

129 FERC ¶ 61,032  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
and Philip D. Moeller.

Louisville Gas & Electric Company and  
Kentucky Utilities Company

Docket No. ER02-2560-009

ORDER ACCEPTING IN PART AND  
REJECTING IN PART COMPLIANCE FILING

(Issued October 15, 2009)

1. In this order, the Commission accepts in part and rejects in part the compliance filing and refund report filed by Louisville Gas & Electric Company (LG&E) and Kentucky Utilities Company (KU) (collectively, LG&E/KU). The Commission also denies the request of East Kentucky Power Cooperative (East Kentucky) for discovery rights.

**Background**

2. KU and East Kentucky are parties to an Interconnection Agreement that allows each to use the other's transmission system to avoid costly duplication of facilities. KU and East Kentucky also entered into a Transmission Agreement for transmission service to Gallatin Steel Company (Gallatin); Gallatin is an East Kentucky load, but is located on KU's system. The Transmission Agreement was likewise designed to avoid the cost of duplicate facilities.

3. After the Interconnection Agreement and the Transmission Agreement (together, Agreements) were negotiated, KU merged with LG&E. LG&E/KU were transmission owning members of Midwest Independent Transmission System Operator, Inc. (Midwest ISO),<sup>1</sup> but the Agreements were "Grandfathered Agreements" under the

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<sup>1</sup> During the period at issue in this proceeding, LG&E/KU were transmission owning members of Midwest ISO. However, as of September 1, 2006, they are no longer members of Midwest ISO.

Midwest ISO Open Access Transmission Tariff (OATT)<sup>2</sup> (i.e., transmission service outlined in the Agreements was provided pursuant to the rates, terms and conditions of the Agreements and not the Midwest ISO OATT).<sup>3</sup>

4. In September 2002, LG&E/KU filed with the Commission a proposal to restructure the Agreements and essentially sought to “adjust the rates . . . under the Agreements so that the charges reflect the corresponding charges that [East Kentucky] would pay if it were a transmission customer of [ ] Midwest ISO.” In amending the Agreements, LG&E/KU sought to “eliminate the under-recovery of their transmission revenue requirement, including [ ] Midwest ISO charges that it is assessed for service provided under the Agreements.” The Commission accepted and suspended LG&E/KU’s proposed rate changes, made them effective November 18, 2002, subject to refund, and set them for hearing.<sup>4</sup>

#### **A. Initial Decision and Remand Decision**

5. Following a hearing, the Presiding Judge issued an initial decision finding, among other things, that East Kentucky should not be charged the Midwest ISO regional through and out rate under the Midwest ISO OATT in addition to charges under the Agreements when East Kentucky imports energy from other Midwest ISO transmission owners to serve any loads for which the Midwest ISO OATT rate has been adopted for service under the Agreements. The Presiding Judge found that these pancaked charges were duplicative, unfair and discriminatory.<sup>5</sup>

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<sup>2</sup> The Midwest ISO OATT has been superseded, first by the Midwest ISO Open Access Transmission and Energy Markets Tariff and then by the Midwest ISO Open Access Transmission, Energy and Operating Reserve Market Tariff. However, because the genesis of this proceeding pre-dates those changes, we will use OATT for purposes of this order.

<sup>3</sup> On July 21, 2006, the Commission accepted for filing a notice of cancellation for the Agreements, effective September 1, 2006. *See Kentucky Utilities Co.*, Docket No. ER06-1124-000 (July 21, 2006) (unpublished letter order). Therefore, the rates at issue in this proceeding are for the locked-in period of November 18, 2002 to September 1, 2006. In addition, LG&E/KU agreed to certain rate treatments for East Kentucky as part of their withdrawal from Midwest ISO. *See Louisville Gas & Elec. Co.*, Docket No. ER06-519-000 (March 17, 2006) (unpublished letter order).

<sup>4</sup> *Louisville Gas & Elec. Co.*, 101 FERC ¶ 61,182 (2002).

