



CASE NO. 2010-00237

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June 14, 2010

**HAND DELIVERED**

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

RECEIVED

JUN 14 2010

PUBLIC SERVICE  
COMMISSION

**RE: Application of Kentucky Utilities Company and Louisville Gas and Electric Company to Transfer Control of Certain Transmission Functions**  
Case No. 2009-00427

Dear Mr. DeRouen:

Enclosed please find and accept for filing the original and ten copies of Kentucky Utilities Company's and Louisville Gas and Electric Company's Joint Motions to Rescind Final Order, Withdraw Application, and Issue Declaratory Order 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

JUN 14 2010

PUBLIC SERVICE  
COMMISSION

2010-00237

CASE NO. 2009-00427 *RCJ*

In the Matter of:

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

**JOINT MOTIONS TO RESCIND FINAL ORDER,  
WITHDRAW APPLICATION, AND ISSUE DECLARATORY ORDER**

Kentucky Utilities Company ("KU") and Louisville Gas and Electric Company ("LG&E") (collectively, "Companies") hereby move the Kentucky Public Service Commission ("Commission") to rescind its February 2, 2010 Final Order in this proceeding, which approved a transfer to the Companies of Independent Transmission Organization ("ITO") functions performed the Southwest Power Pool, Inc. ("SPP"). The Companies further move the Commission to allow the Companies to withdraw their October 30, 2009 Application in this proceeding. Finally, the Companies move the Commission to issue a declaratory order determining that no further Commission approval is required for the Companies to maintain SPP as their ITO, pursuant to the terms set out herein and essentially as previously approved in Case No. 2005-00471.<sup>1</sup> As grounds for their motions, the Companies state that certain conditions justifying the Companies' Application in this case, and the Commission's Final Order approving that Application, no longer obtain, as discussed below.

**I. History of SPP's Role as the Companies' ITO.**

On July 6, 2006, the Commission approved the transfer of certain transmission control functions from the Companies to the Tennessee Valley Authority ("TVA") and SPP under KRS

<sup>1</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).

278.218 in Case No. 2005-00471.<sup>2</sup> In particular, the Commission approved the Companies' request that TVA become the Companies' reliability coordinator and that SPP become the Companies' ITO.

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; schedule transmission reservations; 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.<sup>3</sup> Allocating the settlement amount across the 42 months of ITO services to which it was meant to apply, the Companies currently pay approximately \$4 million per year for SPP's ITO services, which is the total amount for such services reflected in the Companies' test years to set base electric rates in their currently pending rate cases.<sup>4</sup>

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 continue

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<sup>2</sup> *Id.*

<sup>3</sup> Southwest Power Pool, Inc., Docket Nos. EC06-4-000; EC06-4-001; ER06-20-000; ER06-20-001; and ER06-20-009; 130 FERC ¶ 61,003; Letter Order (Jan. 5, 2010). On April 24, 2009, SPP notified FERC of a dispute under the ITO Agreement regarding compensation for additional services provided by SPP pursuant to Order No. 890, *et seq.* Following the Companies' response to SPP's April 24 notice, the matter was referred to settlement proceedings. As a result of extensive negotiations, the parties were able to settle the dispute, submitting the settlement agreement to FERC on October 19, 2009. FERC approved the settlement agreement by a letter order dated Jan. 5, 2010.

<sup>4</sup> *In the Matter of Application of Kentucky Utilities Company for an Adjustment of Base Rates*, Case No. 2009-00548; *In the Matter of Application of Louisville Gas and Electric Company for an Adjustment of Its Electric and Gas Base Rates*, Case No. 2009-00549.

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

Following the verbal notice from SPP in July 2009, the Companies sought out alternative providers of ITO services by issuing a Request for Information (“RFI”) to 10 potential providers. 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.

In their October 30, 2009 Application in this proceeding, the Companies proposed to reassign to the Companies the ITO functions then (and now) delegated to SPP.<sup>5</sup> By its final order in this proceeding, dated February 2, 2010, the Commission approved the transfer of functional control of the Companies’ transmission assets from SPP to the Companies. The Commission’s order recognized that FERC approval would be necessary to effect the proposed transfer, and required the Companies to file with the Commission “the final order issued by FERC concerning the Joint Applicants’ request to reacquire functional control of their ITO functions.”<sup>6</sup>

Also on October 30, 2009, the Companies filed an application with FERC seeking approval of the same transfer of control from SPP to the Companies.<sup>7</sup> That application has met with significant opposition: a number of parties intervened in that proceeding and submitted protests to the Companies’ proposal.<sup>8</sup> The parties who have protested the Companies’ FERC

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<sup>5</sup> Although the Companies served courtesy copies of their Application in this proceeding on the Attorney General and the Kentucky Industrial Utility Customers, Inc., neither sought to intervene.

