

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matters of:

ELECTRONIC APPLICATION OF KENTUCKY)
UTILITIES COMPANY FOR AN ADJUSTMENT) CASE No.
OF ITS ELECTRIC RATES AND FOR CERTIFICATES) 2016-00370
OF PUBLIC CONVENIENCE AND NECESSITY)

-and-

ELECTRONIC APPLICATION OF LOUISVILLE)
GAS AND ELECTRIC COMPANY FOR AN) CASE No.
ADJUSTMENT OF ITS ELECTRIC AND GAS) 2016-00371
RATES AND FOR CERTIFICATES OF PUBLIC)
CONVENIENCE AND NECESSITY)

**ATTORNEY GENERAL’S POST-HEARING BRIEF REGARDING
SCHOOL BOARD PILOT TARIFF**

Comes now the Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention, and hereby tenders the following brief regarding the pilot electric school tariffs¹ which Louisville Gas & Electric Co. and Kentucky Utilities [hereinafter: “LG&E-KU” or “the Companies”] have agreed to offer pursuant to the Stipulation filed in these proceedings. This brief is provided to the Commission pursuant to direction from the bench, and constitutes the Attorney General’s position based exclusively upon the facts and evidence provided in this case. This brief should not be construed as a formal opinion of the Office of the Attorney General.

¹ “School Power Service” (Tariff SPS) Sheet no. 79, and “School Time of Day Service” (Tariff STOD) Sheet no. 80. Both tariffs are identical in both cases. In response to the Commission’s post-hearing data requests, item no. 4, KU filed a revised Tariff STOD, sheet no. 80, to reflect a revised energy rate.

Introduction

On April 19, 2017, LG&E-KU filed into the record of both cases their “Joint Stipulation and Recommendation” [hereinafter “Stipulation”] to which all intervenors have now agreed. Pursuant to Stipulation § 4.11, the Companies agreed to offer optional pilot electric tariffs to schools that are subject to KRS 160.325² at rates different than those under which schools currently served pay. The purpose of the pilot is to study participating schools’ electricity usage to determine whether a stand-alone tariff for schools would be appropriate. Each utility’s pilot electric school tariffs will be available to schools until the total projected savings to the participating schools reaches \$750,000 annually, compared to the projected annual costs under the rates in which the participating schools would have otherwise been served. The Stipulation provides, *inter alia*, that all provisions of the settlement are fair, just and reasonable,³ and in particular, that all tariff sheets (including the pilot electric school tariff sheets) are also fair, just and reasonable.⁴

Under the terms of the tariff as originally proposed, Kentucky School Boards Association [hereinafter “KSBA”], a non-profit corporation representing 173 school boards from each public school district in Kentucky,⁵ would be responsible under the terms of the proposed pilot electric school tariffs for selecting the public schools that will participate in the tariffs, and the order in which those schools will be proposed. The Companies would calculate and provide KSBA with the projected revenue impact of each proposed school’s taking service under the pilot electric school tariffs.

² “Mandatory participation in Kentucky Energy Efficiency Program.”

³ Stipulation § 6.2.

⁴ Stipulation § 4.2.

⁵ Direct testimony of Ronald L. Willhite, p.2, Case No. 2016-00370. Kentucky has 1,233 P-12 public schools serving 670,000 students. Id.

Upon the conclusion of the hearing held on May 9-10, 2017, Chairman Schmitt requested that the Companies, KSBA, and the Attorney General file briefs addressing the legality of the pilot electric school tariffs, and any subsequent tariffs that may arise following the conclusion of the pilot.⁶ In responses to the Commission's post-hearing data requests, both the Companies⁷ and the KSBA⁸ have now acknowledged that if the Commission approves the pilot electric school tariffs, private schools not subject to KRS 160.325 should also be made eligible to participate under the pilot tariffs. The Attorney General agrees that private schools that otherwise satisfy the criteria encompassed in the pilot electric school tariffs should also be allowed to participate.

A. Schools' Unique Load Characteristics and Usage Patterns Warrant the New Pilot Tariff

Most schools within the LG&E-KU service territories are currently served under the PS-Secondary and TODS rates.⁹ The schools that currently take service under PS-Secondary and TODS do so along-side many commercial and small industrial customers. Although the rate schedules for schools, commercial and small industrial customers are similar, school operations are significantly different than the other businesses participating in these rate classifications. For instance, the operating hours for schools taking service under these tariffs differ greatly from those of other users on these rates.¹⁰ As explained by KSBA expert witness Ronald L. Willhite:

While schools, commercial and industrial customers operate on a defined schedule, those schedules are drastically different. Many

⁶ The Commission also provided that such a brief on these issues is optional for other parties to these matters.

