



STOLL · KEENON · OGDEN
P L L C

2000 PNC PLAZA
500 WEST JEFFERSON STREET
LOUISVILLE, KY 40202-2828
MAIN: (502) 333-6000
FAX: (502) 333-6099
www.skofirm.com

KENDRICK R. RIGGS
DIRECT DIAL: (502) 560-4222
DIRECT FAX: (502) 627-8722
kendrick.riggs@skofirm.com

July 6, 2010

RECEIVED

JUL 06 2010

PUBLIC SERVICE
COMMISSION

VIA HAND DELIVERY

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

RE: Application of Kentucky Utilities Company for an Adjustment of Base Rates
Case No. 2009-00548

Application of Louisville Gas and Electric Company for an Adjustment of
Electric and Gas Base Rates
Case No. 2009-00549

Dear Mr. DeRouen:

Enclosed please find and accept for filing the original and ten copies of the Joint Response of Kentucky Utilities Company and Louisville Gas and Electric Company to the Attorney General's Renewed Motion to Dismiss in the above-referenced matters. 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.

Yours very truly,

Kendrick R. Riggs

KRR:ec
Enclosures
cc: Parties of Record

400001.134411/642775.1

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF KENTUCKY)
UTILITIES COMPANY FOR AN) **CASE NO. 2009-00548**
ADJUSTMENT OF BASE RATES)

In the Matter of:

APPLICATION OF LOUISVILLE GAS)
AND ELECTRIC COMPANY FOR AN) **CASE NO. 2009-00549**
ADJUSTMENT OF ITS ELECTRIC)
AND GAS BASE RATES)

**JOINT RESPONSE OF KENTUCKY UTILITIES COMPANY
AND LOUISVILLE GAS AND ELECTRIC COMPANY
TO THE ATTORNEY GENERAL'S RENEWED MOTION TO DISMISS**

Kentucky Utilities Company ("KU") and Louisville Gas and Electric Company ("LG&E") (collectively, "Companies") respectfully submit this Response to Attorney General's ("AG") Renewed Motion to Dismiss ("Motion"), filed with the Commission on June 29, 2010.

I. Introduction

The AG's Motion is appropriately styled a "renewed" motion, as it contains the same fundamental flaws as the first Attorney General's Motion to Dismiss ("first Motion to Dismiss") that was denied by the Commission in its June 8, 2010 Order ("Order"). The Motion advances the very same arguments through use of allegations that remain unsupported by the records of evidence, while suffering from the same critical lack of authority, to seek extraordinary relief yet again.

Moreover, the Commission denied the AG's first Motion to Dismiss due to a lack of evidentiary support,¹ the AG's unwarranted and unexplained delay in advancing his concerns

¹ Case Nos. 2009-00548 and 2009-00549, June 8, 2010 Order at 3 ("Order").

regarding the pending change of control,² and the ample precedent for concurrently reviewing rate proceedings and change of control cases.³ For the AG's Motion to succeed, he must rebut the only ground for denial available to be remedied by a renewed pleading: the lack of evidentiary support plaguing the existing filings. Despite having the benefit of cross-examination of the Companies' witnesses at the hearing, as well as the opportunity to submit supplemental direct testimony, the Motion simply restates the very same unsupported arguments, often verbatim, that this Commission flatly rejected three weeks prior. Because the Motion does not provide any additional legal or evidentiary support, the Companies respectfully request the Commission to deny the AG's Motion.

II. The AG's Motion Provides No Further Legal Support for the Extraordinary Relief He Seeks

The Commission's Order stated "there is ample precedent for reviewing major rate cases on their merits during the same time an acquisition of the utility and its parent is pending."⁴ The AG's Motion simply ignores this precedent, neither refuting the Commission's position, nor providing a single citation to contrary authority. As demonstrated by the precedent supporting the concurrent review of rate cases and change of control proceedings, there is no legal basis for

² *Id.* at 4.

³ *Id.* at 4-5.

