

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC JOINT APPLICATION OF PPL	)	
CORPORATION, PPL SUBSIDIARY HOLDINGS,	)	
LLC, PPL ENERGY HOLDINGS, LLC, LG&E AND	)	
KU ENERGY LLC, LOUISVILLE GAS AND	)	
ELECTRIC COMPANY AND KENTUCKY	)	CASE NO. 2017-00415
UTILITIES COMPANY FOR APPROVAL OF AN	)	
INDIRECT CHANGE OF CONTROL OF	)	
LOUISVILLE GAS AND ELECTRIC COMPANY	)	
AND KENTUCKY UTILITIES COMPANY	)	

ORDER

On October 17, 2017, pursuant to KRS 278.020(6), PPL Corporation, PPL Subsidiary Holdings, LLC (“NEWCO1”), PPL Energy Holdings, LLC (“NEWCO2”), LG&E and KU Energy LLC (“LKE”), Louisville Gas and Electric Company (“LG&E”), and Kentucky Utilities Company (“KU”) (collectively, “Joint Applicants”) submitted a joint application (“Joint Application”) requesting Commission approval of a corporate reorganization that will result in the indirect acquisition of control of LG&E and KU (collectively, the “Utilities”) by NEWCO1 and NEWCO2.<sup>1</sup> The Commission issued a letter on October 23, 2017, accepting the Joint Application for filing.

PROCEDURAL BACKGROUND

To ensure the orderly review of the Joint Application, the Commission established a procedural schedule in this case by Order dated October 31, 2017. On October 26, 2017, Kentucky Industrial Utilities Customers (“KIUC”) filed a Motion to

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<sup>1</sup> Joint Application at 1.

Intervene, which the Commission granted by Order dated November 16, 2017. On November 2, 2017, the Attorney General of the Commonwealth of Kentucky (“Attorney General”) filed a Motion to Intervene, which the Commission granted by Order dated November 16, 2017. During the timeline set forth in the procedural schedule, the Joint Applicants responded to one Commission Staff Request for Information and two Attorney General data requests. On January 8, 2018, Joint Applicants requested that the Commission take this case under submission for consideration and a decision. KIUC indicated it had no objection to this request,<sup>2</sup> and the Attorney General did not object to this request. The Commission, however, by Order issued on February 22, 2018, scheduled a hearing for March 20, 2018, and directed Joint Applicants to file testimony on or before March 13, 2018, addressing in detail the costs and benefits associated with any potential merger of LG&E and KU. A hearing was held as scheduled on March 20, 2018, the scope of which was focused primarily on LG&E and KU’s corporate governance as it related to identifying areas of efficiencies from a combined LG&E and KU entity. Joint Applicants filed responses to post-hearing data requests on March 29, 2018. The case now stands submitted for decision.

#### PARTIES TO THE REORGANIZATION

LG&E is a corporation organized, validly existing, and in good standing under the laws of Kentucky, with a business address of Post Office Box 32010, 220 West Main Street, Louisville, Kentucky 40202.<sup>3</sup> LG&E is a utility engaged in the electric and gas

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<sup>2</sup> KICU letter filed January 8, 2018.

<sup>3</sup> Joint Application at 2.

business.<sup>4</sup> LG&E (1) generates and purchases electricity and (2) distributes and sells electricity in nine Kentucky counties.<sup>5</sup> LG&E also (1) purchases, stores, and transports natural gas and (2) distributes and sells natural gas in 17 Kentucky counties.

KU is a corporation organized, validly existing, and in good standing under the laws of Kentucky, with a business address of Post Office Box 32010, 220 West Main Street, Louisville, Kentucky 40202.<sup>6</sup> KU (1) generates and purchases electricity and (2) sells electricity in 77 Kentucky counties.<sup>7</sup>

LKE is a limited liability company organized, validly existing, and in good standing under the laws of Kentucky, with a business address of Post Office Box 32010, 220 West Main Street, Louisville, Kentucky 40202.<sup>8</sup> LKE owns all of the stock of the Utilities — LG&E and KU.<sup>9</sup>

PPL Corporation is a Pennsylvania corporation with an address of Two North Ninth Street, Allentown, Pennsylvania 18101.<sup>10</sup> PPL Corporation is the parent company of LKE.<sup>11</sup>

NEWCO1 is a Delaware limited liability company with an address of 1105 North Market Street, Suite 1300, Wilmington, Delaware 19801.<sup>12</sup>

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<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 2–3.

<sup>7</sup> *Id.* at 2.