⁷ Responses to Commission post hearing data requests to LG&E, item no. 20, Case no. 2016-00371; and to Commission post hearing data requests to KU, item no. 20, Case no. 2016-00370.

⁸ Responses to Commission post hearing data requests to KSBA, item no. 1, Case no. 2016-00371; and to item no. 1, Case no. 2016-00370.

⁹ Willhite direct testimony, p. 3. Some schools in KU's service territory may take under Tariff AES.

¹⁰ Id. at pp. 3-5.

industries operate 2nd, 3rd and weekend shifts while stores operate extended hours into the evening year round seven days per week. Schools typically are fully occupied from 7:30 am until 2:30 pm weekdays only nine to ten months of the year with numerous shut down periods for breaks throughout the year. Schools continue open beyond instructional periods for extra-curricular activities, but by this time automation systems and set back procedures have begun adjusting temperatures for unoccupied space. In a nutshell school load build up typically begins around 7 am, peaks by lunch time in the warmer months and declines at a significant pace until and after the instructional day ends in early-afternoon. In the colder months schools tend to peak across the morning hours and similar to the warm periods usage/peak decline after lunch.¹¹

Moreover, as provided in record evidence, school load and usage characteristics differ significantly from commercial and industrial customers taking under the same tariffs.¹² Clearly, school facilities are utilized for only a fraction of the time that commercial and industrial customers utilize their facilities. These unique usage patterns provide a factual basis warranting the new pilot electric school tariffs.

Although only public schools were represented in the instant cases, it is more than reasonable to assume that private and public schools share the *same* characteristics with each other that make them unique when compared to other commercial and industrial customers. Thus, given the similar load and usage characteristics, K-12 schools, regardless of being private or public, are a homogenous group for these purposes. It is therefore reasonable to provide a pilot tariff to both those public schools selected by the KSBA for participation, as well as to any private schools that may wish to apply to the Companies to participate.

B. The Pilot Electric Tariff Represent New Classifications Under KRS 278.030

KRS 278.030 provides, in pertinent part:

(1) Every utility may demand, collect and receive fair, just and

¹¹ Willhite Direct Testimony, p. 5.

¹² Id. at 5-7.

reasonable rates for the services rendered or to be rendered by it to any person.

(2) Every utility shall furnish adequate, efficient and reasonable service, and may establish reasonable rules governing the conduct of its business and the conditions under which it shall be required to render service.

(3) Every utility may employ in the conduct of its business suitable and reasonable classifications of its service, patrons and rates. The classifications may, in any proper case, take into account the nature of the use, the quality used, the quantity used, the time when used, the purpose for which used, and any other reasonable consideration. . . .
[Emphasis added]

Utilities thus have the legal authority to create rates and classes of customers, provided those rates are not unduly discriminatory.¹³ As Kentucky’s then-highest court noted, “‘a distinction may be made between different customers or classes of customers on account of *location, amount of consumption or such other material conditions* which distinguish them from each other or from other classes.”¹⁴ Based on Stipulation § 4.11, it is clear that the Companies and intervenors took into account schools’ unique load characteristics, in particular, the *quantity* of power they consume, *times* of consumption, and the unique role schools play in Kentucky communities in concluding that the pilot electric school tariffs are fair, just and reasonable.

As previously noted, schools’ electric usage patterns and load profiles are unique, especially when compared to those entities they take service alongside in TODS and PS-Primary, thus supporting the distinctions between them. It should be mentioned that KSBA’s testimony in these matters supported a stand-alone tariff, not a pilot, and thus the stipulated resolution regarding this issue is a concession, albeit one supported by substantial

¹³ See, e.g., *Marshall County v. South Central Bell Telephone Company*, 519 S.W.2d 616, 618 (Ky.1975), citing KRS 278.030(3).

¹⁴ *Louisville & Jefferson County Metropolitan Sewer Dist. v. Seagram v. Int’l Harvester Co.*, 211 S.W.2d 122, 126 (Ky.1948) (*quoting* Pond, Public Utilities §§ 275, 288, and 292) [emphasis added].

evidence.¹⁵ Nonetheless, given the evidence KSBA provided, the pilot electric school tariffs being tendered for the Commission’s review and approval thus comply with KRS 278.030 (3).

