



STOLL · KEENON · OGDEN
PLLC

2000 PNC PLAZA
500 WEST JEFFERSON STREET
LOUISVILLE, KENTUCKY 40202-2874
502-333-6000
FAX: 502-333-6099
WWW.SKOFIRM.COM

W. DUNCAN CROSBY III
DIRECT DIAL 502-560-4263
DIRECT FAX 502-627-8754
Duncan.crosby@skofirm.com

June 22, 2006

VIA HAND DELIVERY

RECEIVED

JUN 22 2006

PUBLIC SERVICE
COMMISSION

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

**RE: *In the Matter of the Application of Louisville Gas and Electric Company and
Kentucky Utilities Company for Authority to Transfer Functional Control of
Their Transmission System*
Case No. 2005-00471**

Dear Ms. O'Donnell:

Enclosed please find and accept for filing the original and ten copies each of the following documents in the above-referenced matter:

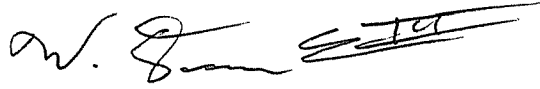
1. Fourth Amended Joint Application, the compact disc entitled, "Fourth Amended Application-Exhibit 1," and supporting testimony;
2. Joint Motion for Leave Conditionally to File an Amended Application, Withdraw Certain Testimony, and File Conditional Testimony.

Please confirm your receipt of these filings 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.

Elizabeth O'Donnell
June 22, 2006
Page 2

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". The signature is written in a cursive style with a prominent flourish at the end.

W. Duncan Crosby III

WDC/klu
Enclosures

cc: All persons of record requesting intervention
Kent W. Blake (w/encl)
Elizabeth L. Cocanougher (w/encl)

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

JUN 22 2006

PUBLIC SERVICE
COMMISSION

In the Matter of:

APPLICATION OF LOUISVILLE GAS AND)
ELECTRIC COMPANY AND KENTUCKY)
UTILITIES COMPANY FOR AUTHORITY) CASE NO. 2005-00471
TO TRANSFER FUNCTIONAL CONTROL)
OF THEIR TRANSMISSION SYSTEM)

**JOINT MOTION FOR LEAVE CONDITIONALLY TO FILE AN AMENDED
APPLICATION, WITHDRAW CERTAIN TESTIMONY,
AND FILE CONDITIONAL TESTIMONY**

Pursuant to 807 KAR 5:001, Section 3(5), Louisville Gas and Electric Company (“LG&E”) and Kentucky Utilities Company (“KU,” collectively, the “Companies”) hereby move the Kentucky Public Service Commission (“Commission”) to issue an order granting leave conditionally to amend their Third Amended Joint Application, withdraw the previously filed testimony of Kent W. Blake, and file conditional testimony by Kent W. Blake in this proceeding.¹ The Companies explicitly condition the filing made pursuant to this Motion on the Commission’s issuing an order by July 6, 2006, granting the relief requested in the Fourth Amended Joint Application so that the Companies may proceed with their plans to withdraw from the Midwest Independent Transmission System Operator, Inc. (MISO) effective September 1, 2006. The Companies tender these filings without prejudice to, or waiver of, the right to withdraw them if the Commission does not issue such an order by July 6, 2006. As grounds for their Joint Motion, the Companies state as follows:

On November 18, 2005, the Companies filed their Joint Application and supporting testimony with the Commission, seeking authority to withdraw from membership in MISO.

¹ Other than the testimony of Mr. Blake, pursuant to 807 KAR 5:001 Section 5(5), the Fourth Amended Joint Application incorporates all of the testimony filed on June 15, 2006, in this proceeding by the Companies’ witnesses, including the Tennessee Valley Authority and Southwest Power Pool, Inc., witnesses.

On March 17, 2006, the Federal Energy Regulatory Commission (FERC) issued an order conditionally authorizing the Companies to exit MISO.²

On May 31, 2006, the Commission issued a final order (“May 31 Order”) in Case No. 2003-00266³ (“Investigation”), concluding its nearly three-year long investigation of the Companies’ membership in MISO. In the May 31 Order, the Commission granted the Companies the authority to withdraw from MISO and to establish a regulatory asset in the amount of the Companies’ MISO exit fee and establish a regulatory liability for the amount of Schedule 10 costs that were included in the test year of the Companies’ last base rate case once the Companies cease to incur such expenses.

On June 2, 2006, the Kentucky Office of the Attorney General by and through his Office of Rate Intervention (AG), the Kentucky Industrial Utilities Customers, Inc. (KIUC), and the Companies filed in this proceeding a Stipulation, which provided for, among other things, a “fair, just and reasonable” accounting and rate-making treatment of the MISO exit fee by partially offsetting the regulatory liability to be established for Schedule 10 costs with the like-kind service costs the Companies will incur once they exit MISO to compensate the Tennessee Valley Authority (TVA) and the Southwest Power Pool, Inc. (SPP), for reliability coordination and independent transmission tariff administration services, respectively. During the weeks prior to the May 31 Order, the Companies, AG, and KIUC had carefully negotiated and executed the Stipulation for the purpose of expediting this proceeding by providing the Commission a reasonable, prudent, and mutually agreeable resolution of all of the issues in this case.

On June 13, 2006, however, the Commission issued an order in this proceeding (“June 13 Order”) initiating an investigation and setting for hearing the issue of whether the May 31

² *Louisville Gas and Electric Company et al.*, Docket Nos. EC06-4-000 *et al.*, Order (March 17, 2006).

³ *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.*

Order's accounting treatment of the MISO exit fee and Schedule 10 charges is consistent with the Stipulation's accounting and rate-making treatment of the same items, as well as the TVA and SPP costs. The June 13 Order further stated that the Stipulation's accounting and rate-making provisions "may have the effect of changing the basis upon which the Commission issued its May 31, 2006 Order in Case No. 2003-00266."⁴

On June 21, 2006, the AG, KIUC, and Companies filed a Joint Motion for Reconsideration, stating their belief that the Stipulation and the May 31 Order are not in conflict, but also stating their willingness to withdraw the accounting and rate-making portions of the Stipulation, and the Companies' willingness to amend their Third Amended Joint Application to remove all rate-making-related discussion and requests,⁵ provided that such action would eliminate the need for the investigation and hearing referenced in the June 13 Order, and further, that any other matters capable of resolution would be resolved in an order to be issued no later than July 6, 2006.

Thus, to clarify precisely what relief the AG, KIUC, and Companies are seeking pursuant to their Joint Motion for Reconsideration, the Companies make this Motion and conditionally submit the accompanying Fourth Amended Joint Application and conditional testimony.

WHEREFORE, Louisville Gas and Electric Company and Kentucky Utilities Company respectfully request that the Commission enter an order granting leave conditionally to amend their Third Amended Joint Application, withdraw the previously filed testimony of Kent W. Blake, and file conditional testimony by Kent W. Blake in this proceeding. The Companies explicitly condition the filing made pursuant to this Motion on the Commission's issuing an order by July 6, 2006, granting the relief requested in the Fourth Amended Joint Application so

⁴ June 13 Order at 2 (emphasis added).

