

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JOINT APPLICATION OF KENTUCKY)	
UTILITIES COMPANY AND LOUISVILLE)	CASE NO.
GAS AND ELECTRIC COMPANY FOR A)	2017-00038
DECLARATORY ORDER)	

ORDER

On January 10, 2017, Kentucky Utilities Company (“KU”) and Louisville Gas and Electric Company (LG&E”) (collectively, the “Companies”) filed a Joint Application pursuant to 807 KAR 5:001, Section 19, for an Order declaring that KRS 278.218 does not apply to the transfer of assets between Commission-regulated electric utilities. In the alternative, pursuant to KRS 278.218 and 807 KAR 5:001, Section 8, the Companies requested the Commission to pre-approve asset transfers at net book value between the Companies when necessary to restore or maintain safe and reliable service and when there is inadequate time due to pressing circumstances to seek prior Commission approval for the specific transfer.

On February 2, 2017, Commission Staff issued a notice scheduling an informal teleconference for February 3, 2017, to discuss issues related to the Companies’ Joint Application. Also on February 2, 2017, the Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention (“AG”), filed a motion to intervene, which the Commission granted by Order entered February 6, 2017. At the informal teleconference held on February 3, 2017, the Companies described the impetus for the relief requested in the instant matter, which need is discussed in detail

later in this Order. Commission Staff also requested the Companies to provide additional information concerning the proper accounting treatment of intercompany asset transfers. The Companies filed their response to the request on February 10, 2017. This matter is now before the Commission for a decision based on the evidentiary record.

Discussion

KRS 278.218 states, in part, as follows:

No person shall acquire or transfer ownership of or control, or the right to control, any assets that are owned by a utility as defined under KRS 278.010(3)(a) without prior approval of the commission, if the assets have an original book value of one million dollars (\$1,000,000) or more and:

- (a) The assets are to be transferred by the utility for reasons other than obsolescence; or
- (b) The assets will continue to be used to provide the same or similar service to the utility or its customers.

Citing the statute's legislative history, the Companies contend in their application that the General Assembly enacted KRS 278.218 to prevent Commission-regulated utilities from transferring assets to entities not regulated by the Commission.¹ The Companies further contend that since they are subject to the Commission's jurisdiction and are under common control and ownership of PPL Corporation, transfers of assets between the Companies do not implicate the concerns that led to the enactment of KRS 278.218 and therefore should not be subject to the requirements of the statute.²

¹ Application at 5.

² *Id.*

The Companies note that KRS 278.218 was enacted as part of a bill that also included provisions to create the Kentucky State Board on Electric Generation and Transmission Siting (“Siting Board”). They assert that the General Assembly’s focus of concern was not on transactions between Commission-regulated utilities, but on how merchant facilities might negatively impact regulated utilities’ customers.³ The Companies further assert that the General Assembly’s intent with KRS 278.218 was to prevent Commission-regulated utilities from transferring assets to entities not regulated by the Commission, thereby preventing merchants from avoiding Siting Board jurisdiction.⁴ According to the Companies, this history shows that the General Assembly did not intend KRS 278.218 to address asset transfers between regulated utilities.⁵

The Companies state that they are not aware of an instance wherein the Commission has required prior approval of an asset transfer from one Commission-regulated utility to another Commission-regulated utility.⁶ The Companies assert that the absence of Commission orders concerning utility-to-utility transfers among regulated utilities is consistent with the legislative intent of KRS 278.218 to regulate solely utility asset transfers to entities not regulated by the Commission.⁷

The Companies also state that there is no evidence that the General Assembly intended to erect barriers to transfers between Commission jurisdictional utilities when needed to provide safe and reliable service, especially when providing such service

³ *Id.* at 7

⁴ *Id.*

⁵ *Id.* at 7–8.

⁶ *Id.* at 8.

⁷ *Id.*

depends on rapid asset transfers that could not wait for Commission review and decision.⁸ The Companies describe a recent asset transfer from KU to LG&E that they assert was made based on such a need to maintain safe and reliable service.

