

COMMONWEALTH OF KENTUCKY

**BEFORE THE KENTUCKY STATE BOARD ON
ELECTRIC GENERATION AND TRANSMISSION SITING**

In the Matter of:

**THE APPLICATION OF THOROUGHBRED)
GENERATING COMPANY, LLC FOR A MERCHANT) CASE NO. 2002-00150
POWER PLANT CONSTRUCTION CERTIFICATE)
IN MUHLENBERG COUNTY, KENTUCKY)**

**RESPONSE OF KENTUCKY UTILITIES COMPANY
AND LOUISVILLE GAS AND ELECTRIC COMPANY
TO DATA REQUESTS PROFFERED AT NOVEMBER 10, 2003 HEARING**

November 17, 2003

DATA REQUEST NO. 1

Q: What would be the Federal Energy Regulatory Commission's ("FERC") role, if any, and how would it become involved in resolving any issues between the parties, disputed or otherwise, related to the payment of the costs of transmission upgrades required by Thoroughbred's proposed Facility?

Responding Witness: Mark S. Johnson/Counsel

A: As Kentucky Utilities Company ("KU") and Louisville Gas and Electric Company ("LG&E") are "public utilities" subject to the jurisdiction of the FERC under the Federal Power Act ("FPA"), the FERC, by its exercise of authority over the terms and conditions of electric generator interconnections, will necessarily play a key role in assigning cost responsibility for transmission system upgrades required on either utility's system to accommodate Thoroughbred's proposed merchant facility (the "Facility").

On July 24, 2003, in Order No. 2003, the FERC revised its regulations under the FPA to implement new rules governing generator interconnections to the transmission grid.¹ Among other things, these rules speak directly to how the costs of transmission system upgrades required to accommodate such generators are allocated as between (i) the generator (i.e., the "Interconnection Customer") and the transmission owner/provider with which the generator directly interconnects; and (ii) the generator and the "Affected System" owner/operator (the "downstream" transmission owner whose facilities may be affected by the generator's interconnection with the transmission provider/owner.)²

Under Thoroughbred's current interconnection plan (*see* Williams Direct Testimony at 8), KU's transmission system is an "Affected System" that will experience an "Adverse System Impact" when the Facility commences operation unless specific "Network Upgrades" are constructed on the transmission system to accommodate the Facility's output.³ *See* System Map distributed October 21, 2003 (depicting transmission line

¹ Order No. 2003, FERC Stats & Regs. ¶31,146 (2003). Appended to Order No. 2003 are standardized Large Generator Interconnection Procedures ("LGIP") that establish the procedures governing the interconnection process; and a standardized Large Generator Interconnection Agreement ("LGIA") that "sets forth the legal rights and obligations of each party, addresses cost responsibility issues, and establishes a process for resolving disputes." Order No. 2003, slip op. at 1-2. The FERC has required that all public utilities submit "compliance filings" that add the LGIP and the LGIA standard templates to the utilities' FERC-jurisdictional tariffs. Because KU and LG&E are currently members of the Midwest Independent Transmission System Operator, Inc. ("MISO"), MISO will be filing on behalf of both utilities.

² Order No. 2003 defines "Affected System" as "an electric system other than the Transmission Provider's System that may be affected by the proposed interconnection." Order No. 2003, Standard LGIA, at 3.

³ "Adverse System Impact" is defined under Order No. 2003 as "the negative effects due to technical or operational limits on conductors or equipment being exceeded that may compromise the safety or reliability of the electric system." Order No. 2003, Standard LGIA at 3. "Network Upgrades" as defined in Order No. 2003 include any additions, modifications and upgrades to the transmission system required to accommodate the interconnection of the generating facility. Although the definition refers specifically to construction required on the transmission provider's system (with which the generator interconnects directly), the quote from Order No. 2003 referenced herein (page 2) makes clear that the FERC intends to apply the same definition to Affected Systems.

upgrades as identified in Thoroughbred Energy Campus Interconnection Study); Commonwealth Associates Interconnection System Impact Study, included in Section 5.4 of Thoroughbred Application submitted July 18, 2003. Specifically, the Facility, although directly interconnecting with Big Rivers Electric Corp. (“BREC”), will require the construction of a 345 kV interconnection between KU and BREC, as well as other transmission system upgrades east of this interconnection, to accommodate delivery of the Facility’s output through BREC’s system without degrading the reliability of KU’s transmission system. *See id.*

Regarding such upgrade costs, the FERC in Order No. 2003 clarified that Affected Systems must assume full responsibility for these costs, even where (as here) the generator has not agreed to purchase transmission service through the Affected System (thereby providing a means of partially offsetting such costs). Specifically, under Order No. 2003, although an Affected System owner/operator may require the generator to pay “upfront” for system upgrades required to accommodate the latter’s generation facility, the Affected System owner/operator must, within (at most) five years, *refund the entire amount to the generator* (including interest):

