

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

TARIFF FILING OF KENTUCKY UTILITIES COMPANY AND LOUISVILLE GAS AND ELECTRIC COMPANY FOR NON-CONFORMING LOAD CUSTOMERS	) ) ) )	CASE NO. 2003-00396
AN ADJUSTMENT OF THE GAS AND ELECTRIC RATES, TERMS, AND CONDITIONS OF LOUISVILLE GAS AND ELECTRIC COMPANY	) ) )	CASE NO. 2003-00433
AN ADJUSTMENT OF THE ELECTRIC RATES, TERMS AND CONDITIONS OF KENTUCKY UTILITIES COMPANY	) ) )	CASE NO. 2003-00434

O R D E R

This matter comes before the Commission upon the February 13, 2004 joint motion of Kentucky Utilities Company ("KU") and Louisville Gas and Electric Company ("LG&E") to consolidate their proposed Non-Conforming Load Service ("NCLS") tariffs, now pending in Case No. 2003-00396, with and into KU's pending rate case, Case No. 2003-00434.<sup>1</sup> An amended joint motion was subsequently filed requesting that only KU's proposed tariff be consolidated with and into KU's pending rate case, while LG&E's proposed tariff is consolidated with and into LG&E's pending rate case, Case No. 2003-00433. The motion also requested that North American Stainless ("NAS"), a

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<sup>1</sup> The suspension period in this rate case runs to June 30, 2004.

KU customer whose existing electric service contract is scheduled to terminate March 31, 2004, and who meets the applicability criteria of the proposed NCLS tariff, be served under the terms of that tariff, subject to refund, until the Commission issues a decision on the merits of the tariff. The intervenors in Case No. 2003-00396, NAS and Kentucky Industrial Utility Customers, Inc. ("KIUC"), are also intervenors in Case No. 2003-00434 and they filed separate responses opposing consolidation. Based on the motion and the arguments in support and in opposition, we find good cause to consolidate KU's tariff from Case No. 2003-00396 with and into Case No. 2003-00434 and to consolidate LG&E's tariff from Case No. 2003-00396 with and into Case No. 2003-00433. We also find that NAS should be served under the terms of the proposed NCLS tariff, subject to refund, pending a final decision on the merits of said tariff.

#### HISTORY

KU presently serves NAS under a special contract which was executed in June 2000 and which had a beginning date of April 1, 2001. As permitted under the terms of the contract, NAS, on March 28, 2003, notified KU of its intent to terminate the contract at the end of its 3-year initial term, March 31, 2004. Subsequent to the notice of termination, KU and NAS attempted to negotiate a new contract, but their efforts were unsuccessful. On September 23, 2003, NAS filed a formal complaint against KU regarding the failed negotiations in which it requested to be served under the terms of KU's Large Commercial / Industrial Time-Of-Day ("LCI-TOD") tariff.<sup>2</sup>

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<sup>2</sup> NAS's complaint was docketed as Case No. 2003-00376, North American Stainless, Complainant v. Kentucky Utilities Company, Defendant.

Shortly thereafter, on October 10, 2003, KU and LG&E filed their proposed NCLS tariffs, which they indicated were being developed subsequent to the termination of negotiations with NAS but prior to the filing of NAS's formal complaint.<sup>3</sup> By Order dated November 14, 2003, the Commission consolidated Case No. 2003-00376 with and into Case No. 2003-00396 and established a procedural schedule for processing the surviving case. The procedural schedule provided for two rounds of discovery on KU and LG&E, intervenor testimony, and one round of discovery on intervenors. No hearing date had been scheduled.

#### POSITION OF THE PARTIES

KU and LG&E cite three factors to support consolidation. First, they state that consolidation into their rate cases, in which the Commission will determine their revenue levels and allocations, is appropriate to ensure that "NCLS customers" bear their fair share of the costs of electric service. Second, given that NAS and KIUC are intervenors in KU's rate case, and since the procedural schedule therein will accommodate discovery by the parties to that case regarding NCLS issues, KU and LG&E state that an economy of effort will be accomplished for everyone via consolidation. Third, KU and LG&E state that the rate cases are the appropriate forums to decide the NCLS issues since, in the event the decision thereon results in a lower rate for NAS, any reduction in the revenues NAS provides KU will have to be borne by other KU customers.

