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Anita M. Schafer  
Paralegal

**VIA OVERNIGHT MAIL**

March 18, 2005

Ms. Elizabeth O'Donnell  
Executive Director  
Kentucky Public Service Commission  
211 Sower Boulevard  
Frankfort, KY 40602

RECEIVED

MAR 21 2005

PUBLIC SERVICE  
COMMISSION

Re: Case No. 2003-00252  
Compliance Filing

Dear Ms. O'Donnell:

Enclosed please find an original and twelve (12) copies of The Union Light, Heat and Power Company's Compliance Filing. The filing includes the Compliance Filing and two volumes of the Final Forms of the Transaction Documents.

Please date-stamp the extra two copies of the Compliance Filing and return to me in the envelope provided.

Should you have any further questions, please do not hesitate to call me.

Very truly yours,

Anita M. Schafer  
Senior Paralegal

AMS/mak

Enclosures

**COMMONWEALTH OF KENTUCKY**  
**BEFORE THE PUBLIC SERVICE COMMISSION**

**RECEIVED**

MAR 9 1 2005

PUBLIC SERVICE  
COMMISSION

In the Matter of the Application of The Union )  
Light, Heat and Power Company for a )  
Certificate of Public Convenience and Necessity )  
to Acquire Certain Generation Resources and )  
Related Property; for Approval of Certain )  
Purchase Power Agreements; for Approval of )  
Certain Accounting Treatment; and for )  
Approval of Deviation from Requirements of )  
KRS 278.2207 and 278.2213(6) )

Case No. 2003-00252

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**COMPLIANCE FILING OF**

**THE UNION LIGHT, HEAT AND POWER COMPANY**

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The Union Light, Heat and Power Company (ULH&P) submits this Compliance Filing listing, describing and providing the final transaction documents relative to the transfer of ownership interest in certain electric generating facilities from The Cincinnati Gas & Electric Company (CG&E) to ULH&P. In support of this Compliance Filing, ULH&P states:

1. On July 21, 2003, The Union Light, Heat and Power Company (ULH&P) filed an application for an Order pursuant to KY. REV. STAT. ANN. § 278.020 and 807 KY. ADMIN. REGS. 5:001 Sections 8 and 9 (Application) granting ULH&P a

Certificate of Public Convenience and Necessity (CPCN) to acquire, at net book value plus transaction costs, ownership of three electric generating station facilities, the East Bend Generating Station (East Bend), Miami Fort Unit 6 (Miami Fort 6), and the Woodsdale Generating Station (Woodsdale) (collectively, the Plants), and related property from CG&E, ULH&P's parent company. Additionally, ULH&P requested approval of certain purchase power agreements with CG&E, authority to establish accounting deferrals for the recovery of transaction costs related to the transfer of the Plants to ULH&P, and retention of profits related to off-system sales from the Plants. In accordance with KY. REV. STAT. ANN. § 278.2219, ULH&P also requested a deviation from the requirements of KY. REV. STAT. ANN. § 278.2207 and KY. REV. STAT. ANN. §278.2213(6) to allow ULH&P to become the assignee of certain affiliate contracts related to the operation of the Plants. Finally, ULH&P requested approval to terminate the current Power Sale Agreement with CG&E concurrent with the transfer of the Plants and to continue to freeze its generation, fuel and wholesale transmission rates through 2006. On October 29, ULH&P amended this Application, modifying the relief that it sought from the Commission (Amended Application).

2. On December 5, 2003, the Commission issued an Interim Order, conditionally granting ULH&P's requested relief pending the submission of and the Commission's approval of the final transaction documents. The Commission's Interim Order called for ULH&P to submit final transaction documents for review no later than thirty days prior to the expected closing date. Further, the

Commission's Interim Order requires ULH&P, for those documents already submitted in the record in this proceeding, to describe any changes to those documents, and for those documents not yet submitted into the record in this proceeding, to provide a narrative describing the documents and how the terms and conditions thereof are consistent with the Commission's Interim Order. The Commission's Interim Order set forth at Appendix B those final transaction documents to be submitted.

3. Attached as exhibits to this Compliance Filing are the following documents, submitted in compliance with the Commission's Interim Order:

a. Asset Transfer Agreement for Unit 2 of the East Bend Electric Generating Station (clean version attached as Exhibit 1, version containing redline changes against original attached as Exhibit 2). This document was submitted in the record as an attachment to the Direct Testimony of James L. Turner, Attachment JLT-1. The material changes to the document are itemized below:

1. Reference has been added to the Facilities Operation Agreement (see also below).
2. Reference has been added to a Coal and Lime Supply and Transportation Agreement. Although ULH&P is currently working through the exact terms and conditions of such an agreement, as described below, ULH&P is confident that some form of agreement will be reached with CG&E that will enable the two parties to continue to realize the economies of scale associated

with jointly operating and procuring fuel for their portfolios of generating assets.