⁵ Specifically, this would involve withdrawing all of Stipulation ¶ 2 and amending the Third Amended Joint Application to remove the second textual paragraph of page 1, as well as requesting paragraph number 2 on page 12.

that the Companies may proceed with their plans to withdraw from the Midwest Independent Transmission System Operator, Inc. (MISO) effective September 1, 2006. The Companies tender these filings without prejudice to, or waiver of, the right to withdraw them if the Commission does not issue such an order by July 6, 2006. The Fourth Amended Joint Application and conditional testimony are tendered with this motion.

Dated: June 22, 2006

Respectfully submitted,



Kendrick R. Riggs
William Duncan Crosby III
Stoll Keenon Ogden PLLC
2000 PNC Plaza
500 West Jefferson Street
Louisville, Kentucky 40202
Telephone: (502) 333-6000

Elizabeth L. Cocanougher
Senior Regulatory Counsel
E.ON U.S. LLC
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

The undersigned hereby certifies that an original and ten copies of this Joint Motion was hand delivered on the 22nd day of June 2006 to Elizabeth O'Donnell, Executive Director, Kentucky Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601, and that a copy of this motion was mailed to:

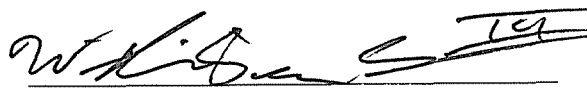
David F. Boehm
Michael L. Kurtz
Boehm, Kurtz & Lowry
36 East Seventh Street, Suite 1510
Cincinnati, Ohio 45202

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

Katherine K. Yunker
Katherine S. Sanford
Yunker & Associates
Post Office Box 21784
Lexington, Kentucky 40522-1784

Stephen G. Kozey
Midwest Independent Transmission
System Operator, Inc.
701 City Center Drive
Carmel, Indiana 46032

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


Counsel for Louisville Gas and Electric
Company and Kentucky Utilities Company

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF LOUISVILLE GAS AND)	
ELECTRIC COMPANY AND KENTUCKY)	
UTILITIES COMPANY TO TRANSFER)	CASE NO: 2005-00471
FUNCTIONAL CONTROL OF THEIR)	
TRANSMISSION SYSTEM)	

CONDITIONAL DIRECT TESTIMONY OF
KENT W. BLAKE
DIRECTOR OF STATE REGULATIONS AND RATES
E.ON U.S. SERVICES, INC.

Filed: June 22, 2006

1 **Q. Please state your name, business address and position.**

2 A. My name is Kent W. Blake. My business address is 220 West Main Street, Louisville,
3 Kentucky 40202. I am Director of State Regulation and Rates for E.ON U.S. Services,
4 Inc., on behalf of Louisville Gas and Electric Company (LG&E) and Kentucky Utilities
5 Company (KU) (collectively “LG&E/KU” or “the Companies”).

6 **Q. Have you previously testified before the Commission?**

7 A. Yes. I have previously testified before this Commission in multiple proceedings.

8 **Q. Your testimony is titled, “Conditional Direct Testimony.” On what is your
9 testimony conditioned?**

10 A. In the June 21, 2006 Joint Motion for Reconsideration filed by the Kentucky Office of the
11 Attorney General by and through his Office of Rate Intervention (AG), the Kentucky
12 Industrial Utilities Customers, Inc. (KIUC), and the Companies (collectively, the
13 “Movants”), the Companies conditionally offered to withdraw all accounting and rate-
14 making related provisions of their Third Amended Joint Application in this proceeding,
15 and the Movants offered to withdraw all such provisions of their June 2, 2006 Stipulation,
16 also filed in this proceeding. The condition attached to the Companies’ and Movants’
17 offer was that the Commission issue an order otherwise granting the relief requested in
18 the Stipulation and Third Amended Joint Application by July 6, 2006.

19 To clarify precisely what relief the Movants seek pursuant to their Joint Motion
20 for Reconsideration, the Companies are filing today: (1) a Joint Motion for Leave
21 Conditionally to File an Amended Application, Withdraw Certain Testimony, and File
22 Conditional Testimony (“Joint Motion for Leave”); (2) a Fourth Amended Joint
23 Application; and (3) this Conditional Testimony. Thus, I am submitting this testimony to

1 accompany the Companies' Fourth Amended Joint Application, which is a conditional
2 application. Just like the Fourth Amended Joint Application, and as explained in the
3 Joint Motion for Leave, my testimony is conditioned upon the Commission's issuing an
4 order by July 6, 2006, granting the relief requested therein. I therefore tender this
5 testimony without prejudice to, or waiver of, the right to withdraw this testimony if the
6 Commission does not issue such an order by July 6, 2006.

7 **Q. What is the purpose of your testimony?**

8 A. The purpose of my testimony is to explain why the Companies believe it is not clear that
9 KRS 278.218 applies to the Companies' contracts with the Tennessee Valley Authority
10 (TVA) for reliability coordination services and with the Southwest Power Pool, Inc.
11 (SPP) for Independent Transmission Organization (ITO) services.

12 **Q. Do the Companies seek to challenge the Commission's jurisdiction over the**
13 **Reliability Coordinator and ITO Agreements between the Companies and TVA and**
14 **SPP, respectively?**

15 A. No. The Companies unambiguously do not wish to challenge the Commission's
16 assertion of jurisdiction over the Reliability Coordinator and ITO Agreements should the
17 Commission determine that KRS 278.218 is applicable to the facts of this case and
18 choose to assert it. Nonetheless, because the Commission has not exercised its authority
19 over the approval of these kinds of contracts in the past, the Companies believe it is
20 unclear whether the statute applies to contracting for reliability coordination and ITO
21 services and would like to make the Commission aware of reasons why the Commission
22 might not assert jurisdiction over such contracts. In the event the Commission decided
23 not to assert jurisdiction under KRS 278.218, it would certainly maintain rights to review

1 these contracts at any time under the broad powers provided to the Commission under
2 KRS 278.030.

3 **Q. Does clear precedent or the language of KRS 278.218 clearly indicate whether the**
4 **statute should apply to the Companies' contracts with TVA and SPP for reliability**
5 **coordination and ITO services, respectively?**

6 A. No. Certainly the Commission has used its authority under KRS 278.218 to exercise
7 jurisdiction over a utility's decision to become a member of a Regional Transmission
8 Organization (RTO)¹ and to exercise jurisdiction over a utility's withdrawal from RTO
9 membership.² But the Companies are unaware of any instance in which, under the
10 authority of KRS 278.218 or any other statute, the Commission has asserted jurisdiction
11 over a utility's choosing a reliability coordinator or ITO-like service provider. For
12 example, we have searched but cannot find any Commission orders approving the current
13 arrangements whereby certain other Kentucky utilities have contracted with TVA for
14 reliability coordination services. Thus, this appears to be a case of first impression.

15 On its face, KRS 278.218 does not appear to resolve the issue. The statute
16 provides the Commission jurisdiction over the Companies' contracts with TVA and SPP
17 if the contracts constitute a "transfer [of] . . . control or the right to control" any of the
18 Companies' jurisdictional assets. But because "control" is not a defined term in KRS
19 Chapter 278 and the Commission has not interpreted "control" to apply to service
20 contracts such as are involved in this case to our knowledge and belief, we do not have
21 sufficient clarity to conclude that the Commission's approval is necessarily required.

