

W. DUNCAN CROSBY III

DIRECT DIAL 502-560-4263

DIRECT FAX 502-627-8754

dcrosby@ogdenlaw.com

1700 PNC PLAZA
500 WEST JEFFERSON STREET
LOUISVILLE, KENTUCKY 40202-2874
(502) 582-1601
FAX (502) 581-9564
www.ogdenlaw.com

January 25, 2005

RECEIVED

JAN 25 2005

PUBLIC SERVICE
COMMISSION

VIA HAND DELIVERY

Elizabeth O'Donnell
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, Kentucky 40601

**RE: *In the Matter of the Investigation Into the Membership of Louisville Gas and Electric Company and Kentucky Utilities Company in the Midwest Independent Transmission System Operator*
Case No. 2003-00266**

Dear Ms. O'Donnell:

Enclosed please find and accept for filing the original and ten copies of Louisville Gas and Electric Company's and Kentucky Utilities Company's Motion to Compel Supplemental Response to December 7, 2004 Data Request Number One in the above-referenced matter. Please confirm your receipt of this filing by placing the stamp of your Office with the date received on the enclosed additional copies and return them to me in the enclosed self-addressed stamped envelope.

Should you have any questions or need any additional information, please contact me at your convenience.

Very truly yours,

A handwritten signature in black ink, appearing to read "W. Duncan Crosby III".

W. Duncan Crosby III

WDC/ec

Enclosures

cc: Parties of Record

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

JAN 25 2005

PUBLIC SERVICE
COMMISSION

In the Matter of:

INVESTIGATION INTO THE)
MEMBERSHIP OF LOUISVILLE)
GAS AND ELECTRIC COMPANY)
AND KENTUCKY UTILITIES)
COMPANY IN THE MIDWEST)
INDEPENDENT TRANSMISSION)
SYSTEM OPERATOR)

CASE NO. 2003-00266

MOTION OF KENTUCKY UTILITIES COMPANY AND
LOUISVILLE GAS AND ELECTRIC COMPANY
TO COMPEL SUPPLEMENTAL RESPONSE TO
DECEMBER 7, 2004 DATA REQUEST NUMBER ONE

Kentucky Utilities Company (“KU”) and Louisville Gas and Electric Company (“LG&E”) (collectively, the “Companies”) hereby move the Public Service Commission (“Commission”) to compel the Midwest Independent Transmission System Operator, Inc. (“MISO”) to supplement its response to the Companies’ 12/7/04 Data Request No. 1 by producing a résumé or curriculum vitae for Dr. McNamara containing certain requested professional information. In support of this Motion, the Companies state as follows:

On December 7, 2004, the Companies propounded a number of Data Requests upon MISO. The Companies’ 12/7/04 Data Request No. 1 stated:

1. At page 1 of 89, lines 9 through 18, Dr. McNamara summarizes his educational and professional background.

- a. Please provide a curriculum vitae and/or résumé for Dr. McNamara that includes a complete description of Dr. McNamara’s professional certifications, educational and professional background, including each and every time he has testified before a court or regulatory agency, with

the subject matter of his testimony, the docket number and the title of the case.

- b. Please identify and provide a copy of each and every paper, report, presentation, speech, or publication that Dr. McNamara has prepared, or which he assisted in preparing, in the course of his professional career which relates to the subject matter of this investigation.

MISO responded to that Request by asserting that it was “overly broad and unduly burdensome,” and stating that Dr. McNamara had already provided information on his background in his previous testimony in this case. MISO further claimed that Dr. McNamara had cited certain affidavits and reports he made to the Federal Energy Regulatory Commission and other state regulatory agencies. The Companies submit that this response is insufficient because the Data Request asked for a catalog of all of Dr. McNamara’s testimonies and writings, and not just a few self-selected examples.

The Companies attempted to resolve this matter by e-mailing MISO’s counsel on January 14, 2005, stating:

While the Companies do not concede that the data request is too burdensome, they are willing to scale it back a bit in order to get the bulk of what they seek. The Companies do not believe that it would be unduly difficult for MISO or Dr. McNamara personally to assemble (if one does not already exist) a resume or CV that contains the requested information.

