

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN INVESTIGATION OF THE CONSTRUCTION)	
BY KENTUCKY UTILITIES COMPANY OF A)	CASE NO.
SCRUBBER AT GHENT UNIT NO. 1)	2006-00449

O R D E R

On October 19, 2006, the Commission opened this investigation to consider whether or not Kentucky Utilities Company (“KU”) had adequately disclosed in Case No. 2004-00426¹ that it intended to construct a new, second Flue Gas Desulfurization System (“scrubber”) at Ghent Unit No. 1, even though the application and supporting testimony filed in that case requested a Certificate of Public Convenience and Necessity (“CPCN”) to construct a scrubber at Ghent Unit No. 2. The Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention, and the Kentucky Industrial Utility Customers, Inc. sought and were granted intervention.

On October 30, 2006, KU submitted responses to the October 19, 2006 data request that examined statements made by KU in its applications in Case Nos. 2004-00426 and 2006-00206² concerning the construction and configuration of scrubbers at

¹ Case No. 2004-00426, The Application of Kentucky Utilities Company for a Certificate of Public Convenience and Necessity to Construct Flue Gas Desulfurization Systems and Approval of Its 2004 Compliance Plan and Recovery by Environmental Surcharge, final Order dated June 20, 2005.

² Case No. 2006-00206, The Application of Kentucky Utilities Company for a Certificate of Public Convenience and Necessity to Construct a Selective Catalytic Reduction System and Approval of Its 2006 Compliance Plan for Recovery by Environmental Surcharge.

Ghent Unit Nos. 1 and 2. At KU's request, an informal conference was held on October 31, 2006 to discuss the responses and discuss how to proceed with the investigation. On November 3, 2006, KU filed revised responses to the information filed on October 30, 2006.

BACKGROUND

KU has been granted CPCNs to construct scrubbers at its Ghent Generating Station as the most cost effective means of compliance with sulfur dioxide emission limits established under the Clean Air Act of 1990, as amended, and the Clean Air Interstate Rule. The initial scrubber for Ghent Unit No. 1 was authorized in Case No. 1992-00005³ and the scrubber for Ghent Unit No. 2 was authorized in Case No. 2004-00426. Because of space limitations at the Ghent site, the location of the scrubber for Unit No. 1 is physically closer to Unit No. 2.

The testimony and data responses submitted in Case No. 2006-00206 clearly stated that KU planned to reconfigure the ductwork on the initial scrubber for Unit No. 1 and attach that scrubber to serve Unit No. 2, while the new scrubber authorized for Unit No. 2 was to be attached and serve Unit No. 1. These statements appeared to be in conflict with the Commission's Orders in Case Nos. 1992-00005 and 2004-00426, and after exploring the issue in Case No. 2006-00206, the Commission therefore opened the current investigation.

In its data responses in this case, KU has acknowledged that just prior to filing Case No. 2004-00426 it had finished its engineering analysis of environmental

³ Case No. 1992-00005, The Application of Kentucky Utilities Company for a Certificate of Public Convenience and Necessity to Construct a Scrubber on Unit No. 1 of Its Ghent Generating Plant, final Order dated July 24, 1992.

compliance options at Ghent and concluded that reconfiguring the ductwork on the initial scrubber for Unit No. 1, resulting in that scrubber being attached and serving Unit No. 2, was the least cost method of compliance. KU stated that this decision did not impact its need to scrub the entire Ghent Generating Station and that it had incorporated the cost savings from this approach into the analysis submitted in support of the CPCN request for scrubbers at Ghent Unit Nos. 2, 3, and 4. However, KU noted that it did not revise or modify its application in Case No. 2004-00426 to reflect the inclusion of the ductwork reconfiguration. In its Statement in Response to the Commission's October 19, 2006 Order, KU said,

At the outset, KU specifically states that it never intended to withhold or obscure disclosure to the Commission of its plans to reconfigure the ductwork currently connecting Ghent Unit No. 1 to Scrubber No. 1. KU did, however, fail to realize the materiality of this issue to the Commission, believing that the reconfiguration of the ductwork in question created efficiencies at a lower cost and was sufficiently minor to obviate the need for explicit Commission approval. This failure to acknowledge the importance of the issue resulted in KU's Application and Testimony filed with the Commission in Case No. 2004-00426 having a less than satisfactory level of detail and clarity.

On November 16, 2006 KU filed Case No. 2006-00493,⁴ an application seeking modifications to the CPCNs granted in Case Nos. 1992-00005 and 2004-00426 that would reflect the adoption of the ductwork reconfiguration at Ghent Unit Nos. 1 and 2. In that case, KU requested that the CPCN awarded in Case No. 1992-00005 be prospectively modified to allow the scrubber serving Ghent Unit No. 1 to serve Ghent Unit No. 2. KU also requested that the CPCN awarded in Case No. 2004-00426 be

⁴ Case No. 2006-00493, Application of Kentucky Utilities Company to Modify Certain Certificates of Public Convenience and Necessity to Construct Ductwork for Two Flue Gas Desulfurization Units at the Ghent Power Station, final Order dated December 22, 2006.

prospectively modified to allow the yet to be constructed scrubber that was to serve Ghent Unit No. 2 to serve Ghent Unit No. 1 instead. In its December 22, 2006 Order, the Commission approved KU's request, finding that the record showed that modifying the CPCNs awarded for the construction of the scrubbers at Ghent Unit Nos. 1 and 2 was preferable and less costly than adhering to the conditions of the original CPCNs.

DISCUSSION

The Commission's examination of a request for a CPCN involves a thorough review of the specific details and plans submitted by the utility in support of the application. When granting a CPCN, the Commission's Orders are specific as to what project it has considered and what construction it authorizes. Thus, when the Commission granted the CPCN in Case No. 2004-00426, it was for the construction of scrubbers at Ghent Unit Nos. 2, 3, and 4 and for Brown Unit Nos. 1 through 3, rather than simply the construction of three scrubbers at the Ghent Generating Station and one scrubber at the Brown Generating Station. Consequently, KU should have known that a change like the ductwork reconfiguration for the scrubbers at Ghent Unit Nos. 1 and 2 would constitute a material issue for the Commission.

In its application, testimony, data responses, and brief in Case No. 2004-00426, KU continued to state it was seeking a CPCN for a scrubber at Ghent Unit No. 2, even though two of its witnesses knew this was not KU's plan for environmental compliance at the Ghent Generating Station. In fact, KU had the obligation to notify the Commission of this or any other change that would impact the projects included in the CPCN application. KU's failure to meet this obligation resulted in the filing of Case No.

2006-00493 to consider the actual environmental compliance strategy for the Ghent Generating Station, which should have been addressed in Case No. 2004-00426.

Based upon the responses filed in this proceeding, the Commission believes that KU now understands what constitutes “a material issue” in a CPCN application. The application for a CPCN must clearly disclose all the details of the projects and must accurately reflect the utility’s actual plans. The Commission places KU, as well as all other utilities under our jurisdiction, on notice that in future CPCN cases the applicant utility has the obligation to inform the Commission as soon as possible of any changes in the specific plans associated with the projects for which a CPCN is being requested.

IT IS THEREFORE ORDERED that this investigation is closed and the case removed from the Commission’s docket.

Done at Frankfort, Kentucky, this 31st day of January, 2007.

By the Commission

ATTEST:



Executive Director