COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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<tr><td>ELECTRONIC APPLICATION OF KENTUCKY
UTILITIES COMPANY AND LOUISVILLE GAS
AND ELECTRIC COMPANY FOR DECLARATORY
ORDER THAT THE PROPOSED CONSTRUCTION
OF LISLE AVENUE OPERATIONS CENTER AND
THE PROPOSED PURCHASE OF AN OFFICE
BUILDING IN EASTERN JEFFERSON COUNTY
ARE ORDINARY EXTENSION IN THE USUAL
COURSE OF BUSINESS AND DO NOT REQUIRE
A CERTIFICATE OF PUBLIC CONVENIENCE AND
NECESSITY</td><td>)
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2023-00415</td></tr>
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O R D E R

On December 15, 2023, Louisville Gas and Electric Company (LG&E) and Kentucky Utilities Company (KU) (collectively, LG&E/KU) jointly filed an application for a declaratory order, pursuant to 807 KAR 5:001, Section 19, that the planned construction of an operations center on Lisle Industrial Avenue in Lexington, Kentucky (Lisle Avenue Operations Center) and the purchase of office space in east Louisville (Eastpoint Administrative Office) may be properly considered ordinary extensions in the usual course of business and do not require a Certificate of Public Convenience and Necessity (CPCN). There are no intervenors in this matter and no person filed a response to the

Application pursuant to 807 KAR 5:001, Section 19(4). This matter is now before the Commission for a decision on the merits.[1]

BACKGROUND

LG&E is a public utility as defined by KRS 278.010(3)(a) that provides gas and electric services to about 430,394 residential, industrial, commercial, and public authority customers in Bullitt, Hardin, Henry, Jefferson, Meade, Oldham, Shelby, Spencer, and Trimble counties.[2] As of 2022, LG&E had a net plant in service of $6,073,949,212.[3]

KU is a public utility as defined by KRS 278.010(3)(a) that provides electric services to about 539,137 residential, commercial, industrial, and public authority customers in Adair, Anderson, Ballard, Barren, Bath, Bell, Bourbon, Boyle, Bracken, Bullitt, Caldwell, Campbell, Carlisle, Carroll, Casey, Christian, Clark, Clay, Crittenden, Daviess, Edmonson, Estill, Fayette, Fleming, Franklin, Fulton, Gallatin, Garrard, Grant, Grayson, Green, Hardin, Harlan, Harrison, Hart, Henderson, Henry, Hickman, Hopkins, Jessamine, Knox, Larue, Laurel, Lee, Lincoln, Livingston, Lyon, McCracken, McCreary, McLean, Madison, Marion, Mason, Mercer, Montgomery, Muhlenberg, Nelson, Nicholas, Ohio, Oldham, Owen, Pendleton, Pulaski, Robertson, Rockcastle, Rowan, Russell, Scott,

[1] Pursuant to 807 KAR 5:001, Section 19, the Commission may, among other things, "issue a declaratory order. . . with respect to the meaning and scope of an order or administrative regulation of the commission or provision of KRS Chapter 278." The Commission "may dispose of an application for a declaratory order solely on the basis of the written submissions filed" or may allow for other actions, including additional discovery, to ensure that the record is complete.

[2] *Annual Report of Louisville Gas and Electric Company to the Public Service Commission for the Year Ended December 31, 2022* (2022 LG&E's Annual Report) at 4-5.

[3] 2022 LG&E's Annual Report at 31.

Shelby, Spencer, Taylor, Trimble, Union, Washington, Webster, Whitley, and Woodford counties.[4] As of 2022, KU had a net plant in service of $7,449,102,852.[5]

KU proposed to construct the Lisle Avenue Operations Center, which would include a new operations facility, warehouse, and outside storage yard.[6] The proposed facility would be built on recently purchased 10-acre property in Lexington, Kentucky.[7] The facility would include 25,630 square feet of office space, 38,321 square feet of attached warehouse, and a 7,000 square foot garage.[8] The estimated total cost of the proposed facility is $32,148,000.[9]

The proposed construction would consolidate KU's current operations centers located at sites on North Limestone Street and Loudon Avenue in Lexington, Kentucky, and would be the primary work location for 121 full-time employees, contractors, and interns.[10] KU argued that both the existing Limestone and Loudon facilities no longer meet the operational needs of those departments and limit their ability to efficiently and safely perform assigned functions, as some structures at the sites are more than 100 years old.[11]

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[4] *Annual Report of Kentucky Utilities Company to the Public Service Commission for the Year Ended December 31, 2022* (2022 KU's Annual Report) at 4-5.

