

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JOINT APPLICATION OF LOUISVILLE GAS AND	)	
ELECTRIC COMPANY, METRO HUMAN NEEDS	)	
ALLIANCE, PEOPLE ORGANIZED AND WORKING	)	
FOR ENERGY REFORM, KENTUCKY	)	CASE NO.
ASSOCIATION FOR COMMUNITY ACTION, AND	)	2001-323
JEFFERSON COUNTY GOVERNMENT FOR THE	)	
ESTABLISHMENT OF A HOME ENERGY	)	
ASSISTANCE PROGRAM	)	

O R D E R

On October 2, 2001, the Louisville Gas and Electric Company (“LG&E”), Metro Human Needs Alliance (“MHNA”), People Organized and Working for Energy Reform (“POWER”), the Kentucky Association for Community Action, and Jefferson County Government (collectively “Joint Applicants”) filed an application pursuant to KRS 278.285<sup>1</sup> seeking Commission approval of a Home Energy Assistance Program (“HEA”). The Joint Applicants proposed that the HEA revisions to LG&E’s DSM tariffs become effective on November 1, 2001. In its October 31, 2001 Order, the Commission suspended the HEA revisions for 2 months through December 31, 2001.

---

<sup>1</sup> KRS 278.285 provides for the approval and recovery of costs associated with utility demand-side management (“DSM”) plans. The statute was amended during the 2001 Regular Session of the General Assembly by House Bill 305, which included home energy assistance programs as DSM programs. House Bill 305 was signed into law by the Governor on March 15, 2001 and became effective June 21, 2001.

Robert L. Madison requested and was granted intervention in this case. A public hearing was held at the Commission's offices on December 6, 2001. The parties filed briefs on December 14, 2001. All information requested has been provided.

#### DESCRIPTION OF THE HEA PROPOSAL

The HEA would provide funding for two residential low-income assistance programs: the All Seasons Assurance Plan ("ASAP") and the Emergency Utility Assistance Plan ("EUA"). The Joint Applicants have proposed that the funds for the HEA be generated by a \$.46 per meter per month charge, to be placed on all residential electric and gas meters.<sup>2</sup> The Joint Applicants have proposed that the HEA be in operation for 5 years, and estimate that the \$.46 per meter charge will generate between \$3.4 million and \$3.7 million annually.<sup>3</sup> The Joint Applicants have also proposed that the \$.46 per meter charge become a separate factor included as part of LG&E's existing DSM Cost Recovery tariff. While the HEA charge will be a per meter charge, the remaining DSM Cost Recovery tariff components will continue to be stated as a factor applied to energy usage. The HEA meter charge would not be shown separately on LG&E electric and gas bills, but would be part of the existing DSM line item.

---

<sup>2</sup> LG&E customers who receive both electric and gas service would pay \$.92 per month, while electric only or gas only customers would pay \$.46 per month.

<sup>3</sup> Application, Executive Summary, at 7.

ASAP is a year-round, monthly utility subsidy program created and operated by the Affordable Energy Corporation (“AEC”).<sup>4</sup> ASAP uses a “modified fixed credit” model that considers the ASAP participant’s income and energy usage when calculating the monthly subsidy payment. The subsidy does not fluctuate with changes in energy use, and the participant is responsible for paying the remainder of the utility bill. ASAP also provides for the repayment of the participant’s arrearages, which are split evenly between the participant and ASAP and repaid over a 12-month period. ASAP currently has 885 participants<sup>5</sup> and AEC has one full-time employee and one part-time employee. The Joint Applicants have estimated the number of participants in ASAP in Year 1 to be 2,624 and to increase to 4,000 participants by Year 5.<sup>6</sup> AEC intends to hire three additional full-time employees to handle the increased number of participants. The Joint Applicants have proposed that ASAP receive the majority of the HEA funds. Since 1997, ASAP has been funded as the result of a settlement agreement that resolved litigation over rate issues involving LG&E’s Trimble County Unit No. 1. That settlement agreement provided \$900,000 annually for a utility assistance program for a period of 5 years.

The EUA is a new program and is designed to provide year-round emergency subsidies to meet crisis situations not addressed by existing winter programs. The EUA

---

<sup>4</sup> AEC initially operated a “percentage of income” assistance plan, also known as ASAP, on a pilot basis during 1993 and 1994. AEC modified the pilot program during 1995 and 1996, which resulted in the “modified fixed credit” model that has been in use since 1997.

<sup>5</sup> Application, Appendix 7, “Ramp-Up of ASAP,” as of November 1, 2001.

<sup>6</sup> Id. at 32.

will target households that qualify under at least one of the following criteria: it is in temporary crisis; it is not eligible for other programs; existing subsidies are insufficient to maintain its service; or it has an application for long-term subsidies pending. Community Winterhelp, Inc. (“Winterhelp”) will be the administrative agent and program operator for the EUA. The Joint Applicants have estimated the number of participants in EUA for Year 1 to be 4,800, and to decrease to 900 participants by Year 5,<sup>7</sup> due to the expected reduction in need for this type of assistance. To provide centralized coordination and reporting, Winterhelp intends to hire a full-time program manager.

