

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matters of:

ELECTRONIC APPLICATION OF KENTUCKY	)	CASE NO.
UTILITIES COMPANY FOR AN ADJUSTMENT OF	)	2018-00294
ITS ELECTRIC RATES	)	

ELECTRONIC APPLICATION OF LOUISVILLE	)	
GAS AND ELECTRIC COMPANY FOR AN	)	CASE NO.
ADJUSTMENT OF ITS ELECTRIC AND GAS	)	2018-00295
RATES	)	

ORDER

On March 31, 2023, Louisville Gas and Electric Company and Kentucky Utilities Company (jointly, LG&E/KU) filed a joint motion requesting relief from an annual reporting requirement regarding updates of a study related to a potential legal merger of LG&E/KU into a single legal entity.

LEGAL STANDARD

KRS 278.390 provides that every order entered by the Commission continues in force until the expiration of time, if any, named in the order, or until revoked or modified by the Commission, unless the order is suspended or vacated, in whole or in part, by order of a court.

In ordering paragraph 7 of the April 30, 2019 Order issued in this proceeding, the Commission required LG&E/KU to file annual updates to its legal merger study.

## MOTION

In their motion, LG&E/KU requested to be relived from the requirement to file annual updates to a study conducted by LG&E/KU regarding the potential legal merger of LG&E/KU into a single entity. LG&E/KU set forth the history of the filing requirement and noted that the initial legal merger study and the annual updates all concluded that LG&E/KU “already operate as an integrated company in virtually all operational areas” and that the cost of a legal merger exceeds the benefits of a legal merger.<sup>1</sup> LG&E/KU further noted that, in the June 30, 2021 Order in Case Nos. 2020-00349 and 2020-00350,<sup>2</sup> the Commission critiqued the seriousness and robustness of the analysis in the annual updates. In response, LG&E/KU issued a request for proposals and selected PricewaterhouseCoopers Advisory Services LLC (PWC) to conduct an independent study of potential legal mergers. After conducting an analysis, PWC concluded that the one-time incremental costs of a legal merger would be \$22.1 million and the estimated annual net savings would be \$2.3 million and that future tax and financial considerations from a merger would not result in material financial impacts and would result in complexities and risks arising from the need for new financial instructions and securing IRS private letter rulings.<sup>3</sup>

As a basis for the motion, LG&E/KU pointed to the above as support for the assertion that legal mergers could adversely impact customer rates because merger costs were ten

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<sup>1</sup> LG&E/KU’s Motion for Relief (filed Mar. 31, 2023), unnumbered pages 1–2.

<sup>2</sup> Case No. 2020-00349, *Electronic Application of Kentucky Utilities Company for an Adjustment of Its Electric Rates, A Certificate of Public Convenience and Necessity to Deploy Advanced Metering Infrastructure, Approval of Certain Regulatory and Accounting Treatments, and Establishment of a One-Year Surcredit* (Ky. PSC June 30, 2021); Case No. 2020-00350, *Electronic Application of Louisville Gas and Electric Company for an Adjustment of Its Electric and Gas Rates, A Certificate of Public Convenience and Necessity to Deploy Advanced Metering Infrastructure, Approval of Certain Regulatory and Accounting Treatments, and Establishment of a One-Year Surcredit* (Ky. PSC June 30, 2021).

<sup>3</sup> LG&E/KU Summary of Potential Legal Merger of Utilities Internal Study (filed Mar. 31, 2023).

times greater than merger benefits. LG&E/KU further asserted that legal merger would require a rate case to harmonize the rates and, as approved in Case Nos. 2020-00349 and 2020-00350, LG&E/KU was subject to a rate-case stay out until summer 2025 for rates effective in January 2026.

In requesting to terminate the annual updates of the legal merger study, LG&E/KU maintained that they would continue to pursue opportunities to operate more efficiently, including continuing to consider whether a legal merger was economic in the future.

### DISCUSSION AND FINDINGS

In the June 30, 2021 Order in Case Nos. 2020-00349 and 2020-00350, the Commission stated that it was not convinced that LG&E/KU conducted an impartial or serious analysis of a potential merger, pointing to LG&E/KU's failure to address the impact its legal status has on others and the numerous savings its legal merger would create, both to LG&E's customers and stakeholders. As an example, the Commission noted that, in its legal merger study updates, LG&E/KU failed to address the duplication of costs to ratepayers and stress on regulators' resources from filing what is effectively two distinct rate cases every few years.

