

PPL companies

May 29, 2012

Mr. Jeff Derouen
Executive Director
Public Service Commission of Kentucky
211 Sower Boulevard
Frankfort, Kentucky 40602

RECEIVED

MAY 29 2012

PUBLIC SERVICE
COMMISSION

LG&E and KU Energy LLC
Corporate Law Department
220 W. Main Street
Louisville, Ky 40232
www.lge-ku.com

Allyson K. Sturgeon
Senior Corporate Attorney
T 502-627-2088
F 502-627-3367
Allyson.sturgeon@lge-ku.com

Re: *In the Matter of: The Application of East Kentucky Power Cooperative, Inc. to Transfer Functional Control of Certain Transmission Facilities to PJM Interconnection, LLC.*
Case No. 2012-00169

Dear Mr. Derouen:

Enclosed please find an original and ten (10) copies of the Louisville Gas and Electric Company and Kentucky Utilities Company's Reply to the Response and Objection of East Kentucky Power Cooperative, Inc. to the Petition for Full Intervention in the above-referenced case.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

Allyson K. Sturgeon

AKS/kmw
Enclosures

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF:

THE APPLICATION OF EAST KENTUCKY)	
POWER COOPERATIVE, INC. TO TRANSFER)	
FUNCTIONAL CONTROL OF CERTAIN)	CASE NO. 2012-00169
TRANSMISSION FACILITIES TO)	
PJM INTERCONNECTION, LLC)	

**REPLY TO THE RESPONSE AND OBJECTION
OF EAST KENTUCKY POWER COOPERATIVE, INC.
TO THE PETITION FOR FULL INTERVENTION FILED BY
LOUISVILLE GAS AND ELECTRIC COMPANY AND
KENTUCKY UTILITIES COMPANY**

Louisville Gas and Electric Company (“LG&E”) and Kentucky Utilities Company (“KU”) (collectively, the “Companies”), by counsel, reply to the Response and Objections of East Kentucky Power Cooperative, Inc. (“EKPC”) to the Petition for Full Intervention by Louisville Gas and Electric Company and Kentucky Utilities Company as follows:

Contrary to EKPC’s Response, there can be no reasonable doubt that the Companies meet the requirements for full intervention in this proceeding under both of the possible standards for such intervention. The first standard requires a potential intervener to have “a special interest in the proceeding which is not otherwise adequately represented.”¹ The requisite “special interest” must relate to the rates or service of a utility.² The Companies, like EKPC, are utilities operating in Kentucky under valid certificates of public convenience and necessity.

And there can be no reasonable doubt about the impact the Companies’ and EKPC’s operations have on each other, which in turn can affect the rates and service they provide to retail customers in Kentucky. As the Companies stated in their Petition, KU and EKPC “share

¹ 807 KAR 5:001 §3(8)(b).

² *In the Matter of: The 2008 Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company*, Case No. 2008-00148, Order at 3 (July 18, 2008), and cited in EKPC Response at 3.

numerous interconnection points between their transmission systems,” and their operations can directly affect each other.³ EKPC has challenged this assertion,⁴ though the Commission has stated that EKPC “is heavily interconnected with KU due to the contiguous nature of their respective service territories and joint use of transmission facilities.”⁵ The Commission was and is correct. The Companies and EKPC share 67 points of interconnection, as shown in Appendix I, “List of Points of Interconnection,” to the September 19, 2011 Interconnection Agreement between the Companies and EKPC.⁶ Perhaps most importantly, the Companies and EKPC use each other’s facilities to serve their customers through numerous load interconnection points.

In the past, EKPC has argued that its system and the Companies’ systems were sufficiently interconnected and mutually impacting to justify EKPC’s intervention in two change-of-control proceedings involving the Companies, a position with which the Commission twice agreed (once over the Companies’ objection). EKPC’s motion to intervene in Case No. 2000-00095, the PowerGen acquisition proceeding, stated:

EKPC’s transmission system and certain of its member cooperatives’ distribution systems are interconnected with the [Companies’] transmission systems The transmission systems of KU and EKPC are highly integrated, such that portions of each party’s load are served by the other party’s transmission system. EKPC also has in place various agreements with KU and LG&E for the transmission, purchase, and sale of electric power and energy.⁷

³ Companies’ Petition at 3 ¶ 6.

