

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

In the Matter of:

ELECTRONIC APPLICATION OF LOUISVILLE GAS)
AND ELECTRIC COMPANY FOR A DECLARATORY) Case No.
ORDER REGARDING THE PROPER METHOD OF) 2016-00537
MUNICIPAL FRANCHISE FEE RECOVERY)

**LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT MOTION FOR ORAL
ARGUMENT AND WITHDRAWAL OF PENDING CLAIM**

Comes now Louisville/Jefferson County Metro Government (“Louisville Metro”), pursuant to KRS § 278.400, and files this Motion seeking an opportunity for oral argument on pending legal issues and to withdraw an issue currently before the Commission. In support thereof, Louisville Metro states as follows:

Both the original Complaint filed by Metro Louisville against Louisville Gas and Electric Co. (“LG&E”) on September 19, 2016, and the Amended Complaint filed on November 9, 2016, raised three key issues for the Commission’s consideration. Those claims are: 1) it is improper to allow LG&E to directly pass the cost of a franchise fee onto LG&E’s gas customers as a utility bill line item, 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 Metro rights-of-way should pay the gas franchise fee; and 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 Metro. Both the Commission’s orders dated January 25, 2017 and February 27, 2017, acknowledge the Commission’s intent to review all three Louisville Metro issues along with those issues raised by LG&E.

Since the commencement of these proceedings, Louisville Metro has sought an opportunity to conduct discovery on interaction between LG&E's gas system infrastructure located in the Louisville Metro rights-of-way ("ROW") and the rest of the distribution system. Not until May 26, 2017 did Louisville Metro receive this information from LG&E. Based on the evidence finally produced and Louisville Metro's analysis of same, Louisville Metro now wishes to withdraw claim 2, which states: "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 Metro rights-of-way should pay the gas franchise fee."¹ Louisville Metro affirmatively states that the evidence produced supports all of Louisville Metro's claims, but upon further review, Louisville Metro wishes to withdraw this claim from review by the Commission in order to hone the scope of inquiry.

With the withdrawal of this issue, only two of Metro Louisville's issues now remain. The final determination of the remaining two issues will require the Commission to analyze and ultimately decide upon the correct interpretation of law. The first remaining Louisville Metro claim -- that it is improper to allow LG&E to directly pass the cost of a franchise fee onto LG&E's gas customers as a utility bill line item -- requires this Commission to interpret a provision of the Kentucky Constitution and decisions by the Kentucky Court of Appeals. The second remaining Louisville Metro claim -- 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 Metro -- will similarly require the Commission to interpret prior Commission precedent, LG&E's Tariff Sheet 90, and portions of KRS Chapter 278. Because the Commission's final determination of these two issues hinges almost completely on legal analysis, Louisville Metro believes the Commission may benefit from an open exchange

¹ Louisville Metro Complaint.

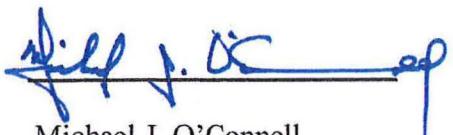
regarding each party's individual interpretation of the relevant legal provisions and decisions. Thus, Louisville Metro seeks an opportunity for oral argument which will either adjudicate the case on the merits or likewise aid the Commission in narrowing the scope of its evidentiary hearing, if necessary.

Indeed, Louisville Metro does not believe at this time that a public hearing to explore the relevant facts is necessary. However, should the Commission grant Louisville Metro's request for oral arguments, those oral arguments may raise issues where further factual analysis, by way of a hearing, could prove beneficial. As such, Louisville Metro does not currently seek a public hearing with an opportunity to cross-examine the LG&E witnesses, though it reserves the right to seek such a hearing following oral arguments. Should the Commission, of its own accord, determine that a public hearing is in the best interests of the public, Louisville Metro will participate in full.

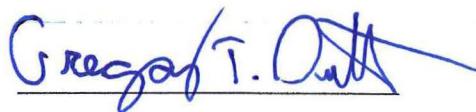
WHEREFORE, Louisville Metro moves the Commission to grant the following relief:

1. Allow Louisville Metro to withdraw from the Commission's consideration claim 2, which states: "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 Metro rights-of-way should pay the gas franchise fee;" and
2. Schedule a date for oral argument on the remaining two Louisville Metro claims.

Respectfully submitted,



Michael J. O'Connell
Jefferson County Attorney's Office
Brandeis Hall of Justice
600 West Jefferson Street, Suite 2086
Louisville, KY 40202
Telephone: 502-574-5772
Mike.OConnell@louisvilleky.gov



Gregory T. Dutton
Goldberg Simpson, LLC
9301 Dayflower Street
Prospect, Kentucky 40059
Telephone: 502-589-4440
gdunder@goldbergsimpson.com