

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF LOUISVILLE GAS AND)	
ELECTRIC COMPANY TO MODIFY ITS)	
CERTIFICATE OF PUBLIC CONVENIENCE)	CASE NO. 2012-00469
AND NECESSITY AS TO THE MILL CREEK)	
UNIT 3 FLUE-GAS DESULFURIZATION UNIT)	

MOTION FOR LEAVE TO FILE AMENDED APPLICATION

Pursuant to 807 KAR 5:001, Section 3(5), Louisville Gas and Electric Company (“LG&E”) hereby moves the Kentucky Public Service Commission (“Commission”) to issue an order granting LG&E leave to file its Amended Application with the Commission, and to file the Supplemental Testimony of John N. Voyles, Jr. to support the Amended Application. The Amended Application and Supplemental Testimony of John N. Voyles, Jr. are attached to, and tendered with, this Motion. LG&E further respectfully moves the Commission to rule that the KRS 278.183(2) 30-day notice-of-intent requirement applies only to a utility’s initial environmental compliance plan filing, not a plan-modification application. In the alternative, LG&E respectfully asks the Commission to deem this Motion to be LG&E’s notice of intent to file the Amended Application under KRS 278.182(2).

I. Background

On October 25, 2012, LG&E filed with the Commission an application pursuant to KRS 278.020(1), KRS 278.183, and 807 KAR 5:001 Sections 8 and 9 asking the Commission to modify the Certificate of Public Convenience and Necessity (“CPCN”) the Commission had granted to LG&E in Case No. 2011-00162 which authorized LG&E to remove the existing wet flue-gas-desulfurization system (“WFGD”) at Mill Creek Unit 3 and tie Unit 3 into the upgraded existing Mill Creek Unit 4 WFGD. More precisely, in the October 25, 2012 Application, LG&E

is asking the Commission to modify the existing CPCN to permit LG&E to build a new WFGD to serve Unit 3 instead of rehabilitating the existing Unit 4 WFGD for Unit 3's use. The purpose of LG&E's request is to save customers money; as the Application explains, timely building a new WFGD should result in a lower net-present-value revenue requirement than LG&E's original proposal. By letter dated November 2, 2012, the Commission Staff informed LG&E that its Application was not deficient.

Before filing its application, LG&E contacted all parties to Case No. 2011-00162, LG&E's 2011 Environmental Compliance Plan ("2011 Plan") case, to notify them of LG&E's intent. LG&E met with all the Case No. 2011-00162 parties and the Commission Staff at the Commission's offices on October 10, 2012 to explain LG&E's plan.

On November 1, 2012, the Commission Staff issued a letter to LG&E seeking clarification of its Application. The letter asked if LG&E intended to recover the costs of the new WFGD through LG&E's environmental cost recovery mechanism ("ECR"), which the letter stated would require an additional application to seek a modification of LG&E's 2011 Environmental Compliance Plan, or whether LG&E intended to forego such cost recovery through the environmental surcharge.

II. Motion

In response to the Commission Staff's November 1, 2012 letter, LG&E respectfully moves the Commission to accept for filing in this proceeding the attached Amended Application and Supplemental Testimony of John N. Voyles, Jr. The Amended Application seeks in the first instance an order declaring that LG&E does not need to modify its 2011 Plan to proceed with the proposed new Mill Creek Unit 3 WFGD because the plan itself specifies only a flue gas desulfurization system as the control facility that is the means of removing SO₂ from Unit 3's flue gas. In the alternative, the Amended Application requests timely approval of a modification

to LG&E's 2011 Plan to permit LG&E to recover the costs of the proposed new Mill Creek Unit 3 WFGD instead of the cost of upgrading the existing WFGD at Mill Creek Unit 4 for Unit 3's use through LG&E's ECR.

If the Commission determines that a 2011 Environmental Compliance Plan modification is necessary, LG&E further respectfully moves the Commission to rule that the KRS 278.183(2) 30-day notice-of-intent requirement applies only to a utility's *initial* environmental compliance plan filing, not a plan-modification application. The requirement in the statute does not address applications like the Amended Application: "Each utility, before initially imposing an environmental surcharge pursuant to this subsection, shall thirty (30) days in advance file a notice of intent to file said plan and subsequently submit to the commission a plan"¹ LG&E initially imposed an environmental surcharge about 20 years ago, and the Commission approved the 2011 Plan almost a year ago.² LG&E's request in the alternative to modify the 2011 Plan, which will not change the ECR tariff sheet or formula, but will serve only to reduce customers' overall cost of Project 26, should not be construed to be an "initial[] impos[ition]" of an environmental surcharge. LG&E therefore respectfully asks the Commission not to require a notice of intent and to begin without delay its consideration of the Amended Application.

In the alternative, LG&E respectfully asks the Commission to deem this Motion to be LG&E's notice of intent to file the Amended Application under KRS 278.182(2).

WHEREFORE, Louisville Gas and Electric Company respectfully requests that the Commission issue an order granting LG&E leave to file an Amended Application with the Commission and to file the Supplemental Testimony of John N. Voyles, Jr. to support the


¹ KRS 278.183(2) (emphasis added).

² *In the Matter of: The Application of Louisville Gas and Electric Company for Certificates of Public Convenience and Necessity and Approval of Its 2011 Compliance Plan for Recovery by Environmental Surcharge*, Case No. 2011-00162, Order (Dec. 15, 2011).

Amended Application. LG&E further respectfully moves the Commission to rule that the KRS 278.183(2) 30-day notice-of-intent requirement applies only to a utility's initial environmental compliance plan filing, not a plan-modification application. In the alternative, LG&E respectfully asks the Commission to deem this Motion to be LG&E's notice of intent to file the Amended Application under KRS 278.182(2).

Dated: November 9, 2012

Respectfully submitted,

A handwritten signature in blue ink, reading "Kendrick R. Riggs". The signature is written in a cursive style and is positioned above a horizontal line.

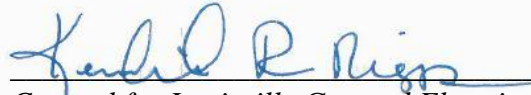
Kendrick R. Riggs
W. Duncan Crosby III
Monica H. Braun
Stoll Keenon Ogden PLLC
2000 PNC Plaza
500 West Jefferson Street
Louisville, Kentucky 40202
Telephone: (502) 333-6000

Allyson K. Sturgeon
Senior Corporate Attorney
LG&E and KU Services Company
220 West Main Street
Louisville, Kentucky 40202
Telephone: (502) 627-2088

Counsel for Louisville Gas and Electric Company

CERTIFICATE OF COMPLIANCE

In accordance with Ordering Paragraph No. 10 of the Commission's October 25, 2012 Order, this is to certify that Louisville Gas and Electric Company's November 9, 2012 electronic filing is a true and accurate copy of the documents being filed in paper medium; that the electronic filing has been transmitted to the Commission on November 9, 2012; that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding; and that an original and one copy of the filing will be hand-delivered to the Commission on November 9, 2012. There are currently no other parties to this proceeding.

A handwritten signature in blue ink, appearing to read "Gerald R. Niess", is written over a horizontal line.

Counsel for Louisville Gas and Electric Company