

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF LOUISVILLE GAS AND)
ELECTRIC COMPANY FOR AN ORDER)
APPROVING AN AGREEMENT AND PLAN OF) CASE NO. 89-374
EXCHANGE AND TO CARRY OUT CERTAIN)
TRANSACTIONS IN CONNECTION THEREWITH)

O R D E R

On December 18, 1989, Louisville Gas and Electric Company ("LG&E") filed an application with this Commission seeking approval of its proposed reorganization. Specifically, LG&E requested in its application that the Commission approve the execution of the proposed Agreement and Plan of Exchange by LG&E and the performance by it of actions reasonably necessary or appropriate to carry out the same, and that the Commission find that the proposed holding company ("Holding Company"), if constituted as contemplated in the Agreement, will not be a utility as defined in KRS 278.010(3). LG&E proposes to reorganize by creating Holding Company which will issue its common stock to the holders of LG&E's common stock in exchange for the shares of LG&E's common stock pursuant to the provisions of KRS 271.11-020. Each share of LG&E's common stock will be exchanged for one share of Holding Company's common stock. After the transaction has been consummated, Holding Company will own all the outstanding common stock of LG&E and the former holders of LG&E's common stock will own all the outstanding common stock of Holding Company. LG&E's

preferred stock and debt obligations will not be converted or otherwise exchanged in the reorganization.

In connection with the implementation of the proposed reorganization, LG&E's wholly-owned subsidiary, the Ohio Valley Transmission Corporation ("OVTC"), will be merged into LG&E. LG&E has sought the approval of this merger from the Indiana Utility Regulatory Commission ("Indiana URC"), which has jurisdiction over OVTC; an interim order approving the merger was issued by the Indiana URC on March 28, 1990. Approval of the merger, as well as the reorganization, was sought from the Federal Energy Regulatory Commission ("FERC"). LG&E received FERC approval in an order issued March 15, 1990. In addition, LG&E's ownership share in the Ohio Valley Electric Corporation ("OVEC") will be reduced from 7 percent to under 5 percent.

LG&E stated that it has identified the need to increase the growth potential of the corporation and to contribute to the economic development of its service area, while ensuring that its utility consumers will not be exposed to any risks which may be associated with an unregulated business. LG&E believes that the holding company structure allows it to meet these needs. LG&E has claimed that investments by Holding Company would result in an infusion of new capital into the service area, which should lead to additional jobs, a strengthened economy, and an increase in sales of gas and electricity within the service territory, which in turn would directly benefit LG&E and its customers. LG&E has stated that the holding company structure, by segregating the non-utility businesses into corporations that will not be subsid-

aries of LG&E, would provide the flexibility needed to achieve successful assimilation of new businesses and insulate the customers of LG&E and the holders of LG&E's public securities from the risks of the non-utility businesses. The liabilities incurred by those subsidiaries would not constitute liabilities of LG&E. Further, this segregation of non-utility business would provide clear delineation of regulatory jurisdictions. LG&E has claimed that the holding company structure would enhance the flexibility of LG&E to adjust to increased competition in the electric and gas industries. Through the development of non-utility subsidiaries, Holding Company would be able to diversify its sources of income. LG&E has stated that the holding company structure would help LG&E maintain a balanced capital structure, providing the means for adjustments to be made in LG&E's equity position to assure favorable rates for LG&E's customers while also preserving the capital strength of the overall organization of which LG&E will be a part. LG&E has claimed that additional financing alternatives would be made possible since Holding Company could finance through the issuance of additional common stock or other securities and LG&E could raise funds through its own debt and preferred stock issuances. LG&E has stated that the exchange of stock would not in any way affect the financial, technical, and managerial abilities of LG&E to provide high quality, reliable utility service, and that approval of the proposed reorganization would not result in any increase or change in LG&E's rates or charges. Although LG&E presently has not identified any investment activities for Holding Company, it is expected that Holding

Company will only develop or acquire other businesses which are closely related to LG&E's core business of providing gas and electric service.

The Utility and Rate Intervention Division of the Office of the Attorney General filed a petition with the Commission to intervene in this proceeding. This petition was granted by the Commission. No party requested a public hearing and, consequently, the Commission's decision is based upon LG&E's application and its responses to information requests.