<sup>5</sup> *Louisville Gas & Elec. Co.*, 106 FERC ¶ 63,039, at P 59 (2004) (Initial Decision).

6. The Commission affirmed in part and reversed in part the Presiding Judge's findings and established further hearing procedures.<sup>6</sup> In particular, the Commission disagreed with the Presiding Judge's finding that merely because the proposed service under the Agreements is at the same rate as the Midwest ISO OATT rate for load in the LG&E/KU zone, East Kentucky is entitled to service over the entire Midwest ISO system. The Commission stated that "the appropriate solution is not to expand the scope of service under the Agreements to include access to the entire Midwest ISO system. Rather, the appropriate solution is to adjust the proposed rate, to reflect an allocation of costs to the Agreements assuming that LG&E/KU did not provide access to their system under the Midwest ISO OATT."<sup>7</sup> The Commission then remanded this issue back to the Presiding Judge to determine what adjustment to the proposed rate is necessary.

7. On November 16, 2005, following a further hearing, the Presiding Judge issued the Remand Decision on the sole remaining issue: determining the appropriate adjustment to the rate proposed by LG&E/KU for transmission service to East Kentucky under the terms of the Agreements.<sup>8</sup> In the Remand Decision, the Presiding Judge concluded that: (1) the Midwest ISO Attachment O formula rates that LG&E/KU proposed to use here are multi-zonal rates that presume the right of the customer to service over the entire Midwest ISO system at a single, non-pancaked rate; (2) on all amounts of service covered by the Agreements, including amounts of service in excess of the base load amounts, LG&E/KU offered only single-zone service over their own transmission system; (3) East Kentucky, however, was denied the right to multi-zonal service under the Agreements; (4) LG&E/KU's proposed rates were calculated as though they provided multi-zonal service (although, as noted, LG&E/KU provided only single-zone service to East Kentucky); (5) LG&E/KU should use a methodology to adjust the rates to recognize that single-zone service was provided to East Kentucky, by adding "source" throughput to the "sink" throughput that is already included in the denominator of the rate equation; (6) by adjusting the rates in this manner (and multiplying them by the amount of East Kentucky's throughput), LG&E/KU will have apportioned their cost of service to East Kentucky to properly reflect the service provided to East Kentucky under the Agreements; (7) LG&E/KU should be required to demonstrate that they have adjusted their proposed rates by adding this source-only throughput<sup>9</sup> to the denominator

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<sup>6</sup> *Louisville Gas & Elec. Co.*, 109 FERC ¶ 61,330 (2004) (December 2004 Order), *order denying reh'g*, 111 FERC ¶ 61,323 (2005).

<sup>7</sup> December 2004 Order, 109 FERC ¶ 61,330 at P 32.

<sup>8</sup> *Louisville Gas & Elec. Co.*, 113 FERC ¶ 63,022 (2005) (Remand Decision).

<sup>9</sup> For purposes of this order, source-only throughput includes those transactions that source on the LG&E/KU system but sink elsewhere in Midwest ISO and that LG&E/KU currently does not include in the denominator of its proposed formula rate.

of the rate equation (or must revert to the rates already provided in the Agreements, which continued to be applied to the base load amounts under those Agreements); and (8) any proposed rate that does not take into account the costs of service that should be attributed to source transactions and, instead, apportions them to East Kentucky, would not reflect the single-zone service that was provided to East Kentucky and thus would be unjust and unreasonable.<sup>10</sup>

### **B. September 2006 Order**

8. On September 1, 2006, the Commission issued an order affirming the Presiding Judge's Remand Decision.<sup>11</sup> The Commission found that the Remand Decision was well-reasoned, and the Commission affirmed and adopted all of the Presiding Judge's findings and conclusions. The findings in the September 2006 Order required LG&E/KU to adjust their rates in the way proposed by the Presiding Judge and to refund to East Kentucky the resulting difference, with interest. The Commission further found that, to the extent that LG&E/KU were unwilling or unable (due to lack of sufficient data) to implement their proposed rates with the required adjustment, the proposed rates were unjust and unreasonable and were therefore rejected. If the proposed rates were rejected, service under the contracts would be provided under the Agreements' pre-existing rates.<sup>12</sup> Therefore, the Commission presented LG&E/KU with two compliance options. They could either (a) adjust the proposed rates as outlined by the Presiding Judge or (b) revert to charging their pre-existing rates.

