

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF KENTUCKY UTILITIES)
COMPANY FOR A CERTIFICATE OF)
CONVENIENCE AND NECESSITY TO) CASE NO. 92-005
CONSTRUCT A SCRUBBER ON UNIT NO. 1)
OF ITS GHENT GENERATING STATION)

O R D E R

On March 31, 1992, the Kentucky Utilities Company ("KU") filed a motion requesting relief from the Commission's Orders of February 25, 1992 and March 17, 1992 requiring KU to disclose dollar amounts for internal sources of funding anticipated to be available for construction of a scrubber on Ghent 1 and the computer output of KU's five year financial forecast. KU states that once it discloses the requested financial information to the Commission, even if filed under a petition of confidentiality, the rules of the Securities and Exchange Commission ("SEC") and the New York Stock Exchange ("NYSE") require KU to disclose the information to the public. KU filed two affidavits in support of its position as well as excerpts from a NYSE manual.

Based on the motion and being sufficiently advised, the Commission finds that additional information is necessary to fully evaluate KU's motion.

IT IS THEREFORE ORDERED that KU shall file an original and 15 copies of the following information with this Commission, with a copy to all parties of record. Include with each response the

name of the witness who will be responsible for responding to the questions relating to the information provided. Careful attention should be given to copied material to ensure that it is legible. The information requested herein is due no later than April 23, 1992. If the information cannot be provided by this date, KU should submit a motion for an extension of time stating the reason a delay is necessary and include a date by which it will be furnished. Such motion will be considered by the Commission.

1. Provide a complete copy of the NYSE manual. In lieu of the entire manual, if deemed to be voluminous, provide copies of the appropriate section of the NYSE manual which deals with the disclosure of information to judicial or quasi-judicial bodies, along with a copy of the table of contents and the index of the manual.

2. Provide a copy of, or the appropriate citations to, SEC rules which deal with the disclosure of information to judicial or quasi-judicial bodies.

3. Explain in detail why the requested financial information, if filed under a petition of confidentiality, would have to be disclosed under SEC and NYSE rules. Include appropriate citations or copies of applicable rules.

4. In the affidavit of Michael R. Whitley, at page 2, paragraph 9, is his opinion that a confidential disclosure of the forecast to the Commission would require a public disclosure based on an independent evaluation of applicable SEC and NYSE rules, or solely on representations of KU's counsel? If based on an

independent evaluation, describe fully when the evaluation was performed and what documents were reviewed.

5. Mr. Whitley's affidavit states at page 2, paragraph 6, "Any abridged version of the forecast that might be provided would not give the Commission meaningful information and has great potential to be misleading." However, the affidavit also states at page 3, paragraph 12, "Data which may be required can be supplied in a different format." Explain what changes in format could be performed to allow KU to file the requested financial forecast information and the breakdown of the sources of internal funds.

6. In KU's motion and the memorandum in support thereof, numerous references are made to an affidavit of Richard Vaccari, Vice-President for Goldman, Sachs & Co. On April 2, 1992, KU notified the Commission that it was substituting Mr. Vaccari's affidavit with one from Roger C. Grimm, President of KUE Corp. of NY ("KUE Corp.").

a. Explain in detail why Mr. Vaccari's affidavit was not filed.

b. Supply Mr. Vaccari's affidavit, which was specifically referenced by KU.

7. Concerning KUE Corp.:

a. State when and where KUE Corp. was organized and incorporated.

b. Identify the location of each corporate office.

c. Indicate whether KUE Corp. is affiliated, in any manner, with either KU, KU Energy Corporation ("KU Energy"), or any other subsidiary of KU Energy.

d. Explain fully any business relationships between KUE Corp. and KU or KU Energy and state the percentage of KUE Corp.'s annual revenue derived from KU and KU Energy.

8. In the affidavit of Roger C. Grimm, at page 2, paragraph 3, is his opinion that a confidential disclosure of the forecast to the Commission would require a public disclosure based on an independent evaluation of applicable SEC and NYSE rules, or solely on representations of KU's counsel? If based on an independent evaluation, describe fully when the evaluation was performed and what documents were reviewed.

9. Explain in detail the basis for Mr. Grimm's statement at page 4, paragraph 9, that he is unaware of any electric or gas company being required to disclose internal financial projections. Include with this explanation the following:

a. Mr. Grimm's analysis of what forecasted financial information has been requested by other state regulatory commissions.

b. A list of states included in the analysis.

c. The type of test period used in rate cases for each state (i.e., historical or forecasted).

d. The number of months contained in the forecasted test year for each state utilizing a forecasted test year.

e. Details of any financial forecasts required by each state for any purpose.

10. Provide a listing of the electric and gas companies that Mr. Grimm provided investment banking services for during the last five calendar years.

11. In other responses to the February 25, 1992 Order, KU has provided information concerning forecasted capital structure, total capitalization, rates of return, and input variables used in the five year financial forecast. Explain why the disclosure of this information was acceptable to KU, while any further disclosure concerning the internal sources of funds and the five year financial forecast has raised concerns relating to SEC and NYSE rules.

12. Generally accepted auditing standards ("GAAS") recognize that prospective financial statements can be for either "general" or "limited" use. A limited use statement can refer to a submission to a state regulatory agency. Used in this context, the financial statements can be either financial forecasts or financial projections. Explain whether KU has taken into consideration the limited use identification recognized under GAAS, and whether the limited use recognition would satisfy KU's disclosure concerns.

13. Provide copies of the SEC rules referred to in KU's memorandum.

14. Provide copies of any SEC rules regarding forecasted or projected financial information not previously referred to in any of the testimony or exhibits related to this issue.

15. Provide a narrative explanation of the uses of the financial forecasts and a list of each individual KU employee,

director, consultant, or advisor having any access to these forecasts.

16. Provide copies of any decisions of judicial or quasi-judicial bodies holding that SEC or NYSE rules require the public disclosure of proprietary, financial information once such information has been provided under seal to a judicial or quasi-judicial body.

17. NYSE rule 202.02(B), provides that, "Every director has a fiduciary obligation not to reveal any privileged information to anyone not authorized to receive it." If no public disclosure is required when privileged information is disclosed to a director, explain fully why a public disclosure would be required if such information is disclosed on a confidential basis for use in this proceeding only.

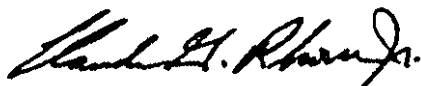
18. Is KU aware of any regulated electric or gas utility that files rate applications based on forecasted test years? If yes, explain fully why other utilities can publicly disclose forecasted financial information to support their rate applications while KU maintains that such a forecast cannot be publicly disclosed.

Done at Frankfort, Kentucky, this 15th day of April, 1992.

PUBLIC SERVICE COMMISSION


For the Commission

ATTEST:



Executive Director, Acting