

**Commonwealth of Kentucky
Before the Public Service Commission**

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PUBLIC SERVICE
COMMISSION

In the Matter of:

Louisville/Jefferson County Metro Government)	
)	
Complainant,)	Case No.
)	2016- <u>00347</u>
v.)	
)	
Louisville Gas and Electric Company)	
)	
Defendant.)	

COMPLAINT

The Louisville/Jefferson County Metro Government (“Louisville”), pursuant to KRS 278.030, KRS 278.040, KRS 278.160, KRS 278.200, KRS 278.260, KRS 278.270, 807 KAR 5:001 Section 19, and 807 KAR 5:001 Section 20, submits its Complaint to the Kentucky Public Service Commission (“Commission”) against Louisville Gas and Electric Company (“LG&E”) regarding its Franchise Agreement with Louisville, and in support thereof states as follows:

PARTIES

1. The complainant is the Louisville/Jefferson County Metro Government, whose address is

601 West Jefferson Street
Louisville, KY 40202

2. Counsel for Complainant is:

Hon. Michael J. O’Connell, Jefferson County Attorney
Brandeis Hall of Justice
600 West Jefferson Street, Suite 2086
Louisville, KY 40202

Gregory T. Dutton, Esq.
Goldberg Simpson, LLC
9301 Dayflower Street
Prospect, KY 40059

3. The Defendant is Louisville Gas and Electric Company, a public utility engaged in the natural gas distribution business, whose address is:

220 West Main St.
Louisville, KY 40232

APPLICABLE LAW

4. “No ...gas... company, within a city or town, shall be permitted or authorized to... lay its pipes or mains... along, over, under or across the streets, alleys or public grounds of a city or town, without the consent of the proper legislative bodies or boards of such city or town being first obtained.” KY. Const. § 163.
5. “Before granting such franchise or privilege for a term of years, such municipality shall first, after due advertisement, receive bids therefore publicly, and award the same to the highest and best bidder...” KY. Const. § 164.
6. “[A]ll rights, privileges and obligations arising out of any such contract, franchise or agreement... shall be subject to the jurisdiction and supervision of the Commission.” KRS 278.200.
7. “The Commission shall have original jurisdiction over complaints as to rates or service of any utility, and upon a complaint in writing made against any utility by any person... that regulation, measurement, practice or act... is unreasonable or unjustly discriminatory... the Commission shall proceed to make such investigation as it deems necessary or convenient.” KRS 278.260.
8. When cities seek a change in public utility rates for franchised utilities, they must follow the procedure prescribed in KRS 278.260. *Southern Bell Telephone & Telegraph Co. v. City of Louisville*, 96 S.W.2d 695 (Ky. 1936).
9. The Commission may change, establish or enforce any rate or service standard of any utility that has been fixed by franchise agreement between a utility and city. KRS 278.200.

10. Every utility may demand, collect and receive fair, just and reasonable rates for the services rendered or to be rendered by it to any person. KRS 278.030.
11. Michael J. O’Connell, in his capacity as the Jefferson County Attorney, has authority to bring this action on behalf of Louisville. KRS 67C.115; KRS 69.210.
12. Upon complaint, if the Commission finds that any rate is unjust, unreasonable, or unjustly discriminatory the Commission shall prescribe a just and reasonable rate to be followed in the future. KRS 278.270.

STATEMENT OF FACTS

13. The Louisville Metro Council, via ordinance No. 132, Series 2016, created a franchise for the transmission, distribution, transportations and sale of gas.
14. On June 6, 2016, the Commission granted a Certificate of Public Convenience and Need authorizing LG&E to bid on the franchise offered by Louisville for natural gas transmission and distribution service. *Application Of Louisville Gas And Electric Company For A Certificate Of Public Convenience And Necessity Authorizing LG&E To Bid On A Gas Franchise Established By The Legislative Council Of Louisville/Jefferson County Metro Government*, Case No. 2016-00193.
15. On August 25, 2016, the Louisville Metro Council passed Ordinance No 214, Series 2016, accepting the bid submitted by LG&E for a gas franchise. The Franchise Agreement between Louisville and LG&E (hereinafter the “Franchise Agreement”) was executed by the parties on August 30, 2016.¹

¹ A copy of the Franchise Agreement is attached hereto as Attachment A.

16. Based on information and belief, most, if not all, of LG&E's gas passes through the Louisville rights-of-way.
17. Thus, all LG&E gas customers benefit from the use of Louisville rights-of-way.
18. In general, a franchise fee is the "rent" a city charges a utility for the privilege of being the exclusive provider of a service for the given area, and the privilege of using the city's rights-of-way to that end.
19. Section 11(b) of the Franchise Agreement provides for a fee of "six percent (6%) of forty-three cents (\$0.43) per thousand cubic feet (mcf) of gas as described in Section 11(a) above." This equates to 2.58 cents (\$0.0258) per mcf.
20. Section 11(a) further explains the calculation of mcf as "each thousand cubic foot (mcf) of gas utilizing the company's pipe, pipeline, main, pumping stations or other means to transport, whether for transmission or distribution, for the purpose of proving natural gas service to customers as a local distribution company within the Franchise Area (using the measured mcf of gas delivered to customers as a substitute)."
21. Section 12 of the Franchise Agreement provides for the Kentucky Public Service Commission to serve as the forum to resolve any disputes between Louisville and LG&E regarding the calculation or recovery of the franchise fee.

CLAIMS

Claim 1: It is Improper to Allow LG&E to Directly Pass the Cost of a Franchise Fee Onto LG&E Gas Customers as a Utility Bill Line Item.

