



Ernie Fletcher  
Governor

Teresa J. Hill, Secretary  
Environmental and Public  
Protection Cabinet

Christopher L. Lilly  
Commissioner  
Department of Public Protection

Commonwealth of Kentucky  
**Public Service Commission**  
211 Sower Blvd.  
P.O. Box 615  
Frankfort, Kentucky 40602-0615  
Telephone: (502) 564-3940  
Fax: (502) 564-3460  
psc.ky.gov

Mark David Goss  
Chairman

John W. Clay  
Commissioner

Kent Blake  
Director - Rates & Regulatory  
Kentucky Utilities Company  
c/o Louisville Gas & Electric Co.  
P. O. Box 32010  
Louisville, KY 40232-2010

October 19, 2006

RE: Case No. 2006-00449

We enclose one attested copy of the Commission's Order in the above case.

Sincerely,

A handwritten signature in black ink, appearing to read "Beth O'Donnell".

Beth O'Donnell  
Executive Director

BOD/jc  
Enclosure

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN INVESTIGATION OF THE	)	
CONSTRUCTION BY KENTUCKY	)	CASE NO. 2006-00449
UTILITIES COMPANY OF A	)	
SCRUBBER AT GHENT UNIT NO. 1	)	

O R D E R

The Commission, on its own motion, hereby initiates this investigation of whether or not Kentucky Utilities Company ("KU") adequately disclosed, in Case No. 2004-00426<sup>1</sup> that it intended to construct a new Flue Gas Desulfurization System ("scrubber") at Ghent Unit No. 1, even though the application and supporting testimony filed in that case requested a Certificate of Public Convenience and Necessity ("CPCN") to construct a scrubber at Ghent Unit No. 2.

BACKGROUND

On July 24, 1992, the Commission issued an Order granting KU a CPCN to construct a scrubber at Ghent Unit No. 1. Subsequently, in 1994, KU filed pursuant to KRS 278.183 its original environmental compliance plan and environmental surcharge to recover, among other costs, those for the scrubber at Ghent Unit No. 1. The Commission approved KU's cost recovery plan and the Ghent Unit No. 1 scrubber costs

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<sup>1</sup> Case No. 2004-00426, The Application of Kentucky Utilities Company For a Certificate of Public Convenience and Necessity to Construct Flue Gas Desulfurization Systems and Approval of Its 2004 Compliance Plan and Recovery by Environmental Surcharge.

were recovered by environmental surcharge until 2004 when those costs were rolled into KU's base rates.

On December 20, 2004, KU filed an application for a CPCN to construct four scrubbers, one of which was proposed to be at Ghent Unit No. 2, and for an amended environmental surcharge to recover the costs of those scrubbers.<sup>2</sup> By Order dated June 20, 2005, the Commission granted KU, among other things, a CPCN to construct a scrubber at Ghent Unit No. 2 and authority to recover the Ghent Unit No. 2 scrubber costs by environmental surcharge.

On September 18, 2006, KU filed a motion to modify the 1992 CPCN which authorized construction of the scrubber at Ghent Unit No. 1.<sup>3</sup> The motion states that KU intends to re-route existing ductwork so the Ghent Unit No. 1 scrubber is connected to Ghent Unit No. 2, thereby achieving operating efficiencies because the Ghent Unit No. 1 scrubber is physically located closer to Ghent Unit No. 2. The motion further states that the new scrubber authorized at Ghent Unit No. 2 will actually be constructed at Ghent Unit No. 1. Finally, the motion states that the Commission knew these facts when it issued the CPCN for a scrubber at Ghent Unit No. 2.

### FINDINGS

Based on a thorough review of KU's application in Case No. 2004-00426 and the voluminous supporting testimony, the Commission is unable to find any discussion of KU's intent that the scrubber to be constructed at Ghent Unit No. 2 would actually be

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<sup>2</sup> Id.