Specifically, the Companies state that on October 5, 2016, a transmission-level transformer owned by LG&E failed at a Jefferson County, Kentucky, substation and it was necessary to take immediate action to reduce reliability risks to its transmission system due to the absence of the transformer. Because KU had a suitable transformer in inventory, LG&E purchased the transformer from KU at a cost of \$1,118,133.00, which was the transformer's net book value.⁹ The transformer was installed on LG&E's system by November 23, 2016. The Companies state that LG&E considered purchasing a replacement transformer on the open market, but that a purchase could have taken up to one year, because such transformers are manufactured to utilities' specifications. The Companies assert that they had to move quickly to proceed with the asset transfer, due to the reliability risks to LG&E system.¹⁰

The Companies state that if the Commission were to declare that KRS 278.218 does not apply to asset transfers between the Companies, the transactions would still be subject to scrutiny by the Commission. The Companies note that all costs related to these transactions are subject to review pursuant to the Commission's plenary jurisdiction over the Companies' rates and service.¹¹

⁸ *Id.* at 9.

⁹ *Id.* at 9–10.

¹⁰ *Id.* at 10.

¹¹ *Id.* at 11.

In the alternative, the Companies request that if the Commission determines that KRS 278.218 applies to asset transfers between jurisdictional utilities, the Commission grant pre-approval of asset transfers between LG&E and KU if a transfer is necessary to restore or maintain safe and reliable service and there is not adequate time to seek prior Commission approval.¹² The Companies assert that such transfers will be for a proper purpose and consistent with the public interest because they will be made only when necessary to ensure the continued safe and reliable operation of the Companies' systems, and will enable the Companies to avoid the increased delay and concerns of purchasing a suitable asset on the market. The Companies note that in Case Nos. 2007-00012 and 2007-00023,¹³ the Commission pre-approved an agreement whereby participating utilities across the country allocated a spare transformer(s) that could be transferred to another participating utility if an act of terrorism resulted in the destruction or long-term disabling of that utility's electric transmission substation.¹⁴

Findings

The Commission, as a creature of statute, "has only such powers as granted by the General Assembly."¹⁵ As such, the issue of whether certain asset transfers between the Companies, such as KU's transfer of a transmission-level transformer to LG&E, fall

¹² *Id.* at 12.

¹³ Case No. 2007-00012, *Joint Petition of Louisville Gas and Electric Company and Kentucky Utilities Company for Approval of a Spare Transformer Sharing Agreement and Transactions Entered Into Under Said Agreement* (Ky. PSC Mar. 6, 2007); Case No. 2007-00023, *Petition of Kentucky Power Company for Approval of Spare Transformer Sharing Agreement and Transactions Agreement* (Ky. PSC Feb. 7, 2007).

¹⁴ Application at 2–3; 13.

¹⁵ *Public Service Comm'n v. Jackson County Rural Electric Cooperative, et al.*, 50 S.W.3d 764, 767 (Ky. App. 2000) (citing *Boone Co. Water and Sewer District v. Public Service Comm'n*, 949 S.W.2d 588 (Ky. 1997)).

within the scope of the Commission's jurisdiction under KRS 278.218 and require the prior approval of the Commission is a matter of statutory analysis.¹⁶

In construing KRS 278.218, the Commission is guided by the fundamental principle that the words in statutes are to be accorded their plain and common meaning.¹⁷ "Where a statute is unambiguous, there is no need to use extrinsic evidence of legislative intent and public policy which the statute is intended to effect."¹⁸ Only if there is ambiguity on the face of a statute may the Commission look to extrinsic references to aid in the construction of the statute.¹⁹

Here, there is no ambiguity. The statute clearly states that no "person" shall acquire or transfer ownership of or control of certain assets owned by a jurisdictional utility without prior approval of the Commission. KRS 278.010(2) defines "person" to include "natural persons, partnerships, corporations, and two (2) or more persons having a joint or common interest." The Commission is not at liberty to construe "person" as used in KRS 278.218(1) and defined in KRS 278.010(2) to exclude a Commission-regulated utility. As such, the Commission finds that KRS 278.218 applies to asset transfers between the Companies, and that, therefore, the Companies' motion for a declaratory order that the statute does not so apply should be denied.

KRS 278.218(2) governs the Companies' alternative request for preapproval of certain asset transfers between the Companies. The statute provides: "The commission

¹⁶ *Id.*

¹⁷ See KRS 446.080(4) ("All words and phrases shall be construed according to the common and approved usage of language. . . ."); *Lamb v. Holmes*, 162 S.W.3d 902, 909 (Ky. 2005) (holding that "[t]he 'plain meaning' of statutes controls when interpreting statutory language").

¹⁸ See *Lewis v. Jackson Energy Co-op. Corp.*, 189 S.W.3d 87, 94 (Ky. 2005).

