

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF)	
LOUISVILLE GAS AND ELECTRIC)	
COMPANY FOR A DECLARATORY ORDER)	CASE NO. 2016-00317
REGARDING THE PROPER METHOD OF)	
MUNICIPAL FRANCHISE FEE RECOVERY)	

**RESPONSE OF LOUISVILLE GAS AND ELECTRIC COMPANY TO
LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT'S
MOTION FOR REHEARING**

Louisville Gas and Electric Company (“LG&E”), by counsel, pursuant to the Commission’s Rules of Procedure for Motion Practice, 807 KAR 5:001 Section 5(2), hereby responds to the Louisville/Jefferson County Metro Government’s (“Louisville Metro”) Motion for Rehearing and to Suspend Procedural Schedule (the “Motion”). Louisville Metro’s Motion gives the Commission no reason to reverse itself and instead, is made for the purpose of unduly delaying this proceeding. LG&E therefore respectfully requests that the Commission deny Louisville Metro’s Motion in its entirety.

I. Louisville Metro Has Not Shown Good Cause to Suspend the Procedural Schedule.

First, the Commission should deny Louisville Metro’s request to suspend the procedural schedule because suspension is unnecessary and would unduly delay this proceeding. More than 20 days ago, the Commission provided a procedural schedule on January 25, 2017.¹ The Commission’s Order expressly requires that motions for extensions of time with respect to the procedural schedule would “only be granted only upon a showing of good cause.” Although Louisville Metro’s Motion is not styled as a motion for extension, its request to suspend the

¹ *In the Matter of: Electronic Application of Louisville Gas and Electric Company for a Declaratory Order Regarding the Proper Method of Municipal Franchise Fee Recovery*, Case No. 2016-00317, Order (Ky. PSC Jan. 25, 2017).

procedural schedule would have the same effect. Thus, Louisville Metro must show good cause to suspend the procedural schedule. The Motion does not demonstrate good cause for doing so.

Louisville Metro argues that the deadline for verified testimony should be postponed to provide the Commission with a full twenty days to consider the Motion prior to the deadline for filing testimony. But the Motion recites arguments the Commission has already rejected, and on some contentions, on two prior occasions. The Motion in large measure merely asks the Commission to change its mind and offers no new evidence or reason the Commission has not already considered. For example, the Motion asks the Commission again about whether the tendered complaint states a *prima facie* case by urging the Commission to reconsider the same evidence in the record. The Motion also conceives ambiguity in the Commission's orders to create a red herring-like need for clarification. The language in the order is clear. Moreover, there is no reason to delay this case while the Commission considers the request for reconsideration. For these reasons, the Commission should summarily deny Louisville Metro's Motion and associated request to postpone the procedural schedule.

II. The Commission Considered Louisville Metro's Addendum.

Louisville Metro alleges that because the Commission has not issued an order expressly accepting or denying Louisville Metro's Motion to File Addendum and an Addendum to the Amended Complaint ("Addendum") in Case No. 2016-00347, the Commission did not appropriately consider the material contained in the Addendum. The Commission should deny Louisville Metro's Motion because the material from the Addendum is incorporated in the case record of 2016-00347 and, furthermore, the Addendum does not support the claims made in Louisville Metro's complaint.

The Commission’s lack of an explicit reference to the Addendum in its order finding that Louisville Metro has not established a *prima facie* case does not show that the Addendum was not considered. In addition, the Addendum will be considered in the consolidated case; the three maps contained in the Addendum have been incorporated in the case record in Case No. 2016-00317.²

Furthermore, the Addendum does not provide “considerable evidentiary weight to the claims made in the Louisville Metro Complaint,” as Louisville Metro contends. In the Commission’s order finding that Louisville Metro’s original complaint had not shown a *prima facie* case, the Commission instructed Louisville Metro to “provide support for the allegation that all LG&E gas customers receive their gas through mains located under Louisville Metro’s rights-of-way.”³ Louisville Metro claims that the information in the two maps contained in the Addendum and the Commission’s Natural Gas Distribution Service Areas map attached to the complaint together “present[] a *prima facie* case that all LG&E gas customers receive their gas through mains located under Louisville Metro rights-of-way.”⁴ But the maps do not clearly show that all LG&E customers receive their gas through mains located only under a Louisville Metro right-of-way. Instead, the maps show that LG&E gas customers receive gas through mains located under multiple municipal jurisdictions *other than* Louisville Metro. Accordingly, the maps do not establish a *prima facie* case and the Commission should deny Louisville Metro’s Motion.