[5] 2022 KU's Annual Report at 31.

[6] Application at 4.

[7] Application at 4.

[8] Application at 4.

[9] Application at 4.

[10] Application at 4.

[11] Application at 4.

In support of KU's contention that the current facilities raise safety and operational concerns, KU stated that, among other issues, the Limestone site has experienced cave-ins caused by "voids" underneath the facility.[12] KU stated that the Loudon site lacks adequate office space, necessary modern updates, warehouse space, parking, and adequate restrooms.[13]

As an alternative to the construction of the Lisle Avenue Operations Center, KU stated that it reviewed other locations within the Lexington-Fayette County area, but none met the search criteria. KU indicated the search criteria included that the site (1) be zoned for industrial use; (2) meet the space requirements; and (3) allow for easy and quick access to New Circle Road (a major thoroughfare that allows for quick access to all areas of Lexington, Central Kentucky corridors, Interstate Highway 64 and Interstate Highway 75, Bluegrass Parkway, and other major highways).[14]

KU also considered the reconfiguration of existing Limestone and Loudon sites. KU stated that the alternate project would require the demolition of nearly all of the existing structures and the construction of new facilities.[15] The alternate project would require leasing temporary office space while the permanent facilities were constructed, as well as the purchase of adjoining land for future growth.[16] Further, KU contended that the reconfiguration project would require a capital expenditure of $37,760,000 and would

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[12] Application at 5-6.

[13] Application at 7-8.

[14] Application at 8.

[15] Application at 8.

[16] Application at 9.

have a net present value revenue requirement effect of $47,759,000.[17] Thus, KU stated that the alternate project would be both costlier and more time consuming than the proposed Lisle Avenue Operations Center project.

LG&E/KU proposed to purchase a 61 percent ownership interest in the Eastpoint Administrative Office from PPL Services Corporation.[18] PPL Services Corporation purchased the Eastpoint Administrative Office for $16,525,000 on September 7, 2023. LG&E/KU stated that it cost $8,695,000 to renovate the building, such that the total cost of the renovated office building is $25,220,000.[19] LG&E/KU plan to purchase a 61 percent ownership interest in the renovated building for $15,394,200, or roughly 61 percent of the total purchase price and renovation cost of the building paid for by PPL Services Corporation.[20]

The transferred ownership interest will be divided between LG&E and KU in accordance with their cost allocation manuals, which provide for a 51 percent (LG&E) and 49 percent (KU) allocation for common administrative support services that LG&E and KU Services Company provides. Based upon this allocation method, LG&E and KU's shares of the purchase and renovation costs will be $7,845,942 and $7,538,258, respectively.[21]

Currently, LG&E/KU lease office space at the LG&E Center located at 220 West Main Street in Louisville, Kentucky. LG&E/KU currently lease 16 floors and 200,000

[17] Application at 9.

[18] Application at 15.

[19] Application at 15.

[20] Application at 15.