REGULATORY CONCERNS

The Commission agrees that the competitive environment is changing in the electric and gas industries. LG&E should be allowed to position itself to meet the changes and have the ability to meet increased competition for investor funds and investment opportunities. In considering LG&E's proposed plan of reorganization, the Commission has certain concerns and objectives with regard to the protection of ratepayer interests. The Commission's concerns relate to three areas. First, the protection of utility resources should be provided. Second, the Commission should be able to adequately monitor the corporate activities of LG&E, Holding Company, and any other subsidiaries established by Holding Company. Third, certain reporting requirements should be established to assist the Commission in its monitoring activities. The following discussion expresses in greater detail some of the Commission's concerns and the conditions and requirements which the Commission believes are necessary in order to ensure that the interests of the ratepayers

are protected. This discussion is not intended to be all inclusive. Furthermore, due to the fact that many aspects of LG&E's business activities under reorganization are not known, and cannot be reasonably anticipated at this time, the Commission will maintain flexibility in its plans and procedures for monitoring Holding Company's and LG&E's activities.

PROTECTION OF UTILITY RESOURCES

Accounting Procedures and Controls

One of the primary concerns facing the Commission with the issue of diversification is the potential which will exist for cross-subsidization of non-regulated activities by the regulated company. Cross-subsidization can occur through misallocation of common or joint costs, or through improper pricing of intercompany transactions. The process of ensuring that cross-subsidization does not occur will result in added regulatory oversight by the Commission and will require increased focus on cost identification by LG&E. Three major areas which can be readily identified for potential cross-subsidization are accounting, cost allocation methodologies, and pricing of intercompany transactions. As the expansion of diversified activities occurs, the proper accounting and cost allocation methodologies will become even more important.

LG&E has developed a Financial Management Information System ("FMIS") to handle the task of properly identifying costs for internal and external reporting purposes. LG&E made a presentation of FMIS at an informal conference held on April 16, 1990. As described by LG&E, FMIS is an automated responsibility accounting system designed to track and record expenditures in a

manner that will allow LG&E to maintain its books and records in a manner required for external financial reporting purposes and to retrieve financial data in the various forms required by management and the Commission. The accounting procedures are important in separating utility and non-utility costs. Inasmuch as the original entries for expenditures are made at this level, this aspect of the separation process is the most elementary since most costs are direct charges and assignments to utility and non-utility operations can be accomplished through accounting controls and procedures which specify the treatment of certain elements of cost. The accounting and reporting system used by LG&E should be adequate to provide assurance that directly assignable utility and non-utility costs are accounted for properly and that reports on the utility and non-utility operations are accurately presented.

Adequate supporting documentation of costs for Commission review should be maintained whether those costs are generated at the LG&E level or Holding Company level. While LG&E has experience in accounting and assigning utility costs, it has had only minimal experience with regard to accounting for Holding Company costs, and time constraints in processing this case have made it impractical for the Commission to conduct an in-depth review of the accounting system. Therefore, the approval of the application in this case is not to be construed as approval of the cost assignment procedures or of the proper method of separation of charges into utility and non-utility operations.

While the accounting system utilized by LG&E to separate direct charges appears to be relatively straightforward, the separation of costs through allocation methodologies is more subjective in nature and will require greater scrutiny to ensure that cross-subsidization does not occur. As a part of this proceeding, Staff and other parties were given a presentation of FMIS. However, detailed documentation has not been reviewed in this proceeding as to the allocation methodologies and procedures to be used by LG&E to separate utility and non-utility operations under the reorganization. Consequently, the Commission makes no findings herein as to the adequacy of LG&E's cost allocation procedures.

It is within the cost allocation procedures that one of the greatest areas of potential misclassifications of utility and non-utility costs exists. Since LG&E's operations are monopolistic and subject to regulation with regard to reasonable costs and earnings, it may be beneficial to the non-regulated Holding Company to shift costs to the regulated operations to make pricing more competitive for the market-oriented business activities and provide greater returns to stockholders. LG&E has provided assurances that cross-subsidization will not exist. However, diversification is in the public interest only to the extent that utility operations will not be adversely affected. Therefore, an essential ingredient to the reorganization plan should be the establishment of reasonable cost allocation procedures to achieve this objective. A major priority in the reorganization process should be the development and implementation of cost allocation

procedures that will accomplish the objective of preventing cross-subsidization. In future proceedings, it will be the responsibility of LG&E to show that its allocation methodologies have not resulted in any cross-subsidization. As a part of that showing, LG&E should be prepared to fully disclose all allocated costs, the portion allocated to each subsidiary of Holding Company, complete details of the methods of allocation, and justification for the amount and the method.

