

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF LOUISVILLE GAS AND	)	
ELECTRIC COMPANY AND KENTUCKY	)	CASE NO.
UTILITIES COMPANY FOR APPROVAL OF	)	2009-00353
PURCHASED POWER AGREEMENTS AND	)	
RECOVERY OF ASSOCIATED COSTS	)	

O R D E R

On November 6, 2009, Louisville Gas and Electric Company ("LG&E") and Kentucky Utilities Company ("KU") filed, pursuant to KRS 278.400, a joint motion for reconsideration of the Commission's October 21, 2009 Order denying their request for a declaration that an application to establish a surcharge to recover the cost of wind power contracts does not need to be supported by the exhibits and documents required by 807 KAR 5:001, Section 10, and, in the alternative, denying their request for a waiver of those filing requirements. On November 10, 2009, the Attorney General's Office, Rate Intervention Division ("AG") and Kentucky Industrial Utility Customers, Inc. ("KIUC") also filed a joint motion for reconsideration of that same Order, arguing that it misstates a 2008 unpublished decision of the Kentucky Court of Appeals in Kentucky Public Service Comm'n et al. v. Commonwealth of Kentucky, ex rel. Stumbo, Case No. 2007-CA-001635-MR (November 7, 2008), a case which addressed a Commission-approved surcharge for Duke Energy Kentucky, Inc. ("Duke Kentucky").

## LG&E/KU REHEARING REQUEST

LG&E and KU state that, due to the magnitude of the financial risk resulting from entering into the two proposed wind power contracts, it would not be prudent to enter into such contracts without advance assurance of cost recovery by the Commission. The wind power contracts represent a financial obligation of more than \$525 million over 20 years, and those costs exceed by more than \$100 million alternative sources of power as determined under a traditional least-cost supply analysis. Due to the magnitude of the power costs under the wind contracts and the risks of recovering those costs, LG&E/KU state that they will not execute the wind power contracts unless the Commission approves full cost-recovery through a surcharge.

LG&E/KU argue that, under the Court of Appeals' decision in the Duke Kentucky surcharge case, the Commission has the authority to establish a surcharge to recover non-capital costs that are volatile in nature, such as fuel used to generate electricity and natural gas supplied for end-use consumption. LG&E/KU opine that the Commission's October 21, 2009 Order misinterpreted the Court of Appeals' decision by stating that its holding was limited to the establishment of surcharges in the context of general rate cases. In support of their alternative argument that the Commission should waive the requisite filing requirements if the filing of a general rate case is required, LG&E/KU assert that there will be no double-recovery of the wind costs because none of those costs are included in existing rates and it would be an unnecessary and unproductive use of resources to require compliance with those filing requirements. Finally, LG&E/KU argue that they should not be required to show that their existing rates are insufficient to recover the new costs of the wind power contracts because those costs

are incremental and, due to their volatile nature, not amenable to base rate recovery. Recovering wind power cost through base rates would be unacceptable, according to LG&E/KU, because such cases create regulatory risk of under-recovery or over-recovery, as well as “continuous and contentious controversy.”<sup>1</sup>

The AG/KIUC filed a response in opposition to the LG&E/KU rehearing request, and LG&E/KU filed a reply in support of their rehearing request.

#### AG/KIUC REHEARING REQUEST

The AG/KIUC argue that the Commission’s October 21, 2009 Order erred in interpreting the Court of Appeals’ decision in the Duke Kentucky surcharge case as holding that the Commission has the authority to implement rate surcharges in the context of general rate cases. The Court of Appeals’ decision, according to the AG/KIUC, held that the Commission could not authorize rate surcharges unless there was specific statutory authority to do so.

LG&E/KU filed a response in opposition to the AG/KIUC rehearing request, arguing that the Court of Appeals held that specific statutory authority was necessary only to recover by surcharge costs of capital projects. Surcharges for non-capital costs which are volatile in nature can be established under the Commission’s implied statutory authority, according to LG&E/KU.