3. Reference to the Back-up Power Supply Agreement has been removed. See below for more information on the Back-up Power Supply Agreement.
4. References to the CPR Institute have been replaced with references to the Center for Resolution of Disputes.
5. A definition of Emission Allowances has been added.
6. The definition of Inventories has been amended to more accurately address the inventories to be transferred.
7. References to Regulatory Non-Satisfaction Event and the Purchase Option have been removed in accordance with the Amended Application.
8. Specific reference to pollution control certificates has been added in the description of Transferred Assets.
9. Specific reference to the Emission Allowances schedule, Schedule 2.01(i), has been added in the description of Transferred Assets.
10. Language has been added to exclude from the Transferred Assets any FERC-jurisdictional transmission facilities.
11. Specific reference to the Emission Allowances schedule, Schedule 2.01(i), has been added in the description of Excluded Assets.
12. Language has been added to specifically state that the transfer price shall include the net book value of construction work in progress.

13. Changes were made to more clearly set out the Site Access requirements and permissions.

14. This document also contains the final schedules, as required by the Commission's Interim Order.

Note that the dollar value of the Transferred Assets is pending the closing of the books for the month prior to the closing of the transaction, so these amounts are left blank in the asset transfer agreements and associated schedules.

b. Asset Transfer Agreement for Unit 6 of the Miami Fort Electric Generating Station (clean version of document attached as Exhibit 3; version redlined against the East Bend Asset Transfer Agreement attached as Exhibit 4). This document closely parallels the Asset Transfer Agreement for Unit 2 of the East Bend Electric Generating Station, but with the following changes:

1. References to East Bend Electric Generating Station have been changed to Miami Fort Unit 6 as appropriate.
2. References to the common facilities and the associated lease and sublease documents have been added as appropriate. See also below.
3. References to the Operation Agreement have been added. See also below.
4. Environmental Permits have been excluded from the Transferred Assets, and included in the Excluded Assets.

Like the Asset Transfer Agreement for Unit 2 of the East Bend Electric Generating Station, which was approved by the Commission as amended, the Asset Transfer Agreement for Unit 6 of the Miami Fort Electric Generating Station sees CG&E's ownership interest in this plant and its associated real property, materials and supplies inventory, and associated plant and equipment transferred to ULH&P at net book value (original cost less depreciation). Thus, the Asset Transfer Agreement for Unit 6 of the Miami Fort Electric Generating Station is consistent with the Commission's Order.

- c. Asset Transfer Agreement for Woodsdale Electric Generating Station (clean version of document attached as Exhibit 5; version redlined against the East Bend Asset Transfer Agreement attached as Exhibit 6). This document closely parallels the Asset Transfer Agreement for Unit 2 of the East Bend Electric Generating Station, but with the following changes:
1. References to East Bend have been replaced with references to Woodsdale, as appropriate.
  2. Reference to the Coal and Lime Supply and Transportation Agreement have been replaced with reference to a Service Agreement, under which CG&E's Gas Operations Department will maintain certain natural gas facilities at Woodsdale Station at cost.
  3. References to specific Woodsdale-related pipeline facilities and fuel inventories have been added to the description of Transferred Assets.

4. References to CG&E's natural gas feeder lines have been added to the description of Excluded Assets.

Like the Asset Transfer Agreement for Unit 2 of the East Bend Electric Generating Station, which was approved by the Commission as amended, the Asset Transfer Agreement for the Woodsdale Electric Generating Station sees CG&E's ownership interest in this plant and its associated real property, materials and supplies inventory, and associated plant and equipment transferred to ULH&P at net book value (original cost less depreciation). Thus, the Asset Transfer Agreement for Unit 6 of the Miami Fort Electric Generating Station is consistent with the Commission's Order.

- d. Purchase, Sale and Operation Agreement, Exhibit 7. This document, under which ULH&P and CG&E shall jointly and economically dispatch their respective generating facilities, has changed from the document that was filed in the record in this proceeding, attached to the Direct Testimony of Robert C. McCarthy, as adopted by M. Stephen Harkness, at Attachment RCM-2, in the following regards. First, the document was changed to conform it to the Federal Energy Regulatory Commission's (FERC) rate schedule format. Second, it was replicated as a FERC rate schedule for both ULH&P and CG&E. Finally, the determination of Market Price was changed to utilize the Midwest Independent Transmission System Operator, Inc.'s (MISO) locational marginal pricing as set forth in MISO's



Open Access Transmission and Energy Market Tariff in accordance with FERC's Order Accepting Filing in Docket No. ER04-1248.<sup>1</sup>