22. Muhammed Ali once said, "Service to others is the rent you pay for your room here on earth." Unfortunately, LG&E doesn't seem to want to pay its fair share of the rent.
23. LG&E's Tariff Sheet No. 90 providing that any franchise "fee or tax shall be added to the customer's bill as a separate item" is unfair, unjust, and unreasonable.²
24. LG&E reported in its 2015 Annual Report a net annual income of \$42,777,577.
25. A franchise is a privilege conferred, in this instance, by the government (people) of Louisville Metro.
26. LG&E extracts a significant financial benefit for the use of Louisville's rights-of-way, and LG&E should not be allowed to simply pass a franchise fee on to the captive ratepayers residing within Louisville.
27. The intention of KY. Const. §§ 163 and 164 is to require a utility to pay rent for the use of a Kentucky municipalities rights-of-way. The intention was not for the utility to pass that cost directly on to the ratepayers.
28. The Kentucky Court of Appeals recently found that "[t]hrough enactment of Section 164, the drafters of our Constitution envisioned that local governments would receive valuable consideration in exchange for the granting of the utility franchises." *City of Florence, Kentucky v. Flanery*, No. 2013-CA-001112-MR, (Ky. App. Nov. 7, 2014), <http://opinions.kycourts.net/COA/2013-CA-001112.pdf>, *disc. review granted*, 2015-SC-

² Tariff Sheet No. 90 is attached hereto as Attachment B.

000181 (Ky. 2016), *oral arguments scheduled*, Sept. 15, 2016; *referencing Ky. Utilities Co. v Bd. of Comm'rs of City of Paris*, 254 Ky. 527, 71 S.W.2d 1024 (1933).

29. Crucially, the valuable consideration must come from the utility, otherwise there is no measurable cost to the utility. In essence, they are receiving the benefit of the public rights-of-way for free.
30. In considering this dilemma, the Boyd Circuit Court found “if the defendant is allowed to pass the cost of the franchise along to the customers then it will have gotten the valuable privilege of using the city’s rights-of-way for free. **Surely this cannot be right.**” *City of Ashland v. Columbia Gas of Ky., Inc.*, No. 93-CI-458, (Boyd Cir. July 7, 1995), *aff’d*, (Ky. App. 1996), *disc. review denied* (Ky. 1997)(Emphasis added).
31. On appeal of that decision, the Kentucky Court of Appeals agreed, stating “we believe the posture of this case on appeal raises a single narrow issue regarding the sale of utility franchises by cities, i.e. whether a city possess the legal right to force a utility, when submitting a bid for the purchase of a franchise, to contractually agree to absorb the cost of the franchise as a normal operating expense. We conclude that a city does possess such a right. Hence, we affirm.” *Columbia Gas of Ky., Inc. v. City of Ashland*, No. 95-CA-2127-MR, (Ky. App. July 19, 1996), <http://opinions.kycourts.net/COA/1993-CA-2127.html>, *disc. review denied* (Ky. 1997).
32. More recently, the Boyd Circuit Court, while declining to address the KY Court of Appeals decision in *Ashland*, found that KRS 278.160 prohibits utilities from deviating from the terms of tariffs, and that the Commission holds exclusive jurisdiction over the approval of tariffs. *Ashland v. Ky. Power Co.*, No 11-CI-00902, (Boyd Cir. Sept. 25,

2013). Therefore, the Commission is the proper venue for challenging the fair, just, and reasonableness of a tariff mandating the inclusion of a franchise fee on customer bills.

33. In summary, the meaning of the constitutional provisions has become divorced from the original intent over the years. The original intent of the franchise fee is a two-fold proposition, the utility pays for the privilege of the monopoly and the use of the publics' rights-of-way, and the City gains a financial benefit. Thus, LG&E should not be passing the franchise fee directly on to customers.

Claim 2: If the Commission allows LG&E to Pass the Cost of a Franchise Fee Directly to Customers, then All LG&E Gas Customers Receiving the Benefit of the Louisville Rights-of-Way Should Pay the Franchise Fee.

34. LG&E's intended method of collecting the franchise fee only from customers located in Jefferson County is unjust, unfair, and unreasonable. The Commission cannot and should not allow a practice whereby LG&E arbitrarily exempts one group of customers from a fee that is based on cost of service, to the direct detriment of another group of customers.
35. The Kentucky Court of Appeals has previously ruled that "we must look more to whether the result is fair, just and reasonable rather than at the particular methodology used to reach the result." *National-Southwire Aluminum Co. v. Big Rivers Elec. Corp.*, 785 S.W.2d 503 (Ky. App. 1990).
36. LG&E intends to collect the Louisville Franchise fee only within Jefferson County. However, LG&E gas customers located in Oldham, Bullitt, Spencer, and Shelby Counties also use gas that travels through the pipes and mains located under the Louisville rights-of-way.

37. The franchise fee is based on the volume of gas passing through the pipes located in the Louisville rights-of-way. Thus, each customer can be charged the franchise fee based on individual usage. This allows for a fair, just, and reasonable allocation of cost to customers based on their volumetric use of the rights-of-way, whether those customers are located in Jefferson County or a surrounding County. With this means of calculating the franchise fee, there is no basis for concern regarding whether a customer is paying for a cost they themselves did not create.
38. Looking at this result in any other context of utility regulation, the Commission would not find it fair, just, and reasonable for one group of ratepayers to subsidize service to the benefit of another group of ratepayers. Especially where, as it is here, the cost is easily and transparently attributable. Yet, that is exactly what LG&E intends to occur in its gas territory.
39. A cost of service study is regularly used in Commission proceedings to ensure that those customers receiving the benefit of service are paying a fair, just, and reasonable amount for the service. The concept at hand proposed by Louisville is virtually the same. Where cost of service can be directly attributed to specific customers, those customers should bear their fair, just, and reasonable portion of the franchise fee.
40. Thus, all LG&E gas customers benefitting from the Louisville rights-of-way should contribute to the franchise fee.

