RECEIVED
JAN 2 5 2005
PUBLIC SERVICE COMMISSION

COMMONWEALTH OF KENTUCKY
BEFORE THE 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, Inc.	Case No. 2003-00266

Reply to LG&E/KU Opposition to Midwest ISO's Motion to Strike and to File Additional Testimony

Finding fault is not the point of the Midwest ISO's Motion to Strike and to File Additional Testimony ("Motion to Strike/Add"), although LG&E/KU's Response and Objection certainly reacts that way.[1] Rather, the Motion to Strike/Add identifies assertions of errors made in LG&E/KU's supplemental rebuttal testimony claiming that the Midwest ISO's benefit-cost analysis is based on erroneous modeling inputs ... that LG&E/KU approved. The timing of these assertions is such as to obstruct the Midwest ISO's efforts, as an intervenor in this manner, to provide the Commission with a complete and accurate record upon which the Commission may base its decision about the issues under investigation.

Furthermore, the claim that the companies will be prejudiced by any further delay in the procedural schedule is unfounded and effectively asks the Commission to ignore an opportunity to receive information regarding LG&E/KU's operations and actual Financial Transmission Rights ("FTR") holdings in the Midwest ISO Energy Markets. Such information would remove the original premise of this investigation, whether LG&E/KU's participation in the Midwest ISO is in the public interest, from the

[1] "Suspicion always haunts the guilty mind; the thief doth fear each bush an officer." *Henry VI, Part III*, IV, i, 43.

abstract and projected outcomes of benefit-cost analyses based upon assumed modeling inputs, incongruent models and "apples to oranges" comparisons; to the actual, with an opportunity to review LG&E/KU's actions in the Midwest ISO Energy Markets. Given LG&E/KU's own assertion that it can not withdraw from the Midwest ISO until the end of 2005, the Midwest ISO questions the companies' insistence that the Commission push forward with a hearing and make a decision based upon a record that LG&E / KU states is complete, based upon LG&E/KU's "corrections" to the Midwest ISO's cost benefit study. If the record is truly "complete" based upon LG&E/KU's proposed corrections to the Midwest ISO's benefit-cost analysis, one would question why the companies and this Commission would ask the Midwest ISO to provide such analysis in the first place.

Specifically, the Motion to Strike/Add asks the Commission to address the following situation:

- In October 2003, the Midwest ISO sought from LG&E/KU input data for modeling runs to support a benefit-costs study regarding LG&E/KU membership in the Midwest ISO.
- In November 2003, as an accommodation to LG&E/KU, the Midwest ISO submitted information it intended to use as inputs to LG&E/KU for it to review and correct if LG&E/KU did not find the submitted information reasonable or was otherwise unwilling to have the "proxy data"[2] serve as the basis for the Midwest ISO study. Among the intended inputs submitted was a spreadsheet, "Unit Characteristics LGE/KU Control Area," listing generating units as LG&E/KU control area units and providing various data about each unit.
- The Midwest ISO relied upon LG&E/KU's failure to object to or correct the generating units list in constructing the models supporting its benefit-cost studies presented in December 2003 and November 2004 — as well as an

[2] This was the term used by the Midwest ISO and LG&E/KU for the data submitted and reviewed — proxies for the actual data requested from LG&E/KU.

updated/corrected study filed on January 20, 2005, as part of Supplemental Responses to the LG&E/KU 12/07/04 Supplemental Data Requests.

- The first indication that LG&E/KU gave that it thought the list of generation units was an inappropriate basis for the benefit-cost studies — being both over- and under-inclusive — was in its Supplemental Rebuttal Testimony filed on January 10, 2005.

