

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC JOINT APPLICATION OF DUKE)
ENERGY KENTUCKY, INC., EAST KENTUCKY)
POWER COOPERATIVE, INC., KENTUCKY)
UTILITIES COMPANY, AND LOUISVILLE GAS) CASE NO. 2017-00410
AND ELECTRIC COMPANY FOR APPROVAL OF)
TRANSACTIONS RELATED TO THE RESTORE)
AGREEMENT)

ORDER

On October 13, 2017, Duke Energy Kentucky, Inc. (“Duke Kentucky”), East Kentucky Power Cooperative, Inc. (“EKPC”), Kentucky Utilities Company (“KU”), and Louisville Gas and Electric Company (“LG&E”) (collectively, the “Joint Applicants”) submitted a joint application requesting, pursuant to 807 KAR 5:001, Section 8, and KRS 278.218, Commission pre-approval of the sale or purchase of utility-owned transformers with original book values in excess of \$1,000,000, which the Joint Applicants may undertake pursuant to the Agreement for Regional Equipment Sharing for Transmission Outage Restoration (the “RESTORE Agreement”).¹

On or about September 15, 2017, the Joint Applicants entered into the RESTORE Agreement with certain other utilities across the United States.² Under the RESTORE Agreement, the Joint Applicants, along with other participants, agree to

¹ Joint Application at 1. On December 13, 2017, certain of the Joint Applicants filed an application for similar approval from the Federal Energy Regulatory Commission, which was filed in the record in this case on December 18, 2017.

² Joint Application at 6.

identify and designate spare transformers,³ along with less costly components such as circuit breakers, with each utility participating in any or all designated voltage or equipment classes as it deems appropriate. If a “Triggering Event” occurs, an affected member of any particular class has the ability to purchase previously designated spare transformers and other components from other members of that class.⁴ Under the RESTORE Agreement, a “Triggering Event” is defined as a “catastrophic event creating an urgent grid need in which, for an extended period of time, a Participant loses its ability to serve significant load, is at imminent risk for losing significant load, or cannot maintain grid stability.”⁵ Thus, the Joint Applicants state that the RESTORE Agreement is intended to ensure that utilities “have access to spare infrastructure necessary to restore the transmission grid in a timely manner following disruption caused by a catastrophic event.”⁶

Pursuant to the RESTORE Agreement, the purchase price of a transferred asset is replacement cost, including transportation and other acquisition costs, plus any reasonable costs and expenses of the seller (including shipping costs if the seller

³ The RESTORE Agreement defines “Spare Transformer” to mean “a transformer that is a Spare Equipment. A Spare [T]ransformer may include a transformer then in service on the Participant’s system, *provided* the Participant operates and maintains the Spare [T]ransformer in accordance with Prudent Utility Practices.” Joint Application at Exhibit 1 (the “RESTORE Agreement”), Section I.II. (page 4)(emphasis in original). “Spare Equipment” is defined to mean “a Qualifying Equipment, including transformers and other items as may be specified by the Committees, (i) that is owned by a Participant, or that such Participant otherwise has rights to own or access, (ii) if subject to a properly-exercised Call Right, the Participant has the right and ability to sell, or cause to be sold, such Qualifying Equipment in accordance with this Agreement, and (iii) the Participant has obtained any and all Governmental Approval that are required for it to sell, or cause to be sold, such Qualifying Equipment in accordance with” the RESTORE Agreement. *Id.*, Section I.HH. (page 3). Capitalized terms are defined in the RESTORE Agreement, Section I.

⁴ Joint Application at 8.

⁵ RESTORE Agreement, Section I.JJ. (page 4).

