

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

INVESTIGATION INTO THE MEMBERSHIP )  
OF LOUISVILLE GAS AND ELECTRIC )  
COMPANY AND KENTUCKY UTILITIES ) CASE NO. 2003-00266  
COMPANY IN THE MIDWEST INDEPENDENT )  
TRANSMISSION SYSTEM OPERATOR, INC. )

O R D E R

On January 19, 2005, the Midwest Independent Transmission System Operator, Inc. ("MISO") filed a motion to strike all or part of the supplemental rebuttal testimonies of Mathew J. Morey, David S. Sinclair, Martyn Gallus, and Paul W. Thompson, filed on January 10, 2005 on behalf of Louisville Gas and Electric Company ("LG&E") and Kentucky Utilities Company ("KU"). MISO states that the aforementioned LG&E and KU supplemental rebuttal testimonies allege, for the first time, that MISO's cost/benefit study is seriously flawed because it is based on erroneous inputs. However, MISO claims that all of the inputs utilized in its cost/benefit study were reviewed and verified as reasonable by LG&E and KU. Consequently, MISO asserts that LG&E and KU should now be estopped from alleging the existence of any such errors in MISO's cost/benefit study. MISO's motion to strike discusses two of the three significant input errors noted in the LG&E and KU supplemental rebuttal testimony: (1) MISO's assumption that the generation leased by Western Kentucky Energy, an affiliate of LG&E and KU, was within the LG&E and KU control area and could be economically

dispatched with the LG&E and KU generation; and (2) MISO's failure to recognize KU's recent retirement of 40 MW of generation.<sup>1</sup>

The MISO motion also requests an opportunity to file an additional cost/benefit study that would be based on the same generating resources that are utilized in the LG&E and KU cost/benefit study. MISO acknowledges that its cost/benefit study is not comparable to that of LG&E and KU, and that the Commission will not have before it in this record the best information available on costs and benefits unless MISO is allowed to file an additional study.

On January 25, 2005, LG&E and KU filed a response and objection to MISO's motion to strike. LG&E and KU state that all the information provided to MISO was true at the time it was provided and that MISO acknowledged over a year ago that it was seeking verification of data on generation not owned by LG&E and KU. LG&E and KU state that this acknowledgement by MISO indicated that it was aware that some of the data to be verified was for generating units not under the control of LG&E and KU. The response also asserts that MISO was previously advised that the retirement dates listed for the LG&E and KU generating units were incorrect, but that MISO made no further inquiry as to the correct retirement dates. LG&E and KU assert that, on a number of occasions, both during this proceeding and prior thereto, they provided MISO with schedules of the generating units under the financial control of LG&E and KU, and none of those schedules included the generation leased by Western Kentucky Energy. The

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<sup>1</sup> The third significant error noted in the LG&E and KU testimony, but not discussed in MISO's motion, was MISO's exclusion from its study of the generation purchased by LG&E and KU under long-term contract from Ohio Valley Electric Corporation and Electric Energy, Inc.

response concludes by stating that the LG&E and KU supplemental rebuttal testimonies not only point out the errors in MISO's cost/benefit study, but also correct those errors. Thus, LG&E and KU assert that there is no need to delay this proceeding to allow MISO to file an additional cost/benefit study.

MISO filed a reply to the LG&E and KU objection to the MISO motion to strike. The reply states that the claim by LG&E and KU that they will be prejudiced by any further delay in this proceeding is unfounded and is in effect a request for the Commission to adjudicate this case without an accurate and complete evidentiary record. The reply further states that although grounds exist to strike the LG&E and KU supplemental rebuttal testimonies, the better course of action would be to provide MISO an opportunity to file an additional cost/benefit study reflecting the generating units under the financial control of LG&E and KU. The reply also asserts that the focus in this investigation should not be limited to the financial interests of LG&E and KU, and their respective ratepayers, but should be on the public interest of all users of the LG&E and KU transmission system. MISO further argues that the generating resource inputs utilized in its cost/benefit study are reasonable, even though they differ from the inputs utilized in the LG&E and KU study, but in any event, LG&E and KU will suffer no prejudice by allowing MISO to file an additional study that is comparable to the LG&E and KU study.

Based on the motion and being otherwise sufficiently advised, the Commission finds that the purpose of this investigation is to determine whether the benefits to LG&E and KU, and their respective ratepayers, of membership in MISO are greater than the costs for that membership. To the extent that the parties have presented arguments on

the reasonableness of the inputs utilized in their respective studies, those arguments are based on facts that should more properly be explored during the hearing in this proceeding. With respect to MISO's request for additional time to file a corrected cost/benefit study, that request will be granted. Having cost/benefit studies in this case that are based upon comparable inputs will produce a more complete evidentiary record, enabling the Commission to be in a better position to render a decision on the merits.

The Commission further finds that LG&E and KU are not responsible for the erroneous inputs utilized by MISO in its cost/benefit study. LG&E and KU verified the accuracy of certain data relating to numerous generating units, some of which were noted as being owned by LG&E and KU, and others which were noted as non-owned by LG&E and KU. As part of that verification process, LG&E and KU also noted that the retirement dates for units were listed incorrectly, but MISO made no subsequent request for the correct retirement dates. Under these circumstances, a brief delay should be granted to allow MISO an opportunity to file another cost/benefit study which is based upon correct generating resource inputs. LG&E and KU should then have an opportunity to file testimony in response thereto.