<sup>8</sup> *Id.* at 3.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* The Joint Applicants state that PPL Corporation does not transact business in Kentucky and is not authorized to do so. *Id.*

<sup>11</sup> *Id.*

NEWCO2 is a Delaware limited liability company with an address of 1105 North Market Street, Suite 1300, Wilmington, Delaware 19801.<sup>13</sup>

### OVERVIEW OF THE REORGANIZATION

The proposed corporate reorganization will cause PPL Corporation, which currently owns all of the outstanding membership interests in LKE, to contribute all of the interests it holds in certain of its direct, wholly-owned subsidiaries, including LKE, to NEWCO1.<sup>14</sup> NEWCO1 will then contribute all of these interests received from PPL Corporation to NEWCO2.<sup>15</sup> PPL Corporation directly owns NEWCO1, and NEWCO1 directly owns NEWCO2.<sup>16</sup> Under this proposed reorganization, LKE (which directly owns the Utilities) will become a direct subsidiary of NEWCO2 and an indirect subsidiary of NEWCO1 and PPL Corporation.<sup>17</sup> Thus, Joint Applicants state that under the proposed reorganization PPL Corporation retains ultimate control over the Utilities, with only the addition of intermediaries (NEWCO1 and NEWCO2) for the purpose of reorganization.<sup>18</sup>

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<sup>12</sup> *Id.* The Joint Applicants state that NEWCO1 does not transact business in Kentucky and is not authorized to do so. *Id.*

<sup>13</sup> *Id.* The Joint Applicants state that NEWCO2 does not transact business in Kentucky and is not authorized to do so. *Id.*

<sup>14</sup> *Id.* at 4–5.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 5.

<sup>17</sup> *Id.* at 4.

<sup>18</sup> *Id.* at 8; *see also* Joint Applicants' Response to Attorney General's Initial Data Requests for Information ("Response to AG's First Requests") (filed Dec. 4, 2017), Item 1 (confirming that the proposed reorganization adds additional holding companies between PPL Corporation and LKE, the direct parent company of the Utilities).

The stated business purpose of the proposed reorganization is to allow PPL Corporation to effectively manage the movement of cash within the group of entities, which will allow it to potentially distribute cash from some of its subsidiaries without creating negative Federal or State income tax consequences due to limited tax basis in those subsidiaries, such as consequences related to capital gains.<sup>19</sup>

### STATUTORY STANDARDS

The Joint Applicants seek approval of the proposed reorganization under KRS 278.020(6), which states:

No person shall acquire or transfer ownership of, or control, or the right to control, any utility under the jurisdiction of the commission by sale of assets, transfer of stock, or otherwise, or abandon the same, without prior approval by the commission. The commission shall grant its approval if the person acquiring the utility has the financial, technical, and managerial abilities to provide reasonable service.

In addition, the Joint Applicants seek a declaration that the proposed reorganization is exempt from KRS 278.020(7) pursuant to KRS 278.020(8).<sup>20</sup> KRS 278.020(7) provides that no entity “shall acquire control, either directly or indirectly, of any utility furnishing utility service in this state, without having first obtained the approval of the commission.” The same section further provides that “[t]he commission shall approve any proposed acquisition when it finds that the same is to be made in accordance with law, for a

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<sup>19</sup> Joint Application at 5. The Joint Applicants state that “[t]here will be no tax implications or other expenses” for the Utilities. Response to Commission Staff’s First Request for Information (filed Dec. 4, 2017), Item 4. Rather, “[i]f at some future point there were to be a distribution within the PPL affiliated group that exceeded the tax basis of the distributing entity, any associated tax cost would have no impact on LG&E and KU. LG&E and KU will continue to calculate taxes on a stand-alone basis consistent with the Tax Allocation Agreement.” *Id.* Moreover, the Joint Applicants state that “[n]one of the costs associated with the proposed transaction will be passed on to LG&E and KU ratepayers.” Response to AG’s First Requests, Item 6.

<sup>20</sup> Joint Applicants do not dispute that these exceptions apply only to KRS 278.020(7) and, therefore, do not excuse or exclude the requirement of Commission approval under KRS 278.020(6). See Joint Application at 7.

proper purpose and is consistent with the public interest.” There are a limited number of exceptions to the need for prior approval under KRS 278.020(7). Those exceptions, set forth in KRS 278.020(8), include the acquisition of control of a utility “by an acquirer who directly, or indirectly through one (1) or more intermediaries, controls, or is controlled by, or is under common control with, the utility, including any entity created at the direction of such utility for purposes of corporate reorganization.”<sup>21</sup>

### DISCUSSION

The Joint Applicants contend that the proposed corporate reorganization satisfies the requirements of KRS 278.020(6). The Joint Applicants specifically note that the officers and employees of LKE and the Utilities, which represent the Utilities’ present managerial and technical ability to provide service, will not change as a result of the proposed reorganization.<sup>22</sup> Thus, the Joint Applicants state, NEWCO1 and NEWCO2 will, through their ownership and control of the Utilities, possess the financial, technical, and managerial ability to provide reasonable utility service.<sup>23</sup> The Joint Applicants state that the proposed reorganization will not affect the Utilities’ financial resources, structures, or policies.<sup>24</sup> Further, the Joint Applicants state that PPL Corporation will continue to be the ultimate parent of LKE and the Utilities and that PPL Corporation’s

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<sup>21</sup> KRS 278.020(8)(b).

