

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF KENTUCKY UTILITIES)	
COMPANY FOR A CERTIFICATE OF PUBLIC)	
CONVENIENCE AND NECESSITY TO APPLY)	
FOR A FRANCHISE FROM BEAVER DAM,)	CASE NO. 2004-00518
CROFTON, EUBANK, FERGUSON,)	
HODGENVILLE, LONDON, LYNCH, MORTONS)	
GAP, WALLINS AND WHITE PLAINS)	

O R D E R

Kentucky Utilities Company (“KU”) has filed an application seeking Certificates of Public Convenience and Necessity (“Certificate”) to qualify for bidding on electric franchises in the cities of Beaver Dam, Crofton, Eubank, Ferguson, Hodgenville, London, Lynch, Mortons Gap, Wallins and White Plains. Under the provisions of KRS 278.020(4), no utility may apply for a franchise from any governmental agency until it has obtained a Certificate from this Commission based on our finding that there is a need and demand for the service sought to be rendered.

The Commission assessed a penalty of \$500 against the Louisville Gas and Electric Company (“LG&E”) in Case No. 2004-00043 for LG&E’s failure to secure a Certificate pursuant to KRS 278.020(3)¹ before entering into an electric franchise agreement with the

¹ KRS 278.020 was amended to provide for additional sections and as a result KRS 278.020(3) became KRS 278.020(4). (2004 Ky. Acts. Ch. 75, § 1, effective July 13, 2004).

city of West Point, Kentucky.² The Commission ordered the penalty abated for a period of 3 years, but directed that if it was determined that LG&E had violated the provisions of KRS 278.020(3) during that 3-year period, the penalty would become immediately due and payable.

KU states that it operates under the same management as LG&E and that, as a result of the Commission's decision in Case No. 2004-00043, it conducted an exhaustive search of all franchises held by KU and LG&E. KU states that the search revealed that it had secured electric franchises for the 10 cities named in this proceeding prior to receiving Commission approval. It states that, as a result of the search, both KU and LG&E have implemented a specific protocol to ensure that there will be no violations of this type in the future. KU acknowledges that the Commission has the authority, pursuant to KRS 278.990, to institute a show cause proceeding against it for its failure to obtain the proper approvals for these franchises. Therefore, to resolve the matter, KU proposes, since the two companies operate under the same management, that LG&E will pay the \$500 penalty abated in Case No. 2004-00043 and KU will pay an additional \$500.

The Commission, having considered the record and being otherwise sufficiently advised, finds that, pursuant to KRS 278.990, a penalty should be assessed against KU for its willful violation of KRS 278.020(4), but finds that the offer of settlement proposed by KU should be denied. We find that, despite the fact that LG&E and KU operate under the same management, KU is the utility that violated KRS 278.020(4) by failing to secure Commission approval prior to entering into the franchises at issue in this proceeding and

² Case No. 2004-00043, Application of Louisville Gas and Electric Company For a Certificate of Public Convenience and Necessity Authorizing It to Bid on Franchise Established by the City of West Point, Kentucky (Ky. P.S.C. Mar. 26, 2004).

KU should be the utility penalized for the violation. The Commission finds the penalty amount offered by KU is reasonable in light of the remedial measures taken to ensure that no further violations of this type will occur. We further find that the penalty assessed against LG&E in Case No. 2004-00043 should remain abated as ordered therein.

The Commission also finds that its authority to grant Certificates pursuant to KRS 278.020(4) is limited to determining only whether there is a need and demand for the service sought to be rendered. Since KU has already entered into franchise agreements with the cities of Beaver Dam, Crofton, Eubank, Ferguson, Hodgenville, London, Lynch, Mortons Gap, Wallins and White Plains, no such finding is necessary and no Certificates should be issued. In addition, the Commission makes no finding or determination as to the qualifications of the bidder, the validity of any of the provisions of the franchises offered by the above-mentioned cities, or the manner in which any franchise fees are to be treated for rate purposes.

IT IS THEREFORE ORDERED that:

1. KU's request for Certificates to bid on franchises for electric service offered by the above-mentioned cities is denied as moot.
2. KU's offer of settlement is denied.
3. KU is assessed a penalty of \$500 for its failure to comply with KRS 278.020(4).
4. Within 10 days of the date of this Order, KU shall pay to the Commonwealth of Kentucky the sum of \$500. This payment shall be in the form of a cashier's check made payable to the "Treasurer, Commonwealth of Kentucky" and shall be mailed or delivered to

the Office of General Counsel, Public Service Commission of Kentucky, 211 Sower Boulevard, Post Office Box 615, Frankfort, Kentucky 40602.

5. Upon receipt of the sum set forth in Ordering Paragraph 3, this case shall be closed and removed from the Commission's docket without further Order.

Done at Frankfort, Kentucky, this 20th day of February, 2006.

By the Commission

ATTEST:

A handwritten signature in black ink, consisting of several overlapping loops and flourishes, positioned above a horizontal line.

Executive Director