

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF KENTUCKY POWER	)	
COMPANY D/B/A AMERICAN ELECTRIC	)	
POWER FOR APPROVAL, TO THE	)	
EXTENT NECESSARY, TO TRANSFER	)	CASE NO. 2002-00475
FUNCTIONAL CONTROL OF	)	
TRANSMISSION FACILITIES LOCATED	)	
IN KENTUCKY TO PJM INTERCONNECTION,	)	
L.L.C. PURSUANT TO KRS 278.218	)	

O R D E R

On August 6, 2003, Kentucky Power Company d/b/a American Electric Power ( Kentucky Power ) filed a petition requesting rehearing of the Commission s July 17, 2003 Order denying Kentucky Power s request for approval pursuant to KRS 278.218 to transfer functional control of its transmission facilities to PJM Interconnection, L.L.C. ( PJM ), an independent transmission operator approved by the Federal Energy Regulatory Commission ( FERC ) as a regional transmission organization ( RTO ).

Kentucky Power asserts that it was required by FERC to join an RTO as a condition for approval of the merger of its parent holding company with another public utility holding company, as well as the requirements of other states laws. Kentucky Power also states that the Commission s finding that the benefits of membership in PJM had to be quantified was erroneous because such requirement conflicts with the public

interest standard applied in Case No. 2002-00018,<sup>1</sup> wherein the Commission stated that benefits need not be immediate nor quantifiable. Further, Kentucky Power claims that any requirement to demonstrate net benefits to Kentucky Power ignores the fact that it is part of an integrated multi-state utility holding company, and that decisions must be based on what is beneficial for the member utilities as a group, as opposed to what it is in the best interest of each individual member. Kentucky Power's petition then proceeds to cite numerous instances of what it claims are errors in the factual findings contained in the Commission's July 17, 2003 Order. Kentucky Power concludes its petition by stating that, while it does not believe that cost/benefit information is required by KRS 278.218, it will provide such information in an effort to convince the Commission that RTO membership is beneficial to its customers and requests rehearing to afford it an opportunity to present such information.

On August 8, 2003, PJM filed a petition for rehearing in which it claims that the Commission's Order was not based upon facts in the record and that it was denied due process as a result of neither the Commission Staff nor intervenors sponsoring witnesses or otherwise identifying issues. More specifically, PJM seeks rehearing on the issues related to cost and benefits of PJM membership; compliance with KRS 278.214, which requires, under certain circumstances, service priority for retail customers when curtailments are necessary on a utility's transmission facilities; generation reserve requirements; PJM's markets and congestion management; and PJM costs. PJM also filed a motion to stay and hold in abeyance all further proceedings

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<sup>1</sup> Case No. 2002-00018, Application for Approval of the Transfer of Control of Kentucky-American Water Company to RWE Aktiengesellschaft and Thames Water Aqua Holdings GMBH (Order dated May 30, 2002).

in this case until Kentucky Power files its specific cost/benefit study, Congress has had additional time to consider the electricity title in the pending energy bill, the Commission has issued a final ruling on Kentucky Power's filing in Case No. 2002-00349,<sup>2</sup> and a resolution is reached in Kentucky Power's federal court challenge to KRS 278.214. PJM asserts that it will be premature for the Commission to issue a final decision in this case until the aforementioned issues have been resolved.

Based on the petitions for rehearing, and being otherwise sufficiently advised, the Commission finds that it is reasonable to grant rehearing to afford Kentucky Power an opportunity to prepare and submit an analysis quantifying the benefits of membership in PJM, as well as to allow PJM to provide additional evidence on the issues which it claims it was unable to address due to lack of notice. While the Commission is willing to consider additional evidence as presented on rehearing, we do so with the caveat that the issue of Kentucky Power's non-compliance with KRS 278.214 has already been adjudicated in Case No. 2002-00349, and that adjudication is now pending review in both state and federal courts. Thus, the Commission's willingness to consider additional evidence in the form of analysis of cost and benefits of membership in PJM should not be misinterpreted as indicating that the Commission will not carry out its statutory responsibility to enforce KRS 278.214.

In addition, the Commission finds it now appropriate to address Kentucky Power's claim that the standard applied in this case to determine whether the transaction was in the public interest, was inconsistent with the standard applied in

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<sup>2</sup> Case No. 2002-00349, An Investigation of the Tariff Filing by Kentucky Power Company d/b/a American Electric Power to Implement KRS 278.214.

Case No. 2002-00018. Kentucky Power's claim is due to its misapplication, perhaps inadvertently, of the standard in Case No. 2002-00018 to the facts in this case. The standard for defining public interest as set forth in Case No. 2002-00018, at 7-8, and then restated in the July 17, 2003 Order in this case at 2, is as follows:

The Commission finds that any party seeking approval of a transfer of control must show that the proposed transfer will not adversely affect the existing level of utility service or rates or that any potential adverse effects can be avoided through the Commission's imposition of reasonable conditions on the acquiring party. The acquiring party should also demonstrate that the proposed transfer is likely to benefit the public through improved service quality, and service reliability, the availability of additional services, lower rates, or a reduction in utility expenses to provide present services. Such benefits, however, need not be immediate or readily quantifiable.

(Emphasis in original). This standard establishes a two-step process: first, there must be a showing of no adverse effect on service or rates; and, second, there must be a demonstration that there will be some benefits. In this case, Kentucky Power failed the first step due to its inability to show that the transfer would not adversely affect its rates. In fact, membership in PJM was acknowledged to cost an additional \$3 million per year, thus resulting in an adverse impact on rates. Had Kentucky Power been able to quantify benefits of at least \$3 million annually, it would then have been able to satisfy the first step of the public interest standard, and then proceed to the second step.

The second step of the public interest standard is that there should also [be a] demonstrat[ion] that the proposed transfer is likely to benefit the public. Such benefits, however, need not be immediate or readily quantifiable. Thus, while the standard does not require benefits to be immediate or readily quantifiable, the benefits referred to therein are what must be demonstrated after satisfying the first step by a

showing of no adverse effect on service or rates. Here, Kentucky Power showed the transfer to have an adverse rate impact of \$3 million annually, thus necessitating a quantification of benefits sufficient to offset those costs to eliminate the adverse effect on the utility's rates. While step two of the standard allows benefits to be other than immediate or readily quantifiable, step two applies only after satisfaction of step one.

The Commission further finds that PJM's motion to stay this case should be denied. While the Commission has no objection to PJM, with the concurrence of Kentucky Power, requesting to dismiss this case without prejudice to refile at some future time after some or all of the events cited by PJM have been resolved, a stay is inappropriate because a date for resolution of many of the issues is unknown. However, the Commission will provide reasonable time to Kentucky Power and PJM to file a Kentucky Power-specific cost/benefit analysis and provide additional testimony on the issues set forth in their respective petitions for rehearing.

IT IS THEREFORE ORDERED that:

1. Rehearing is granted to Kentucky Power and PJM in accord with the findings contained herein.
2. An informal conference shall be held at the Commission's offices at 211 Sower Boulevard, Frankfort, Kentucky on September 4, 2003 at 1:30 p.m., Eastern Daylight Time, for the purpose of developing a procedural schedule for the rehearing phase of this case.

Done at Frankfort, Kentucky, this 25<sup>th</sup> day of August, 2003.

By the Commission

ATTEST:

  
Executive Director