

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

INVESTIGATION INTO THE MEMBERSHIP OF )  
LOUISVILLE GAS AND ELECTRIC COMPANY AND ) CASE NO.  
KENTUCKY UTILITIES COMPANY IN THE ) 2003-00266  
MIDWEST INDEPENDENT TRANSMISSION SYSTEM )  
OPERATOR, INC. )

**REPLY OF MIDWEST INDEPENDENT TRANSMISSION  
SYSTEM OPERATOR, INC. TO OBJECTION OF KENTUCKY  
UTILITIES COMPANY AND LOUISVILLE GAS AND ELECTRIC  
COMPANY TO REQUEST FOR EXTENSION OF PROCEDURAL SCHEDULE**

Midwest Independent Transmission System Operator, Inc. (“Midwest ISO”) respectfully submits this reply to the objection filed by Kentucky Utilities Company (“KU”) and Louisville Gas and Electric Company (“LG&E”) (“Objection”) to Midwest ISO’s request to extend the procedural schedule in this case. LG&E/KU’s principal objection to the Midwest ISO’s requested extension is that “[t]he Commission must resolve these issues expeditiously to afford LG&E and KU much needed clarity regarding the path the Companies should follow, from both an operational and regulatory perspective.” (Objection at 2) Additionally, LG&E and KU complain that Midwest ISO has “had ample time to begin (and make substantial progress towards completing) its own ‘separate’ cost-benefit analysis.” (Id.) The LG&E/KU Objection is legally and factually off the mark and should not persuade the Commission to deny the Midwest ISO’s requested extension of the procedural schedule, which is needed to ensure the Commission has a complete record to address the important public policy issues it has raised in this proceeding.

A. The Public Interest Benefits of an Adequate Record Outweigh LG&E/KU's Sudden Desire for Expeditious Resolution of this Proceeding.

LG&E and KU have themselves sought *two* extensions of the procedural schedule, which is in stark contrast to their principal complaint that the “importance of timely resolution of the issues presented ... counsel[s] strongly against any further delay in the procedural schedule.” (Objection at 2) On July 25, 2003, LG&E and KU requested that the Commission extend the date by which their direct testimony was due. The Commission granted that request six days after it was filed, which resulted in the procedural schedule being extended by 53 days. On September 9, 2003, LG&E and KU requested permission to file rebuttal testimony and once again asked to extend the procedural schedule by a minimum of 11 days to accommodate that testimony. That request is still pending. Thus, LG&E and KU have made two separate requests to extend the procedural schedule by a total of 64 days (Midwest ISO's request would extend the last deadline on the existing schedule by 61 days).

In any event, the Commission directed LG&E and KU to present in its direct testimony an analysis of the costs *and benefits* of Midwest ISO membership. Instead, LG&E and KU filed a report prepared by Laurits R. Christenson Associates, Inc. (the “Christenson Report”) that emphasizes the costs of Midwest ISO membership, but largely ignores the benefits. Obviously, an analysis of the costs incurred by LG&E and KU associated with Midwest ISO membership is meaningless without a corresponding analysis of the benefits that LG&E and KU receive as a result of their membership in the Midwest ISO.<sup>1</sup>

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<sup>1</sup> In their prepared testimony, LG&E and KU essentially request the Commission's approval of the transfer of control of LG&E/KU's transmission facilities from Midwest ISO to LG&E and KU. Approving such a transfer of control on the basis of the Christenson Report could significantly adversely affect LG&E/KU's retail customers by denying them the net benefits of Midwest ISO membership that the Christenson Report ignores. *See* KRS 278.218; *see also Application of Kentucky Power Co.*, Case No. 2002-00475 (Order granting rehearing, August 25, 2003).

