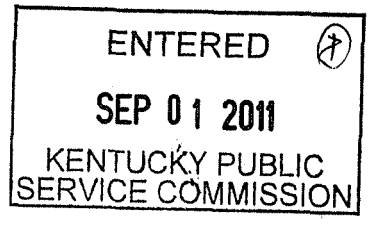
information request by KIUC concerning the source of short-term debt available to PPL Corp., as well as any studies that address PPL Corp.'s financing requirements and plans, is not relevant to any issue in this case and does not appear to be calculated to lead to the discovery of relevant information. Therefore, such information is not discoverable.

IT IS THEREFORE ORDERED that:

1. KIUC's motion to compel answers to Item 7(c) is granted to the extent that LG&E shall file within seven days of the date of this Order the underlying support for the environmental capital expenditures for years 2011 through 2016, including all financial statement projections of environmental capital expenditures and excluding all other financial statement projections.

2. KIUC's motion to compel answers to Item Nos. 7(b), 7(d), 8(b), 9, 12, and 15 is denied.

By the Commission



ATTEST:

Executive Director

Lonnie Bellar
Vice President, State Regulation & Rates
LG&E and KU Services Company
220 West Main Street
Louisville, KENTUCKY 40202

Honorable Michael L Kurtz
Attorney at Law
Boehm, Kurtz & Lowry
36 East Seventh Street
Suite 1510
Cincinnati, OHIO 45202

David Brown
Stites & Harbison, PLLC
1800 Providian Center
400 West Market Street
Louisville, KENTUCKY 40202

Honorable Kendrick R Riggs
Attorney at Law
Stoll Keenon Ogden, PLLC
2000 PNC Plaza
500 W Jefferson Street
Louisville, KENTUCKY 40202-2828

Robert M Conroy
Director, Rates
Louisville Gas and Electric Company
220 W. Main Street
P. O. Box 32010
Louisville, KY 40202

Allyson K Sturgeon
Senior Corporate Attorney
LG&E and KU Services Company
220 West Main Street
Louisville, KENTUCKY 40202

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

Edward George Zuger, III
Zuger Law Office PLLC
P.O. Box 728
Corbin, KENTUCKY 40702

Robert A Ganton, Esq
Regulatory Law Office - U.S. Army Leg
901 North Stuart Street, Suite 525
Arlington, VIRGINIA 22203

Esq Scott E Handley
Administrative Law Division - Office
50 Third Avenue, Room 215
Fort Knox, KENTUCKY 40121

Honorable Dennis G Howard II
Assistant Attorney General
Office of the Attorney General Utility & Rate
1024 Capital Center Drive
Suite 200
Frankfort, KENTUCKY 40601-8204