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<sup>3</sup> The tariffs included a proposed effective date of November 1, 2003; however, that effective date did not provide the 30-day notice required for new rate schedules. On October 31, 2003 the Commission suspended the tariffs for 5 months from their statutorily permitted earliest effective date through April 8, 2004.

NAS filed both a response and a supplemental response in opposition to the motion to consolidate. NAS's response opposed the motion on the grounds that it is the only ratepayer affected by the proposed tariffs and the record concerning the proposed tariffs is substantially complete. It argued that consolidation would impair its ability to plan and conduct its production due to the uncertainty that such action would apply to its operations. NAS also claimed that consolidation was inappropriate because the cost-of-service study filed by KU in its rate case did not attempt to identify the particular cost of serving NCLS loads. NAS also stated that temporary imposition of the NCLS tariff would subject it to unprecedented terms of service that KU has not demonstrated are warranted. Finally, it argued that consolidation with the KU rate case would inevitably lead to disclosure of commercially sensitive energy and billing data relating to NAS.

In its supplemental response, NAS requested that KU's cost-of-service study be placed into the record of Case No. 2003-00396 so that all factors germane to the proposed NCLS tariff can be addressed. NAS stated that such action would permit the Commission to consider and resolve the contested issues in a timely manner relative to the expiration of NAS's current contract with KU. NAS repeated the request contained in its initial response that, should the cases be consolidated, it be placed on an interim rate based on the LCI-TOD tariff after its current contract with KU expires.

KIUC also filed a response in opposition, citing the complicated nature of KU's pending rate case and stating that consolidation would further burden that case with issues specific to KU and NAS. Claiming that the proposed tariff would apply only to NAS, KIUC argued that the issues related thereto were not a proper subject for a general rate case. It also reiterated NAS's concerns about the matter of preventing the

disclosure within the rate case of confidential information that NAS considers commercially sensitive.

On March 12, 2004, KU and LG&E filed a reply which states that while NAS is the only customer that would initially be affected by the proposed tariffs, the tariffs were designed to apply to all customers with loads that vary significantly within the hour and that KU and LG&E have been contacted by other potential customers that would fall under the NCLS tariffs. KU and LG&E argue that NAS will not suffer any significant problems by a delay of approximately 3 months in a decision on the NCLS tariff<sup>4</sup> and that KU's proposal to place NAS on the NCLS tariff, subject to refund, will provide stability and reduced rates compared to the current contract. KU and LG&E also question NAS's concerns about the potential for lost steel production from contingency curtailments under the proposed tariff, given that the existing contract contains a virtually identical curtailment provision.

In response to NAS's supplemental response, KU and LG&E state that while the cost-of-service studies filed in the rate case should be considered by the Commission, so too should the accompanying pre-filed testimony and workpapers along with the hearing transcript. KU and LG&E assert that the most efficient way to consider all these documents is to grant their consolidation request since NAS and KIUC are already intervenors in KU's rate case.

KU and LG&E also responded to NAS's request to be placed on KU's LCI-TOD rate schedule in the event consolidation is granted. If a final ruling calls for NAS to be

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<sup>4</sup> The 3-month delay refers to the end of the suspension period in the rate case, which is June 30, 2004, compared to the March 31, 2004 termination date of the current KU – NAS contract.

served under the NCLS tariff, KU and LG&E claim that placing NAS on the LCI-TOD rate on an interim basis would put KU at risk of not recovering costs during the interim period that were intended to be recovered through the NCLS tariff.

### DISCUSSION

The Commission acknowledges at the outset that circumstances beyond our control will preclude an adjudication of the issues raised in Case No. 2003-00396 prior to the termination of the existing KU – NAS contract. Therefore, an interim rate must be established for NAS regardless of our decision on consolidation. Thus, we must now consider the merits of consolidation as well as an interim rate.