Claim 3: If the Commission Allows LG&E to Pass the Cost of a Franchise Fee Directly to Customers, then the Franchise Fee Should be Collected Throughout Louisville

41. It is overtly unfair for certain LG&E gas customers to receive the benefit of Louisville rights-of-way and the benefits of the Louisville franchise fee, yet not contribute their fair monetary share to the Louisville franchise fee.
42. Historically, LG&E has only collected the franchise fee from the urban services district and the unincorporated areas of Jefferson County.
43. Louisville is unique in the Commonwealth in that dozens of municipalities are located within the geographic and jurisdictional borders of Louisville.
44. LG&E has time after time stated its intention to only collect the franchise fee from gas customers located in the urban services district and the unincorporated areas of Louisville, thus excluding all LG&E gas customers located outside of those two areas but within Louisville from collection of the fee.
45. No Kentucky regulation or statute prevents LG&E from collecting the Louisville franchise fee from all gas customers located within Louisville. Indeed, LG&E's tariff actually anticipates collecting the fee from all gas customers within Louisville.
46. LG&E Tariff Sheet No. 90 states, "A surcharge shall be calculated and added to the total bill for gas service for all customers located within local governmental jurisdictions which currently or in the future impose municipal franchise fees or other local taxes on the Company by ordinance, franchise, or otherwise."
47. Per KRS 278.160(2), "No utility shall... collect... a greater or less compensation... than that prescribed in its filed schedules."

48. LG&E itself has acknowledged that “any deviation from LG&E’s tariff filed without Commission approval would violate the filed-rate doctrine, which the Commission has called the ‘bedrock of utility regulation.’” *Application of Louisville Gas and Electric Company for a Declaratory Order Regarding the Proper Method of Municipal Franchise Fee Recovery*, Verified Application at 11, Case No. 2016-00317 (internal citations omitted).
49. Despite KRS 278.160(2), Tariff Sheet No. 90, and LG&E’s own recognition of the importance of the filed rate doctrine, LG&E does not intend to collect the full franchise fee in accordance with its tariff. LG&E intends to collect “less compensation... than that prescribed in its filed schedules.”
50. If LG&E collected the fee from “all customers located within local governmental jurisdictions which currently... impose municipal franchise fees”, then LG&E would collect the fee from *all* gas customers within Louisville, not just a portion of the customers. Louisville is the local governmental jurisdiction imposing the franchise fee, and every citizen of Louisville has representation on the Louisville Metro Council, the franchising authority.
51. The money raised from the Louisville franchise fee is aggregated into the City’s general fund, from which most Louisville expenditures are funded under direction of the Louisville Metro Council.
52. Thus, every LG&E gas customer has an elected representative on the body tasked with both authorizing the franchise fee, and authorizing the expenditure of any funds collected as a result of the franchise fee.

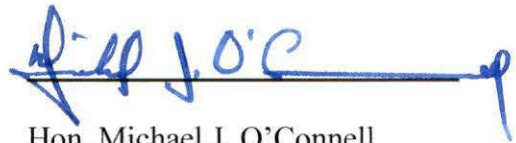
53. LG&E gas customers, regardless of residence in the urban services district, the unincorporated areas, or a municipality within Louisville, all receive benefits from the funds spent by Louisville.
54. As a result of LG&E's anticipated franchise fee collection practices, a specific portion of LG&E gas customers will receive the benefits of the Louisville rights-of-way, without paying any portion of the franchise fee.
55. The areas of Louisville Metro that LG&E intentionally excludes from collection are overwhelmingly located in the more economically advantaged portions of the city. The mean household income of Louisville is \$63,966, and the mean household income of those areas LG&E chooses to exclude is \$102,351. U.S. Census Bureau; American Community Survey, 2010-2014 American Community Survey 5-year Estimates. The calculated mean household income of Louisville would plummet if LG&E's exclusionary and disparate policy is allowed, thus demonstrating an even greater economic gap between those LG&E intends to charge and those it does not.
56. LG&E's biased practice of exempting certain economically-advantaged portions of Louisville from collection of the franchise fee is unjustly discriminatory. LG&E's intended implementation exempts those customers who can most afford the fee, and hoists the burden onto those customers who can least afford it.
57. LG&E's refusal to collect the franchise fee uniformly across Louisville creates an unfair, unjust, unreasonable, and discriminatory practice of applying the franchise fee to (1) only a portion of the population receiving the benefit of the franchise fee, and (2) the population least financially equipped to absorb the franchise fee.

PRAYER FOR RELIEF

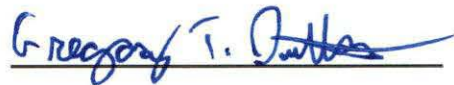
WHEREFORE, Louisville respectfully requests that the Commission set a schedule for discovery and make a determination that a *prima facie* case has been established that:

1. LG&E's practice of placing the franchise fee as a line item on gas customer bills is not fair, just, and reasonable;
2. LG&E's failure to apply the Louisville franchise fee to customers residing outside of Louisville is not fair, just, and reasonable; and
3. LG&E's failure to apply the Louisville franchise fee to all LG&E gas customers within Louisville is not fair, just, and reasonable, and is in fact discriminatory.

Respectfully submitted this September 16, 2016.



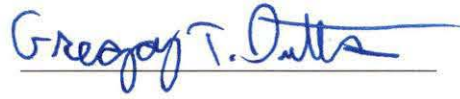
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CERTIFICATE OF SERVICE

This is to certify that a true and accurate copy of this document has been served via electronic mail to the persons listed below.



