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October 1, 2013

Kendrick Riggs, Esquire
2000 PNC Plaza
500 West Jefferson Street
Louisville, KY 40202

PSC STAFF OPINION 2013-013

Re: Louisville Gas & Electric Company and Kentucky Utilities Company
Request for an Advisory Opinion

Dear Mr. Riggs:

Commission Staff acknowledges receipt of your September 4, 2013 letter in which you request an opinion concerning the transfer of portions of generating station property between Louisville Gas and Electric Company ("LG&E") and Kentucky Utilities Company ("KU"). This opinion represents Commission Staff's interpretation of the law as applied to the facts presented, is advisory in nature, and is not binding on the Commission should the issues herein be formally presented for Commission resolution.

Based upon your letter, Commission Staff understands the facts as follows:

LG&E and KU are engaged in the electric business in Kentucky. The companies merged in 1998 pursuant to the Commission's authorization.¹ The companies jointly own and operate several generating stations. To ensure the generating units are fully held as tenants in common, LG&E and KU intend on transferring small land interests between each other, in proportion to their ownership in the respective generating units. The land to be transferred is within the footprint of the generating units. Transfers between LG&E and KU are conducted at-cost, which in the case of land transfers is the original book value of the land. The composite book value of the land to be transferred is

¹ Case No. 1997-00300, *In the Matter of: Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for Approval of Merger* (Ky. PSC Sept. 12, 1997).

\$20,223.57. Transferring the land at-cost is consistent with the companies' *Corporate Policies and Guidelines for Intercompany Transactions* as approved in connection with the LG&E and KU merger.² The companies note that in a previous case, the Commission held that prior Commission approval should be sought before land on an existing generating site is sold or leased.³ Because the proposed land transfers are entirely between the two regulated affiliates, as opposed to a sale to an unregulated affiliate or to an unaffiliated entity, LG&E and KU opine that the transfers should not require Commission approval.

You request an opinion as to whether Commission approval is required prior to transfers between LG&E and KU of small interests in land upon which are generating units jointly owned by LG&E and KU. The specific properties to be transferred, their costs, and their intended percentages of ownerships are listed in Exhibits A and B to your September 4, 2013 letter.

Commission Staff begins its analysis by noting that land that is intended to be transferred encompasses the footprint of generating units for which LG&E and KU were previously granted Certificates of Public Convenience and Necessity ("CPCN"). In granting authority to construct that generation, the Commission also authorized those generating units to be jointly owned in varying percentages at the generating stations where the land is now to be transferred in accordance with each utility's ownership interest.⁴ The sole purpose of the proposed transfers is to equalize the percentages of property owned by each utility with their respective ownership interests in the generating unit.

² See *Id.*

³ Case No. 2002-00029, *In the Matter of: Application of Louisville Gas and Electric Company and Kentucky Utilities Company for a Certificate of Public Convenience and Necessity for the Acquisition of Two Combustion Turbines* (Ky. PSC June 11, 2002).

⁴ Case No. 2002-00381, *Application of Louisville Gas and Electric Company and Kentucky Utilities Company for a Certificate of Public Convenience and Necessity for the Acquisition of Four Combustion Turbines and a Site Compatibility Certificate for the Facility*, (Mar. 18, 2003); Case No. 2011-00375, *Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for a Certificate of Public Convenience and Necessity and Site Compatibility Certificate for the Construction of a Combined Cycle Combustion Turbine at the Cane Run Generating Station and the Purchase of Existing Simple Cycle Combustion Turbine Facilities from Bluegrass Generation Company, LLC in LaGrange, Kentucky* (Ky. PSC May 3, 2012); Case No. 2000-00294, *Application of Louisville Gas and Electric Company and Kentucky Utilities Company for a Certificate of Public Convenience and Necessity for the Acquisition of Two Combustion Turbines* (Ky. PSC Oct. 16, 2000); Case No. 1999-00056, *The Application of Louisville Gas and Electric Company and Kentucky Utilities Company for a Certificate of Public Convenience and Necessity for the Acquisition of Two 164 Megawatt Combustion Turbines* (Ky. PSC July 23, 1999).