<sup>3</sup> KU's motion was docketed as Case No. 2006-00412, The Application of Kentucky Utilities Company For a Certificate of Convenience and Necessity to Construct a Scrubber on Unit No. 1 of Its Ghent Generating Plant.

constructed at Ghent Unit No. 1. While KU's September 18, 2006 motion states that it revealed its intent to the Commission by way of a map appended to the application in Case No. 2004-00426, and by a response to a data request in that case relating to the status of an air permit modification, those two documents appear to be inconsistent with the application and sworn testimony. In addition, the Commission's June 20, 2005 Order granting KU a CPCN to construct a scrubber at Ghent Unit No. 2 contains no discussion or reference to KU's intent that this new scrubber will actually be constructed at Ghent Unit No. 1.

Furthermore, on three separate occasions since granting the CPCN to construct a scrubber at Ghent Unit No. 2, KU has filed applications pursuant to KRS 278.300 for authority to issue financing to fund the construction of a scrubber at Ghent Unit No. 2, and in each case the Commission approved the financing specifically tied to the construction of a scrubber at Ghent Unit No. 2.<sup>4</sup> Thus, the Commission needs to determine whether or not there is a basis to support KU's position that the CPCN issued to KU in Case No. 2004-00426 to construct a scrubber at Ghent Unit No. 2 was, in actuality, a CPCN to construct a scrubber at Ghent Unit No. 1.

The Commission further finds that the issues raised in Case No. 2006-00412 regarding KU's request to modify the 1992 CPCN for Ghent Unit No. 1 involve similar facts and issues as those set for investigation herein. In the interest of administrative

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<sup>4</sup> Case No. 2005-00183, The Application of Kentucky Utilities Company For an Order Authorizing the Issuance of Securities and the Assumption of Obligations (Order dated June 20, 2005); Case No. 2005-00357, The Application of Kentucky Utilities Company For an Order Authorizing the Issuance of Securities and the Assumption of Obligations (Order dated October 14, 2005); and Case No. 2006-00187, Application of Kentucky Utilities Company For an Order Authorizing the Issuance of Securities and the Assumption of Obligations (Order dated June 16, 2006).

efficiency and economy, Case No. 2006-00412 should be consolidated with and incorporated into this case.

IT IS THEREFORE ORDERED that:

1. This investigation is opened, and Case No. 2006-00412 is consolidated with and incorporated into this case and Case No. 2006-00412 shall be closed.

2. KU shall file within 10 days of the date of this Order an original and five copies of its responses to the data request set forth in Appendix A attached hereto. Each copy of the data responses should be placed in a bound volume with each item tabbed. When a number of sheets are required for an item, each sheet should be appropriately indexed, for example, Item 1(a), Sheet 2 of 6. Include with each response the name of the witness who will be responsible for responding to questions relating to the information provided. Careful attention should be given to copied material to ensure that it is legible.

Done at Frankfort, Kentucky, this 19<sup>th</sup> day of October, 2006.

By the Commission

ATTEST:



Executive Director

Case No. 2006-00449

## APPENDIX A

### APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 2006-00449 DATED October 19, 2006.

1. Indicate whether KU agrees or disagrees with each of the following statements which relate to Case No. 2004-00426 and explain in detail the basis for each disagreement:

a. In the application, KU petitioned the Commission to issue an Order granting a CPCN for the construction of scrubbers at Ghent Units No. 2, 3, and 4 and at the E. W. Brown Station.

b. On page 4 of the application, KU estimated the total capital cost of the new scrubber for Ghent Unit No. 2 at \$149.6 million and the total capital cost for all four scrubbers at \$659.0 million.

c. In the Compliance Plan attached to the application, KU listed the four proposed scrubbers as Project No. 21 in its proposed 2004 Environmental Compliance Plan.

d. The mechanical drawings included in the "Maps" section following the application are stamped "preliminary" and were prepared over 12 months prior to the filing of the application.

e. Page 4 of the Direct Testimony of Kent W. Blake states, "Exhibit KWB-1 identifies by generation unit where the FGDs will be installed and the timeframe for construction" and Exhibit KWB-1 shows scrubbers being installed at Ghent Units No. 2, 3, and 4 and the Brown Generating Station.