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Attachment

A

FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT by and between **LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT** of the Commonwealth of Kentucky (the "Louisville Metro", and **LOUISVILLE GAS AND ELECTRIC COMPANY**, a Kentucky corporation having a business address of 220 West Main Street, Louisville, Kentucky 40232 (the "Company"):

WHEREAS, Metro Council passed Ordinance No. 132, Series 2016, to create a Franchise for the transmission, distribution, transportation and sale of gas; and

WHEREAS, the Company submitted its bid for said Franchise which bid has been determined to be the highest and best bid; and

WHEREAS, Metro Council passed Ordinance 214 Series 2016 accepting the bid of the Company;

NOW, THEREFORE, for good and valuable consideration, the parties hereto, agree as follows:

Section 1. There is hereby created a Franchise to acquire, lay, maintain and operate in the public streets, avenues, alleys and other public ways of Louisville Metro, but not within the jurisdiction of any other city located in Jefferson County, Kentucky (the "Franchise Area"), a system of mains, pipes, fixtures and appliances for the transmission, transportation, distribution and sale of gas for heating and other purposes, subject to all the provisions of this Franchise Agreement.

Section 2. The following definitions apply to this Franchise:

(a) "*Company*" means the Party or Person that shall become the purchaser of said Franchise, or any successor or assignee of such Party or Person.

(b) "*Facility*" or "*Facilities*" means any tangible component of the Company's

gas distribution and transmission system, located within the Right of Way of the Franchise Area, including, but not limited to, mains, pipes, pipelines, conduit, valves, meters, or other physical assets used for the delivery of natural gas.

(c) "*Franchise*" or "*Franchise Agreement*" means this Franchise Agreement, as approved by the Metro Council and accepted by the Company.

(d) "*Metro Council*" means the legislative body of Louisville Metro.

(e) "*Party*" or "*Person*" means any natural or corporate person, business association or other business entity including, but not limited to, a partnership, a sole proprietorship, a political subdivision, a public or private agency of any kind, a Utility, a successor or assign of any of the foregoing, or any other legal entity.

(f) "*Right of Way*" means the surface of and the space above and below a property, Street or sidewalk, to the extent Louisville Metro has the authority to allow the Company to use them, and shall include Rights of Way as shall be now held or hereafter held by Louisville Metro within the Franchise Area.

(g) "*Street*" means the surface of, and the space below, any public street, road, alley, bridge or highway within Louisville Metro, used or intended to be used by the general public for travel, to the extent Louisville Metro has the authority to allow the Company to use them.

(h) "*Utility Policy*" means the Louisville Metro Public Works & Assets Utility Policy presently in force, or as later amended or updated, throughout the term of the Franchise.

Section 3. The Company shall have the right and privilege of laying and maintaining gas mains and pipes, and appurtenances necessary or appropriate in connection therewith, in, along, under, above and across the said Right of Way, and transmit, transport, distribute and sell gas through said pipes, within the Franchise Area as they now exist or may hereafter be extended; subject to the provisions hereof, Louisville Metro regulations or laws on the use of the Right of

Way by utilities, and to all powers (including police power) inherent in, conferred upon or reserved to said Louisville Metro.

Section 4. (a) No pavements or sidewalks shall be disturbed and no excavation in any of the said Rights of Way will be made, except in strict accordance with the Utility Policy and all laws and ordinances, presently in force, or as later amended or updated, throughout the term of the Franchise on the use of the Right of Way, provided that such pavements and sidewalks and excavations shall be replaced and restored by and at the expense of the Company to Louisville Metro standards in accordance with the Utility Policy and all laws and ordinances, presently in force, or as later amended or updated, throughout the term of the Franchise, as required by the Director of Public Works. Should the Company fail or refuse to replace or restore said pavement, sidewalk or excavation to Louisville Metro standards or condition in accordance with the Utility Policy and all laws and ordinances, in force, as amended or updated, throughout the term of the Franchise as required by the Director of Public Works within a reasonable time, then same may be replaced and restored by Louisville Metro under the direction of the Director of Public Works at the cost and expense of the Company. Work by the Company hereunder shall be done in a workmanlike manner and so as not to unnecessarily interfere with public use of any of said Right of Way.

(b) Replacement, patching and restoration of the Right of Way shall be performed according to the applicable standards and with the materials specified by Louisville Metro, in accordance with the Utility Policy and all laws and ordinances, in force, as amended or updated, throughout the term of the Franchise as required by the Director of Public Works. The Director of Public Works shall have the authority to prescribe the manner and extent of the restoration on reasonable terms, and may do so in written procedures of general application. The Company agrees to comply with all applicable requirements as set forth in the Utility Policy and all laws

and ordinances, in force, as amended or updated, throughout the term of the Franchise.

(c) Material failure of the Company to adhere to this Franchise Agreement--which incorporates the Utility Policy and all laws and ordinances concerning Louisville Metro's Right of Way, presently in force, or as later amended or updated--shall be deemed a violation of this Franchise Agreement. Louisville Metro reserves all rights to enforce said policies and laws. Subject to Section 4(d) below, in the enforcement of its policies and laws, Louisville Metro may utilize any available legal remedy including, but not limited to, the following options: (a) the remedial or penalty provisions of the Utility Policy, (b) ordinal penalty provisions, if any, or (c) suit for breach of the Franchise Agreement.

(d) The agreement to incorporate by reference the Utility Policy and all laws and ordinances concerning Louisville Metro's Right of Way is without waiver of or prejudice to the Company's right to challenge the reasonableness or lawfulness of the provisions contained therein, including, without limitation, that a combination of remedies addressed in Section 4(c) would be unduly punitive. The Company reserves all rights and remedies available to it to challenge any provision contained in the Utility Policy and all laws and ordinances concerning Louisville Metro's Right of Way.