[21] Application at 15-16.

square feet of the LG&E Center, which is configured for 700 workspaces to support 515 employees, project workspace needs, and contractor spaces.[22] If LG&E/KU purchase that Eastpoint Administrative Office, LG&E/KU plan to move their public headquarters, along with 300 employees, from the LG&E Center to their Broadway Office Complex (BOC) located at 820 West Broadway in Louisville, Kentucky,[23] which would require about $10,000,000 in renovations to accommodate the additional staff.[24] LG&E/KU indicated that the remainder of the employees that currently work at the LG&E Center would be relocated to the Eastpoint Administrative Office.[25]

LG&E/KU indicated that they considered a number of alternatives to their proposed plan to purchase the Eastpoint Administrative Office and utilize their existing Broadway Office Complex (BOC). In 2022, LG&E/KU retained Jones Lang Lasalle IP Occupancy Planning and Management (JLL) to perform a space utilization analysis of LG&E Center and BOC to develop an occupation planning strategy for those offices.[26] The study, which was filed with the application in this matter, found that at its highest point, only 26.6 percent of the office space capacity at the LG&E Center was being used.[27] LG&E/KU stated that they planned to reduce its office space requirements from 200,000

[22] Application at 11.

[23] Application at 11.

[24] Application at 15, footnote 3.

[25] Application at 11.

[26] Application at 12.

[27] Application at 12.

square feet to something in the range of 75,000 to 100,000 square feet based on the study.[28]

LG&E/KU stated that they entered into negotiations with Bradford Allen, the owners of the LG&E Center, regarding their lease, which is set to expire. Bradford Allen offered a 10-year lease extension for 114,000 square feet at $2,280,000 annually with a 3 percent annual escalation.[29] In the alternative, Bradford Allen proposed that LG&E/KU purchase an interest in 142,000 square feet of office space in the LG&E Center at a total cost of $42,300,000.[30] LG&E/KU stated that they considered Braford Allen's offers as well as 24 other properties for lease or purchase in addition to Bradford Allen's offers.[31] However, LG&E/KU asserted that the Eastpoint Administrative Office proposal was the most cost effective option.[32]

LG&E/KU filed an application for a declaratory order that their proposed Lisle Avenue Operations Center and Eastpoint Administrative Office projects are ordinary extensions in the usual course of business and do not require a CPCN.[33] LG&E/KU argued that there is no blanket prohibition against a finding that the construction or purchase of a headquarters is an extension in the ordinary course of business. LG&E/KU contended that in past instances where the construction of office buildings were not found to be in the ordinary course of business, the proposed building involved a wasteful

[28] Application at 11-13.

[29] Application at 13-14.

[30] Application at 14.

[31] Application at 14.

[32] Application at 20.

[33] Application at 1.

duplication of facilities or had a material effect on the utility's financial condition, or the utility had failed to demonstrate the absence of those factors. Conversely, LG&E/KU asserted that in cases in which a headquarters or office project satisfied the requirements of KRS 278.020(1) and 807 KAR 5:001, Section 15(3) that the project was found to be an extension in the ordinary course of business.[34]

LG&E/KU argued that their plans to construct Lisle Avenue Operations Center and purchase the Eastpoint Administrative Office, while upgrading and moving employees to the BOC, would not conflict with the certificates or service of other existing utilities, result in wasteful duplication, or materially affect LG&E/KU's financial condition. Among other things, LG&E/KU asserted that the estimated cost of constructing the Lisle Avenue Operations Center would represent about 0.26 percent of KU's net utility plant in service and that the cost of the Eastpoint Administrative Office to LG&E and KU, respectively, would not exceed 0.13 percent of each utilities' net utility plant in service. LG&E/KU also contended that the Lisle Avenue Operations Center and the Eastpoint Administrative Office would not result in wasteful duplication based on its analysis of the alternatives discussed above.

LEGAL STANDARD

Pursuant to 807 KAR 5:001, Section 19, the Commissioner may, upon application by a person substantially affected, "issue a declaratory order… with respect to the

[34] Application at 23.

meaning and scope of an order or administrative regulation of the commission or provision of KRS Chapter 278."[35] An application for a declaratory order must:

> (a) Be in writing;
> (b) Contain a complete, accurate, and concise statement of facts upon which the application is based;
> (c) Fully disclose the applicant's interest;
> (d) Identify all statutes, administrative regulations, and orders to which the application relates; and
> (e) State the applicant's proposed resolution or conclusion.[36]

Any factual allegation in an application for a declaratory order must be supported by an affidavit or verified.[37] The Commission "may dispose of an application for a declaratory order solely on the basis of the written submission filed" or may allow for other actions, including additional discovery, to ensure that the record is complete.[38]

