

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

KENTUCKY UTILITIES COMPANY S PLAN)
TO ADDRESS THE FUTURE OF THE)
MERGER SURCREDIT APPROVED BY THE) CASE NO. 2002-00429
KENTUCKY PUBLIC SERVICE COMMISSION)
IN CASE NO. 1997-00300)

LOUISVILLE GAS AND ELECTRIC COMPANY S)
PLAN TO ADDRESS THE FUTURE OF THE)
MERGER SURCREDIT APPROVED BY THE) CASE NO. 2002-00430
KENTUCKY PUBLIC SERVICE COMMISSION)
IN CASE NO. 1997-00300)

O R D E R

In its Order approving the merger of Louisville Gas and Electric Company (LG&E) and Kentucky Utilities Company (KU), the Commission approved a merger surcredit mechanism which would return to customers a portion of the savings resulting from the merger.¹ The surcredit is based on an analysis conducted by Deloitte and Touche on behalf of LG&E and KU, which estimated LG&E s and KU s post-merger savings for a period of 10 years. In the merger case, LG&E and KU proposed, and the Commission approved, a plan to flow through the savings estimated by Deloitte & Touche for the first 5 years after the merger. The Commission ordered LG&E and KU to file an application midway through the fifth year after the merger in order to determine

¹ Case No. 1997-00300, Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for Approval of a Merger, Order dated September 12, 1997.

whether the surcredits should be continued and, if continued, what additional amounts of savings should be shared with customers.²

On January 13, 2003, LG&E and KU filed applications to continue their merger surcredits and to modify the original mechanism. The Kentucky Industrial Utility Customers, Inc. (KIUC), the Attorney General's Office (AG), and the Lexington-Fayette Urban County Government (LFUCG) sought and were granted intervention in the KU case. KIUC and the AG also were granted intervention in the LG&E case. KIUC filed testimony in both cases while neither the AG nor the LFUCG submitted testimony or interrogatories.

BACKGROUND

LG&E's and KU's applications set forth their proposal to continue the merger surcredit for an additional 5 years. LG&E and KU also proposed to modify the surcredit mechanism by using the gross amount of non-fuel savings in year 5 after the merger, as estimated by Deloitte & Touche, as the savings for each of the years 6 through 10. The savings would continue to be shared 50/50 between ratepayers and shareholders with the allocation between LG&E and KU continuing at 47/53, as had been approved for the original surcredit. Under LG&E's and KU's proposal, ratepayers would receive approximately \$180.7 million over the next 5 years. This sharing proposal is net of the savings assignable to KU's non-jurisdictional wholesale customers and its Virginia customers.

KIUC proposed that the merger surcredit continue in its current form using the original Deloitte & Touche estimate of merger savings for years 6 through 10. Under

² Id.

KIUC's proposal, ratepayers would receive approximately \$209 million over the next 5 years.

On August 26, 2003, the parties submitted a unanimous settlement agreement. The pertinent terms of that agreement are as follows: (1) The merger surcredit will continue for another 5 years, with ratepayers receiving a total of \$191,981,129; (2) The sharing percentages between customers and shareholders will remain 50/50 as approved in the merger case; (3) The allocation of the customer portion of the merger savings between LG&E and KU will remain 47/53 as previously approved; (4) The industrial customers represented by KIUC and the larger accounts for the LFUCG will receive an up-front, one-time distribution of their calculated portion of the estimated savings; and (5) Six months prior to the end of year 10, LG&E and KU will file a plan with the Commission for the future disposition of the merger surcredits,

The limited number of customers who are to receive their 5-year surcredit in an up-front, lump sum payment have agreed that their portion of the surcredit will be discounted by 10 percent, 1 percent higher than the rate used to calculate the original merger surcredit. The additional 1 percent included in the discount rate results in approximately \$300,000 that will be added to the amount of the surcredit to be paid to the remaining customers. LG&E and KU also agreed to increase the remaining customers merger surcredit by \$700,000, bringing the total increase for customers not receiving the lump sum payment to \$1,000,000. The one-time discounted payments to customers represented by KIUC and LFUCG are as follows:

LG&E industrial customers	\$6,910,728
KU industrial customers	\$5,202,222
LFUCG Accounts	\$147,237

The remaining merger surcredit payments will be levelized over the 5-year period. Thus, LG&E s electric customers will receive \$18,045,255 annually for a 5-year total of \$90,226,275, while KU s customers will receive \$17,898,933 annually, for a 5-year total of \$89,494,665. Each customer s monthly surcredit will be based on the customer s actual electric consumption.

