



STOLL · KEENON · OGDEN  
P L L C

2000 PNC PLAZA  
500 WEST JEFFERSON STREET  
LOUISVILLE, KENTUCKY 40202-2828  
502-333-6000  
FAX: 502-333-6099  
WWW.SKOFIRM.COM

**KENDRICK R. RIGGS**  
DIRECT DIAL 502-560-4222  
DIRECT FAX 502-627-8722  
kendrick.riggs@skofirm.com

June 21, 2006

RECEIVED

VIA HAND DELIVERY

JUN 21 2006

PUBLIC SERVICE  
COMMISSION

Elizabeth O'Donnell  
Executive Director  
Kentucky Public Service Commission  
211 Sower Boulevard  
Frankfort, KY 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 (10) copies of Kentucky Utilities Company's and Louisville Gas and Electric Company's Response to the Midwest Independent Transmission System Operator's Renewed Motion for Full Intervention in the above-referenced matter. Please confirm your receipt of this filing by placing the stamp of your Office with the date received on the two additional copies provided and return them to me in the enclosed self-addressed stamped envelope.

Should you have any questions or need any additional information, please contact me at your convenience.

Very truly yours,

  
Kendrick R. Riggs

KRR/cja  
Enclosures

Elizabeth O'Donnell  
June 21, 2006  
Page 2

cc: All Persons of Interest  
Kent W. Blake (w/encl)  
Elizabeth L. Cocanougher (w/encl)

**COMMONWEALTH OF KENTUCKY**  
**BEFORE THE PUBLIC SERVICE COMMISSION**

**RECEIVED**

JUN 21 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 )**

**RESPONSE OF KENTUCKY UTILITIES COMPANY AND  
LOUISVILLE GAS AND ELECTRIC COMPANY TO  
THE MIDWEST INDEPENDENT TRANSMISSION SYSTEM OPERATOR, INC.'S  
RENEWED MOTION FOR FULL INTERVENTION**

Kentucky Utilities Company and Louisville Gas and Electric Company (collectively, the “Companies”) hereby respond to the Midwest Independent Transmission System Operator, Inc.’s (“MISO”) Renewed Motion for Full Intervention, which Motion MISO filed with the Public Service Commission (“Commission”) in this Case on June 19, 2006. The Companies request that the Commission deny MISO’s Renewed Motion. MISO has no interest in this proceeding and can present no evidence that other parties to this proceeding will not adequately present as it relates to any relevant issues: (1) the accounting and rate-making treatment of the MISO exit fee is of no consequence to MISO; and (2) the Companies, Tennessee Valley Authority (TVA) and Southwest Power Pool, Inc. (SPP) have and will continue to present all necessary evidence concerning TVA’s and SPP’s services. In short, MISO’s interests in, and useful input into, the Commission’s MISO-related proceedings ended when the Commission granted the Companies authority to exit MISO.

Furthermore, the Commission stated in its December 22, 2005 Order in this proceeding that it would expedite its review of the Companies’ application once it had issued a final order in Case No. 2003-00266:

The relief that the Applicants seek in their current application is entirely dependent upon our final decision in Case No. 2003-00266. . . . If we grant the requested relief in that proceeding, we will then move expeditiously to review the application presented in this proceeding.<sup>1</sup>

After nearly three years of its investigation in Case No. 2003-00266, the Commission issued its final order therein on May 31, 2006. The Companies submit that these cases have gone on long enough; the time has come to review expeditiously the Companies' Third Amended Joint Application and issue a final order in this proceeding either approving the Third Amended Joint Application or determining that the Commission will not exercise its jurisdiction. MISO's intervention in this proceeding will serve only to delay, not expedite, this process.

In further support of their request that the Commission deny MISO's Renewed Motion, the Companies state:

The regulation governing full intervention in Commission proceedings states in relevant part:<sup>2</sup>

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.

As the Companies show below, MISO neither has an interest in this proceeding not otherwise adequately represented, nor will it present to the Commission issues or facts that the other parties hereto will not adequately present; indeed, MISO has not alleged that the Companies or other parties to this proceeding will not adequately inform the Commission of issues or facts important to the Commission. Rather, MISO's Renewed Motion clearly indicates that its goal is not to offer evidence necessary to resolve the discrete issues presented in this proceeding, but rather to

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<sup>1</sup> December 22, 2005 Order at 1-2.