Moreover, the enactment of KRS 160.325 evinces the Kentucky Legislature’s concerns regarding school energy usage. That statute addresses “. . . the rising energy costs that are straining school budgets . . . ,” and requires all public school boards to enroll in the Kentucky Energy Efficiency Program. The Legislature was thus concerned enough about the nature and quantity of energy usage in the public schools to enact a separate statute in order “. . . to obtain information regarding the potential energy savings for every board-owned and board-operated facility.” This statute thus provides even more evidence of the legitimate need for new classifications for electric service to schools.

In the cases at bar, substantial record evidence exists for the Commission to find that K-12 schools – both public and private -- have load characteristics and usage patterns that vary substantially from other users in their existing rate classes, thus warranting the establishment of the proposed pilot electric school tariffs.

C. The Commission has Previously Approved Other Non-Preferential, Schools-Only Tariffs

For many years, KU has offered a separate tariff available solely to schools located within its service territory that use only electric energy for other-than incidental instructional and miscellaneous purposes, known as the All Electric School Tariff (Tariff AES). As indicated by Mr. Willhite, Tariff AES’s ROR exceeds KU’s overall ROR, and does not disadvantage any other customers.¹⁶ The Commission to date has not expressed any concerns regarding the legality of Tariff AES. Tariff AES thus serves as an example of

¹⁵ See Direct testimony of Ronald L. Willhite, generally.

¹⁶ Willhite direct testimony, pp. 6-7.

another appropriate rate available exclusively to schools that is not preferential in any manner, and which otherwise complies with the mandates of KRS Chapter 278 *et seq.*

Furthermore, LG&E-KU are not the only utilities to address schools' energy needs. The Commission has previously approved a pilot tariff for Kentucky Power Co. ("Pilot Tariff K-12 School"),¹⁷ which appears to be very similar to the pilot electric school tariffs for which the parties seek approval in the instant cases. Kentucky Power Company submitted Tariff K-12 School for approval in its last base rate case, Case No. 2014-00396. As the final order in that case¹⁸ provided no discussion regarding that tariff, it appears the Commission at that time appropriately did not have any concerns regarding its legality.

D. When Amended to Include Private Schools, the Pilot Electric School Tariffs Do Not Violate of KRS 278.035

KRS 278.035 provides:

Any entity receiving public funds from the Commonwealth of Kentucky, or any political subdivision thereof, for the purpose of offsetting at least fifty percent (50%) of its operational expenses shall not be entitled to preferential retail rates for services provided by utilities subject to the provisions of KRS Chapter 278. This section shall not prohibit the provision of free or reduced rate service under KRS 278.170(3).

All public and private schools, including those that would participate in the pilot electric school tariffs, have very similar load and usage characteristics, making them a homogenous group. It is therefore reasonable to provide a pilot tariff to those public schools selected by the KSBA for participation, as well as to any private schools that may wish to participate. As long as all potential school participants to the pilot electric school tariffs are

¹⁷ Accessible at:

<[http://www.psc.ky.gov/tariffs/Electric/American%20Electric%20Power%20Company%20\(Kentucky%20Power%20Company\)/Tariff.pdf](http://www.psc.ky.gov/tariffs/Electric/American%20Electric%20Power%20Company%20(Kentucky%20Power%20Company)/Tariff.pdf)>, Sheet Nos. 9-9 through 9-12, effective June 30, 2015.

¹⁸ Case No. 2014-00396, Order dated June 22, 2015.

afforded equal opportunity to participate, the pilot electrical tariffs cannot be said to be “preferential” within the meaning of KRS 278.035. Rather, provided that all schools are afforded an opportunity to participate, the pilot tariff is merely a classification, allowable under Kentucky law. Given that the records in these cases are void of any evidence that the pilot electric school tariffs are preferential or unduly discriminatory in any manner, KRS 278.035 should not apply.

In conclusion, the Attorney General agrees with both the Companies and KSBA, that the pilot electric school tariffs should be made available to private schools. The Attorney General believes that if the Companies submit revised versions of the tariff sheets reflecting that both private and public schools are eligible to participate in the pilot electric school tariffs, that change will cure them of any perceptions of a preference, thus complying with KRS 278.035.

Respectfully submitted,

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Certificate of Service and Filing

Counsel certifies that the foregoing is a true and accurate copy of the same document being filed in paper medium with the Commission within two business days; that the electronic filing has been transmitted to the Commission on June 2, 2017; that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding.

This 2nd day of June, 2017



Assistant Attorney General