² The maps filed in the Addendum were filed under a petition for confidential protection. The petition is included in the case record of Case No. 2016-00347, which was incorporated into Case No. 2016-00317.

³ *In the Matter of: Louisville/Jefferson County Metro Government v. Louisville Gas and Electric Company*, Case No. 2016-00347, Order at 5 (Ky. PSC Oct. 19, 2016).

⁴ Louisville/Jefferson County Metro Government Addendum to Amended Complaint at 2 (tendered Dec. 5, 2016).

III. The Commission’s Statement on “Review” Requires No Clarification.

Louisville Metro requests clarification about the Commission’s statement that “there is sufficient evidence provided by Louisville Metro to *review* the allegations contained in its amended complaint.”⁵ Particularly, Louisville Metro requests that the Commission confirm that should Louisville Metro carry its burden of proof, the Commission would consider a ruling favorable to Louisville Metro. The clear language in the order puts parties on notice of the issues and no further clarification is necessary. By requesting that the Commission clarify whether it would consider a ruling favorable to Louisville Metro, Louisville Metro is requesting that the Commission prejudice this case. The Commission should decline to do so and deny Louisville Metro’s Motion.

IV. The Commission’s Explanation of the Burden Requires No Clarification.

Louisville Metro similarly requests clarification on the burden of proof in this case. No further clarification of this issue is necessary; the Commission’s language and regulations definitively establish the appropriate burden of proof.

V. The Commission Correctly Ordered that Louisville Metro’s Complaint Did Not Establish a *Prima Facie* Case and Louisville Metro Has Presented no Evidence to Necessitate Rehearing

The Commission should also deny Louisville Metro’s Motion because (1) the Commission correctly ordered that Louisville Metro’s complaint in Case No. 2016-00347 did not establish a *prima facie* case and (2) the Motion fails to present any evidence or arguments not addressed in these proceedings. First, Louisville Metro’s amended complaint fails to meet the requirements of 807 KAR 5:001, Section 20(1); thus, it does not establish a *prima facie* case and was appropriately dismissed. 807 KAR 5:001, Section 20(1)(c) requires that a formal complaint

⁵ *In the Matter of: Louisville/Jefferson County Metro Government v. Louisville Gas and Electric Company*, Case No. 2016-00347, Order at 3 (emphasis added).

state “[f]ully, clearly, and with reasonable certainty, the act or omission, of which complaint is made, with a reference, if practicable, to the law, order, or administrative regulation, of which a failure to comply is alleged, and other matters, or facts, if any, as necessary to acquaint the commission fully with the details of the alleged failure.” Louisville Metro’s amended complaint fails to allege that LG&E did not comply with a law, order, or regulation. A complaint that simply objects to the utility’s Commission-approved tariff does not allege such a violation and thus does not establish a *prima facie* case.⁶ For these reasons, Louisville Metro’s amended complaint does not establish a *prima facie* case and was correctly dismissed.

Second, the Commission should also deny the Motion because it fails to present any new evidence. KRS 278.400 states in relevant part concerning rehearing, “Upon the rehearing any party may offer additional evidence that could not with reasonable diligence have been offered on the former hearing.” Interpreting KRS 278.400, the Commission has stated, “The statute is intended to provide closure to Commission proceedings by limiting rehearing to new evidence not readily discoverable at the time of the original hearings.”⁷ The Commission has also interpreted the statute as “providing an opportunity for the Commission to address any errors or omissions in our Orders.”⁸ But the Commission has also stated, “Moreover, final orders of the Commission remain undisturbed absent extraordinary circumstances or the appearance of new

⁶ *In the Matter of: Stewart Home School, LLC v. Farmdale Water District*, Case No. 2015-00357, Order at 4 (Ky. PSC Feb. 11, 2016) (holding that a complaint did not establish a *prima facie* case when it only objected to filed rates and did not make a claim that the utility was charging rates that had not been approved by the Commission).

