

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

O R D E R

On May 10, 1991, the Commission issued an Order granting in part a motion filed jointly by the Attorney General's Office, Utility and Rate Intervention Division ("AG"), and Jefferson County, Kentucky ("Jefferson"), requesting that the Louisville Gas and Electric Company ("LG&E") be compelled to produce certain information that was requested during the initial hearing phase or at the April 24-25, 1991 rehearing. The Commission's Order compelled LG&E to make available for inspection and copying at its offices for two consecutive days the documents specified therein, and established a procedural schedule for enlarging the time for the inspection, scheduling a further evidentiary hearing, and filing of supplemental rehearing briefs.

On May 14, 1991, LG&E filed a motion requesting the Commission to reconsider its May 10, 1991 Order or, in the alternative, to revise the procedural schedule contained therein. LG&E asserts that the Commission erred in granting the intervenors a further round of discovery when the intervenors had failed to take advantage of prior Commission Orders granting opportunities for discovery. Should the May 10, 1991 Order not be revised, LG&E

requests that the inspection take place on May 16-17, 1991 so that all parties can adhere to the previously established briefing schedule. If the inspection does not take place on those dates, LG&E suggests that, for briefing purposes, the rehearing issues be combined with the information discovered during the document production.

On May 15, 1991, the AG filed a response in opposition to LG&E's motion and also filed a motion requesting the Commission to reconsider and amend the May 10, 1991 Order. In its response, the AG states that LG&E's motion lacks merit because it does not acknowledge and address the alleged violations of the AG's due process rights during discovery. The AG's motion reiterates many of the same arguments previously presented in the AG's April 26, 1991 motion and denied by the Commission's May 10, 1991 Order.

The AG states that the opportunity to inspect documents at LG&E's offices is unacceptable, and insists that he has the right to have these documents copied and sent to his office. The AG also states that he did participate in one document production, but was unable to obtain all of the information sought at that time. The AG further claims that participation in a document production would be expensive and inefficient because the AG's out-of-state consultant would have to attend along with the AG's entire Utility Intervention staff, consisting of two attorneys. Further, the AG requests that the Commission now establish a further hearing and allow a minimum of 30 days for the AG to analyze the documents produced at his office. Alternatively, the AG requests the Commission to consider a suggested alternative

proposal for the delivery of documents to his offices. This proposal, in the AG's words, "[W]ill not resolve the due process problems but it will reduce the damages". AG Memorandum, page 8. On May 16, 1991, LG&E filed a response in opposition to the AG's motion to reconsider and amend the May 10, 1991 Order.

Based on the motions and the responses, and being sufficiently advised, the Commission hereby finds that LG&E's request for reconsideration of the May 10, 1991 Order should be denied. LG&E has presented nothing to demonstrate that the required two-day document inspection is burdensome or would not lead to the discovery of relevant evidence. LG&E's alternative request for a modification of the briefing schedule should be granted. The parties should not be burdened with filing four briefs when two are sufficient.

The AG's motion for reconsideration and amendment should be denied. The AG has presented no authority to support his claim that he is entitled to receive at his office all the documents previously requested. LG&E has provided responses to hundreds of requests for information during the course of this investigation. Only in those limited instances where the requested documents have been voluminous in nature has the Commission sanctioned on-sight inspections rather than document productions. Recognizing that the AG previously had a full and fair opportunity to inspect these documents but failed to do so, there is no merit in this request for reconsideration. The AG has also failed to explain why two Assistant Attorneys General plus a consultant would have to participate in the document inspection when the September 21, 1990

document inspection required only the one Assistant Attorney General who was formerly an accountant at a major electric utility. Despite the AG's claim that it was unable to obtain all of the information sought during the September 21, 1990 document inspection, the record reflects that the AG participated for only three hours out of the allotted 20.

It is clear from the aforementioned motions and responses that LG&E's and the AG's positions are miles apart, and there does not appear to be any glimmer of hope that mutually acceptable dates can be selected for the document inspection. Consequently, the Commission will revise its May 10, 1991 Order to the extent that the document inspection ordered therein is to take place on May 22-23, 1991, initial rehearing briefs to include both the rehearing issues and the information discovered during the document inspection should be filed by June 6, 1991, and any reply rehearing brief should be filed by June 14, 1991. All other provisions of the May 10, 1991 Order, including the designation of documents to be produced for inspection, the procedure to request an evidentiary hearing, and the procedure to request additional time for inspection, remain in full force and effect.

IT IS THEREFORE ORDERED that:

1. LG&E's motion be and it hereby is granted in part and denied in part as reflected in the findings above.
2. The AG's motion be and it hereby is denied.
3. The Commission's May 10, 1991 Order be and it hereby is modified to the extent that the required two-day document production and inspection shall be held at LG&E's offices on May

22-23, 1991; initial rehearing briefs to include any issue subject to rehearing and any information discovered during the document inspection shall be filed by June 6, 1991; any reply rehearing brief shall be filed by June 14, 1991; and all other provisions of the May 10, 1991 Order shall remain in full force and effect.

4. The rehearing briefing schedule established by the Commission during the April 25, 1991 rehearing be and it hereby is rescinded.

Done at Frankfort, Kentucky, this 17th day of May, 1991.

PUBLIC SERVICE COMMISSION

  
FOR the Commission

ATTEST:

  
Executive Director