<sup>2</sup> 807 KAR 5:001 § 3(8)(b).

re-litigate the issue of the Companies' exiting MISO. Because the Commission decided that issue with finality in its May 31, 2006 Order in Case No. 2003-00266 ("May 31 Order"),<sup>3</sup> and because MISO's participation in this Case will serve only to unnecessarily complicate, disrupt, and delay these proceedings, the Commission should deny MISO's Renewed Motion.

**I. MISO Has No Interest in, and Can Present No Issues or Facts that Other Parties Hereto Will Ignore or Neglect, Concerning the Accounting and Rate-making Treatment of the MISO Exit Fee**

The Commission's June 13, 2006 Order ("June 13 Order") in this proceeding, the order upon which MISO attempts to find grounds to support its Renewed Motion, in fact offers MISO no such support for intervention in this proceeding. Though MISO attempts to introduce ambiguity where there is none concerning it,<sup>4</sup> the June 13 Order was quite clear that the accounting and rate-making treatment of the MISO exit fee is the one area of potential conflict between the Companies, AG,<sup>5</sup> and KIUC's<sup>6</sup> June 2, 2006 Stipulation and the May 31 Order, which granted the Companies authority to exit MISO.<sup>7</sup> Furthermore, nowhere in the Renewed Motion does MISO argue that it has an interest in, or useful information regarding, the accounting or rate-making treatment. Since the accounting and rate-making treatment is the sole issue the June 13 Order raises, it provides no ground for MISO's intervention.

Of course, MISO's failure to address the accounting and rate-making issue in the Renewed Motion is no accident; MISO knows it has no dog in that hunt. Instead, MISO

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<sup>3</sup> *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.*

<sup>4</sup> See Renewed Motion at ¶ 12.

<sup>5</sup> Kentucky Office of the Attorney General.

<sup>6</sup> Kentucky Industrial Utilities Customers, Inc.

<sup>7</sup> See June 13 Order at 2. In a Joint Motion filed in this proceeding today, the AG, KIUC, and Companies conditionally offered to withdraw the accounting and rate-making portions of the Stipulation, and the Companies conditionally offered to remove similar portions of their Third Amended Joint Application, doing away with this potential area of conflict -- which the AG, KIUC, and Companies do not believe is a conflict at all.

attempts to twist the June 13 Order to provide an opening to advance its real agenda: re-litigating the exit issue itself. The first three substantive paragraphs of the Renewed Motion, ¶¶ 6-8, attack the basis upon which the Commission granted the Companies authority to exit MISO in the May 31 Order, suggesting that there can be no exit without a comparison between MISO membership and the Companies' TVA-SPP proposal. This is a red herring; the Commission's May 31 Order already granted the Companies authority to exit MISO, so comparisons to it are not relevant to analysis of the TVA and SPP contracts. But MISO's true objective becomes even more evident at the end of Renewed Motion ¶ 12, in which MISO seizes upon the June 13 Order's "changed circumstances" language as its opportunity to lard this record with "fresh" data:

[T]he "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.

Thus it appears MISO's goal is to create nearly endless litigation of these cases, always eager to supply "fresher" data, presumably in order to discourage the Companies to the point that they simply throw up their hands and resign themselves and their customers to the economic detriments, uncertainties, and diluted Commission jurisdiction that MISO membership entails. In short, MISO proposes to place this Commission and the Companies in a continuous, perpetual study of the exit issue for the purpose of creating endless delay. Thus, MISO's intervention will be unduly complicating and disruptive. Though all parties and the Commission may be assured

that the Companies will not tire of making the choices that are best for their customers and their own interests, it is time to bring this matter to a conclusion.<sup>8</sup>

The Commission's investigation of the Companies' MISO membership, Case No. 2003-00266, has gone on for nearly three years.<sup>9</sup> MISO had more than ample opportunity to present evidence in that proceeding, which it did repeatedly in both phases of the investigation. Nonetheless, the Commission issued its final order on May 31, 2006, authorizing the Companies to exit MISO. Having already authorized the Companies to exit MISO, the Commission should deny MISO's Renewed Motion and issue a final order in this proceeding by July 6, 2006, either approving the TVA-SPP proposal or declining to exercise jurisdiction over the TVA and SPP contracts.