f. Page 2 of the Direct Testimony of John P. Malloy (“Malloy Testimony”) states, “KU is requesting a CCN for the construction of wet-limestone, forced oxidation flue gas desulfurization (“FGD”) systems on E. W. Brown Units No. 1, 2 and 3 and Ghent Units No. 2, 3 and 4. This project is part of the recommended SO<sub>2</sub> compliance plan detailed in the *2004 SO<sub>2</sub> Compliance Strategy* study contained in Exhibit JPM-2.”

g. Exhibit JPM-2, the November 2004 “SO<sub>2</sub> Compliance Strategy for Kentucky Utilities and Louisville Gas and Electric” (“2004 Compliance Strategy”) states on page 3 of 91, “Construction of a wet flue gas desulfurization (“FGD”) systems on Ghent Units No. 2, 3 and 4 and E. W. Brown Units No. 1, 2 and 3 and the simultaneous switching of the units to high sulfur coal is the most reasonable least cost plan for continued environmental compliance.”

h. The 2004 Compliance Strategy does not discuss, consider, or include an evaluation of the option of connecting the existing Ghent Unit No. 1 scrubber to Ghent Unit No. 2 and constructing a new scrubber that would be connected to Ghent Unit No. 1.

i. The Post-Hearing Brief at pages 2-4, 6, 25-28, and 54 states KU is seeking a CPCN to construct three new scrubbers for Ghent Units No. 2, 3, and 4 and one new scrubber for Brown Units No. 1, 2, and 3. KU also requests that these four scrubbers should be included in the approved environmental compliance plan.

j. Except for the statements contained in the January 2005 engineering study by Kentuckiana Engineering Company, Inc., included as an attachment to KU’s response to Item 4 of the Commission Staff’s First Data Request

dated January 26, 2005, and two mechanical drawings included in the "Maps" section following the application, all statements and information contained in the application, Testimony, Data Responses, and Post-Hearing Brief agree that KU was seeking a CPCN to construct a new scrubber at Ghent Unit No. 2.

k. The Commission's June 20, 2005 Order does not discuss or acknowledge that KU intended to reconfigure the ductwork so the existing Ghent Unit No. 1 scrubber would be connected to Ghent Unit No. 2.

l. The Commission's June 20, 2005 Order does not discuss or acknowledge that the scrubber authorized therein to be constructed at Ghent Unit No. 2 will actually be connected to Ghent Unit No. 1 and not connected to Ghent Unit No. 2.

2. The first ordering paragraph in the Commission's June 20, 2005 Order in Case No. 2004-00426 states:

KU is granted a CPCN to construct four scrubbers at Ghent Units 2, 3, and 4 and Brown Units 1, 2, and 3 as needed to comply with EPA requirements.

Does KU agree that the June 20, 2005 Order granted KU a CPCN to construct a scrubber at Ghent Unit No. 2?

3. Does KU agree that the Commission's June 20, 2005 Order in Case No. 2004-00426 approved KU's third amendment to its environmental compliance plan, and the third amendment included the construction of four scrubbers: one each at Ghent Units No. 2, 3, and 4; and one at Brown Units No. 1-3?



4. In Case No. 2006-00206,<sup>1</sup> KU's response to the Commission Staff's Second Data Request dated August 21, 2006, Item 5, states that its application in Case No. 2004-00426 included a drawing dated November 23, 2004 illustrating that the scrubber originally constructed and connected to Ghent Unit No. 1 will be connected to Ghent Unit No. 2. Provide the specific citation to the record of Case No. 2004-00426 where the November 23, 2004 drawing can be found.