#### COMMISSION FINDINGS

Based on the requests for rehearing and being otherwise sufficiently advised, the Commission finds that the LG&E/KU request to allow the recovery of renewable power costs by surcharge without a supporting rate application or, alternatively, to waive the

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<sup>1</sup> LG&E/KU Motion for Reconsideration at 6.

requisite filing requirements presents significant legal and factual issues which should be further developed and examined through oral argument. Similarly, the AG/KIUC request for rehearing on the scope and mandates of the Court of Appeals' unpublished decision in the Duke Kentucky surcharge case warrants reconsideration by way of oral argument. Therefore, the Commission will grant both requests for rehearing for the limited purpose of holding an oral argument to assist us in considering all of the issues raised on rehearing.

In addition, the Commission finds that a procedural schedule should be established to commence a review of the reasonableness of the two proposed wind power contracts. That procedural schedule is attached hereto as an Appendix to this Order and is incorporated herein.

Finally, the Commission recognizes that the portion of the pending LG&E/KU application requesting approval of two wind power contracts falls within our jurisdiction as evidences of indebtedness which must be approved as financing under KRS 278.300. That statute requires the Commission to adjudicate financing applications within 60 days of filing, unless good cause exists to continue the application. Here, the Commission finds that an investigation of the LG&E/KU wind power contracts is necessary to determine their reasonableness and that the investigation cannot be completed within 60 days of the filing date of the application.

IT IS THEREFORE ORDERED that:

1. The requests for rehearing, one filed by LG&E/KU and the other filed by the AG/KIUC, are granted for the limited purpose of further considering the factual and legal issues raised therein.

2. The parties shall present oral argument on the facts and legal issues raised in the requests for rehearing on December 16, 2009 at 10:00 a.m., Eastern Standard Time, at the Commission's offices in Frankfort, Kentucky.

3. The LG&E/KU request for approval of two wind power contracts as financing is continued beyond the 60-day time limit set forth in KRS 278.300(2).

4. The procedural schedule for processing the review of the two proposed wind power contracts is attached hereto as an Appendix and shall be followed in this case.

5. a. Responses to requests for information shall be appropriately bound, tabbed and indexed and shall include the name of the witness responsible for responding to the questions related to the information provided, with copies to all parties of record and nine copies to the Commission.

b. Each response shall be answered under oath or, for representatives of a public or private corporation or a partnership or association or a governmental agency, be accompanied by a signed certification of the preparer or person supervising the preparation of the response on behalf of the entity that the response is true and accurate to the best of that person's knowledge, information, and belief formed after a reasonable inquiry.

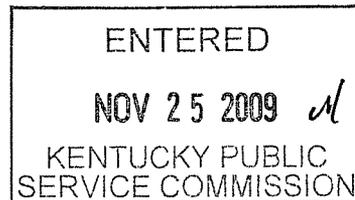
c. Any party shall make timely amendment to any prior response if it obtains information which indicates that the response was incorrect when made or, though correct when made, is now incorrect in any material respect.

d. For any request to which a party fails or refuses to furnish all or part of the requested information, that party shall provide a written explanation of the specific grounds for its failure to completely and precisely respond.

6. All parties shall respond to any interrogatories and requests for production of documents that Commission Staff submits in accordance with the procedural schedule set forth in the Appendix.

7. Motions for extensions of time with respect to the procedural schedule attached hereto shall be made in writing and will be granted only upon a showing of good cause.

By the Commission



ATTEST:

  
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Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE  
COMMISSION IN CASE NO. 2009-00353 DATED NOV 25 2009

Initial data requests to LG&E/KU shall be filed no later than.....	12/21/09
Responses to initial data requests by LG&E/KU shall be filed no later than.....	01/06/10
Supplemental data requests to LG&E/KU shall be filed no later than .....	01/18/10
Responses to supplemental data requests by LG&E/KU shall be filed no later than.....	01/28/10
Intervenor testimony, if any, in verified prepared form, shall be filed no later than.....	02/10/10
Data requests to Intervenor shall be filed no later than.....	02/19/10
Intervenors' responses to data requests shall be filed no later than .....	03/01/10

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