The Joint Applicants propose to establish a Consultative Board for HEA. The proposal calls for an eight-member board, made up of representatives from LG&E, MHNA, POWER, Jefferson County Department of Human Services, AEC, Winterhelp, the Louisville-Jefferson County Community Action Agency. In addition, the board will include one member at large.<sup>8</sup> The Consultative Board will establish policy; provide general oversight; monitor implementation; review contracts between LG&E, AEC, and Winterhelp; establish evaluation parameters for ASAP and EUA; select an independent evaluator; and perform annual reviews of HEA fund balances. Program operation decisions for ASAP and EUA will remain with the governing boards of AEC and Winterhelp, respectively.

#### INTERVENOR POSITION AND PUBLIC COMMENTS

Mr. Madison is the only intervenor in this proceeding. He contends the HEA as proposed contains numerous problems and should be rejected, but if such a program is

---

<sup>7</sup> Id. at 43.

<sup>8</sup> Id., Executive Summary, at 5.

approved, he recommends it be significantly modified. Mr. Madison advocates that the charge on residential combined electric and gas customers should be no more than \$.05 per month and \$.025 per month if the customer is an electric only or gas only customer.<sup>9</sup> Among the concerns Mr. Madison raises about the proposed HEA are:

- the lack of a formula to allocate HEA funds to each of the seventeen counties served by LG&E;
- the lack of a survey of all residential customers to determine their support for the HEA;
- the lack of any matching support to the HEA funds from LG&E's shareholders;
- the need to make this a pilot program, in effect for 1 year;
- the need to disclose the HEA charge as a separate line item on the LG&E bill;
- the Consultative Board as proposed should be rejected because it lacks representation from all counties served by LG&E and several of the proposed representatives have conflicts of interest; and
- the establishment of one HEA fund for both gas and electric subsidies has the potential of cross-subsidization between gas and electric customers.<sup>10</sup>

There has been a significant amount of public interest expressed during this proceeding. Many individuals and organizations have contacted the Commission through letters, phone calls, and postcards, to express their support of or opposition to

---

<sup>9</sup> Madison Testimony at 3 of 10 and Madison Post Hearing Brief at 13 of 34.

<sup>10</sup> Id. at 3 through 7 of 10.

the proposed HEA.<sup>11</sup> In addition, during the public hearing several individuals offered comments in support of and in opposition to the proposed HEA.

### EVALUATION AND ANALYSIS

After reviewing the proposal from the Joint Applicants, the Commission has identified several concerns that are discussed below.

#### Involvement of the Customer Representatives

KRS 278.285 requires that the Commission consider the extent to which customer representatives and the Office of the Attorney General (“AG”) have been involved in the development of the home energy assistance plan and the amount of support for the plan by each participant. The statute does not require unanimous support for the plan as a condition for Commission approval.<sup>12</sup>

LG&E indicated that shortly after the DSM statute was amended earlier this year, it commenced to meet with the low-income customer representatives to discuss a residential low-income assistance program. Although LG&E currently has in place a number of DSM programs that were developed in conjunction with the AG and customer representatives who reflect income and non-income-based interests, the AG and the non-income-based customer representatives were excluded from the discussions that led to the proposal in this case. In fact, LG&E and the low-income customer representatives developed this proposal among themselves and only then submitted it

---

<sup>11</sup> As of December 20, 2001, the Commission received: 24 letters from various organizations and individuals, with 14 supporting the proposal and 10 opposing; 297 phone calls from individuals, with 109 supporting the proposal and 188 opposing; and 729 preprinted postcards distributed by AEC and signed by individuals supporting the proposal.

<sup>12</sup> KRS 278.285(1)(f).

to the AG for comment and suggestions. Although the AG received notice of this case, he declined to participate and has issued no public statement of position on the proposed low-income assistance programs.

The Joint Applicants argue in their brief that they have satisfied the requirements of KRS 278.285(1)(f), based on the AG's opportunity to review and comment on the proposed low-income assistance programs. Although there was some general testimony by LG&E at the hearing on the involvement of the AG, the Joint Applicants' brief attempts to supplement the evidentiary record by revealing, for the first time, some of the specific details related to their meeting with the AG and his response to the proposed low-income assistance programs.<sup>13</sup>

The Commission notes that it is not bound by the technical rules of legal evidence. See KRS 278.310. However, fundamental rights of due process are violated when a party who participated in an evidentiary hearing and was afforded a full opportunity to present evidence subsequently attempts to utilize a post-hearing brief to present additional evidence. Consequently, the Commission will not consider that portion of the Joint Applicants' brief, beginning with the last paragraph on page 3 through and including the first full paragraph on page 4, which discloses the details of the Joint Applicants' negotiations with the AG.

In his brief, Mr. Madison contends that the Commission must determine as a threshold issue whether the involvement of the AG meets the requirements of

---

<sup>13</sup> Joint Applicants Post Hearing Brief at 3 and 4.