⁴ EKPC Response at 2 (“The second reason offered by the Companies in support of its Petition is the bare assertion that EKPC and KU share numerous interconnection points and this proceeding will have operational impacts on the Companies’ transmission system. Again, no facts are offered to support that conclusion.”); *id.* at 4 (“The final ground offered by the Companies to justify intervention is their contention that because EKPC and KU share numerous interconnection points between their transmission systems, this proceeding will have operational impacts on the Companies’ own transmission system. As previously stated, the Companies do not offer any further support other than that bare conclusion.”).

⁵ *In the Matter of: A Review of the Adequacy of Kentucky’s Generation Capacity and Transmission System*, Administrative Case No. 387, Order at 24, 58 (Dec. 20, 2001) (emphases added).

⁶ Available at http://elibrary.ferc.gov/idmws/Doc_Family.asp?document_id=13959084.

Although the Companies objected to EKPC's intervention in that proceeding on multiple grounds—including a ground that EKPC now asserts against the Companies, namely that transmission matters are for FERC to decide—the Commission granted EKPC full intervention.⁸ At the public hearing in that proceeding, EKPC's counsel's only questions for the chairman and chief executive officer of PowerGen concerned transmission and how a change of control might affect the Companies' practices:

Q: Dale Henley on behalf of East Kentucky Power. East Kentucky is highly interconnected with both KU and LG&E, and we would be interested in your comments relating to best practices as applied to transmission.

...

Q: Would you discuss transmission, in general, planning, construction, maintenance, pricing, things that are of interest to you this morning?

...

Q: Is there any reason that East Kentucky should anticipate or expect that there might be any changes in the way business is currently ongoing between the companies?⁹

While these are very general, these are precisely the kinds of questions the Companies would like to address as full interveners in this proceeding.

In the E.ON AG acquisition proceeding, EKPC again sought intervention on the grounds that its high level of transmission interconnection with the Companies made EKPC “directly interested in and potentially affected by the proposed acquisition,” and that “the rates, terms and conditions of the companies’ transmission tariff affect EKPC as a transmission customer of the

⁸ *In the Matter of: Application of PowerGen, plc to Acquire Louisville Gas and Electric Company and Kentucky Utilities Company*, Case No. 2000-00095, Order (Apr. 18, 2000); Case No. 2000-00095, Objection to Motion to Intervene Filed by East Kentucky Power Cooperative, Inc. (Apr. 3, 2000).

⁹ Case No. 2000-00095, Transcript of Evidence, Volume I at 79 ln. 24 – 81 ln. 3 (Apr. 19, 2000).

companies.”¹⁰ EKPC concluded that those facts gave it “a direct and immediate interest in this proceeding that cannot be adequately represented by any other party.”¹¹ The Commission agreed.¹² If those interests were sufficient for the Commission to grant EKPC full intervention in two of the Companies’ acquisition proceedings, which had at best an indirect connection to the operation of the Companies’ transmission systems, then the Companies should be granted full intervention in this proceeding, wherein the functional control of EKPC’s transmission system is directly at issue.

Finally, as EKPC notes multiple times in its Application and supporting testimony, the Companies, EKPC, and the Tennessee Valley Authority established a reserve sharing group several years ago that they continue to maintain, and which EKPC proposes to maintain even if the Commission grants the relief EKPC has requested herein.¹³ By its very nature, a reserve sharing group cannot function if the participants’ systems cannot interact with each other in significant ways. These interactions implicate not just transmission operations, as EKPC seems to imply, but also generating unit dispatch, which can have a direct impact on Kentucky retail customers. It is therefore unreasonable to dispute that the Companies’ operations are and will continue to be affected by EKPC’s operations, including the control of its transmission system, in ways that certainly could affect the Companies’ rates and service to their retail customers. The Companies therefore have a clear and distinct special interest in this proceeding that affects the rates and service of a utility.

¹⁰ *In the Matter of: Joint Application of E.ON AG, PowerGen plc., LG&E Energy Corp., Louisville Gas and Electric Company, and Kentucky Utilities Company for Approval of an Acquisition*, Case No. 2001-00104, East Kentucky Power Cooperative, Inc.’s Motion to Intervene at 2 (May 24, 2001).