It would be equitable to strike the testimony of those LG&E/KU supplemental rebuttal witnesses who claim error in the Midwest ISO's use of the vetted list of generation units and/or the portions of the testimony that allege a claim of error. More importantly, however, the Commission should seek a full and fair record on which to decide this case. An adverse outcome of this case could cost Kentucky consumers tens of millions of dollars per year and affect the reliability of the power system in Kentucky and surrounding states. Although it would be equitable to strike the testimony of those LG&E/KU supplemental rebuttal witnesses who claim error in the Midwest ISO's use of the vetted list of generation units,[3] the better course would be to permit the Midwest ISO to prepare and file a benefit-cost analysis with a model based on the units in LG&E/KU's study.[4]

Refuting each charge, misstatement, or partial truth in the Response/Objection may be a pointless (and certainly an inefficient) exercise; little in that filing is germane

---

[3] Adjudicative bodies have wide discretion in addressing failures to supplement discovery. *See, e.g., Hines v. Joy Mfg. Co.*, 850 F.2d 1146, 1153 (6th Cir. 1988) ("Exclusion of evidence, continuance, or other action deemed appropriate by the court may be imposed as a sanction for breach of the duties set forth under [Rule 26(e)]."). *See also Mawby v. United States*, 999 F.2d 1252, 1254-55 (8th Cir. 1993) (finding reversible error in trial court's decision to allow "surprise" evidence without an opportunity to rebut); *Arche, Inc. v. Azaleia U.S.A., Inc.*, 882 F. Supp. 334, 338 (S.D.N.Y. 1995) (excluding evidence for failure to supplement).

[4] If the Commission decides both to permit supplementation of the Midwest ISO analysis and to strike sections of the LG&E/KU supplemental rebuttal testimony, the Midwest ISO would file an "as corrected" version of Dr. McNamara's 11/19/04 testimony so as to provide the Commission a clean record and enable it to avoid the confusion of having a record burdened by numbers that are the result of the LG&E/KU discovery failures.

to the issue of what to do next. Furthermore, the Response/Objection insistence that only financial interest or control can be relevant presents an issue that goes to the merits, and perhaps it is inappropriate to exclude one such viewpoint or the other in the form of an evidentiary/procedural ruling. The Midwest ISO respectfully suggests that it might be most expeditious for the Commission to hold a hearing on the Motion regarding any question about a particular argument or statement or to explore the ramifications of possible rulings on the Motion. In the meantime, the Midwest ISO emphasizes the following:

1. Units that are forecasted to be managed by the LG&E/KU control area are the appropriate focus of the Midwest ISO studies.

In its Response/Objection (at p. 3), LG&E/KU states the "Commission has an adequate record already upon which to make its decision." This claim that the record is "adequate" ignores the reason the Commission initiated this investigation. The purpose is to determine whether transfer of operational control over LG&E/KU transmission assets from the Midwest ISO back to LG&E/KU is in "the public interest." KRS 278.218. The public interest is broader than the financial interests of LG&E/KU. Any determination of the public interest should center on whether continued operation of LG&E/KU transmission assets by the Midwest ISO would make Kentucky customers better off than they are likely to be under alternative systems for the non-discriminatory management of those assets. The focus of this case thus is on the operation of the LG&E/KU transmission system.

In making its decision, the Commission should consider the interests of all LG&E/KU Kentucky transmission customers. This includes retail ratepayers who purchase bundled service from LG&E/KU and other members of the public who depend on the reliable and efficient operation of the LG&E/KU transmission system. In part, it is this broader definition of the public interest that the Midwest ISO has sought to examine in its initial and supplemental benefit-cost studies. Both studies specifically addressed the cost to serve LG&E/KU control area load, and were based on what the Midwest ISO believed would be the generation managed by the LG&E/KU control area in the future given implementation of the Energy Market Tariff ("EMT").

In addressing the effects of transmission operations, the most relevant area for consideration is a control area. Transmission operations are managed though a system of control areas and reliability coordinators. The Midwest ISO is a reliability coordinator; LG&E/KU is a control area operator. Contrary to the suggestion in the Response and Objection at p. 17, the Midwest ISO footprint is not a control area.

In deciding what generating units to include in the studies, the Midwest ISO had to project what units would in the future be managed as part of the LG&E/KU control area. Given the benefits of participation in coordinated dispatch and a large regional market, the Midwest ISO anticipated that LG&E/KU might well choose to manage affiliate generating units on or near its own transmission lines through its control area. The Midwest ISO took at face value the companies' verification that these units should be considered part of the LG&E/KU control area for purposes of modeling a future with and without membership in the Midwest ISO.