⁷ *In the Matter of: Application of Kentucky-American Water Company for a Certificate of Public Convenience and Necessity Authorizing Construction of the Northern Division Connection*, Case No. 2012-00096, Order at 4 (Jan. 23, 2014).

⁸ *Id.* at 5.

evidence that was not available during the pendency of the case.”⁹ Thus, in the absence of new evidence or argument, the Commission should deny a motion for rehearing.¹⁰

Louisville Metro’s Motion provides no new evidence or argument and instead criticizes the standard applied by the Commission and asserts that the Commission did not sufficiently review the evidence it presented. Merely disagreeing with a Commission order is not sufficient to receive a rehearing of it; rather, a credible showing of some modicum of new evidence that “could not without reasonable diligence have been offered” earlier in the proceeding, or some new argument not already addressed by the Commission, is required. Louisville Metro’s Motion neither offers such evidence or argument. For that reason, the Commission should deny the request for rehearing.

VI. Conclusion

The Commission correctly found that Louisville Metro’s complaint in Case No. 2016-00347 failed to establish a *prima facie* case. Louisville Metro’s Motion gives no plausible reason for the Commission to reverse its decision and reconsider whether Louisville Metro established a *prima facie* case. Furthermore, the request to suspend the procedural schedule is an attempt to unduly delay this proceeding. Therefore, the Commission should dismiss this Motion in its entirety.

⁹ *In the Matter of: Dan Gibson v. Cellular Phone of Kentucky, Inc. d/b/a/ Ramcell*, Case No. 95-430, Order at 2 (Oct. 2, 1195).

¹⁰ *See, e.g.*, Case No. 2012-00096, Order at 6 (Jan. 23, 2014) (“In summary, the Commission finds that Kentucky-American has not met the burden set forth in KRS 278.400 to require a rehearing in this matter. It has failed to present any new evidence or argument to disturb our earlier findings. In the absence of any discernible error in the Order of April 25, 2013, Kentucky-American's Petition for Rehearing should be denied.”).

WHEREFORE, Louisville Gas and Electric Company and Kentucky Utilities Company respectfully request that the Commission deny Louisville Metro's Motion for Rehearing and to Suspend Procedural Schedule in its entirety.

Dated: February 17, 2017

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Kendrick R. Riggs", is written over a horizontal line.

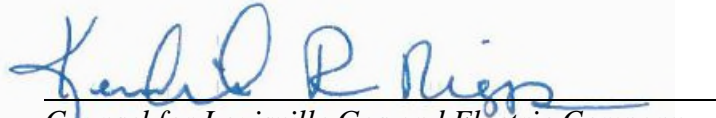
Kendrick R. Riggs
Stoll Keenon Ogden PLLC
2000 PNC Plaza
500 West Jefferson Street
Louisville, KY 40202-2828
Telephone: (502) 333-6000
Facsimile: (502) 627-8722
kendrick.riggs@skofirm.com

Allyson K. Sturgeon
Senior Corporate Attorney
LG&E and KU Energy LLC
220 West Main Street
Louisville, KY 40202
Telephone: (502) 627-2088
Facsimile: (502) 627-3367
allyson.sturgeon@lge-ku.com

Counsel for Louisville Gas and Electric Company

CERTIFICATE OF SERVICE

In accordance with 807 KAR 5:001, Section 8, this is to certify that the foregoing electronically filed February 17, 2017 Response is a true and accurate copy of the same document being filed in paper medium; that the electronic filing has been transmitted to the Commission on February 17, 2017; that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding; and that an original and six copies, in paper medium, of the Response are being mailed by first class U.S. Mail, postage prepaid, to the Commission February 17, 2017.



Counsel for Louisville Gas and Electric Company