DISCUSSION

Pursuant to KRS 278.020(1), no utility may construct or acquire any facility to be used in providing utility service to the public until it has obtained a CPCN from the Commission. To obtain a CPCN, the utility must demonstrate a need for such facilities and an absence of wasteful duplication.[39]

"Need" requires:

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[35] 807 KAR 5:001, Section 19(1); see also Case No. 2020-00095, *Electronic Application of Kenergy Corp. for a Declaratory Order* (Ky. PSC Mar. 11, 2021), Order at 4-5 (noting that Commission may issue a declaratory order, in its discretion, with respect to the meaning and scope of an order, regulation, or statute if a request is made by a person substantially affected).

[36] 807 KAR 5:001, Section 19(2).

[37] 807 KAR 5:001, Section 19(6).

[38] 807 KAR 5:001, Section 19(8); see also Case No. 2020-00095, Mar. 11, 2021 Order at 4-5 (noting that the Commission has discretion in whether to address an application for a declaratory order).

[39] *Kentucky Utilities Co. v. Pub. Service Comm'n*, 252 S.W.2d 885 (Ky. 1952).

> [A] showing of a substantial inadequacy of existing service, involving a customer market sufficiently large to make it economically feasible for the new system or facility to be constructed or operated.
>
> [T]he inadequacy must be due either to a substantial deficiency of service facilities, beyond what could be supplied by normal improvements in the ordinary course of business; or to indifference, poor management or disregard of the rights of consumers, persisting over such a period of time as to establish an inability or unwillingness to render adequate service.[40]

"Wasteful duplication" is defined as "an excess of capacity over need" and "an excessive investment in relation to productivity or efficiency, and an unnecessary multiplicity of physical properties."[41] To demonstrate that a proposed facility does not result in wasteful duplication, the Commission has held that an applicant must demonstrate that a thorough review of all reasonable alternatives has been performed.[42] Selection of a proposal that ultimately costs more than an alternative does not necessarily result in wasteful duplication.[43] All relevant factors must be balanced.[44]

An exception to the CPCN requirement is provided in KRS 278.020(1)(a)(2) for "ordinary extensions of existing systems in the usual course of business." This exception is further described in 807 KAR 5:001, Section 15(3), which states:

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[40] *Kentucky Utilities Co. v. Pub. Service Comm'n*, 252 S.W.2d at 890.

[41] *Kentucky Utilities Co. v. Pub. Service Comm'n*, 252 S.W.2d at 890.

[42] Case No. 2005-00142, *Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for the Construction of Transmission Facilities in Jefferson, Bullitt, Meade, and Hardin Counties, Kentucky* (Ky. PSC Sept. 8, 2005).

[43] See *Kentucky Utilities Co. v. Public Service Comm'n*, 390 S.W.2d 168, 175 (Ky. 1965).

[44] See also Case No. 2005-00089, *Application of East Kentucky Power Cooperative, Inc. for a Certificate of Public Convenience and Necessity for the Construction of a 138 kV Electric Transmission Line in Rowan County, Kentucky* (Ky. PSC Aug. 19, 2005), final Order at 6, 18.

> Extensions in the ordinary course of business. A certificate of public convenience and necessity shall not be required for extension that no not create wasteful duplication of plant, equipment, property, or facilities, or conflict with the existing certificates or service of other utilities operating in the same area and under the jurisdiction of the commission that are in the general or contiguous area in which the utility renders service, and that do not involve sufficient capital outlay to materially affect the existing financial condition of the utility involved, or will not result in increased charges to its customers.

