

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

|                                   |   |            |
|-----------------------------------|---|------------|
| APPLICATION OF KENTUCKY UTILITIES | ) | CASE NO.   |
| COMPANY FOR AN ADJUSTMENT OF BASE | ) | 2009-00548 |
| RATES                             | ) |            |

|                                    |   |            |
|------------------------------------|---|------------|
| APPLICATION OF LOUISVILLE GAS AND  | ) | CASE NO.   |
| ELECTRIC COMPANY FOR AN ADJUSTMENT | ) | 2009-00549 |
| OF ELECTRIC AND GAS BASE RATES     | ) |            |

O R D E R

On June 2, 2010, the Attorney General, Office of Rate Intervention (“AG”), filed a motion to dismiss the pending applications for adjustments in base rates filed by Kentucky Utilities Company (“KU”) and Louisville Gas and Electric Company (“LG&E”). The Commission entered a procedural Order the next day, allowing any party to file a response to the motion by June 4, 2010 and allowing the AG to file a reply by 10:00 a.m. on June 7, 2010. The relatively abbreviated filing times were established in recognition that evidentiary hearings in these cases had been scheduled three months ago to commence on June 8, 2010. LG&E and KU filed the only response, and they opposed the motion to dismiss. The AG filed a reply in support of dismissal.

Both the KU and LG&E rate applications are based on 12-month historic test periods ending September 30, 2009, as authorized by KRS 278.192(1), with pro forma adjustments, as authorized by 807 KAR 5:001, Section 10(1)(7). The AG asserts that the historic test periods utilized by each utility are unreasonable for use in setting rates because of a recently announced acquisition by PPL Corporation (“PPL”) of E.ON U.S.

LLC (“EUS”), the parent holding company and sole shareholder of KU and LG&E. The AG claims that “one can only speculate” as to the impact of the acquisition by PPL on the future operations of each utility, although he cites what he calls “admissions” by PPL in a presentation to financial analysts that KU and LG&E will:

1. be a “stronger, more diversified enterprise with increased earnings visibility”;
2. have a “solid investment grade credit profile”; and
3. have “enhanced regulated growth opportunities.”<sup>1</sup>

Based on these citations, the AG argues that the acquisition will have a positive financial impact on KU and LG&E, but the test period selected by each utility does not reflect the changes that will be in effect during the time the new rates will be charged. Thus, the AG claims that the acquisition has created changes that are known but are not measurable at this time.

The AG further argues that KU and LG&E, as the applicants in these cases, have the burden of proof to persuade the Commission that the test periods utilized in these rate cases are reasonable for setting rates to be charged in the future. The AG asserts that neither KU nor LG&E has met that burden with respect to the anticipated changes resulting from the PPL acquisition and that, as a consequence, both rate cases should be dismissed now. According to the AG, dismissing the pending rate cases is not harsh because it was the shareholders of KU and LG&E that decided to sell the utilities while their rate cases were pending. Thus, the AG claims that dismissal is a necessary consequence of the shareholders’ voluntary decision which renders the test periods unreliable.

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<sup>1</sup> AG motion at 3.

KU and LG&E oppose the motion to dismiss, asserting that the AG has cited no evidence to support his claim that the test periods are now unreliable due to the proposed acquisition by PPL. They argue that the AG's motion sets forth nothing but speculation and assumptions as to the financial impacts on the utilities of an acquisition by PPL. Citing 807 KAR 5:001, Section 10 (1)(7), which authorizes pro forma adjustments to the test period for "known and measurable changes," they claim that, even though the evidence relating to the PPL acquisition will not support a pro forma adjustment to the test periods, the AG is attempting to establish a lower evidentiary standard for adjudicating his motion to dismiss than is established for accepting test period adjustments.

The KU and LG&E response also asserts that the statements in the PPL presentation to financial analysts refer to the impacts on PPL of its acquisition of KU and LG&E, not the impacts on KU and LG&E of being acquired by PPL. The response further claims that the Commission lacks the authority under KRS Chapter 278 to dismiss a pending rate case, and that KU and LG&E have due process rights to a fair and timely decision on the merits of their rate applications.

