

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

JUN 15 2007

PUBLIC SERVICE  
COMMISSION

In the Matters of:

AN EXAMINATION OF THE APPLICATION )  
OF THE FUEL ADJUSTMENT CLAUSE OF )  
KENTUCKY UTILITIES COMPANY FROM ) CASE NO. 2006-00509  
NOVEMBER 1,2004 TO OCTOBER 31,2006 )

-and-

AN EXAMINATION OF THE APPLICATION )  
OF THE FUEL ADJUSTMENT CLAUSE OF )  
LOUISVILLE GAS AND ELECTRIC COMPANY ) CASE NO. 2006-00510  
FROM NOVEMBER 1,2004 TO OCTOBER 31,2006 )

ATTORNEY GENERAL'S POST-HEARING BRIEF

Comes now the Attorney General of the Commonwealth of Kentucky, by  
and through his Office of Rate Intervention, and tenders the following post-  
hearing brief in the above-styled matters.

I. INTRODUCTION

The Commission initiated the above-styled matter pursuant to 807 KAR  
5:056, Section 1(11) and (12) for the purpose of examining the fuel adjustment  
clauses ["FAC"] of Louisville Gas & Electric Company ["LG&E"] and Kentucky  
Utilities Company ["KU"] [hereinafter collectively referenced as "the  
Companies"]. That section requires the Commission to review a utility's FAC  
every two years and, *inter alia*, disallow any improper expenses.

On December 18, 2006, the Commission issued a procedural schedule in  
both of the above-referenced matters. Both the Attorney General and Kentucky

Industrial Utility Customers, Inc. ["KIUC"] filed motions to intervene in both cases, and the Commission granted said motions. On March 23, 2007, KIUC submitted pre-filed direct testimony from its expert Stephen J. Baron. A public hearing on this matter was held on May 10, 2006.

## II. ARGUMENT

Mr. Barron's testimony clearly illustrated that the Companies improperly retained certain reimbursements for fuel expenses which the Companies included in their respective FACs during the period of April 1, 2005 through August 31, 2006, when the Companies were associated with the Midwest Independent System Operator's ("MISO") "Day 2" operations.<sup>1</sup> During this 17-month period, MISO often required the Companies to dispatch high-cost generating units when lower cost market power was available. The Companies' contract with MISO required that on those occasions in which the Companies were required to dispatch generating units out of economic order, they would receive compensation from a pool of monies collected from MISO members in the form of Revenue Sufficiency Guarantee Make-Whole Payments ["RSG MWP's"].<sup>2</sup> Although the Companies received RSG MWP's in compensation for dispatching their generating units out of economic order, the Companies nonetheless charged their native load customers for the higher fuel cost through the FAC. In those hours when the Companies received MISO RSG MWP's that were

---

<sup>1</sup> MISO "Day-2 operations" relied on the use of locational marginal pricing to determine the prices charged to load, the prices paid to generators and the cost of congestion. Baron Testimony, p. 4.

<sup>2</sup> Id.

associated with native load, the Companies incurred a total of \$5,584,489 in excessive fuel costs, which they recovered from customers in their FAC.<sup>3</sup>

In lengthy testimony filed in direct, in rebuttal, and in further testimony given during the hearing, the Companies attempted to justify the retention of these funds. The Attorney General does not believe that the Companies have adequately justified the retention of the MISO RSG MWP.

The Attorney General believes that since the Companies were already receiving compensation for these costs through the FAC, it was improper for them to retain the MISO RSG MWP. Unless the Commission corrects for this unjustified retention of funds, E.ON's shareholders (who paid none of the excessive fuel costs) will reap the benefit, while its ratepayers (who already paid via the FAC mechanism) will lose the credit to which they are entitled. The Attorney General joins with KIUC's recommendation that the Commission disallow the excess fuel costs charged by each Company, up to the amount of the RSG make-whole payments received hourly by each Company.<sup>4</sup> In addition, the Commission should apply interest to make ratepayers whole.

During questioning at the hearing, and in a post-hearing informal conference, the parties discussed the possibility of addressing make-whole payments in the Companies' next base-rate case. Although at least one other utility, Kentucky Power Company ("KPC") accounts for its PJM operating reserve

---

<sup>3</sup> Id. p. 5 lines 1-4.