⁴ *Id.* at 4. Case No. 2005-00042, *In the Matter of: An Adjustment of the Gas Rates of The Union Light, Heat and Power Company*; Case No. 2005-00228, *In The Matter of: Joint Application of Duke Energy Corporation, Duke Energy Holding Corp., Deer Acquisition Corp., Cougar Acquisition Corp., Cinergy Corp., The Cincinnati Gas & Electric Company, and The Union Light, Heat and Power Company for Approval of a Transfer and Acquisition of Control*; Case No. 2000-080, *In the Matter of: An Adjustment of the Gas Rates of Louisville Gas and Electric Company*; Case No. 2000-00095, *In the Matter of: Joint Application of Powergen PLC, LG&E Energy Corp., Louisville Gas and Electric Company, and Kentucky Utilities for Approval of a Merger*; Case No. 9539, *In the Matter of: The Application of Muhlenberg County Water District (A) For a Certificate of Public Convenience and Necessity (1) Approving the Construction of New Plant Facilities; (2) Approving the Issuance of Certain Securities; and (3) Authorizing Adjustment of Water Service Rates and Charges; and (B) For an Order Approving the Merger of Muhlenberg County Water District and Muhlenberg County Water District (Graham) Under the Terms of KRS 74.363 and the Application of Established Rates of Muhlenberg County Water District to the Customers of Muhlenberg County Water District (Graham)*; Case No. 92-169, *In the Matter of: Salt River Water District and Kentucky Turnpike Water District Joint Petition for Approval of Merger Agreement and Retail Rate Adjustment*; Case No. 9067, *In the Matter of: The Adjustment of Rates of the Spears Water Company, Inc.*

dismissal of the rate cases simply because a change of control proceeding was filed while the rate cases were under investigation. Further, the Companies continue to assert, as explained more fully in the Joint Response of Kentucky Utilities Company and Louisville Gas and Electric Company to the Attorney General's Motion to Dismiss ("Joint Response"), that the statutory framework created in Chapter 278 of the Kentucky Revised Statutes does not permit dismissal because such action would deprive the Companies of their statutory right to be heard on their applications "as speedily as possible" and to place their rates into effect by a time certain.⁵

In denying the AG's first Motion to Dismiss, the Commission stated, "[I]t would be premature to rule on whether the applicants have met their burden of proof."⁶ The Companies submit that the extensive records of evidence in these proceedings, which now include a Stipulation and Recommendation entered into by the Companies and all intervenors except the AG⁷, a hearing at which the AG cross-examined several of LG&E's and KU's witnesses, along with post-hearing briefs filed by the parties to the Stipulation, the Companies, and the AG, satisfy the Companies' burden of proof. The Companies and all the intervenors except the AG have demonstrated the reasonableness of the Stipulation and Recommendation, and the Companies have shown the reasonableness of their filed positions. Therefore, the proceedings should properly be considered under submission for Commission adjudication.

⁵ See Joint Response of Kentucky Utilities Company and Louisville Gas and Electric Company to the Attorney General's Motion to Dismiss ("Joint Response") at 8-10; KRS 278.190(1)-(3).

⁶ Order at 4.

⁷ The AG does not object to the revenue allocation or rate design portions of the Stipulation. Video Transcript of the Hearing of June 8, 2010 (Case Nos. 2009-00548 and 2009-00549) ("Video Hearing Transcript") at 10:29:45-10:30:07 and at 10:45:35-10:46:05.

III. The AG’s Motion Provides No Further Evidentiary Support for His Speculative Allegations of the Effect of the PPL Transaction on the Pending Rate Proceedings

- A. The AG’s pleadings associated with his Motion to Dismiss acknowledge that he cannot provide a concrete example of any effect on the Companies if the transaction is ultimately consummated.