Section 5. Whenever Louisville Metro or any of its departments or agencies shall grade, regrade, widen or alter any Right of Way or shall construct, reconstruct or alter any other municipal public works therein, it shall be the duty of the Company, when so ordered by Louisville Metro, to changes its mains, pipes and appurtenances in the Right of Way at its own expense so as to conform to the established grade or line of such Right of Way and so as not to interfere with such municipal public works so constructed, reconstructed or altered. However, the Company shall not be required to make any such change when the Right of Way in which its Facilities are located is vacated or when the Right of Way is altered for the convenience of abutting property owners or for

private purposes and not as an incident to a public improvement, unless the reasonable cost of such relocation and the loss and expense resulting therefrom is first paid to the Company.

Section 6. (a) As consideration for the granting of the Franchise, the Company agrees it shall defend, indemnify, and hold harmless Louisville Metro from and against claims, suits, causes of action, proceedings, judgments for damages or equitable relief, and costs and expenses asserted against Louisville Metro that the Company's use of the Right of Way or the presence or operation of the Company's equipment on or along said Right of Way has caused damage to tangible property or bodily injury, if and to the extent such damage or injury is not caused by Louisville Metro's negligence.

(b) Louisville Metro shall notify the Company in writing within a reasonable time of receiving notice of any issue it determines may require indemnification.

(c) The Company shall maintain in full force and effect a commercial general liability insurance policy reasonably acceptable to Louisville Metro with a minimum policy limit of ten million dollars (\$10,000,000.00) per occurrence and twenty million dollars (\$20,000,000.00) in the aggregate and shall provide Louisville Metro with a certificate of insurance evidencing the insurance policy required by this section. The Company may elect to self-insure all or part of this requirement.

(d) The rights reserved to Louisville Metro with respect to the indemnity and insurance provisions under this Section are in addition to all other rights of Louisville Metro, whether reserved by this Franchise or authorized by law, and no action, proceeding or exercise of a right with respect to such insurance policy shall affect any other right Louisville Metro may have.

Section 7. (a) When requested to do so by Louisville Metro, Company shall make available to Louisville Metro copies of its regular monthly or annual statements, reports and records as to heat value and pressure of gas distributed pursuant to this Franchise, and such other

reports as Louisville Metro may reasonably request.

(b) Louisville Metro reserves the right to make such tests of gas meters, pressure, specific gravity and heat value of the gas furnished by Company hereunder as it shall deem necessary or advisable.

(c) The Company agrees further to furnish the Mayor, the Metro Council and the County Attorney for Jefferson County written notice, by certified mail, concurrent with its filing an application with the Public Service Commission for an increase in base rates; and such notice shall specify amount and type of increase to be sought and alerting to Louisville Metro that such a filing is being made. The Company agrees to maintain "as-built" drawings of all Facilities within the Right of Way, and to provide said drawings to the Director of Public Works, as requested.

Section 8. The Company agrees to continue to cooperate with state and local government low-income energy assistance efforts, including state and local government energy assistance programs, and further agrees to the continued operation of a voluntary customer check off system for customer contributions to energy assistance efforts, such as Winterhelp.

Section 9. The Franchise hereby created is not exclusive and shall be of a term of five (5) years contingent upon: (1) the issuance by the Commission of all approvals and certificates required by law; and (2) the award of the Franchise by Louisville Metro to the Company, unless terminated sooner under the terms of this Franchise Agreement. The Franchise may be renewed by subsequent agreement between Metro Council and Company three (3) times subject to the passage of an appropriate ordinance by Metro Council; however no renewals shall extend the total term of the Franchise beyond twenty years from the date of the inception of the Franchise.

The Company is hereby given the right to assign the Franchise created by this Franchise Agreement to any person, firm or corporation able, ready and willing to carry out the terms of this

Franchise, but shall, prior to such assignment, obtain consent from Louisville Metro to such assignment, which consent shall not be unreasonably withheld or delayed.

Section 10. In the event that the Public Service Commission of Kentucky shall cease to have jurisdiction over the Company's retail gas rates and service and no other regulatory authority shall have by law such jurisdiction over retail gas rates and service in Louisville Metro, then Metro Council shall have regulatory jurisdiction over the Company's gas rates and service in the jurisdiction of Louisville Metro within the limits permitted by law and to the extent that the Public Service Commission of Kentucky presently has such jurisdiction; provided, however, the Company shall have the right to seek redress in court by appeal or otherwise from any regulatory order or action of Metro Council on the ground that such order or action is unjust, unreasonable, unlawful or confiscatory.

If Metro Council acquires regulatory jurisdiction as aforesaid, the then existing rules and regulations of the Public Service Commission of Kentucky (or other regulatory authority having jurisdiction) and the rates, rules and regulations of the Company as contained in its filing with such Commission or other authority as to matters of rates and service, shall continue in effect unless and until changed, after hearing, by final order of Metro Council or of court, or unless and until changed by agreement between Louisville Metro and the Company.

In the event that the provision of gas service is deregulated by state legislation, then this Franchise may be terminated upon ninety (90) days written notice by Louisville Metro to the Company if it is determined by Louisville Metro that continuation of the Franchise would be unfair and unreasonable to Louisville Metro or to the customers of the Company, or upon the agreement between Louisville Metro and the Company.