KRS 278.285(1)(f). Mr. Madison argues that if this threshold is not met, the Commission should reject the HEA.<sup>14</sup>

Based on the evidence of record, the Commission finds that the AG has not been substantially involved in the process used by the Joint Applicants to develop the HEA. The AG was not included by the Joint Applicants in the negotiations that led to the development of the HEA. The HEA was developed and then submitted to the AG for his review and comment.<sup>15</sup> Under these facts, the proposed HEA does not satisfy the intent or spirit of KRS 278.285(1)(f). The Commission also notes that the AG was not invited to have a seat on the proposed Consultative Board of the HEA.

One of the AG's statutory roles is to function as the representative of all customers. The exclusion of the AG from the initial negotiations to develop the HEA resulted in the proposal being developed by the groups that would specifically benefit from it: LG&E and the low-income customer advocacy groups. However, the AG's exclusion from the development of the HEA does not, as suggested by Mr. Madison, mandate its rejection. Rather, it is one factor to be considered by the Commission in determining whether the DSM programs, including the new rate schedules, are reasonable.

#### Composition and Function of the Proposed Consultative Board

As discussed previously, the proposed Consultative Board for the HEA has numerous duties and responsibilities. However, the Joint Applicants insist the role of

---

<sup>14</sup> Madison Post Hearing Brief at 2 of 34.

<sup>15</sup> Response to Madison Data Request dated November 10, 2001, Item 9.



the Consultative Board is primarily advisory in nature.<sup>16</sup> Further, the Joint Applicants contend that although the program operators, AEC and Winterhelp, have seats on this Consultative Board, neither program operator will be voting on matters before the Consultative Board pertaining to their respective programs.<sup>17</sup> The Joint Applicants believe that the organizations serving on the Consultative Board represent a “diverse group of community and government organizations that are knowledgeable in establishing criteria and identifying need.”<sup>18</sup>

Mr. Madison contends that there are serious conflicts of interest within the proposed Consultative Board. He believes that if a Consultative Board is to be established, it should be composed of representatives from all counties that LG&E serves and that those representatives should not have conflicts of interest.<sup>19</sup>

The Commission disagrees with the Joint Applicants’ contention that the Consultative Board’s role is primarily advisory. Its duties and responsibilities include establishing policies, reviewing contracts, establishing evaluation parameters, and selecting evaluators. These functions clearly define this board as administrative. The Commission also shares Mr. Madison’s concerns about the organizations represented on the Consultative Board and the potential conflicts of interest. As noted earlier in this Order, the AG was not provided a seat on the Consultative Board. The Commission

---

<sup>16</sup> Response to the Commission Staff’s Data Request dated November 13, 2001, Items 2 and 3.

<sup>17</sup> Id., Item 2(b).

<sup>18</sup> Joint Applicants Post Hearing Brief at 13.

<sup>19</sup> Madison Testimony at 5 of 10.

considers this to be a significant flaw in the composition of this board. Of the eight proposed members, two members are the proposed program operators, AEC and Winterhelp. It is inappropriate for the program operators to have seats on the Consultative Board. Regardless of the safeguards the Joint Applicants have offered to avoid potential conflicts of interest involving the program operators, there is the appearance of a conflict of interest. To ensure confidence in the administration of the HEA, the program operators should not be members of the Consultative Board.

The remaining composition of the Consultative Board is also of concern. Four of the eight members are to be representatives either of low-income customer advocacy groups or of organizations that regularly assist low-income customers. Even without the program operators on this Board, the Consultative Board is still too focused only on the interests of low-income customer groups. The Commission finds it essential for a program like HEA to have a board that includes representatives of all residential customers, both those benefiting from the HEA as well as those being charged for the costs of the HEA.

Finally, the Commission is concerned that the proposed Consultative Board appears to have, or could be perceived to have, a bias toward Jefferson County. The inclusion of at least one representative from areas outside Jefferson County is necessary to eliminate any perception that the HEA exists only for the benefit of LG&E low-income customers residing in Jefferson County.

#### Need for Two Program Operators

Under the proposed HEA, AEC will administer the funds allocated to ASAP, while Winterhelp will administer the funds allocated to EUA. The Joint Applicants argue that

this separation is necessary because the types of assistance provided under each program are designed to address different needs. The Joint Applicants also argue that the history and experience of AEC and Winterhelp justify having separate program operators.<sup>20</sup>

Mr. Madison contends that the structure for administering the HEA is duplicative, complicated, and increases the administrative costs. Mr. Madison argues that LG&E could perform many of the administrative functions.<sup>21</sup>

The Commission is not persuaded by the Joint Applicants' arguments that there must be two program operators. Low-income customers in need of assistance are not likely to know the type of assistance they are eligible to receive or to which agency, AEC or Winterhelp, they should apply. Having both programs administered by the same operator will eliminate this confusion and simplify the process for participating customers. A review of the administrative expenses budgeted for the two programs also indicates some duplication. Under the proposed plan, Winterhelp would need to establish an administrative structure that would duplicate the structure already existing at AEC. Since AEC already has an administrative structure in place, the Commission finds that AEC is in a better position than Winterhelp to administer both ASAP and EUA.

