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October 30, 2009

RECEIVED

OCT 30 2009

PUBLIC SERVICE  
COMMISSION

**HAND DELIVERED**

Jeff DeRouen  
Executive Director  
Kentucky Public Service Commission  
211 Sower Boulevard  
Frankfort, KY 40601

Case No: 2009-00427

**RE: Application of Kentucky Utilities Company and Louisville Gas and Electric Company to Transfer Control of Certain Transmission Functions**

Dear Mr. DeRouen:

Enclosed please find and accept for filing the original and ten copies of a Verified Joint Application of Kentucky Utilities Company and Louisville Gas and Electric Company 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 please contact me at your convenience.

Sincerely,

W. Duncan Crosby III

WDC:ec

Enclosures

cc: Dennis G. Howard II, Assistant Attorney General (w/ encl)  
Michael L. Kurtz, Boehm Kurtz and Lowry (w/ encl)

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COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED  
OCT 30 2009  
PUBLIC SERVICE  
COMMISSION

In the Matter of:

APPLICATION OF KENTUCKY UTILITIES )  
COMPANY AND LOUISVILLE GAS AND )  
ELECTRIC COMPANY TO TRANSFER CONTROL )  
OF CERTAIN TRANSMISSION FUNCTIONS )

CASE NO. 2009-00 427

VERIFIED JOINT APPLICATION

Kentucky Utilities Company ("KU") and Louisville Gas and Electric Company ("LG&E") (collectively, "Companies") hereby petition the Kentucky Public Service Commission ("Commission") by application pursuant to KRS 278.218 to issue an order by January 15, 2010, approving a transfer to the Companies of all the functions currently performed the Southwest Power Pool, Inc. ("SPP"). The Companies believe such a transfer would be for a proper purpose and in the public interest because they can perform the functions SPP currently performs for the Companies (having to do primarily with providing access to the Companies' transmission services) without adversely impacting rates and without sacrificing objectivity in transmission scheduling.

In support of this Application, the Companies state as follows:

1. Addresses: Applicant KU's full name and business address is: Kentucky Utilities Company, One Quality Street, Lexington, Kentucky 40507. KU's mailing address is Kentucky Utilities Company c/o Louisville Gas and Electric Company, Post Office Box 32010, 220 West Main Street, Louisville, Kentucky 40232.

Applicant LG&E's full name and post office address is: Louisville Gas and Electric Company, 220 West Main Street, Post Office Box 32010, Louisville, Kentucky 40202.

2. Articles of Incorporation: A certified copy of KU's current Articles of Incorporation is on file with the Commission in Case No. 2005-00471, *In the Matter of: Application of Louisville Gas and Electric Company and Kentucky Utilities Company for Authority to Transfer Functional Control of their Transmission System* filed on November 18, 2005, and is incorporated by reference herein pursuant to 807 KAR 5:001, Section 8(3).

Likewise, a certified copy of LG&E's Articles of Incorporation is on file with the Commission in Case No. 2005-00471, *In the Matter of: Application of Louisville Gas and Electric Company and Kentucky Utilities Company for Authority to Transfer Functional Control of their Transmission System* filed on November 18, 2005, and is incorporated by reference herein pursuant to 807 KAR 5:001, Section 8(3).

3. KU is a public utility, as defined in KRS 278.010(3)(a), engaged in the electric business. KU generates and purchases electricity, and distributes and sells electricity at retail in the following counties in Central, Northern, Southeastern and Western Kentucky:

Adair	Edmonson	Jessamine	Ohio
Anderson	Estill	Knox	Oldham
Ballard	Fayette	Larue	Owen
Barren	Fleming	Laurel	Pendleton
Bath	Franklin	Lee	Pulaski
Bell	Fulton	Lincoln	Robertson
Bourbon	Gallatin	Livingston	Rockcastle
Boyle	Garrard	Lyon	Rowan
Bracken	Grant	Madison	Russell
Bullitt	Grayson	Marion	Scott
Caldwell	Green	Mason	Shelby
Campbell	Hardin	McCracken	Spencer
Carlisle	Harlan	McCreary	Taylor
Carroll	Harrison	McLean	Trimble
Casey	Hart	Mercer	Union
Christian	Henderson	Montgomery	Washington
Clark	Henry	Muhlenberg	Webster
Clay	Hickman	Nelson	Whitley
Crittenden	Hopkins	Nicholas	Woodford
Daviess			

4. LG&E is a public utility, as defined in KRS 278.010(3)(a), engaged in the electric and gas business. LG&E generates and purchases electricity, and distributes and sells electricity at retail in Jefferson County and portions of Bullitt, Hardin, Henry, Meade, Oldham, Shelby, Spencer, and Trimble Counties. LG&E also purchases, stores and transports natural gas and distributes and sells natural gas at retail in Jefferson County and portions of Barren, Bullitt, Green, Hardin, Hart, Henry, Larue, Marion, Meade, Metcalfe, Nelson, Oldham, Shelby, Spencer, Trimble, and Washington Counties.

