

COMMOMWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMISSION

In the Matter of:

THE APPLICATION OF THE UNION LIGHT, HEAT	)	
AND POWER COMPANY FOR A CERTIFICATE OF	)	
PUBLIC CONVENIENCE TO ACQUIRE CERTAIN	)	
GENERATING RESOURCES AND RELATED	)	CASE NO.
PROPERTY; FOR APPROVAL OF CERTAIN	)	2003-00252
PURCHASE POWER AGREEMENTS; FOR	)	
APPROVAL OF CERTAIN ACCOUNTING TREATMENT;	)	
AND FOR APPROVAL OF DEVIATION FROM	)	
REQUIREMENTS OF KRS 278.2297 AND 278.2213(6)	)	

O R D E R

This proceeding was initiated by the July 21, 2003 application of The Union Light, Heat and Power Company<sup>1</sup> (“ULH&P”) now Duke Energy Kentucky, Inc. (“Duke Kentucky”) seeking the approvals enumerated above. The Commission has issued three Orders in this docket which resolved all the substantive issues raised by Duke Kentucky’s application except for the filing and review of: (1) the final transaction documents executed as part of the closing of the asset transfer under which Duke Kentucky acquired 1,105 megawatts of generating capacity from its parent, The Cincinnati Gas and Electric Company (“CG&E”) now Duke Energy Ohio, Inc. (“Duke Ohio”); (2) the accounting entries made by Duke Kentucky to record the asset transfer; (3) the breakdown of Duke Kentucky’s financing to acquire the generating assets; and

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<sup>1</sup> ULH&P and its parent, CG&E, are public utility subsidiaries of Cinergy Corp. (“Cinergy”). Effective April 3, 2006, Cinergy consummated a merger with Duke Energy Corporation. As a result of this merger, ULH&P became Duke Kentucky and CG&E became Duke Ohio. Duke Kentucky and Duke Ohio will be used throughout the remainder of this Order.

(4) the Back-up Power Supply Agreement (“PSA”) under which Duke Kentucky would receive power from Duke Ohio when its newly-acquired generation is not available to meet its system demand.

Duke Kentucky filed the final transaction documents, accounting entries and financing information with the Commission May 30, 2006. In its March 29 and April 13, 2006 filings with the Commission, Duke Kentucky explained how recent changes in the Federal Energy Regulatory Commission’s (“FERC”) code of conduct rules on affiliate transactions prohibited it from entering into a PSA with its parent, Duke Ohio, without a competitive bidding process.<sup>2</sup> In its March 29, 2006 filing, Duke Kentucky also discussed its experience under the Midwest Independent System Operator’s (“MISO”) Day 2 energy market, which provides for a market clearing price and joint dispatch of all generating resources participating in the MISO market. In that filing, Duke Kentucky stated its belief that obtaining back-up power from the MISO Day 2 energy market was the best alternative to its original proposal to enter into a PSA with Duke Ohio. Subsequently, at a March 30, 2006 informal conference and in its April 13, 2006 filing, Duke Kentucky stated that it would propose a substitute arrangement for its back-up power supply in its upcoming general rate case.

Duke Kentucky filed Case No. 2006-00172,<sup>3</sup> its general rate application, on May 31, 2006. In that application, Duke Kentucky stated that it was in the process of

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<sup>2</sup> The issue of a PSA was also discussed at a March 30, 2006 informal conference in this proceeding. A memorandum summarizing the conference was filed in the record of this case on April 12, 2006.

<sup>3</sup> Case No. 2006-00172, Application of The Union Light, Heat and Power Company d/b/a Duke Energy Kentucky for an Adjustment of Electric Rates, final Order dated December 21, 2006.

conducting a competitive bidding process for a variety of supply options. However, there has been no final resolution of the issue of a back-up power supply arrangement as part of Case No. 2006-00172. The parties to that case filed a unanimous settlement agreement with the Commission on October 27, 2006. Under the terms of that agreement Duke Kentucky will continue to use its best efforts to procure a back-up power supply and obtain FERC approval thereof, if necessary, as soon as possible. The agreement further states that Duke Kentucky will file its back-up supply plan with the Commission as soon as the plan is completed but in no event later than at the time of making its March 2007 Fuel Adjustment Clause (“FAC”) filing.<sup>4</sup>

#### DISCUSSION

The final transaction documents filed with the Commission include, among other things, the following items for the three generating assets – East Bend Unit 2, Miami Fort Unit 6, and Woodsdale Units 1 through 6 – which Duke Kentucky has acquired from Duke Ohio: (1) asset transfer agreements; (2) property deeds; (3) bills of sale; (4) easements; (5) various assignment agreements and assignment & assumption agreements; (6) lease and sublease agreements for various common facilities of Miami Fort Units 5, 6, 7, and 8; and (7) various agreements concerning the operation and fuel supplies at the Woodsdale Units. These documents are in addition to various other transaction documents that Duke Kentucky has previously filed with the Commission.

The accounting entries reflect the book value of the assets, capital and liabilities transferred from Duke Ohio to Duke Kentucky as part of Duke Kentucky’s acquisition of

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<sup>4</sup> Duke Kentucky submitted its back-up supply plan to the Commission for approval on January 23, 2007. See Case No. 2007-00044, Back-Up Power Supply Plan of Duke Energy Kentucky, Inc.

the generating assets identified above. The entries also reflect how the assets, capital and liabilities have been recorded by Duke Kentucky on its books of account.

The accounting entries and financing information reflect Duke Kentucky's assumption of long-term debt and payables of Duke Ohio associated with the acquisition of the generating assets. They also reflect the equity contribution provided by Duke Ohio as the parent company of Duke Kentucky and the long-term financing arrangements in which Duke Kentucky entered in conjunction with its purchase of the aforementioned generating assets.

The unanimous settlement agreement filed in Duke Kentucky's electric rate case, Case No. 2006-00172, has received Commission approval. Duke Kentucky filed its back-up supply plan on January 23, 2007, pursuant to the terms of that settlement agreement. The Commission will examine the terms and conditions of the back-up supply agreement in Case No. 2007-00044.

#### FINDINGS AND ORDERS

Based on the evidence of record and being otherwise sufficiently advised, the Commission finds that:

1. The transaction documents, accounting entries, and financing information filed by Duke Kentucky on May 30, 2006 have been reviewed and are accepted as satisfying the filing requirements previously established by the Commission in its June 17, 2005 Order in this proceeding.

2. The matter of a back-up power supply arrangement for Duke Kentucky has not been resolved in this proceeding, nor was it resolved in Duke Kentucky's rate case, Case No. 2006-00172. However, the unanimous settlement agreement submitted

by the parties to that case, which we have accepted and approved, provides for the future resolution of this issue in a manner that is acceptable to the Commission.

3. This case should be closed and removed from the Commission's docket.

Done at Frankfort, Kentucky, this 12<sup>th</sup> day of February, 2007.

By the Commission

ATTEST:

  
Executive Director