9. In response to the Commission's directive in the September 2006 Order, LG&E/KU made a compliance filing stating that they had chosen to revert to the pre-existing rates. They also submitted a refund report that reflected their decision to go back to the previous rates.

### **C. February 2007 Order**

10. On February 6, 2007, the Commission granted in part and denied in part Gallatin's and East Kentucky's requests for rehearing of the September 2006 Order, accepted LG&E/KU's decision to revert to the pre-existing rates under the Agreements, and

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<sup>10</sup> See Remand Decision, 113 FERC ¶ 63,022 at P 98.

<sup>11</sup> *Louisville Gas and Elec. Co.*, 116 FERC ¶ 61,215 (2006) (September 2006 Order).

<sup>12</sup> *Id.* P 30.

directed LG&E/KU to make a further compliance filing with a revised refund report.<sup>13</sup> The Commission noted that the issue before it in this proceeding concerning Midwest ISO Schedule 10 charges was limited to the period from November 18, 2002 to April 1, 2005, the date Schedule 23 to the Midwest ISO OATT became effective. The Commission explained that, in a separate proceeding on Schedule 23, it found that Midwest ISO Transmission Owners (including LG&E/KU) could pass through Schedule 10 charges to customers under certain grandfathered agreements (including the Agreements at issue here) because the Midwest ISO Transmission Owners had demonstrated that Schedule 10 charges are associated with new and different services that are not already contemplated in grandfathered agreements. From April 1, 2005, LG&E/KU's recovery of Schedule 10 charges was pursuant to Schedule 23 and was outside the scope of this proceeding.<sup>14</sup>

11. The Commission also found that its statement in the September 2006 Order, that it had been established that East Kentucky should pay the Midwest ISO Schedule 10 charges on base load amounts, was in error. On reconsideration, the Commission found that it could not allow LG&E/KU to pass through the Schedule 10 charges for service above base load amounts, prior to April 1, 2005. Since LG&E/KU had chosen to revert to the pre-existing rates, the Commission directed refunds to East Kentucky, with interest, of any Schedule 10 charges assessed for the period from November 18, 2002 to April 1, 2005. The Commission found that after April 1, 2005, LG&E/KU's recovery of Schedule 10 charges was pursuant to Schedule 23 and was outside the scope of this proceeding.<sup>15</sup>

12. The Commission further found that LG&E/KU had to apply the same rate adjustment to the ancillary service rates that the Presiding Judge outlined for the base transmission rates.<sup>16</sup>

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<sup>13</sup> *Louisville Gas and Elec. Co.*, 118 FERC ¶ 61,086 (2007) (February 2007 Order).

<sup>14</sup> *Id.* P 24, 29 (citing *Transmission Owners of the Midwest Indep. Transmission Sys. Operator, Inc.*, 110 FERC ¶ 61,339, *order on reh'g*, 113 FERC ¶ 61,122 (2005), *affirmed*, *East Kentucky Power Coop. v. FERC*, 489 F.3d 1299 (D.C. Cir. 2007) (concluding that the Commission's order on Schedule 23 comports with reasoned decision-making and denying East Kentucky's petition for review)).

<sup>15</sup> February 2007 Order, 118 FERC ¶ 61,086 at P 24-29.

<sup>16</sup> *Id.* P 32.