The Commission has interpreted 807 KAR 5:001, Section 15(3), as stating that no CPCN is required for extensions "that do not result in wasteful duplication of utility plant, do not compete with the facilities of existing public utilities, and do not involve a sufficient capital outlay to materially affect the existing financial condition of the utility involved or to require an increase in utility rates."[45]

The construction or renovation of an office building may be exempt from the CPCN requirement if it otherwise meets the elements of KRS 278.020(1) and 807 KAR 5:001, Section 15(3), because the plain language of the statute and regulation, which control, do not include a blanket prohibition against a finding that such extensions are in the ordinary course of business. In fact, the Commission held that the construction of office space was in the ordinary course of business in Case No. 2003-00403[46] and in Case No. 2007-00424[47] based on elements in 807 KAR 5:001, Section 15 (3). Further, in Case No. 2016-

[45] Case No. 2000-00481, *Application of Northern Kentucky Water District (A) for Authority to issue Parity Revenue Bonds in the Approximate Amount of $16,545,000; and (B) A Certificate of Convenience and Necessity for the Construction of Water Main Facilities* (Ky. PSC Aug. 30, 2001), Order at 4.

[46] Case No. 2003-00403, *Application of Kenergy Corporation for a Certificate of Convenience and Necessity to Construct New Branch Offices In Hartford and Hanson* (Ky. PSC. Apr. 15, 2004), Order.

[47] Case No. 2007-00424, *Application of Madison County Utility District for an Order Issuing a Certificate of Public Convenience and Necessity and for Authority to Borrow Funds and to Refinance Certain Indebtedness of the District* (Ky. PSC Mar. 20, 2008), Order.

00181, while the Commission stated that, “historically, the Commission has held that the construction of headquarters and regional office buildings is not in the ordinary course of business and does require a CPCN,” the Commission ultimately held that a CPCN was required because there was insufficient evidence filed in the utility’s application to establish that the extension was in the ordinary course of business.[48] Thus, if LG&E/KU’s proposed office projects satisfy the elements of 807 KAR 5:001, Section 15(3), they are extensions in the ordinary course of business and are exempt from the CPCN requirement.

While the other requirements in 807 KAR 5:001, Section 15(3) must be satisfied, the determining element for whether an extension is in the ordinary course of business is generally whether the extension involves sufficient capital outlay to materially affect the existing financial condition of the utility involved. The reason for this is that a finding that an extension will not result in wasteful duplication would be necessary for the Commission to grant a CPCN, and while it is typically not an issue due to well-established territories, a finding regarding whether an extension will conflict with another utility’s certificate or service would, at minimum, be something that the Commission would consider in determining whether to grant a CPCN. Further, while the reasoning has been different in different cases, the Commission has not found that the exception does not apply due to

[48] Case No. 2016-00181, *Electronic Application of Columbia Gas of Kentucky, Inc. For A Declaratory Order That The Construction of Proposed Gas Safety Training Facilities Is in the Ordinary Course of Business and Does Not Require A Certificate of Public Convenience* (Ky. PSC Sept. 9, 2016), Order; *see also* Case No. 2021-00314, *Electronic Application of Big Rivers Electric Corporation for a Certificate of Public Convenience and Necessity Authorizing Construction of a New Headquarters Facility and an Order Authorizing Big Rivers to Sell its Existing Headquarters Facility* (Ky. PSC Dec. 7, 2023), Order (in which the Commission addressed and granted a CPCN for a headquarters pursuant to KRS 278.020(1), because no argument was made that the extension was in the ordinary course of business); Case No. 2019-00326, *Electronic Application of Jackson Purchase Energy Corporation for a Certificate of Public Convenience and Necessity to Construct a New Headquarters Facility* (Ky. PSC Jan. 14, 2020), Order (granting a CPCN for a new headquarters).

an increase in rates where the capital outlay was determined to be immaterial. Thus, the primary distinction between whether an extension requires a CPCN or is exempt pursuant to the ordinary course of business exception is whether the extension involves a sufficient capital outlay to materially affect the existing financial condition of the utility involved.

