

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. 90-158

O R D E R

On September 11, 1990, the Attorney General's office, Utility and Rate Intervention Division ("AG"), filed the following four motions: 1) Motion to Reconsider; 2) Motion to Compel and Amend Procedural Schedule; 3) Motion to Compel Re: Supplemental Request for Information; and 4) Motion to Dismiss. The Louisville Gas and Electric Company ("LG&E") filed on September 17, 1990, its responses to the AG's motions to reconsider, to amend the procedural schedule, and to dismiss; and filed on September 18, 1990 its response to the motion to compel re: supplemental information.

Being specifically advised, the Commission hereby makes the following analysis and findings with regards to each of the pending motions.

AG MOTION TO RECONSIDER

During the September 6, 1990 hearing, the AG's prior motion to compel was granted in part and denied in part. The AG now seeks reconsideration of that portion of the Commission's decision which denied the AG's motion to compel LG&E to provide budget information for historic, current, and future time periods.

In support of its request for reconsideration, the AG claims that the budget information is relevant, may lead to the discovery of abnormalities in the test year, and is needed to completely analyze the test year. The AG further asserts that the Commission's decision was erroneously based on the mistaken assumption that the budget information was requested in conjunction with a forecasted test year analysis.

LG&E's response notes that the AG has neither demonstrated a need for budget documents, nor addressed any of the substantive reasons or legal authorities which LG&E has presented to demonstrate that budget documents are not relevant and should not be produced in this proceeding.

At the September 6, 1990 hearing, the Commission denied the AG's prior motion to compel the budget documents based on the finding that:

The utility has used an historic test year; not a forecast test year. Consequently, LG&E's budgets are not relevant to this case. The Commission and intervenors have traditionally reviewed and analyzed a utility's pro forma adjustments based upon historic financial data; not projections. By their very nature, the budget projections would include significantly more than just the known and measurable adjustments allowed to an historic test year. (Transcript of Evidence, September 6, 1990, page 12-13.)

At the time this decision was announced, the Commission was well aware that the AG was requesting budget documents to analyze the historic test year rather than a forecasted test year. While denying those documents on the grounds of relevancy, the Commission was merely recognizing that budget documents would have been relevant had LG&E presented a forecasted test year.

The AG has failed to present any reason why abnormalities in the test year are not discoverable by comparing actual financial data for the test year with actual financial data from prior historic periods and post test year periods. All of this actual financial data is already in the record. As the Commission recognized in its prior ruling, budgets will vary for a myriad of reasons, not the least of which is the validity of the budgeting process itself. Inquiries into LG&E's budgeting process, and the basis for projecting revenues and expenses, are all highly complex areas that bear no relevancy to the task in this rate case - the normalization of an historic test year and the analysis of known and measurable pro forma adjustments. Therefore, the Commission will affirm its decision to deny production of the budget documents.

AG MOTION TO COMPEL AND AMEND PROCEDURAL SCHEDULE

The AG claims that LG&E has continually refused to cooperate in the discovery phase of this rate case, that LG&E does not want to provide the AG the information he needs to present his case, and that LG&E's two offers to produce documents were not made in good faith because of the restrictive conditions attached to the offers. The AG specifically argues that its inspection of LG&E's records would take several days, but that LG&E was willing to allow no more than two days. The AG's motion concludes by requesting the Commission to compel LG&E to provide complete responses to the AG's Request for Information filed on August 8, 1990 and to modify the procedural schedule by delaying the hearing

to allow additional time for analysis of the requested information.

In its response, LG&E states that every effort has been made to cooperate with the AG during the discovery phase, including, but not limited to, hand delivery of responses to data requests and providing additional copies for the AG's consultants. LG&E further states that the AG and other parties were offered an opportunity to inspect relevant LG&E business records on August 27, 1990, but this offer was rejected by the AG on the grounds that the terms of the offer to produce were unacceptable. Despite attempts by LG&E to ascertain which specific terms of its offer were unacceptable, no response was provided by the AG. LG&E's response also recites the numerous efforts made to amicably resolve the AG's discovery objections, including the scheduling of a second document production on September 10, 1990 to accommodate the AG's schedule. While LG&E was willing to allow that document inspection to occur over a two day period, it was unwilling to commit to a four day inspection period.

The Commission finds that the AG has failed to present any evidence in support of his argument that LG&E is responsible for delays during the discovery phase of this rate case. To the contrary, the record clearly indicates that LG&E has timely responded to all requests for information. While LG&E's response to a limited number of data requests may have taken the form of an objection, LG&E was clearly entitled to set forth such objections for review and decision by the Commission. Furthermore, LG&E's offer of a two day document inspection was reasonable, especially

so in light of the fact that LG&E had already filed voluminous information in response to hundreds of data requests.

Had the AG participated in the two day document request, it might then have been in a position to demonstrate to the Commission why a total of four days is necessary. Absent such a demonstration, there is no reasonable basis for the Commission to conclude that two days is insufficient for the document production. Therefore, the Commission will allow the AG, and any other interested party, to inspect the business records covered by LG&E's prior offer to produce, for two consecutive days, commencing September 25, 1990, at LG&E's offices between the hours of 8:00 a.m. and 6:00 p.m. The parties may, by mutual agreement, modify the dates and times for the document inspection to accommodate their schedules.