Section 11. Franchise Fee. (a) As compensation for the Franchise granted to the Company, Louisville Metro shall receive payment as determined by the Metro Council, at its

discretion, throughout the term of the Franchise. The total annual payment shall be capped and shall not exceed a total annual Franchise Fee of three percent (3%) of Gross Receipts within the Franchise Area. The Franchise Fee remitted to Louisville Metro may be based, at the discretion of the Metro Council, throughout the term of the Franchise, on: (1) the number of the linear feet of in-service pipeline segments in the LG&E Geographic Information System (GIS) owned or operated by the Company, whether said pipe is used for transmission or distribution, within the Franchise Area; (2) each thousand cubic foot (mcf) of gas utilizing the Company's pipe, pipeline, main, pumping stations or other means to transport, whether for transmission or distribution, for the purpose of providing natural gas service to customers as a local distribution company within the Franchise Area (using the measured mcf of gas delivered to customers as a substitute). Basing any portion of the Franchise Fee upon gas delivered to all LG&E customers does not equate to approval or acquiescence by the Company that customer use outside of the Franchise Area is reasonably related to the calculation of the Franchise Fee for Louisville Metro. If appropriate, this issue may be part of the litigation contemplated in Section 12; (3) a percentage of Gross Receipts; (4) a flat fee; or (5) a combination of any of the above named options. Company will be notified of any intended change by certified mail and shall have 60 days from Metro Council action to make changes to the payment terms. Payment of any amount due under this Franchise shall be made on a monthly basis within thirty (30) days of the end of the preceding calendar month.

Metro Council may, by ordinance, make the Franchise Fee contingent upon the adjudication described in Section 12 below. If Metro Council does not make the Franchise Fee contingent upon such adjudication, but does elect to bring an action contemplated in Section 12, payment of the Franchise Fee, if any, will be made pending the issuance of a final order resolving the matter, and until all appeals, if any, are final and concluded. LG&E will collect and remit the

Franchise Fee, if any, based upon its tariff on file with, and approved by, the Kentucky Public Service Commission. If Metro Council makes the Franchise Fee contingent upon the adjudication of an action contemplated in Section 12, LG&E will not collect or remit any Franchise Fee during the time period in which the action is pending, including any appeals therefrom, and LG&E will have no retroactive obligation to remit payment of the Franchise Fee following of the conclusion of the adjudication and any appeals therefrom. Any decision by Metro Council to reinstate an obligation to remit the Franchise Fee or any change in the recovery method resulting from any action described in Section 12 below shall be treated as a Franchise Fee change described above and the Company shall have 60 days from Metro Council action, final Kentucky Public Service Commission or court action, including from any appeals therefrom, and whichever occurs later, to make changes to payment terms.

(b) At the commencement of the Franchise upon passage, the Franchise Fee shall be a combination of: (1) zero per linear foot as described in Section 11(a) above; (2) six percent (6%) of forty-three cents (\$0.43) per thousand cubic feet (mcf) of gas as described in Section 11(a) above; (3) zero % of Gross Receipts; and (4) no fee is to be collected beginning with bills rendered for the October 2016 billing cycle, and remitted monthly thereafter until such time as Metro Council changes the term by subsequent ordinance. Metro Council makes the Franchise Fee contingent upon the adjudication of an action contemplated in Section 12, LG&E will not collect or remit any Franchise Fee during the time period in which the action is pending, including any appeals therefrom, and LG&E will have no retroactive obligation to remit payment of the Franchise Fee following of the conclusion of the adjudication and any appeals therefrom. Should the adjudication and any appeals therefrom, conclude that the franchise fee should be recovered from the Company's ratepayers as a line item on the bills of customers only in the franchise area, the amount of the fee will automatically revert to zero and no fee will be due from the Company.

(c) Gross Receipts means those amounts of money which the Company receives annually from its customers, including, but not limited to residential, industrial and commercial entities, within the Franchise Area for the retail sale, distribution and/or transportation of gas, under rates, temporary or permanent, authorized by the Kentucky Public Service Commission and represents amounts billed under such rates as adjusted for refunds, the net write-off of uncollectible accounts, corrections or other regulatory adjustments. Gross Receipts also includes but is not limited to any amounts of money earned within Louisville Metro for the use, rental, or lease of the Company's Facilities. Gross Receipts do not include home energy assistance funds ("HEA") or miscellaneous service charges, including but not limited to turn-ons, meter sets, non-sufficient fund charges, late fees and interest, which are related to but are not a part of the actual retail sale of gas.

(d) At a minimum, the Franchise Fee is intended to apply to Gross Receipts related to those services which include the Franchise Fee as part of the Company's tariff filed with the Kentucky Public Service Commission as of the date of the adoption of this Franchise, and the Company expressly agrees that it will continue to pay the Franchise Fee on Gross Receipts derived from these services for the duration of this Franchise. The Company will also assess and pay the Franchise Fee on any such Gross Receipts from revised, amended, or additional tariffs (except for nonrecurring charges in Louisville Metro) unless Louisville Metro specifically indicates that it does not want the Franchise Fee to apply to such Gross Receipts, and subject to any necessary approval by the Kentucky Public Service Commission. Following any changes to calculations of amounts payable hereunder, such payments shall commence with the first billing period following any necessary tariff approval by the Kentucky Public Service Commission. Until such time, the Company will continue collecting and remitting payments to Louisville Metro under the terms of its existing tariff and Franchise Agreement until such time as this tariff approval is obtained.

(e) The Company shall file a complete and accurate report of all Gross Receipts received

within the Franchise Area during the previous month. The report shall be of a design agreed to by the Company and Louisville Metro's Office of Management & Budget (OMB) with sufficient information to confirm the accuracy of the submitted monthly Franchise Fee.

(f) The Company shall file a complete and accurate report, to the best of its ability and knowledge, at the beginning of the Franchise Agreement designating the linear feet of in-service pipeline segments in the LG&E GIS, owned and operated by the Company, whether transmission or distribution, within the Franchise Area. The report may be based upon the same data set as relied upon for the Company's annual report certified to the United States Department of Transportation Pipeline and Hazardous Materials Safety Administration. After the initial report, updated reports, indicating changes to the linear feet of in-service pipeline segments in the LG&E GIS, owned and operated by the Company, whether transmission or distribution, within the Franchise Area shall be supplied annually when the Company certifies its report to the United States Department of Transportation Pipeline and Hazardous Materials Safety Administration. The report shall be provided to Louisville Metro's Office of Management & Budget (OMB) with sufficient information to confirm the accuracy of the submitted monthly franchise fee.