Also pending before the Commission are two filings made by MISO on January 20, 2005. One is a motion to suspend the due dates set forth in the existing procedural schedule for issuing data requests to LG&E and KU on their supplemental rebuttal testimony. As the basis for this motion, MISO cites its earlier-filed outstanding motion to strike the LG&E and KU supplemental rebuttal testimony, and states that if that motion is granted, there will be no need for it to issue data requests. In the

alternative, if the motion is denied, MISO requests a brief extension of time to issue additional data requests to LG&E and KU. The other MISO filings on that date are supplemental responses which include three documents: (1) updated responses to certain LG&E and KU data requests; (2) additional testimony of MISO witness McNamara, consisting of 14 pages plus attachments, which sets forth updates and corrections to his November 19, 2004 rebuttal testimony; and (3) an updated version of the rebuttal testimony of MISO witness McNamara, consisting of 89 pages plus exhibits, which is intended to replace his November 19, 2004 rebuttal testimony.

LG&E and KU subsequently filed an objection to MISO's request to suspend the procedural schedule regarding data requests. LG&E and KU state that they oppose any suspension of the procedural schedule because it may lead to a delay in this case, but they have no objection to allowing MISO additional time, up through January 26, 2005, to issue additional data requests. LG&E and KU also object to the supplemental responses filed by MISO, claiming that they are not updates to previous filings, but are an improper attempt to present the results of a new cost/benefit study not contained in MISO's previously filed rebuttal testimony. LG&E and KU note that MISO did not request a revision to the procedural schedule to authorize the filing of this new study, and they request that it be stricken. In the alternative, LG&E and KU request an opportunity to file further rebuttal testimony addressing MISO's new study.

In its response to this LG&E and KU objection, MISO claims that it was obligated to file the newly completed cost/benefit study in response to a prior request by LG&E and KU for any such study prepared by MISO. Further, MISO claims that one of its supplemental data responses had been served electronically on the parties and

Commission Staff, and was only filed in the record in response to a request by Commission Staff.

The Commission finds that MISO's motion to suspend the procedural dates for issuing data requests to LG&E and KU should be denied as moot. MISO tendered additional data requests to LG&E and KU on January 26, 2005, and LG&E and KU agreed to respond to those requests. As to MISO's filing of supplemental responses that include a new cost/benefit study, those responses were untimely under the existing procedural schedule, and MISO should have requested authority to file its new study. The prior request by LG&E and KU for MISO to file any cost/benefit studies did not authorize MISO to now file a new study which was performed after it filed its prior responses. As to the supplemental data response which MISO claims was filed in the record only because of a request by Commission Staff, MISO has failed to recognize that it is inappropriate for a party to electronically provide Commission Staff with data which is not filed in the case record. Once Staff received this data electronically, Staff was obliged to ensure that the data was filed in the case record. Although all the supplemental responses by MISO were untimely under the procedural schedule, the Commission has already determined that the record needs to include accurate studies of the costs and benefits for LG&E and KU to be members of MISO. Consequently, the supplemental responses will not be stricken from the record.

Finally, there is also pending a motion filed by LG&E and KU to compel MISO to supplement its response to the LG&E and KU data request of December 7, 2004, Item No. 1, which requested a resume or curriculum vitae for MISO witness McNamara. MISO's initial response objected to the request as being overly broad and unduly

burdensome, but partially responded by citing certain documents already in the record of this case which contain information on the witness's background and certain of his writings, reports, and speeches.

Having considered this motion to compel, the Commission finds that each existing resume, curriculum vitae, or other similar document which lists or describes the education, background, or work experience of MISO witness McNamara should be filed. In addition, any existing list of the writings, reports, or speeches prepared or presented by this witness should also be filed. In the event that no such list exists, MISO should prepare and file a list of the writings, reports, and speeches that were prepared or presented by this witness and are in his possession or under his control. A party cannot shield its expert witness from discovery by simply not maintaining a list of the witness's prior work.

IT IS THEREFORE ORDERED that:

1. The MISO motion to strike the supplemental rebuttal testimony of LG&E and KU is denied.
2. The LG&E and KU motion to strike the MISO supplemental responses filed on January 20, 2005 is denied.
3. MISO's motion to suspend the dates in the procedural schedule for issuing data requests to LG&E and KU on their supplemental rebuttal testimony is denied as moot.
4. The respective requests by LG&E/KU and MISO to file additional testimony are granted.

5. The procedural schedule appended to the Commission's December 2, 2004 Order is supplemented, and the date of the public hearing is changed, as set forth in Appendix A attached hereto.

6. MISO shall file within seven days of the date of this Order the information and list discussed in the findings above as being responsive to the LG&E and KU data request of December 7, 2004, Item No. 1.

Done at Frankfort, Kentucky, this 4<sup>th</sup> day of February, 2005.

By the Commission

ATTEST:



Executive Director



APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE  
COMMISSION IN CASE NO. 2003-00266 DATED FEBRUARY 4, 2005

MISO shall file any additional rebuttal  
testimony in verified prepared form  
no later than ..... 02/14/05

LG&E and KU shall file any additional  
supplemental rebuttal testimony in  
verified prepared form no later than ..... 02/22/05

Public hearing shall begin at 9:00 a.m.,  
Eastern Standard Time, in Hearing Room 1  
of the Commission's offices at 211 Sower  
Boulevard, Frankfort, Kentucky ..... 03/01/05