

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

JUL 12 2005

PUBLIC SERVICE
COMMISSION

In the Matter of:

THE APPLICATION OF KENTUCKY UTILITIES)
COMPANY FOR A CERTIFICATE OF PUBLIC)
CONVENIENCE AND NECESSITY TO CONSTRUCT) Case No. 2004-00426
FLUE GAS DESULPHURIZATION SYSTEMS AND)
APPROVAL OF ITS 2004 COMPLIANCE PLAN FOR)
RECOVERY BY ENVIRONMENTAL SURCHARGE)

and

THE APPLICATION OF LOUISVILLE GAS)
AND ELECTRIC COMPANY FOR APPROVAL) Case No. 2004-00421
OF ITS 2004 COMPLIANCE PLAN FOR)
RECOVERY BY ENVIRONMENTAL SURCHARGE)

RESPONSE OF THE ATTORNEY GENERAL TO KENTUCKY
INDUSTRIAL UTILITY CUSTOMERS' APPLICATION FOR REHEARING

Kentucky Industrial Utility Customers' (KIUC) Application for Rehearing presents no new evidence. It merely reargues points and positions extensively and forcefully presented at hearing and in section 3 of its brief. KIUCs' position has already been considered and rejected by the Commission. KIUC's Application should not be granted.¹

KIUC attempts to impose on the Commission an obligation that does not exist with its argument that the order must address "whether the approved rate allocation complies with Kentucky's economic development concerns."² The statutory charge of the Commission set out in KRS 278.040 is "to regulate utilities and enforce the provisions of this chapter." It has complied with that statutory charge utilizing the same standards for allocation of the surcharge

¹ See, *In the Matter of: An Adjustment of the Rates of Delta Natural Gas Company, Inc.*, Case No. 99-176, Order on Rehearing, February 7, 2000, p 2-3, (The reiteration of positions already presented do not constitute grounds for relief on rehearing); and, *In the Matter of: An Investigation of the Sources of Supply and Future Demand of Kentucky-American Water Company*, Case No. 93-434, Order on Rehearing, April 25, 1995, pp. 3-4, (A party seeking relief through rehearing must establish the necessity for a modification to or change in the prior result and the mere identification of a different outcome does not establish necessity).

² See Application for Rehearing, page 2.

under KRS 278.183 it has utilized for these companies since their first application under that statute.

Nothing in KRS 154.01-020, as argued KIUC's main brief and in this Application, requires a different outcome. That subsection of that statute is simply the broad mission statement opening a Chapter that contains specific and varied provisions to help industrial commercial enterprises and individuals that are or would be located in or operating in Kentucky. It imposes no obligation on the Commission to utilize standards other than total revenues for the allocation of the LG&E/KU environmental surcharges.

Governor Fletcher's Executive Order, argued by KIUC in support of its allocation position both in the application and in its main brief, also imposes no added obligation on the Commission and requires no change in the allocation of the environmental surcharge by total revenues. KIUC has presented no compelling reason to change the allocation utilized by the Commission for KU/LG&E's surcharge since their inception. The Application for Rehearing should be denied.

Respectfully submitted



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 12th day of July, 2005, and certify that this same day I have served the parties by mailing a true copy, postage prepaid, to the following:

KENDRICK R RIGGS ESQ
ODGEN NEWELL & WELCH PLLC
1700 PNC PLAZA
500 WEST JEFFERSON STREET
LOUISVILLE KY 40202

ELIZABETH L COCANOUGHES ESQ
SENIOR REGULATORY COUNSEL
LOUISVILLE GAS AND ELECTRIC COMPANY
P O BOX 32010
LOUISVILLE KY 40232

MICHAEL L KURTZ ESQ
BOEHM KURTZ & LOWRY
36 EAST SEVENTH STREET
SUITE 1510
CINCINNATI OH 45202

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


