

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JOINT VERIFIED APPLICATION OF)
E.ON AG, POWERGEN LTD., AND) CASE NO. 2007-00466
E.ON U.S. LLC FOR WAIVER OF)
CERTAIN MERGER COMMITMENTS)

O R D E R

On October 30, 2007, E.ON AG, Powergen Ltd., and E.ON U.S. LLC (collectively “Applicants”) filed a joint application requesting a limited waiver of certain commitments that are now triggered by E.ON AG’s acquisition of a business based in the United States. The commitments had been agreed to by the Applicants in 2001 as part of the transfer of ownership of Kentucky Utilities Company (“KU”) and Louisville Gas and Electric Company (“LG&E”) from Powergen Plc (now known as Powergen Ltd.) to E.ON AG.¹ In approving that transfer of ownership, the Commission adopted numerous merger commitments, including the requirements that E.ON AG’s United States headquarters be maintained in Louisville, Kentucky for 10 years and that the management of all future United States based acquisitions by E.ON AG will report to E.ON AG’s United States headquarters.²

¹ Case No. 2001-00104, Joint Application for Transfer of Louisville Gas and Electric Company and Kentucky Utilities Company in Accordance with E.ON AG’s Planned Acquisition of Powergen Plc.

² Case No. 2001-00104, Order dated August 6, 2001, Appendix A, Merger Commitment Nos. 36 and 57, and as clarified by Order dated September 17, 2001.

The application states that E.ON AG has publicly announced a decision to generate at least 20 percent of its energy from renewable resources by 2020. To help reach this renewable energy goal, E.ON AG has entered into an agreement with Airtricity Holdings, Limited, an Irish renewable energy company, whereby E.ON AG will purchase 100 percent of the stock of Airtricity North America, the holding company for Airtricity, Inc. (“Airtricity”) and Airtricity Holdings (Canada) Limited. Airtricity is a United States based developer and operator of renewable wind energy. Airtricity and its United States subsidiaries employ 66 people at 6 locations, with each of its two largest offices employing 26 people.

Airtricity is not a traditional electric utility and it makes no retail sales of electricity to end-use customers, only wholesale sales for resale. Airtricity is classified as an exempt wholesale generator under the regulations of the Federal Energy Regulatory Commission. Airtricity’s assets include 210 MW of operational wind generation in Texas, additional wind farms under construction in Texas and New York, and multiple wind farms under development in a number of states excluding Kentucky. Airtricity currently has no plans to develop, build, or acquire any assets in Kentucky.

The Applicants acknowledge that, under the agreed-to merger commitments, the management of Airtricity is required to report to E.ON AG’s United States headquarters in Louisville, Kentucky. However, the Applicants request a limited waiver of that requirement so that Airtricity can report directly to a new E.ON business unit known as Renewables and Climate Protection (“RCP”), located in Düsseldorf, Germany.

The requested waiver is based on the international scope of E.ON AG’s renewable energy initiative, which includes projects in Germany, Spain, Portugal,

Denmark, Sweden, and Great Britain. These other projects will all be managed by and report to RCP, which will have significant technical and management expertise in the field of renewable energy. Consequently, having Airtricity report directly to RCP will result in more efficient control and coordination of its U.S. renewable assets, whereas having Airtricity report to E.ON AG's U.S. headquarters would neither produce any efficiencies nor any synergies.

In response to the Applicants' motion, an informal conference was held at the Commission's offices on November 7, 2007. On that same date, the Attorney General's Office of Rate Intervention filed a motion for full intervention, which was subsequently granted. The Applicants then requested another informal conference, which was held on December 7, 2007.

On December 10, 2007, the Applicants filed an amended joint application and a motion in support thereof. The amended application sets forth one technical correction, which notes that the new E.ON AG business unit that will manage its renewable energy business has been renamed E.ON Climate and Renewables ("ECR"), and four substantive additions which are conditioned upon the Commission's approval of the limited waiver requested.

The first substantive addition is a request that the limited waiver be applicable to not only the acquisition of Airtricity, but also to any future renewable efforts of E.ON AG in the United States that are operated from outside the United States as part of E.ON AG's ECR business unit.

The second substantive addition is a proposal to extend, for an additional 5 years, through June 30, 2017, the Applicants' existing merger commitment Nos. 36

and 57. These commitments require that KU's headquarters be maintained in Lexington, Kentucky; that LG&E's and LG&E Energy's (now E.ON U.S.) respective headquarters be maintained in Louisville, Kentucky, and that the United States headquarters of E.ON AG and Powergen Ltd. be maintained in Louisville, Kentucky. Also proposed to be extended by 5 years is the commitment that the management of future acquisitions in the United States by E.ON AG will report to E.ON AG's headquarters in Louisville, Kentucky, except for the renewable energy resources as noted in the prior paragraph.