In a June 11, 2002 Order granting LG&E and KU a CPCN to acquire two combustion turbines, the Commission noted that it was the third case in which the companies sought a CPCN after combustion turbines were constructed by an unregulated affiliate on LG&E or KU property.⁵ The Commission further stated that:

The land available for new generation at the utilities' existing generating sites is finite. We also realize this land is very valuable to the utilities and their customers due to the existing infrastructure that includes both natural gas pipelines and electric transmission lines. Because of the finite nature and value of these sites, we find that LG&E and KU should seek Commission approval prior to entering into the sale or lease of any land located on an existing generation site.⁶

Thus, in Case No. 2002-00029, the Commission established the requirement that LG&E and KU must obtain prior approval for the sale or lease of any land at an existing generating site due to the limited quantity of land available for siting generating units and the consequent value of such land. LG&E and KU have previously sought the Commission's approval to sell or transfer land in accordance with the mandate set forth in Case No. 2002-00029.⁷ Those land sales and swaps have been for either undeveloped tracts or for the relocation of facilities to accommodate the construction of a public project.⁸ Here, the land to be transferred is occupied by generating units that were previously approved by the Commission to be co-owned by LG&E and KU. Under the transfers proposed here, the land will not be sold or leased to an unregulated or unaffiliated entity, and the land will continue to be used for the siting of generating units owned by LG&E and KU to serve their respective customers. Thus, the proposed transfers between LG&E and KU are in furtherance of, and consistent with, the Commission's prior approval of joint ownership of the generating units; the transfers serve a largely administrative function and will not reduce the land available to the utilities at their existing generating sites; and the potential value and use of the land will

⁵ *Id.* at 6.

⁶ *Id.*

⁷ See e.g. Case No. 2006-00391, *Application of Louisville Gas and Electric Company for Approval of Sale of Property to the Louisville Arena Authority, Inc.* (Ky. PSC Sept. 28, 2006); Case No. 2011-00014, *Application of Louisville Gas and Electric Company for Approval of Land Swap With and Lease of Land to Louisville Metro Government* (Ky. PSC Mar. 4, 2011); Case No. 2011-00435, *Application of Louisville Gas and Electric Company for Approval of Land Exchange with Louisville/Jefferson County Metro Government* (Ky. PSC Jan. 23, 2012).

⁸ *Id.*

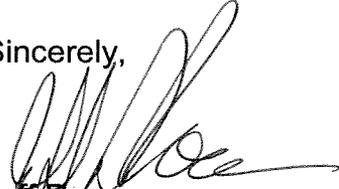
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not be impaired by the transfers. Consequently, no prior Commission approval is needed for the proposed land transfers under the terms of the Commission's June 11, 2002 Order in Case No. 2002-00029.

Further, Commission Staff notes that pursuant to KRS 278.218, Commission approval is required prior to any person acquiring or transferring ownership of utility assets valued at \$1,000,000 or more when the assets are not obsolete or will be utilized to provide a similar service to the utility or its customers.⁹ Here, the proposed land transfers fall well below the initial \$1,000,000 threshold for Commission approval. Therefore, the obsolescence or use of the land is not at issue and no approval is needed under KRS 278.218.¹⁰

This letter represents Commission Staff's interpretation of the law as applied to the facts presented. This opinion is advisory in nature and is not binding on the Commission should the issues herein be formally presented for Commission resolution. Questions concerning this opinion should be directed to Jonathan Beyer, Staff Attorney, at (502) 782-2581.

Sincerely,



Jeff Derouen
Executive Director

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⁹ KRS 278.218(1).

¹⁰ KRS 278.218(1)(a), (b)