- e. Assignment and Assumption Agreement for the Gas Supply and Management Agreement, Exhibit 8. This document evidences the assignment of the Gas Supply and Management Agreement as described in and attached to the Direct Testimony of John J. Roebel, Attachment JJR-1 from CG&E to ULH&P.
- f. Assignment and Assumption Agreement for the Commodity Storage Agreement, Exhibit 9. This document evidences the assignment of the Commodity Storage Agreement as described in and attached to the Direct Testimony of John J. Roebel, Attachment JJR-2 from CG&E to ULH&P.
- g. Assignment and Assumption Agreement for the Propane Supply and Management Agreement, Exhibit 10. This document evidences the assignment of the Propane Supply and Management Agreement as described in and attached to the Direct Testimony of John J. Roebel, Attachment JJR-4 from CG&E to ULH&P.
- h. Lease of Miami Fort Unit 5 and Unit 6 Common Facilities from The Union Light, Heat and Power Company to The Cincinnati Gas & Electric Company, Exhibit 11. This agreement sets forth the terms and conditions under which ULH&P shall lease to CG&E certain facilities common to Units 5 and 6 that ULH&P is acquiring from CG&E. The rental that

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<sup>1</sup> See *The Union Light, Heat and Power Company*, 110 FERC ¶ 61,212.

ULH&P shall collect under this agreement is calculated using a standard cost-of-service revenue requirement formula, considering the proportionate share of the common facilities utilized by CG&E. Thus, CG&E shall pay ULH&P an amount calculated to offset ULH&P's revenue requirement associated with CG&E's use of these facilities.

- i. Lease of Miami Fort Unit 5, Unit 6, Unit 7, and Unit 8 Common Facilities from The Cincinnati Gas & Electric Company to The Union Light, Heat and Power Company, Exhibit 12. This agreement sets forth the terms and conditions under which CG&E shall lease to ULH&P a portion of CG&E's share of certain common facilities currently owned with the Dayton Power & Light Company (DP&L) associated with Units 5, 6, 7, and 8 at the Miami Fort Electric Generating Station. The rental that CG&E shall collect from ULH&P under this agreement is calculated using a standard cost-of-service revenue requirement formula, considering the proportionate share of the common facilities utilized by ULH&P. ULH&P shall pay CG&E an amount calculated to offset CG&E's revenue requirement associated with ULH&P's use of these facilities. Thus, this lease agreement is consistent with the Commission's Interim Order approving the transfer of the Plants at net book value.
- j. Sublease of Miami Fort Unit 5, Unit 6, Unit 7, and Unit 8 Common Facilities from The Cincinnati Gas & Electric Company to The Union Light, Heat and Power Company, Exhibit 13. This agreement sets forth the terms and conditions under which CG&E shall sublease to ULH&P a

share of facilities that CG&E subleases from DP&L associated with Units 5, 6, 7, and 8 at the Miami Fort Electric Generating Station. The rental associated with this sublease is computed to be ULH&P's proportionate share of CG&E's rental cost to DP&L under a lease between these two owners of the common facilities. Thus, this sublease agreement is consistent with the Commission's Interim Order approving the transfer of the Plants at net book value.

- k. Assignment and Assumption Agreement for Synfuel Agreements, Exhibit 14. CG&E has entered into an arrangement with Tyrone Synfuel, L.P. (TSLP) under which TSLP leases land at the East Bend Electric Generating Station for TSLP's Synthetic Fuel Production Facility. TSLP's Synthetic Fuel Production Facility transforms coal into Synthetic Fuel for the East Bend Station. Due to certain tax incentives with the production of synthetic fuel, TSLP is able to sell synthetic fuel to CG&E at a discount from the per-BTU cost of standard coal. CG&E shall assign the following TSLP agreements to ULH&P at the time ULH&P acquires CG&E's interest in the East Bend Station:
1. Lease Agreement by and between The Cincinnati Gas & Electric Company and Tyrone Synfuels, L. P. dated March 11, 2004.
  2. Synthetic Fuel and Coal Supply Agreement by and between The Cincinnati Gas & Electric Company and Tyrone Synfuels, L. P. dated March 11, 2004.

3. Coal and Synthetic Fuel Handling Agreement by and between The Cincinnati Gas & Electric Company and Tyrone Synfuels, L. P. dated March 11, 2004.
4. Environmental Indemnity Agreement by and between The Cincinnati Gas & Electric Company and Tyrone Synfuels, L. P. dated March 11, 2004.
1. Facilities Operation Agreement, Exhibit 15. ULH&P has determined not to acquire the generation step-up transformers at the Plants from CG&E. However, because these transmission facilities are not included in the transmission service provided by the MISO under its Open Access Transmission Tariff (OATT), CG&E and ULH&P have entered into an agreement, the Facilities Operation Agreement (FOA), under which CG&E shall provide transmission step-up service to ULH&P over these Plant-dedicated facilities. The rates to be charged to ULH&P for this service are computed on a cost-of-service basis, using data available from CG&E's FERC Form 1 filing, and is thus consistent with the Commission's Interim Order approving the transfer of the Plants at net book value.
- m. Miami Fort Unit 6 Operation Agreement, Exhibit 16. As discussed at the January 11, 2005 Informal Conference with the Commission Staff and the Attorney General, ULH&P has determined to allow CG&E to continue to operate Miami Fort Unit 6. The Miami Fort Unit 6 Operation Agreement