The issue of cross-subsidization through pricing of inter-company transactions also relates to the pricing of goods and services between holding company affiliates as well as the establishment of prices for transfer of assets of the utility. At present, other than participating in economic development, Holding Company has not identified specific activities into which it will diversify. Therefore, there are no definite plans for subsidiaries to transact business with LG&E. However, these transactions are a possibility which should be realistically anticipated. Regarding the sale or transfer of assets, LG&E has introduced a cost or market standard in its policies and guidelines for inter-company transactions to protect against cross-subsidization of non-utility activities by LG&E's customers. These policies and guidelines are explained in LG&E's Corporate Policies and Guidelines for Intercompany Transactions.

LG&E has stated that the sale or transfer of assets will be settled by cost or fair market value, whichever is greater, when a sale or transfer is made by LG&E to a related company, and by cost or fair market value, whichever is lower, when a sale or transfer

is made by a related company to LG&E. In all instances, LG&E and each related company shall comply with LG&E's Corporate Policies and Guidelines for Intercompany Transactions. Additionally, in accordance with these policies and guidelines, LG&E and each related company shall employ accounting and other procedures and controls related to sales, transfers, and cost allocations to ensure and facilitate full review by the Commission and to protect against cross-subsidization of non-utility activities by LG&E's customers. These accounting and other procedures and controls will be reviewed periodically, as well as in all subsequent LG&E general rate cases and in other LG&E proceedings as appropriate or necessary. Whenever LG&E modifies or amends these policies and guidelines, LG&E shall file with the Commission the currently effective document indicating the modifications or amendments, the effective date of such, and the accounting period(s) affected.

Diversion of Management Talent

The Commission is aware that it will be in the best interest of Holding Company and its shareholders to secure the most skilled management available. While LG&E will certainly share in the benefits of a well-managed corporate structure, the Commission is concerned that diversion of management talent away from LG&E to Holding Company and its affiliates could present a threat to the continued efficient operation of LG&E and, therefore, would not be in the best interests of the ratepayers. LG&E has stated that it intends to maintain its present management team which will, at all times, be dedicated to utility activities so as to ensure that

utility operations are not neglected as a result of non-utility activities. The continuity of the management of LG&E is important to the ratepayer. Furthermore, the Commission notes LG&E's commitment that utility operations will not be neglected and will be assigned the same priority and level of expertise as in the past. The Commission will monitor, on an on-going basis, the composition of LG&E's management team.

Financial Resources

There is a concern that Holding Company may divert LG&E's financial resources to benefit the activities of non-regulated affiliates at the expense of utility ratepayers. The Commission's objective is to minimize the degree of this risk which arises from Holding Company's control of LG&E's financial resources.

The Commission has primarily focused on four main concerns regarding the insulation of LG&E's financial resources from increased risks and the exposure of LG&E to increased costs of capital stemming from those risks.

First, the Commission is concerned that attempts by Holding Company to adjust LG&E's capital structure could adversely affect LG&E's cost of capital and financial integrity. LG&E indicated in its application that the holding company structure would help LG&E maintain a balanced capital structure, through the payment of dividends by LG&E to Holding Company and the investment of funds in LG&E by Holding Company. Consistent with LG&E's stated intention, the Commission believes that Holding Company should assist LG&E in maintaining a balanced capital structure.

Second, the Commission is concerned that the dividend policy of LG&E could adversely affect its financing requirements and capabilities. The Commission is convinced that LG&E's dividend policy must not adversely affect the utility's ratepayers. LG&E has acknowledged that the payment of dividends to Holding Company will be a mechanism by which Holding Company will adjust LG&E's equity position. Through these adjustments to retained earnings, LG&E contends Holding Company will help LG&E maintain an acceptable cost of capital and thereby favorable rates for utility customers.

