COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF LOUISVILLE GAS AND ELECTRIC COMPANY FOR APPROVAL OF NEW RATE TARIFFS CONTAINING A MECHANISM FOR THE PASS-THROUGH OF MISO-RELATED REVENUES AND COSTS NOT ALREADY INCLUDED IN EXISTING BASE RATES	)	CASE NO. 2004-00459
THE APPLICATION OF KENTUCKY UTILITIES COMPANY FOR APPROVAL OF NEW RATE TARIFFS CONTAINING A MECHANISM FOR THE PASS-THROUGH OF MISO-RELATED REVENUES AND COSTS NOT ALREADY INCLUDED IN EXISTING BASE RATES	)	CASE NO. 2004-00460

O R D E R

On December 1, 2004, Louisville Gas and Electric Company ("LG&E") and Kentucky Utilities Company ("KU") tendered for filing applications for approval of tariffs which are designed to pass through to their respective electric customers the net revenues and net expenses resulting from the wholesale energy market tariffs adopted by the Midwest Independent System Operator, Inc. ("MISO"). The tariffs will operate as monthly surcharges imposed upon all customers' bills and are to reflect only the MISO revenues and expenses that are not already included in existing base electric rates. The applications state that the actual charges or credits to customers' bills will vary monthly, but the expectation is that the combined LG&E and KU customer billings will increase by $7 million annually.

The MISO cost surcharge tariffs have effective dates of January 1, 2005, although MISO's wholesale energy market tariffs will not be effective until March 1, 2005. The applications request that the surcharges be approved as of January 1, 2005, but if an investigation is conducted, as of May 1, 2005. In the event that the investigation is not completed by May 1, 2005, LG&E and KU request that the surcharges be effective, subject to refund, on that date.

The testimonies filed by LG&E and KU in support of their respective applications recommend approval of the MISO cost surcharges as "just and reasonable" and as "complements" to their existing rates. Although the applications stress that the surcharges will reflect only MISO revenues and expenses not already included in existing rates, the applications do not claim that LG&E's and KU's existing rates are not fair, just, and reasonable. In fact, the applications contain absolutely no financial information or exhibits to show that LG&E's and KU's existing rates are insufficient to allow full recovery of the MISO energy market costs.

On December 20, 2004, LG&E and KU filed motions to amend their respective applications and tendered for filing amended applications. The motions state that the amendments are intended to demonstrate the Commission's authority to approve the MISO cost surcharges.

LG&E and KU also filed on that date a Stipulation and Recommendation ("Stipulation") entered into by the applicants and the intervenors, the Office of the Attorney General and Kentucky Industrial Utility Customers, Inc. The Stipulation states that the intervenors want to raise the issue of whether the MISO cost surcharges can be approved outside of a proceeding for a general adjustment in base rates. The parties have agreed to a proposed briefing schedule, which provides for the intervenors to file first and which will result in this issue being submitted to the Commission by the end of February 2005. The Stipulation also recommends that the proposed MISO cost surcharges be suspended through May 31, 2005 to allow additional time to investigate their reasonableness.

Based on the original and amended applications, the Stipulation, and being otherwise sufficiently advised, the Commission finds that the proposed MISO cost surcharges appear to apply to every customer class of service and to every customer within each service class. Although the applications claim that adoption of the proposed surcharges will have no impact on LG&E's and KU's base rates, there would appear to be an impact on the electric rates paid by each customer every month. As defined in KRS 278.010(12), the term rate includes "any...compensation for service rendered or to be rendered by any utility…." If the proposed MISO cost surcharges are approved, it appears that the rates now paid by every LG&E and KU electric customer will be adjusted by a charge or credit to reflect the surcharge.

Commission regulation 807 KAR 5:001, Section 10, establishes minimum filing requirements for all applications requesting a general adjustment in existing rates. Those filing requirements include a specific advance notice, as well as detailed financial data and exhibits that are necessary to demonstrate that the applicant's existing rates are not, or will not be, fair, just, and reasonable, and need an adjustment. The MISO cost surcharges are proposed to be mandatory, not optional, rates, and they will recur every month on the bill of every electric customer. Consequently, it appears that LG&E and KU are requesting a general adjustment to every rate classification by including the MISO cost surcharge as a supplement to every rate classification. However, the LG&E and KU applications did not include the financial data and exhibits required by 807 KAR 5:001, Section 10, and the advance notices of filing that were provided did not comply with that regulation.

