

**U.S. Department of Labor**

Labor-Management Services Administration  
Washington, D.C. 20216



Reply to the Attention of:

OPINION NO. 83-33A  
Sec. 3(1), 3(2)

JUN 23 1983

Mr. W.W. Hancock, Jr.  
Vice President and Secretary  
Louisville Gas and Electric Company  
P.O. Box 32010  
Louisville, Kentucky 40232

Dear Mr. Hancock:

This is in reply to your letter of November 3, 1981, requesting an advisory opinion regarding applicability of title I of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you ask whether the Voluntary Savings Program of the Louisville Gas and Electric Company (the Savings Program) is subject to the reporting and disclosure requirements of title I of ERISA.

You advise that the Louisville Gas and Electric Company (the Company) is making the Savings Program available to non-bargaining unit employees under the Retirement Income Plan. Eligible employees may elect to transfer to the Savings Program all or a part of their refunded contributions from the Retirement Income Plan. The Company has arranged with the Equitable Life Assurance Society (Equitable) for investment with a guaranteed rate of interest. After July 31, 1988, the arrangement with Equitable will be renegotiated. The Company will bear the expense of administering the Savings Program. The balance in an employee's account under the Savings Program will be paid in full upon retirement or other termination of service with the Company. The employee may elect to have it paid in a single cash sum or in the form of a guaranteed lifetime annuity from Equitable. Employees may elect to make partial or full withdrawals at any time earlier, subject to certain conditions. Upon the employee's death the balance in his or her account will be paid to the spouse or a designated beneficiary. The Company expects the Savings Program to meet Internal Revenue Service requirements permitting the interest earned to be excluded from the employees' incomes until withdrawn from the Savings Program.

Employee benefit plans subject to title I of ERISA are required to meet the applicable reporting and disclosure provisions of part 1 of that title. An "employee benefit plan" is defined in section 3(3) of ERISA as "... an employee welfare benefit plan or an employee pension benefit plan or a plan which is both an employee welfare benefit plan and an employee pension benefit plan." An "employee welfare benefit plan" is defined in section 3(1) of ERISA as "... any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that such plan, fund, or program was established or is maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, (A) medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment, or vacation benefits, apprenticeship or other training programs, or day care centers, scholarship funds, or prepaid legal services, or (B) any benefit described in section 302(c) of the Labor Management Relations Act, 1947 (other than pensions on retirement or death, and insurance to provide such pensions)."

Based solely on the representations made in your request for an opinion, it is the position of the Department of Labor (the Department) that the Savings Program is not an employee welfare benefit plan within the meaning of ERISA section 3(1) because the Savings Program is not maintained for the purpose of providing any of the benefits listed in section 3(1) or included in that section by reason of the reference to section 302(c) of the Labor Management Relations Act, 1947. Although you state that the Savings Program meets the criteria provided in regulation 29 C.F.R. §2510.3-1(j), and that, therefore, the Savings Program should not have to meet the reporting and disclosure requirements of title I of ERISA, this regulation identifies certain programs which, although they provide benefits of the type described in section 3(1), will not constitute employee welfare benefit plans because they are not maintained by either an employer or employee organization. Accordingly, that regulation would not be applicable to the Savings Program.

Section 3(2)(A) defines the term "employee pension benefit plan" as:

(2)(A) Except as provided in subparagraph (B), the terms "employee pension benefit plan" and "pension plan" mean any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that by its express terms or as a result of surrounding circumstances such plan, fund, or program --

(i) provides retirement income to employees, or  
(ii) results in a deferral of income by employees for periods extending to the termination of covered employment or beyond, regardless of the method of calculating the contributions made to the plan, the method of calculating the benefits under the plan or the method of distributing benefits from the plan.

Based on your representations, it is the position of the Department that the Savings Program would constitute an employee pension benefit plan, within the meaning of section 3(2) of ERISA, which is subject to the requirements of title I of ERISA, including its reporting and disclosure provisions. Although the Department has identified certain programs in regulation 29 C.F.R. §2510.3-2 which will not be considered to constitute employee pension benefit plans under title I of ERISA, the Savings Program does not appear to fall within any of the types of programs identified by that regulation.

Furthermore, nothing above should be taken to express a position of the Department as to whether the Savings Program is part of the Retirement Income Plan or constitutes a separate and distinct employee pension benefit plan from that plan.

This letter constitutes an advisory opinion under ERISA Procedure 76-1. Accordingly, this letter is issued subject to the provisions of that procedure, including section 10 thereof relating to the effect of advisory opinions.

Sincerely,

Jeffrey N. Clayton  
Administrator  
Pension and Welfare Benefit Programs