The Commission also finds that many administrative functions for the HEA could be more efficiently handled by LG&E, rather than AEC. For example, since LG&E already has customer usage and billing data, it would seem reasonable for LG&E to calculate the level of assistance to be provided under ASAP, rather than submitting this

---

<sup>20</sup> Joint Applicants Post Hearing Brief at 9-13.

<sup>21</sup> Madison Post Hearing Brief at 30 of 34.

data to AEC for AEC to calculate the benefits. The Joint Applicants have failed to demonstrate that they have thoroughly analyzed all administrative functions to determine the most efficient, lowest cost structure to administer the proposed HEA.

#### Separation of HEA Fund into Gas and Electric Portions

As proposed, the HEA funds are collected from gas and electric customers and then commingled and treated as a single pool of money to be allocated to ASAP and EUA. While the funds are collected separately from gas and electric customers, there is no tracking of the funds generated from gas and electric customers. Thus, funds collected from gas customers can be used to pay electric bills, while funds collected from electric customers can be used to pay gas bills. The Joint Applicants oppose splitting the HEA funds into separate gas and electric funds, arguing that it would increase the administrative costs for the program operators and for LG&E without “achieving much more accuracy due to most customers being combined service customers.”<sup>22</sup> In their brief, the Joint Applicants suggest that if the Commission is concerned about the lack of separate funds, they would agree to implement allocation factors to fund the HEA in direct proportion to the revenue generated, on an annual basis.<sup>23</sup>

Mr. Madison argues that the establishment of one HEA fund will result in cross-subsidization between gas and electric customers. He contends that the Commission has criticized LG&E in previous cases for not maintaining an adequate separation of

---

<sup>22</sup> Response to the Commission Staff’s Data Request dated November 13, 2001, Item 1(c)(2).

<sup>23</sup> Joint Applicants Post Hearing Brief at 20.

gas and electric activities.<sup>24</sup> Mr. Madison advocates that the funds raised from gas customers should be used exclusively for gas assistance and the funds raised from electric customers should be used exclusively for electric assistance.<sup>25</sup>

The Commission finds that under KRS 278.030(1), as well as 278.170(1), the HEA funds must be separated into gas and electric components. As the Commission has previously noted in LG&E cases, as a combined utility LG&E is actually two separate, regulated utilities. The fact that currently the majority of ASAP participants are combined customers is of no significance.

KRS 278.030(1) mandates that rates be “fair, just and reasonable.” LG&E has separate rates for electric service and gas service, and those rates were designed expressly to recover only the costs to provide electric service and gas service, respectively. LG&E’s rates will not pass muster under the “fair, just and reasonable” standards if electric rates are increased to pay gas costs, or if gas rates are increased to pay electric costs. In addition, KRS 278.170(1) prohibits a utility from “subjecting any person to any unreasonable prejudice or disadvantage.” To increase electric rates and allow those funds to be applied against gas costs would unduly discriminate against electric customers in violation of KRS 278.170(1). The result would occur if gas rates are increased to recover electric costs.

Under LG&E’s current proposal, there is no way to verify that the rates paid by electric customers are not being used to pay gas costs. Consequently, LG&E must identify and track not only the source of the HEA funds, but also the use of those funds.

---

<sup>24</sup> Madison Testimony at 7 of 10.

<sup>25</sup> Madison Post Hearing Brief at 4 and 5 of 34.

This tracking is essential to ensure that there is no subsidization between electric and gas rates.

#### LG&E Shareholder Contribution to HEA

Mr. Madison advocates that the shareholders of LG&E should be required to match the funds raised by the HEA per meter charge. He argues that if LG&E thinks the proposed HEA is a good idea, it should be willing to support the program, since the funds will be returning to LG&E in the form of bill payments.<sup>26</sup>

The Joint Applicants argue that House Bill 305, codified at KRS 278.285, provided for a charge to be collected from ratepayers for home energy assistance programs. They further argue that the Commission lacks the statutory authority to compel LG&E to increase its charitable contributions. LG&E notes that it voluntarily gave up a claim to its DSM incentive mechanism for the HEA program, even though such an incentive has been approved for other LG&E DSM programs. In addition, the Joint Applicants note that it will cost LG&E approximately \$100,000 to upgrade its customer information system to implement the changes required for the HEA program. This is a cost that LG&E is willing to bear and will not recover as part of the operating costs of the HEA. However, LG&E states that it will not commit any additional shareholder dollars to support the HEA program.<sup>27</sup>

The Commission is not persuaded by the arguments raised by the Joint Applicants. There is no language in KRS 278.285 that prohibits a utility from contributing to home energy assistance programs. The Joint Applicants in effect argue

---

<sup>26</sup> Madison Testimony at 5 of 10.

<sup>27</sup> Joint Applicants Post Hearing Brief at 18.

that LG&E cannot be required to make charitable contributions. Ironically, LG&E ratepayers have raised the same objection, arguing that the HEA requires them to make charitable contributions.<sup>28</sup> Concerning the DSM incentive mechanism, LG&E voluntarily opted to not request an incentive. Thus, the appropriateness of an incentive for a DSM program that increases, rather than decreases, a utility's revenues has not been explored. Similarly, the estimated cost to modify LG&E's customer information system has not been investigated since it was just filed in the Joint Applicants' post-hearing brief.