5. Since May 2005, KU has submitted four applications for approval of pollution control bond financing for portions of the pollution control facilities being constructed at the Ghent Generating Station: Case Nos. 2005-00183,<sup>2</sup> 2005-00357,<sup>3</sup> 2006-00187,<sup>4</sup> and 2006-00414.<sup>5</sup> State whether KU agrees or disagrees with each of the following statements concerning these four financing cases and explain in detail the basis for any disagreement:

a. Each financing application states that it "relates to the proposed permanent financing for portions of pollution control facilities at the Company's Ghent

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<sup>1</sup> Case No. 2006-00206, The Application of Kentucky Utilities Company for a Certificate of Public Convenience and Necessity to Construct a Selective Catalytic Reduction System and Approval of Its 2006 Compliance Plan for Recovery by Environmental Surcharge.

<sup>2</sup> Case No. 2005-00183, The Application of Kentucky Utilities Company for an Order Authorizing the Issuance of Securities and the Assumption of Obligations.

<sup>3</sup> Case No. 2005-00357, Application of Kentucky Utilities Company for an Order Authorizing the Issuance of Securities and the Assumption of Obligations.

<sup>4</sup> Case No. 2006-00187, Application of Kentucky Utilities Company for an Order Authorizing the Issuance of Securities and the Assumption of Obligations.

<sup>5</sup> Case No. 2006-00414, The Application of Kentucky Utilities Company for an Order Authorizing the Issuance of Securities and the Assumption of Obligations.

Generating Station in Carroll County, Kentucky. These facilities are described in Exhibit 2 hereto, and in Case No. 2004-00426. . . .”

b. Exhibit 2 in each application includes the statement “The Project facilities include complete new flue gas desulphurization facilities to serve generating stations 2, 3 and 4, including, among other things, the necessary SO<sub>2</sub> absorber reaction tanks, recirculation facilities, oxidation air compressors and blowers, foundations and structures, air compressors and air handling equipment, dewatering system improvements, conveyors and related facilities, related mechanical and electrical auxiliaries, tanks, associated site improvements and related structures.”

c. Page 1 of the “Memorandum of Agreement” between KU and the Carroll County Fiscal Court, attached as an exhibit to the appropriate Carroll County Fiscal Court resolution in each application, includes the statement that, “In compliance with the law, the Company has previously constructed and acquired and must now construct and acquire additional major sulphur dioxide removal facilities with respect to generating units 2, 3 and 4 of the Ghent Generating Station to control sulphur dioxide emissions and for the collection, recycling, treatment and ultimate disposition of solid wastes.”

6. State whether KU agrees or disagrees with each of the following statements concerning the Commission’s final Orders in Case Nos. 2005-00183, 2005-00357, and 2006-00187 and explain in detail the basis for any disagreement:

a. In each Order the Commission stated, “The pollution control facilities to be constructed by KU include new flue gas desulfurization facilities to serve

Unit Nos. 2, 3, and 4 at KU's Ghent Generating Station in Carroll County, Kentucky, as well as solid waste facilities, additions and improvements."

b. In each Order the Commission approved the proposed financing and stated in ordering paragraph number 3, "The proceeds from the transactions authorized herein shall be used only for the lawful purposes set out in the application."

7. KU's monthly environmental surcharge report for the August 2006 expense month, filed on September 22, 2006, shows a construction work in progress ("CWIP") balance for Project No. 21 of \$106,927,688.

a. Provide a breakdown of the CWIP balance separately showing the amounts for the Ghent Unit No. 2, 3, and 4 scrubbers and the scrubber for the Brown Units.

b. For the Ghent Unit No. 2 CWIP, indicate how much of the balance is associated with connecting the existing Ghent Unit No. 1 scrubber to Ghent Unit No. 2, and how much is associated with constructing a new scrubber to serve Ghent Unit No. 1.

8. In Case No. 2006-00412,<sup>6</sup> KU filed a motion on September 18, 2006 which states on page 1 that:

By Order dated July 24, 1992 (the "Final Order"), the Commission granted the Certificate sought by KU herein to construct a flue gas desulfurization system and associated scrubber retrofit facilities (the "Scrubber") to be constructed at KU's Ghent Generating Station in Carrollton, Kentucky and to be installed near unit number 1 of the Ghent Generating Station ("Ghent Unit 1").