The Companies have provided such documents on behalf of their witnesses; Dr. Tierney's would be a model for Dr. McNamara to work from. If MISO is not able to provide copies of all of Dr. McNamara's writings, then he or MISO should include in his resume or CV a listing of all his writings, reports and speeches, etc. and make available to the Companies any specific writing(s) the Companies subsequently request.

A complete copy of this e-mail is attached hereto as Attachment A.

MISO's counsel responded to the Companies' e-mail on January 17, 2005, stating that MISO continued to object to the Request for Dr. McNamara's résumé or curriculum vitae because no such document exists and would have to be created. MISO did, however, state that it was "certainly a possibility" that MISO would make available copies of any Dr. McNamara's writings the Companies' specifically requested. A complete copy of this e-mail is attached hereto as Attachment B.

On January 18, 2005, the Companies' counsel replied to MISO's counsel's e-mail, stating:

I find it very surprising that Dr. McNamara does not have a CV. If you will provide me with a list of Dr. McNamara's written testimonies and presentations for the last ten years, I will identify those documents which we will inspect and possibly request a copy. I would appreciate your response by the beginning of business tomorrow (January 19, 2005). If you cannot provide this information, LG&E/KU will have no choice other than to file a motion to compel.¹

A complete copy of this e-mail is attached hereto as Attachment C. MISO has yet to respond to that request and the Companies now find it necessary to file this Motion to Compel.

While MISO has stated a "possib[le]" willingness to provide the Companies with copies of the "writings" being requested, the Companies first must obtain a list of such "writings" in order to identify which documents to request. Although it is reasonable to expect that a man such as Dr. McNamara, who has been employed at a number of different places and is offering his testimony here as an expert witness, would have readily available a résumé or curriculum vitae of the kind that the Companies' experts have provided, the Companies offered to accept a

¹ Emphasis added.

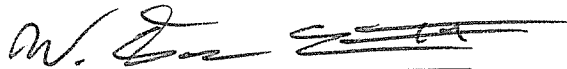
list identifying Dr. McNamara's writings, speeches, presentations and testimonies over the last ten years. However, even that basic information has not been provided by MISO.

The information at issue here is clearly relevant and discoverable. MISO's refusal to provide the Companies with a copy of Dr. McNamara's résumé or curriculum vitae, or some other listing of his professional activities over the last ten years, is hindering the Companies' ability to prepare for the upcoming hearing. An Order from this Commission compelling MISO to produce the requested information is thus appropriate and necessary.

WHEREFORE, the Companies respectfully move the Commission to compel MISO to produce a complete résumé or curriculum vitae for Dr. McNamara, or alternatively, some other document, listing all of his writings, speeches, presentations, and testimonies over the last ten years, on or before January 28, 2005.

Dated: January 25, 2005

Respectfully submitted,



Kendrick R. Riggs
W. Duncan Crosby III
OGDEN NEWELL & WELCH PLLC
1700 PNC Plaza
500 West Jefferson Street
Louisville, Kentucky 40202
Telephone: (502) 582-1601

Elizabeth L. Cocanougher
Senior Corporate Attorney
Louisville Gas and Electric Company
220 West Main Street
Post Office Box 32010
Louisville, Kentucky 40232
Telephone: (502) 627-4850

Counsel for Louisville Gas and Electric
Company and Kentucky Utilities Company

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Motion to Compel Production was served via U.S. mail, first-class, postage prepaid, this 25th day of January 2005, upon the following persons:

Katherine K. Yunker
Benjamin D. Allen
Yunker & Associates
Post Office Box 21784
Lexington, Kentucky 40522-1784

James C. Holsclaw
Stephen G. Kozey
Midwest ISO
701 City Center Drive
Carmel, Indiana 46032

Elizabeth E. Blackford
Assistant Attorney General
Office of the Attorney General
Utility & Rate Intervention Office
1024 Capital Center Drive, Suite 200
Frankfort, Kentucky 40601-8204

