

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF KENTUCKY UTILITIES)	
COMPANY FOR AN ORDER PURSUANT)	CASE NO. 2004-00395
TO KRS 278.300 AND FOR APPROVAL)	
OF LONG-TERM PURCHASE CONTRACT)	

APPLICATION OF LOUISVILLE GAS AND)	
ELECTRIC COMPANY FOR AN ORDER)	
PURSUANT TO KRS 278.300 AND)	CASE NO. 2004-00396
FOR APPROVAL OF LONG-TERM)	
PURCHASE CONTRACT)	

O R D E R

On October 1, 2004, Louisville Gas and Electric Company (“LG&E”) and Kentucky Utilities Company (“KU”) tendered for filing separate applications for approval of an amended wholesale power contract with Ohio Valley Electric Corporation (“OVEC”). LG&E and KU originally entered into a purchase power agreement with OVEC in 1953, and the proposed amended agreement is for a term of 20 years commencing on March 13, 2006.

Both LG&E and KU state that, by entering into the amended purchase power agreement, they have obligated themselves to pay monthly minimum demand charges equal to their respective OVEC ownership ratios of OVEC’s total cost of owning, financing, operating, and maintaining its generation and transmission facilities. Those demand charges must be payable irrespective of whether OVEC is able to generate any

energy. In addition, LG&E and KU may be obligated to pay demand charges in the event of an early termination of the amended purchase power agreement.

Both LG&E and KU note that the Commission previously held in Administrative Case No. 19000350 that long-term purchase power contracts may require approval as evidences of indebtedness under KRS 278.300 if such contracts include minimum payment obligations or take-or-pay provisions.¹ The LG&E and KU applications acknowledge that, since the amended purchase power agreement with OVEC does include minimum payment obligations, “the Commission might assert that approval under KRS 278.300 is required.” Both applications conclude by requesting the Commission to approve the amended purchase power agreements and to grant “any necessary authorization under KRS 278.300.”

Neither application includes a claim that the long-term financial obligations arising under the amended purchase power agreement are exempt from the provisions of KRS 278.300. However, both applications were accompanied by cover letters that include claims that the transactions for which the applications seek Commission approval may in fact be exempt from such approval. Based on the inclusion of this claim in the cover letters, and the absence of any such claim in the applications, the Commission is unable to determine from the record whether LG&E and KU are asserting that the transactions discussed in their respective applications are exempt from Commission approval under KRS 278.300. If LG&E and KU are requesting such an exemption, that request must be clearly stated and supported by a memorandum of

¹ Administrative Case No. 19000350, 1992 Energy Policy Act Requirements (Order dated October 5, 1993).

law. Consequently, the Commission will afford LG&E and KU an opportunity to supplement the existing record if they are requesting the Commission to determine that the transaction discussed in their respective applications is exempt from approval under KRS 278.300. If such an exemption is being requested, the Commission will first adjudicate the merits of that request and then, if necessary, adjudicate the merits of the transaction after the deficiencies discussed herein are cured.

The Commission further notes that LG&E and KU have also filed motions requesting deviations from the applicable filing requirements under 807 KAR 5:001, Sections 6 and 11, relating to financial exhibits. Those regulations require that applications for approval of long-term debt under KRS 278.300 be accompanied by a financial exhibit covering operations for a 12-month period ending not more than 90 days prior to the date the application is filed. LG&E and KU state that their respective financial information is prepared on a calendar quarterly basis and that their most recent available financial information covers the period ending June 30, 2004. Since their respective financial information for the period ending September 30, 2004 will not be available until mid-November 2004, LG&E and KU request a deviation from the applicable regulation.

Based on the requests for deviations and being otherwise sufficiently advised, the Commission finds that despite the statements by LG&E and KU that their most recent available financial information is for the period ending June 30, 2004, LG&E and KU for many years have been filing on a monthly basis income statements and balance sheets covering a 12-month period. The requests for deviations do not acknowledge that these more recent financial statements exist or explain why they could not have

been filed with the applications to satisfy the requirements of 807 KAR 5:001, Section 6(9). Further, it would appear that very minimal effort would be needed by LG&E and KU to update the financial information required by 807 KAR 5:001, Section 6(1) through (3), which requires only statements as to the amount and types of stock that is authorized, issued, and outstanding and the details and terms of preferred stock. Consequently, neither LG&E nor KU has shown good cause to deviate from these regulations and they should comply with those filing requirements. The other financial exhibits required by 807 KAR 5:001, Section 6(4) through (8), would require substantial effort to be sufficiently updated and, considering the issues set forth in the applications, the information as of June 30, 2004 should be sufficient.

The Commission further finds that, based on the commonality of facts and legal issues set forth in the applications filed by LG&E and KU, consolidated Orders will be issued to the extent possible in the interest of administrative efficiency.

IT IS THEREFORE ORDERED that:

1. Within 5 days of the date of this Order, LG&E and KU shall notify the Commission in writing as to whether the Commission is being requested to determine whether the transactions in these cases are exempt from the provisions of KRS 278.300.

2. In the event that LG&E and KU are requesting a determination of exemption under KRS 278.300, LG&E and KU shall file, within 20 days of the date of this Order, a memorandum of law in support of that request.

3. The motions of LG&E and KU for deviations from 807 KAR 5:001, Section 6(4) through (8), are granted, and the requests for deviations from Section 6(1) through (3) and (9) are denied.

Done at Frankfort, Kentucky, this 15th day of October, 2004.

By the Commission

ATTEST:

A handwritten signature in black ink, consisting of several overlapping loops and flourishes, positioned above a horizontal line.

Executive Director

Case No. 2004-00395
Case No. 2004-00396