COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JOINT APPLICATION OF KENTUCKY UTILITIES COMPANY, KENTUCKY ASSOCIATION FOR COMMUNITY ACTION, INC., AND COMMUNITY ACTION COUNCIL FOR LEXINGTON-FAYETTE, BOURBON, HARRISON AND NICHOLAS COUNTIES, INC. FOR THE ESTABLISHMENT OF A HOME ENERGY ASSISTANCE PROGRAM	)	CASE NO. 2004-00303

O R D E R

On July 30, 2004, the Kentucky Utilities Company ("KU"), the Kentucky Association for Community Action, Inc. ("KACA"), and the Community Action Council for Lexington-Fayette, Bourbon, Harrison and Nicholas Counties, Inc. ("CAC") (collectively "Joint Applicants") filed an application seeking approval of the specific parameters and details, including the administrative budget, for a Home Energy Assistance ("HEA") program in KU's service territory.

The application was filed to implement the terms of the Partial Settlement Agreement, Stipulation and Recommendation ("Partial Settlement and Stipulation") that was filed in the KU rate case and approved by the Commission on June 30, 2004.[1] All parties to the KU rate case unanimously agreed to the general concept of having a 10-cent per month residential meter charge to fund the HEA program for 3 years in the KU service territory. They further agreed that the HEA program would commence on

[1] Case No. 2003-00434, An Adjustment of the Electric Rates, Terms, and Conditions of Kentucky Utilities Company.

October 1, 2004 and would be operated by existing social service providers with experience in operating low-income energy assistance programs. The providers would be entitled to recover their actual operating expenses not to exceed 10 percent of the total HEA funds collected. In addition, the parties recognized KU's need to modify its information technology system at a one-time cost of $78,610,[2] which would be recoverable by KU through its demand side management ("DSM") mechanism.

The Commission's approval in Case No. 2003-00434 encompassed only the general concepts of the HEA program as specifically set forth in the Partial Settlement and Stipulation. All of the specific details of the HEA program were required to be subsequently filed and approved by the Commission. Further, all parties to the KU rate case unanimously agreed that no money was to be distributed to the social service providers to implement the HEA program until the specific details and budgets of the programs had been approved by the Commission.

KU's HEA program focuses on providing a subsidy during peak heating and cooling months. The program was designed to ensure effectiveness and efficiencies comparable to that obtained under an HEA program known as the Energy Assistance Program ("EAP"), offered by Columbia Gas of Kentucky, Inc. ("Columbia"). With similar approaches as the EAP, the Joint Applicants assert that there will be few technical modifications needed by CAC to operate KU's HEA program. The Joint Applicants expect to serve approximately 1,300 low-income customers.

The specific details for KU's HEA program as filed on July 30, 2004 include the following items:

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[2] KU's Joint Application at 12.

- Program participants will be active KU customers who have KU electric as their primary heat source[3] and whose income is at or below 110 percent of the then-effective federal poverty guidelines. Participants must apply for available weatherization programs and accept services if eligible and available.

- Participants must be enrolled in the Federal Low Income Home Energy Assistance Program ("LIHEAP") and direct LIHEAP payment to KU.

- The subsidy benefit will be a direct subsidy of a set dollar amount during peak cooling and heating months,[4] with the monthly benefit initially set at $42 per applicable month not to exceed $294 per year.

- KACA will monitor both the implementation and ongoing operations of KU's HEA program, including continuing program evaluation and tracking program expenditures.

- CAC will make contracts with other energy assistance providers in the KU service territory and provide data support and services for the program and provide specific training and technical assistance to contracting community action agencies' staff.

- Contracting community action agencies will perform outreach and recruitment, data intake, income verification and re-verification, client follow-up and data recording.

- KU will bill the 10-cent per residential meter per month HEA program charge on customers' bills, provide necessary program data to KACA and CAC, and provide the funds to cover administrative costs.

In order to make KU's HEA program available throughout KU's service territory, the Joint Applicants have allocated the expected 1,300 participants over the counties in the service territory based on the number of KU customers in each county. The Joint Applicants indicated that this allocation was a "base starting point" and the allocation

[3] A small energy assistance fund will be available to assist low-income customers whose primary heat source is not electric. The Joint Applicants have budgeted $25,319 over the 3-year program period for this fund. See KU's Joint Application at 9 and Exhibit G.