¹¹ *Id.*

¹² Case No. 2001-00104, Order (June 8, 2001).

¹³ *See, e.g.*, EKPC Application at 14 ¶ 32.

Though the Companies appreciate the Attorney General’s mandate and ability to represent customers generally, the Companies are uniquely positioned to represent their customers’ interests in this proceeding for the simple reason that they are in possession of information about their system and their customers that no other party has. Although EKPC possesses some of the same system-related information the Companies have—precisely because their systems are so intertwined—EKPC does not have all of the data the Companies have, and they do not have the interest in representing the Companies’ interest in its electrical system and the possible impacts on its customers that the Companies have. That is understandable; EKPC is before the Commission to do what it believes is best for its electrical system and customers. The Companies merely ask to be able to do the same.

The Companies therefore respectfully submit that they have a special interest in this proceeding that will not, and indeed cannot, be adequately represented by any other party.

Turning to the second standard by which a party may be granted full intervention in a Commission proceeding, the Companies are, by any reasonable measure, “likely to present issues or to develop facts that assist the commission in fully considering the matter without unduly complicating or disrupting the proceedings.”¹⁴ There are several reasons for this. First, as is demonstrated at length above, the Companies’ transmission system is heavily interconnected with EKPC’s system, and the Companies can therefore offer the Commission relevant information about their system’s interaction with EKPC and their systems’ impacts upon each other’s system reliability and customers, which is not a small matter for the Commission to consider in this proceeding.

¹⁴ 807 KAR 5:001 §3(8)(b).

Second, as an exhibit to EKPC's Application demonstrates, the Companies are currently market-participant members of PJM and signatories to its Operating Agreement.¹⁵ The Companies are also currently market-participant members of the Midwest ISO,¹⁶ in addition to being former transmission-owning (and founding) members thereof. The Companies therefore have relevant information about, and experiences with, PJM and RTOs generally that may assist the Commission in this proceeding.¹⁷

Third, EKPC's Application and supporting documents note multiple times that EKPC is part of a reserve sharing group that includes the Companies and makes assertions about the Companies' view of EKPC's participation in that group.¹⁸ The Companies can offer relevant information about the reserve sharing arrangement, and the Commission should hear the Companies' views directly from the Companies themselves.

The Companies therefore have a wealth of relevant information and experience to offer the Commission to assist in its consideration of EKPC's Application, and can provide it without creating undue complication or disruption. For these reasons, the Companies respectfully submit they meet the second standard for being granted full intervention in this proceeding.

EKPC advances two other arguments in its Response, neither of which constitutes a valid ground for denying the Companies' Petition. First, EKPC notes that the Companies have not

¹⁵ EKPC Application Exhibit 7 at 529. *See also* <http://www.pjm.com/about-pjm/member-services/member-list.aspx>.

¹⁶ *See* <https://www.midwestiso.org/StakeholderCenter/Members/Pages/MembershipList.aspx>.

¹⁷ EKPC apparently attempts to cast doubt upon the Companies' ability to provide relevant information concerning RTO membership because of the Companies' current Independent Transmission Organization ("ITO") arrangement. (EKPC Response at 4.) This is a red herring at best. First, as described in the text above, the Companies have extensive experience with PJM and MISO as market-participant members of both RTOs; that is what is relevant, not the Companies' Commission-approved ITO arrangement. Second, EKPC misstates the facts when it asserts that the Companies have changed ITOs twice in six years. (EKPC Response at 4.) In fact, the Companies have had only one ITO, and still have the same ITO they had after the Commission first approved the ITO arrangement. It is true that the Companies sought to bring ITO functions in-house, which the Commission approved but FERC did not, and that the Companies recently sought and received Commission and FERC approval to change ITOs this year.

¹⁸ *See, e.g.*, EKPC Application at 14 ¶ 32.

sought to intervene in other utilities' previous RTO-related proceedings.¹⁹ Although that is true, it is irrelevant; there is no statute, regulation, or Commission precedent to support the assertion that not seeking to intervene in some proceedings precludes a party from seeking intervention in another proceeding. But there is also a simple explanation for why the Companies are seeking full intervention in this proceeding but did not in similar proceedings for other utilities: EKPC and the Companies are vastly more interconnected and mutually impacting than are the Companies and any other utility, as described at length above.

