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December 9, 2005

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RECEIVED

DEC 09 2005

PUBLIC SERVICE
COMMISSION

VIA HAND DELIVERY

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 of Louisville Gas and Electric Company's and Kentucky Utilities Company's Response to The Midwest Independent Transmission Operator, Inc.'s Motion to Intervene 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 enclosed additional copies 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/ec
Enclosures
cc: Parties of Record

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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DEC 09 2005

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
MOTION TO INTERVENE**

Kentucky Utilities Company and Louisville Gas and Electric Company (collectively, the “Companies”) hereby respond to the Midwest Independent Transmission System Operator, Inc.’s (“MISO”) Motion to Intervene, which Motion MISO filed with the Public Service Commission (“Commission”) in this Case on December 1, 2005. The Companies request that the Commission deny MISO’s Motion to Intervene because MISO: (1) represents no Kentucky-related interest in this Case; (2) on the evidence of its past statements, MISO has no interest of its own in the outcome of this Case; and (3) MISO had a more than sufficient opportunity in Case No. 2003-00266 to offer evidence into the record and make its arguments on the only matter in which MISO can reasonably argue it has an interest; namely, whether the Company’s membership in MISO provides a net benefit to the Companies and their customers. In the alternative, the Companies request that the Commission limit MISO’s intervention to addressing topics that have not already been addressed in Case No. 2003-00266, so as to avoid inefficient and duplicative rehearing of issues already submitted to the Commission for its decision, in which non-duplicative topics MISO has an interest that should be considered. Consistent with the Companies’ request and request in the alternative, the Companies further request that the

Commission enter a final order in Case No. 2003-00266 by December 31, 2005, to assist in expediting this Case and a case concerning the same subject matter currently pending before the Federal Energy Regulatory Commission.

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

The regulation governing full intervention in Commission proceedings states in relevant part:¹

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 ignore or neglect; indeed, MISO's participation in Case No. 2003-00266 concerning the Companies' MISO membership clearly demonstrates that MISO participation in this Case could unduly complicate, disrupt and delay these proceedings, and the Commission should therefore deny MISO's Motion to Intervene. The Companies also respectfully request that the Commission enter a final order in Case No. 2003-00266 finding that (a) the costs of MISO's Day 2 markets exceed the benefits they provide (if any) and (b) the Companies' continued MISO membership is not in the public interest because the Companies can likely obtain comparable reliability coordination and other services from another provider or other providers at lower cost and risk levels. The Companies originally requested in their September 6, 2005 Brief and September 13, 2005 Reply Brief in Case No. 2003-00266 that the Commission act by November

¹ 807 KAR 5:001 § 3(8)(b).

1, 2005, to grant this relief, and now ask that the Commission issue a final order in that Case containing such fact findings in order to expedite proceedings in this Case and those before the Federal Energy Regulatory Commission (“FERC”) concerning the same subject matter.

I. MISO Has No Special Interest in this Case That Is Not Otherwise Adequately Represented

MISO’s intervention and participation in these proceedings will not serve to represent or protect any Kentucky person(s) or interest(s), and certainly will not do so more effectively than the participation of Office of the Attorney General² and the Kentucky Industrial Utility Customers (“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.³ By the terms of its organic document, the [TO Agreement], MISO is indeed an independent entity, subject to no direct control by its stakeholders (including the Companies), and is regulated only by FERC. MISO also has no customers in Kentucky, and no duty to serve. Moreover, a MISO witness admitted in the earlier proceeding before the Commission concerning the Companies’ membership in MISO (Case No. 2003-00266) that MISO represents “the market” and that its “interest in the outcome” of that proceeding was “the market,”⁴ not that MISO represented any Kentucky interest. Thus, MISO cannot credibly claim to represent any Kentucky interest, the sole interests that are of statutory concern to this Commission.

² Kentucky statute tasks the Attorney General with representing Kentucky consumers before this Commission. See KRS 367.150(8).

³ 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.”).

⁴ Case No. 2003-00266, III Tr. 12-13 (Feb. 27, 2004).