(g) The Company shall file a complete and accurate report, to the best of its ability and knowledge, at the beginning of the Franchise Agreement of all natural gas mcf, utilizing the company's pipe, pipeline, main, pumping stations or other means to transport, whether for transmission or distribution, gas within the Franchise Area during the previous month. After the initial report, an updated report, indicating changes to all natural gas mcf utilizing the company's pipe, pipeline, main, pumping stations or other means to transport, whether for transmission or distribution, gas within the Franchise Area during the previous month, shall accompany the submission of the monthly Franchise Fee. The report shall be of a design agreed to by Louisville Metro's Office of Management & Budget (OMB) with sufficient information to confirm the

accuracy of the submitted monthly Franchise Fee.

(h) No acceptance of any Franchise Fee payment by Louisville Metro shall be construed as an accord and satisfaction that the amount paid is in fact the correct amount nor shall acceptance be deemed a release to any claim Louisville Metro may have for future or additional sums pursuant to this Franchise. Louisville Metro shall have the right to inspect the Company's income, financial, and records relating to gross revenues in order to audit, and to re-compute any amounts determined to be payable under this Franchise. The Company shall respond to a reasonable request for information related to obtaining audit information within ten (10) business days unless agreed otherwise by the parties. This provision in Section 11(h) shall survive the term of any Franchise Agreement awarded pursuant to this Franchise for a period of one (1) year. Any additional amount due to Louisville Metro as a result of the audit shall be paid within ten (10) days following written notice to the Company by Louisville Metro which notice shall include a copy of the audit report. If as a result of such audit or review Louisville Metro determines that the Company has underpaid its Franchise Fee by one percent (1%) or more for any one (1) month period then in addition to making full payment of the relevant obligation it shall reimburse Louisville Metro for all of the reasonable costs associated with the audit or review. If such audit or review is performed in connection with the granting of a new Franchise, a sale or transfer of control of the Company, or a substantive modification of the terms to, or an assignment of this Franchise, the Company shall reimburse Louisville Metro for all of the reasonable costs associated with the audit or review including all out-of-pocket costs for attorneys, accountants and other consultants.

(i) In the event that any Franchise payment or recomputed amount is not made on or before the applicable dates heretofore specified, interest shall be charged from such date at the annual rate of eight percent (8%). With respect to its billing of Louisville Metro, Company agrees to, upon request; provide an explanation of any and all billing adjustments or credits including the account(s)

impacted and any and all late payments.

(j) The Company shall have the right to a refund from Louisville Metro of any fees paid pursuant to this section which are paid in excess of the amount due under this Franchise or are paid in excess of the amount lawfully owed. Any refund amount due to the Company shall be paid within ten (10) days following written notice to Louisville Metro by the Company.

(k) As further consideration for the granting of this Franchise, the Company agrees to pay all publication costs Louisville Metro incurs in the granting of this Franchise. The above-mentioned costs shall be invoiced by Louisville Metro to the Company and the Company shall pay said costs within thirty (30) days of receipt of said invoice.

Section 12. The agreement of a Franchise Fee structure in Section 11 and implemented throughout the term of the Franchise by the Company does not equate to approval or acquiescence by Louisville Metro to the Company's method of recovery of the entire Franchise Fee, or some portion of the Franchise Fee from the Company's ratepayers within the Franchise Area. This Franchise Agreement contemplates that Louisville Metro reserves the right to challenge the Company's method of recovery of the Franchise Fee at the Kentucky Public Service Commission or any other court of competent jurisdiction. Both Louisville Metro and the Company reserve the right to challenge the jurisdiction of any forum where the Company's method of recovering the cost of the Franchise Fee from its customers is challenged. The Company and Louisville Metro, separately, reserve the right to seek all administrative relief from the Kentucky Public Service Commission or any other court of competent jurisdiction, including appeals of any final orders as permitted by law. The reference to "any other court of competent jurisdiction" in the preceding sentence does not imply or express any agreement by or consent from the Company that any forum other than the Kentucky Public Service Commission has jurisdiction over the Company's recovery of Franchise Fees from its customers.

Section 13(a). In addition to all other rights and powers pertaining to Louisville Metro by virtue of the Franchise created by this Franchise or otherwise, Louisville Metro, reserves the right to terminate and cancel this Franchise and all rights and privileges of the Company hereunder in the event that the Company:

(1) Willfully violates any material provision of this Franchise or any material rule, order, or determination of Louisville Metro made pursuant to this Franchise, except where such violation is without fault or through excusable neglect;

(2) Willfully attempts to evade any material provision of this Franchise or practices any fraud or deceit upon Louisville Metro;

(3) Knowingly makes a material misrepresentation of any fact in the application, proposal for renewal, or negotiation of this Franchise; or

(4) Is no longer able to provide regular and customary uninterrupted service to its customers in Louisville Metro.

(b) Prior to attempting to terminate or cancel this Franchise pursuant to this section, Louisville Metro shall make a written demand that the Company do or comply with any such provision, rule, order or determination. If the violation, found in Section 13(a), by the Company continues for a period of thirty (30) days following such written demand without written proof that corrective action has been taken or is being actively and expeditiously pursued, Louisville Metro may place its request for termination of this Franchise as early as the next regular Metro Council meeting agenda. Louisville Metro shall cause to be served upon Company, at least ten (10) days prior to the date of such Metro Council meeting, a written notice of intent to request such termination and the time and place of the meeting, legal notice of which shall be published in accordance with any applicable laws.

(1) It shall be a defense to any attempt to terminate and cancel this Franchise that the Company was relying on federal law, state law, or a valid tariff in acting or not acting on the issue in dispute.