The Commission is also troubled by LG&E's declaration that it will not commit any additional shareholder dollars to support the proposed HEA program. As one of the Joint Applicants, LG&E clearly believes there is merit and benefit to the HEA. The Commission reminds LG&E of commitments made in the PowerGen plc ("PowerGen") and E.ON AG ("E.ON") acquisition proceedings. The Commission found that those acquisitions were in the public interest only if the applicants in those cases accepted and agreed to certain commitments and conditions set forth in the approval Orders. One of those commitments was that, "E.ON, PowerGen, and LG&E Energy commit that LG&E and KU shall maintain a substantial level of involvement in community activities,

---

<sup>28</sup> See November 3, 2001 letter from Ms. Hellmann ("I have always assumed that it was my right and my choice to give assistance or donate to a charity, or again my choice not to give. When did it become a law that such giving was no longer my choice but would be charged to me without my consent."); November 13, 2001 letter from Ms. Jeanes ("I have no objection to help for those members of our community who are unable to bear the high cost of heating their homes in winter. However, I have a very strong objection to a law that mandates that I am to make a charitable donation along with my own payment to LG&E."); and December 7, 2001 letter from Mr. Williams ("I am **deeply opposed** to any plan that forces me to donate to a charity.") (Emphasis in original.)

through annual charitable and other contributions, on a level comparable to or greater than the participation levels experienced prior to the date of the merger.”<sup>29</sup> The Joint Applicants have proposed an HEA program that would require ratepayers to pay between \$3.4 million and \$3.7 million annually. For LG&E to forego an incentive and absorb certain operating costs appears to be inconsistent with the commitments it made in those acquisition Orders.

#### Savings Resulting from the HEA Program

The Joint Applicants have identified several benefits and savings accruing to LG&E and its ratepayers through the implementation of the HEA program.<sup>30</sup> However, the Joint Applicants have failed to quantify any of these benefits and savings, claiming that to do so is impossible because each calculation requires a prediction of human behavior.<sup>31</sup> In their brief, the Joint Applicants argue that KRS 278.285 expressly prohibits home energy assistance program proposals from being subjected to a cost/benefit analysis, which has traditionally been performed for other DSM programs. The Joint Applicants argue that the revenues LG&E has foregone by not requesting a DSM incentive on the HEA more than compensate for any potential savings that could

---

<sup>29</sup> Case No. 2001-104, Joint Application for Transfer of Louisville Gas and Electric Company and Kentucky Utilities Company in Accordance with E.ON AG’s Planned Acquisition of PowerGen plc, final Order dated August 6, 2001, Appendix A, page 9, Commitment No. 38. Also See Case No. 2000-095, Joint Application of PowerGen plc, LG&E Energy Corp., Louisville Gas and Electric Company, and Kentucky Utilities Company for Approval of a Merger, final Order dated May 15, 2000, Appendix A, page 8, Commitment No. 3.

<sup>30</sup> Application, ASAP Section, at 29.

<sup>31</sup> Response to the Commission Staff’s Data Request dated November 13, 2001, Item 13.



be quantified from the HEA program. Further, they suggest that non-quantifiable savings that may result from the HEA program will eventually be reflected in LG&E's Earning Sharing Mechanism ("ESM") calculations, and any savings will thus flow to ratepayers through the ESM.<sup>32</sup>

Mr. Madison notes that the Joint Applicants have not identified the cost savings resulting from the HEA program, and suggests that any dollar savings be netted from the cost of the HEA in setting any future HEA costs to ratepayers.<sup>33</sup>

The Commission is not persuaded by the arguments of the Joint Applicants. While it may be difficult to quantify the savings to ratepayers, the Commission finds that the benefits and savings to LG&E can be reasonably estimated. Among the benefits and savings identified by the Joint Applicants are:

- Reduced customer service costs because of decrease in calls to customer service;
- Reduced costs because of reduction in disconnect notices or brown bills;
- Reduced costs because of reduction in disconnects; and
- Increased cash flow because subsidy is paid on accounts at the time the meter is read.

The Joint Applicants have provided no evidence to demonstrate that these benefits and savings to LG&E cannot be estimated.

The Joint Applicants' citations to the prohibition of a cost/benefit analysis for home energy assistance programs are misplaced. At no time in this proceeding has the

---

<sup>32</sup> Joint Applicants Post Hearing Brief at 15-17.

<sup>33</sup> Madison Post Hearing Brief at 29 of 34.

Commission suggested that the HEA program had to pass a cost/benefit analysis. The Commission has not requested the Joint Applicants to perform any of the traditional DSM cost/benefit tests on the proposed HEA program.