I. **History of Control of Companies' Transmission Functions**

5. Following the acquisition of KU Energy Corporation by LG&E Energy Corp. in 1997, LG&E and KU began jointly operating their generation and transmission systems on a combined basis for the purpose of achieving more efficient operations than could be achieved independently.

6. Pursuant to commitments the Companies made in their various merger proceedings, on February 1, 2002, they transferred operational control of their transmission facilities to the Midwest Independent Transmission System Operator, Inc. ("MISO"), a Federal Energy Regulatory Commission ("FERC")-approved Regional Transmission Organization ("RTO").<sup>1</sup>

7. Subsequent changes in the structure and operation of MISO, including the requirements of its day-ahead and real-time power markets, however, caused the Companies to reassess their decision and determine to pursue more cost-effective methods of operating their transmission system. After a lengthy investigation in Case No. 2003-00266 to determine

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<sup>1</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, Inc.*, Case No. 2003-00266, Order at 4 (May 31, 2006).

whether the Companies' membership in MISO was still in the public interest, on May 31, 2006, the Commission issued an Order authorizing the Companies to withdraw from MISO and to transfer functional control of their transmission facilities back to themselves.<sup>2</sup>

8. Soon thereafter, on July 6, 2006, the Commission approved, under KRS 278.218, the transfer of certain transmission control functions from the Companies to the Tennessee Valley Authority ("TVA") and SPP.<sup>3</sup> In particular, the Commission approved the Companies' request that TVA become the Companies' reliability coordinator and that SPP become the Companies' Independent Transmission Operator ("ITO").

9. In its role as ITO, SPP's primary responsibility is to administer the Companies' Open-Access Transmission Tariff ("OATT") as well as to: grant and deny transmission service requests (pursuant to the OATT); perform system impact studies for all interconnections; transmission scheduling; administer the Companies' Open-Access Same-time Information System ("OASIS"); and be responsible for compliance with applicable North American Electric Reliability Council ("NERC") and South-East Reliability Council ("SERC") requirements. For these services, the Companies currently pay SPP \$3.4 million per year under their original contract, as well as an additional \$2.27 million one-time payment under a recent settlement agreement with SPP.

10. The agreement with SPP expires under its terms on August 31, 2010. In July of 2009, SPP advised the Companies that it did not desire to renew the contract or otherwise to

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<sup>2</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, Inc.*, Case No. 2003-00266, Order at 26 (May 31, 2006).

<sup>3</sup> *In the Matter of: the Application of Louisville Gas and Electric Company and Kentucky Utilities Company to Transfer Functional Control of their Transmission Facilities*, Case No. 2005-00471, Order at 8 (July 6, 2006).

continue to offer ITO services to the Companies. On October 26, 2009 SPP provided the Companies a written notice of termination of the agreement.

11. Since the verbal notice from SPP in July 2009, the Companies have made diligent efforts to explore alternative providers of ITO services. The Companies sent a Request for Information (“RFI”) to 10 potential providers of ITO services. Despite extensions of time and follow-up efforts, only one company responded to the RFI with an expression of possible interest. Upon further discussions with the Companies regarding the range and nature of the services being sought, the responding company determined it could not offer the services and declined to respond to a Request for Proposal.

12. The Companies propose that the ITO functions formerly delegated to SPP under the terms and conditions imposed by the FERC in connection with their exit from MISO now be reassigned to the Companies due to changes in FERC regulation since the ITO was established.<sup>4</sup> (TVA will continue to act as the Companies’ Reliability Coordinator.) Specifically, since the Companies established the ITO, the FERC ordered enhanced open access requirements under Order No. 890, which greatly increased transparency in providing open access services to eliminate any lingering potential for discrimination in the administration of open access tariff requirements. Order No. 890’s increased OASIS posting requirements and requirements for stakeholder involvement in transmission planning substantially improved the ability for the FERC and transmission customers to monitor all of the tariff administration functions currently performed by SPP under the Companies’ OATT. As a result, the Companies no longer need to engage a separate entity to perform these functions, as explained in further detail below.

