

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

In the matter of:

JAN 24 2005

THE APPLICATION OF LOUISVILLE GAS AND ELECTRIC)
COMPANY FOR APPROVAL OF NEW RATE TARIFFS)
CONTAINING A MECHANISM FOR THE PASS-THROUGH) CASE NO. 2004-00459
OF MISO-RELATED REVENUES AND COSTS NOT)
ALREADY INCLUDED IN EXISTING RASE RATES)

PUBLIC SERVICE
COMMISSION

AND

THE APPLICATION OF KENTUCKY UTILITIES)
COMPANY FOR APPROVAL OF NEW RATE TARIFFS)
CONTAINING A MECHANISM FOR THE PASS-THROUGH) CASE NO. 2004-00460
OF MISO-RELATED REVENUES AND COSTS NOT)
ALREADY INCLUDED IN EXISTING BASE RATES)

BRIEF OF THE ATTORNEY GENERAL IN SUPPORT OF
DISMISSING THE APPLICATIONS OF LG&E AND KU

On December 22, 2004, the Commission entered its Order finding (1) that while the applications of the Companies seeking between rate case surcharge recovery of additional MISO expenses do not comport with the requirements of 807 KAR 5:001 in their failure to present any financial or other exhibits as required by Section 10 of that regulation, it would withhold its ruling until such time as the parties had briefed the issue, and (2) inviting the parties to address whether or not it would be appropriate to consider these requests for added revenues in Cases Numbered 2003-00433 and 2003-00434, the last general rate cases filed by the Companies that are still pending on rehearing of issues raised by the Attorney General.

A. These applications should be dismissed.

First, the Attorney General strongly agrees with the Commission's statement that the applications filed by the companies ask the Commission to engage in single-issue rate making that will effect a general adjustment of rates by charging all classes what is expected to be net

added costs flowing from participation in MISO. The Attorney General agrees with the Commission that while the legislature has enacted statutes defining those added costs for which rate recovery may be sought through single-issue rate making apart from a general rate case, it has not enacted a statute authorizing a single-issue rate case focused exclusively on MISO-related revenues and expenses.¹ Accordingly, the Commission cannot and should not engage in single-issue rate making to tack added MISO related expense recovery onto the base rates charged absent a showing by the Companies that its total rates are no longer fair, just and reasonable.

KRS 278.192, which allows for the use of a future test year for the purposes of supporting a rate increase as well as an historic test year, was enacted by the General Assembly in 1992. That same year, the General Assembly enacted KRS 278.183, the environmental surcharge statute, which carved out certain environmental expenses for single-issue ratemaking. As single-issue rate recovery, environmental surcharge cost recovery under KRS 278.183 can be obtained without reference to the overall financial well being of the utility and without reference to the fairness, justness or reasonableness of its rates. The enactment of the two statutes in the same session indicates that the General Assembly meant that all changes to rates not specifically singled out for special single-issue treatment were to continue to be handled as had been done traditionally under the statutory scheme via a general rate case. KRS 278.030; KRS 278.270.

807 KAR 5:001 Section 10 was amended in 1993 to specify what information must be filed when using an historic test year or a future test year when seeking a general adjustment in

¹ Johnson v. Correll, Ky., 332 S. W. 2d 843 (1960) (When the powers given an administrative agency are to be performed in a specified manner, there is an implied restriction upon the exercise of those powers in excess of the grant, the agency may not add to or subtract from the statute, powers not conferred are prohibited); Louisville Water Company v. Wells Ky. App., 664 S.W.2d 525 (1984) (Enumeration of particular things excludes other things which are not specifically mentioned).

rates. The information required is comprehensive financial information that addresses the needs of the utility for fair, just and reasonable rates. That information does not permit the examination of a new expense or an increase in rates without reference to what impact that expenses has on the fairness, justness and reasonableness of a utilities extant rates.

Assuming solely for the sake of this argument that the Commission is empowered to engage rate making to allow added rate recovery between rate cases, the utility seeking such relief must, at a minimum, comply with the requirements of 807 KAR 5:001 Section 10 to show financially and factually that such added recovery is necessary to assure that the rates of the utility are fair, just and reasonable. As the Commission noted in its Order, Section 10 of 807 KAR 5:001 requires that financial information be filed in connection with a general adjustment of rates and that the required information that is wholly lacking here. Therefore, the Commission should reject and dismiss the Applications under 807 KAR 5:001 Section 2(2).