The claim by the Joint Applicants that any savings will flow through LG&E's electric ESM is misplaced. First, it is only reasonable for LG&E to recover its net costs for the HEA, since the savings are a direct offset to those costs. Second, any savings resulting in the reduction of LG&E's electric cost of service will be returned to all customer classes, even though all the costs are paid by the residential class. Third, the electric ratepayers receive 40 percent of the savings while LG&E receives 60 percent. Fourth, LG&E retains 100 percent of the savings allocable to the gas operations, since it has no ESM for its gas operations. Finally, KRS 278.285(3) requires the Commission to assign the cost of DSM programs only to the class of customers that benefit from the programs. If only the residential customers are the beneficiaries, then only the residential customers are entitled to the savings.

#### Allocation of HEA Funds to Counties Other Than Jefferson County

Mr. Madison believes the proposed HEA program is flawed in that it does not have a mechanism in place to distribute specific dollars from the HEA funds to the counties in LG&E's service territory where the funds were raised. He contends that the Joint Applicants' "first come, first served" approach discriminates against non-Jefferson County customers in the LG&E service territory. He cites figures that he believes demonstrate that ASAP to date has assisted a disproportionate number of customers in Jefferson County. Mr. Madison also expresses concerns about the allocation of HEA funds between customers in Jefferson County and the city of Louisville. He

recommends that formulas be in place to ensure the HEA funds are appropriately distributed within the LG&E service territory.<sup>34</sup>

While the Commission appreciates the concerns raised by Mr. Madison on this issue, we are not persuaded that his solution is reasonable. Given the relatively low number of LG&E customers in some of the counties outside of Jefferson County, it would not be possible to match the assistance given to customers in a given county with the amount of HEA funds generated from that county. Moreover, the Commission does not agree that the historic customer participation in ASAP demonstrates a bias toward Jefferson County customers. Any analysis of historic participation in ASAP must consider the impact of the decision to limit ASAP payments to the electric portion of energy bills. Finally, the Commission finds no support for Mr. Madison's concerns about the allocation of HEA funds between Jefferson County and the city of Louisville.

However, the Commission is concerned that all eligible customers in the LG&E service territory should have an equal opportunity to apply for assistance from the HEA program. While a "first come, first served" approach may be the only reasonable way to operate the program, steps should be undertaken to ensure that applications from outside Jefferson County are processed just as promptly as those from within Jefferson County. LG&E, AEC, and the Consultative Board must make this a prime consideration in the administration of any HEA program.

#### Customer Support for HEA

Mr. Madison argues that the implementation of the HEA program should be delayed until LG&E surveys all its residential customers to gauge their position on the

---

<sup>34</sup> Madison Post Hearing Brief at 5-8, 13-16, and 33-34 of 34.

HEA. He contends that if a significant approval percentage from residential customers is not achieved, the proposed HEA program should be rejected and LG&E be prohibited from proposing another home energy assistance program for 3 years.<sup>35</sup>

The Joint Applicants did not attempt to survey or gauge the reaction of LG&E's residential customers to the proposed HEA program. They state that they only worked with those groups who were familiar with the needs of low-income customers in the LG&E service territory. They note that no attempt was made to assess the reaction of residential customers, an approach consistent with the handling of all other DSM programs.<sup>36</sup>

The Commission finds no basis to delay implementation of the proposed HEA program until all of LG&E's residential customers are polled on their support for the proposal. However, the Commission does believe that the Joint Applicants should have considered and attempted to gauge customer reaction to the HEA program. While home energy assistance programs are now defined by statute as being a form of DSM, these programs are not the normal DSM offering. Surveying the residential customers could have shown whether there is broad-based support for such a program in the LG&E service territory.

The Commission also notes that AEC saw the need to undertake a lobbying campaign to encourage support for the proposal. The correspondence sent by AEC to current ASAP participants urged them to call the Commission, mail in pre-printed

---

<sup>35</sup> Madison Testimony at 4-5 of 10.

<sup>36</sup> Response to the Commission Staff's Data Request dated November 13, 2001, Item 27.

postcards using suggested reasons for supporting the proposal, and offered to transport participants to the public hearing.<sup>37</sup>

### MODIFIED HEA PROGRAM

The Joint Applicants have placed the Commission in a difficult position. The heating season is upon us, and some assistance to low-income customers will be needed. The Joint Applicants knew that the current \$900,000 per year funding from the Trimble County settlement would run out in early 2002. Since House Bill 305 was signed by the Governor on March 15, 2001, the Joint Applicants had ample time to develop home energy assistance programs and afford the Commission a reasonable time to conduct a review. Unfortunately, the Joint Applicants did not file their HEA program until October 2, 2001. They requested Commission approval in less than 30 days, by November 1, 2001.

Based on the evidence in this record, the Commission will not approve the HEA program as proposed. This Order discusses several concerns that have not been adequately addressed in the proposal. Moreover, the Commission believes the record shows that the Joint Applicants have excluded the AG from the development of the HEA program, an exclusion that is not consistent with the intent of KRS 278.285(1)(f). However, despite the limited involvement of the AG, it is crucial that a low-income assistance program be in place for this heating season. Accordingly, based on the evidence of record, the Commission will approve a modified HEA program, subject to acceptance by LG&E, as discussed below.