However, since retained earnings are a form of internal financing, the dividend decision can significantly affect LG&E's external financing requirements. In other words, if LG&E needs capital, the larger the cash dividend paid to Holding Company, the greater the amount of capital that must be raised externally through borrowing or through the public sale of preferred stock or, in the extreme case, through the sale of common equity. This external financing requirement could adversely affect LG&E's cost of capital. Therefore, LG&E through its board of directors has the responsibility to use its dividend policy consistent with preserving the financial strength of the utility.

Third, the Commission is concerned that an unwillingness on the part of Holding Company to provide necessary capital to LG&E could severely impair LG&E's ability to provide utility services, as is its statutory obligation. LG&E has stated that since it will continue to issue its own preferred stock and debt as needed, capital attraction by LG&E will not be affected by the operations

of Holding Company's non-utility affiliates. Furthermore, LG&E has stated that, if at any time Holding Company is, for whatever reason, unable to provide needed capital to LG&E, LG&E's board of directors will have access to markets to obtain needed common equity. Any action or decision by the board of directors of Holding Company, including the unwillingness to provide adequate capital to LG&E, that, in any way, impairs LG&E's ability to provide adequate, efficient, and reasonable utility service, will be in direct violation of KRS 278.030(2).

Fourth, the Commission is concerned that the guaranteeing of the debt of non-utility affiliates, as well as that of Holding Company, by LG&E could unnecessarily place in jeopardy the financial position and resources of LG&E. LG&E has stated that it will provide financing for Holding Company only through the payment of dividends from shareholder-owned funds and will not guarantee credit for its affiliates without Commission approval. LG&E, pursuant to KRS 278.300, is prohibited from guaranteeing debt without prior Commission approval.

For rate-making purposes, the Commission has jurisdiction over LG&E's capital structure, financing, and cost of capital. Through this authority, the Commission can protect utility customers from the financial effect resulting from non-utility activities. The Commission approves all new debt, preferred stock, and common equity issued by LG&E which prevents significant deviations from the approved capital structure, which is the key to ensuring that LG&E maintains its financial integrity. In addition to that financial control, the Commission has authority

to approve any guarantee of debt obligations by LG&E for Holding Company and its affiliates. Under the proposed reorganization, the Commission will continue to determine for rate-making purposes LG&E's capital structure and its return on common equity.

Employer/Purchaser of Last Resort

There is a risk, under the proposed reorganization, that LG&E could be used as the "dumping ground" for employees, assets and products associated with failed or troubled affiliate ventures. The Commission is concerned that LG&E's strength and stability could give the management of Holding Company or its affiliates the false impression that it can be the employer or purchaser of last resort.

LG&E has assured the Commission that its management is committed to maintaining the highest caliber of managerial, technical, and other capabilities and to ensure that materials, supplies, and services are acquired in the most case effective manner. LG&E has indicated that in order for it to be successful in future periods, such a commitment is necessary. LG&E has acknowledged that the Commission will maintain complete oversight of utility operations and will be able to ensure that inappropriate transfers or purchases from an affiliate are not made. The commission intends to assume the monitoring role for LG&E's activities to assure the ratepayers that "dumping" has not occurred.

Divestiture

As part of its investigation of LG&E's proposed reorganization, the Commission felt obligated to consider the worst case situation of a failed or failing unregulated affiliate

and its affect on the operations of LG&E. In response to a question in the Commission's Information Request, LG&E indicated that, upon the determination that an investment in any subsidiary is not likely to be profitable, not in accordance with its corporate objectives, or negatively affecting its ability to raise capital, Holding Company will undertake divestiture. The response further stated that, because Holding Company intends for LG&E to remain its core business, it will not divest itself of LG&E. The Commission notes that at this point in LG&E's reorganization process, it may appear unnecessary to consider the option of divestiture. However, if future circumstances dictate that the only reasonable course of action is divestiture, including that of the utility, it will be the responsibility of LG&E's management, as those charged with the well-being of the dominant subsidiary, to ensure that divestiture takes place.

MONITORING THE HOLDING COMPANY AND THE SUBSIDIARIES

In the course of the Commission's investigation of the regulatory safeguards necessary in cases of utility reorganization, it has become obvious that the most basic and indispensable requirement is open access to all books, records, and personnel of the holding company and each subsidiary. It is absolutely essential that the Commission has the ability to pursue any problems perceived in the operations of the utility through access to the books and records to the holding company and affiliates. During formal proceedings, the Commission may also choose to cross-examine personnel of the unregulated entities, in the event it

appears necessary, to effectively monitor the relationship between LG&E and its parent and affiliates.

