

BOEHM, KURTZ & LOWRY

ATTORNEYS AT LAW
36 EAST SEVENTH STREET
SUITE 1510
CINCINNATI, OHIO 45202
TELEPHONE (513) 421-2255
TELECOPIER (513) 421-2764

RECEIVED

FEB 07 2005

PUBLIC SERVICE
COMMISSION

VIA OVERNIGHT MAIL

February 4, 2005

Beth A. O'Donnell, Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, Kentucky 40602

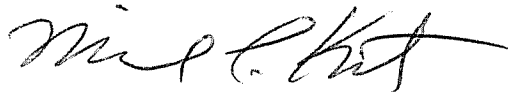
Re: Case No. 2004-00460 & 2004-00459

Dear Ms. O'Donnell:

Please find enclosed the original and twelve copies of the Reply Brief of the Kentucky Industrial Utility Customers, Inc., filed in the above-referenced matter.

By copy of this letter, all parties listed on the attached Certificate of Service been served. Please place these documents of file.

Very Truly Yours,



Michael L. Kurtz, Esq.
BOEHM, KURTZ & LOWRY

MLKkew
Attachment
cc:

Certificate of Service
Richard Raff, Esq.

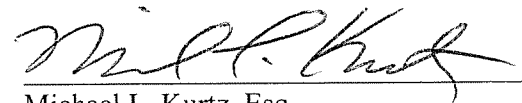
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by mailing a true and correct copy, by regular U.S. mail (unless otherwise noted) to all parties on the 4th day of February, 2005.

Kent W. Blake
Director, Regulatory Initiatives
Kentucky Utilities Company
220 W. Main Street
P. O. Box 32010
Louisville, KY 40232-2010

Honorable Elizabeth L. Cocanougher
Senior Regulatory Counsel
Louisville Gas and Electric Company
220 W. Main Street
P. O. Box 32010
Louisville, KY 40232-2010

Honorable Kendrick R. Riggs
Attorney at Law
Ogden, Newell & Welch, PLLC
1700 Citizens Plaza
500 West Jefferson Street
Louisville, KY 40202



Michael L. Kurtz, Esq.

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

FEB 07 2005

PUBLIC SERVICE
COMMISSION

In the Matter of:

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

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

REPLY BRIEF OF
KENTUCKY INDUSTRIAL UTILITY CUSTOMERS, INC.

I. INTRODUCTION

Kentucky Industrial Utility Customers, Inc. ("KIUC") submits this Reply Brief to the Response Brief of Louisville Gas & Electric Company and Kentucky Utilities Company (collectively "the Companies" or "LG&E/KU") filed on January 31, 2005 in the above-captioned matter.

II. THE COMPANIES' PROPOSED MISO TRACKER VIOLATES THE COMMISSION'S PROHIBITION AGAINST SINGLE ISSUE RATEMAKING AND IS INEQUITABLE

In its Response Brief the Companies rebut KIUC's contention that granting LG&E/KU's proposal violates the prohibition against single-issue ratemaking by citing cases before the Commission in which a tracker or rider was attached to a rate outside of a rate case. These cases are not analogous to the Companies' present proposal because they primarily involve the Commission approving a mechanism in which; 1) a natural gas utility is to share profits from off-systems sales with its customers

(See Re Columbia Gas of Kentucky, Inc. Case No. 96-079 (July 31, 1996); 2) a natural gas utility is provided an incentive to minimize its fuel costs (See Re Western Kentucky Gas Company Case No. 97-513 (June 1, 1998), and Re Louisville Gas & Electric Company Case No. 97-171 (September 30, 1997)); or 3) a natural gas utility is to recover costs in order to ensure that it recovers its authorized rate of return on equity (See Re Delta Natural Gas Company, Inc. Case No. 99-046 (May 10, 1999). The Companies also cites Re Union Light, Heat and Power Company(“ULH&P”), Case No. 2001-00092 (January 1, 2002) as an instance in which the Commission approved a rider for costs a utility planned to incur in order to replace aging cast iron and steel gas mains. That case is certainly not relevant because the ULH&P rider was approved during a rate case, whereas LG&E/KU are obviously proposing a new tracker outside the context of a rate case.