Although LG&E/KU obtained a potential legal merger study from PWC, the Commission remains concerned that LG&E/KU is not fully considering the impact its legal status has on others and savings from a legal merger. In its study, PWC developed the following evaluative questions to guide the analysis:<sup>4</sup>

- Has the Company captured synergies typically realized in utility mergers?

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<sup>4</sup> PWC's LG&E/KU Legal Merger Assessment (filed Mar. 31, 2022), at 3.

- Is it cost effective to maintain two separate utilities and a separate service company to serve the two utilities where the holding company no longer engages in unregulated activity and has no plans to do so in the future?
- Is it cost effective to transfer the employees and corporate functions of LKS, KU and LG&E to the new merged utility, allowing a single operation, albeit under separate marketing brands as desired for a time?
- What is the potential impact to the current and future financing structure under a combined utility?
- What tax considerations need to be addressed under a single utility?
- What are the implications to customer rates and future rate cases from a combined utility?

In the report, PWC concluded that there would be “minimal” cost benefits from a legal merger because LG&E/KU “have had many years to obtain efficiencies in the regulatory area, many reports and proceedings are already submitted on a combined basis.”<sup>5</sup> PWC stated:

The obvious benefit of one rate case versus two is also diminished as the Company currently files both LG&E and KU electric rate cases at the same time. Although there are separate revenue requirement filings, the timelines, supporting witnesses, approach/methodologies, supporting rate schedules, data requests, and witness cross-examination processes are generally the same for each entity.<sup>6</sup>

This statement overlooks the impact on the duplication of costs to ratepayers and stress on regulators’ resources because revenue requirement filings and supporting financial data, data request responses, and resulting rate schedules are unique to each of the two utilities and thus remain the equivalent of two general rate cases. Based upon

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<sup>5</sup> PWC’s LG&E/KU Legal Merger Assessment at 47.

<sup>6</sup> PWC’s LG&E/KU Legal Merger Assessment at 47.

a review of the filing, the Commission concludes that the PWC analysis failed to address the issues raised by the Commission in Case Nos. 2020-00349 and 2020-00350.

Based upon the motion and case record, the Commission is not persuaded that LG&E/KU established good cause to cease filing legal merger study updates because LG&E/KU has not addressed issues raised by the Commission and has not filed an unbiased review of the benefits and costs. However, the Commission concludes that, for reasons of efficiency and improved quality of analysis, LG&E/KU should cease filing annual updates and, instead, file legal merger study updates that fully consider all issues raised by the Commission as part of an application for a general rate adjustment filed pursuant to KRS 278.190 and 807 KAR 5:001, Section 16. The requirement to file a legal merger study update in conjunction with filing a general rate adjustment application should continue until further Order of the Commission. By reducing the frequency of filing and requiring the study to be filed with general rate case applications, the Commission expects that LG&E/KU will devote sufficient time and resources to conduct a robust analysis that reflects an unbiased review of the benefits and costs of a legal merger, and that address those qualitative risks continually identified by LG&E/KU as a hurdle to legal merger.

IT IS THEREFORE ORDERED that:

1. LG&E/KU's motion to be relieved of filing annual updates of a legal merger study is granted in part and denied in part.
2. LG&E/KU's request to be relieved of filing in this proceeding legal merger studies on an annual basis is granted.

3. LG&E/KU's request to be relieved of filing a legal merger study update is denied.

4. LG&E/KU shall file a legal merger study update with each application LG&E/KU files for a general rate adjustment pursuant to KRS 278.190 and 807 KAR 5:001, Section 16, until further Order of the Commission.

5. Legal merger study updates filed in the future shall reflect an unbiased review of the benefits and costs of a legal merger and address those qualitative risks that continually identified by LG&E/KU as a hurdle to legal merger.

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PUBLIC SERVICE COMMISSION

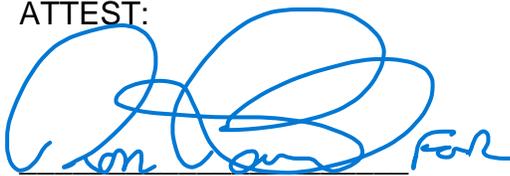
  
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