At the informal conference held with Commission Staff on November 6, 2003 (the “Informal Conference”), LG&E and KU argued that a separate analysis prepared by Midwest ISO is unnecessary because Midwest ISO will have an opportunity to address deficiencies in the Christenson Report by cross examining LG&E/KU’s witnesses. Pointing out during cross examination that LG&E and KU have failed to comply with the Commission’s directive to provide an analysis of Midwest ISO benefits will do nothing to supply the Commission with a proper analysis of those benefits. As the Court of Appeals of Kentucky has explained:

There are decisions suggesting that if, because of the condition of the record, the court on appeal cannot determine what judgment should justly be rendered, it may remand the case for further proceedings. We believe that such an action is clearly required where . . . the lack of evidence and arguments setting forth the positions of both parties on an issue is due to the failure to grant one of the parties a meaningful opportunity to be heard.

*Utility Regulatory Comm’n v. Kentucky Water Service Co.*, Ky. App., 642 S.W.2d 591, 594 (1982) (citations omitted).

The Commission has recognized the importance of due process principles and taken steps to obtain a complete record in this proceeding and other similar proceedings currently before it. Indeed, as noted above, the Commission granted LG&E/KU’s own motion to extend the procedural schedule, in which LG&E and KU took the position that “in order to ensure that the Commission is able to render a thoughtful, well-informed decision as to the Companies’ continued membership in MISO, the record in this proceeding — particularly as it relates to the costs *and benefits* associated with MISO (and other regional transmission organization) membership — should contain not only fully updated information, *but in-depth independent analytical insight.*”<sup>2</sup> In a case involving Kentucky Power Company’s proposed transfer of

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<sup>2</sup> *Motion of Louisville Gas and Electric Company and Kentucky Utilities Company to Amend Procedural Schedule* (July 25, 2003) (emphasis added).

functional control of its transmission facilities to PJM Interconnection, L.L.C. (“PJM”), the Commission granted rehearing of its decision denying the proposed transfer of control in order to “afford Kentucky Power an opportunity to prepare and submit an analysis *quantifying the benefits of membership in PJM....*” *Application of Kentucky Power Co.*, Case No. 2002-00475 (Order granting rehearing, August 25, 2003) (emphasis added).

Likewise, the public interest will be better served in this proceeding if Midwest ISO is afforded a meaningful opportunity to prepare and submit an analysis quantifying the benefits of LG&E/KU’s membership in Midwest ISO. Midwest ISO is preparing a comprehensive analysis of operational, reliability, and pricing transparency benefits to LG&E/KU’s retail customers as a result of LG&E/KU’s membership in Midwest ISO. The amended procedural schedule proposed by the Midwest ISO is itself an aggressive schedule that will require diligent efforts to complete that analysis and present the results in prepared testimony by January 16, 2004.

Contrary to LG&E/KU’s Objection, Midwest ISO has not had “ample time” to prepare its own cost-benefit analysis. As explained by Midwest ISO at the Informal Conference, shortly after the Commission issued its order initiating this proceeding, several of the Midwest ISO’s officers met with representatives of LG&E and KU to discuss Midwest ISO’s intervention in this proceeding. At that meeting, the Midwest ISO agreed to provide LG&E and KU information they needed to prepare the comprehensive cost-benefit analysis that the Commission directed them to file. Midwest ISO subsequently provided information informally requested by LG&E and KU. Despite LG&E/KU’s pledge to prepare an “in-depth analytical insight” of the costs *and benefits* of membership in the Midwest ISO, however, it ultimately filed a one-sided analysis that emphasizes the Midwest ISO’s costs. In light of the important public policy implications the Commission’s decision will have, the public interest will be best served by allowing the Midwest

ISO an opportunity to present a comprehensive study that analyzes both the costs and benefits of LG&E's and KU's membership in the Midwest ISO.