⁶ Joint Applicant at 1.

decides to offer transportation services), and tax liability attributable to the sale.⁷ Thus, the Joint Applicants state, any seller will be “made whole” for any asset sold pursuant to the RESTORE Agreement.⁸

The Joint Applicants state that the ability to quickly purchase a transformer pursuant to the RESTORE Agreement will be beneficial to the Joint Applicants should there be a Triggering Event, because transformer purchases in particular are subject to long lead times.⁹ The Joint Applicants state that pre-approval of such transfers, which occur on reasonable terms upon a defined catastrophic event, is preferable to the Joint Applicants being left to market forces and potential delay during such events; therefore the transfers are for proper purposes and consistent with the public interest.¹⁰ The Joint Applicants state that they anticipate replacing any transformer sold pursuant to the RESTORE Agreement within a reasonable time and thus do not expect their service to be compromised by participating in the RESTORE Agreement.¹¹

The Joint Applicants state that the RESTORE Agreement does not require them to purchase additional transformers beyond normal inventory.¹² However, should a transformer committed to be available through the RESTORE Agreement be used or

⁷ *Id.* at 8 (citing RESTORE Agreement, Appendix D Article 1.1 and 1.2); *see also* Joint Applicants’ Response to the Commission Staff’s First Request For Information (“Response to First Request”), Item 4 (filed November 30, 2017) (further describing potential costs).

⁸ Joint Application at 8.

⁹ *See id.* at 7, 11; *see also* Response to First Request, Item 3 (describing the process and general time frame of 47 to 64 weeks involved in acquiring a transformer).

¹⁰ *See* Joint Application at 12–13.

¹¹ *Id.* at 11.

¹² *Id.* at 8. Additionally, Joint Applicants Duke Energy, LG&E, and KU state that the RESTORE Agreement does not affect existing arrangements or regulatory commitments for transferring assets among their affiliated entities. *Id.* at 8-10.

sold, the Joint Applicants would be required to commit a comparable transformer to the agreement, which could necessitate a purchase.¹³ Thus, the Joint Applicants request that the Commission's approval apply not only to transformers currently committed to the RESTORE Agreement, but also transformers to be committed in the future.¹⁴

The Joint Applicants state that each further commits to notifying the Commission of the details of any transaction made pursuant to the RESTORE Agreement within 30 days of a transfer of any assets with an original book value of \$1,000,000 or more and owned by a utility as defined under KRS 278.010(3)(a).¹⁵

FINDINGS AND CONCLUSIONS

The Commission is an agency of the Commonwealth of Kentucky vested by statute with the authority to fix rates, establish and alter service regulations, and otherwise regulate such practices of jurisdictional utilities, including electric utilities, as provided by statute.¹⁶

KRS 278.218(1) provides that:

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.

¹³ *Id.* at 10–12.

¹⁴ *Id.*

¹⁵ *Id.* at 1, 13–14.

¹⁶ KRS 278.040; *Public Service Comm'n v. Cities of Southgate, Highland Heights*, 268 S.W.2d 19, 21 (Ky. 1954).

KRS 278.218(2) provides that “[t]he commission *shall* grant its approval if the transaction is for a proper purpose and is consistent with the public interest.”¹⁷

The Joint Applicants are electric utilities subject to the jurisdiction of the Commission. The Commission finds that the proposed transfers, replacements, and acquisitions of and for spare transformers requested by the Joint Applicants are for a proper purpose, are consistent with the public interest, and should be approved.

IT IS THEREFORE ORDERED that:

1. The Joint Applicants’ request for preapproval under KRS 278.218 to transfer spare transformers and perform such other functions as required pursuant to the terms of the RESTORE Agreement is approved.

2. Each Joint Applicant shall provide final transfer or, if applicable, acquisition details, within 30 days of any transaction occurring under the terms of the RESTORE Agreement and shall supplement such initial reporting with subsequent final documents.

3. Any documents filed pursuant to ordering paragraph No. 2 of this Order shall reference the number of this case and shall be retained in the applicable utility’s general correspondence files.

4. This Order in no way affects the authority of the Commission over rates, services, or any matters whatsoever subject to the Commission’s jurisdiction that may come before it, nor shall anything herein be construed as acquiescence in any estimate of costs or any valuation of property claimed or asserted. The Commission retains

¹⁷ (Emphasis added).

jurisdiction over this subject matter and the Joint Applicants to effectuate the provisions of this Order.

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By the Commission

ENTERED
FEB 22 2018
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:


Executive Director

Case No. 2017-00410

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