

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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In the Matter of:

Application of Louisville Gas and Electric
Company and Kentucky Utilities Company
to Transfer Functional Control of Their
Transmission System

Case No. 2005-00471

**Renewed Motion for Full Intervention of the
Midwest Independent Transmission System Operator, Inc.**

On December 1, 2005, the Midwest Independent Transmission System Operator, Inc. ("Midwest ISO"), a full intervenor in Case No. 2003-00266, moved for full intervention in this proceeding, Case No. 2005-00471. Pursuant to undertakings made at the informal conference held on June 7, 2006, Louisville Gas and Electric Company ("LG&E") and Kentucky Utilities Company ("KU") have submitted an amended application (and supporting testimony), and the Midwest ISO now renews and supplements its intervention request.

1. To be granted full intervention, a person "shall submit in writing to the secretary a request for full intervention, which shall specify his interest in the proceeding. If the commission determines that a person has a special interest in the proceeding which is not otherwise adequately represented or that full intervention by party is likely to present issues or to develop facts that assist the commission in fully considering the matter without unduly complicating or disrupting the proceedings, such person shall be granted full intervention." 807 KAR 5:001, Section 3(8). In its initial Motion (at 2), the Midwest ISO stated that it "has a special interest in this proceeding ... which is not otherwise adequately represented" and that it "is likely to present issues and develop

facts that will assist the Commission in fully considering this matter without unduly complicating, disrupting, or delaying the proceedings.” That was a true statement in December 2005, and it is today.

2. LG&E and KU initiated this proceeding with a joint application for an order authorizing them to transfer functional control of their facilities from the Midwest ISO for the purpose of withdrawing from membership in the Midwest ISO and transferring control to the Tennessee Valley Authority (“TVA”) and Southwest Power Pool (“SPP”).

3. In Case No. 2003-00266, the Commission issued a 2-1 final order on May 31, 2006 (“the 5/31/06 Order”), that *inter alia* authorized LG&E/KU to withdraw from membership in the Midwest ISO and set the accounting and ratemaking treatment of the fee to be paid upon withdrawal from membership (“the exit fee”). At the time of this Renewed Motion, the KRS 278.400 period for requesting rehearing has not ended.

4. On June 2, 2006, LG&E, KU, the Attorney General’s Office, and KIUC filed in this proceeding a stipulation (“the 6/2/06 Stipulation”) including provisions relating to the treatment of the exit fee that are different from those in the 5/31/06 Order.

5. On June 13, 2006, the Commission initiated in this proceeding an investigation of the accounting and ratemaking provisions of the 6/2/06 Stipulation and directed that “a hearing shall be scheduled at a future date.” 6/13/06 Order at 3.

6. The next day, on June 14, 2006, LG&E and KU tendered a Third Amended Joint Application asking for an order approving the contracts with TVA and SPP or, alternatively, determining that KRS 278.218 approval is not needed. In addition, they ask the Commission “to resolve the ratemaking treatment of the exit fee on the basis of the [6/2/06] Stipulation....” 3d Am. Jt. App. at 1. In the accompanying Joint Motion for Leave to File an Amended Application, Withdraw Previous Testimony and File

Replacement Testimony (at 2), LG&E and KU aver that “since ... the Commission and FERC have authorized the Companies to withdraw from MISO membership, [that] issue ... should no longer be before the Commission in this proceeding.” LG&E and KU have omitted from their tendered amended application any prefiled testimony purporting to show the arrangements with TVA and SPP as superior and without detrimental effect relative to continued membership in the Midwest ISO.

7. Even as amended, however, the Joint Application relies upon a comparison with membership in the Midwest ISO in at least two ways. The first is that transfer of control of utility assets requires that “the transaction is for a proper purpose and is consistent with the public interest.” KRS 278.218(2). The second element mandates a showing that the proposed arrangements will not lead to an adverse effect on service or rates and will likely lead to an improvement in public benefit over the *status quo*:

The Commission finds that any party seeking approval of a transfer of control must show that the proposed transfer will not adversely affect the existing level of utility service or rates or that any potential adverse effects can be avoided through the Commission’s imposition of reasonable conditions on the acquiring party. The acquiring party should also demonstrate that the proposed transfer is likely to benefit the public through improved service quality, and service reliability, the availability of additional services, lower rates, or a reduction in utility expenses to provide present services. Such benefits, however, need not be immediate or readily quantifiable.

Case No. 2002-00475, Order of August 25, 2003, at 4 (emphasis in original). The *status quo* for LG&E and KU is their participation in the Midwest ISO as transmission-owner members. They are not proposing to withdraw from the Midwest ISO and then later turn over to SPP and TVA certain functions regarding their transmission assets, but to transfer the functional control from the Midwest ISO to SPP and TVA. LG&E and KU phrase their testimony in non-comparative assertions, (*see* Blake Testimony 6:3-7 and Johnson Testimony 8:19-22), but Commission consideration requires comparisons with

the current situation — a situation in which the Midwest ISO has an interest and is able to present issues and develop facts that will assist the Commission in fully considering the matter.

8. The second way in which there is a comparison to Midwest ISO membership is in the LG&E/KU argument that they are not transferring functional control in their arrangements with TVA and SPP. LG&E and KU attempt to contrast Midwest ISO membership with their TVA-SPP arrangements, referring to the 5/31/06 Order and claiming that certain “consequences” of membership will not occur under the arrangements. *See* 3d Am. Jt. App. at 9(¶20); Blake Testimony 3:18-6:16. The Midwest ISO disputes — on both legal and factual grounds — the distinction that LG&E and KU try to draw; it has an interest in, and facts relevant to, whether the proposed arrangements with SPP and TVA “provide the appropriate level of independence required by FERC regulations” (Blake Testimony 4:16) and yet are so different from Midwest ISO membership that there is no change in control.