¹ See, e.g., *In the Matter of: Application of Kentucky Power Company d/b/a American Electric Power for Approval, to the Extent Necessary, to Transfer Functional Control of Transmission Facilities Located in Kentucky to PJM Interconnection, L.L.C. Pursuant to KRS 278.218*, Case No. 2002-00475, Order at 4 (8/25/2003).

² *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, Order (May 31, 2006).

1 **Q. Is there any precedent that provides at least some indication whether the**
2 **Companies' TVA and SPP contracts constitute a transfer of "control" that would**
3 **bring the contracts under KRS 278.218?**

4 Yes. Though there is no precedent directly on point, the Commission's May 31, 2006
5 Order in Case No. 2003-00266 ("May 31 Order") provides some guidance as to what
6 constitutes "control" for KRS Chapter 278 purposes, which guidance suggests that KRS
7 278.218 should not apply to the Companies' contracts with TVA and SPP.³ In the May
8 31 Order, the Commission discussed and construed KRS 278.020(5), which contains the
9 same "control or the right to control" language as does KRS 278.218(1).⁴ The
10 Commission highlighted several consequences of the Companies' membership in the
11 Midwest Independent Transmission System Operator, Inc. (MISO) as indicia that the
12 Companies had effectively transferred "control" to MISO; importantly, though, none of
13 these consequences will occur under the Companies' TVA-SPP proposal.

14 First, in the May 31 Order the Commission noted that the Companies have
15 transferred to MISO the function of operating the Companies' transmission facilities, and
16 that MISO "now controls those facilities and uses them to transmit electric energy in
17 interstate commerce."⁵ The Companies do not dispute these facts with respect to
18 transmission assets of 100kV or greater under its current arrangements with MISO.
19 However, under the proposed arrangement with TVA as reliability coordinator and SPP
20 as ITO, the Companies will regain operational control of their transmission facilities and
21 use them to transmit electric energy to both retail customers under its existing retail
22 tariffs and in interstate commerce subject to the Companies' own Open-Access

³ *Id.* at 3-8.

⁴ *Id.*

⁵ May 31 Order at 6.

1 Transmission Tariff (OATT). For example, the Companies will define and perform all
2 work associated with the maintenance of its transmission assets and will simply
3 coordinate with TVA as to the timing in order to ensure grid reliability. In addition, SPP
4 will review our transmission plans and can recommend other projects; however, the
5 Company is not obligated to build any projects recommended by SPP. The Companies
6 are simply outsourcing certain functions with regard to the transmission assets it controls
7 in order to provide the appropriate level of independence required by FERC regulations.

8 Second, the May 31 Order stated that the Companies transferred operational
9 control of their transmission assets to MISO, and, “[u]pon transfer, LG&E and KU
10 ceased operating their transmission assets for the principal benefit of their native load
11 customers, and MISO commenced operating those assets for the benefit of its Midwest
12 transmission operations.”⁶ As Mark Johnson’s testimony filed in this proceeding details,
13 the Companies will not relinquish operational control of their transmission assets to TVA
14 or SPP. Rather, the Companies will regain operational control upon exiting MISO and
15 operate those assets for the principal benefit of their retail customers. Neither TVA nor
16 SPP will have the authority to operate the Companies’ transmission assets for the
17 principal benefit of any other region. Though it is true that TVA may direct the
18 Companies to take certain actions with their transmission and generation assets to
19 preserve reliability,⁷ it is precisely this lesser amount of control that differentiates
20 reliability coordination from MISO’s Day 2 market; indeed, TVA will help ensure that
21 the Companies’ transmission assets remain reliable for the benefit of the Companies’
22 customers.

⁶ May 31 Order at 7.

⁷ See RC Agreement § 1.5.

1 Third, the Commission listed several points that indicated to it that the
2 Companies' transfer of operational control of their transmission assets to MISO was
3 "very significant":

- 4 • "[T]ransforms aspects of what is presently retail service into wholesale
5 transactions."⁸
- 6 • "[S]ever[s] the historic connection between their respective generation and the
7 electric service provided to retail customers."⁹
- 8 • "[G]eneration used to serve native load customers must now be scheduled or bid
9 through the MISO energy market at wholesale rates that are not subject to the
10 Commission's jurisdiction. . . . [W]hat had historically been a purely retail sale of
11 power subject to our jurisdiction has been transformed into a wholesale sale of
12 power that is beyond the scope of our jurisdiction."¹⁰

13 These points relate largely to the "Day 2" energy market in which the Companies were
14 required to participate as members of MISO. However, under the proposed arrangements
15 with SPP and TVA, the Companies are not "joining" either of these entities as members
16 and will not be required to participate in any energy market that may be developed by
17 either of these entities. Instead, the Agreements are strictly fee-for-service contracts
18 under which TVA primarily will provide a wide-area view of the surrounding
19 transmission grid to ensure the stable and reliable functioning of the Companies'
20 transmission system, and under which SPP primarily will provide impartial
21 administration of the Companies' OATT and Open Access Same-time Information
22 System (OASIS). No part of the Agreements severs the connection between the

⁸ *Id.* at 7-8.

⁹ *Id.* at 8.

¹⁰ *Id.*

1 Companies' generation and their customers; no part converts formerly retail transactions
2 to wholesale transactions; the Commission's jurisdiction will remain intact and
3 undiminished. Because there appears to be no significant way in which the Companies'
4 contracts with TVA and SPP transfer control of, or the right to control, any utility assets
5 to TVA or SPP, the Companies respectfully submit that KRS 278.218 ought not apply to
6 the Reliability Coordinator and ITO Agreements.

7 **Q. If the Commission concludes it does have jurisdiction to require the Companies to**
8 **obtain approval under KRS 278.218, what is the position of the Companies?**

9 A. If the Commission concludes it does have jurisdiction to require the Companies to obtain
10 approval under KRS 278.218, then the Companies request the Commission to grant them
11 the authority to enter into the contracts. KRS 278.218(2) states, "The commission shall
12 grant its approval if the transaction is for a proper purpose and is consistent with the
13 public interest." The TVA-SPP proposal is for a proper purpose: the reliable functioning
14 of, and the independent administration of open access to, the Companies' transmission
15 facilities, as required by, and in accordance with, NERC guidelines and FERC
16 regulations and policies. Furthermore, the TVA-SPP proposal is consistent with the
17 public interest: compliance with NERC and FERC policies that result in the well-
18 functioning and reliable performance of the Companies' transmission assets, including
19 the ability for the Companies to make off-system sales through independently and
20 impartially administered transmission assets, is in the public interest. The Companies
21 therefore believe the Commission should approve the TVA and SPP Agreements under
22 KRS 278.218, if the Commission determines to exercise its jurisdiction thereunder.