The [LGIP and LGIA included in the FERC’s proposed rulemaking] included no pricing provisions that specifically address situations where Network Upgrades must be constructed on Affected Systems to protect the reliability of those systems. However, the [FERC] concurs . . . that the . . . LGIA should be modified to expressly allow for refunds to be provided to the Interconnection Customer when such Network Upgrades must be constructed, and the Interconnection Customer is required to pay for them. Therefore, the Commission modifies Article 11.4 of the Final Rule LGIA to make it applicable to all jurisdictional Affected System Operators on whose systems Network Upgrades are constructed to accommodate the Interconnection Customer’s Interconnection Request. This means that, prior to the Commercial Operation Date, an Affected System Operator may require the Interconnection Customer to pay for all Interconnection Facilities and Network Upgrades constructed to accommodate the Interconnection Customer’s Interconnection Request. *Then, upon commencement of commercial operation, any Affected System Operator that has received payments from the Interconnection Customer must begin to refund to the Interconnection Customer the costs of Network Upgrades that the Interconnection Customer has paid. Furthermore, refunds are to be provided without regard to whether the Interconnection Customer has contracted for delivery service on the Affected System Operator’s Transmission System. If the Interconnection Customer has not contracted for delivery service, and in the absence of another mutually agreeable payment schedule, refunds shall be provided by means of a uniform stream of monthly payments designed to fully reimburse the Interconnection Customer, with interest, over a five-year period commencing with the Generating Facility’s Commercial Operation Date.*

Order No. 2003, slip op. at 145 (emphasis added). The language of the standard LGIA elaborates on this finding (Section 11.4.2):

Refunds are to be made without regard to whether the Interconnection Customer contracts for transmission service on the Affected System. If the Interconnection Customer does not contract for transmission service, and in the absence of another mutually agreeable payment schedule, refunds shall be established at a level equal to the Affected System's rate for firm point-to-point transmissions service multiplied by the output of the Large Generating Facility assumed in the Interconnection Facilities Study. All refunds must be paid within five years of the Commercial Operation Date.

In so ruling, the FERC ignored claims that its "credit back" policy unfairly burdens the customers of affected transmission owners by requiring the latter to subsidize the cost of upgrades constructed solely to accommodate the generator, relying largely on its pro-competitive market stance to support its decision. *See* Order No. 2003, slip op. at 130-145.

With regard specifically to the Thoroughbred project as it affects KU, the FERC will enforce the rules set forth in Order No. 2003, or address any proposed departure therefrom, in ruling on the agreement governing the upgrade construction that KU must file and obtain approval of as a FERC-jurisdictional entity.⁴ Specifically, the terms and conditions governing the upgrade construction, including the parties' respective cost responsibility, will be set forth in a construction agreement entered into directly with Thoroughbred, or will otherwise be incorporated into the interconnection agreement between KU and BREC. In the latter case, BREC will act, in effect, as a conduit, incorporating the same terms in its interconnection agreement with Thoroughbred. *See* Order No. 2003 at 145:

When the Interconnection Customer is required to pay for Network Upgrades on an Affected System, it must enter into an agreement with the Affected System Operator unless the payments are incorporated in the interconnection agreement that the Interconnection Customer signs with the Transmission Provider [BREC]. Any agreement with an Affected System Operator must specify the terms governing payments to be made by the Interconnection Customer as well as the payment of refunds by the Affected System Operator.

Consistent with this finding, Section 11.4.2 of the FERC's standard LGIA provides, in pertinent part as follows:

⁴ Because KU is currently a member of MISO, MISO will likely be a third-party signatory to the agreement KU files at FERC. If the parties cannot agree on the allocation of cost responsibility, KU will file an unexecuted agreement, and the FERC will resolve the issue either summarily or after the completion of hearing procedures.

Special Provisions for Affected Systems. Unless the Transmission Provider [BREC] provides, under the LGIA, for the payment of refunds for amounts advanced to [the] Affected System Operator for Network Upgrades, the Interconnection Customer and Affected System Operator shall enter into an agreement that provides for such payment. The agreement shall specify the terms governing payments to be made by the Interconnection Customer to the Affected System Operator as well as the payment of refunds by the Affected System Operator.

As KU will be bound by the FERC's ruling on the agreement filed by KU as described above, KU submits that any certificate issued by the Board authorizing construction of the Facility must be conditioned on KU's receipt of, and Thoroughbred's acceptance of, a FERC order waiving the above-described refund/crediting rules or otherwise permitting Thoroughbred to assign back to KU any credits owed under Order No. 2003. Absent such order, Thoroughbred will be unable to comply with state law. *See* KRS Section 287.212.

DATA REQUEST NO. 2

Q: Will there be an adverse impact on retail customers as a result of the FERC's requirement that KU provide credits and cash refunds to Thoroughbred in accordance with FERC Order No. 2003?

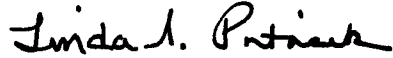
Responding Witness: Mark S. Johnson/Counsel

A: Yes. Under existing federal law, as described in KU/LG&E's response to Question No. 1, KU's customers will be forced to shoulder all system upgrade costs incurred by KU solely to accommodate the Thoroughbred merchant plant facility ("Facility"). (KU would seek full rate recovery of such costs.) Indeed, the threat of cost subsidization is even more pronounced where, as here, KU is an Affected System which cannot rely on transmission revenues from the Facility to offset, at least in part, such upgrade expenditures.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this day a true and correct copy of the foregoing document was served by first class mail on the persons named on the official service list in this proceeding.

Dated: November 17, 2003.



Counsel for
Louisville Gas and Electric Company
and Kentucky Utilities Company