## **II. MISO Has No Special Interest in this Case That Is Not Otherwise Adequately Represented**

MISO further attempts to persuade the Commission that it should grant MISO intervention because it has an interest in, and can provide information concerning, the safe and reliable transition of services from MISO to the Companies, TVA, and SPP.<sup>10</sup> MISO undermines its own assertion by pointing out that the Companies, TVA, and SPP all filed testimony on just that topic,<sup>11</sup> demonstrating that MISO's interest in a safe and reliable transition of services is neither special nor unique. Indeed, the Companies, TVA, and SPP are currently working to coordinate with MISO to effect such a transfer; all parties thereto are gathering, and will be in possession of, essentially the same data, all in accordance with the Joint Reliability

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<sup>8</sup> The Companies find it distasteful to have to pay a pro rata share of the legal costs MISO continues to incur to fight the Companies' exit at the state and federal levels, and thereby making it a regulatory gauntlet, particularly on such dubious grounds as the ones MISO presents in the Renewed Motion.

<sup>9</sup> The Companies have a due process right to have this litigation conclude in a timely manner. *Kentucky Power Co. v. Energy Regulatory Com.*, 623 S.W.2d 904, 908 (Ky. 1981).

<sup>10</sup> Renewed Motion ¶¶ 9-10.

<sup>11</sup> *Id.*

Coordination Agreement between TVA, MISO, and PJM<sup>12</sup>, as well as guidelines and procedures established by the North American Electric Reliability Council (NERC) and the Federal Energy Regulatory Commission (FERC). Thus the stated reason for MISO's proposed intervention in this proceeding is unnecessary and inappropriate; the Companies, TVA, and SPP have already or will provide all the data the Commission requires to approve the TVA-SPP proposal, should the Commission determine to exercise jurisdiction concerning the proposal.

Furthermore, MISO's intervention and participation in these proceedings will not serve to represent or protect any Kentucky person(s) or interest(s) in the issues that are presented in this action. Such interests are effectively represented by the AG<sup>13</sup> and the KIUC, both of which are or will be intervenors in this Case; indeed, the Commission has held that intervenors such as these can adequately protect the interests of Kentucky citizens with common interests, which in this Case are low rates and reliable service.<sup>14</sup> By the terms of the T.O. Agreement,<sup>15</sup> MISO is indeed an independent entity, subject to no direct control by its stakeholders (including the Companies), and is regulated at most only by FERC. MISO also has no retail customers in Kentucky. Thus, MISO cannot credibly claim to represent any Kentucky interest, the sole interests that are of statutory concern to this Commission.

Also, because MISO is not a consumer of the Companies' power, under Commission precedent it has no interest in the Companies' retail rates or service and no right to intervene in

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<sup>12</sup> The Pennsylvania-New Jersey-Maryland Regional Transmission Organization.

<sup>13</sup> Kentucky statute tasks the Attorney General with representing Kentucky consumers before this Commission. See KRS 367.150(8).

<sup>14</sup> *In the Matter of: Application of East Kentucky Power Cooperative, Inc. for a Certificate of Public Convenience and Necessity, and a Site Compatibility Certificate, for the Construction of a 278 MW (Nominal) Circulating Fluidized Bed Coal Fired Unit and Five 90 MW (Nominal) Combustion Turbines in Clark County, Kentucky*, Case No. 2005-00053, Order at 5 (May 26, 2005) ("The Commission is not persuaded by EnviroPower's claims that these intervenors [the Office of the Attorney General and Gallatin Steel] cannot adequately protect the interests that EnviroPower shares with every other citizen in the expectation of good governance and integrity of the administrative process.").

