

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN ADJUSTMENT OF GAS AND ELECTRIC)
RATES OF LOUISVILLE GAS AND) CASE NO. 90-158
ELECTRIC COMPANY)

O R D E R

On February 5, 1991, the Attorney General, by and through his Utility and Rate Intervention Division ("AG") and the Metro Human Needs Alliance, Inc. ("MHNA") filed a joint motion requesting reconsideration and rehearing of a portion of the Commission's January 29, 1991 Order on the issue of accumulated deferred income taxes. This issue was raised for the first time in the petitions for rehearing filed by the AG and MHNA. The AG also filed two additional motions on February 5, 1991: the first requests modification of the January 29, 1991 Order to remove for rate-making purposes all legal expenses associated with Case No. 10320;¹ the second requests a nunc pro tunc Order correcting the erroneous tax treatment of an adjustment for additional Kentucky sales taxes. Louisville Gas and Electric Company ("LG&E") filed its responses to these motions on February 8, 1991.

¹ Case No. 10320, An Investigation of Electric Rates of Louisville Gas and Electric Company to Implement a 25 Percent Disallowance of Trimble County Unit No. 1, Order dated October 2, 1989.

Accumulated Deferred Income Taxes

The AG and MHNA took issue with the Commission's decision in its January 29, 1991 Order, arguing in the joint motion that MHNA had raised the issue of accumulated deferred income taxes during the hearing, the appropriate reduction was easily determinable, the Commission should have made the adjustment on its own, and that the failure to do so contradicts the Commission's standard of recognizing the effects of the commercialization of Trimble County Unit No. 1 ("Trimble County"). The AG and MHNA further argue that an adjustment to rate base related to accumulated deferred income taxes would also result in an adjustment to LG&E's capitalization. In its response, LG&E stated that the joint motion should be denied as violating the rule against a "rehearing on rehearing"; the Commission was correct when it ruled that the issue of deferred income taxes was not raised until rehearing; and that there was no merit to the argument that the capitalization of LG&E should be decreased for accumulated deferred income taxes.

The Commission has reviewed the transcript references cited by the AG and MHNA. Contrary to their argument, the testimony does not disclose that a rate base reduction should be made. The cross-examination of LG&E on this subject was general in nature, involving the difference between the 1989 actual deferred income taxes and the 1990 estimated deferred income taxes. While LG&E agreed that such an adjustment to rate base could have been made, LG&E did not propose or sponsor such an adjustment. A review of the evidence and the briefs discloses that neither the AG nor MHNA proposed or supported such an adjustment. As stated in the

January 29, 1991 Order, the record in this case does not contain the information necessary to calculate the adjustment to deferred income taxes which is now being proposed. The AG and MHNA now argue that the record contains an "approximation of the magnitude of the adjustment." Such an "approximation" does not constitute a known or measurable adjustment which can be included for rate-making purposes. Further, the AG and MHNA state that since the Commission developed the numbers used for the adjustment to depreciation expense, it can similarly develop the numbers for the deferred income taxes. However, the depreciation expense allowed in the December 21, 1990 Order was determined from known figures contained in LG&E's prepared direct testimony.² The Commission did not resort to approximation, estimation, or interpolation in that instance. For the proposed adjustment to deferred income taxes, the figures are simply not in the record.

Therefore, the Commission denies the joint motion of the AG and MHNA.

Legal Expenses Related to Case No. 10320

The AG argues that because of a February 1, 1991 decision of the Franklin Circuit Court, which found that the procedures employed in the settlement process in Case No. 10320 violated the due process rights of the intervenors, the entire action was unlawful and the expenses of pursuing and defending such unlawful actions are inappropriate for rate-making and must be excluded. The AG further argues that the Court's decision could not have

² Fowler Direct Testimony, Exhibit 1, Schedule G, page 2 of 4, line 3; page 3 of 4, line 3; and page 4 of 4, line 7.

been produced in time to be introduced into the record earlier. The AG seeks rehearing on this issue and asks that the legal expenses associated with Case No. 10320 be removed from this case.

LG&E responded to the AG's motion by noting that there was nothing to suggest that legal fees related to Case No. 10320 were allowed in rates. LG&E states that the ruling of the Franklin Circuit Court does not qualify as newly discovered evidence under KRS 278.400 and KRS 278.440, which LG&E argues "does not include 'new evidence' based upon events occurring after the date of the hearing."³ LG&E notes that the AG has argued this same position in another proceeding, and the Commission rejected the argument.