B. These applications should not be combined with pending general rate cases.

The Commission has invited comment on whether it would be appropriate to combine the consideration of these requests for added relief for MISO-related expenses with Cases 2003-00433 and 2003-00434. Even though those rate cases are still pending review on rehearing, it would not be appropriate or lawful to include the consideration of the expenses at issue here in those rate cases. The filing requirements of 807 KAR 5:001 Section 10 (7) pertaining to pro forma expenses have not been met and cannot now be met for MISO expenses arising well outside of the test year utilized in Cases 2003-0043 and 2003-00434. Therefore, the expenses cannot be considered in those cases.

Because LG&E and KU utilized historic test years in both of the general rate cases, the utilities would be required to request pro forma treatment of expenses arising after the end of the

test year. 807 KAR 5:001 Section 10 (7) requires a utility to file information pertaining to any known and measurable changes to the test year in order to pro form the test year to bring forward revenues and other relevant changes so that the out-of-test-year expense is not considered in isolation from its impact on the revenue requirements of the utility.

Certainly the filing requirements attending consideration of these expenses in the context of a general rate case could be no less stringent than those the Commission has identified as being appropriate here. Simply put, the Companies cannot avoid the filing requirements of 807 KAR 5:001 Section 10. Were the Companies to present these out-of-test-year MISO expenses for consideration in the rate cases, they would have to be presented as pro forma expenses. That would require that the initial applications in those cases be amended and updated after the utilities have already agreed to new rates, after the Commission has ruled on the propriety of the rate increases, and after the companies have already been operating for months under the rates to which they agreed. It would be pointless to create a procedural nightmare by attempting such a measure.

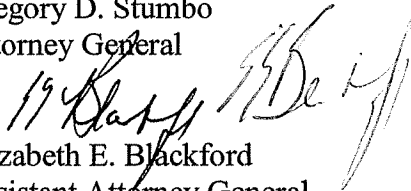
Even if the filing requirements could be met, the MISO expenses addressed in these applications lie 18 months and more beyond the September 30, 2003, test year that was utilized in Cases 2003-00433 and 2003-00434. This is a substantially greater gap between the test year and the expense than is normally considered appropriate for pro forma treatment. Furthermore, the amount of these expenses is not known with any certainty, much less with the certainty required of a pro forma adjustment. Therefore the Commission should not consider attempting merge these applications into those cases.

C. Conclusion.

For these reasons, the Commission should dismiss these applications and should refuse the requested rate relief..

Respectfully submitted,

Gregory D. Stumbo
Attorney General



Elizabeth E. Blackford
Assistant Attorney General
1024 Capital Center Drive, Suite 200
Frankfort, Kentucky 40601-8204
(502) 696-5453

NOTICE OF FILING AND CERTIFICATION OF SERVICE

I hereby give notice that I have filed the original and ten true copies of the foregoing with the Executive Director of the Kentucky Public Service Commission at 211 Sower Boulevard, Frankfort, Kentucky, 40601 this the 24th day of January, 2005, and certify that this same day I have served the parties by mailing a true copy, postage prepaid, to the following:

KENT W BLAKE
DIRECTOR-STATE REGULATION & RATES
LOUISVILLE GAS AND ELECTRIC COMPANY
P O BOX 32010
LOUISVILLE KY 40232-2010

HONORABLE ELIZABETH L COCANOUGHER
SENIOR REGULATORY COUNSEL
LOUISVILLE GAS AND ELECTRIC COMPANY
P O BOX 32010
LOUISVILLE KY 40232-2010

HONORABLE KENDRICK R RIGGS
OGDEN NEWELL AND WELCH PLLC
1700 CITIZENS PLAZA
500 WEST JEFFERSON STREET
LOUISVILLE KY 40202

HONORABLE DAVID F BOEHM
BOEHM KURTZ & LOWRY
36 EAST SEVENTH STREET
SUITE 2110
CINCINNATI OH 45202