In its application, LG&E stated that it will provide the Commission access to the books and records of Holding Company and its affiliates and subsidiaries. The Commission will have access, as necessary in the exercise of its statutory duties, to the books and records of Holding Company and its other affiliates and subsidiaries as the books and records may be related to transactions with LG&E. If the subsidiaries or affiliates of Holding Company do not transact business with LG&E, LG&E will verify, if necessary, the lack of such transactions through independent sources.

Further, in order to ensure the full protection of ratepayer interests, the Commission considers it necessary to monitor significant transfers of utility assets, business ventures of Holding Company, and other major transactions. LG&E has indicated that it has no present plans to transfer any assets nor has it identified non-utility activities in which Holding Company will participate other than in economic development. Since there is the potential that these and future actions may have a significant impact on the ratepayers, the Commission should review them at the time they are completed.

REPORTING REQUIREMENTS

In order for the Commission to effectively monitor the activities of LG&E, Holding Company and its related subsidiaries, and to ensure ratepayer protection, certain additional reports

shall be required of LG&E and shall be furnished to the Commission on an annual, periodic, or other basis as appropriate.

Periodic Reports

LG&E has agreed to and should furnish the Commission with the annual financial statements of Holding Company, including consolidating adjustments of Holding Company and its subsidiaries with a brief explanation of each adjustment and all periodic reports filed with the Securities and Exchange Commission. Concerning the filing of the annual balance sheets and income statements of any non-consolidated subsidiaries of Holding Company, LG&E indicated in its response to the Commission's Information Request that it would follow the Corporate Policies and Guidelines for Intercompany Transactions. Those policies require all subsidiaries to prepare and have available monthly and annual financial information required to compile financial statements and to comply with other reporting requirements. The Commission believes that these financial statements for the non-consolidated subsidiaries are important in order for the Commission to adequately exercise its monitoring role. Thus, the annual balance sheets and income statements of any non-consolidated subsidiary of Holding Company should be furnished to the Commission.

LG&E has agreed to and should file on a quarterly basis a report detailing LG&E's proportionate share of Holding Company's total operating revenues, operating and maintenance expenses, and number of employees.

LG&E has agreed to and should furnish the following reports on an annual basis:

1. A general description of the nature of intercompany transactions with specific identification of major transactions, and a description of the basis upon which cost allocations and transfer pricing have been established. Included in this report should be a discussion indicating the use of the cost or market standard for the sale or transfer of assets, the allocation factors used and the procedures used to determine these factors if they are different from the procedures used in prior years.

2. A report which identifies professional personnel transferred from LG&E to Holding Company or any of the non-utility subsidiaries. Included should be a brief description of the duties performed while employed by LG&E and to be performed subsequent to transfer.

Special Reports

Other special reports should be furnished to the Commission as necessary. At the present time, LG&E has no plans to transfer utility assets, nor has it identified any investment activities of Holding Company, nor has it proposed any other transactions. However, the Commission is of the opinion that it is realistic to anticipate that such actions will occur in the future and that certain reports will be required for the Commission to effectively monitor these activities. LG&E has agreed to file any contracts or other agreements concerning the transfer of such assets or the pricing of intercompany transactions with the Commission at the time the transfer occurs and in accordance with the Corporate

Policies and Guidelines for Intercompany Transactions.

In response to the Commission's Information Request, LG&E indicated it would be willing to provide the following additional information:

1. The quarterly filing of the number of employees of Holding Company and each subsidiary on the basis of payroll assignment.

2. The years of service at LG&E and the salaries of professional employees transferred from LG&E to Holding Company or its subsidiaries.

3. Cost allocation factors that would be in use.

4. Summaries of any cost allocation studies conducted and the basis for the methods used to determine the cost allocation in effect.

5. The methods used to update or revise the cost allocation factors in use.

6. Articles of Incorporation and bylaws of affiliated companies which would be in businesses related to the electric or gas industry or that would be doing business with LG&E.