(2) The Metro Council shall consider the request of Louisville Metro and shall hear any person interested therein, and shall determine in its discretion, whether or not any violation by the Company was with just cause.

(3) If such violation by the Company is found to have been with just cause, the Metro Council shall direct the Company to comply therewith within such time and manner and upon such terms and conditions as are just and reasonable.

(4) If the Metro Council determines such violation by the Company was without just cause, then the Metro Council may, by resolution, declare that this Franchise of the Company shall be terminated and forfeited unless there is compliance by the Company within such period as the Metro Council may fix.

(c) Any violation by the Company or its successor of the material provisions of this Franchise, or the failure promptly to perform any of the provisions thereof, shall be cause for the forfeiture of this Franchise and all rights hereunder if, after written notice to the Company and an opportunity to cure, such violations, failure or default continue as set forth in Section 13(a).

Section 14. Louisville Metro shall have the right to cancel this Franchise thirty (30) days after the appointment of a receiver or trustee to take over and conduct the business of the Company, whether in receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said thirty (30) days, unless:

1. Within thirty (30) days after his/her election of appointment, such receiver or trustee shall have fully complied with all the provisions of this Ordinance and remedied all

defaults thereunder; and,

2. Such receiver or trustee, within said thirty (30) days shall have executed an agreement, duly approve by the court having jurisdiction in the premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this Ordinance and the Franchise granted to the Company.

Section 15. The Company will work and discuss plans with Louisville Metro's Infrastructure Coordination Committee to help coordinate work with Louisville Metro and other utilities.

Section 16 (a). The Company warrants that it will maintain an Emergency Response Plan that is in compliance with the applicable requirements of local, state and federal agencies with jurisdiction and will notify the Department of Public Works and 911 Emergency Communications Center anytime telephonic notice to the Kentucky Public Service Commission is required pursuant to 807 KAR 5:027, Section (3)(a), (c), (d), (f) or (g). Upon written request by Louisville Metro, the Company agrees to meet periodically to review the Emergency Response Plan.

(b) The Company's Emergency Plans shall designate the Company's responsible local emergency officials and a 24 hour emergency contact number. The Company shall, after being notified of an emergency, cooperate with Louisville Metro and respond as soon as possible to protect the public's health, safety and welfare. The response will be subject to the Unified Command Structure of the National Incident Management System (NIMS).

(c) The Company shall cooperate with Louisville Metro and respond to protect public health and safety in the event of an emergency.

(d) In the course of construction, modification, or removal of any of its Facilities in the Right of Way, the Company shall remove and remediate all hazardous substances encountered in the course of its activities in accordance with all applicable state and federal laws, statutes,

regulations, and orders.

Section 17. This Franchise shall be governed by the laws of the Commonwealth of Kentucky, both as to interpretation and performance. The venue for any litigation related to this Franchise shall be in a court of competent jurisdiction in Kentucky.

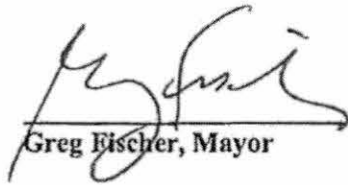
Section 18. This Franchise does not create a contractual relationship with or right of action in favor of a third party against either Louisville Metro or the Company.

Section 19. If any section, sentence, clause or phrase of this Franchise is held unconstitutional or otherwise invalid, such infirmity shall not affect the validity of the remaining Franchise.

Section 20. In case the Company shall fail within thirty (30) days after this bid to comply with the provisions of this Ordinance, the Director of Public Works shall again advertise such Franchise for sale in the manner in which the first sale was made and shall again sell said Franchise in the same manner, and upon the same conditions and requirements in all respects as the original sale of said Franchise was made, and in case the successful bidder at such sale shall fail or refuse to comply with the terms of said sale within the time prescribed, then the Director of Public Works may again advertise such Franchise for sale in the manner prescribed herein and may continue to do so until said Franchise is purchased by some bidder who shall comply with the terms of said sale.

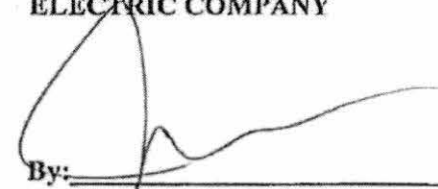
IN WITNESS WHEREOF, the Parties have executed this Franchise Agreement this 30th of August, 2016.

LOUISVILLE/JEFFERSON COUNTY
METRO GOVERNMENT



Greg Fischer, Mayor

LOUISVILLE GAS AND
ELECTRIC COMPANY



By: _____

Title: VP Customer Services

Attachment

B

Louisville Gas and Electric Company

P.S.C. Gas No. 10, Original Sheet No. 90

Adjustment Clause

Franchise Fee

APPLICABILITY

All gas rate schedules.

MONTHLY CHARGE

A surcharge shall be calculated and added to the total bill for gas service for all customers located within local governmental jurisdictions which currently or in the future impose municipal franchise fees or other local taxes on the Company by ordinance, franchise, or otherwise. Such fees or taxes shall be net of any corresponding fees or taxes which are currently included in the base charges of each rate schedule.

The amount calculated shall be applied exclusively to the bills of customers receiving service within the territorial limits of the authority imposing the fee or tax. The fee or tax shall be added to the customer's bill as a separate item. Where more than one such fee or tax is imposed, each of the fees or taxes applicable to each customer shall be added to the bills as separately identified items.

DATE OF ISSUE: July 10, 2015

DATE EFFECTIVE: February 6, 2009

ISSUED BY: /s/ Edwin R. Staton, Vice President
State Regulation and Rates
Louisville, Kentucky

Issued by Authority of an Order of the
Public Service Commission in Case No.
2009-00549 dated July 30, 2010