23 **Q. What is the Companies' recommendation?**

1 A. The Companies recommend the Commission issue an order granting the relief requested
2 in the Companies' Fourth Amended Joint Application (which is the same in substance as
3 that requested in the Joint Motion for Reconsideration filed on June 20, 2006 by the AG,
4 KIUC, and the Companies) on or before July 6, 2006. The relief the Companies request
5 therein is that the Commission allow the Companies to complete their exit from MISO
6 and either declare that the Commission will not exercise jurisdiction to approve the TVA
7 and SPP contracts or, in the alternative, grant the Companies the authority to enter into
8 the contracts. Again, this testimony and the Companies' other related filings made today
9 are conditioned upon the Commission's issuing the requested order by July 6, 2006.

10 **Q. Does this conclude your testimony?**

11 A. Yes, it does.

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

**APPLICATION OF LOUISVILLE GAS AND)
ELECTRIC COMPANY AND KENTUCKY)
UTILITIES COMPANY FOR AUTHORITY) CASE NO. 2005-00471
TO TRANSFER FUNCTIONAL CONTROL)
OF THEIR TRANSMISSION SYSTEM)**

FOURTH AMENDED JOINT APPLICATION

Louisville Gas and Electric Company (“LG&E”) and Kentucky Utilities Company (“KU”) (collectively, the “Companies”) respectfully petition by application the Kentucky Public Service Commission to issue an order either: (1) approving under KRS 278.218 the Companies’ contracts with the Tennessee Valley Authority (“TVA”) and the Southwest Power Pool, Inc. (“SPP”) to act as the Companies’ Reliability Coordinator and Independent Transmission Organization (“ITO”), respectively; or in the alternative, (2) determining that the Companies need not obtain such approval under KRS 278.218. The Companies explicitly condition this Fourth Amended Joint Application on the Commission’s issuing an order by July 6, 2006, granting the relief requested herein so that the Companies may proceed with their plans to withdraw from the Midwest Independent Transmission System Operator, Inc. (“MISO”) effective September 1, 2006. The Companies reserve the right to withdraw this Fourth Amended Application if the Commission does not issue such an order by July 6, 2006.

In support of this Application, the Companies state as follows:

Applicants

1. The full name and mailing address of LG&E is: Louisville Gas and Electric Company, Post Office Box 32010, 220 West Main Street, Louisville, Kentucky 40232. The full name and mailing address of KU is: Kentucky Utilities Company c/o Louisville Gas and

Electric Company, Post Office Box 32010, 220 West Main Street, Louisville, Kentucky 40232.

Both LG&E and KU are Kentucky corporations authorized to do business in the Commonwealth of Kentucky.

2. LG&E is a utility engaged in the electric and gas business. LG&E generates and purchases electricity, and distributes and sells electricity at retail in Jefferson County and portions of Bullitt, Hardin, Henry, Meade, Oldham, Shelby, Spencer and Trimble Counties. LG&E also purchases, stores and transports natural gas and distributes and sells natural gas at retail in Jefferson County and portions of Barren, Bullitt, Green, Hardin, Hart, Henry, Larue, Marion, Meade, Metcalfe, Nelson, Oldham, Shelby, Spencer, Trimble and Washington Counties.

3. KU is a utility engaged in the electric business. KU generates and purchases electricity, and distributes and sells electricity at retail in the following counties in Central, Northern, Southeastern and Western Kentucky:

Adair	Edmonson	Jessamine	Ohio
Anderson	Estill	Knox	Oldham
Ballard	Fayette	Larue	Owen
Barren	Fleming	Laurel	Pendleton
Bath	Franklin	Lee	Pulaski
Bell	Fulton	Lincoln	Robertson
Bourbon	Gallatin	Livingston	Rockcastle
Boyle	Gerrard	Lyon	Rowan
Bracken	Grant	Madison	Russell
Bullitt	Grayson	Marion	Scott
Caldwell	Green	Mason	Shelby
Campbell	Hardin	McCracken	Spencer
Carlisle	Harlan	McCreary	Taylor
Carroll	Harrison	McLean	Trimble
Casey	Hart	Mercer	Union
Christian	Henderson	Montgomery	Washington
Clark	Henry	Muhlenberg	Webster
Clay	Hickman	Nelson	Whitley
Crittenden	Hopkins	Nicholas	Woodford
Daviess			

4. Certified copies of the Companies' Articles of Incorporation are already on file with the Commission in this case and are incorporated herein by reference pursuant to 807 KAR 5:001, Section 8(3).

5. The Southwest Power Pool was created in 1941 when eleven companies joined together to serve national defense needs during World War II. Currently, SPP is a FERC-approved RTO committed to maintaining the reliability of the bulk electric power system.¹ SPP has forty-five members and serves more than 4 million customers. SPP provides independent reliability coordination and tariff administration, regional engineering model development, planning and operating studies, reliability assessment studies, regional transaction scheduling and operating reserve sharing services to its members. In addition to its RTO operations, SPP has also served as the reliability coordinator and independent tariff administrator for American Electric Power East, which includes Kentucky Power Co.² SPP also serves as the Independent Coordinator of Transmission (ICT) for Entergy, Inc., providing Entergy with reliability coordination, transmission service evaluation and approvals, a weekly procurement process, and transmission planning activities, including a stakeholder process. As ICT, SPP is also scheduled to begin transmission service processing for the Entergy in the fall of 2006.

6. The Tennessee Valley Authority is the nation's largest public power company. It supplies the electricity needs of 8.6 million people in an area spanning portions of seven states by providing wholesale power to 158 municipal and cooperative power distributors, and by directly serving 62 large industries and government installations in the Tennessee Valley. TVA also provides transmission service on a nondiscriminatory, as available basis to other power providers requiring power transfers out of or through the TVA system. TVA, as a North

¹ Southwest Power Pool, Inc., 109 FERC ¶ 61,010 (2004), order on reh'g, 110 FERC ¶ 61,137 (2005).

² American Electric Power Company, Central and South West Corporation, 91 F.E.R.C. ¶ 61,208 (2001).

American Electric Reliability Council (NERC) certified Reliability Coordinator, monitors and ensures the reliable operation of the bulk transmission system in ten states including Tennessee, and portions of Alabama, Georgia, Illinois, Iowa, Kentucky, Mississippi, Missouri, North Carolina and Virginia. TVA currently serves as reliability coordinator for the East Kentucky Power Cooperative, Inc., serving 16 electric cooperatives and 500,000 customers, and Big Rivers Electric Corporation, serving 3 electric cooperatives and 107,000 customers.

Communications

7. Copies of all orders, pleadings and other communications related to this proceeding should be directed to:

Elizabeth L. Cocanougher
Senior Corporate Attorney
E.ON U.S. LLC
220 West Main Street
Louisville, Kentucky 40202

Kent W. Blake
Director of State Regulation and Rates
E.ON U.S. LLC
220 West Main Street
Louisville, Kentucky 40202

Kendrick R. Riggs
William Duncan Crosby III
Stoll Keenon Ogden PLLC
2000 PNC Plaza
500 West Jefferson Street
Louisville, Kentucky 40202

The Transmission System

8. The Companies' respective transmission systems were built, owned and operated for the purposes of transferring power from their own generators to serve their native load. Over time, the transmission systems became increasingly interconnected with others in the state in an effort to enhance system reliability, engage in off-system sales transactions and reduce facility redundancy. Upon their merger in 1998, the Companies' transmission systems were combined. Currently, the Companies' combined transmission and distribution network covers 27,000 square miles.