B. The Requested Extension Will Not Harm LG&E and KU.

As noted above, LG&E/KU's argument that the requested extension of the procedural schedule will "inure to the detriment" of LG&E and KU is inconsistent with their own approach to the case, in that they have requested two extensions themselves. In fact, the Midwest ISO's requested extension will not harm LG&E and KU, because it will not decelerate their withdrawal from the Midwest ISO, if that is the course of action the companies ultimately decide to pursue. LG&E and KU have made it clear that they will not commence efforts to withdraw from the Midwest ISO unless and until this Commission issues an order that, among other things, guarantees their recovery of any exit fee imposed upon them as a result of withdrawal.<sup>3</sup> Based on the existing procedural schedule, which has no scheduled hearing dates and does not require intervenors to respond to data requests until December 19, 2003, it appears the Commission does not intend to hold hearings in this proceeding until next year. A grant of LG&E/KU's pending request to extend the procedural schedule such that they are permitted to file rebuttal testimony by December 30, 2003, will ensure that hearings are not begun before next year.

Thus, if the Commission does issue an order that meets all of the requirements established by LG&E and KU, it will not be issued until next year. Under Article V of the Agreement of Transmission Facilities Owners to Organize the Midwest Independent Transmission System Operator, Inc., a Delaware Non-Stock Corporation (the "Transmission

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<sup>3</sup> See *Testimony of Paul W. Thompson* at 15, filed in Case No. 2003-00266 on Sep. 22, 2003 ("[T]he Companies must be allowed to recover from customers the exit fee imposed on withdrawing members, as set forth in the MISO Agreement, as well as all costs incurred in connection with LG&E's and KU's ongoing membership obligations prior to the exit."); see also LG&E and KU Response to First Data Request of Comm'n Staff Dated Oct. 6, 2003, Question No. 8 (attached hereto as Attachment A).

Owners Agreement”),<sup>4</sup> a transmission owning member’s withdrawal is not effective until December 31 of the calendar year following the calendar year in which notice of withdrawal is given. Consequently, if LG&E and KU commence withdrawal efforts in 2004, their withdrawal will not be effective until the end of calendar year 2005.<sup>5</sup> Under Midwest ISO’s proposed procedural schedule, hearings could be held in this proceeding as early as April 2004, which would leave ample time for the Commission to issue an order and LG&E and KU to commence withdrawal proceedings at the FERC in time to be concluded before December 31, 2005.

C. Conclusion.

For the foregoing reasons and the reasons set forth in the Midwest ISO’s Request for Extension of the Procedural Schedule, the Midwest ISO respectfully requests that the Commission amend the procedural schedule such that Intervenor testimony be due no earlier than January 16, 2004.

Respectfully submitted,

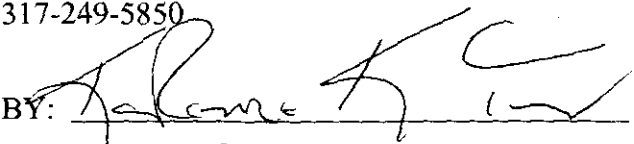
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<sup>4</sup> The Transmission Owners Agreement is available on the Midwest ISO’s Web site at [http://www.midwestiso.org/documents/to\\_miso\\_agreement.pdf](http://www.midwestiso.org/documents/to_miso_agreement.pdf).

<sup>5</sup> Contrary to LG&E/KU’s apparent misunderstanding, Article VII of the Transmission Owners Agreement would not allow LG&E and KU to effect an earlier withdrawal as a result of a Commission order in this proceeding directing LG&E and KU to commence withdrawal efforts. See *Midwest Independent Transmission System Operator, Inc.*, 84 FERC ¶61,231, 62,150-151 (Sep. 16, 1998) (explaining that intent of Article VII was to permit “regulatory out withdrawals” in the event of unacceptable state regulatory decisions issued *prior to commencement of Midwest ISO operations*).