<sup>15</sup> Agreement of Transmission Facilities Owners to Organize The Midwest Independent Transmission System Operator, Inc., A Delaware Non-Stock Corp., Effective Feb. 1, 2002.



this Case. As the Commission explained in its recent Order denying EnviroPower, LLC intervention in a proceeding concerning East Kentucky Power Cooperative, Inc.:

[T]he Commission finds that its jurisdiction is limited under KRS Chapter 278 to “rates” and “service” of utilities. KRS 278.040(2). EnviroPower does not challenge the finding in the Commission’s April 18, 2005 Order that EnviroPower is not a customer of East Kentucky Power. Thus EnviroPower has no interest in the rates charged by East Kentucky Power or the service that it provides its customers. Thus, EnviroPower has no right to intervene in this case to assert any interest involving the rates or service of East Kentucky Power.<sup>16</sup>

Because MISO has not claimed, and indeed cannot claim, to have an interest in the Companies’ Kentucky-regulated rates or service, according to the Commission’s recent precedent, MISO has no right to intervene in this Case, and the Commission should deny the Renewed Motion.<sup>17</sup>

### **III. MISO Has No Interest or Information Relevant to this Proceeding Concerning Market-Based Rate Authority**

Finally, MISO asserts that the Commission should grant it intervention in this proceeding because the Companies’ testimony addressed market-based rate authority, “put[ting] in issue matters concerning their [MISO] market participation and any limits thereon.”<sup>18</sup> Even if such matters are “in issue” (and they are not), FERC, not MISO, determines what market-based rate authority the Companies may exercise, and the Companies made this issue well known to the Commission in its testimony. In fact, as the Companies have informed the Commission, the Companies have recently filed a request in FERC Docket No. ER06-1046-000 seeking

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<sup>16</sup> *In the Matter of: Application of East Kentucky Power Cooperative, Inc. for a Certificate of Public Convenience and Necessity, and a Site Compatibility Certificate, for the Construction of a 278 MW (Nominal) Circulating Fluidized Bed Coal Fired Unit and Five 90 MW (Nominal) Combustion Turbines in Clark County, Kentucky*, Case No. 2005-00053, Order at 4 (May 26, 2005).

<sup>17</sup> *See id.*

<sup>18</sup> Renewed Motion ¶ 11.

clarification of the exact scope of their market based rate authority for applicability upon withdrawal.

In sum, MISO's shotgun approach, which attempts to spray enough bird shot to "hit" even tangential issues such as the Companies' market based rates, must be rejected. MISO's intervention would not serve to inform the Commission, but would only unnecessarily complicate and disrupt this proceeding.

### **Conclusion**

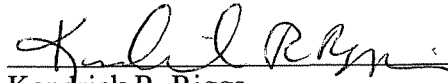
After nearly three years of proceedings, the Commission ended its investigation into the Companies' MISO membership in Case No. 2003-00266 on May 31, 2006, authorizing the Companies to exit MISO. MISO now seeks to complicate this proceeding with its attempted intervention in order to introduce reams of "fresh" evidence in order to re-litigate the Commission's determination to authorize the Companies' exit from MISO. The Commission should deny MISO that opportunity by denying it intervention. Enough is enough.

The Commission committed to review the Companies' application in this proceeding expeditiously once Case No. 2003-00266 was complete; it now is. The time is at hand to issue an order approving the Companies' TVA-SPP proposal or deciding not to exercise jurisdiction over it.

**WHEREFORE**, the Companies request that the Commission deny the Midwest Independent Transmission System Operator, Inc.'s Renewed Motion for Full Intervention.

Dated: June 21, 2006

Respectfully submitted,



Kendrick R. Riggs  
W. Duncan Crosby III  
STOLL KEENON OGDEN PLLC  
2000 PNC Plaza  
500 West Jefferson Street  
Louisville, Kentucky 40202  
Telephone: (502) 582-1601

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**

I hereby certify that a true copy of the foregoing Response to Motion to Intervene was served via U.S. mail, first-class, postage prepaid, this 21st day of June 2006 upon the following persons:

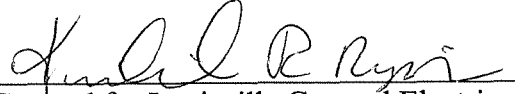
Katherine K. Yunker  
Katherine S. Sanford  
Yunker & Associates  
Post Office Box 21784  
Lexington, Kentucky 40522-1784

Stephen G. Kozey  
Midwest ISO  
701 City Center Drive  
Carmel, Indiana 46032

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

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

  
Counsel for Louisville Gas and Electric  
Company and Kentucky Utilities Company