¹⁹ *Id.*

shall grant its approval if the transaction is for a proper purpose and is consistent with the public interest.”

The Companies’ request is for preapproval of inter-company asset transfers at net book value when necessary to restore or maintain safe and reliable service and when there is not adequate time to seek Commission approval. The Commission finds that such transfers and the proposed accounting treatment of them are for a proper purpose and consistent with the public interest and should be approved. The Commission further finds that its preapproval of these transactions should not be construed as acceptance of any estimate of costs or valuation of property claimed or asserted.

Finally, the Commission finds that pursuant to KRS 278.218(1), the Companies were required to obtain the Commission’s prior approval of KU’s transfer of a transmission-level transformer to LG&E. LG&E, a person as defined in KRS 278.010(2), acquired ownership of an asset that was owned by a jurisdictional utility, KU. The asset had an original book value of more than \$1,000,000, and was transferred by KU for reasons other than obsolescence.

The Companies did not obtain prior approval from the Commission; neither have the Companies requested after-the-fact approval of the transfer. The Commission finds, however, that the transfer was necessary to maintain safe and reliable service and was, therefore, for a proper purpose and consistent with the public interest. The Commission, on its own motion, finds that the transfer should be approved.

In granting after-the-fact approval of the transfer of the transformer, however, the Commission notes that although the LG&E transformer failed on October 5, 2016, the

Companies did not file their joint application in the instant case until January 10, 2017, more than three months after LG&E's need to obtain a replacement transformer arose. The Companies offer no explanation for this delay. The Commission finds that in the future, should the Companies find it necessary to transfer an asset to restore or maintain safe and reliable service and there is insufficient time to seek prior approval from the Commission, the Companies should provide written notice to the Commission within 30 days of the transfer.

IT IS THEREFORE ORDERED that:

1. The Companies' request for an Order declaring that KRS 278.218 does not apply to asset transfers between the Companies or between jurisdictional utilities is denied.

2. The Companies' alternative request for preapproval under KRS 278.218 of asset transfers at net book value between the Companies is approved, provided that the transfer is necessary to restore or maintain safe and reliable service and that there is not adequate time to seek Commission approval.

3. The Companies shall provide written notice to the Commission within 30 days of each asset transfer that is preauthorized by this Order, shall supplement such initial reporting with final documents and accounting entries for each utility, and shall report all asset transfers between the Companies in the annual filing made by the Companies in compliance with the Commission's Order in Case No. 2010-00204.²⁰

²⁰ Case No. 2010-00204, *Joint Application of PPL Corporation, E.ON AG, E.ON US Investments Corp., E.ON U.S. LLC, Louisville Gas and Electric Company, and Kentucky Utilities Company for Approval of an Acquisition of Ownership and Control of Utilities* (Ky. PSC Sept. 30, 2010).

4. This Order shall not be construed as acquiescence in any estimate of costs or any valuation of property claimed or asserted in conjunction with an asset transfer between the Companies that is preauthorized by this Order.

5. KU's transfer and LG&E's acquisition of a transmission-level transformer at net book value to replace the transformer that failed at LG&E's Beargrass Substation in Jefferson County, Kentucky, is approved.

By the Commission



ATTEST:


Acting Executive Director

*Honorable Allyson K Sturgeon
Senior Corporate Attorney
LG&E and KU Energy LLC
220 West Main Street
Louisville, KENTUCKY 40202

*Kentucky Utilities Company
220 W. Main Street
P. O. Box 32010
Louisville, KY 40232-2010

*Honorable W. Duncan Crosby III
Attorney at Law
Stoll Keenon Ogden, PLLC
2000 PNC Plaza
500 W Jefferson Street
Louisville, KENTUCKY 40202-2828

*Louisville Gas and Electric Company
220 W. Main Street
P. O. Box 32010
Louisville, KY 40232-2010

*Honorable Kendrick R Riggs
Attorney at Law
Stoll Keenon Ogden, PLLC
2000 PNC Plaza
500 W Jefferson Street
Louisville, KENTUCKY 40202-2828

*Kent Chandler
Assistant Attorney General
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204

*Rick E Lovekamp
Manager Regulatory Affairs
Louisville Gas and Electric Company
220 W. Main Street
P. O. Box 32010
Louisville, KY 40202

*Robert Conroy
LG&E and KU Energy LLC
220 West Main Street
Louisville, KENTUCKY 40202

*Sara Veeneman
LG&E and KU Energy LLC
220 West Main Street
Louisville, KENTUCKY 40202