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<sup>4</sup> *Louisville Gas and Electric Co.*, 114 FERC ¶ 61,282, *order on reh’g*, 116 FERC ¶ 61,020 (2006) (“Midwest ISO Exit Order”).

13. Under their proposal, the Companies will administer their OATT under the stringent transparency requirements that are now applicable under Order No. 890, which requirements did not exist when the Companies exited MISO. These requirements are sufficient to address any lingering vertical market power concerns the FERC may have regarding the Companies' prior mergers. For instance, Order No. 890 now requires OASIS postings regarding denials of transmission service requests for affiliates and non-affiliates, postings of transmission studies that are late, posting of transmission study criteria, and the opening up of the transmission planning process.<sup>5</sup> All of these requirements are designed to address the potential for vertically integrated transmission owners to discriminate unduly against third-party customers in providing open access transmission services.<sup>6</sup> As a result of these changes, the Companies' wholesale power customers will continue to enjoy the increased open access transparency afforded by Order No. 890. This open access service will continue to be administered in a reasonable and fiscally responsible manner for customers. Finally, because LG&E and KU do not currently have market-based rate authority in their control area, wholesale energy customers in the control area are paying cost-based rates for wholesale capacity and energy.<sup>7</sup>

## **II. The Companies Respectfully Request Authority to Transfer ITO Functions from SPP to the Companies**

14. The statute that governs transfers of control of utility assets is KRS 278.218, which states:

(1) No person shall acquire or transfer ownership of or control, or the right to control, any assets that are owned by a utility as defined under KRS 278.010(3)(a) without prior approval of the

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<sup>5</sup> See discussion *infra*.

<sup>6</sup> *Id.* at PP 348-49, 376, 413.

<sup>7</sup> *LG&E Energy Marketing Inc.*, 122 FERC ¶ 61,175 (2008).

commission, if the assets have an original book value of one million dollars (\$1,000,000) or more and:

(a) The assets are to be transferred by the utility for reasons other than obsolescence; or

(b) The assets will continue to be used to provide the same or similar service to the utility or its customers.

(2) The commission shall grant its approval if the transaction is for a proper purpose and is consistent with the public interest.

The Companies stipulate that the transfer of transmission system control they propose herein meets the applicability standard of KRS 278.218(1) and therefore requires Commission approval.

15. Concerning the KRS 278.218(2) requirement that a transfer of the kind the Companies propose be “for a proper purpose and ... consistent with the public interest,” the Commission has said:

The Commission finds that any party seeking approval of a transfer of control must show that the proposed transfer will not adversely affect the existing level of utility service or rates or that any potential adverse effects can be avoided through the Commission’s imposition of reasonable conditions on the acquiring party. The acquiring party should also demonstrate that the proposed transfer is likely to benefit the public through improved service quality, and service reliability, the availability of additional services, lower rates, or a reduction in utility expenses to provide present services. Such benefits, however, need not be immediate or readily quantifiable.<sup>8</sup>

The Commission subsequently summarized this test: “[F]irst, there must be a showing of no adverse effect on service or rates; and, second, there must be a demonstration that there will

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<sup>8</sup> *In the Matter of: Application for Approval of the Transfer of Control of Kentucky-American Water Company to RWE Aktiengesellschaft and Thames Water Aqua Holdings GMBH*, Case No. 2002-00018, Order at 7-8 (May 30, 2002) (emphasis in original).

be some benefits.”<sup>9</sup> When the Commission applied the KRS 278.218(2) standard the Companies’ application to transfer functional control of its transmission system to TVA (as their RC) and SPP (as their ITO), the Commission stated that the public interest, “[E]ncompasses both network reliability and the cost of electric service.”<sup>10</sup> The Commission determined in that proceeding that the Companies’ chosen RC would provide the network reliability necessary to serve the public interest.

16. Because the Companies believe they can provide equivalent or better ITO services than they currently receive from SPP without adversely impacting rates, and to obtain the benefits stated in Paragraph No. 18 below (particularly increased control over future cost incurrence), the Companies respectfully request that the Commission grant them authority to resume performing ITO functions when the Companies’ contract with SPP expires on August 31, 2010.