Regarding the AG's request that LG&E be compelled to provide complete responses to each item in the AG's Request for Information filed on August 8, 1990, the Commission finds that LG&E's original responses, as supplemented following the September 6, 1990 hearing, constitute full and complete responses. As to the AG's request to modify the procedural schedule, the Commission notes that two other parties, Kentucky Industrial Utility Customers and the Kentucky Cable Television Association, Inc., have also filed similar motions. Consequently, the Commission will modify the procedural schedule to the extent that intervenors' testimony will be due October 3, 1990; all requests for information to intervenors will be due October 15, 1990; and intervenors' responses to requests for information will be due

October 24, 1990. This revised schedule will afford the parties the additional time needed to analyze the data produced in accordance with this Order, without the need to delay the hearing.

MOTION TO COMPEL RE: SUPPLEMENTAL REQUEST FOR INFORMATION

The AG requests that the Commission compel LG&E to provide further responses to 40 of the 250 (including subparts) supplemental data requests filed by the AG on August 29, 1990. For many of the items specified in the Motion to Compel, the AG claims that LG&E's response was unresponsive, evasive, misleading, vague, or does not appear logical. LG&E's response to the AG's motion contains a specific description of each of the 40 items requested by the AG, followed by a summary of its response. For a number of items, LG&E has supplemented and clarified its original responses. For many of the items, LG&E claims that it fully responded to the question contained in the AG's supplemental data request, and that this motion is a thinly veiled attempt by the AG to compel responses to questions that differ from those originally propounded.

Based on a review of LG&E's responses to the AG's Supplemental Information Request, the Commission hereby finds that LG&E has fully and completely responded to AG Item Nos. 3; 6; 7(d); 8(b), (d), (e), (f), and (g); 10(a); 11(b); 19(e), (f), (h), (k), and (m); 20; 28, 28(a); 31; 32; 36; 38; 39; 48(a); 54; 58; 65; and 67. The Commission further finds that LG&E's responses to the following items are incomplete and should be supplemented as noted:

AG No. 4: LG&E has answered the question but not provided copies of work papers or other

documentation as requested. LG&E should provide these items.

- AG No. 9: LG&E's original response, as supplemented by its response to the Motion to Compel, states that the information requested is not in the actuarial reports that are in LG&E's possession. LG&E should make those actuarial reports available to the AG for inspection and copying.
- AG Nos. 15 and 16: LG&E should provide the information as requested. Although LG&E is not seeking rate recovery of certain expenses, information relating to those expenses is relevant to determine whether rate-recovery of similar expenses is appropriate.
- AG No. 19(d): LG&E's response does not indicate whether the higher level of expense in Account 513 is expected to continue on a recurring basis. LG&E should provide a direct response to the question.
- AG No. 19(1): LG&E's response provides no explanation as to why the level of expense incurred during the test year is appropriate on a going-forward basis. LG&E should provide a specific, detailed explanation to this request.
- AG No. 19(n): LG&E should provide a specific identification of all additional computer equipment and the rental charges which increased costs in Account 931 in the test year over that of the prior period.
- AG No. 19(o): LG&E should provide the on-going level of maintenance expense as a result of the move to the new offices.
- AG No. 34: LG&E's response is incomplete to the extent that an explanation has not been provided as to why each amount included in Account 190 is appropriate as an increase to rate base. LG&E should provide the explanation as to each amount included in the referenced account.
- AG No. 37: LG&E's response is incomplete to the extent that it has not stated whether it will continue to incur the level of commitment fees incurred during the test year once Trimble County has been completed. LG&E should respond to this question.

AG No. 48(e): LG&E should provide the subaccount as requested in the AG's Motion to Compel.

AG No. 50: LG&E should provide the insurance rates in effect prior to the test year so that they can be compared to those in effect during the test year.

MOTION TO DISMISS

The AG alleges that LG&E's failure to timely respond to data requests is a calculated attempt to frustrate the AG's ability to fully participate in this proceeding, that LG&E is either overwhelmed by the magnitude of this case or acting in bad faith, and that the delays resulting from LG&E's actions constitute due process violations. LG&E's response claims that any delays are the result of the AG's own desire to not comply with the procedural schedule. LG&E points to the AG's summary rejection of the offers to produce and the AG's failure to respond to LG&E correspondences offering to discuss discovery disputes in an attempt to resolve them expeditiously.

The Commission finds no merit to the AG's Motion to Dismiss. As stated above in the discussion of the AG's Motion to Compel and Amend Procedural Schedule, the evidence clearly demonstrates that LG&E has timely responded to requests for discovery. As to the AG's claim of infringement of its due process rights, no case law or statutory reference is cited to support the claim, and the Commission finds such claim to be untenable on its face. LG&E has provided responses to hundreds of requests for information propounded by the AG. The AG, as well as the other intervenors, have been afforded the right to conduct meaningful discovery.

IT IS THEREFORE ORDERED that:

1. The AG's motion requesting the Commission to reconsider its Order entered into the record during the hearing on September 6, 1990 be and it hereby is denied.

2. The AG's Motion to Compel and Amend Procedural Schedule be and it hereby is granted to the extent that LG&E shall allow inspection and copying of those business records previously offered for production, at LG&E offices for two consecutive days, commencing September 25, 1990, between 8:00 a.m. and 6:00 p.m. The procedural schedule attached as Appendix A to the Commission's July 20, 1990 Order be and it hereby is modified to the extent that Intervenors shall file their testimony no later than October 3, 1990; request for information to Intervenors shall be due no later than October 15, 1990; and Intervenors shall mail or deliver responses to requests for information no later than October 24, 1990.

3. The AG's Motion to Compel Re: Supplemental Data Request is granted to the extent that LG&E shall provide by September 26, 1990 the additional information specified in the findings above in response to the AG's Supplemental Data Requests.

4. The AG's Motion to Dismiss be and it hereby is denied.

Done at Frankfort, Kentucky, this 21st day of September, 1990.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director