---

<sup>37</sup> Response to Information Requested During Hearing Held December 6, 2001, Item 3.

The Commission finds that the HEA program should be approved as a pilot program only, for a 5-month period from January through May 2002. The Commission believes it is reasonable to establish the funding for this pilot program at a level up to \$1,000,000. However, there should be a partnership between LG&E and its ratepayers to assist the low-income residential customers. A partnership is both reasonable and appropriate since the evidence clearly shows benefits to both LG&E and its ratepayers. LG&E will receive a direct financial benefit from the HEA program since all the funds collected, less administrative expenses, will be paid to LG&E. In addition, as LG&E noted, the HEA program will improve LG&E's public image in the community.<sup>38</sup> Accordingly, the Commission finds it appropriate for ratepayers and LG&E's shareholders to contribute equally to the funding. Shareholder contribution will ensure an active oversight of the HEA by LG&E and this should result in improved program efficiencies. This finding is consistent with the Commission's treatment of the Customer Assistance Plan ("CAP") currently operated by Columbia Gas of Kentucky ("Columbia").<sup>39</sup> Under the Columbia CAP, the ratepayer portion of the plan costs is limited to 50 percent of the total. Therefore, the Commission will approve a modified HEA program contingent upon LG&E agreeing to match the amounts generated by ratepayers, up to \$500,000 of the \$1,000,000 fund.

For this pilot program, assuming LG&E's match of ratepayer funds, the Commission will authorize a monthly per meter charge to generate up to \$500,000 from

---

<sup>38</sup> Joint Application at 29.

<sup>39</sup> Case No. 94-179, Notice of Adjustment of Rates by Columbia Gas of Kentucky, Inc. on and after July 1, 1994, final Order dated November 1, 1994.

ratepayers. Based on the number of active meters in the LG&E service territory as of December 10, 2001, this monthly per meter charge will be \$.16 for customers receiving only electric or gas service and \$.32 for combined customers.<sup>40</sup> LG&E should be allowed to charge this per meter rate for bills rendered on and after January 1, 2002 through May 31, 2002. After May 31, 2002, the \$.16 per meter charge and LG&E's matching contribution will end. The \$.16 per meter charge will be shown as a separate line item on all residential customers' bills, and will be identified as "Home Energy Assistance Fund."

While the Commission strongly believes that the HEA program should separately track the collection and disbursement of electric and gas funds, we will not require the Joint Applicants to make the separation during this pilot program. However, during the pilot program LG&E and AEC should maintain records separately identifying the HEA funds generated from gas meters and electric meters. The Commission will also require LG&E and AEC to maintain records that document the level of assistance provided to gas customers and to electric customers separately. This will require the separation of the assistance provided to combined customers into portions for gas bills and electric bills. LG&E and AEC should provide the Commission with detailed reports based on these monitoring records within 30 days of the end of the pilot program.

The Commission will approve and adopt the eligibility requirements proposed by the Joint Applicants for the ASAP and EUA programs. However, the Commission will

---

<sup>40</sup> See: Response to Information Requested During Hearing Held December 6, 2001, Item 2. The total number of active meters is 604,039 (22,652 gas only + 76,411 electric only + (2 x 252,488) combined). Dividing \$500,000 by 604,039 equals \$.82776, which then is divided by 5 months, yielding a per meter rate of \$.16555. In order to avoid generating more than the \$500,000, the per meter rate will be set at \$.16.

not approve Winterhelp as the program operator of EUA. During this pilot program, AEC will be authorized to operate both the ASAP and EUA programs, with assistance from LG&E. Since this will only be a pilot program, it is not reasonable for Winterhelp to duplicate administrative functions already in place at AEC.

For this pilot program, the Commission will approve the creation on an eight-member Consultative Board with the functions and responsibilities outlined in the application. The Consultative Board will also decide how to allocate the HEA funds to ASAP and EUA. However, the membership on this board must be revised to be more inclusive. The membership of the Consultative Board should include LG&E, the AG or his designee, and two representatives of low-income customer advocacy groups. However, to avoid any conflict of interest, no program operator will be permitted to hold a seat on this board. The remaining four members should be representatives of the residential customer class who will pay for the HEA, but who are not currently eligible to receive the assistance. One of these seats should be assigned to a representative who resides outside of Jefferson County. The Joint Applicants should file a list of the individuals serving on the Consultative Board and the interests they represent no later than January 31, 2002.

As noted above, this HEA pilot program will end after May 31, 2002. If the Joint Applicants wish to propose a new HEA program, an application must be filed with the Commission no later than May 31, 2002. The Commission is aware that under these circumstances, the operation of and funding for ASAP and EUA will not continue uninterrupted. However, the Commission will make every effort to review and analyze



the new HEA proposal in an expeditious manner, with the goal of having a new HEA program approved prior to next year's heating season.