Based on a review of the motion to dismiss and being otherwise sufficiently advised, the Commission finds that the sole evidentiary support for the AG's motion is a presentation by PPL to financial analysts and a PPL press release. While both documents reference the financial implications of the acquisition of KU and LG&E, they appear to be speaking in terms of the financial implications to PPL, not to KU and LG&E.

The AG states in his reply that, due to the time limitations for processing rate cases as set forth in KRS 278.190, he has not been able to conduct discovery on the

actual financial impacts of the PPL acquisition on KU and LG&E. However, the PPL press release and presentation to financial analysts appended to the AG's motion to dismiss are dated April 28, 2010 and April 29, 2010, respectively, while the motion was filed on June 2, 2010. No explanation is offered as to why discovery could not have been conducted, or at least requested, during that four-and-a-half-week period.

The Commission agrees with the AG's claim that the issue of whether the test periods utilized in these rate cases are reasonable is a burden-of-proof question, and only the Commission, as the trier of fact, can answer that question. Until all parties have had a full opportunity to present evidence, it would be premature to rule on whether the applicants have met their burden of proof.

The Commission further finds that there is ample precedent for reviewing major rate cases on their merits during the same time that an acquisition of the utility and its parent is pending. On February 25, 2005, The Union Light, Heat and Power Company ("ULHP") filed an application for a general adjustment in gas rates.<sup>2</sup> During the pendency of that case, ULHP's parent, Cinergy Corp. ("Cinergy"), filed for Commission approval of a transfer and acquisition of control of ULHP to Duke Energy Corporation ("Duke").<sup>3</sup> Similarly, on March 30, 2000, LG&E filed an application for a general adjustment in gas rates while an application was pending for approval of a merger of LG&E and its parent, LG&E Energy, with Powergen PLC. In both instances, the rate

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<sup>2</sup> Case No. 2005-00042, An Adjustment of the Gas Rates of The Union Light, Heat and Power Company (Ky. PSC Dec. 22, 2005).

<sup>3</sup> Case No. 2005-00228, Joint Application of Duke Energy Corporation, Duke Energy Holding Corp., Deer Acquisition Corp., Cougar Acquisition Corp., Cinergy Corp., The Cincinnati Gas & Electric Company, and The Union Light, Heat and Power Company for Approval of a Transfer and Acquisition of Control (Ky. PSC Nov. 29, 2005).

cases were reviewed and decided on their merits, while the impacts, if any, of the transfers and acquisitions of control were reviewed concurrently, but separately. In each instance, any financial impacts of the acquisition were addressed in the acquisition case, not in the rate case.

Here, the AG has already requested and been granted intervention in the acquisition case involving EUS and PPL.<sup>4</sup> A procedural schedule will soon be established in that case providing for discovery, intervenor testimony, and an evidentiary hearing. Thus, the AG and any other intervenor in Case No. 2010-00204 will have an opportunity to fully explore the financial impacts of the acquisition on KU and LG&E in that case.

The Commission will deny the AG's motion to dismiss on the basis that there is no support for the claim that the test years utilized by KU and LG&E have been rendered obsolete by the announcement of the acquisition by PPL. However, the denial will be without prejudice to the AG's right at the evidentiary hearings in these rate cases to address the issue of the reasonableness of the test years. The AG has sponsored testimony on the test-period revenues, expenses, and cost of capital, as have KU and LG&E. Through supplemental direct testimony or through cross-examination, the AG may pursue this issue and renew his motion if he so chooses.

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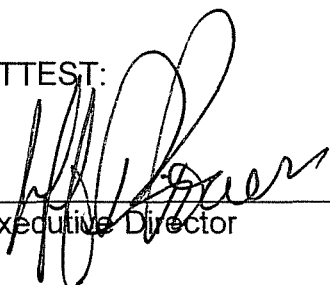
<sup>4</sup> Case No. 2010-00204, Joint Application of PPL Corporation, E.ON AG, E.ON US Investments Corp., E.ON U.S. LLC, Louisville Gas and Electric Company and Kentucky Utilities Company for Approval of an Acquisition of Ownership and Control of Utilities.

IT IS THEREFORE ORDERED that the AG's motion to dismiss is denied without prejudice.

By the Commission

ENTERED *EW*  
JUN - 8 2010  
KENTUCKY PUBLIC  
SERVICE COMMISSION

ATTEST:

  
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Executive Director

Case No. 2009-00548  
Case No. 2009-00549

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