13. The Commission also clarified that, if LG&E/KU reverted back to their pre-existing rates, then they could not charge for Scheduling, System Control and Dispatch Service, or Reactive Supply and Voltage Control from Generation Sources Service since LG&E/KU did not previously charge for those services. Since LG&E/KU had, in fact, chosen to revert to their pre-existing rates, the Commission directed LG&E/KU to refund to East Kentucky the charges they assessed for these ancillary services.<sup>17</sup>

#### **D. July 2007 Order**

14. On July 20, 2007, the Commission issued an order granting rehearing of the February 2007 Order.<sup>18</sup> LG&E/KU claimed that the Commission in the February 2007 Order wrongly disallowed certain Schedule 10 and ancillary services charges if LG&E/KU chose to revert to the pre-existing rates (which they had), and LG&E/KU asked that they be given the right to choose again between the two compliance options. To address LG&E/KU's concern, the Commission granted rehearing and allowed LG&E/KU to choose again between making adjustments to the proposed rates required by the Presiding Judge or reverting back to the pre-existing rates.<sup>19</sup>

#### **Compliance Filing**

15. On August 3, 2007, LG&E/KU submitted an informational filing notifying the Commission that LG&E/KU had changed their decision and were now opting to adjust the proposed rates as outlined by the Presiding Judge, and would not be reverting to the pre-existing rates. On August 20, 2007, with the compliance filing at issue here, LG&E/KU filed a refund report to reflect the adjusted rates.

#### **Notice of Filing and Responsive Pleadings**

16. Notice of LG&E/KU's August 20, 2007 filing was published in the *Federal Register*, 72 FR 50354 (2007), with interventions and protests due on or before September 10, 2007. On September 10, 2007, East Kentucky filed a motion to reject the compliance filing, alternative protest and a request for discovery rights. Also on September 10, 2007, Gallatin filed a protest incorporating and adopting East Kentucky's protest. On September 28, 2007, LG&E/KU filed an answer. On October 15, 2007, East Kentucky filed an answer.

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<sup>17</sup> *Id.* P 33.

<sup>18</sup> *Louisville Gas & Elec. Co.*, 120 FERC ¶ 61,074 (2007) (July 2007 Order).

<sup>19</sup> *Id.* P 23.

## **Discussion**

### **A. Procedural Matters**

17. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2009), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept LG&E/KU's and East Kentucky's answers because they have provided information that assisted us in our decision-making process.

### **B. Substantive Matters**

18. As discussed in more detail below, we accept in part and reject in part LG&E/KU's compliance filing.

#### **1. "Through" Transactions**

19. LG&E/KU state that, "following the methodology in the Presiding Judge's hypothetical example" in the Remand Decision, they added to the denominator of the formula rate all transactions that source in the LG&E/KU zone and sink in another zone ("source-only" transactions).<sup>20</sup> East Kentucky in its protest points out that LG&E/KU did not include in the denominator those transactions that both source and sink outside the LG&E/KU control area but that pass through the LG&E/KU transmission system ("through" transactions). East Kentucky asserts that, in affirming the Presiding Judge's Remand Decision, the Commission required that the denominator of the formula rate be adjusted to include through transactions.

20. LG&E/KU argue in their answer that the adjustments outlined by the Presiding Judge and that the Commission adopted address only transactions that source in the LG&E/KU control area and, therefore, through transactions need not be included in the denominator. LG&E/KU argue that the Presiding Judge used a hypothetical example to illustrate the required adjustments and that the hypothetical example did not include through transactions. LG&E/KU claim that the Commission finding in the September 2006 Order that the adjustment should include through transactions does not control because the Commission in the same order adopted "all of the Presiding Judge's findings and conclusions" and ordered LG&E/KU to "adjust their rate as proposed by the Presiding Judge ...."<sup>21</sup>

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<sup>20</sup> Transmittal Letter at 3.

<sup>21</sup> LG&E/KU Answer at 8 (citing September 2006 Order, 116 FERC ¶ 61,215 at P 30).