Moreover, because MISO is not a consumer of the Companies' power, it has no interest in the Companies' rates or service and therefore has no right to intervene in 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.⁵

Because MISO has not claimed, and indeed cannot claim, to have an interest in the Companies' rates or service, according the Commission's recent precedent, MISO has no right to intervene in this Case.⁶

Given that MISO does not represent any Kentucky interest in this Case, it cannot plausibly claim to have any other kind of interest in the Case that would entitle it to full intervention. Indeed, in Case No. 2003-00266, one of MISO's witnesses agreed that the Companies' withdrawal from MISO would have only a "minor impact" on MISO's operations.⁷ The Companies also introduced into evidence in that proceeding an article from the Louisville Courier-Journal, which quoted MISO's chief executive officer as stating that the Companies'

⁵ 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).

⁶ See *id.*

⁷ Case No. 2003-00266, I Tr. 25-26 (July 20, 2005).

withdrawal from MISO would have only a “minor impact” on MISO’s operations.⁸ If MISO intends now to claim that it is impacted by the Companies’ departure in a fashion that the TO Agreement does not contemplate, that theory is not appropriate to raise in this forum. Moreover, based on the Commission’s past denials of intervention in other cases and on the authority of the highest court in Kentucky, what little interest MISO might plausibly claim -- a “minor impact” interest -- is too remote to merit being granted intervenor status. In Inter-County Rural Elec. Cooperative Corp. v. Pub. Serv. Comm’n, Kentucky’s highest court upheld the Commission’s order denying the East Kentucky Rural Electric Cooperative Corp. intervention in a territorial boundary dispute proceeding between Kentucky Utilities Co. (“KU”) and Inter-County Rural Electric Cooperative Corp.⁹ East Kentucky was the wholesale power supplier for Inter-County, and asserted an interest in the KU-Inter-County proceeding because Inter-County’s territorial integrity affected East Kentucky’s cost of power and rates to Inter-County and other member cooperatives.¹⁰ The Commission denied East Kentucky intervention on the ground that its stated interest -- at best a derivative financial interest -- was “just too remote.”¹¹ Kentucky’s highest court agreed with the Commission.¹² And East Kentucky’s is the same position that MISO occupies with respect to this Case, *i.e.*, one of attenuated and “minor impact.” Indeed, MISO’s interest in this proceeding is of even less consequence than was East Kentucky’s in Inter-County: in that case, at least, all the affected parties represented Kentucky interests, a claim MISO has conceded it cannot make because it is obliged to represent “the market.”

⁸ In the Matter of: Investigation into the Membership of Louisville Gas and Electric Company and Kentucky Utilities Company in the Midwest Independent Transmission Operator, Inc., Case No. 2003-00266, Supplemental Direct Testimony of Paul W. Thompson (September 29, 2004) Exh. PWT-1.

⁹ 407 S.W.2d 127 (Ky. 1966).

¹⁰ “[T]he cost of power to Inter-County and to East Kentucky’s seventeen other member cooperatives is substantially affected by the relationship of East Kentucky and Inter-County.” Id. at 128.

¹¹ Id. at 129.

¹² Id. at 130.

Thus, because the Companies have made the business decision to utilize the services of providers other than MISO for reliability coordination and Independent Transmission Organization services, MISO seems to stand more in the position of a disappointed vendor with respect to this proceeding, an interest the Commission has consistently held does not merit intervention of any kind.¹³ The Companies, as MISO members and signatories to the so-called MISO TO Agreement,¹⁴ have a clear right to withdraw from MISO membership and have given the requisite notice to do so- which MISO acknowledged in Case No. 2003-00266.¹⁵ Because the Companies are not obliged to retain MISO's services for any determinate length of time, MISO stands in the same position as SPP, TVA, or any other potential provider of services to the Companies; namely, that of potential -- or disappointed -- vendor. Since the Commission has consistently held that disappointed vendors do not merit intervention,¹⁶ the Commission should deny MISO's intervention in this Case.