[4] Peak cooling months are defined as July, August, and September while peak heating months are defined as December, January, February, and March.

would be adjusted as needed.[5] Participants in KU's HEA program may voluntarily leave the program upon their request and will be involuntarily removed from the program if they default on the disconnect notice payment terms.

The Joint Applicants propose to file a comprehensive program assessment ("HEA Assessment") with the Commission by January 1, 2007.[6] This assessment is to ensure that KU's HEA program is meeting its established goals and expected program outcomes. The expected program outcomes include a reduction in the need for LIHEAP Crisis Assistance; a reduction in arrearages by making a participant's current bill more affordable;[7] a reduction in the loss of service due to non-payment; and an increase in energy savings in combination with weatherization programs. The Joint Applicants also propose to annually audit the financial records of KU's HEA program using a third-party independent auditor, in accordance with Office of Management and Budget Circular No. A-133 ("OMB A-133") auditing standards.

The Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention ("AG"), sought and was granted intervention in this case. The Commission established a procedural schedule that included one round of discovery.

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[5] Response to the Commission Staff's First Data Request dated September 7, 2004, Item 10.

[6] This date is based on the commencement date of October 1, 2004 for the HEA program. The Partial Settlement and Stipulation provides that the HEA Assessment is to be filed with the Commission within 90 days of the conclusion of the second year of the HEA program.

[7] The KU HEA program does not include payment of participants' arrearages.

On September 30, 2004, the Commission authorized KU to begin collecting the monthly 10-cent per residential meter charge to fund KU's HEA program, but found the record insufficient to support approval of the program details. The Commission also suspended, until approval of KU's HEA program, the proposed revised DSM tariff to collect KU's one-time information technology costs. The Commission noted that a comparison of the HEA program proposed by KU and the HEA program proposed by the Louisville Gas and Electric Company ("LG&E") revealed significant differences.[8] The Commission found that the record was insufficient to justify approving the specific details of the HEA programs which differed significantly between the KU and LG&E service territories.[9] The Commission further found that no evidence had been presented to demonstrate that low-income customers in the service territories of KU and LG&E had vastly dissimilar characteristics sufficient to justify vastly dissimilar HEA programs. The Commission concluded that the Joint Applicants should have an

[8] The Partial Settlement and Stipulation included the establishment of an HEA program for both KU and LG&E. The LG&E HEA program was filed as Case No. 2004-00304, Joint Application of Louisville Gas and Electric Company, Metro Human Needs Alliance, Inc., People Organized and Working for Energy Reform, and Kentucky Association for Community Action, Inc. for the Establishment of a Home Energy Assistance Program.

[9] Three specific differences were noted in the September 30, 2004 Order. They were (1) the KU HEA program provided a 7-month subsidy while the LG&E HEA program provided a year-round subsidy; (2) KU's HEA program would not subsidize a participant's arrearage while LG&E's HEA program would subsidize arrearages; and (3) KU's HEA program provided a fixed subsidy to each participant while LG&E's HEA program provided a variable subsidy that was calculated on the basis of each participant's unique circumstances.

opportunity to supplement the record in this case, or otherwise demonstrate why the specific parameters and details of the two HEA programs should not be identical.[10]

KU and CAC filed supplemental testimony on October 19, 2004. KU estimated that if the KU HEA program was required to mirror the LG&E HEA program, the one-time information technology implementation costs would be about the same or possibly 5 percent less. KU noted that the low-income assistance agencies in its service territory had focused on the unique demands of the low-income populations for many years. KU stated that in an effort to keep administrative costs to a minimum and implement the HEA program as quickly as possible, the Joint Applicants and the AG agreed that existing infrastructures of the participating low-income assistance organizations should be utilized.[11]

CAC noted that the KU HEA program was designed to ensure comparable effectiveness and efficiencies as had been demonstrated and documented in the Columbia EAP. CAC described how the 7-month approach effectively targets program subsidies to the months when the need is the greatest and attempts to avoid the accumulation of credits in customer accounts during low-usage months. CAC explained that the HEA program is designed to encourage the participant to consistently plan to keep electric service at an affordable level during the whole year and reinforce the financial obligation that the household had to pay for its electric service.[12] Concerning

[10] The September 30, 2004 Order scheduled an informal conference for October 12, 2004 to allow the parties to discuss the issues and develop a procedural schedule.