21. We find that LG&E/KU must include through transactions in the denominator of its formula rate as part of the required rate adjustment. The Commission addressed this issue in the September 2006 Order when it stated that:

LG&E/KU must adjust their proposed formula rate to add to the denominator the number of megawatts that are now not included (i.e., any transactions that are not assessed a LG&E/KU zonal rate under the Midwest ISO OATT but that receive service on the LG&E/KU transmission system and that are currently not included in the denominator).<sup>22</sup>

22. We find without merit LG&E/KU's claim that this specific Commission directive does not control because the Commission in the same order adopted "all of the Presiding Judge's findings and conclusions" and ordered LG&E/KU to "adjust their rate as proposed by the Presiding Judge ...."<sup>23</sup> LG&E/KU's reliance on the Presiding Judge's hypothetical example as a basis to not include through transactions when making the required adjustments is unconvincing. It is true that the hypothetical example the Presiding Judge used to demonstrate the need for an adjustment and his subsequent explanation included a transaction that sourced on LG&E/KU system, but it did not include a transaction that sourced outside LG&E/KU system.<sup>24</sup> However, the hypothetical example was just that – an example. LG&E/KU has ignored other parts of the Presiding Judge's discussion, where, for example, he explained the need for an adjustment by stating that "[p]rior to de-pancaking, a customer was charged for every use of the zone, whether the transaction originated in the zone, *traversed it*, or ended in it."<sup>25</sup>

23. Even if, arguendo, it was unclear whether the Presiding Judge meant the adjustment he proposed would include through transactions, the Commission made clear in the September 2006 Order that the adjustment LG&E/KU needed to make to their proposed rates included *all* transactions (including through transactions) that were not assessed a LG&E/KU zonal rate under the Midwest ISO OATT but that receive service on the LG&E/KU system and were not included in the denominator of the proposed formula rate. LG&E/KU cannot at this late date persuasively claim that it need not

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<sup>22</sup> September 2006 Order, 116 FERC ¶ 61,215 at P 31.

<sup>23</sup> LG&E/KU Answer at 8 (citing September 2006 Order, 116 FERC ¶ 61,215 at P 30).

<sup>24</sup> Remand Decision, 113 FERC ¶ 63,022 at P 63-64.

<sup>25</sup> *Id.* P 66 (emphasis added).

follow the Commission's directive because they believe that the directive is inconsistent with the Presiding Judge's findings (which, in any event, it is not.)

24. LG&E/KU are also procedurally barred from making such a claim here. Even though LG&E/KU initially chose to revert to their pre-existing rates instead of making the necessary adjustments to their proposed rates, they still could have requested rehearing or clarification of the Commission's directive in the September 2006 order if they believed it was in error, but they chose not to do so.<sup>26</sup>

25. LG&E/KU also did not raise this issue in their request for rehearing of the February 2007 Order. In response to changes the Commission made on rehearing in the February 2007 Order, LG&E/KU requested, and the Commission granted, another chance for LG&E/KU to adjust their proposed rates as outlined in the September 2006 Order instead of reverting to their pre-existing rates. If LG&E/KU were unclear about the adjustment they were asking to be allowed to make, they could have asked, on rehearing, that the Commission clarify matters, but they again did not do so. Notably, LG&E/KU in their request for rehearing of the February 2007 Order quoted the specific language in the September 2006 Order directing LG&E/KU to adjust their proposed formula rate to include *all* transactions in the denominator and continued to argue, as they have done throughout the proceeding, that *no* adjustment at all is needed.<sup>27</sup> LG&E/KU never claimed, as they do for the first time in their answer here, that the Commission's specific directive to include all transactions (including through transactions) was in any way inconsistent with the Presiding Judge's proposed adjustments.

## 2. Ancillary Service Rates

26. East Kentucky in its protest argues that LG&E/KU did not make the required adjustments to Scheduling System Control and Dispatch Service (Schedule 1) and Reactive Supply and Voltage Control from Generation Sources Service (Schedule 2) ancillary service rates. East Kentucky notes that the Commission in the February 2007 Order stated that "the adjustment outlined by the Presiding Judge applies to both the base transmission rate and to the ancillary service rates."<sup>28</sup> In their answer, LG&E/KU argue that they are following the language in the Commission's subsequent July 2007 Order.