The AG continues to argue, as he did in his first Motion to Dismiss and in his Attorney General’s Reply to the Joint Response of Kentucky Utilities Company and Louisville Gas and Electric Company to His Motion to Dismiss (“Reply to the Companies’ Joint Response”), that the ownership of the Companies is relevant to the rate case proceedings because the PPL transaction, if approved, will have a material effect on the Companies sufficient to warrant dismissal of the rate cases.⁸ Though the AG argued this position in his first Motion to Dismiss and in his Reply to the Companies’ Joint Response, the Order denying his first Motion to Dismiss aptly observed that the “sole evidentiary support for the AG’s motion is a presentation by PPL to financial analysts and a PPL press release.”⁹ The AG acknowledged the speculative nature of his argument in his first Motion to Dismiss, which stated that “one can only speculate” as to the effect of the transaction on the Companies¹⁰ and that the material impact is not measurable.¹¹ The AG’s Reply to the Companies’ Joint Response contained equally vague allegations regarding the effect of the transaction, deeming the potential effects “not yet well-defined or capable of quantification.”¹² In short, prior to the Commission’s Order, the AG doggedly contended that the pending change of control proceeding would have such a significant and material impact on the Companies as to render the test period unreliable and warrant dismissal of actively litigated rate cases—he just could not tell the Commission what those impacts would be.

⁸ See first Motion to Dismiss at 3-7; Reply to the Companies’ Joint Response at 2-4; Motion at 2-6.

⁹ Order at 3.

¹⁰ First Motion to Dismiss at 3.

¹¹ First Motion to Dismiss at 5.

¹² Reply to the Companies’ Joint Response at 4.

In denying the AG's first Motion to Dismiss, the Commission afforded the AG the opportunity to "address the issue of the reasonableness of the test years" at the hearing, and authorized the AG "through supplemental direct testimony or through cross-examination... [to] pursue this issue and renew his motion if he so chooses."¹³ As noted in the AG's Motion,¹⁴ at the hearing the AG cross-examined the Companies' witnesses and inquired into the effect, if any, on the Companies' daily operations and access to capital if the transaction were ultimately consummated. In addition to addressing the reasonableness of the test year at the hearing through cross-examination, the AG also renewed his Motion to Dismiss.

The AG has thus been permitted to inquire further into the effect of the pending transaction case on these proceedings, supplement his testimony, cross examine the witnesses of the Companies- and still cannot provide the Commission with at least *one* concrete piece of evidence showing how the transaction will affect the Companies as to render the test years unreliable. Instead, the AG has again filed a pleading alleging that "the exact effect on the companies is unknown,"¹⁵ "the nature and extent of the agreement with PPL Corporation with regard to LG&E and KU are not well-defined or capable of exact quantification"¹⁶ and "the extent of this change is not known at this point."¹⁷

It is more than disappointing that the AG, despite again asking this Commission to take the drastic and extraordinary step of dismissing actively litigated rate cases that, except for this Motion, would be under submission for final decision, would again provide as evidentiary support vague and ambiguous allegations. As explained more fully in the Companies' Joint Response, the AG is asking the Commission to take the severe action to dismiss the rate cases

¹³ Order at 5.

¹⁴ Motion at 3.

¹⁵ Motion at 5.

¹⁶ Motion at 6.

¹⁷ Motion at 8.

through utilizing an evidentiary threshold that is even lower than the standard legally required to support a pro forma adjustment, as the AG's own Motion admits that the alleged "effect" is not known and measurable, and thus the "adjustment process cannot be applied."¹⁸

- B. The AG's purported additional evidentiary support is inaccurate and provides no basis to warrant dismissal of these proceedings.

In addition to reiterating that he could not define the impact of the transaction on the Companies if eventually consummated, the AG's Motion provides two more purported measures of evidentiary support. First, the AG argues that the "fact that E.ON AG is divesting itself of E.ON U.S. clearly will affect the ratings for the companies going forward."¹⁹ Despite the assuredness of this contention, the records of evidence, along with the AG's own witness, demonstrate this is inaccurate. As noted by the AG in his Motion, when asked if the transaction could ultimately impact the cost of capital, the AG's own witness, Dr. Randall Woolridge, stated that the transaction could "*potentially*" affect the cost of capital.²⁰ Further, and again as noted in the AG's motion, Dr. Woolridge referred to a "*potential*" impact to the Companies' capital structure.²¹ Further, when asked by Commission Staff whether an increase in the cost of capital would cause the Companies to require additional revenue, Dr. Woolridge replied that it was *possible*.²² Finally, Dr. Woolridge described PPL's credit rating, and the subsequent impact on the Companies, as a "*big question mark*."²³ Thus, while the AG's Motion argues that the credit ratings of the Companies will "clearly" be impacted if the transaction is consummated, the evidentiary support the AG provides is nothing more than the speculative assertions that have hallmarked every pleading the AG has filed regarding the Motion to Dismiss.

