

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF THE UNION LIGHT, HEAT)	
AND POWER COMPANY FOR DEVIATION)	CASE NO.
FROM THE REQUIREMENTS OF)	2003-00024
KRS 278.2207(1)(b))	

SECOND DATA REQUEST OF COMMISSION STAFF TO
THE UNION LIGHT, HEAT AND POWER COMPANY

The Union Light, Heat and Power Company (ULH&P), pursuant to 807 KAR 5:001, is requested to file with the Commission the original and eight copies of the following information, with a copy to all parties of record. The information requested herein is due not later than 10 days from the date of this request. When a number of sheets are required for an item, each sheet should be appropriately indexed, for example, Item 1(a), Sheet 2 of 6. Include with each response the name of the person who will be responsible for responding to questions relating to the information provided. Careful attention should be given to copied material to ensure that it is legible. Where information herein has been previously provided, in the format requested herein, reference may be made to the specific location of said information in responding to this information request.

1. Refer to ULH&P s responses to Items 1 and 7 of the Commission Staff s First Data Request dated March 11, 2003 (Staff s First Request). Provide the names of

the witnesses responsible for providing the responses. For purposes of this request, a response of Counsel will not be sufficient.

2. Refer to the response to Item 1(c) of Staff's First Request. In its November 1, 2002 Order in Case No. 2002-00375,¹ the Commission stated that ULH&P must seek prior Commission approval for any and all transactions with Cinergy Marketing & Trading, LP (CM&T) not specifically approved in that Order. ULH&P filed its application in Case No. 2002-00375 on October 11, 2002 and the final Order was issued on November 1, 2002. On December 1, 2002, ULH&P and CM&T entered into an amendment of the asset management agreement (Second Amendment). ULH&P filed its application in this case on January 16, 2003.

a. ULH&P's response to Item 1(c) did not adequately address why it did not seek the Commission's prior approval of the Second Amendment between ULH&P and CM&T. Provide the originally requested information.

b. Case No. 2002-00375 was processed in a 3-week time frame. Explain in detail how ULH&P concluded that a deviation request for the Second Amendment could not be processed prior to the December 1, 2002 execution date.

c. Given the November 1, 2002 Order in Case No. 2002-00375, explain in detail why ULH&P's actions concerning the Second Amendment do not constitute a violation of the Commission's Order in Case No. 2002-00375.

3. Refer to Item 4 of Staff's First Request. The Executive Summary of the bids received by ULH&P indicates that Aquila had the second best bid. Did ULH&P

¹ Case No. 2002-00375, Application of The Union Light, Heat and Power Company for a Deviation to Allow The Union Light, Heat and Power Company to Purchase Natural Gas from Cinergy Marketing & Trading.

approach Aquila to see if it would honor its previous bid and accept assignment of the contract? Explain the response in detail.

4. Refer to ULH&P's response to Items 5(b) and (c) of Staff's First Request. ULH&P states that it received the first credit from Mirant in January 2002 and that the credits were applied to the Actual Adjustment (AA) in three Gas Cost Adjustment (GCA) filings. According to ULH&P's GCA filings, the earliest application of the credit in its AA was for March 2002. Explain why the AA calculations for January and February 2002 in ULH&P's GCA filings did not include the credits received from Mirant.

5. Refer to ULH&P's response to Item 5(d) of Staff's First Request. The response does not appear to address the questions raised in the data request. Provide a clarification of the response and explain how it is responsive to the information requested.

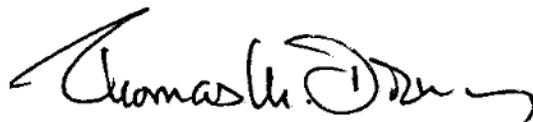
6. Refer to ULH&P's response to Item 6 of Staff's First Request. Explain whether the list of bidders from the original RFP was available to Mirant when it was trying to assign the contract prior to assigning it to CM&T.

7. Throughout the application, ULH&P states that it believed there was a risk that a transfer of the storage gas to ULH&P could have been considered a preference under bankruptcy law if Mirant had filed bankruptcy during the remaining term of the asset management agreement and the value of the gas exceeded the value of Mirant's collateral. ULH&P further states that it would be reasonable for the Commission to approve the deviation because it mitigates the risk that the termination of the transaction might be deemed a preferential transfer under federal bankruptcy law. Explain in detail why ULH&P believed that the assignment of the asset management

agreement to CM&T and the transfer of title of the gas to CM&T did not carry the same risk of being considered a preferential transfer.

8. Refer to the response to Item 7 of Staff's First Request and page 5 of the application. In the response to Item 7, ULH&P states that it was not a party to the negotiations Mirant had with other companies regarding attempts to assign the Agreement and does not know if Mirant discussed with other companies the possible renegotiation of the management fee. In the second full paragraph on page 5 of the application, ULH&P states, Mirant, CM&T and ULH&P ultimately agreed that Mirant would assign the Asset Management Agreement to CM&T. Explain why it was reasonable for ULH&P to agree to the assignment of its asset management to its affiliate when it did not know whether other respondents to its RFP had been contacted.

9. KRS 278.2213(6) provides that all dealings between a utility and a non-regulated affiliate shall be at arm's length. Explain in detail how the Second Amendment to Agreement between CM&T and ULH&P and Section 3.2 of the Assignment comports with this statute.



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DATED April 9, 2003

cc: All Parties