Valid arguments have been presented both in support of and in opposition to consolidating the tariff case into the rate case. However, the Commission finds the overriding considerations to be the relevance of KU's cost-of-service study, which is already in the record of KU's rate case, and the need to ensure that the decision on the merits of the proposed tariff does not result in KU's rates being designed to recover less than its authorized revenue requirements.

The Commission finds that a reasoned, informed decision on the issues in the tariff case requires a consideration of KU's cost-of-service study, the accompanying testimony and workpapers, and hearing transcript. Since the study is already in KU's rate case, and since NAS and KIUC are intervenors therein, we find that it is more efficient to consolidate KU's tariff case into KU's rate case. Furthermore, while NAS is the only customer that will qualify for the proposed NCLS tariff at present, new KU or LG&E customers whose loads vary significantly within the hour will also be served

under the proposed tariffs. Therefore, it is appropriate that the proposed tariffs be considered in conjunction with KU's and LG&E's other tariffs.

The Commission recognizes that consolidation may result in additional efforts being necessary to protect from public disclosure certain data that NAS considers to be commercially sensitive. While we acknowledge these concerns, procedures to protect such data have been adopted in prior cases and can be similarly adopted as necessary upon consolidation.

As to the interim rate for service to NAS pending a decision on the merits of the NCLS tariff, we find the proposed tariff to be more appropriate than KU's LCI-TOD tariff for a number of reasons. First, because NAS's load exceeds the existing 50 MW limit for the LCI-TOD tariff, it has been served under a special contract since 2001. Second, in light of the pending termination of the existing KU - NAS contract, KU has no rate schedule or tariff, other than the proposed NCLS tariff, which is applicable to NAS's load. Third, should NAS be temporarily placed on the LCI-TOD tariff and the Commission ultimately decide that NAS should be served on the NCLS tariff, KU will have lost the opportunity to recover a portion of its costs during the interim period. Therefore, we will lift the previously imposed suspension of the NCLS tariff and allow it to become effective, subject to refund, on March 31, 2004. Upon expiration of the KU - NAS contract, KU should provide service to NAS pursuant to the terms and rates of the NCLS tariff subject to refund in the event the Commission determines in Case No. 2003-00434 to either reduce the NCLS tariff rate or allow NAS to be served under a different tariff. The Commission notes that service under this tariff is estimated to save NAS \$1.2 million annually versus its existing contract.

IT IS THEREFORE ORDERED that:

1. The KU NCLS tariff pending in Case No. 2003-00396 and the portion of the record applicable thereto is consolidated for all purposes with and into Case No. 2003-00434. The LG&E NCLS tariff pending in Case No. 2003-00396 and the portion of the record applicable thereto is consolidated for all purposes with and into Case No. 2003-00433. All future filings relating to any issue in Case No. 2003-00396 shall be made in either Case Nos. 2003-00433 or 2003-00434, as appropriate.

2. Case No. 2003-00396 is closed and is removed from the Commission's docket.

3. The previously imposed suspension of the KU NCLS tariff is lifted and said tariff shall become effective for service rendered on and after March 31, 2004, subject to refund.

4. Upon expiration of the existing KU – NAS contract, KU shall serve NAS under the terms of the NCLS tariff subject to refund in the event that in Case No. 2003-00434 the Commission either reduces those rates or allows NAS to be served under a different tariff.

5. Within 5 days of the date of this Order, KU shall file a revised NCLS tariff reflecting the effective date and refund provision as ordered herein.

6. Nothing related to the consolidation ordered herein shall result in any revision or modification to the existing procedural schedule in either Case Nos. 2003-00433 or 2003-00434.



Done at Frankfort, Kentucky, this 23<sup>rd</sup> day of March, 2004.

By the Commission

ATTEST:

A handwritten signature in black ink, appearing to read "Thomas H. (T) [unclear]", written over a horizontal line.

Executive Director

Case No. 2003-00396  
Case No. 2003-00433  
Case No. 2003-00434