CONFIDENTIAL

COMMONWEALTH OF KENTUCKY
**PUBLIC SERVICE COMMISSION**
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(502) 564-3940

October 25, 1989

Hon. Kendrick Riggs
Middleton and Reutlinger
2500 Brown and Williamson Tower
Louisville, Kentucky 40202-3410

Dear Kendrick:

This letter is written in response to Louisville Gas and Electric Company's request, dated October 18, 1989, for the Commission's opinion on the following question: Whether in connection with LG&E's proposed reorganization and formation of a holding company, LG&E needs the Commission approval pursuant to KRS 278.020 to merge its wholly owned Indiana subsidiary, Ohio Valley Transmission Corporation (OVTC), into LG&E. The Commission Staff is of the opinion that the merger of OVTC into LG&E under the circumstances as they are represented in LG&E's request does not require prior Commission approval pursuant to KRS 278.020.

OVTC is and has always been a wholly owned subsidiary of LG&E. OVTC presently owns and operates approximately 83 structure miles in Indiana of high voltage transmission lines connecting the electrical systems of Cincinnati Gas and Electric Company, Public Service Company of Indiana and Indiana-Kentucky Electric Corporation. Additionally, all the electric transmission and distribution facilities owned by OVTC are located in Indiana. OVTC does not sell electricity to any end-user in Kentucky or to any third parties for sale to an end-user in Kentucky.

KRS 278.020(4) states, in part, that: "No person under the jurisdiction of the commission shall acquire or transfer ownership of or control, or the right to control, any utility, by sale of assets, transfer of stock or otherwise, or abandon the same, without prior approval of the commission." Since OVTC is a wholly owned subsidiary of LG&E this statute is not applicable. LG&E has owned 100% of OVTC stock and there will be no change in the essential operation of LG&E after the merger. Therefore, there will be no transfer of ownership or control by transfer of stock.

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Furthermore, KRS 278.020(5) which requires Commission approval upon any entity acquiring control of "any utility furnishing utility service in this state. . ." is not applicable because OVTC does not furnish utility service in the state of Kentucky.

In summary, the proposed merger of OVTC into LG&E does not require prior Commission approval pursuant to Chapter 278 of the Kentucky Revised Statutes. The Commission would appreciate being advised when this transaction is completed. As you note in your letter, once LG&E begins to operate the Indiana properties as a division of LG&E it will be necessary to use separate accounting procedures to record its cost. This letter and your letter requesting the opinion dated October 18, 1989 will be kept in the Commission's confidential file until LG&E files its proposed reorganization with the Commission. If you should need any further information, please do not hesitate to contact me at the number below.

Sincerely,

Susan Mastin

Susan N. Mastin
General Counsel
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October 18, 1989



Mr. Claude Rhorer
Acting Executive Director
Public Service Commission
730 Schenkel Lane
P.O. Box 615
Frankfort, Kentucky 40601

Dear Mr. Rhorer:

Louisville Gas and Electric Company is requesting the Commission's opinion on the following question: Whether in connection with LG&E's proposed reorganization and formation of a holding company, LG&E needs the Commission's approval pursuant to Chapter 278 of the Kentucky Revised Statutes to merge its wholly owned Indiana subsidiary, Ohio Valley Transmission Corporation, into LG&E. As set out herein, counsel for LG&E believes that the Commission's approval is not required under the statutes, but asks that the Commission provide a written response to this question before the application to form a holding company is filed.

The formation of the holding company would be accomplished through a mandatory exchange of stock by which LG&E shareholders will exchange their shares in LG&E for shares in the holding company on a one-for-one basis. In addition to the mandatory exchange of stock, LG&E will take steps to reorganize its corporate structure, including the merger of OVTC into LG&E, in order to allow the holding company to claim an exemption under the Public Utility Holding Company Act of 1935.