The third substantive addition to the amended application is the inclusion of two commitments: (1) E.ON AG's acquisition of Airtricity will not impede the ability of KU and LG&E to pursue prudent renewable resources in Kentucky; and (2) if E.ON AG or any of its subsidiaries considers a potential renewable energy project in Kentucky, KU and LG&E will receive timely notice so they can make a reasonable business judgment on whether to pursue the project as a generating resource for their respective customers.

The fourth substantive addition is an agreement that if the requested limited waiver is granted, the waiver will not be cited as precedent in any other Commission proceedings, except in conjunction with the enforcement or interpretation of this application.

Based on the evidence of record and being otherwise sufficiently advised, the Commission finds good cause to grant the Applicants' motion to file an amended application. Further, the Commission finds good cause to grant the limited waiver as requested by the Applicants.

The assets and operations of Airtricity are relatively minor in nature and dispersed over a relatively wide geographic area, compared to the centralized assets and operations of LG&E and KU. Thus, the Commission finds that there would be few, if any, efficiencies or synergies to KU and LG&E from having Airtricity managed in the United States. Due to the unique nature of renewable resources, centralized management of E.ON AG's assets under its ECR business unit is reasonable. In addition, to the extent that there might be some efficiencies for KU and LG&E as a result of E.ON AG's acquisition of Airtricity, the Applicants have agreed to analyze the issue and file a report within 6 months of consummating the acquisition.

At the time that E.ON AG acquired KU and LG&E, merger commitments were made to maintain the headquarters of KU, LG&E, and E.ON AG's United States operations in Kentucky for 10 years. Also included was a 10-year commitment that all future acquisitions in the United States by the Applicants would be managed by E.ON AG's headquarters in Louisville, Kentucky. E.ON AG's acquisition of KU and LG&E was completed on June 30, 2002 and, consequently, the commitments to maintain the headquarters in Kentucky, and to manage new acquisitions in Kentucky, runs through June 30, 2012.

The proposal to now extend these commitments for an additional 5 years, through June 30, 2017, represents a significant benefit to the ratepayers and all those in the service territories of KU and LG&E. Having management personnel, including senior executives, located within the KU and LG&E service territories results in the utilities being more efficiently run and more responsive to customers' needs. In addition, KU, LG&E, and the E.ON AG United States headquarters have been good

corporate citizens of Kentucky and their physical presence in the Commonwealth has contributed to an improved quality of life for all citizens.

Finally, the Commission finds as beneficial the Applicants' new commitments that: (1) the granting of this waiver will not impede KU's and LG&E's ability to acquire renewable energy resources in Kentucky; and (2) KU and LG&E will have the opportunity to consider participating in any potential renewable resource project in Kentucky that is under consideration by E.ON AG, its subsidiaries, or business units.

IT IS THEREFORE ORDERED that:

1. The Applicants' motion for leave to file an amended application is granted.
2. The Applicants' request for a limited waiver of merger commitment Nos. 36 and 57, as set forth in Appendix A to the August 6, 2001 Order in Case No. 2001-00104 and as clarified by the September 21, 2001 Order in Case No. 2001-00104, is granted upon the commitments set forth in Appendix A attached hereto and limited to the extent that Airtricity and any future United States based renewable resource projects acquired by the Applicants may be operated outside the United States by E.ON AG's ECR business unit.
3. Within 10 days of the date of this Order, the Applicants shall file a written notice acknowledging and accepting each of the commitments set forth in Appendix A attached hereto.
4. Within 6 months of the acquisition of Airtricity, the Applicants shall file a report with the Commission detailing their analysis, findings, and views as to potential synergies or other benefits consistent with the concept of Airtricity being operated outside the United States by E.ON AG's ECR business unit.

5. Except as set forth in Ordering Paragraph No. 2 above, all of the provisions and commitments in the Commission's Orders in Case No. 2001-00104 shall remain in full force and effect.

Done at Frankfort, Kentucky, this 17th day of December, 2007.

By the Commission

Commissioner Clark Abstains.

ATTEST:



Executive Director

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 2007-00466 DATED December 17, 2007.

1. The Applicants commit to extending for an additional 5 years, from June 30, 2012 until June 30, 2017, the effect of merger commitment Nos. 36 and 57 as set forth in Appendix A to the Commission's August 6, 2001 Order, and as clarified in the Commission's September 17, 2001 Order, in Case No. 2001-00104, except to the extent of the limited waiver granted in Ordering Paragraph No. 2 of the December 17, 2007 Order in Case No. 2007-00466.

2. The Applicants commit that the Airtricity acquisition will not impede the ability of KU and LG&E to pursue prudent renewable energy resources in Kentucky.

3. The Applicants commit that if any of their subsidiaries or business units, including ECR, considers a potential renewable energy project in Kentucky, the subsidiary or business unit will inform KU and LG&E of the potential project and will allow KU and LG&E to make a reasonable business judgment on whether to pursue the project as a generation resource for their customers.

4. The Applicants commit that neither they nor their subsidiaries or successors will cite the waiver granted in the December 17, 2007 Order in Case No. 2007-00466 as precedent in any other Commission proceeding, except in proceedings regarding the enforcement or interpretation of that Order.