

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF KENTUCKY UTILITIES)
COMPANY TO ASSESS A SURCHARGE UNDER)
KRS 278.183 TO RECOVER COST OF) CASE NO. 93-465
COMPLIANCE WITH ENVIRONMENTAL)
REQUIREMENTS FOR COAL COMBUSTION)
WASTES AND BY-PRODUCTS)

In the Matter of:

THE APPLICATION OF LOUISVILLE GAS AND)
ELECTRIC COMPANY FOR APPROVAL OF A)
COMPLIANCE PLAN AND TO ASSESS A)
SURCHARGE PURSUANT TO KRS 278.183 TO) CASE NO. 94-332
RECOVER COSTS OF COMPLIANCE WITH)
ENVIRONMENTAL REQUIREMENTS FOR COAL)
COMBUSTION WASTES AND BY-PRODUCTS)

O R D E R

On April 23, 1999, Kentucky Utilities Company (KU), Louisville Gas and Electric Company (LG&E), the Attorney General's Utility and Rate Intervention Division, Kentucky Industrial Utility Customers, Inc. (KIUC), Metro Human Needs Alliance, People Organized and Working for Energy Reform, Anna Shedd, Lexington-Fayette Urban County Government (LFUCG), and Jefferson County, Kentucky (collectively Joint Applicants) filed a Settlement Agreement (Settlement) in response to the December 17, 1998 Opinion of the Supreme Court of Kentucky in Kentucky Industrial Utility Customers, Inc. v. Kentucky Utilities Co., Ky., 983 S.W.2d 493 (1998). The Joint Applicants state that the Settlement, which will become effective upon

approval by the Commission,¹ resolves all their pending litigation relating to the environmental surcharge statute, KRS 278.183.

BACKGROUND

In its July 19, 1994 Order in Case No. 93-465, the Commission approved an environmental surcharge for KU, which was implemented in August 1994. This was the first surcharge authorized under the provisions of KRS 278.183. The Commission's decision was appealed, and the case was eventually heard by the Supreme Court of Kentucky. In its December 17, 1998 Opinion, the Supreme Court reversed the Commission's decision to allow KU cost recovery of environmental projects built prior to January 1, 1993, and remanded the case to the Commission. The Opinion, however, was ambiguous in addressing the cost recovery of projects under construction on January 1, 1993.

In its April 6, 1995 Order in Case No. 94-332, the Commission approved an environmental surcharge for LG&E, which was implemented in May 1995. This Order was also appealed, but the appeal was held in abeyance pending resolution of the appeal of Case No. 93-465.

In January 1999, KU and LG&E informed the Commission that settlement negotiations were underway, which hopefully would resolve all outstanding issues. The Settlement filed with the Commission by the Joint Applicants on April 23, 1999 was the result of those negotiations. An informal conference was held at the Commission's

¹ The Settlement defines the effective date to be the first day of the month following the expiration of ten days after LG&E or KU files its monthly Environmental Surcharge Report and proposed factor pursuant to Section 6.3 for purposes of implementing the Settlement. See Settlement Agreement at 5.

offices on May 6, 1999, and additional information was sought in the Commission's July 6, 1999 Order. All information requested from the Joint Applicants has been provided.

SETTLEMENT PROVISIONS

The Settlement provides for a temporary adjustment of the environmental surcharges of KU and LG&E, which reflects a refund of a portion of the surcharge revenues collected by KU and LG&E since the inception of their respective surcharges. The temporary adjustment for each utility, with amounts adjusted to a jurisdictional basis, reflects a negotiated base amount² plus an incremental monthly amount.³ The temporary adjustment will be reflected in the monthly surcharge calculations in equal amounts over a 12-month period. However, for certain industrial customers of KU and LG&E and certain LFUCG accounts, the appropriate share of the temporary adjustment will be returned in a single month.⁴

The Settlement provides for a balancing analysis at the end of the 12-month period, to determine whether any under- or over-collection of revenues occurred. Any under- or over-collections will be reflected as an adjustment to the environmental surcharge factors in the second month following the completion of the 12-month

² For KU, the base amount covers the expense months of June 1994 through and including October 1998. For LG&E, the base amount covers the expense months of March 1995 through and including November 1998.