As background information, Ohio Valley Transmission Corporation ("Ohio Valley") was incorporated in Indiana in 1930 in order to construct and operate a transmission line interconnecting the facilities of Louisville Gas and Electric Company and Cincinnati Gas and Electric Company. Ohio Valley is and has always been a wholly owned subsidiary of LG&E. Ohio

Valley presently owns and operates approximately 83 structure miles in Indiana of high voltage transmission lines connecting the electrical systems of Cincinnati Gas and Electric Company, Public Service Company of Indiana and Indiana-Kentucky Electric Corporation. A portion of the lines also serves as a system tie line. Ohio Valley's gas facilities consist of a portion of one underground storage field extending under the Ohio River from Kentucky to Indiana. Ohio Valley owns no gas transmission or distribution mains and does not service any retail customers in Indiana.

All the electric transmission and distribution facilities owned by Ohio Valley are located in Indiana. Ohio Valley does not serve any ultimate consumers but operates the foregoing properties for the purpose of LG&E's system operations. Ohio Valley does not sell electricity to any end-users in Kentucky or to any third parties for sale to an end-user in Kentucky. Ohio Valley's revenues, income, plants and assets are less in each case than 1% of the revenues, income, plants and assets of LG&E. After the merger of LG&E and Ohio Valley, LG&E will operate the Indiana properties as a division of LG&E and use separate accounting procedures to record its costs. Considering the size of Ohio Valley's total operation in contrast to that of LG&E and the fact that Ohio Valley operations are totally within the state of Indiana, LG&E believes that the merger of Ohio Valley and LG&E as between a wholly owned subsidiary and a parent company will have no noticeable effect on the total operations of LG&E.

LG&E submits that Commission approval of the merger of OVTC into LG&E under these circumstances is not required under Chapter 278 of the Kentucky Revised Statutes. KRS 278.020(5) requires Commission approval where an entity shall acquire control of "any utility furnishing utility service in this state...." As set out above, Ohio Valley does not furnish utility service in the state of Kentucky. Ohio Valley is subject to the jurisdiction of the Indiana Utility Regulatory Commission as to certain utility facilities, accounts, and in other respects.

Further, Subsection 4 of KRS 278.020 does not require Commission approval of the proposed merger. KRS 278.020(4) requires Commission approval where there is any acquisition or transfer of ownership or control of any utilities through the sale of assets or transfer of stock. The authority of the Commission to approve the sale or transfer of stock of a utility system was recognized in the case of <u>Public Service Commission v. Cities of SouthGate</u>, Ky., 268 S.W.2d 19 (1954). The socalled SouthGate doctrine recognized the implied power of the Commission to approve the sale of any utility system because the Commission had the responsibility to determine whether the buyer was "ready, willing and able to continue providing adequate service" to the public.

However, the facts regarding the merger of LG&E and its wholly owned subsidiary, Ohio Valley, do not present a set of facts requiring the application of the SouthGate doctrine or KRS 278.020(4) and satisfaction of their underlying public policies. There will be no change in the essential operations of LG&E after the merger of LG&E and Ohio Valley that would call for a determination of whether LG&E is able to continue to provide adequate service. Furthermore, ever since Ohio Valley was incorporated in 1930 LG&E has owned 100% of Ohio Valley's stock; therefore, there will not be any acquisition or transfer of ownership or control, because Ohio Valley has always been a wholly owned subsidiary of LG&E.

For these reasons and the deminimis nature of the merger, LG&E believes that the Commission's approval of the merger of Ohio Valley into LG&E is not necessary under the Kentucky statutes. The Company recognizes, however, that in the absence of these facts or given other circumstances, the approval of a merger by the Commission could be required under KRS 278.020. If the Commission or Commission Staff needs any additional information before responding to this letter, please do not hesitate to contact me. LG&E asks that the Commission respond to this question before the end of October, as the Company intends to file its formal application for formation of the holding company in early November, 1989.

Because this topic involves information which has not been publicly disclosed, could affect the price of LG&E's stock, and has been treated confidentially within LG&E, LG&E would request that the Commission afford the contents of this letter confidential treatment and protection from public disclosure.

Thank you for your assistance.

Yours very truly,

Kendrick R. Riggs

Kendrick R. Riggs
Counsel for Louisville Gas and Electric Company

KRR/pjs