Power purchase contracts were not included as LG&E/KU resources in the proxy data submitted to the companies because the Midwest ISO:

- was unaware of any rights under the companies' power purchase agreements for LG&E/KU to dispatch generators (as opposed to purchasing on a fixed schedule); and
- had no reason to believe that in the future LG&E/KU could buy power on a basis other than the then fair market value of the power.

To materially affect the differential between model runs such that they should be separately modeled as resources, such power purchase agreements would both have to provide LG&E/KU (a) the right to determine when generation would be dispatched on its behalf under the agreement and (b) the ability to acquire the power in the future at a price that does not reflect the local market clearing price for that power. Thus, the Midwest ISO also took at face value LG&E/KU's failure to indicate that its OVEC and EEI power purchase agreements should be treated in the model as additional resources.

LG&E/KU's argument that the Midwest ISO should have known what resources were under LG&E/KU financial control misses the central point of this investigation. Whether an asset is or is not subject to the financial control of LG&E/KU does not determine whether the operators of that asset and the Kentucky consumers that they serve would be financially better off if the LG&E/KU transmission system continues to be operated by the Midwest ISO. In this case, the generating plants that could have a material impact on the difference in the results between the LG&E/KU and Midwest ISO studies (Coleman, Green, Henderson II, Reid, and Wilson) serve Kentucky consumers and are operated by Western Kentucky Energy ("WKE"), an LG&E/KU affiliate.

The Midwest ISO made it clear to LG&E/KU in November 2003 which plants it intended to include in the study. If LG&E/KU thought that the list was in error or unrepresentative of the resources that should be considered in evaluating whether ending Midwest ISO operation of LG&E/KU-owned transmission assets was in the public interest, it should have voiced its concern at that time. To say in its response to this motion that the Midwest ISO should only have been considering resources under LG&E/KU's financial control is simply another attempt to introduce an alleged error that should have been raised when the companies verified the Midwest ISO's model inputs.

All other things being equal, one would anticipate that the results of an appropriate study of LG&E/KU-owned resources alone should point in the same direction as an analysis of a broader scope of Kentucky resources and load. Now that the companies have adopted an absolutist position regarding the resources that should be analyzed for purposes of this investigation, both the Commission and the public interest would be served by a record that includes studies that are comparable in terms of the resources analyzed. The attempt in the LG&E/KU supplemental rebuttal testimony to back into what the Midwest ISO's results would have been if the same definition of LG&E/KU resources now proposed by the companies had been used cannot be assumed to provide a reasonable point of comparison to the LG&E/KU study.[5] If the companies' definition had been used, it would have changed the basic pool definitions in the Midwest ISO model and shifted the dispatch of generating units in Kentucky.

2. <u>LG&E/KU effectively approved the use of the listed units in the Midwest ISO's studies and never withdrew that approval.</u>

Although LG&E/KU now contends that the set of generation units modeled is a fundamental (and defective) element of the Midwest ISO studies, LG&E/KU strenuously objected to, and moved to strike, the very request that sought such information (Midwest ISO's Data Request Number 22), on the grounds that the request was "simply irrelevant to this proceeding." 11/04/03 Motion of Louisville Gas and

---

[5] LG&E/KU's attempted "adjustments" to the Midwest ISO model runs to correct "erroneous generation" did not produce results that were satisfactory to LG&E/KU, *see, e.g.*, MJM Supp. Reb. at 22; in other instances, LG&E/KU was unable to even attempt such adjustments, *id.* at 23-24.

Electric Company and Kentucky Utilities Company to Strike Supplemental Data Requests at pp. 3-4. Rather than moving to compel the production of this and other relevant information, the Midwest ISO reached an agreement with LG&E/KU, wherein it would submit data it intended to use in its study for LG&E/KU to verify. This compromise procedure protected the information that LG&E/KU deemed to be sensitive, while allowing the Midwest ISO to obtain necessary inputs for its benefit-cost analyses. In addition, counsel for the Midwest ISO explicitly alerted her counterparts for LG&E/KU that the Midwest ISO was agreeing to excuse LG&E/KU from affirmatively providing data only because LG&E/KU would be estopped by the compromise process from contesting the data at a later point in the proceeding. LG&E/KU now attempts to ignore the fact that it could have avoided this morass by complying with its discovery obligations in the first place, *i.e.*, by providing the relevant data requested by the Midwest ISO in October 2003.