<sup>22</sup> *Id.* at 9; Joint Applicants’ Response to the Attorney General’s Supplemental Data Requests (“Response to AG’s Second Requests”) (filed Dec. 27, 2017), Item 1.

<sup>23</sup> Application at 9; Response to AG’s Second Requests, Item 1. The Commission has previously found that “an accurate assessment of the acquiring parties’ ability to provide utility service can be made through an examination of the abilities of the management that is currently in place and will remain in place.” Case No. 2006-00197, *The Joint Petition of Kentucky-American Water Company, Thames Water Aqua Holdings GmbH, RWE Aktiengesellschaft, Thames Water Aqua US Holdings, Inc., and American Water Works Company, Inc. For Approval of a Change in Control of Kentucky-American Water Company* (Ky. PSC Apr. 16, 2007), Order at 9.

<sup>24</sup> *Id.*; see also Response to AG’s Second Requests, Item 1.

principal officers will be the principal officers of NEWCO1 and NEWCO2.<sup>25</sup> The Joint Applicants note that the Commission has previously found PPL Corporation to possess the financial, technical, and managerial ability to provide reasonable utility service.<sup>26</sup> In short, Joint Applicants state that the proposed reorganization “will have no effect on the operation or management of the Utilities.”<sup>27</sup>

Having reviewed the record and being otherwise sufficiently advised, the Commission finds that the proposed corporate reorganization meets the standard set forth in KRS 278.020(6). Because there is no change to the operation or management of the Utilities, and given the experience and expertise of the current management and employees of the Utilities, NEWCO1 and NEWCO2 have the financial, technical, and managerial abilities to provide reasonable service. We also note that, according to the Joint Applicants, because the operation and management of the Utilities will not change, the proposed restructuring will have no effect on the financial structure of LKE or the Utilities,<sup>28</sup> will not impose any cost or expense on those entities, and will have no effect on the Utilities’ rates or service.

The Joint Applicants further contend that the proposed corporate reorganization is exempt from the requirements of KRS 278.020(7) pursuant to KRS 278.020(8). The Commission agrees and finds that, pursuant to KRS 278.020(8), the proposed

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<sup>25</sup> Response to AG’s Second Requests, Item 1.

<sup>26</sup> *Id.* (citing 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* (Ky. PSC Sept. 30, 2010), Order at 19.

<sup>27</sup> *Id.* at 1.

<sup>28</sup> The proposed restructuring will also have no impact on the capitalization of LG&E, KU, LKE, or PPL Corporation. See Response to AG’s First Request, Item 10.

reorganization is exempt from the provisions of KRS 278.020(7), because NEWCO1 and NEWCO2 are under common control with the Utilities.<sup>29</sup>

As the Commission expressed at the March 20, 2018 hearing, we will require LG&E and KU to develop an internal study to fully evaluate and quantify the costs and benefits associated with a potential merger of the two utilities. The study should consider, among other things, the impact of the departure of the nine municipal utilities that are served by KU and whether the impact of this loss could be mitigated by a combined LG&E and KU system.

IT IS THEREFORE ORDERED that:

1. The proposed corporate reorganization that will result in the indirect acquisition of control of the Utilities by NEWCO1 and NEWCO2, as described in the Joint Application, is approved.

2. The Joint Applicants shall notify the Commission in writing within seven days of the reorganization being completed. If it has not been completed within six months of the date of this Order, the Joint Applicants shall provide a written status report to the Commission every 30 days thereafter.

3. LG&E and KU shall develop an internal study analyzing the costs and benefits associated with a potential merger of the two utilities as described herein. This study shall be filed on or before September 30, 2018, or in conjunction with LG&E and KU's next base rate application, whichever is earlier.

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<sup>29</sup> The Commission previously found that KRS 278.218 specifically applies to the acquisition or transfer of ownership of, or control, or the right to control certain utility assets that are used in the generation, production, transmission, or distribution of electricity. See Case No. 2014-00043, *Joint Application of Magnum Hunter Resources Corporation, NGAS Hunter, LLC, Magnum Hunter Production, Inc. and Sentra Corporation for Approval of Proposed Reorganization* (Ky. PSC May 20, 2014), Order at 8. As in that case, because the Joint Applicants here are not proposing to transfer any assets used or to be used by an electric utility in Kentucky, KRS 278.218 is not applicable.

4. Any documents filed pursuant to ordering paragraph No. 2 of this Order shall reference the number of this case and shall be retained in the Utilities' general correspondence files. To the extent that the internal study referenced in ordering paragraph No. 3 of this Order is filed on or before September 30, 2018, the study shall be retained in the Utilities' general correspondence files.

5. Any material revision to the proposed reorganization shall require approval by the Commission in order for the amendment to be effective.

6. Following the completion of the approved corporate reorganization, Joint Applicants shall not transfer ownership of, or control, or the right to control the Utilities, by sale of assets, transfer of stock, or otherwise, or abandon the same, without prior approval of the Commission.

7. This case is closed and removed from the Commission's docket.

By the Commission



ATTEST:

  
Executive Director

Case No. 2017-00415

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