¹⁸ Motion at 6; see the Joint Response at 2-3.

¹⁹ Motion at 3.

²⁰ Motion at 4; Video Hearing Transcript at 4:29:15 (emphasis added).

²¹ *Id.*

²² Motion at 4; Video Hearing Transcript at 4:56:00 (emphasis added).

²³ Video Hearing Transcript at 4:54:10 (emphasis added).

In fact, Dr. Woolridge admitted at the hearing while being examined by Commission Staff that even assuming the transaction is consummated, and further assuming that the cost of debt would increase because of the change in the parent company, any additional revenue required to cover the increased costs would not be reflected until LG&E and KU file new rate cases.²⁴ This admission demonstrates that even assuming the AG's unsupported allegations regarding the cost of debt occur, those issues will not be relevant for decision until another rate case is filed, which cannot possibly occur until this Commission, the Virginia State Corporation Commission, the Tennessee Regulatory Authority, and the Federal Energy Regulatory Commission, all approve the transaction and the transaction is ultimately consummated by E.ON AG and PPL. Quite simply, the pending rate case proceedings are not the appropriate venue for the AG's speculative assertions to be litigated, and certainly do not provide a sufficient basis to warrant dismissal of these proceedings. As noted in the Commission's Order, when rate cases and change of control cases are concurrently pending, "any financial impacts of the acquisition were addressed in the acquisition case, not in the rate case."²⁵

The second piece of evidence on which the AG's motion relies is that during the cross-examination of LG&E's and KU's witnesses, the witnesses "were repeatedly asked at the hearing whether they had supplemented their testimony and/or responses to data requests to indicate changes to the information in light of the pending acquisition, their testimony indicated that none had."²⁶ The AG utilizes this information to imply that the Companies inappropriately withheld information regarding the transaction from the parties to these proceedings. The AG is correct that none of the witnesses updated data responses or supplemented testimony to address the pending transaction because none of the data requests issued by any party to either rate case

²⁴ Video Hearing Transcript at 4:59:15.

²⁵ Order at 5.

²⁶ Motion at 3.

required supplementation due to the change of control case being filed. Most telling, the AG's Motion did not provide a single data request that should have been updated due to the filing of the change of control case. Further, the Motion, as well as the First Motion to Dismiss, ignores the evidence filed in the pending change of control case on May 28, 2010, as the evidence in that proceeding refutes the AG's claims of a material impact.²⁷ The AG's *implied* allegations that the Companies did not properly comply with their legal obligations to supplement discovery responses provides no evidentiary support because the Companies complied with all such obligations, updating information throughout the proceedings when warranted.

Thus, the AG's Motion is replete with vague and speculative assertions regarding the effect of the transaction on the Companies. The Companies submit that the AG's inability to put forth any tangible proof of a material impact to LG&E and KU is, in fact, the most powerful evidence of all.

IV. Conclusion

The Commission denied the AG's first Motion to Dismiss for three reasons: it lacked evidentiary support;²⁸ there was no excuse for the AG's unwarranted and unexplained delay in advancing his concerns regarding the pending change of control;²⁹ and there was, and is, ample

²⁷ Case No. 2010-00204, *In the Matter of: The Joint Application of PPL Corporation, E.ON AG, E.ON US Investments Corp., E.ON U.S. LLC, Louisville Gas and Electric Company and Kentucky Utilities Company for Approval of an Acquisition of Ownership and Control of Utilities*. In addition to the change of control case, the Companies have also filed refinancing cases in conjunction with the change of control. Case No. 2010-00205, *In the Matter of: The Application of Louisville Gas and Electric Company for an Order Authorizing the Restructure and Refinancing of Unsecured Debt and the Assumption of Obligations and for Amendment of Existing Authority*; Case No. 2010-00206, *In the Matter of: The Application of Kentucky Utilities Company for an Order Authorizing the Restructure and Refinancing of Unsecured Debt and the Assumption of Obligations and for Amendment of Existing Authority*.