The Commission notes that the AG makes no claim that any of the legal expenses were incurred imprudently, in bad faith, or for an improper purpose. The AG has cited no precedent, from this jurisdiction or any other, to support excluding legal fees solely because the utility did not prevail in court. LG&E's interpretation of the December 21, 1990 and January 29, 1991 Orders is correct. The Commission excluded all legal expenses related to Commission and judicial proceedings involving Trimble County and other major issues. This included all legal expenses relating to Case No. 10320. We also agree that the ruling of the Franklin Circuit Court on February 1, 1991 does not constitute newly discovered evidence since it was not in existence at the

³ Response of LG&E to Motions of the AG and MHNA, filed February 8, 1991, page 9.

time of the hearing in this case. Thus, the AG's motion is denied.

State Sales Tax Adjustment

The AG requested a nunc pro tunc Order to reflect the deductibility, in calculating LG&E's federal and state income taxes, of the state sales tax adjustment of \$163,000. The Commission's calculation of the income tax expense did not reflect the deduction, resulting in an overstatement of LG&E's net operating income and revenue requirements. The AG cited Case No. 10498⁴ as precedent for the relief requested here. LG&E responded that it was not aware of any such nunc pro tunc Order in Case No. 10498, and that correction of this error could not be made nunc pro tunc, but requires the initiation of a new case. Finally, LG&E stated that any adjustment should be on a prospective basis, and should be applicable to bills rendered on or after a date certain since the administrative costs of prorating service before and after the effective date would far exceed any benefits to ratepayers.

The Commission has reviewed its calculations and finds that the effects of the state sales tax adjustment were inadvertently excluded from the determination of income tax expense. Correcting this calculation will increase LG&E's adjusted net operating income by \$64,295, and reduce the additional revenue required by \$106,176. Although the Commission did make a similar adjustment

⁴ Case No. 10498, Adjustment of Rates of Columbia Gas of Kentucky, Inc., Order dated October 17, 1989.

in Case No. 10498 by a nunc pro tunc Order entered October 17, 1989, the magnitude of that adjustment was significantly greater both in absolute terms and as a percentage of total revenues than the adjustment at issue here. These types of calculations have also been corrected on a prospective only basis.⁵

The Commission recognizes that the cost to recalculate each customer's bill since January 1, 1991 and to refund any overcollections could exceed the benefits to the ratepayers. We are also aware that while the January 29, 1991 Order authorized LG&E to increase its rates by \$42,785 for service rendered on and after that date, the increase will be delayed to eliminate the administrative cost to prorate customer bills. Since that rate increase will be implemented with bills rendered on and after March 5, 1991, the Commission finds that the rate decrease authorized herein should be similarly implemented.

Revenue Requirements

Based on the above finding that the additional revenue required has been overstated by \$106,176, the Commission has recalculated the additional revenue required by LG&E. This recalculation includes the changes authorized by the January 29, 1991 Order and this Order. A breakdown between electric and gas operations of the revised total operating income and the increase in total revenue allowed is as follows:

⁵ Case No. 89-228, Columbia Gas of Kentucky, Inc., Order dated August 23, 1989.

	<u>Electric</u>	<u>Gas</u>	<u>Total</u>
Net Operating Income Found Reasonable	\$120,854,243	\$13,141,627	\$133,995,870
Adjusted Net Operating Income	<u>117,590,899</u>	<u>12,824,443</u>	<u>130,415,342</u>
Net Operating Income Deficiency	3,263,344	317,184	3,580,528
Gross Up Revenue Factor for Taxes (1.00-.32445)	.60555	.60555	.60555
Additional Revenue Required	<u>\$ 5,389,058</u>	<u>\$ 523,795</u>	<u>\$ 5,912,853</u>

The revenues granted will provide a rate of return on the net original cost rate base of 9.52 percent and an overall return on total capitalization of 9.89 percent. The rates and charges in Appendix A are designed to produce gross operating revenues, based on the adjusted test year, of \$691,597,766. These operating revenues include \$507,777,939 in electric revenues and \$183,819,827 in gas revenues.

IT IS THEREFORE ORDERED that:

1. The joint motion of the AG and MHNA to amend the January 29, 1991 Order, to reconsider, and to grant rehearing be and it hereby is denied.

2. The motion of the AG to amend the rehearing Order of January 29, 1991 be and it hereby is denied.

3. The motion of the AG requesting a nunc pro tunc Order to correct the calculation of federal and state income taxes be and it hereby is granted to the extent that the relief shall be prospective only.


4. The rates in Appendix A, attached hereto and incorporated herein by reference, be and they hereby are approved for bills rendered by LG&E on and after March 5, 1991.

Done at Frankfort, Kentucky, this 22nd day of February, 1991.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 90-158 DATED 2/22/91

The following rates and charges are prescribed for the customers in the area served by Louisville Gas and Electric Company. All other rates and charges not specifically mentioned herein shall remain the same as those in effect under authority of this Commission prior to the effective date of this Order.