17. First, the Companies project that their annual cost to self-provide ITO services will be approximately \$3-4 million, not including start-up costs of approximately \$2 million; this compares favorably to the Companies’ current SPP contract cost of \$3.4 million per year, as well as an additional \$2.27 million one-time payment under a recent settlement agreement with SPP. The Companies therefore do not anticipate that their proposal will result in any adverse rate impacts.

18. Second, in addition to not adversely impacting rates, the Companies’ proposal, which generally reassigns tariff administration duties concerning granting transmission service

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<sup>9</sup> *In the Matter of: Application of Kentucky Power Company d/b/a American Electric Power for Approval, to the Extent Necessary, to Transfer Functional Control of Transmission Facilities Located in Kentucky to PJM Interconnection, L.L.C. Pursuant to KRS 278.218, Case No. 2002-00475, Order at 4 (Aug. 25, 2003).*

<sup>10</sup> *In the Matter of: the Application of Louisville Gas and Electric Company and Kentucky Utilities Company to Transfer Functional Control of their Transmission Facilities, Case No. 2005-00471, Order at 5 (July 6, 2006).*

request and performing related system impact studies to LG&E and KU, should provide additional benefits. Allowing LG&E and KU to perform these functions would facilitate higher quality and more efficient transmission customer service. LG&E and KU believe that they have greater economic incentive to provide higher quality and more efficient service than a third party. By self-providing ITO-type services, the Companies will also have greater control over cost incurrence than they would have under a third-party contract. LG&E and KU would have direct responsibility for NERC/SERC reliability standards compliance, OATT compliance and other FERC compliance. Bringing these functions in-house decreases third-party vendor risk of penalties in this core business function. The proposal is a reasonable and practical alternative available to the Companies under current regulatory, economic, and market conditions; will not adversely affect rates or service; and will give the Companies better control over future cost incurrence, making the proposed transfer for a proper purpose and in the public interest under KRS 278.218 as interpreted by the Commission in the orders quoted in Paragraph No. 10 above.

19. The Companies have applied to the FERC for the requisite authority as well. Their application is being filed with FERC concurrently with the filing of this application with the Kentucky Commission. Attached hereto as Exhibit 1 is a complete copy of the Companies' FERC application on disc. The Companies will file the orders(s) entered by FERC on this application with the Commission.

**WHEREFORE**, because that the ITO Agreement will expire on August 31, 2010, and to ensure an effective transition of the ITO functions from SPP to the Companies and TVA, Louisville Gas and Electric Company and Kentucky Utilities Company request that the Commission review this filing on an expedited basis, and approve the proposed ITO replacement by January 15, 2010, subject to the Companies obtaining the necessary approval from the Federal

Energy Regulatory Commission. The timing of this approval is necessary to provide LG&E/KU and TVA with sufficient time to hire staff, conduct training, and implement software changes. LG&E/KU and TVA must start this process by February 2010 to allow sufficient time to transition safely and reliably to the new system by September 1, 2010.

Dated: October 30, 2009

Respectfully submitted,



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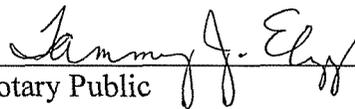
VERIFICATION

COMMONWEALTH OF KENTUCKY )  
 ) SS:  
COUNTY OF JEFFERSON )

The undersigned, **Lonnie E. Bellar**, being duly sworn, deposes and says that he is Vice President, State Regulation and Rates for Kentucky Utilities Company and Louisville Gas and Electric Company and an employee of E.ON U.S. Services, Inc., and that he has personal knowledge of the matters set forth in the foregoing Verified Application, and that the content thereof is true and correct to the best of his information, knowledge and belief.

  
\_\_\_\_\_  
Lonnie E. Bellar

Subscribed and sworn to before me, a Notary Public in and before said County and State, this 30<sup>th</sup> day of October 2009.

 (SEAL)  
\_\_\_\_\_  
Notary Public

My Commission Expires:

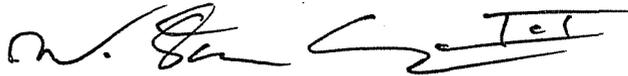
November 9, 2010

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing Application was served on the following persons on the 30th day of October 2009, U.S. mail, postage prepaid:

Dennis G. Howard II  
Lawrence W. Cook  
Assistant Attorneys General  
Office of the Attorney General  
Office of Rate Intervention  
1024 Capital Center Drive, Suite 200  
Frankfort, KY 40601-8204

Michael L. Kurtz  
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Counsel for Kentucky Utilities Company and  
Louisville Gas and Electric Company