Moreover, because the Companies have a right to withdraw from MISO membership and have given the requisite notice to do so,¹⁷ all that remains is for the Companies to obtain this Commission's and the Federal Energy Regulatory Commission's approvals to complete the Companies' exit from MISO. Because the Companies have such a contractual right to withdraw,

¹³ See, e.g., 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).

¹⁴ Agreement of Transmission Facilities Owners to Organize The Midwest Independent Transmission System Operator, Inc., A Delaware Non-Stock Corp., Effective Feb. 1, 2002.

¹⁵ See, e.g., In the Matter of: Investigation into the Membership of Louisville Gas and Electric Company and Kentucky Utilities Company in the Midwest Independent Transmission Operator, Inc., Case No. 2003-00266, I T.E. 22-23 (July 20, 2005).

¹⁶ See, e.g., 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).

¹⁷ See, e.g., In the Matter of: Investigation into the Membership of Louisville Gas and Electric Company and Kentucky Utilities Company in the Midwest Independent Transmission Operator, Inc., Case No. 2003-00266, I T.E. 22-23 (July 20, 2005).

there is no prejudice to MISO of which it may complain or claim an interest meriting intervention in this Case.

II. MISO's Intervention Is Not Likely to Present Issues or Develop Facts that Assist the Commission in Fully Considering this Case Without Unduly Complicating or Disrupting the Proceedings

Based on MISO's participation in Case No. 2003-00266, it is unlikely that MISO's participation in this proceeding will present new issues or develop as-yet-undisclosed facts without unduly complicating or disrupting the proceedings in this Case. MISO can contribute no "issues or . . . develop facts that assist the commission in fully considering" this Case. Issues regarding the value that MISO membership provides as compared to the costs incurred were considered by the Commission in Case No. 2003-00266. The subject matter of this proceeding is limited to the transfer of functional control of the Companies' transmission system from MISO to the Companies, to the Tennessee Valley Authority as Reliability Coordinator, and to the Southwest Power Pool as Independent Transmission Organization. Any information MISO might desire to produce concerning its own operations is not relevant to this proceeding. Thus, allowing MISO to intervene in this proceeding would be contrary to the Commission's holding in its April 18, 2005 Order, denying EnviroPower's motion to intervene in the aforementioned East Kentucky Power Cooperative case because "conducting another investigation of these issues in this case would be inefficient and duplicative [of the issues already addressed in a previous case in which EnviroPower had intervened]."¹⁸

¹⁸ 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 (April 18, 2005).

III. Alternative Relief: Limited Intervention for MISO

In the alternative, the Companies request that the Commission limit MISO's intervention to addressing topics that have not already been addressed in Case No. 2003-00266, so as to avoid the very kind of inefficient and duplicative rehashing that the Commission cited in the above-discussed East Kentucky Power case. In any event, the Companies respectfully request that the Commission issue a final order in Case No. 2003-00266 by December 31, 2005, so that those issues may be fully and finally resolved.¹⁹ As discussed in the direct testimony of Mr. Kent Blake filed November 18, 2005, in this proceeding, the Commission can issue such an order at this time without prejudice to its consideration of the issues in this proceeding by expressly stating in its Order in Case No. 2003-00266 that its findings of fact do not constitute approval under KRS 278.218 of the Companies' application in this proceeding.

WHEREFORE, the Companies request that the Commission deny the Midwest Independent Transmission System Operator, Inc.'s Motion to Intervene or, in the alternative, limit MISO's intervention in this Case by precluding it from addressing topics already addressed and submitted to the Commission for final consideration in Case No. 2003-00266.

¹⁹ Specifically, the Companies request that the Commission find that (a) the costs of MISO's Day 2 markets exceed the benefits they provide (if any) and (b) the Companies' continued MISO membership is not in the public interest because the Companies can likely obtain comparable reliability coordination and other services from another provider or other providers at lower cost and risk levels.

Dated: December 9, 2005

Respectfully submitted,



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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 9th day of December 2005 upon the following persons:

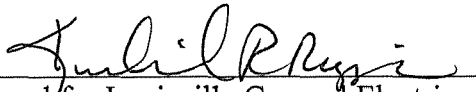
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