Any new HEA program proposed for the LG&E service territory must be structured to reflect and address the following issues:

- The involvement of the AG in all aspects of the development of the new HEA proposal.
- A balanced cross-section of interests on any Consultative Board established to oversee the new HEA program.
- A Consultative Board structure that eliminates any conflicts of interest, either actual or perceived.
- A demonstration that as many administrative functions as possible have been examined and assigned to LG&E rather than a separate, third party program operator.
- Separation of the HEA fund into a gas fund and an electric fund. The application should not assume that the assistance level needed for gas customers is the same as for electric customers. Consequently, the new HEA proposal must establish the needs for gas assistance separately from the needs for electric assistance.
- The level of matching funds to be provided by LG&E and its shareholders.
- Estimates of the dollar savings LG&E could reasonably expect to achieve from the benefits produced by the new HEA program.
- A demonstration that eligible residential customers residing outside of Jefferson County have an equal opportunity to be considered for and receive HEA assistance.

During the review of any new HEA program proposal, the Commission will be agreeable to requests for informal conferences with the Commission Staff to address and explore issues that are identified.

## MOTIONS TO STRIKE

LG&E has moved to strike a very limited portion of Mr. Madison's prepared direct testimony, filed on November 28, 2001, and two cross-examination questions asked by LG&E and Mr. Madison's responses thereto. The grounds for the motion are that the testimony and responses are scurrilous. The issue addressed in that portion of Mr. Madison's testimony is the racial composition of the current ASAP recipients and proper allocation of ASAP funds between the city of Louisville and Jefferson County.

We note at the outset that the racial statistic cited by Mr. Madison was originally compiled and published in the ThermoRetec analysis of the ASAP program. LG&E, in conjunction with the other applicants, sponsored the author of the ThermoRetec analysis to answer questions related to that analysis.

The Commission does not believe that the cited statistic proves any geographic discrimination in the disbursement of ASAP funds and we have not relied upon that portion of the testimony in our deliberations or decision.

LG&E's motion fails to disclose why its objection was not raised during the all-day hearing on December 6, 2001, or why it chose to explore on cross-examination a subject that it now believes should be stricken. Based on all the facts and circumstances, the motion will be denied.

Mr. Madison has also filed a motion to strike three portions of the Joint Applicants' brief. The first portion is a discussion of the specific details of the AG's comments on the proposed HEA program; the second portion is a reference to a 1999 State Report for Low Income Home energy Assistance Program; and the third portion references an estimated cost for LG&E to modify its computer system to accommodate

the HEA program. The grounds for the motion are that the Joint Applicants are attempting to supplement the evidentiary record by inserting new information that was not subject to discovery or cross-examination.

The Commission previously stated in this Order that the Joint Applicants had improperly attempted to supplement the record with details of their discussions with the AG and that those details will not be considered in this case. With respect to the two other portions of the Joint Applicants' brief, the new information contained therein is not material to any material issue. For these reasons, Mr. Madison's motion to strike will be denied.

#### SUMMARY

Based on the evidence of record and being otherwise sufficiently advised, the Commission finds that:

1. The HEA program as proposed by the Joint Applicants does not conform to the requirements of KRS 278.285, 278.030(1), or 278.170(1), and should be denied.
2. The governing structure as proposed for the HEA program is not reasonable and should be denied.
3. The requested adjustment in the Residential DSM rate surcharge is not reasonable and should be denied.
4. The modified HEA program as described in this Order is approved on a pilot basis for a 5-month period from January through May 2002, contingent upon LG&E agreeing to match the ratepayer contribution up to \$500,000. Within 7 days of the date of this Order, LG&E should notify the Commission in writing of its willingness to match the ratepayer contribution.

5. All reports referenced in this Order should be filed with the Commission in the manner described in this Order.

6. Any proposal to implement a home energy assistance program for next year's heating season or beyond should be filed with the Commission no later than May 31, 2002. Such a filing should address all the issues identified in this Order.

7. The motions to strike filed by LG&E and Mr. Madison should be denied as discussed in the findings above.

IT IS THEREFORE ORDERED that:

1. The HEA program as proposed by the Joint Applicants is denied.

2. The modified HEA program as described in this Order is approved on a pilot basis for a 5-month period from January through May 2002, subject to LG&E agreeing to match the ratepayer contributions up to \$500,000. Within 7 days of the date of this Order, LG&E shall file a written notice stating whether it agrees to match the ratepayer contributions.

3. The motions to strike filed by LG&E and Mr. Madison are denied.

Done at Frankfort, Kentucky, this 27<sup>th</sup> day of December, 2001.

By the Commission

SEPARATE OPINION OF VICE CHAIRMAN GARY W. GILLIS,  
CONCURRING IN PART AND DISSENTING IN PART

I agree with the findings of my fellow Commissioners related to the shortcomings of the proposed low-income assistance plan. I also agree with the need to create a

partnership with LG&E and the ratepayers to fund such a program. However, in recognition of the need for a low-income program to continue in place, I am concerned that the requirement for LG&E to immediately fund fifty percent of the program may jeopardize and interrupt the continuity of the program for this heating season. I would, therefore, prefer that the five-month pilot program be funded solely by ratepayers and the issue of company matching be addressed at the termination of this pilot. Therefore, I respectfully include my partial dissent.

---

Gary W. Gillis, Vice Chairman

ATTEST:

  
Executive Director