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<sup>6</sup> Case No. 2006-00412, The Application of Kentucky Utilities Company For a Certificate of Convenience and Necessity to Construct a Scrubber on Unit No. 1 of Its Ghent Generating Plant.

a. Does KU agree that the July 24, 1992 Order literally states that KU is granted a Certificate of Public Convenience and Necessity (“CPCN”) to construct a scrubber “at Ghent Unit No. 1,” not “near” Ghent Unit No. 1?

b. Does KU agree that the drawing appended to the September 18, 2006 motion was not included in the “Maps” section of Case No. 2004-00426?

9. Beginning at the bottom of page 2 of KU’s September 18, 2006 motion in Case No. 2006-00412, KU states that:

[E]fficiencies would be achieved by routing the Ghent Unit 2 flue gas into the existing Scrubber and routing the Ghent Unit 1 flue gas through the new scrubber currently (and in name only) being constructed for Ghent Unit 2. (footnote omitted)

a. Explain the meaning of the phrase “new scrubber currently (and in name only) being constructed for Ghent Unit 2.”

b. Explain in detail how the scrubber being constructed for Ghent Unit No. 2 can be “in name only” when the CPCN granted by the Commission authorizes the construction of a new scrubber at Ghent Unit No. 2.

10. Provide the most current estimates of the total capital costs for each of the following projects:

a. Connecting the Ghent Unit No. 1 scrubber to serve Ghent Unit No. 2.

b. Constructing a new scrubber that will be connected to, and serve, Ghent Unit No. 1.

11. Does KU believe that the inclusion of the phrase “at Ghent Unit No. 1” in the ordering paragraph of the July 24, 1992 Order in Case No. 1992-00005<sup>7</sup> was a reference to the generating unit that would be physically located closest to the scrubber, or a reference to the generating unit that would be connected to the scrubber?

12. Under the authority granted by the July 24, 1992 Order in Case No. 1992-00005, did KU construct a scrubber that was:

a. Physically located closer to Ghent Unit No. 1 than any other generating unit at the Ghent Station?

b. Connected to Ghent Unit No. 1?

13. The Blake testimony was filed in Case No. 2004-00426 on December 20, 2004. Was Mr. Blake aware on that date that the existing scrubber at Ghent Unit No. 1 was to be connected to Ghent Unit No. 2, that KU did not intend to construct a new scrubber at Ghent Unit No. 2, and that the request to construct a scrubber at Ghent Unit No. 2 was really a request to construct a new scrubber at Ghent Unit No. 1?

a. If yes, explain in detail why his testimony contains no discussion of these facts and why his Exhibit KWB-1 shows a scrubber to be constructed at Ghent Unit No. 2 rather than at Ghent Unit No. 1.

b. If no, when and how did Mr. Blake first become aware that KU did not intend to construct a new scrubber at Ghent Unit No. 2?

14. The Malloy Testimony was filed in Case No. 2004-00426 on December 20, 2004. Was Mr. Malloy aware on that date that the existing scrubber at

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<sup>7</sup> Case No. 1992-00005, The Application of Kentucky Utilities Company For a Certificate of Convenience and Necessity to Construct a Scrubber on Unit No. 1 of Its Ghent Generating Plant.

Ghent Unit No. 1 was to be connected to Ghent Unit No. 2, that KU did not intend to construct a new scrubber at Ghent Unit No. 2, and that the request to construct a scrubber at Ghent Unit No. 2 was really a request to construct a new scrubber at Ghent Unit No. 1?

a. If yes, explain in detail why his testimony contains no discussion of these facts; why at page 13, line 6, of his testimony he refers to the 2004 plan for a scrubber “constructed for Ghent Unit [ ] 2. . . , and why his Exhibit JPM-1 shows a scrubber to be constructed at Ghent Unit No. 2 rather than at Ghent Unit No. 1.

b. If no, when and how did Mr. Malloy first become aware that KU did not intend to construct a new scrubber at Ghent Unit No. 2?