Simply stated, the pending applications appear to be requests for the Commission to engage in single-issue rate-making by focusing exclusively on one or more closely related items of revenue and expense, to the exclusion of all other items of revenue and expense. Although the Commission has, in limited instances, previously engaged in single-issue rate-making, those instances were either specifically authorized by statute or the result of a unanimous agreement by all parties with approval by the Commission. While the General Assembly has authorized single-issue rate-making for recovery of the Commission's annual assessment and the costs of its consultants (KRS 278.130), environmental costs (KRS 278.183), and demand side management costs (KRS 278.285), there is no provision of law authorizing a rate case focused exclusively on MISO-related revenues and expenses. Since LG&E and KU are proceeding under KRS 278.030, which requires rates to be "fair, just and reasonable," their applications appear to be deficient by having omitted the information and schedules required by 807 KAR 5:001, Section 10, to justify a change in rates.

The Commission notes that, by Orders dated June 30, 2004, increased rates were approved for LG&E and KU in conjunction with their rate applications in Case No.

2003-00433[1] and 2003-00434.[2] Since those rate applications are still pending before the Commission on rehearing, the parties are invited to address whether those cases might provide appropriate forums to review the proposed MISO cost surcharges.

In summary, it appears that the Commission may lack authority to consider the MISO cost surcharges requested by LG&E and KU absent compliance with all filing requirements under 807 KAR 5:001, Section 10. If true, this would require LG&E and KU to file all the information and schedules required by the regulation or, possibly, incorporate the MISO cost surcharges into their pending rate cases. Although the Commission has the authority under 807 KAR 5:001, Section 2(2), to reject for filing any document which on its face does not comply with Commission regulations, we agree with the position of the parties, as expressed in the Stipulation, that briefs should be submitted on the issue of the Commission's authority. However, the proposed briefing schedule will lead to a Commission decision in late March 2005, and this may not allow sufficient time for processing this case if the Commission determines that it does have authority to grant the surcharges. The MISO cost surcharge applications will have been pending for almost 4 months by then, and KRS 278.190(3) limits the Commission's review of rate changes to 10 months. To ensure adequate time to investigate the pending cases, all briefs on the Commission's authority will need to be filed by February 7, 2005, in accordance with the schedule established herein.

[1] An Adjustment of the Gas and Electric Rates, Terms, and Conditions of Louisville Gas and Electric Company, PSC Case No. 2003-00433.

[2] An Adjustment of the Electric Rates, Terms, and Conditions of Kentucky Utilities Company, PSC Case No. 2003-00434.

The Commission also recognizes that the proposed MISO cost surcharges have an effective date of January 1, 2005, which is 30 days after the applications were tendered for filing. The requirement for 30 days' notice before changes in rates can become effective is set forth in KRS 278.180, and the 30-day notice period does not commence until the minimum filing requirements have been met.

However, the Commission has determined herein that the issue of whether the pending applications satisfy the minimum filing requirements should not be decided until the parties have an opportunity to address that issue. Since this issue cannot be resolved prior to January 1, 2005, we will act in accordance with the Stipulation and exercise our authority under KRS 278.190 to suspend the MISO cost surcharges for 5 months, to become effective on May 31, 2005. In the event it is determined that the pending applications do not satisfy the minimum filing requirements, the 30-day notice required by KRS 278.180 will not commence until the filing requirements are satisfied.

IT IS THEREFORE ORDERED that:

1. Intervenors shall file briefs on the Commission's authority to consider the proposed MISO cost surcharges no later than January 24, 2005. Any responses by LG&E and KU shall be filed no later than January 31, 2005, and any reply by intervenors shall be filed by February 7, 2005.

2. The pending MISO cost surcharge tariffs are suspended for 5 months, to become effective on May 31, 2005, without prejudice to a later effective date if the pending applications are determined to not satisfy the minimum filing requirements.

3. The motions of LG&E and KU to amend their applications are granted.

Done at Frankfort, Kentucky, this 22nd day of December, 2004.

By the Commission

ATTEST:

Executive Director