

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ADJUSTMENT OF GAS AND ELECTRIC RATES)
OF LOUISVILLE GAS AND ELECTRIC COMPANY) CASE NO. 10064

O R D E R

On February 23, 1988, the Commission issued its Order scheduling a technical conference to commence on March 7, 1988, for the purpose of discussing the issues to facilitate an agreed settlement. The Commission further ordered Louisville Gas and Electric Company ("LG&E") to file a suggested agenda for the conference. On February 29, 1988, LG&E filed an agenda and a list of seven conditions which LG&E suggested be applicable to the settlement discussions. Those conditions are:

- 1) The participation by Commission Staff in the settlement conference does not subject the Staff to cross-examination at the hearing on any issue not settled by agreement of the parties;
- 2) Each party waives all cross-examination of the witnesses of the other parties with respect to the issues agreed to and accepted by the Commission;
- 3) Each party agrees that the settlement agreement, unless otherwise specified, is submitted for purposes of this case only and is not deemed to be binding upon the parties in any other proceeding before the Commission, nor is it to be offered or relied upon in any future proceeding involving LG&E;
- 4) All discussions during the settlement conference are confidential and privileged and shall not be introduced in evidence in any proceeding;
- 5) The settlement conference is open only to the parties and is not open to the public;

- 6) If any party fails to attend the conference, such failure will constitute a waiver of all objections to any order arising out of, or any agreement reached at, the conference; and
- 7) Settlements of specific facts and issues are made on a tentative basis, pending a final and comprehensive settlement agreement.

On March 3, 1988, Jefferson County, Kentucky, responded to LG&E's suggested conditions for the settlement conference by objecting to condition Nos. 1, 3, and 6. Objection No. 1 states that the parties would be denied due process rights if they are unable to conduct cross-examination of the Commission Staff in the event a settlement agreement is not reached. The objection to condition No. 3 is that the parties should be able to rely upon the terms of the settlement agreement in future proceedings. The objection to condition No. 6 is that a party who decides not to attend the settlement conference should not be held to have waived any objection to the issues that may be resolved by a settlement agreement.

On March 3, 1988, counsel for residential intervenors filed a notice stating that a prior commitment would prevent counsel's attendance at the settlement conference scheduled for March 11, 1988, and requesting that it be rescheduled to March 14, 1988.

Based on LG&E's suggested agenda and the enumerated conditions, the parties responses, and being advised, the Commission is of the opinion and hereby finds that the conditions are reasonable and should be adopted. The objections of Jefferson County are unpersuasive. Regarding condition No. 1, the Commission's Staff has neither filed testimony nor a report in

this case. Therefore, Staff's participation in the settlement conference affords no basis to subject Staff to cross-examination during the hearing. As to condition No. 3, the Commission recognizes that if a settlement is to be reached, each party must be willing to negotiate in good faith on the issues in this case without being concerned that their positions will establish binding precedent for future proceedings. However, the Commission's decision on this point is not intended to foreclose the parties' rights to designate their settlement on one or more issues as being binding in future proceedings. Condition No. 6 is reasonable and necessary to insure that a party who chooses not to attend a settlement conference is not then at will to disrupt the results achieved by those parties in attendance. The settlement conference is an integral part of the procedural schedule for this case. A party cannot be permitted to decline to participate in a settlement conference and then be permitted to object to any settlement reached by the attending parties.

The Commission further finds that good cause has not been shown to reschedule the settlement conference from March 11, 1988, to March 14, 1988. If a settlement agreement cannot be reached, the parties will need sufficient time to adequately prepare for the hearing scheduled on March 22, 1988. The Commission also notes that the residential intervenors' motions to intervene were signed by three counsel of record and every effort should be made to insure that either a counsel or a designated representative is present during the settlement conference.

IT IS THEREFORE ORDERED that:

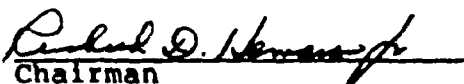
1. LG&E's agenda and the conditions for the settlement conference be and they hereby are adopted;

2. Jefferson County's objections to condition Nos. 1, 3, and 6 be and they hereby are overruled; and

3. Residential intervenors' request to reschedule the settlement conference be and it hereby is denied.

Done at Frankfort, Kentucky, this 4th day of March, 1988.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:

Executive Director