The Commission has generally determined the materiality of an extension's capital outlay by comparing the cost of the extension to a utility's net plant in service. Applying that standard, the Commission has nearly always held that an extension that will require a capital outlay in excess of 10 percent of a utility's net plant in service will materially affect a utility's financial condition,[49] and has generally found recently that extensions that approach 5 percent of a utility's net plant in service will do the same.[50] Conversely, the Commission has generally found that an extension that will require a capital outlay of less than 1 percent of net plant in service is an extension in the ordinary course of business.[51] However, evidence other than the relationship of the capital outlay to the net plant in

[49] *See, e.g.*, Case No. 2014-00277, *In the Matter of: Springcrest Sewer Co., Inc. Request for Deviation from 807 KAR 5:071, Section 7(4)* (Ky. PSC Dec. 16, 2014) Order (finding that a remote monitoring system that exceeded 10% of a utilities net plant in service was material and, therefore, required a CPCN).

[50] *See, e.g.* Case No. 2021-00183, *Electronic Application of Columbia Gas of Kentucky, Inc. for an Adjustment of Rates; Approval of Depreciation Study; Approval of Tariff Revisions; Issuance of a Certificate of Public Convenience and Necessity, and Other Relief* (Ky. PSC Dec. 28, 2021), Order 26-27 (in which the Commission found that an extension was not in the ordinary course of business, based in part, on the fact that it would require a capital outlay of about 4.76 percent of the utilities net plant in service).

[51] *See, e.g.,* Case No. 2014-00171, *Application of Northern Kentucky Water District For Approval of Dixie Highway Water Main Improvements, Issuance of a Certificate of Convenience and Necessity and Approval of Financing* (Ky. PSC Aug. 6, 2014), Order at 4.

service is also considered.[52] Thus, while the materiality of the capital outlay may be obvious in many instances, there is no bright line rule, particular in close cases, for when a capital outlay is sufficient to materially affect the financial condition of a utility.

Here, the evidence presented by LG&E/KU indicates that the cost of constructing the Lisle Avenue Operations Center would be about 0.26 percent of KU's net utility plant in service,[53] and that the cost of the Eastpoint Administrative Office and making necessary upgrades to the BOC would be about 0.21 percent and 0.17 percent of LG&E and KU's net utility plant in service, respectively.[54] While that construction does still involve a significant amount of money, it would have a limited effect on LG&E/KU's rates due to its

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[52] *See* Case No. 2019-00067, *Application of Hardin County Water District No. 1 for a Declaratory Order that Proposed Waterworks Improvements to Maintain Adequate and Reliable Water Service to the Fort Knox Military Installation do not Require a Certificate of Public Convenience and Necessity* (Ky. PSC May 30, 2024), Order at 9-10 (in the which the Commission found that a large extension would not materially affect the financial condition of the utility, in part, because it was fully funded by the customer that would have served by the extension, the United States government, and the funds had already been paid and could only be used, pursuant to an agreement with the customer, on the proposed extension); Case No. 2021-00183, *Electronic Application of Columbia Gas of Kentucky, Inc. for an Adjustment of Rates; Approval of Depreciation Study; Approval of Tariff Revisions; Issuance of a Certificate of Public Convenience and Necessity, and Other Relief* (Ky. PSC Dec. 28, 2021), Order at 27 (in which the Commission based a finding that an extension was not in the ordinary course of business, in part, the utility's claims that its inability to recover the costs associated with the capital outlay would have a significant effect on its financial condition); *see also* Case No. 2020-00060, *Electric Application of Kentucky Utilities Company for Approval of its 2020 Compliance Plan for Recovery by Environmental Surcharge* (Ky. PSC Sept. 29, 2020)("The Commission finds that, until further Order of the Commission, any capital expenditure that exceeds $100 million will be considered material to KU's financial position and will require a CPCN.").

[53] Application at 18.

[54] While LG&E/KU indicated that the capital outlay for the Eastpoint Administrative Office would only represent about 0.13 percent of their net plant in service, LG&E/KU indicated that the total cost of the Eastpoint Administrative Office would be $15,394,200 and that the total cost of renovating the BOC to accommodate additional personnel would be about $10 million. Since both of those projects are apparently necessary to allow LG&E/KU to relocate from the LG&E Center, they should both be considered when determining the materiality of the project. *See* Case No. 2020-00290, *Electronic Application of Bluegrass Water Utility Operating Company, LLC for an Adjustment of Rates and Approval of Construction* (Ky. PSC Aug. 2, 2021), Order at 21-23 (indicating that the cost of projects necessary to address the need should be reviewed in their entirety to determine whether the capital outlay is sufficient to materially affect the existing financial condition of the utility). Thus, using LG&E/KU's allocation methodology and reported net utility plant in service, the capital outlay for LG&E and KU, respectively, would be about 0.21% and 0.17% of their net utility plant in service.