²⁸ Case Nos. 2009-00548 and 2009-00549, June 8, 2010 Order at 3.


²⁹ *Id.* at 4.

precedent for the concurrent review of rate proceedings and change of control cases.³⁰ In his renewed Motion, the AG could only attempt to rebut this first ground for denial. Although the AG has had the benefit of cross-examining the Companies' witnesses, and was afforded the opportunity to provide supplemental direct testimony, the Motion provides no additional legal or evidentiary support for the extraordinary remedy he again seeks.

WHEREFORE, Kentucky Utilities Company and Louisville Gas and Electric Company respectfully request the Commission to deny the Attorney General's Renewed Motion to Dismiss.

Dated: July 6, 2010

Respectfully submitted,



Kendrick R. Riggs

Deborah T. Eversole
W. Duncan Crosby III
Stoll Keenon Ogden PLLC
2000 PNC Plaza
500 West Jefferson Street
Louisville, Kentucky 40202-2828
Telephone: (502) 333-6000

Robert M. Watt III
Monica H. Braun
Stoll Keenon Ogden PLLC
300 West Vine Street
Lexington, Kentucky 40507-1801
Telephone: (859) 231-3000

Allyson K. Sturgeon
Senior Corporate Counsel
E.ON U.S. LLC
220 West Main Street
Louisville, Kentucky 40202
Telephone: (502) 627-2088

Counsel for Louisville Gas and Electric
Company and Kentucky Utilities Company

³⁰ *Id.* at 4-5.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the above and foregoing Joint Response was served by first class United States mail, postage prepaid, to the following persons on the 6th day of July, 2010:

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

Michael L. Kurtz
David F. Boehm
Boehm, Kurtz & Lowry
36 East Seventh Street, Suite 1510
Cincinnati, OH 45202

Lisa Kilkelly
Eileen Ordover
Legal Aid Society
416 W. Muhammad Ali Blvd., Suite 300
Louisville, KY 40202

Gardner F. Gillespie
Dominic F. Perella
Hogan Lovells US LLP
555 Thirteenth Street, N.W.
Washington, DC 20004

Holly Rachel Smith
Hitt Business Center
3803 Rectortown Rd.
Marshall, VA 20115

Robert A. Ganton
Regulatory Law Office
U.S. Army Legal Services Agency
901 N. Stuart Street, Suite 525
Arlington, VA 22203-1837

David C. Brown
Stites & Harbison PLLC
400 West Market Street, Suite 1800
Louisville, KY 40202-3352

Iris G. Skidmore
Bates & Skidmore
415 W. Main Street, Suite 2
Frankfort, KY 40601

Laurence J. Zielke
Zielke Law Firm, PLLC
1250 Meidinger Tower
Louisville, KY 40202

Carroll M. Redford III
Miller, Griffin & Marks, PSC
271 W. Short St., Ste. 600
Lexington, KY 40507

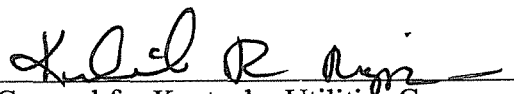
James T. Selecky
BAI Consulting
16690 Swingley Ridge Road, Suite 140
Chesterfield, MO 63017

Steven A. Edwards, Esq.
Administrative Law Division
Office of Staff Judge Advocate
1310 Third Avenue Room 215
Fort Knox, KY 40121-5000

Tom FitzGerald
Liz D. Edmondson
Kentucky Resources Council, Inc.
P.O. Box 1070
Frankfort, KY 40602

Kimberly S. McCann
William H. Jones, Jr.
VanAntwerp, Monge, Jones, Edwards
& McCann, LLP
1544 Winchester Avenue, 5th Floor
Ashland, KY 41101

Matthew R. Malone
William H. May, II
Hurt, Crosbie & May PLLC
The Equus Building
127 West Main Street
Lexington, KY 40507


Counsel for Kentucky Utilities Company
and Louisville Gas and Electric Company