STATEMENT

Dissent of
Commissioner Cheryl A. LaFleur on
Louisville Gas and Electric Company, Kentucky Utilities Co.

Date: March 21, 2019

Docket Nos.: EC98-2-001, ER18-2162-000
Item No.: E-6

In today's order the Commission conditionally grants Louisville Gas and Electric Company's and Kentucky Utilities Company's (together, LG&E/KU's) request, pursuant to Federal Power Act sections 203(b) and 205, to remove mitigation imposed to resolve horizontal market power concerns arising from LG&E/KU's 1998 merger and subsequent withdrawal from MISO in 2006. Specifically, today's order removes a rate de-pancaking mitigation designed to shield Kentucky Utility Municipals, Tennessee Valley Authority Distributor Group, and any future Requirements Customers (together, Rate Schedule No. 402 Customers) from any re-pancaking of rates for transmission service between LG&E/KU's transmission system and the remaining members of MISO.[1] On this record, I am not persuaded that removing this mitigation is consistent with the public interest, and, at a minimum, I believe the Commission should engage in further record development before making that determination.

The majority opinion acknowledges that LG&E/KU's modified Delivered Price Test shows that removing the rate de-pancaking mitigation results in screen failures in Winter Peak, Winter Off-Peak and Shoulder Off-Peak periods.[2] Notably, these screen failures occur during periods when the market is highly or moderately concentrated, which suggests that Rate Schedule No. 402 Customers have limited access to alternative generation suppliers during critical periods.

To consider whether screen failures are determinative, the Commission has stated that it may consider "any alternative methods or factors, if adequately supported."[3] However, I do not believe that LG&E/KU have provided sufficient support to justify removal of the rate de-pancaking mitigation. LG&E/KU refer to four requests for proposals held by the Kentucky Municipal Energy Agency that resulted in various proposals from

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[1] *Louisville Gas and Elec. Co.*, 114 FERC ¶ 61,282, at P 112 (2006). The Commission accepted the de-pancaking mitigation, filed in Docket No. ER06-1279-000 on July 26, 2006, via delegated order. *E.ON U.S., LLC*, Docket No. ER06-1279-001 (Nov. 9, 2006) (delegated order).

[2] *Louisville Gas and Elec. Co.*, 166 FERC ¶ 61,206, at P 67 (2019).

[3] *Id.* We note, however, this consideration generally applies to an analysis of horizontal market power in an initial request for merger.

suppliers.[4] However, the referenced requests for proposals benefited from the application of the rate de-pancaking mitigation, and the mere existence of suppliers with available economic capacity is not dispositive. Simply put, I do not think the results of solicitations that were conducted with rate de-pancaking mitigation in place are sufficient evidence of the adequacy of competitive options without mitigation. In my view, the record is incomplete in assessing the availability of a sufficient number of suppliers, and a sufficient amount of supply, to serve Rate Schedule No. 402 Customers at competitive prices without the rate de-pancaking mitigation. In addition, the results of the delivered price test that show how much prices would change without rate de-pancaking are necessarily based on little evidence and I do not find those estimates probative.

In order to better understand the potential impacts of the removal of the rate de-pancaking mitigation on competition in the KU Destination Market, I would have set this matter for hearing, which would provide the opportunity to explore what competitive alternatives are actually available to serve Rate Schedule No. 402 Customers. In the absence of further record development that adequately addresses the screen failures, I am concerned that the Commission is unjustly constraining the generation supply options available to Rate Schedule No. 402 Customers.

In conclusion, while people frequently talk about how the sausage gets made, this case shows how the pancakes get made. While a single pancake may be fine, I do not believe that LG&E/KU should be able to force feed a short stack of pancakes to Rate Schedule No. 402 Customers. Without better ingredients than are presented in this record, the conclusion that these customers have adequate menu alternatives is half-baked at best. While I expect the majority would rather that I hop to their decision, I am not waffling, and respectfully dissent.

[4] Joint Application of Louisville Gas and Electric Co. and Kentucky Utilities Co., Docket Nos. EC98-2-001 and ER18-2162-000, at 37-38 (filed Aug. 3, 2018).