<sup>6</sup> *In the Matter of Application of Kentucky Utilities Company and Louisville Gas and Electric Company to Transfer Control of Certain Transmission Functions*, Case No. 2009-00427, Order at 4 (Feb. 2, 2010).

<sup>7</sup> *E.ON U.S. LLC*, Docket Nos. ER10-191-000 and EC06-4-003, Application (Oct. 30, 2009).

<sup>8</sup> *See, e.g., E.ON U.S. LLC*, Docket Nos. ER10-191-000 and EC06-4-003, Motion to Intervene, Protest, and Motion to Reject Filing as Deficient of Kentucky Municipals (Nov. 20, 2009).

application continue to oppose the Companies' proposal, primarily on the assertion that the Companies would exercise vertical market power and fail to administer impartially the Companies' OATT.<sup>9</sup>

On May 13, 2010, FERC issued a letter to the Companies asking what affect, if any, the proposed PPL Corporation ("PPL") acquisition of E.ON U.S. LLC ("EUS") would have on the Companies' FERC application for the Companies to self-provide ITO services.<sup>10</sup> The Companies are filing a letter with FERC today stating that the proposed PPL acquisition has and will have no effect on the merits of the Companies' application.

Nonetheless, because of the ongoing intervenor opposition to the Companies' proposal to transfer ITO functions from SPP to the Companies, the procedural progress to date, and the approaching expiration of the SPP contract, the Companies have determined that their self-provision approach is no longer reasonably achievable without unacceptable delay and uncertainty. Therefore, the Companies are also stating in their letter to FERC being filed today that they intend to withdraw their FERC application in favor of continuing to receive ITO services from SPP as described below. Under the circumstances, keeping SPP as the Companies' ITO is a currently pragmatic means of complying with FERC's transmission independence requirements and providing the FERC intervenors, several of which are Kentucky municipalities, assurance that the Companies' OATTs will be impartially administered.

## **II. Terms of the Draft ITO Agreement and Proposed Accounting Treatment.**

In the interest of obtaining ITO services from a well-established provider under the circumstances, and given the prevailing market conditions, the Companies contacted SPP and

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<sup>9</sup> See *id.*

<sup>10</sup> *E.ON U.S. LLC*, Docket Nos. ER10-191-000 and EC06-4-003, Letter order requesting E.ON U.S. LLC to provide additional information to assist the Commission in processing their application (May 13, 2010).

began negotiations for SPP to continue as the Companies' ITO. SPP has agreed, subject to the finalization of the revised contract. Although a revised contract between the Companies and SPP is not yet final, its tentative principal terms provide that SPP will continue to serve as the Companies' ITO for two years beginning on September 1, 2010 (the current contract's initial term will expire on August 31, 2010), for a total compensation of \$8 million per year (\$3 million up-front annual payment, \$416,667 per month). The new agreement will not cause SPP to have more functional control of the Companies' transmission system than it currently has under the authority of the Commission's July 6, 2006 order in Case No. 2005-00471.<sup>11</sup> The Companies will file the final contract with the Commission in this proceeding when it becomes available. It is anticipated the new agreement will be completed no later than July 15, 2010.

The Companies recognize that the payments to SPP under the proposed contract are higher than those the Companies currently make to SPP for the same services. But because the Companies are currently unable to go forward with the self-provision approach, and because the expiration of the current SPP contract is approaching, continuing with SPP, a Commission-approved provider of ITO services, is the most practical approach the Companies can pursue at this time. To be sure, non-compliance with FERC's transmission independence requirements is not an option. That notwithstanding, the Companies acknowledge that granting the Companies' requested motions cannot be construed in any future rate proceeding as approval for ratemaking purposes of the cost of the Companies' decision to continue with SPP as their ITO services provider.

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<sup>11</sup> The Commission approved the amount of control presently vested in SPP as the Companies' ITO in *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).

To attempt to mitigate the future cost of complying with FERC transmission independence requirements, the Companies will continue to study and seek out other means of compliance to implement at the termination of the proposed two-year SPP contract, including the self-provide option and services from other qualified ITO providers. If the market for this kind of service develops, additional providers of such services may be available and willing to compete to provide such services in the future.