The LG&E/KU affirmative obligation to identify errors is evident in the nature of the agreement reached by the parties. The common way in which discovery disputes are resolved is by the parties agreeing to narrow the scope of the request and the responding party affirmatively providing data within that limited scope. That is not what was agreed to here. The Midwest ISO agreed to do something that, at that time, it clearly did not have an obligation to do — to disclose to an opposing party its proposed model inputs prior to the time they were relied upon or any testimony was filed. There naturally had to be a quid pro quo for the Midwest ISO assuming this additional affirmative obligation. That quid pro quo was the obligation agreed to by LG&E/KU to review and identify any errors in the modeling inputs. Thus, it is not enough for their answers to be technically not false, while they omit pointing out what they now consider to be errors.

Any errors made were indeed "easily avoidable" (Response/Objection at p. 17) — had LG&E/KU corrected the Midwest ISO's listing of LGE/KU Control Area units in November 2003. However, in its Response/Objection (at pp. 6, 7) LG&E/KU contends that the information it provided was correct.[6] Alternatively, it contends that it did not have to review the listing of "LGE/KU Control Area Units":

> [A] review and report were not requested and, in the Companies' opinion, were not necessary because the Companies believed that MISO already knew that it had included in its lists units not under the Companies' financial control.

Response/Objection at p. 4. This contention is particularly astonishing because (a) it follows immediately after a quoted request for just such a review and report; (b) the entire process was geared toward LG&E/KU "signing off" on the use of data; and (c) the listing supplied was not of units under LG&E/KU financial control, but of those in its control area. Even if "MISO already knew that it had included in its lists units not under the Companies' financial control," there is nothing to support a belief that the Midwest ISO already knew that some of the units it listed as "LGE/KU Control Area Units" should not be used as such in the model it was developing. More egregiously, there is nothing that excuses LG&E/KU from objecting then that the listing was wrong and supplying what it believed to be correct information.

The Response/Objection also claims that any failure to exclude Green River Units 1 and 2 from a study is the fault of the Midwest ISO in not following-up on LG&E/KU's report as to certain submitted proxy data. In an e-mail dated 11/12/03 (attached to the Response/Objection as Exhibit 4), LG&E/KU counsel reported:

---

[6] Except for corrected information, LG&E/KU did not provide any data; furthermore, the information it provided was not in response to a particular data request, but rather as part of the agreed-upon verification process.

> The information on future units is correct; current units are operational; the retirement dates are incorrect. The correct retirement date for the one unit that is retired is provided.

Reference to one of the attached Excel spreadsheet workbooks indeed did reveal a corrected retirement date for the Pineville 3 unit. Neither the workbook nor the e-mail text indicated that there was anything incorrect about the retirement dates other than the date for Pineville 3's retirement. Furthermore, if other dates were unacceptable to LG&E/KU, the agreement was that the companies would provide corrected or acceptable dates[7] — not that the Midwest ISO should repeatedly ask for corrections to make sure that LG&E/KU was satisfied with the inputs to be used for the study.

The workbook with the corrected retirement date included other corrected basic unit data (or acceptable proxies). Interestingly, the longer tables provided there of corrected/proxy unit data each contain units that are not in the other two tables (*i.e.*, each list is different from the others), indicating that each is a <u>partial</u> list — of only those units for which the relevant datum should be revised.[8] Neither in the e-mail nor the attached workbooks does LG&E/KU take the position that the Midwest ISO list of "LGE/KU Control Area Units" is over- or under-inclusive or otherwise inaccurate.

Furthermore the Response/Objection does not show that LG&E/KU ever informed the Midwest ISO thereafter that the list of generating units was, or had become, wrong. The study presented in the Midwest ISO December 2003 testimony was based on the inputs vetted with LG&E/KU through the agreed-upon process, LG&E/KU was afforded (and availed itself of) the opportunity to propound data

---

[7] If LG&E/KU could not ascertain whether the proxy data was suitable or needed further information to provide acceptable data, it asked for such information. *See, e.g.*, 11/12/03 e-mail, item 22(c).