David F. Boehm
Michael L. Kurtz
Boehm, Kurtz & Lowry
36 East Seventh Street, Suite 2110
Cincinnati, Ohio 45202

Stephen L. Teichler
1667 K Street, N.W., Suite 700
Washington, DC 20006-1608

Richard G. Raff
Staff Counsel
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, Kentucky 40601



Counsel for Louisville Gas and Electric
Company and Kentucky Utilities Company

Crosby, W. Duncan

From: Carlisle, Eloise K. on behalf of Riggs, Kendrick R.
Sent: Friday, January 14, 2005 10:02 AM
To: Katherine K. Yunker (yunker@desuetude.com)
Cc: Benjamin D. Allen (ballen@desuetude.com); beth.cocanougher@lgeenergy.com; Crosby, W. Duncan
Subject: Data Request No. 1 to MISO

This message is a communication from an attorney's office and is privileged. If it was sent to you in error, do not read it, inform the sender that you received it and then delete it. Thank you.

Katie:

The Companies would like to follow-up on MISO's response to the Companies' December 7, 2004 Data Request No. 1 which requested a complete CV or resume for Dr. McNamara, including a list of all of the state and federal proceedings in which he has testified, and a copy of all the papers, speeches, reports and the like that Dr. McNamara has authored in the course of his professional career that are related to the subject matter of the MISO investigation ("writings"). MISO responded that the data request was unduly burdensome and that MISO has already provided at least some of the requested information.

While the Companies do not concede that the data request is too burdensome, they are willing to scale it back a bit in order to get the bulk of what they seek. The Companies do not believe that it would be unduly difficult for MISO or Dr. McNamara personally to assemble (if one does not already exist) a resume or CV that contains the requested information.

The Companies have provided such documents on behalf of their witnesses; Dr. Tierney's would be a model for Dr. McNamara to work from. If MISO is not able to provide copies of all of Dr. McNamara's writings, then he or MISO should include in his resume or CV a listing of all his writings, reports and speeches, etc. and make available to the Companies any specific writing(s) the Companies subsequently request.

Please advise whether MISO objects to supplementing its response to Data Request No. 1 in this modified way by the close of business on Monday, January 17, 2005.

Thank you.

Kendrick R. Riggs
Ogden Newell & Welch PLLC
1700 PNC Plaza
500 West Jefferson Street
Louisville, Kentucky 40202
Direct Dial: 502-560-4222
Direct Fax: 502-627-8722
Cell: 502-262-0172
Email: kriggs@ogdenlaw.com

1/25/2005

Crosby, W. Duncan

From: Katie Yunker [yunker@desuetude.com]
Sent: Monday, January 17, 2005 4:33 PM
To: Riggs, Kendrick R.
Cc: Ben Allen; Jim Holsclaw
Subject: Re: Data Request No. 1 to MISO

Kendrick: I was out sick when this e-mail came in, and have not been able to confirm the objection with the Midwest ISO. However, a C.V. of the type requested indeed would have to be created -- and a request for a document that does not exist is indeed objectionable on that ground.

As for providing copies of all writings -- that would be burdensome; making available specifically requested writings for LG&E/KU's inspection and copying (as was done last year around this time with respect to certain of Dr. Morey's writings, and as was offered by the Midwest ISO with respect to studies, etc. relied upon by Mr. Falk) is certainly a possibility.

On Jan 14, 2005, at 10:02 AM, Riggs, Kendrick R. wrote:

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500 West Jefferson Street

Louisville, Kentucky 40202

Direct Dial: 502-560-4222

Direct Fax: 502-627-8722

Cell: 502-262-0172

Email: kriggs@ogdenlaw.com

Crosby, W. Duncan

From: Carlisle, Eloise K. on behalf of Riggs, Kendrick R.
Sent: Tuesday, January 18, 2005 9:27 AM
To: 'Katie Yunker'; Riggs, Kendrick R.
Cc: Ben Allen; Jim Holsclaw; beth.cocanougher@lgeenergy.com
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500 West Jefferson Street
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