[11] Cockerill Testimony at 2-3.

[12] Burch Testimony at 4-5.

arrearages, CAC commented that arrearages were not a critical element in the primary goal of stabilizing participants' energy costs and that other resources are available to address arrearages.[13] CAC stated that the structure of the HEA subsidy kept procedures streamlined and simple, building on existing technology used in the Columbia EAP.[14]

CAC cited the facts that KU is an electric only utility with a mostly rural service territory, whereas LG&E is a combined electric and gas utility with a mostly urban service territory, as the primary reasons for differences between the proposed HEA programs.[15] CAC estimated that if the KU HEA program is required to match the approach of the LG&E HEA program, it could cost between $35,000 to $40,000 and could take up to 6 months to develop and implement the necessary modifications. Such a delay would result in missing the upcoming heating season entirely.[16]

The AG filed comments on October 25, 2004, and stated that he had fully participated in the negotiations that resulted in the establishment of the terms under which KU's HEA program is to be initiated and administered. He expressed his belief that the KU HEA program was designed to achieve the intended benefits at the least cost, while recognizing that the KU and LG&E service areas have different programs and facilities in place to administer individual HEA programs. The AG also expressed the belief that the low-income assistance agencies serving in the KU and LG&E service

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[13] Id. at 8.

[14] Id. at 6.

[15] Id. at 9.

[16] Id. at 6-7.

territories do not have the ability to implement the same or nearly the same program in both service territories without substantial additional administrative cost.[17]

Based on the evidence of record, the Commission finds that the differences in the proposed KU and LG&E HEA programs are due to incompatible billing and accounting systems at the two utilities and incompatible computer software at the low-income assistance providers in each service territory, not due to different demographic characteristics of potential HEA participants. While the Joint Applicants have noted specific advantages to modeling the KU HEA program to operate using the same technology as used for the Columbia EAP, they have made only general statements about the differences in the types of utilities and rural versus urban customers.

However, the Commission is persuaded at this time by the Joint Applicants' arguments that modifying KU's proposed HEA program would result in delaying its implementation beyond this year's heating season. The Commission believes it is desirable for KU's HEA program to be implemented as soon as possible, even though its differences from LG&E's HEA have not been justified by any demographic characteristics of potential HEA participants. Therefore, the Commission finds that the program details of KU's HEA program should be approved as filed and the commencement date of the program should be December 1, 2004 to ensure that the pilot runs for a full 3 years.

The Joint Applicants have stated that the HEA program will be audited annually by a third-party independent auditor in accordance with the OMB A-133 auditing standards. Due to our concerns that LG&E and KU are offering different HEA

[17] AG's Comments at 2.

programs, and recognizing there are 14 counties in Kentucky in which both KU and LG&E provide service, the Commission will require additional information to be filed in conjunction with the annual audits. The additional information should include the summaries of interviews with both those persons dealing directly with potential HEA participants to identify any problems in implementing KU's HEA program, and those persons working in the 14-county "overlap" area to identify any problems in administering two different HEA programs.

As noted previously, the Partial Settlement and Stipulation requires an HEA Assessment be prepared and filed with the Commission within 90 days of the conclusion of the second year of the HEA program. Since we have now determined that the HEA commencement date should be December 1, 2004, that assessment will be due no later than February 28, 2007. The Joint Applicants have described the issues that they propose to address in the HEA Assessment. The Commission finds those issues to be reasonable, but the HEA Assessment also needs to address these supplemental issues:

Availability. KU's service territory covers 77 counties in Kentucky. The Joint Applicants have proposed to allocate the expected 1,300 participants among the counties in KU's service territory based on the number of KU customers in each county. The HEA Assessment should address whether this approach made the HEA program clearly available to customers in all counties served by KU.