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<sup>26</sup> LG&E/KU acknowledge that they chose to not seek rehearing of the September 2006 Order and instead chose to revert to their pre-existing rate in an effort to simplify the litigation. LG&E/KU Request for Rehearing of the February 2007 Order at 3.

<sup>27</sup> LG&E/KU Request for Rehearing of the February 2007 Order at 18.

<sup>28</sup> East Kentucky Protest at 7 (citing February 2007 Order, 118 FERC ¶ 61,086 at P 32).

LG&E/KU state that they did not make any adjustment to the ancillary service rates because: (1) the Commission in the July 2007 Order allowed them to choose anew between the two compliance options set forth in the September 2006 Order; (2) the September 2006 Order directed them to adjust the proposed rates as outlined by the Presiding Judge; and (3) the Presiding Judge did not contemplate adjustments to the ancillary service rates.

27. We reject LG&E/KU's argument. LG&E/KU state that the Commission in the July 2007 Order told them they could keep their new rates if they adjusted them "as outlined by the Presiding Judge"<sup>29</sup> and nowhere can they find a place where the Presiding Judge adjusted their ancillary service rates. However, the Commission made a clear and unambiguous finding in the February 2007 Order that "the adjustment outlined by the Presiding Judge applies both to the base transmission rate *and* the ancillary service rates."<sup>30</sup> LG&E/KU successfully argued that they should be allowed to change their mind about reverting to their pre-existing rates because the Commission made changes in the February 2007 Order. Having successfully argued that they should get a "do over" because of the rate adjustments the Commission made in the February 2007 Order, LG&E/KU ask to ignore those same rate adjustments in making their compliance filing. LG&E/KU can not have it both ways. Accordingly, we direct LG&E/KU, again, to apply the rate adjustments to *both* the base transmission rate *and* to ancillary service rates.

28. LG&E/KU make the additional argument that ancillary service charges are control area specific and, therefore, do not need to be adjusted. LG&E/KU state that the reason no adjustment is required is because Schedule 1 and Schedule 2 ancillary services can only be provided by the control area operator in which the load served is located. There is no need to adjust the proposed ancillary service rates to reflect "single zone" service, they claim, because such service can only be provided by the control area operator in the control area where the load is located. The proposed rates have always been control-area specific charges (both before and after LG&E/KU joined Midwest ISO) and LG&E/KU is the control area operator where East Kentucky's loads are located. LG&E/KU further claim that it does not make sense to adjust the Schedule 1 and 2 rates because the rates are stated, not formula, rates.

29. As an initial matter, this new argument in LG&E/KU's answer that they should not have to adjust the Schedule 1 and 2 ancillary service rates is essentially a late request for rehearing of the February 2007 Order. It was in that order that the Commission stated explicitly that the necessary adjustments apply to the base transmission rate *and* to the

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<sup>29</sup> LG&E/KU Answer at 10 (citing July 2007 Order, 120 FERC ¶ 61,074 at P 23).

<sup>30</sup> February 2007 Order, 118 FERC ¶ 61,086 at P 32 (emphasis in original).

ancillary service rates.<sup>31</sup> Since the time period within which a party may file a request for rehearing of a Commission order is statutorily established at 30 days by section 313(a) of the Federal Power Act (FPA) and the Commission has no discretion to extend that deadline,<sup>32</sup> we must reject what is in fact LG&E/KU's belated request for rehearing on this issue.