size as compared to LG&E/KU's net plant in service and overall rates, and therefore, the exclusion of such amounts from rate recovery, if appropriate, would not materially affect LG&E/KU's financial condition. Further, those amounts are within the range that the Commission has generally found to be in the ordinary course of business, and there are no unique or unusual facts that would otherwise justify a finding that the projects' costs will materially affect the financial condition of LG&E or KU. Thus, the Commission finds that the capital outlay necessary for the Lisle Avenue Operations Center, and the Eastpoint Administrative Office, along with necessary upgrades to the BOC, will not materially affect the financial condition of LG&E/KU.

LG&E/KU's evidence similarly indicates that the projects will not conflict with the existing certificates or service of other utilities. First, the office projects are located within LG&E and KU's service territories. Further, LG&E/KU's proposed office projects will be used by LG&E/KU staff to perform general, administrative work to provide service to LG&E/KU's customers, so there is no risk that their construction will conflict with the certificates or service of another utility even if they were not in LG&E or KU territories. Thus, the Commission finds that LG&E/KU's construction of the Lisle Avenue Operations Center, and the purchase of the Eastpoint Administrative Office, along with necessary upgrades to the BOC, will not conflict with the certificates or service of another utility.

Based on the findings above, LG&E/KU's proposals to construct the Lisle Avenue Operations Center, purchase of the Eastpoint Administrative Office, and upgrade the BOC would be extensions in the ordinary course of business if the proposals will not result in wasteful duplication. However, while LG&E/KU presented evidence that tends to support its assertion that its proposals will not result in wasteful duplication, additional written discovery and potentially a hearing would be necessary to clarify the bases of LG&E/KU's need and costs in order for the Commission to make a finding that LG&E/KU's proposals will not result in wasteful duplication. Such discovery would turn this matter into an application for a CPCN, which would defeat the purpose of requesting a declaratory order that a CPCN is not required. Thus, the Commission, pursuant to the discretion allowed by 807 KAR 5:001, Section 19, declines to make a finding regarding whether LG&E/KU's proposals will result in wasteful duplication.

The absence of a finding regarding wasteful duplication should not be construed as a requirement that LG&E/KU file a CPCN for their proposals or that the Commission expects to exclude any costs associated with LG&E/KU's proposals. Rather, as in the case of other extensions that otherwise meet the elements of the ordinary course of business exception, the Commission is simply reserving any judgement regarding whether LG&E/KU's proposals will result in wasteful duplication until that issue arises, if ever, in a future proceeding in which LG&E/KU seek rates to recover their costs associated with the investment. However, as noted above, the Commission does find that LG&E/KU's proposals meet the other requirements of the ordinary course of business exception. Thus, assuming they will not result in wasteful duplication, the Commission finds that LG&E/KU's proposals would be extensions in the ordinary course of business, and therefore, would not require CPCNs.

IT IS THEREFORE ORDERED that:

1. LG&E/KU's joint application for a declaratory order is granted in part and denied in part.

2. Assuming that it will not result in wasteful duplication, the construction of the Lisle Avenue Operations Center is an ordinary extension in the usual course of business, and a CPCN, pursuant to KRS 278.020(1), is not required for the project.

3. Assuming that it will not result in wasteful duplication, the purchase of a 61 percent share in the Eastpoint Administrative Office and the corresponding upgrades to the BOC are an ordinary extension in the usual course of business, and a CPCN, pursuant to KRS 278.020(1), is not required for the projects.

4. This case is closed and removed from the Commission's docket.

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PUBLIC SERVICE COMMISSION

Chairman

Vice Chairman

Commissioner

ENTERED

APR 04 2024

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