9. On July 17, 2003, the Commission, by order, initiated an investigation of the Companies' membership in MISO.³ In the order, the Commission indicated its willingness to explore the feasibility of the Companies' leaving MISO and joining a different RTO. In light of the evidence presented during the investigation, the Companies advised the Commission that they would seek to withdraw from MISO and pursue an alternative model that satisfies FERC's non-discriminatory, open access transmission service objectives and other relevant policy goals. When MISO filed its TEMT and Day 2 Market proposals with FERC, the Commission reopened its investigation because of concerns about the impact of Day 2 operations on the Companies and Kentucky ratepayers.

10. On October 7, 2005, in *LG&E Energy LLC, Louisville Gas & Electric Company et al*, Docket Nos. EC06-4-000 & EC06-20-000, the Companies petitioned FERC for an order authorizing the transfer of the functional control of their facilities from MISO back to themselves and authorizing the Companies to enter into agreements with SPP to serve as the Companies' OATT administrator and with TVA to serve as the Companies' NERC-certified

³ *In the Matter of: Investigation into the Membership of the Louisville Gas and Electric Company and Kentucky Utilities Company in the Midwest Independent Transmission System Operator, Inc.*, Case No. 2003-266, Order issued July 17, 2003.

reliability coordinator. The ITO and reliability coordinator proposal ensures that the Companies will maintain the requisite level of independence in the operation of their transmission system while maintaining a high level of system reliability. FERC approval of this transaction is required because such withdrawal constitutes a change in rates under the Federal Power Act (“FPA”) Section 205.⁴

11. On January 10, 2006, the Companies filed with FERC revised Attachment M of their Open Access Transmission Tariff containing a final and executed ITO Agreement and a final Reliability Coordinator Agreement, as well as a final Withdrawal Agreement between Applicants and MISO, which sets out the obligations of each party in accommodating the Companies’ withdrawal, including a Withdrawal Fee Methodology. Thus, the Companies and MISO have an agreed methodology for calculating the MISO exit fee. Complete electronic copies of the executed Reliability Coordinator and ITO Agreements, as well as the MISO Withdrawal Agreement, accompany this Fourth Amended Joint Application on the compact disc entitled, “Fourth Amended Application Exhibit 1.”⁵

12. On March 17, 2006, FERC issued its Order Conditionally Approving Request to Withdraw from the Midwest ISO, 114 FERC ¶ 61,282. In that order, FERC conditionally approved the Companies’ proposed withdrawal from MISO and directed the Companies to make a compliance filing. The conditions imposed by FERC are acceptable to the Companies. Overall, FERC found with respect to the Companies’ proposal to withdraw from MISO:

- 1) That the Companies have complied with the terms of the Midwest ISO Transmission Owners’ Agreement (TOA);

⁴ Although certain parties, including Big Rivers Electric Corp. (BREC) and East Kentucky Power Cooperative, Inc. (EKPC), initially intervened without supporting (indeed, BREC protested) the Companies’ application at FERC, now stakeholders in Kentucky, Tennessee, Indiana and Illinois -- including BREC and EKPC -- which are directly affected by the Companies’ proposal have withdrawn their protests. These stakeholders either do not oppose, or support, the Companies’ decision to withdraw from MISO.

⁵ The TVA and SPP Agreements are the same as those the Companies submitted to the Commission by letter dated April 13, 2006, in this case. (The Agreements are part of the FERC compliance filing submitted with the letter.)

- 2) That their proposal, upon compliance with certain conditions, satisfies certain Merger Conditions that had previously been placed upon the Companies;
- 3) That the Companies' proposed open access transmission tariff ("OATT"), including certain changes proscribed by the Commission, is "consistent with or superior to" the pro forma OATT established by the Commission by Order No. 888; and
- 4) That the Section 205 tariff filing, also subject to certain conditions, is just reasonable, and not unduly discriminatory.

FERC required the Companies to make a compliance filing prior to completing their withdrawal from MISO.

13. On April 11, 2006, the Companies made the requisite compliance filing with FERC.⁶ Included in the filing were revised and executed ITO and Reliability Coordinator Agreements, which more clearly delineated the responsibilities of the Companies, SPP, and TVA after the Companies exited MISO. Under the Reliability Coordinator Agreement, TVA's primary service will be to provide a wide-area view of the transmission grid on neighboring systems, as well as in MISO and PJM, in order to ensure reliable service to the Companies' customers. Under the ITO Agreement, SPP's primary service will be impartially to administer the Companies' Open Access Transmission Tariff.

The Companies have requested that FERC issue a final order approving the Companies' compliance filing and denying outstanding motions for rehearing by July 7, 2006.

14. On May 24, 2006, the Companies filed with FERC proposed amendments to their market-based rate tariffs to take effect once the Companies exit MISO.⁷ The proposed amended tariffs would allow the Companies to retain market-based rate authority for all wholesale transactions except those with points of delivery inside LG&E/KU and BREC control areas (e.g.,

⁶ The Companies filed in the record of this proceeding by letter dated April 13, 2006, a copy of their FERC compliance filing.

⁷ *LG&E Energy Marketing Inc., Louisville Gas and Electric Company, Kentucky Utilities Company, Western Kentucky Energy Corporation* (Docket No. ER06-1046-000), Letter (May 24, 2006).

transactions at the LG&E/KU and BREC interfaces with other control areas would be at market-based rates).

The Commission may want to consider issuing a final order in this proceeding conditioned upon the receipt of a statement from the Companies that the scope of any FERC-approved market-based rate authority for the Companies to be effective upon exit from MISO will not result in a material diminution of the market-based rate authority the Companies already possess or that which the Companies proposed in their May 24, 2006 FERC filing.

15. On May 31, 2006, the Commission issued a final order in Case No. 2003-00266, authorizing the Companies to exit MISO (“May 31 Order”).

16. Due to the complexity of MISO’s models the Companies were required to notify MISO by June 15, 2006, of their intent to exit and be removed from MISO’s modeling effective September 1, 2006, the first feasible date for the Companies to exit MISO. (These dates are set out in a joint letter by the Companies and MISO to FERC, an electronic copy of which accompanies this Fourth Amended Joint Application on the compact disc entitled, “Fourth Amended Application Exhibit 1.”) On June 14, 2006, the Companies filed the required schedules to notify MISO of their intent to exit and be removed from MISO’s modeling effective September 1, 2006. The Companies may, however, rescind those schedules no later than July 7, 2006, which will result in the Companies’ being unable to exit MISO before December 1, 2006.

17. Because time is of the essence in order to comply with the abovementioned milestone dates, the Companies respectfully request that the Commission issue a final order in this proceeding by July 6, 2006. If the Companies do not receive the requisite regulatory approvals by July 7, 2006, they will of necessity rescind their notice of exit to MISO. This will require the Companies to remain MISO members for another three months; the Companies will

then have to notify MISO by September 15, 2006, of their intent to exit MISO effective December 1, 2006.