30. In any event, LG&E/KU's argument regarding the adjustment to the ancillary service rates is the same argument they previously made, and that the Commission dismissed, regarding the adjustment to the base transmission formula rate; namely that the rate already reflects "single zone" service. Just like the base transmission rate, and unlike customers that take service under the Midwest ISO OATT, East Kentucky was required to pay pancaked rates for Schedule 1 and 2 ancillary services if it wants service outside the LG&E/KU control area but within Midwest ISO to serve loads supplied under the Agreements. Accordingly, it was appropriate for the Commission to find in the February 2007 Order that the Schedule 1 and 2 ancillary service rates have to be adjusted to reflect the single-zone service being provided. We also reject LG&E/KU's new claim that it does not make sense to adjust the Schedule 1 and 2 ancillary service rates because those are stated, not formula, rates. LG&E/KU must adjust the stated Schedule 1 and 2 ancillary service rates by adding into the denominator used to derive the ancillary service stated rates the same transactions it must add to the denominator used in the base transmission formula rate. Additionally, as the Commission found in the September 2006 Order, if LG&E/KU is unwilling or unable to implement their proposed rate with the required adjustment, the proposed rate is unjust and unreasonable and LG&E/KU must therefore revert to their pre-existing rates.<sup>33</sup>

### 3. Virginia Facilities

31. As directed by the Commission,<sup>34</sup> LG&E/KU adjusted their proposed base transmission rate to remove the cost of certain facilities located in Virginia. LG&E/KU state that the net transmission plant shown on the rate formula templates at page 2, lines 2 and 8, was reduced by removing the amount associated with the 161 kV and 69 kV Virginia facilities, with a corresponding reduction to the transmission plant allocator.

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<sup>31</sup> *Id.*

<sup>32</sup> *E.g., New England Power Pool*, 89 FERC ¶ 61,022, at 61,076 (1999); *accord City of Campbell v. FERC*, 770 F.2d 1180, 1183 (D.C. Cir. 1985); *Boston Gas Co. v. FERC*, 575 F.2d 975, 977-78, 979 (1<sup>st</sup> Cir. 1978).

<sup>33</sup> September 2006 Order, 116 FERC ¶ 61,215 at P 30.

<sup>34</sup> *Id.* P 36.

LG&E/KU explain that, because the removal of the Virginia facilities is reflected in the transmission plant allocator, all lines that use that allocator will likewise be lower. LG&E also provides at Exhibit I a year-by-year breakdown of the net transmission plant credit for the Virginia facilities. In its protest, East Kentucky argues that LG&E/KU did not provide any support for the adjustment to remove the Virginia facilities. In addition, East Kentucky states that LG&E/KU omitted certain costs associated with the Virginia facilities, including operation and maintenance expenses taxes and insurance costs, and depreciation.

32. In their answer, LG&E/KU states that all costs related to the Virginia facilities were removed through the use of the lower transmission plant allocator and provides a list of all the lines in the rate formula template that were adjusted.<sup>35</sup>

33. We find that LG&E/KU properly adjusted their rates to remove the Virginia facilities. The supplemental information LG&E/KU provided in their answer addresses East Kentucky's concern that all expenses related to the Virginia facilities be removed.

#### **4. Refunds**

34. When LG&E/KU initially decided to revert back to the pre-existing rates, they issued a refund to East Kentucky for the difference between the higher originally proposed rates and the lower pre-existing rates.<sup>36</sup> LG&E/KU explain that, because they have now decided to charge the new rates with the required adjustments, the original refund that East Kentucky received should have been lower. LG&E/KU argue, therefore, that East Kentucky should return to LG&E/KU the difference between the original refund and the new, lower refund East Kentucky is due under the new rates. In their answer, LG&E/KU add that they are not asking East Kentucky to pay interest on any over-refunded amounts.<sup>37</sup>

35. East Kentucky argues that, until the Commission issues a final order determining what the rates under the Agreements should be, East Kentucky is not under any obligation to return any portion of the previous refunds to LG&E/KU. However,

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<sup>35</sup> LG&E/KU Answer at 9 and Exhibit B (showing as an example the adjustments made to the 2006 formula rate to remove the Virginia facilities).

<sup>36</sup> See *Louisville Gas and Elec. Co.*, Docket No. ER02-2560-008 (Apr. 5, 2007) (unpublished letter order) (accepting LG&E/KU's refund report).