<sup>4</sup> For KU, the amount of the disallowance is \$5,075,553; for LG&E, the amount that should be disallowed is \$508,936.

credits (which are similar to LG&E and KU's RSG MWPs) by including them as a credit to ratepayers in its base rates,<sup>5</sup> LG&E and KU's ratepayers are unfortunately not able to receive credit for make-whole payments through a base rate case for two reasons: first, reimbursement through a future base rate case would violate the rule against retroactive ratemaking; and second, as the Company has noted,<sup>6</sup> any credit for fuel costs that were double recovered along with MISO RSG MWPs would be disallowed in a rate case as non-recurring revenues, because, unlike KPC's ongoing association with PJM, LG&E and KU are no longer members of MISO.

Therefore, the appropriate – and indeed only – avenue for addressing these excessive fuel costs is through an adjustment to the FAC in the instant two-year review case. The Commission's FAC rules require the disallowance of improper fuel expenses during a two-year review case (807 KAR 5:056 Section 1, (12)).

The Commission has previously approved another utility's own, voluntary exclusion of fuel costs for which it had already been compensated via MISO RSG MWPs. In Case No. 2006-00172, Duke Energy of Kentucky ("DEK"), voluntarily submitted a proposal to adjust its FAC in order to exclude fuel costs it had collected and for which it had also received MISO RSG MWPs for out of economic order dispatch of some of its generating units. The Commission approved a Fuel Adjustment Clause tariff for DEK in which MISO make-whole payments are

---

<sup>5</sup> KPSC Case No. 2006-00507, Kentucky Power Company's Response to First Set of Data Requests of KIUC, Item 1, p. 2 of 2.

<sup>6</sup> TE p. 67 lines 11-20.

deducted from DEK's total fuel costs in its FAC,<sup>7</sup> and determined that such an accounting of make-whole payments is in compliance with 807 KAR 5:056.<sup>8</sup> In approving this treatment of Duke Kentucky's RSG MWP's, the Commission determined that MISO make-whole payments are related to fuel cost and can be credited to customers through a utility's FAC. The companies' position thus stands in direct contradiction to existing Commission precedent. Therefore, the Companies' FAC costs should be credited to their respective customers in an amount equal to the sum they have already been compensated for via the MISO RSG MWP's.

Finally, the Companies also attempt to assert a defense to any crediting of FAC funds by curiously asserting that the intervenors' proposal constitutes single-issue ratemaking. It should go without stating that the statutorily-mandated procedure for adjusting fuel costs is, of necessity, involved with a single issue.

### III. CONCLUSION

The Commission should require the Companies to credit the MISO RSG MWP's to their respective ratepayers. Any other result would allow the Companies' shareholders to be unjustifiably enriched, at the expense of their ratepayers.

---

<sup>7</sup> KIUC Cross Ex. 2, "Schedule 4."

<sup>8</sup> KPSC Case No. 2006-00172 Order of December 21, 2006.

Respectfully submitted,

GREGORY D. STUMBO  
ATTORNEY GENERAL

A handwritten signature in black ink, appearing to read "Lawrence W. Cook", is written over a horizontal line.

LAWRENCE W. COOK  
PAUL D. ADAMS  
ASSISTANT ATTORNEYS GENERAL  
1024 CAPITAL CENTER DRIVE,  
SUITE 200  
FRANKFORT KY 40601-8204  
(502) 696-5453  
FAX: (502) 573-8315

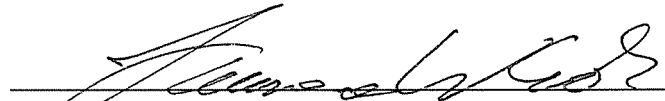
*Certificate of Service and Filing*

Counsel certifies that an original and ten photocopies of the foregoing were served and filed by hand delivery to Beth O'Donnell, Executive Director, Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601; counsel further states that true and accurate copies of the foregoing were mailed via First Class U.S. Mail, postage pre-paid, to:

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

Hon. Michael L Kurtz  
Attorney at Law  
Boehm, Kurtz & Lowry  
36 E. 7th St.  
Ste. 1510  
Cincinnati, Ohio 45202

this 15<sup>th</sup> day of June, 2007

  
Assistant Attorney General