Although the Companies explain that the proposed MISO tracker will “*pass through to customers certain monthly net revenues and costs as a result of MISO’s EMT...*”¹ the MISO tracker is not a profit-sharing mechanism. It is clear that the tracker is devised to pass through large costs and relatively small net revenues so that the tracker will always represent an extra charge to ratepayers. The proposed tracker is loaded with most or all of the costs associated with the new MISO tariff, but excludes other MISO-associated revenues such as enhanced profits from off-system sales. This is particularly inequitable considering that the Companies opted out of the earnings sharing mechanism by filing their last rate case.² The Companies’ have decided to discontinue trackers that benefit ratepayers by giving them a share of over-earnings and incentivize utility efficiency, but propose to enact new trackers that recover expenses without reference to offsetting revenues. LG&E/KU should not be

¹ Statutory Notices of LG&E/KU (December 1, 2004)

² The Companies’ argue in their Response Brief (pp. 9-10) that they did not unilaterally discontinue the ESM. KIUC disagrees with this contention. The ESM was terminated when the Company filed its last base rate case. The Company chose to raise its rates through a rate case instead of proceeding under the ESM. The elimination of the ESM prevents the Companies from recovering (on a 60%-40% basis) extra revenues from rate payers when its earnings fall short of projections, but also deprives rate payers of a portion of LG&E/KU over-earnings.

allowed to create a tracker, between rate cases, whereby the Companies cherry-pick which components to include and which components to exclude.

Further, the Company has made no claim that it is under-earning. Its proposal falls squarely into the single-issue ratemaking scenario described and prohibited in Re Big Rivers Electric Cooperative,³ which was cited in KIUC's initial Brief in this matter but not addressed in the Companies Response Brief. In that case the Commission declared that it will not establish rates based on a single revenue or expense. The Commission explained that it will not allow for the refund of litigation proceeds to ratepayers outside the context of a rate case, even though such proceeds were clearly due to ratepayers, because doing so would set a bad precedent. The Commission warned that such a precedent could be used to justify an over-earning utility to recover a single expense item between rate cases. The Commission stated:

*A separate rate which requires the refund of litigation proceeds without examining [Big Rivers'] other expenses and revenues may also have unintended policy consequences. A utility which incurs a significant expense in one area, but which is otherwise earning profits, may request a rate designed solely to recover the significant expense. If a utility can be ordered to refund particular revenues, it can also be authorized to collect a particular expense. While a refund of any litigation proceeds may be attractive in the short run, in the long run the precedent which it establishes may greatly disadvantage utility ratepayers."*⁴

The above-quoted language perfectly describes the Companies' present filing. LG&E/KU propose to recover a single significant expense despite otherwise earning profits equal to or greater than their authorized rate of return on equity. The Commission's long-held prohibition against single-issue ratemaking would be hollow if the Companies are permitted to recover their MISO related costs without making a complete base rate filing on an all-in cost of service basis.

³ Re Big Rivers Electric Corporation, Kentucky Public Service Commission Case No. 94-453, 1997 WL 152646 (Ky. PSC) (1997)

⁴ Id at 3.

Finally, the Companies' proposal comes on the heels of a significant rate increase as a result of their last base rate case. It is unreasonable for the Companies' to request another rate increase within such a short period of time in order to recover a single expense, especially without any evidence that the Companies are unable to earn their approved rate of return. If the Companies' are under-earning they should file a new rate case.

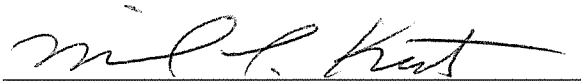
III. THE COMPANIES' REQUEST TO DEFER THEIR MISO COSTS AND COLLECT THEM IN THEIR NEXT RATE CASE SHOULD BE REJECTED

The Commission should reject the Companies' proposal to defer the net costs and revenues not already included in existing rates as regulatory assets until the next base rate case. A deferred recovery of MISO costs is nonetheless single-issue ratemaking. The Companies' request of this deferral is an attempt to circumvent the prohibition against single-issue ratemaking by tracking present costs that are unrecoverable between rate cases in order to recover these costs at their next rate case without reference to simultaneously occurring revenues. This delayed implementation of the rate increase does not cure its fundamental violation of Commission precedent. Further, approval of a deferred recovery will create intergenerational inequity whereby customers in the future will be forced to pay for costs associated with past service.

III. CONCLUSION

The Companies' Application is an attempt to engage in single-issue ratemaking and is inequitable given that they have failed to include all MISO-related revenues and expenses, have opted out of their ESM and have just recently received a significant rate increase from their last rate case. Finally, the Companies' secondary proposal to defer their MISO expenses until the next rate case is similarly inappropriate in that a deferral of the recovery of these cost does not cure its violation of the prohibition against single-issue ratemaking.

Respectfully submitted,



David F. Boehm, Esq.
Michael L. Kurtz, Esq.
Kurt J. Boehm, Esq.
BOEHM, KURTZ & LOWRY
36 East Seventh Street, Suite 1510
Cincinnati, Ohio 45202
Ph: (513) 421-2255 Fax: (513) 421-2764

**COUNSEL FOR KENTUCKY INDUSTRIAL
UTILITY CUSTOMERS, INC.**

February 4, 2005