7. Articles of Incorporation of affiliated companies involved in non-related business.

LG&E should furnish the Commission this additional information upon the following time table:

Item 1 - Quarterly

Item 2 - Annually, in conjunction with the annual transfer of employees report.

Item 3 - At a minimum annually, or more frequently when there have been significant changes.

Item 4 - As such studies are performed and completed.

Item 5 - At a minimum annually, more frequently as needed.

Items 6 and 7 - As the situation occurs.

FINDINGS

The Commission, after consideration of the evidence of record and being advised, finds that:

1. LG&E will, after the consummation of the transactions contemplated in its proposed Agreement and Plan of Exchange, continue to have the financial, technical, and managerial abilities to provide reasonable utility services, within the meaning of KRS 278.020(4).

2. Holding Company will not, by reason of its ownership of all outstanding shares of common stock of LG&E, be a utility as defined in KRS 278.010(3) as it will not own, control, operate, or manage any facilities used in connection with the generation, production, transmission, and distribution of electricity to or for the public.

3. With the conditions and assurances discussed in this Order, the proposed reorganization of LG&E as a subsidiary of the non-regulated Holding Company is in the public interest and should be approved.

4. The reorganization of LG&E as approved in the Order should not result in an increase or change in any of LG&E's rates or charges.

5. The reorganization of LG&E should have no adverse impact whatsoever on the utility or its ratepayers.

6. The interests of LG&E company and its ratepayers should be given first priority in the business decisions of Holding Company.

7. LG&E should maintain adequate supporting documentation of all costs, regardless of their origin.

8. LG&E should develop, implement, and maintain cost allocation procedures that will prevent cross-subsidization.

9. The pricing of intercompany transactions should not result in an adverse impact on the ratepayers of the utility.

10. In future rate proceedings, LG&E should be able to show that no cross-subsidization has occurred by disclosing all allocated costs, the portion allocated to each segment of Holding Company, complete details of the methods of allocation, and justification for the amount and the method.

11. LG&E and each related company shall comply with LG&E's Corporate Policies and Guidelines for Intercompany Transactions.

12. Any amendment to LG&E's policies and guidelines should be filed with this Commission, along with its effective date and the accounting periods affected.

13. LG&E should avoid a diversion of management talent that would adversely impact the utility and ratepayers.

14. LG&E should maintain a balanced capital structure.

15. LG&E's board of directors should not allow the dividend policy to adversely affect its financial integrity nor the rates of LG&E's customers.

16. Pursuant to KRS 278.030(2), LG&E's obligation to provide utility service must not be impaired by Holding Company.

17. Pursuant to KRS 278.300, LG&E is restricted from guaranteeing the debt of Holding Company and its affiliates.

18. LG&E should take whatever protective measures necessary, including divestiture, to ensure that LG&E maintains its present level of services and operations.

19. Holding Company and its subsidiaries should provide open access to all books, records, and personnel as discussed in this Order.

20. LG&E should file the details of significant transfers of utility assets, business ventures of Holding Company, and other major transactions as they are completed.

21. LG&E should provide the reports and other information as specifically set out in the Reporting Requirements Section of this Order.

22. LG&E should provide copies of final approval orders received from FERC, the Indiana URC, and the Internal Revenue Service, as well as the details concerning its ownership reduction in OVEC.

IT IS THEREFORE ORDERED that:

1. LG&E is authorized to execute its proposed Agreement and Plan of Exchange and perform the actions reasonably necessary or appropriate to accomplish it.

2. The reorganization of LG&E as a regulated subsidiary of the non-regulated Holding Company is hereby approved.

3. LG&E shall comply with all reporting requirements contained herein.

4. Access to the books and records of Holding Company and its other affiliates and subsidiaries shall be provided as described herein.

5. LG&E shall file with the Commission a copy of the Agreement and Plan of Exchange within 30 days of its execution by LG&E and Holding Company, and shall promptly notify the Commission in writing of the consummation of the Plan of Exchange under the Agreement.

6. LG&E shall file copies of the final approval orders received from FERC, the Indiana URC, and the Internal Revenue Service within 30 days of receipt, and shall provide the details concerning the ownership reduction in OVEC within 30 days of finalization.

Done at Frankfort, Kentucky, this 25th day of May, 1990.

By the Commission

ATTEST:


Executive Director