DISCUSSION

In determining whether the terms of the settlement are in the public interest and are reasonable, the Commission has taken into consideration the following factors: the comprehensive nature of the settlement; the parties positions as set forth in the prepared direct testimony; the benefits to the parties, as well as LG&E s and KU s ratepayers, from resolving all outstanding issues on an expedited basis; and the amount of revenue to be credited to ratepayers in excess of the level initially proposed by LG&E and KU. Based on our consideration of these factors, the evidence of record, and being otherwise sufficiently advised, the Commission finds the settlement to be a reasonable resolution of the issues raised in this case.

However, the Commission has some concerns regarding the provision in the settlement that authorizes a small number of customers to receive their 5-year merger surcredit in a lump sum payment. This issue was not raised in the applications, discovery, or intervenor testimony. Rather, it surfaced for the first time in the settlement agreement.

The basis for the Commission's concern is that KRS 278.170(1) prohibits utilities from giving any person an unreasonable preference or advantage. When questioned on this issue, LG&E and KU asserted that the lump sum payments are not unduly discriminatory because: (1) such payments will be discounted and the discount factor is 1 percent greater than that used to derive the original merger surcredit; (2) customers not receiving lump sum payments will receive \$300,000 from the increased discount rate, plus an additional \$700,000 that LG&E and KU have agreed to contribute, providing these customers an additional total merger surcredit savings of \$1 million; and (3) such one-time payments to select customers are in accord with prior Commission Orders approving settlements.

Based on the totality of the circumstances, as well as the interests of administrative efficiency and preserving the resources of all parties, we conclude that the settlement presents a reasonable resolution of these proceedings and should be accepted. However, the Commission gives notice that any future settlements that provide different treatment to some, but not all, customers in the same class of service must include sufficient explanation and support to demonstrate compliance with the standard set forth in KRS 278.170(1).

IT IS THEREFORE ORDERED that:

1. The Settlement set forth in Appendix A to this Order and the tariff changes included in Exhibit 1 to the Settlement are approved.
2. Within 20 days from the date of this Order, LG&E and KU shall file with the Commission revised tariff sheets setting out the rates and tariffs approved herein.

These tariff sheets shall show their date of issue, the effective date, and a statement that they were issued by authority of this Order.

Done at Frankfort, Kentucky, this 16th day of October, 2003.

By the Commission

DISSENTING OPINION OF
COMMISSIONER ROBERT E. SPURLIN

In reviewing a proposed settlement, the Commission is obligated to verify that it has been agreed to by all the parties and that it is consistent with the statutory requirements applicable to utility rates and service. Unlike a court, which acts as a neutral arbiter and relies upon the parties to protect all affected interests, the Commission has a statutory obligation to ensure that all interests, including those of the public, are not adversely affected by a settlement agreement.

In this case, the proposed settlement appears to be reasonable except to the extent that it allows a limited number of customers within one or more classes of service to receive their proportionate share of a 5-year surcredit in a lump sum, up-front payment. Although such lump sum payment will be reduced by a 10 percent discount factor, these limited customers are being treated differently from all other customers in the same class of service. The basis for this different treatment is not grounded on the

nature of the utility service provided to them, the quality or quantity of their usage, the time when used, the purpose for which used, or any other reasonable consideration. Rather, these customers are being treated differently solely because they intervened in these cases, whereas all other customers in the same classes of service have no individual representation.

I am firmly convinced that providing lump sum payments to the intervening members of a service class, while denying similar rate treatment to the remaining class members solely because they did not intervene, constitutes an unreasonable preference or advantage, in violation of KRS 278.170(1). For this reason, I respectfully dissent from the decision reached by my fellow Commissioners.



Robert E. Spurlin, Commissioner
Kentucky Public Service Commission

ATTEST:



Executive Director

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NOS. 2002-00429 and 2002-00430
DATED OCTOBER 16, 2003

(See document named 200200429_200200430_10162003apx.pdf for Appendix)