

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

|                                   |   |            |
|-----------------------------------|---|------------|
| APPLICATION OF KENTUCKY UTILITIES | ) |            |
| COMPANY AND LOUISVILLE GAS AND    | ) | CASE NO.   |
| ELECTRIC COMPANY TO RETAIN        | ) | 2010-00237 |
| SOUTHWEST POWER POOL, INC. TO     | ) |            |
| PERFORM INDEPENDENT TRANSMISSION  | ) |            |
| ORGANIZATION FUNCTIONS            | ) |            |

O R D E R

On June 14, 2010 Kentucky Utilities Company and Louisville Gas and Electric Company ("Applicants") filed a joint motion requesting the Commission to rescind the February 2, 2010 Order in Case No. 2009-00427,<sup>1</sup> which authorized a transfer to the Applicants of the Independent Transmission Organization ("ITO") functions currently performed by the Southwest Power Pool, Inc. ("SPP"). In their joint motion, the Applicants also requested that the Commission allow them to withdraw their October 30, 2009 application in Case No. 2009-00427. Lastly, the joint motion requests that the Commission issue a declaratory order determining that no further Commission approval is required for the Applicants to retain SPP as their ITO administrator.

CASE NO. 2009-00427

In their application in Case No. 2009-00427, the Applicants requested Commission approval, pursuant to KRS 278.218, of a transfer under which they would regain operational control of their transmission assets from SPP. Since 2006, SPP has

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<sup>1</sup> Case No. 2009-00427, Application of Kentucky Utilities Company and Louisville Gas and Electric Company to Transfer Control of Certain Transmissions Functions (Ky. PSC, Feb. 2, 2010).

been the Applicants' ITO administrator under the terms and conditions approved by the Federal Energy Regulatory Commission ("FERC") in connection with the Applicants exit from the Midwest Independent Transmission System Operator. In that capacity, SPP administers the Applicants' Open-Access Transmission Tariff ("OATT") and Open-Access Same-time Information System processes transmission service requests pursuant to the OATT; performs system impact studies for all interconnections; performs transmission scheduling; and is responsible for compliance with applicable North American Electric Reliability Council and South-East Reliability Council requirements. Under their agreement with SPP, the Applicants' annual cost for these services is \$3.4 million. Applicants have also incurred an additional \$2.27 million one-time payment to SPP to settle a compensation dispute initiated by SPP under the jurisdiction of FERC.

The ITO agreement with SPP expired under its terms on August 31, 2010. In July 2009, SPP verbally notified the Applicants of its intent to not renew the contract. Subsequently, on October 26, 2009, SPP provided the Applicants with written notice of the termination of the agreement.

After unsuccessful efforts to find a potential replacement ITO provider, the Applicants filed their application for authority to reacquire the transmission functions currently performed by SPP on behalf of the Applicants. The Applicants also filed a similar application with FERC.

The Applicants maintained that their proposal was just and reasonable due to certain recent changes in FERC regulation that enhanced open access requirements and eliminated any potential for discrimination in the administration of open access tariff

requirements. Applicants also maintained that they could provide equivalent or better ITO services than they currently receive from SPP without adversely impacting rates. Applicants projected the annual cost to provide ITO services in-house to be approximately \$3-4 million, not including start-up costs of approximately \$2 million. Applicants stated that this compared favorably to their then-current SPP contract cost of \$3.4 million per year, as well as an additional \$2.7 million one-time payment under a recent settlement with SPP.

Finding that the transfer was for a proper purpose and consistent with the public interest, the Commission issued the February 2, 2010 Order in Case No. 2009-00427 approving the transfer. That Order also recognized that the Applicants had filed a similar application with FERC and that FERC's approval was also needed to allow the Applicants authority to reacquire its ITO services from SPP. Applicants now file the instant motion seeking to rescind the February 2, 2010 Order and allow them to withdraw their application in that case.

#### APPLICANTS' MOTION TO RESCIND AND WITHDRAW

In support of their motion, the Applicants state that certain conditions justifying their application in Case No. 2009-00427, and the Commission's February 2, 2010 Order approving that application, no longer exist. Specifically, the Applicants advised of their intent to withdraw their FERC transfer application. Because of intervenor opposition in the FERC matter, the procedural progress in those proceedings and the approaching expiration of the SPP contract, the Applicants made the determination that the self-provision approach was no longer reasonably achievable without unacceptable

delay and uncertainty. Thus, the Applicants state that they will withdraw their transfer application at FERC.