<sup>37</sup> LG&E/KU Answer at 13.

East Kentucky commits to repay to LG&E/KU any amount improperly refunded to East Kentucky once the Commission issues a final order in this matter.<sup>38</sup>

36. East Kentucky also argues that, if the Commission does not reject LG&E/KU's compliance filing outright, further information is needed in order to determine whether the proposed adjustments are just and reasonable. It asks that the Commission order LG&E/KU: (1) to provide supporting data so that East Kentucky can determine which transactions are properly included in the adjusted denominator, including any through transactions, and that the Virginia facilities were properly accounted for, and (2) to provide recalculated ancillary services rates taking into account the properly adjusted denominator. East Kentucky asks that the Commission also allow it full discovery rights and an additional opportunity to comment once the necessary information has been provided and evaluated.

37. We direct LG&E/KU to submit to the Commission a revised refund report and supporting documentation within 60 days of the date of this order. In addition, we agree that LG&E/KU must provide supporting data and calculations so that East Kentucky can determine that LG&E/KU adjusted the denominator to include all through transactions and also made the same adjustments to the ancillary service rates that the Commission required them to make to the base transmission rates.<sup>39</sup> Given this directive, we will reject East Kentucky's request for discovery rights as unnecessary. We expect, however, that both parties will work together to bring final resolution to this lengthy proceeding. To avoid another dispute about the required compliance filing, LG&E/KU should make their best effort to answer questions East Kentucky may have about the supporting data and refund calculations *before* making their compliance filing.<sup>40</sup>

### C. Schedule 10 Charges

38. In its protest, East Kentucky asks the Commission to revisit the decision to allow LG&E/KU to pass-through Schedule 10 charges. East Kentucky states that it "is cognizant that the Commission has ruled on this issue, but respectfully seeks further

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<sup>38</sup> East Kentucky Answer at 9.

<sup>39</sup> As discussed above, LG&E/KU already provided supplemental information in its answer to sufficiently demonstrate that all expenses related to the Virginia facilities have been removed.

<sup>40</sup> As discussed above, East Kentucky has committed to repay to LG&E/KU any amount that the Commission determines was improperly refunded.

consideration of this determination....”<sup>41</sup> LG&E/KU argue that East Kentucky’s request that it not be assessed Schedule 10 charges is a collateral attack on prior Commission orders that settled the issue of Schedule 10 charges. LG&E/KU maintain that treatment of Schedule 10 charges was not at issue as part of the current compliance filing.<sup>42</sup>

39. We agree with LG&E/KU and reject East Kentucky’s request to revisit the Commission’s prior decision on the Schedule 10 charges. As East Kentucky itself acknowledges, the Commission has already ruled on this issue. East Kentucky’s request is essentially an out-of-time request for rehearing of the February 2007 Order. Since the time period within which a party may file an application for rehearing of a Commission order is statutorily established at 30 days by section 313(a) of the FPA and the Commission has no discretion to extend that deadline,<sup>43</sup> we must reject what is in fact East Kentucky’s belated request for rehearing on this issue.

The Commission orders:

(A) The compliance filing is hereby accepted in part and rejected in part, as discussed in the body of this order.

(B) East Kentucky’s request for discovery rights is hereby denied, as discussed in this body of this order.

(C) LG&E/KU is hereby directed to file a refund report and supporting documentation within 60 days of the date of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>41</sup> East Kentucky Answer at 12 (citing February 2007 Order, 118 FERC ¶ 61,086 at P 27).

<sup>42</sup> LG&E/KU Answer at 15.

<sup>43</sup> *E.g.*, *New England Power Pool*, 89 FERC ¶ 61,022, at 61,076 (1999); *accord City of Campbell v. FERC*, 770 F.2d 1180, 1183 (D.C. Cir. 1985); *Boston Gas Co. v. FERC*, 575 F.2d 975, 977-78, 979 (1<sup>st</sup> Cir. 1978).