9. Even if the only role the *status quo* had in this proceeding were the one implicit in the logistics of the transfer of functional control from the Midwest ISO to TVA (as reliability coordinator) and SPP (as independent transmission organization), the Midwest ISO “has a special interest in this proceeding” and “is likely to present issues and develop facts that will assist the Commission in fully considering this matter.” The Midwest ISO has an interest in the safe and reliable transition of LG&E and KU on the September 1st date or at some later date depending on the receipt and timing of necessary approvals. *See* Gallus Testimony 1:18-2:2 (suggesting a final order conditioned on receipt of a particular LG&E/KU statement), 3:13-4:9 (describing timeline and requested FERC acceptance of market-based rate tariff sheets in 43 days (rather than the 60 days within which FERC must act)); Johnson Testimony 10:1-9 (describing feasible

effective exit dates). Since there is going to be a hearing in this proceeding, the Midwest ISO should be present to deal with any questions on this subject.

10. In addition, the witness from TVA talks about matters it will perform in coordination with the Midwest ISO. Goza Testimony 5:3-8, 5:21-6:31, 9:4-10:2; *see also* 3d Am. Jt. App. at 7 (¶13). The witness from SPP also discusses such coordination matters. Rew Testimony 7:20-23, 8:14-20. Because the Midwest ISO would coordinate different aspects of its operations with TVA and SPP, its presence in this proceeding will assist the Commission's consideration should any questions arise concerning these matters.

11. The importance of market-based rate authority receives additional emphasis in the amended application (3d Am. Jt. App. at 7-8 (¶14); Gallus Testimony 2:3-4:20), and LG&E and KU refer to purported consequences of participation in the Day 2 energy market (*see, e.g.*, Blake Testimony 5:4-7, 6:1-5). Although not "required to participate" (Blake Testimony 6:2&4) in the market after withdrawal, LG&E and KU may participate in the Day 2 market, and the Midwest ISO's understanding is that they intend to continue their participation in the market. *See* 6/7/06 Notice of Filing, Attachment Exhibit A (tasks between items 175 and 176 not applicable when transmission-owner member remains as a market participant). Furthermore, there are border-utility issues, including about LG&E/KU market-based rate authority at interfaces and their proposal to cap sales within the BREC control area at the locational marginal price established for the interface with the Midwest ISO. *See* Gallus Testimony 2:12-3:2, 3:17-4:2. It thus will assist the Commission's consideration for the Midwest ISO to be a party to this proceeding, given that LG&E and KU have put in issue matters concerning their market participation and any limits thereon.

12. The Midwest ISO notes that there is some uncertainty as to which issues are to be addressed (if at all) on rehearing in Case No. 2003-00266 and which should or

may be addressed in this proceeding. In the 6/13/06 Order (at 2), the Commission states:

The accounting and rate-making provisions of the Stipulation may have the effect of changing the basis upon which the Commission issued its May 31, 2006 Order in Case No. 2003-00266.... The Commission further gives notice that one of the issues to be investigated is whether, since the issuance of the May 31, 2006 Order in Case No. 2003-00266, there have been changed circumstances sufficient to justify the Commission's modification in this case of the findings set forth in that Order, or whether the accounting and ratemaking provisions of the Stipulation can be considered only if raised in a petition for rehearing

It seems unlikely that circumstances would have changed significantly in the two or three days that passed between the 5/31/06 Order and the 6/2/06 Stipulation; however, the "freshest" data in Case No. 2003-00266 is now nearly a year old and circumstances may have changed sufficiently since the July 2005 hearing to justify modification of the 5/31/06 Order in this proceeding. The openness of that possibility makes it crucial for the Midwest ISO to be a party to this proceeding so as to provide data and information relating to claims of changed circumstances.

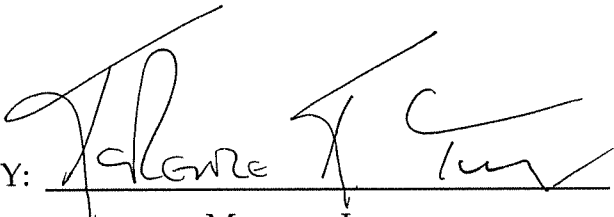
13. In their response to the initial Motion, served December 9, 2005 (at 8), LG&E and KU requested in the alternative that the Midwest ISO's intervention be limited to "topics that have not already been addressed in Case No. 2003-00266, so as to avoid ... inefficient and duplicative rehashing" of issues. The Midwest ISO does not intend to "rehash" issues. However, the tendered amended application and the 6/13/06 Order demonstrate that there continue to be linkages between the two proceedings, and if LG&E, KU, or the Commission asks that topics from Case No. 2003-00266 be addressed in this proceeding (*e.g.*, the exit fee), there is no basis for imposing a limit solely on the Midwest ISO. When "topics ... addressed in Case No. 2003-00266" have a bearing on this proceeding, all parties should be permitted to address them.

Respectfully submitted,

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CERTIFICATE OF FILING AND SERVICE

I hereby certify that on the 19th day of June, 2006, the original and ten (10) copies of this Renewed Motion were hand-delivered for filing with the Commission, an electronic copy was e-mailed to counsel of record, and a copy was mailed, first-class and postage-prepaid, to:

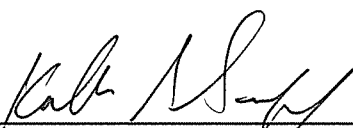
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