Whether KRS 278.218 Applies to the ITO and Reliability Coordinator Agreements

18. Pursuant to KRS 278.218(1), Commission approval is required for the “transfer of ownership of or control, or the right to control,” certain utility assets. Further, KRS 278.218(2) provides that approval is to be granted, “if the transaction is for a proper purpose and is consistent with the public interest.”

19. The May 31 Order authorized the Companies to reacquire functional control of their transmission assets by exiting MISO. Under their proposal, when the Companies exit MISO, TVA will be their Reliability Coordinator serving primarily to provide the Companies a wide-area view of the surrounding transmission grid to ensure reliable service. Likewise, when the Companies exit MISO, SPP will act as the Companies’ ITO, primarily administering the Companies’ Open Access Transmission Tariff.

20. The Companies’ counsel has been unable to locate any case in which the Commission has asserted jurisdiction over a utility’s choice of a reliability coordinator or ITO-like service provider. Thus, because this appears to be a case of first impression, it is not clear whether obtaining reliability coordination or ITO services constitutes a transfer of control of utility assets of the kind governed by KRS 278.218. The Companies do not believe that such transactions should fall under the ambit of KRS 278.218 because, rather than transferring operational control to TVA and SPP, the Companies have merely arranged for TVA and SPP to provide certain services for set fees; the Companies will continue to operate and maintain all of their utility assets under the ITO/Reliability Coordinator arrangement, and are free to terminate SPP’s or TVA’s services with reasonable notice and without incurring an exit fee. The Companies emphasize that they are not seeking authority to join an RTO or otherwise enter into

a membership arrangement with TVA or SPP; rather, the Companies' contracts with TVA and SPP are strictly fee-for-service contracts.

21. In the alternative, if the Commission concludes it has jurisdiction to require the Companies to obtain approval under KRS 278.218, then the Companies request the Commission to grant them the authority to enter into the contracts. KRS 278.218(2) states, "The commission shall grant its approval if the transaction is for a proper purpose and is consistent with the public interest." The TVA-SPP proposal is for a proper purpose: the reliable functioning of, and the independent administration of open access to, the Companies' transmission facilities, as required by, and in accordance with, NERC guidelines and FERC regulations and policies. The TVA-SPP proposal is also consistent with the public interest: compliance with NERC and FERC policies that result in the well-functioning and reliable performance of the Companies' transmission assets, including the ability for the Companies to make off-system sales through independently and impartially administered transmission assets, is in the public interest. Therefore, if the Commission determines that the statute applies, the Companies' obtaining TVA's and SPP's reliability coordination and ITO services, respectively, should be approved by the Commission pursuant to KRS 278.218.

Testimony in Support of the Application

20. The Companies support their request for authority to obtain TVA's and SPP's services with the following testimony:

- Kent W. Blake, Director of State Regulation and Rates, E.ON U.S. Services, Inc., will explain why the Companies do not believe that the ITO and Reliability Coordinator proposal should be subject to KRS 278.218, and in the alternative why the proposal satisfies the requirements of 278.218.

21. The Companies also support their request for authority to obtain TVA's and SPP's services with the following testimony, filed in this proceeding on June 15, 2006, and, pursuant to 807 KAR 5:001 Section 5(5), move the Commission to incorporate by reference the following evidence previously tendered with the Companies' Third Amended Joint Application:

- Mark S. Johnson, Director of Transmission, E.ON U.S. Services, Inc., describes the functions of the ITO and Reliability Coordinator and the Request For Proposal processes that led to the selection of SPP and TVA to serve in those roles, and updates the Commission on the relevant proceedings before FERC concerning the Companies' exit from MISO and their TVA/SPP proposal.
- Kent W. Blake, Director of State Regulation and Rates, E.ON U.S. Services, Inc., will explain why the Companies do not believe that the ITO and Reliability Coordinator proposal should be subject to KRS 278.218, and in the alternative why the proposal satisfies the requirements of 278.218.
- Martyn Gallus, Senior Vice President, Energy Marketing, E.ON U.S. Services, Inc., will describe the status of the Companies' market-based rate filings before FERC.

22. LG&E and KU also support their application with the following testimony submitted by the Tennessee Valley Authority and the Southwest Power Pool, as the prospective third-party vendors of reliability coordination and independent transmission operation, respectively, regarding their qualifications and interests, filed in this proceeding on June 15, 2006, and, pursuant to 807 KAR 5:001 Section 5(5), move the Commission to incorporate by reference the following evidence previously tendered with the Companies' Third Amended Joint Application:

- The testimony of Stuart L. Goza, Reliability Coordinator for TVA, provides background regarding how TVA acts as reliability coordinator for other electric systems and how TVA proposes to provide such service to the Companies.
- The testimony of Bruce A. Rew, Executive Director of Contract Services, Southwest Power Pool, will provide information on the capabilities of SPP to perform the functions of an ITO for the Companies.

Additional Support for the Companies' Application

23. On June 2, 2006, the Kentucky Office of the Attorney General by and through his Office of Rate Intervention (AG), the Kentucky Industrial Utilities Customers, Inc. (KIUC), and the Companies, filed a Stipulation in this proceeding that supported Companies' exit from MISO and endorsed the TVA-SPP proposal. The Stipulation also contained certain recommended accounting and rate-making treatment. In the June 21, 2006 Joint Motion for Reconsideration filed by the Companies, AG, and KIUC (the "Movants"), the Movants conditionally offered to withdraw all accounting and rate-making provisions of the Stipulation (i.e., withdraw Stipulation ¶ 2), and the Companies offered to withdraw all such provisions from their Third Amended Joint Application. The condition attached to the Companies' and Movants' offer was that the Commission issue an order otherwise granting the relief requested in the Stipulation and Third Amended Joint Application by July 6, 2006.

This Fourth Amended Joint Application requests the same relief as the Third Amended Joint Application with the accounting and rate-making provisions removed. The Stipulation, which remains in effect except, conditionally, ¶ 2, states in ¶ 1: "The Signatories to this Stipulation support the Companies' joint application in this proceeding and request the

Commission expeditiously review and approve the application without a hearing by June 30, 2006.”

WHEREFORE, Louisville Gas and Electric Company and Kentucky Utilities Company respectfully request that the Commission issue an order by July 6, 2006, allowing the Companies to complete their exit from MISO and either (1) pursuant to KRS 278.218, approving the Companies’ contracts with the Tennessee Valley Authority and the Southwest Power Pool to act as the Companies’ reliability coordinator and Independent Transmission Organization, respectively, or (2) determining that the Companies need not obtain such approval under KRS 278.218.