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CERTIFICATE OF FILING AND SERVICE

I hereby certify that on this the 10<sup>th</sup> day of November, 2003, the original and ten (10) copies of this Reply were hand-delivered for filing with the Commission, an electronic file was e-mailed to all counsel of record in this proceeding (including Commission Counsel Richard Raff), and a copy was sent by first-class U.S. mail to:


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**LOUISVILLE GAS AND ELECTRIC COMPANY  
AND  
KENTUCKY UTILITIES COMPANY**

**CASE NO. 2003-00266**

**Response to First Data Request of Commission Staff  
Dated October 6, 2003**

**Question No. 8**

**Responding Witnesses: Paul W. Thompson/Michael S. Beer**

Q-8. Refer to pages 14-16 of the Thompson Testimony and pages 10-11 of the Testimony of Michael S. Beer ("Beer Testimony"). Mr. Thompson discusses LG&E and KU wanting the Commission's full support of their pursuit of a voluntary exit from MISO, but not a Commission requirement to do so. Mr. Beer describes LG&E's and KU's request for authorization in this proceeding to establish a regulatory asset for the MISO exit fee. Mr. Beer also discusses LG&E's and KU's intentions for future rate recovery of their MISO-related costs. Provide clarification of precisely what LG&E and KU are requesting from the Commission in this proceeding.

A-8. LG&E and KU clarify their position as follows: if the Commission determines, based on the evidence of record in this case, that (i) the costs of the MISO membership exceed the benefits of the MISO membership and (ii) the Companies should pursue an exit from MISO, then LG&E and KU request that the Commission direct the Companies to pursue such withdrawal, recognizing that the Companies cannot exit without having first obtained requisite FERC approval. In this regard, the order must acknowledge the Companies' obligation to obtain FERC approval prior to exit, and afford the Companies ample opportunity to secure such approval on reasonable terms. LG&E and KU also request that the Commission's order recognize that the Companies are entitled to (i) full rate recovery of all ongoing MISO-related costs pending their receipt of a final FERC order approving such withdrawal; and (ii) full recovery of any exit fee imposed on them as a consequence of such withdrawal and were not required to obtain the Commission's prior approval before joining MISO.

LG&E and KU believe strongly that the above-noted conditions to exit, as described by Mr. Thompson in his testimony (at pages 14-16), are essential (a) to make the Companies whole for costs incurred in connection with their membership in MISO (which membership the Commission cited with favor, and effectively imposed on the Companies through the merger commitments in Case Nos. 2000-095 and 2001-104); and (b) to allow the Companies to avoid the inherent uncertainties and costs attendant to conflicting state and federal

**Attachment A**



regulatory directives. More specifically in the latter regard, an order by this Commission directing exit by a date certain without the requested conditions would necessarily create such conflict unless the Companies were able to obtain a consistent FERC order by that date, which may not be possible. See the Companies' response to Question 10. Sound regulatory policy and principles of corporate integrity *counsel strongly against* leaving the Companies -- answerable as regulated entities both to this Commission and the FERC -- in a position of untenable uncertainty as to what they must do to comply with the law.

Mr. Beer's testimony at the above-referenced pages describes the Companies' two-pronged proposal for recovering MISO-related costs "if the KPSC accepts the Companies' exit proposal as described by Mr. Thompson." MISO-related costs include (i) the exit fee imposed by MISO pursuant to the MISO Transmission Owners' Agreement, and (ii) all ongoing MISO costs, pending the Companies' receipt of a final FERC order approving exit.

As stated in Mr. Beer's testimony, if the KPSC accepts the Companies' exit proposal as described by Mr. Thompson, LG&E and KU would request in this proceeding that the Commission permit the Companies to establish a regulatory asset for the MISO exit fee. The Companies would separately seek authorization in their next base rate case to include in base rates all ongoing (e.g., Schedule 10) MISO-related expenses (as reflected in the test period), as well as all *pro forma* adjustments, pending receipt of final FERC approval to exit MISO. Upon receipt of all necessary final approvals for exit, the Companies would take the requisite ratemaking steps (through a filing with the Commission) to *remove* the MISO-related expenses from base rates, and *begin amortization and base rate recovery* of the regulatory asset over a specific term.

So structured, the above proposal ensures that cost recovery is properly timed to protect against over- or under- recovery at any one point in time (*i.e.*, it prevents the Companies from recovering concurrently exit fee costs and ongoing MISO costs pending receipt of requisite FERC approval).