[8] None of the lists includes the EEI and OVEC purchased-power resources that LG&E/KU now contends it was error to omit from the set of units or the OMU resource(s) that was included in the Midwest ISO study as being within the LG&E/KU control area.

requests regarding the study, the Midwest ISO produced gigabytes of data about that study to LG&E/KU, the companies filed rebuttal testimony critiquing the study and cross-examined Dr. McNamara about it at the hearing. Briefs were filed and the record apparently closed, all without LG&E/KU ever suggesting that there was a fatal error in the list of generation resources on which the study was based.

Despite its failure to raise the claimed error before January 10, 2005,[9] LG&E/KU posits that the Midwest ISO should have discovered that neither LG&E nor KU had financial control over the Dynegy, City of Paris, and WKE generation units because they had "previously and repeatedly provided MISO information on the Companies' generation resource portfolio."[10] Response/Objection at p. 6. Information that LG&E/KU may have provided for a different purpose and in a different context regarding what units were being managed as part of its control area at that point in time did not indicate to the Midwest ISO what units should be considered part of LG&E/KU's control area for purposes of a forecast of how the area would be operated under an LMP market. From the Midwest ISO's perspective, LG&E/KU at any time could choose to dynamically schedule generation operated by its WKE affiliate through the LG&E / KU control area. All of the units in dispute are either physically in the LG&E/KU control area or are operated by an LG&E/KU affiliate. Indeed, MISO's analysis indicates that LGEE — and, as a result of a financial stronger parent company, LG&E/KU — would be substantially better off if these units were dynamically

---

[9] LG&E/KU claims that it could not have brought up this alleged defect until after it received all the data it requested regarding the Midwest ISO's second study, which was filed on November 19, 2004. Yet information provided in Midwest ISO's 11/19/04 filing — particularly Exhibit RRM-Table 5 (Unit 2005 Capacity Factor), Rebuttal Testimony of Dr. Ronald R. McNamara — plainly discloses the list of generating resources used.

[10] The Dynegy and City of Paris units have almost no effect on the outcome of the Midwest ISO study because, given their costs and size, they simply do not provide a material quantity of generation.

scheduled from the LG&E/KU control area. From the time it was received, the modeling team felt that LG&E/KU's response should be accepted at face value — in part because that is precisely the course of action that it appeared reasonable utility management would pursue.

The Commission does not need to find that LG&E/KU willfully withheld correct or supplemental information about the units list. It is enough that LG&E/KU either did not catch what it now contends are errors or did not expose those errors in this proceeding until January 10, 2004 — a point at which the existing procedural schedule did not provide for any additional pre-filed testimony. The need for further investigation of this claimed error can be met by permitting the Midwest ISO to conduct and present an additional study.

3. LG&E/KU is not prejudiced by presentation of a study that uses the unit list from its study.

In its response, LG&E/KU attempts to further avert blame by asserting that had the Midwest ISO submitted its benefit-cost analysis on September 29, 2004, it "could have had the opportunity to detect MISO's error sooner." Response/Objection at p. 17. As discussed above, this argument is inconsistent with LG&E/KU's earlier assertions, and is merely a red herring to distract the Commission from LG&E/KU's desire to use the reopening of this case and its procedural schedule to push through its arguments against the energy markets. For LG&E/KU to assert that it had to wait until it received the Midwest ISO's second benefit-cost analysis in November 2004 to correct the errors it now claims are "fatal" is, at best, incorrect and at worst, disingenuous. In fact, LG&E/KU had numerous opportunities to supplement and correct its responses to the Midwest ISO's supplemental data requests. Most recently, the Midwest ISO referred to its previous consultation regarding inputs in response to LG&E/KU's Data Request

Number 55. Instead of supplementing or correcting its response earlier in this case, LG&E/KU chose to raise this issue at a time that was the most advantageous to its position, *i.e.*, in the last set of rebuttal testimony allowed in the reopened portion of this case. It therefore acted when it could have the last word in this case before the hearing.