Dated: June 22, 2006

Respectfully submitted,



Kendrick R. Riggs
William Duncan Crosby III
Stoll Keenon Ogden PLLC
2000 PNC Plaza
500 West Jefferson Street
Louisville, Kentucky 40202
Telephone: (502) 333-6000

Elizabeth L. Cocanougher
Senior Regulatory Counsel
E.ON U.S. LLC
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

The undersigned hereby certifies that an original and ten copies of this Amended Application was hand delivered on the 22nd day of June 2006 to Elizabeth O'Donnell, Executive Director, Kentucky Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601, and that a copy of this motion was mailed to:

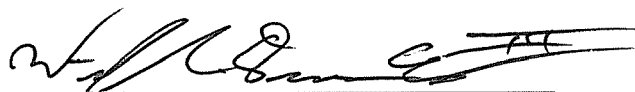
David F. Boehm
Michael L. Kurtz
Boehm, Kurtz & Lowry
36 East Seventh Street, Suite 1510
Cincinnati, Ohio 45202

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

Katherine K. Yunker
Katherine S. Sanford
Yunker & Associates
Post Office Box 21784
Lexington, Kentucky 40522-1784

Stephen G. Kozey
Midwest Independent Transmission
System Operator, Inc.
701 City Center Drive
Carmel, Indiana 46032

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



Counsel for Louisville Gas and Electric
Company and Kentucky Utilities Company

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF LOUISVILLE GAS AND)	
ELECTRIC COMPANY AND KENTUCKY)	
UTILITIES COMPANY TO TRANSFER)	CASE NO: 2005-00471
FUNCTIONAL CONTROL OF THEIR)	
TRANSMISSION SYSTEM)	

CONDITIONAL DIRECT TESTIMONY OF
KENT W. BLAKE
DIRECTOR OF STATE REGULATIONS AND RATES
E.ON U.S. SERVICES, INC.

Filed: June 22, 2006

1 **Q. Please state your name, business address and position.**

2 A. My name is Kent W. Blake. My business address is 220 West Main Street, Louisville,
3 Kentucky 40202. I am Director of State Regulation and Rates for E.ON U.S. Services,
4 Inc., on behalf of Louisville Gas and Electric Company (LG&E) and Kentucky Utilities
5 Company (KU) (collectively “LG&E/KU” or “the Companies”).

6 **Q. Have you previously testified before the Commission?**

7 A. Yes. I have previously testified before this Commission in multiple proceedings.

8 **Q. Your testimony is titled, “Conditional Direct Testimony.” On what is your
9 testimony conditioned?**

10 A. In the June 21, 2006 Joint Motion for Reconsideration filed by the Kentucky Office of the
11 Attorney General by and through his Office of Rate Intervention (AG), the Kentucky
12 Industrial Utilities Customers, Inc. (KIUC), and the Companies (collectively, the
13 “Movants”), the Companies conditionally offered to withdraw all accounting and rate-
14 making related provisions of their Third Amended Joint Application in this proceeding,
15 and the Movants offered to withdraw all such provisions of their June 2, 2006 Stipulation,
16 also filed in this proceeding. The condition attached to the Companies’ and Movants’
17 offer was that the Commission issue an order otherwise granting the relief requested in
18 the Stipulation and Third Amended Joint Application by July 6, 2006.

19 To clarify precisely what relief the Movants seek pursuant to their Joint Motion
20 for Reconsideration, the Companies are filing today: (1) a Joint Motion for Leave
21 Conditionally to File an Amended Application, Withdraw Certain Testimony, and File
22 Conditional Testimony (“Joint Motion for Leave”); (2) a Fourth Amended Joint
23 Application; and (3) this Conditional Testimony. Thus, I am submitting this testimony to

1 accompany the Companies' Fourth Amended Joint Application, which is a conditional
2 application. Just like the Fourth Amended Joint Application, and as explained in the
3 Joint Motion for Leave, my testimony is conditioned upon the Commission's issuing an
4 order by July 6, 2006, granting the relief requested therein. I therefore tender this
5 testimony without prejudice to, or waiver of, the right to withdraw this testimony if the
6 Commission does not issue such an order by July 6, 2006.

7 **Q. What is the purpose of your testimony?**

8 A. The purpose of my testimony is to explain why the Companies believe it is not clear that
9 KRS 278.218 applies to the Companies' contracts with the Tennessee Valley Authority
10 (TVA) for reliability coordination services and with the Southwest Power Pool, Inc.
11 (SPP) for Independent Transmission Organization (ITO) services.

12 **Q. Do the Companies seek to challenge the Commission's jurisdiction over the**
13 **Reliability Coordinator and ITO Agreements between the Companies and TVA and**
14 **SPP, respectively?**

15 A. No. The Companies unambiguously do not wish to challenge the Commission's
16 assertion of jurisdiction over the Reliability Coordinator and ITO Agreements should the
17 Commission determine that KRS 278.218 is applicable to the facts of this case and
18 choose to assert it. Nonetheless, because the Commission has not exercised its authority
19 over the approval of these kinds of contracts in the past, the Companies believe it is
20 unclear whether the statute applies to contracting for reliability coordination and ITO
21 services and would like to make the Commission aware of reasons why the Commission
22 might not assert jurisdiction over such contracts. In the event the Commission decided
23 not to assert jurisdiction under KRS 278.218, it would certainly maintain rights to review

1 these contracts at any time under the broad powers provided to the Commission under
2 KRS 278.030.

3 **Q. Does clear precedent or the language of KRS 278.218 clearly indicate whether the**
4 **statute should apply to the Companies' contracts with TVA and SPP for reliability**
5 **coordination and ITO services, respectively?**

6 A. No. Certainly the Commission has used its authority under KRS 278.218 to exercise
7 jurisdiction over a utility's decision to become a member of a Regional Transmission
8 Organization (RTO)¹ and to exercise jurisdiction over a utility's withdrawal from RTO
9 membership.² But the Companies are unaware of any instance in which, under the
10 authority of KRS 278.218 or any other statute, the Commission has asserted jurisdiction
11 over a utility's choosing a reliability coordinator or ITO-like service provider. For
12 example, we have searched but cannot find any Commission orders approving the current
13 arrangements whereby certain other Kentucky utilities have contracted with TVA for
14 reliability coordination services. Thus, this appears to be a case of first impression.

15 On its face, KRS 278.218 does not appear to resolve the issue. The statute
16 provides the Commission jurisdiction over the Companies' contracts with TVA and SPP
17 if the contracts constitute a "transfer [of] . . . control or the right to control" any of the
18 Companies' jurisdictional assets. But because "control" is not a defined term in KRS
19 Chapter 278 and the Commission has not interpreted "control" to apply to service
20 contracts such as are involved in this case to our knowledge and belief, we do not have
21 sufficient clarity to conclude that the Commission's approval is necessarily required.

¹ See, e.g., *In the Matter of: Application of Kentucky Power Company d/b/a American Electric Power for Approval, to the Extent Necessary, to Transfer Functional Control of Transmission Facilities Located in Kentucky to PJM Interconnection, L.L.C. Pursuant to KRS 278.218*, Case No. 2002-00475, Order at 4 (8/25/2003).

² *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, Order (May 31, 2006).

1 **Q. Is there any precedent that provides at least some indication whether the**
2 **Companies' TVA and SPP contracts constitute a transfer of "control" that would**
3 **bring the contracts under KRS 278.218?**

4 Yes. Though there is no precedent directly on point, the Commission's May 31, 2006
5 Order in Case No. 2003-00266 ("May 31 Order") provides some guidance as to what
6 constitutes "control" for KRS Chapter 278 purposes, which guidance suggests that KRS
7 278.218 should not apply to the Companies' contracts with TVA and SPP.³ In the May
8 31 Order, the Commission discussed and construed KRS 278.020(5), which contains the
9 same "control or the right to control" language as does KRS 278.218(1).⁴ The
10 Commission highlighted several consequences of the Companies' membership in the
11 Midwest Independent Transmission System Operator, Inc. (MISO) as indicia that the
12 Companies had effectively transferred "control" to MISO; importantly, though, none of
13 these consequences will occur under the Companies' TVA-SPP proposal.