**III. The Companies Respectfully Request the Commission to Rescind Its February 2, 2010 Final Order in this Proceeding, and Allow the Companies to Withdraw their Application Herein.**

The Companies respectfully move the Commission to rescind its February 2, 2010 Final Order and to allow the Companies to withdraw their Application in this proceeding as moot. Such an approach would be consistent with Commission precedent. For example, the Commission recently allowed the Companies to withdraw their application as moot in Case No. 2009-00353 after the Companies terminated the wind power contracts that were the subject matter of the proceeding.<sup>12</sup> In an earlier case, the Commission rescinded a previous order authorizing a city to purchase all of the assets of a small sewer utility after a certain condition precedent to the sale did not obtain (i.e., adequate financing) by the date the acquisition was required to close.<sup>13</sup> Just as in the two above-cited Commission orders recognized that certain conditions had to obtain for an order or application not to be moot, so the Final Order in this proceeding recognized that FERC approval of the proposed functional control transfer from SPP

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<sup>12</sup> *In the Matter of Application of Louisville Gas and Electric Company and Kentucky Utilities Company for Approval of Purchased Power Agreements and Recovery of Associated Costs*, Case No. 2009-00353, Order (April 9, 2010).

<sup>13</sup> *In the Matter of a Joint Application of the City of Minor Lane Heights, a Municipal Corporation of the Fifth Class Situated in Jefferson County, Kentucky, and Calvert Investments, Inc., a Regulated Private Utility Corporation, etc.*, Case No. 8936, Order at 2 (Nov. 2, 1984).

to the Companies would be necessary to effect the transfer.<sup>14</sup> Because FERC has not issued that approval to date, and because the Companies are going to withdraw their FERC application concerning the transfer, both the Commission's Final Order and the Companies' Application are now moot, and the former should be rescinded and the latter withdrawn.

**IV. The Companies Respectfully Request the Commission to Declare that No Further Commission Approval Is Necessary for SPP to Continue as the Companies' ITO.**

The Companies' requested relief in the preceding motions would result in SPP's remaining the Companies' ITO, just as it is today. No change in functional control of any of the Companies' utility assets would occur. Consequently, the Companies further move the Commission to issue a declaratory order stating that the Companies do not require additional Commission approval to enter into the proposed draft contract with SPP. 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 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.

As described in Section I above, the Commission approved the transfer of functional control necessary for SPP to serve as the Companies' ITO in its July 6, 2006 order in Case No. 2005-00471 pursuant to KRS 278.218. To date, SPP has performed reliably as the Companies'

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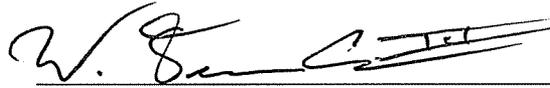
<sup>14</sup> *In the Matter of Application of Kentucky Utilities Company and Louisville Gas and Electric Company to Transfer Control of Certain Transmission Functions*, Case No. 2009-00427, Order at 4 (Feb. 2, 2010).

ITO. Although the Commission approved a transfer of functional control from SPP back to the Companies in its Final Order in this proceeding, no actual functional control has been returned to the Companies: SPP is performing all ITO functions for the Companies today. Therefore, the Companies are not seeking by their motions to transfer functional control from one party to another, but rather to maintain the Commission-approved status quo. To the Companies' knowledge and understanding, nothing in KRS 278.218 requires Commission approval for a party already in control of utility assets to keep such control. The Companies therefore respectfully request that, in addition to granting the Companies' motions to rescind the Commission's Final Order and to withdraw the Companies' Application, the Commission issue an order declaring that no further Commission approval or authority is required for SPP to remain the Companies' ITO under the proposed new contract.

**WHEREFORE**, the Companies respectfully move the Commission to rescind its February 2, 2010 Final Order, to allow the Companies to withdraw their October 30, 2009 Application, and to issue a declaratory order determining that no Commission approval is required for SPP to remain the Companies' the ITO, acknowledging that granting the Companies' requested motions cannot be construed in any future rate proceeding as approval for ratemaking purposes of the cost of the Companies' decision to continue with SPP as their ITO services provider.

Dated: June 14, 2010

Respectfully submitted,



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Louisville Gas and Electric Company

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct courtesy copy of the foregoing Motions was served on the following persons on the 14th day of June 2010, by U.S. mail, postage prepaid:

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