ELECTRIC SERVICE

RESIDENTIAL RATE
(RATE SCHEDULE R)

RATE:

Winter Rate: (Applicable during 8 monthly billing periods of October through May)

First 600 kilowatt-hours per month 5.904¢ per KWH
Additional kilowatt-hours per month 4.583¢ per KWH

Summer Rate: (Applicable during 4 monthly billing periods of June through September)

First 600 kilowatt-hours per month 6.402¢ per KWH
Additional kilowatt-hours per month 6.553¢ per KWH

WATER HEATING RATE
(RATE SCHEDULE WH)

RATE:

All kilowatt-hours per month 4.338¢ per KWH

GENERAL SERVICE RATE
(RATE SCHEDULE GS)

RATE:

\$7.77 per meter per month for three-phase service

Winter Rate: (Applicable during 8 monthly billing periods of October through May)

All kilowatt-hours per month 6.316¢ per KWH

Summer Rate: (Applicable during 4 monthly billing periods of June through September)

All kilowatt-hours per month 7.101¢ per KWH

LARGE COMMERCIAL RATE
(RATE SCHEDULE LC)

RATE:

Demand Charge:

Primary
Distribution

Winter Rate: (Applicable during 8 monthly billing periods of October through May)

All kilowatts of billing demand

\$5.68 per KW
per month

Summer Rate: (Applicable during 4 monthly billing periods of June through September)

All kilowatts of billing demand

\$8.52 per KW
per month

LARGE COMMERCIAL TIME-OF-DAY RATE

RATE:

Customer Charge: \$18.90 per delivery point per month

Demand Charge:

Peak Period Demand Charge

· Summer Peak Period \$6.71 per KW per month
Winter Peak Period \$3.57 per KW per month

INDUSTRIAL POWER
(RATE SCHEDULE LP)

RATE:

Customer Charge: \$42.21 per delivery point per month

Demand Charge:

<u>Secondary</u> <u>Distribution</u>	<u>Primary</u> <u>Distribution</u>
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Summer Rate:
(Applicable during 4 monthly
billing periods of June
through September)

All kilowatts of billing demand	\$10.81 per KW per month	\$8.88 per KW per month
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Energy Charge:

All kilowatt-hours per month 2.714¢ per KWH

INDUSTRIAL POWER TIME-OF-DAY RATE
(RATE SCHEDULE LP-TOD)

RATE:

Customer Charge: \$44.29 per delivery point per month

Demand Charge:

Basic Demand Charge:
Secondary Distribution \$5.31 per KW per month

Peak Period Demand Charge:
Summer Peak Period \$5.57 per KW per month
Winter Peak Period \$2.95 per KW per month

OUTDOOR LIGHTING SERVICE
(RATE SCHEDULE OL)

RATES:

	<u>Rate Per Month Per Unit</u>	
	<u>Installed Prior to January 1, 1991</u>	<u>Installed After December 31, 1990</u>
<u>Overhead Service</u>		
<u>High Pressure Sodium Vapor</u>		
150 watt	\$9.83	\$9.83
400 watt	12.26	12.26
<u>Underground Service</u>		
<u>High Pressure Sodium Vapor</u>		
150 Watt	19.32	19.32

PUBLIC STREET LIGHTING SERVICE
(RATE SCHEDULE PSL)

RATES:

<u>Type of Unit</u>	<u>Rate Per Month Per Unit</u>	
	<u>Installed Prior to January 1, 1991</u>	<u>Installed After December 31, 1990</u>
<u>Overhead Service</u>		
<u>Mercury Vapor</u>		
400 Watt (Under-ground pole)	\$14.30	\$-0-
1000 Watt	18.38	22.07
<u>High Pressure Sodium Vapor</u>		
400 Watt	11.09	11.09
<u>Underground Service</u>		
<u>Mercury Vapor</u>		
175 Watt	15.08	21.47
<u>High Pressure Sodium Vapor</u>		
150 Watt	19.31	19.31
<u>Incandescent</u>		
6000 Lumen	10.90	-0-

**GAS TRANSPORTATION SERVICE/STANDBY
RATE TS**

RATE:

In addition to any and all charges billed directly to Company by other parties related to the transportation of customer-owned gas, the following charges shall apply:

Administrative Charge: \$90.00 per delivery point per month.

	<u>G-1</u>	<u>G-6</u>
Distribution Charge Per Mcf	\$1.1075	\$0.5300
Pipeline Supplier's Demand Component	<u>.2295</u>	<u>.2295</u>
Total	\$1.3370	\$0.7595