LG&E/KU also alleges that it "will be prejudiced by any further delay." *Id.* However, it does so without demonstrating how it will suffer prejudice by a process that would ensure that the Commission has access to the most accurate information upon which to make its decision. LG&E/KU is bound by the Midwest ISO Transmission Owners' Agreement to remain in the market through at least the end of 2005.[11] A brief delay in this proceeding will have no impact on when LG&E/KU could withdraw from the Midwest ISO. Therefore, a delay at this point will not have any effect on costs incurred by LG&E/KU and their customers.

LG&E/KU's argument also ignores the fact that it, not the Midwest ISO, was the party who moved the Commission to reopen the present case to consider the costs and benefits of its participation in the Midwest ISO's energy markets. Without explanation, it now asserts that the reopened portion of its case (a proceeding initiated on its behest and for its benefit) is ripe for decision based on a record that contains "fatal" errors. Furthermore, this position effectively asks the commission to forego the opportunity to receive information regarding actual LG&E/KU operations and actual FTR holdings in the Midwest ISO energy markets. This does not make sense.

Finally, ensuring that the Commission has access to the most accurate and updated information possible works to LG&E/KU's benefit, not its prejudice. In its response, LG&E/KU piously states that it has an interest "in bringing this proceeding to

---

[11] This is acknowledged in the Supplemental Rebuttal Testimony of Paul Thompson, at p. 5, *ll.*12-14.

a certain conclusion." *Id.* The Midwest ISO shares this interest. However, refusing to allow the Midwest ISO to present the most accurate data to the Commission does not ensure a "certain conclusion" to these proceedings; rather, it ensures that any decision issued by the Commission will be less certain.

At this point, the record contains Midwest ISO and LG&E / KU benefit cost studies that cannot be readily compared. Apart from the methodological differences which are explored in the testimony of Midwest ISO and LG&E / KU witnesses, there are at least three material inputs that are treated differently in the two studies:

- The Retirement of Green River Units 1 and 2: According to LG&E/KU, these units were operationally retired by on December 31, 2003, only 51 days after the Companies verified that they had no retirement date for these units and 55 days prior to the initial hearing in this proceeding. These units were not retired in the Midwest ISO study because the companies verified that they should be treated as control area units and never updated its response despite an instruction in the discovery requests to do so.[12]
- Treatment of LG&E/KU's OVEC and EEI Power Purchase Agreements: These agreements were included in the Companies supplemental study. They were not included as LG&E / KU resources in the Midwest ISO's initial study or in the base case in our supplemental study. However, because of the LG&E/KU's grandfathered transmission agreement for the delivery of power from EEI, the EEI agreement was separately modeled in the GFA sensitivity case in the Midwest ISO's supplemental study. As is discussed below, there are circumstances in which modeling of power purchase agreements as a resource separate and distinct from

[12] LG&E/KU suggests that the Midwest ISO should have read into the use of the plural "dates" in its response to Data Request 22a that Green River Units 1 and 2 were being retired. Such divination was not possible. The proxy data provided to the companies included what was labeled as a default retirement date of January 1, 2099 for all units with no planned retirement date. The Companies responded to Request 22a that "... the retirement dates are incorrect. The correct retirement date for the one unit that is retired is provided." Another way to interpret this response was that of course the default entry of January 1, 2099 is not an actual retirement date for all of the remaining units. No reasonable person would have read that response to mean that "there are additional planned retirement dates that, in violation of our discovery agreement, we are not disclosing and will disclose only if you inquire further."

the general representation of economic power purchase and sale transactions would be unnecessary or inappropriate. The companies' verification of the modeling inputs without identifying any additional resources thus indicated that the EEI or OVEC capacity underlying these contracts should not be treated as separate and distinct LG&E / KU resources.