sets forth the terms and conditions under which CG&E shall operate Miami Fort Unit 6, and under which ULH&P shall reimburse CG&E at CG&E's fully embedded cost. Considering that Miami Fort Unit 6 will be operated by CG&E using the same personnel and in the same manner as it would be operated by ULH&P, as originally described to the Commission, ULH&P does not expect to incur any different costs through CG&E's operation. Thus, this cost-based transaction is consistent with the Commission's Interim Order.

4. The Commission's Interim Order required the filing of several additional documents that ULH&P is not attaching to this Compliance Filing, as follows:
  - a. Back-up Power Supply Agreement. As discussed at the January 11, 2005 Informal Conference in this proceeding, ULH&P has not yet executed the Back-up Power Supply Agreement offered by CG&E. ULH&P has determined to put its back-up power supply needs out to bid. With ULH&P's rates frozen, and ULH&P able to take power from CG&E under the PSOA at market prices, ULH&P believes that the lack of a back-up power supply should not impair its ability to acquire the Plants from CG&E. To the extent necessary to allow the Commission to issue a Final Order in this proceeding so that the transfer of the Plants can take place without undue delay, ULH&P requests waiver of the requirement to provide the Commission the final version of the Back-up Power Supply Agreement. ULH&P commits to provide the Commission a copy of the

back-up power supply agreement it enters into at the time it concludes such arrangement.

- b. Assignment of Storage and Service Agreement. In the Direct Testimony of John J. Roebel, ULH&P described the TEPPCO Storage Agreement, attached as Attachment JJR-3, under which TEPPCO provided CG&E with 50,000 barrels of propane storage space within TEPPCO's pipeline system during the months of November through March. CG&E has since determined that such an agreement is no longer needed as propane is now available from sources in Texas in a matter of days rather than the weeks it previously took. CG&E has determined that the TEPPCO Storage Agreement was no longer economical considering these changed circumstances, and thus terminated this agreement.
- c. Amendment/Assignment of Current Coal Contracts. CG&E and ULH&P are currently exploring the most economical means of procuring coal for the Plants, considering issues such as economies of scale, economic dispatch, and transfer pricing. ULH&P anticipates filing with the Commission in the near future a Coal and Lime Supply and Transportation Agreement setting forth the terms and conditions of such coal supply arrangement. Until such time as the Commission can review and rule on such a filing, ULH&P proposes to purchase coal and lime for its Plants from CG&E at cost. This at-cost pricing will have no effect on rates as ULH&P's fuel adjustment clause (FAC) rate is frozen through December 31, 2006. To the extent necessary to allow the Commission to issue a Final


Order in this proceeding so that the transfer of the Plants can take place without undue delay, ULH&P requests waiver of the requirement to provide the Commission the Amendment/Assignment of Current Coal Contracts as ordered by the Commission in its Interim Order. ULH&P anticipates filing for approval of a Coal and Lime Supply and Transportation Agreement well before ULH&P's FAC rate again becomes functional.

WHEREFORE, ULH&P respectfully requests the Commission to:

1. Waive the requirement that ULH&P provide a final version of the Back-up Power Supply Agreement before the Commission will issue a Final Order;
2. Waive the requirement that ULH&P provide Amendments/Assignments of Current Coal Contracts before the Commission will issue a Final Order; and
3. Issue a Final Order in this proceeding granting ULH&P's requested relief as amended by the Commission in its Interim Order.

Respectfully submitted,

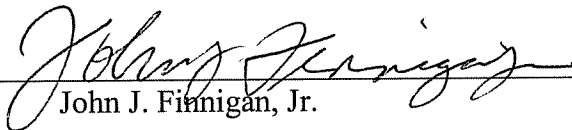
THE UNION LIGHT, HEAT AND POWER  
COMPANY

  
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**CERTIFICATE OF SERVICE**

I hereby give notice that on this 18<sup>th</sup> day of March, 2005, I have filed an original and 10 true copies of the foregoing Compliance Filing of the Union Light, Heat and Power Company with the Kentucky Public Service Commission at 211 Sower Boulevard, Frankfort, Kentucky, 40601, and I further certify that this same day I have served the parties listed below by overnight-delivery.

  
John J. Finnigan, Jr.

Elizabeth E. Blackford  
Assistant Attorney General  
Office of Rate Intervention  
1024 Capital Center Drive  
Frankfort, Kentucky 40601