14 First, in the May 31 Order the Commission noted that the Companies have
15 transferred to MISO the function of operating the Companies' transmission facilities, and
16 that MISO "now controls those facilities and uses them to transmit electric energy in
17 interstate commerce."⁵ The Companies do not dispute these facts with respect to
18 transmission assets of 100kV or greater under its current arrangements with MISO.
19 However, under the proposed arrangement with TVA as reliability coordinator and SPP
20 as ITO, the Companies will regain operational control of their transmission facilities and
21 use them to transmit electric energy to both retail customers under its existing retail
22 tariffs and in interstate commerce subject to the Companies' own Open-Access

³ *Id.* at 3-8.

⁴ *Id.*

⁵ May 31 Order at 6.

1 Transmission Tariff (OATT). For example, the Companies will define and perform all
2 work associated with the maintenance of its transmission assets and will simply
3 coordinate with TVA as to the timing in order to ensure grid reliability. In addition, SPP
4 will review our transmission plans and can recommend other projects; however, the
5 Company is not obligated to build any projects recommended by SPP. The Companies
6 are simply outsourcing certain functions with regard to the transmission assets it controls
7 in order to provide the appropriate level of independence required by FERC regulations.

8 Second, the May 31 Order stated that the Companies transferred operational
9 control of their transmission assets to MISO, and, “[u]pon transfer, LG&E and KU
10 ceased operating their transmission assets for the principal benefit of their native load
11 customers, and MISO commenced operating those assets for the benefit of its Midwest
12 transmission operations.”⁶ As Mark Johnson’s testimony filed in this proceeding details,
13 the Companies will not relinquish operational control of their transmission assets to TVA
14 or SPP. Rather, the Companies will regain operational control upon exiting MISO and
15 operate those assets for the principal benefit of their retail customers. Neither TVA nor
16 SPP will have the authority to operate the Companies’ transmission assets for the
17 principal benefit of any other region. Though it is true that TVA may direct the
18 Companies to take certain actions with their transmission and generation assets to
19 preserve reliability,⁷ it is precisely this lesser amount of control that differentiates
20 reliability coordination from MISO’s Day 2 market; indeed, TVA will help ensure that
21 the Companies’ transmission assets remain reliable for the benefit of the Companies’
22 customers.

⁶ May 31 Order at 7.

⁷ See RC Agreement § 1.5.

1 Third, the Commission listed several points that indicated to it that the
2 Companies' transfer of operational control of their transmission assets to MISO was
3 "very significant":

- 4 • "[T]ransforms aspects of what is presently retail service into wholesale
5 transactions."⁸
- 6 • "[S]ever[s] the historic connection between their respective generation and the
7 electric service provided to retail customers."⁹
- 8 • "[G]eneration used to serve native load customers must now be scheduled or bid
9 through the MISO energy market at wholesale rates that are not subject to the
10 Commission's jurisdiction. . . . [W]hat had historically been a purely retail sale of
11 power subject to our jurisdiction has been transformed into a wholesale sale of
12 power that is beyond the scope of our jurisdiction."¹⁰

13 These points relate largely to the "Day 2" energy market in which the Companies were
14 required to participate as members of MISO. However, under the proposed arrangements
15 with SPP and TVA, the Companies are not "joining" either of these entities as members
16 and will not be required to participate in any energy market that may be developed by
17 either of these entities. Instead, the Agreements are strictly fee-for-service contracts
18 under which TVA primarily will provide a wide-area view of the surrounding
19 transmission grid to ensure the stable and reliable functioning of the Companies'
20 transmission system, and under which SPP primarily will provide impartial
21 administration of the Companies' OATT and Open Access Same-time Information
22 System (OASIS). No part of the Agreements severs the connection between the

⁸ *Id.* at 7-8.

⁹ *Id.* at 8.

¹⁰ *Id.*

1 Companies' generation and their customers; no part converts formerly retail transactions
2 to wholesale transactions; the Commission's jurisdiction will remain intact and
3 undiminished. Because there appears to be no significant way in which the Companies'
4 contracts with TVA and SPP transfer control of, or the right to control, any utility assets
5 to TVA or SPP, the Companies respectfully submit that KRS 278.218 ought not apply to
6 the Reliability Coordinator and ITO Agreements.

7 **Q. If the Commission concludes it does have jurisdiction to require the Companies to**
8 **obtain approval under KRS 278.218, what is the position of the Companies?**

9 A. If the Commission concludes it does have jurisdiction to require the Companies to obtain
10 approval under KRS 278.218, then the Companies request the Commission to grant them
11 the authority to enter into the contracts. KRS 278.218(2) states, "The commission shall
12 grant its approval if the transaction is for a proper purpose and is consistent with the
13 public interest." The TVA-SPP proposal is for a proper purpose: the reliable functioning
14 of, and the independent administration of open access to, the Companies' transmission
15 facilities, as required by, and in accordance with, NERC guidelines and FERC
16 regulations and policies. Furthermore, the TVA-SPP proposal is consistent with the
17 public interest: compliance with NERC and FERC policies that result in the well-
18 functioning and reliable performance of the Companies' transmission assets, including
19 the ability for the Companies to make off-system sales through independently and
20 impartially administered transmission assets, is in the public interest. The Companies
21 therefore believe the Commission should approve the TVA and SPP Agreements under
22 KRS 278.218, if the Commission determines to exercise its jurisdiction thereunder.

23 **Q. What is the Companies' recommendation?**

1 A. The Companies recommend the Commission issue an order granting the relief requested
2 in the Companies' Fourth Amended Joint Application (which is the same in substance as
3 that requested in the Joint Motion for Reconsideration filed on June 20, 2006 by the AG,
4 KIUC, and the Companies) on or before July 6, 2006. The relief the Companies request
5 therein is that the Commission allow the Companies to complete their exit from MISO
6 and either declare that the Commission will not exercise jurisdiction to approve the TVA
7 and SPP contracts or, in the alternative, grant the Companies the authority to enter into
8 the contracts. Again, this testimony and the Companies' other related filings made today
9 are conditioned upon the Commission's issuing the requested order by July 6, 2006.

10 **Q. Does this conclude your testimony?**

11 A. Yes, it does.

VERIFICATION

COMMONWEALTH OF KENTUCKY)
) **SS:**
COUNTY OF JEFFERSON)

The undersigned, **Kent W. Blake**, being duly sworn, deposes and says that he is the Director of State Regulation and Rates for E.ON U.S. Services Inc., that he has personal knowledge of the matters set forth in the foregoing testimony, and the answers contained therein are true and correct to the best of his information, knowledge and belief.


_____)
KENT W. BLAKE

Subscribed and sworn to before me, a Notary Public in and before said County and State, this 22nd day of June 2006.

 (SEAL)

Notary Public

My Commission Expires:
Notary Public, State at Large, KY
My commission expires Oct. 5, 2007