³ For KU, the incremental amount is \$250,000 per month, and covers the expense months of November 1998 through the second expense month preceding the effective date of the Settlement. For LG&E, the incremental amount is \$75,000 per month, and covers the expense months of December 1998 through the second expense month preceding the effective date of the Settlement.

⁴ The 12 industrial customers and six LFUCG accounts for KU are listed in Exhibits D and E of the Settlement. The 10 industrial customers for LG&E are listed in Exhibit C of the Settlement.

temporary adjustment period. Assuming an effective date of August 1, 1999, the Joint Applicants have determined that KU's total temporary adjustment would be \$19,440,130,⁵ while LG&E's total temporary adjustment would be \$4,984,870.⁶

In addition to the temporary adjustment to the operation of the environmental surcharge, the Settlement provides that certain costs will be excluded on a prospective basis as well. Exhibits attached to the Settlement show that the Joint Applicants have determined that KU's monthly jurisdictional environmental surcharge gross revenue requirement would be reduced by \$261,498, while LG&E would experience a \$73,541 monthly reduction.⁷

COMMISSION FINDINGS

Having thoroughly reviewed the Settlement, the Commission finds that the Settlement represents a reasonable resolution to the issues surrounding the environmental surcharge litigation for KU and LG&E. The Settlement reflects a fair and equitable implementation of the December 17, 1998 Opinion of the Supreme Court, as well as a fair and reasonable distribution of the temporary adjustment to the environmental surcharge.

⁵ Of this \$19,440,130, the industrial customers and LFUCG accounts would receive \$1,607,690. The remaining \$17,832,440 would be spread over the 12-month period; see Case No. 93-465, Response to the Commission's July 6, 1999 Order, Item 2.

⁶ Of this \$4,984,870, the industrial customers would receive \$538,866. The remaining \$4,446,004 would be spread over the 12-month period; see Case No. 94-332, Response to the Commission's July 6, 1999 Order, Item 1.

⁷ See Exhibits A and B of the Settlement. The referenced reductions in the jurisdictional gross revenue requirement do not include the effects of the temporary adjustment.

The Settlement provides that KU and LG&E will file the necessary reports and surcharge factors implementing the Settlement no less than 33 days but no more than 45 days after the date of the Commission's Order.⁸ Given this provision, the final amounts of the temporary adjustment will need to be updated. KU and LG&E should provide such an update as part of the respective monthly environmental surcharge reports submitted when the Settlement is implemented.⁹

SUMMARY

After consideration of the evidence and being otherwise sufficiently advised, the Commission finds that:

1. The Settlement Agreement filed on April 23, 1999, appended hereto, is reasonable, does not conflict with any regulatory principle and should be approved.
2. The final amount of the temporary adjustment to the environmental surcharges of KU and LG&E should be submitted to the Commission in the manner specifically set out in this Order.

IT IS THEREFORE ORDERED that:

1. The terms and conditions set forth in the Settlement Agreement, a copy of which is appended hereto, are adopted and approved and are incorporated into this Order as if fully set forth herein.
2. KU and LG&E shall provide the determination of the final amounts of the temporary adjustment in the manner described herein.

⁸ Settlement at Section 6.3, pages 12-13.

⁹ Exhibit K of the Settlement is an acceptable format; copies of an updated Exhibit K, reflecting the inclusion of the July 1999 expense month, should be filed for KU and LG&E.

Done at Frankfort, Kentucky, this 17th day of August, 1999.

By the Commission

ATTEST:

Executive Director

APPENDIX

AN APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 93-465 AND CASE NO. 94-332
DATED AUGUST 17, 1999

Attached is the Settlement Agreement filed by the Joint Applicants with the Commission on April 23, 1999, without Exhibits A through J.