

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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In the Matter of:

SEP 04 2009

LOUISVILLE GAS AND ELECTRIC COMPANY)
AND KENTUCKY UTILITIES COMPANY 2009)
APPLICATION FOR APPROVAL OF) CASE NO. 2009-00353
PURCHASED POWER AGREEMENTS)
AND RECOVERY OF ASSOCIATED COSTS)

**PUBLIC SERVICE
COMMISSION**

JOINT MOTION OF THE ATTORNEY GENERAL AND KIUC TO DISMISS, OR
IN ALTERNATIVE, TO HOLD CASE IN ABEYANCE UNTIL KENTUCKY
SUPREME COURT HAS RULED ON PENDING ISSUE; AND RESPONSE TO
LG&E AND KU MOTION

Come now the Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention, and Kentucky Industrial Utility Customers, Inc., [hereinafter jointly referred to as "Joint Movants"] and hereby jointly move the Commission to dismiss the Application filed in the above-styled matter or, in the alternative, to hold said matter in abeyance until such time as the Kentucky Supreme Court has ruled on the merits of two cases pending before it which are dispositive to the relief sought in the Application filed in the instant matter. Joint Movants also herein file their response to the Applicants' "Motion for Declaratory Ruling or in the Alternative for Waiver of Certain Filing Requirements." In support of their motion, the Joint Movants state as follows.

The Application filed by Louisville Gas & Electric Co. and Kentucky Utilities Co. [hereinafter jointly referred to as "Applicants"] must be dismissed because it seeks relief in the form of a surcharge not specifically authorized by

statute. In *Kentucky Public Service Commission and Duke Energy Kentucky, Inc., f/k/a The Union Light, Heat & Power Company v. Commonwealth Of Kentucky, Ex Rel. Greg Stumbo*, 2007-CA-001635-MR, the Kentucky Court of Appeals ruled that “the PSC cannot authorize the imposition of a surcharge . . . without specific statutory authorization.”¹ In regards to the surcharge the Applicants seek in the instant matter, **no such specific statutory authorization exists.** The Court of Appeals’ ruling in that matter is now on appeal before the Supreme Court of Kentucky, which has accepted discretionary review.² Any review of the instant matter by the Commission prior to the time the Kentucky Supreme Court rules on this subject would thus be premature and improvident at best, and may also usurp the Commonwealth’s highest Court of its jurisdiction. For that reason, the Application must be either dismissed or held in abeyance until the Kentucky Supreme Court has issued its ruling, which will necessarily be dispositive of the relief the Applicants seek.

The Applicants have also filed a Motion For Declaratory Ruling Or In The Alternative For Waiver Of Certain Filing Requirements. That Motion should be denied. Before a utility is allowed to raise rates on consumers, the Legislature established a mandatory process for Commission review to protect the public. The Commission’s regulations recognize the importance of protecting the public

¹ *Id.*, Slip Op. at p. 13.

² 2009-SC-000134 and 2009-SC-000150.

interest through a thorough review. Following that process in this important case of first impression is particularly appropriate.

The Motion at page 4 candidly states that “the cost of the Wind Power Contracts significantly exceeds the direct cost of generating electricity using traditional resources...” At page 12 of the draft application this excess cost over the cost of traditional resources is quantified at \$108.3 million. \$108.3 million is a significant extra cost for this economy to absorb. Page 9 of the draft application estimates the annual rate increase on the average residential consumer of KU as \$11.04 and for LG&E as \$8.52. This is a rate increase of approximately 1.3% for KU and 1.0% for LG&E. Given these facts, one would think that such a rate increase request would require more scrutiny, not less.

This Application raises more questions than it answers. For example:

1. Is the 109.5 mw of additional wind capacity needed at this time in light of reduced consumer demand resulting from the depressed state of the economy and the pending commercial operation of Trimble County Unit 2?; If not, then why should ratepayers be made to pay for the full cost of Trimble County Unit 2, since the Applicants are likely to sell the resultant excess production of that unit in off-system sales at a much higher profit?
2. **If and when** renewable power is required by state or federal law in the future, are the proposed wind contracts the most cost

effective, or should the Companies pursue renewable resources in Kentucky or simply purchase Renewable Energy Credits (RECs) on the open market as many other utilities have done?

3. If 295,000 MWh of additional wind energy (see draft application at page 9, footnote 11) is achieved by the Companies, then how should the increased profits from off-system sales that will naturally result be used to off-set costs in the proposed Renewable Resource Clause?
4. What returns are currently being earned by LG&E and KU and should their shareholders be required to contribute to this admittedly uneconomic proposal that is allegedly being pursued for public policy reasons?

This case deserves a full review, not the abbreviated process with a foregone conclusion proposed by the Companies. As was stated by Judge Shepherd in his Opinion and Order that led to the Court of Appeals' ruling in *Stumbo, supra*, now pending before the Kentucky Supreme Court:


" . . . [[T]here is no inherent authority to perform interim single-issue rate adjustments because such a mechanism would undermine the statutory scheme. . . [F]inding the PSC to have authority to review any single expenditure outside the context of a rate case would create a means to circumvent the general rate case mechanism created by KRS 278.190 Outside a general rate case there is no context in which to consider any expense."³

³ Franklin Circuit Court Slip Op. at 6-7.

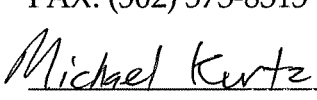
WHEREFORE, the Attorney General and KIUC respectfully jointly request that the Commission DISMISS the subject petition without prejudice until such time as the Kentucky Supreme Court has opportunity to fully rule on the legality of the relief sought by Applicants, or in the alternative hold this matter in abeyance.

Respectfully submitted,

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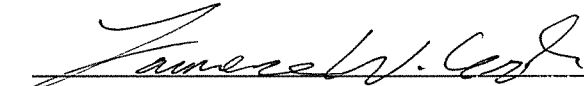
Certificate of Service and Filing

Counsel certifies that an original and ten photocopies of the foregoing were served and filed by hand delivery to Jeff Derouen, 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:

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this 4th day of September, 2009.


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