Because FERC's approval was also required to allow the Applicants to regain operational control of their ITO services, the Applicants maintain that their decision to withdraw the FERC application renders the Commission's February 2, 2010 Order in Case No. 2009-00427 moot. Applicants contend that it would be reasonable for the Commission to rescind the February 2, 2010 Order and allow the Applicants to withdraw their application in that proceeding.

#### REQUEST FOR DECLARATORY RULING

In addition to their decision to withdraw the FERC transfer application, the Applicants stated that they and SPP have reached an agreement to retain SPP as their independent ITO provider for a two-year extension period beginning on September 1, 2010. The total compensation under the extended agreement is \$8 million per year, consisting of an annual up-front payment of \$3 million and monthly payments of \$416,667. The new agreement will not cause SPP to have more functional control of the Applicants' transmission system than it currently has. The extended agreement expires on its terms on August 31, 2012, with Applicants agreeing that, no later than September 1, 2011, they will make the FERC filings necessary to effectuate such termination.

Applicants acknowledge that the payments under the extended SPP contract are higher than those they currently make to SPP for the same services. Applicants assert that, because they are unable to go forward with the self-provision approach and because of the timing of the expiration of the current SPP contract, continuing with SPP

is the most practical approach the Applicants can pursue at this time. In an attempt to mitigate the future cost of complying with FERC transmission independence requirements, the Applicants state that they will continue to evaluate alternative compliance strategies to be implemented at the termination of the two-year extended SPP contract.

In addition, the Applicants acknowledge that granting their requested motion cannot be construed in any future rate proceeding as approval for rate-making purposes of the cost of the Applicants' decision to continue with SPP as their ITO services provider. Lastly, in response to the issue of the cost of the extended agreement with SPP, the Applicants have committed to waive any claim in future base rate cases that, due to federal pre-emption, the Commission lacks authority to review the incremental costs for the two-year contract extension. Applicants, however, will retain their right to assert that the charges are reasonable and appropriate.

The Applicants assert that the extended agreement will allow SPP to remain the Applicants' ITO, just as it is currently, and that no change in functional control of any of the Applicants' utility assets will occur as a result of the extended SPP agreement. For these reasons, the Applicants request the Commission to issue a declaratory ruling that no additional approval is needed under KRS 278.218 for the Applicants to enter into the proposed extended contract with SPP.

#### FINDINGS

The Commission, after consideration of the evidence of record and being otherwise sufficiently advised, finds that:

1. The Applicants' motion to reopen Case No. 2009-00427 for the purposes of withdrawing their application and rescinding the February 2, 2010 Order has been deemed to be a new application and has been reviewed on its merits in this case.

2. Under the facts presented here, the Applicants' withdrawal of their FERC request for approval to re-acquire operational control of their ITO functions from SPP renders moot the Commission's February 2, 2010 Order in Case No. 2009-00427. This in turn renders the Applicants' request to withdraw their application in Case No. 2009-00427 moot.

3. Because the Applicants neither re-acquired control of their transmission system from SPP, nor intend to transfer any additional control to SPP under the two-year extended agreement, no additional authority is needed under KRS 278.218.

4. Applicants commit for the two-year term of the extended agreement with SPP not to assert that the FERC jurisdiction legally pre-empts the Commission from disallowing retail rate recovery of the compensation in excess of \$4 million per year paid to SPP; however, the Applicants will retain the right to assert that the charges are reasonable and appropriate.

IT IS THEREFORE ORDERED that:

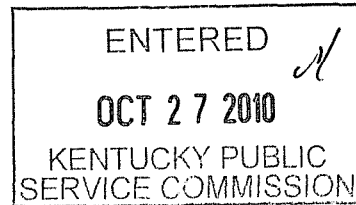
1. Applicants' motion to rescind the Commission's February 2, 2010 Order in Case No. 2009-00427 and to allow the Applicants to withdraw their application in Case No. 2009-00427 is denied as moot.

2. Applicants' extended agreement with SPP does not fall within the ambit of KRS 278.218 for the reasons stated herein and Commission approval of the two-year extension is not required.

3. This Order supersedes and renders moot our February 2, 2010 Order in Case No. 2009-00427.

4. This case is closed and is removed from the Commission's docket.

By the Commission



ATTEST:

  
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Executive Director

Case No. 2010-00237

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