Second, EKPC argues that FERC has exclusive jurisdiction over transmission matters.²⁰ As also described at length above, the Commission rejected that argument when the Companies advanced it to oppose EKPC's intervention in the PowerGen acquisition proceeding, and accepted the transmission interconnectedness of the Companies and EKPC as a sufficient reason to grant EKPC intervention in the E.ON AG acquisition proceeding. Furthermore, as explained above, the Companies and EKPC do not merely conduct wholesale transmission transactions with each other, but also serve each other's retail customers over each other's facilities, and are sufficiently interconnected for them to be in a reserve sharing group, which concerns generation dispatch in addition to transmission matters. Finally, the two Commission orders EKPC cites as supporting its position do not undermine the Companies' position precisely because they concerned only wholesale transmission concerns, whereas the Companies' interest in this proceeding implicates possible impacts to their electrical system and their Kentucky retail customers arising from generation dispatch and transmission concerns, all of which is well within the scope of the "proper purpose and ... consistent with the public interest" standard in KRS 278.218.

¹⁹ EKPC Response at 4-6.

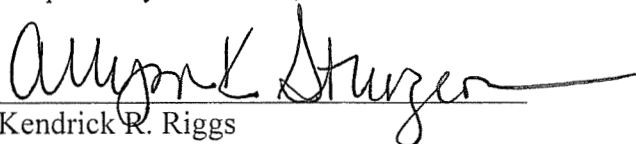
²⁰ *Id.* at 6-7.

In summary, the Companies' and EKPC's systems are highly interconnected and mutually impacting. They serve each other's load off of each other's facilities. They are two of the three members of an important generation reserve sharing group. And the Companies are market-participant members of the very RTO EKPC seeks to join, as well as the Midwest ISO. The Companies therefore have a special interest that cannot be adequately represented by another party to this proceeding, and are uniquely situated to provide information useful to the Commission's consideration of the matters at issue herein. The Companies therefore respectfully submit that the Commission should grant them full intervention in this proceeding.

WHEREFORE, Louisville Gas and Electric Company and Kentucky Utilities Company respectfully request that the Commission grant them full intervention in this proceeding.

Dated: May 29, 2012

Respectfully submitted,



Kendrick R. Riggs
W. Duncan Crosby III
Stoll Keenon Ogden PLLC
2000 PNC Plaza
500 West Jefferson Street
Louisville, KY 40202-2828
Telephone: (502) 333-6000

Allyson K. Sturgeon
Senior Corporate Attorney
LG&E and KU Energy LLC
220 West Main Street
Louisville, KY 40202
Telephone: (502) 627-2088

*Counsel for Louisville Gas and Electric
Company and Kentucky Utilities Company*

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing Reply was served upon the following persons by United States first class mail, postage prepaid, on the 29th day of May, 2012:

Roger R. Cowden
Corporate Counsel
East Kentucky Power Cooperative, Inc.
4775 Lexington Road
P. O. Box 707
Winchester, KY 40392-0707

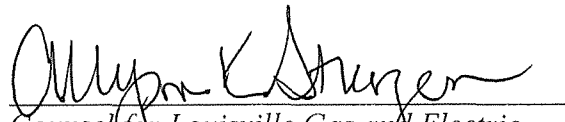
Jennifer Black Hans
Dennis G. Howard, II
Lawrence W. Cook
Office of the Kentucky Attorney General
Office of Rate Intervention
1024 Capital Center Drive, Suite 200
Frankfort, KY 40601-8204

Ann F. Wood
East Kentucky Power Cooperative, Inc.
4775 Lexington Road
P. O. Box 707
Winchester, KY 40392-0707

Jason R. Bentley
McBrayer, McGinnis, Leslie & Kirkland, PLLC
305 Ann Street
Suite 308
Frankfort, KY 40601

Mark David Goss
David S. Samford
Frost Brown Todd LLC
250 W. Main Street, Suite 2800
Lexington, KY 40507

Michael L. Kurtz
Boehm, Kurtz & Lowry
36 E. Seventh Street
Suite 1510
Cincinnati, OH 45202


Counsel for Louisville Gas and Electric
Company and Kentucky Utilities Company