Participant Benefits. The Joint Applicants proposed to evaluate the HEA program based on a set of expected outcomes relating to a reduction in the need for LIHEAP Crisis Assistance; a reduction in arrearages; a reduction in the loss of service due to non-payment; and an increase in energy savings in combination with weatherization programs. The HEA Assessment should also analyze the movement of participants in and out of the HEA program to determine if benefits to the participants are short-term or long-term in nature.

Two HEA Programs. As discussed previously, the HEA programs proposed by KU and LG&E include significant differences which are not due to the demographic characteristics of potential HEA participants in each service territory. The HEA Assessment should address the development of "mirror-image" HEA programs for the KU and LG&E service territories, and should include an analysis of the demographic characteristics of the HEA participants in each territory.

Arrearages. One of the expected outcomes of the HEA program is a reduction in arrearages. KU's HEA program does not include the payment of arrearages from HEA funds. The HEA Assessment should evaluate the impact of not including arrearages in the HEA program and the effectiveness of this approach.

KU's Contribution to the HEA Program. In the June 30, 2004 Order in Case No. 2003-00434, the Commission noted that it has urged utilities that will be the beneficiaries of assistance programs to be financial contributors to those programs. We stated that a utility that is at least partially funding an assistance program has a greater incentive to monitor the program expenditures and would be in a better position to assure its ratepayers that the funds are being spent in the most efficient manner. While expressing our disappointment at that time that KU had chosen not to be a financial contributor to the HEA program, we expressed the expectation that, in any event, KU needed to actively monitor the implementation, operation, and expenditures of the HEA program.[18]

KU was asked in this proceeding whether it had reconsidered its refusal to contribute financially to the proposed HEA program. KU stated that it had reconsidered the issue, but again decided not to contribute financially to the HEA program, although it will continue its support of other assistance programs.[19] KU's voluntary support of other assistance programs is commendable, but it differs significantly from what KU's residential customers are asked and required to do. Those customers are also given the option to support other assistance programs, but are required to pay the HEA charge. The Commission well recognizes that we have no authority to require KU to fund its HEA program, but we continue to believe that KU should do so. KU is the direct beneficiary of this HEA program, as the funds collected from residential ratepayers are applied to otherwise uncollected utility bills, and it should be willing to set an example as a good corporate citizen by making a financial contribution to this program.

Concerning the need to actively monitor the implementation, operation, and expenditures of the HEA program, KU indicated that it will be reviewing reports on HEA program activities, results, and budget updates; it will be evaluating and reporting HEA program results; and it will be providing regular reports to KACA and CAC to assist in

[18] Case No. 2003-00434, June 30, 2004 Order at 61.

[19] Response to the Commission Staff's First Data Request dated September 7, 2004, Item 3.

the production of quality data in order to determine relevant statistics on the HEA program.[20]

These monitoring activities do not appear to reflect “active” monitoring of the implementation, operation, and expenditures of the HEA program. The activities described by KU generally deal with “after-the-fact” reviews of the HEA program, rather than the “up-front” involvement in the HEA program that the Commission was expecting.

Consequently, the HEA Assessment should include a review of KU’s involvement in the HEA program and an explanation of how this level of involvement has resulted in the active monitoring of the HEA program. KU should also reconsider its refusal to contribute financially to its own HEA program.

IT IS THEREFORE ORDERED that:

1. KU’s HEA program as described in the joint application is approved, with a commencement date of December 1, 2004.

2. KU is authorized to begin expending the HEA funds collected under the 10-cent per residential meter charge.

3. KU’s proposed revised DSM tariff to collect its one-time information technology costs is approved.

4. The annual audit reports of the HEA program, consisting of the financial audit and the interview summaries discussed in the findings above, shall be filed with the Commission within 10 days of their completion.

[20] Id., Item 8(a).

5. The HEA Assessment shall be filed with the Commission no later than February 28, 2007 and shall address the issues outlined in the Joint Application and the supplemental issues discussed in the findings above.

6. Subject to the filing of a timely petition for rehearing pursuant to KRS 278.400, this case is closed and any future filings shall be maintained in KU's general correspondence file or docketed as a new case.

Done at Frankfort, Kentucky, this 24th day of November, 2004.

By the Commission

ATTEST:

Robert A Amato for the
Executive Director