- The treatment of Kentucky generating units operated by LG&E/KU affiliate WKE: The Midwest ISO study includes these generating units based on our initial expectation that, consistent with reasonable management and their economic interests, LG&E/KU would seek to manage affiliate operated generation through its control area after implementation of the EMT to take advantage of regional markets and the economics of joint dispatch and the companies' verification that they should be treated as LG&E/KU control area units for purposes of this study. After the fact, the companies are alleging that this difference is an error. The parties' positions reflect in part a factual difference regarding future dispatch of these units that was based on LG&E/KU's apparently mistaken verification. If the verification had been accurate or the Commission wished to consider the potential additional costs associated with LG&E/KU's not taking advantage of opportunities to jointly dispatch its own and affiliate operated generation, the parties also would differ on whether the appropriate standard in this case is, as the Midwest ISO maintains, what is in the "public interest" in Kentucky or, as LG&E/KU seems to maintain in their reply, what are the effects under LG&E/KU's financial control.[13]

If provided a reasonable opportunity to do so, the Midwest ISO is prepared to supplement its study to:

1. Treat Green River Units 1 and 2 as retired;
2. Model both the EEI and OVEC contracts as LG&E / KU resources; and
3. Provide sensitivity cases illustrating the difference between affiliate operated generation being dispatched separately (LG&E/KU current position) and being managed through the LG&E/KU control area (data verified in November 2003).

---

13 The Midwest ISO and Companies also treat differently the Paris and Dynegy units that are in the LG&E/KU control area, but not under LG&E/KU financial control. These units, however, do not materially impact the results of the Midwest ISO study.

The Midwest ISO anticipates being able to provide this supplemental information without unduly delaying this proceeding.[14]

The Commission has frequently stated that it desires to have a full and complete record before issuing a decision. This is the rationale behind its decision not to stringently enforce the rules of evidence in cases before the Commission. *See, e.g., In re Application of Big Rivers to Assess a Surcharge under KRS 278.183*, Case No. 94-032, Order dated August 31, 1994 at p. 2 (noting that the Commission grants "wide latitude" on evidentiary issues so that it can accept all information presented "which may aid it in determining the public interest in proceedings before it"). Allowing the Midwest ISO to present its most accurate benefit-cost analysis of LG&E/KU's participation in the energy markets is not only critical to the Commission is critical to the Commission's ability to evaluate LG&E/KU's claim that it would face material financial risks under the Midwest ISO EMT, it will also ensure that the Commission will have before it the most complete and up-to-date information possible to determine whether such an action is in the public interest. LG&E/KU has not (and cannot) show that this outcome would operate to its prejudice.

WHEREFORE, the Midwest ISO respectfully requests that that the Commission grant its motion to strike. In addition, the Midwest ISO respectfully requests that the Commission allow it to file and serve additional testimony including an analysis with corrected and updated inputs.

---

[14] The Midwest ISO also requested a suspension and brief extension of the discovery timetable to enable the parties to conclude discovery in an orderly fashion once it is known whether the Midwest ISO will be granted to opportunity to supplement its testimony.

Respectfully submitted,

Katherine K. Yunker
Benjamin D. Allen
YUNKER & ASSOCIATES
P.O. Box 21784
Lexington, KY 40522-1784
(859) 255-0629
fax: (859) 255-0746

Stephen G. Kozey
James C. Holsclaw
MIDWEST INDEPENDENT TRANSMISSION
SYSTEM OPERATOR, INC.
701 City Center Drive
Carmel, IN 46032
(317) 249-5769

Stephen L. Teichler
DUANE MORRIS, LLP
1667 K. Street N.W., Suite 700
Washington, DC 20006-1608
(202) 776-7830

By: ______________________
ATTORNEYS FOR MIDWEST INDEPENDENT
TRANSMISSION SYSTEM OPERATOR, INC.

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on this the 25th day of January, 2005, the original and ten (10) copies of the foregoing, were hand-delivered to the Commission for filing. A copy of the foregoing has also been sent by first-class U.S. mail to:

Beth Cocanougher
LG&E ENERGY CORP.
220 West Main St.
P.O. Box 32030
Louisville, KY 40232-2030

Elizabeth E. Blackford
Assistant Attorney General
Utility & Rate Intervention Division
1024 Capital Center Drive; Suite 200
Frankfort, KY 40601-8204

Kendrick R. Riggs
OGDEN NEWELL & WELCH PLLC
1700 PNC Plaza
500 West Jefferson Street
Louisville, Kentucky 40202

David C. Boehm
BOEHM, KURTZ & LOWRY
Suite 2110 CBLD Building
36 East Seventh Street
Cincinnati, OH 45202

Attorney for Midwest Independent
Transmission System Operator, Inc.