

RECEIVED

FEB 02 2005

PUBLIC SERVICE  
COMMISSION

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the matter of:

AN ADJUSTMENT OF THE GAS AND )  
ELECTRIC RATES, TERMS, AND CONDITIONS ) CASE NO.  
OF LOUISVILLE GAS AND ELECTRIC ) 2003-00433  
COMPANY )

AND

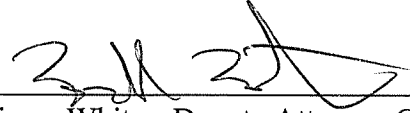
AN ADJUSTMENT OF THE ELECTRIC RATES, ) CASE NO.  
TERMS, AND CONDITIONS OF KENTUCKY ) 2003-00434  
UTILITIES COMPANY )

NOTICE CONCERNING ATTORNEY GENERAL'S  
MOTION TO RELEASE REPORT

Comes the Attorney General, Gregory D. Stumbo, by counsel and provides the Commission additional notice concerning the Attorney General's Motion for Release of Report filed in Franklin Circuit Court, Civil Actions 04-CI-962, 04-CI-970, which motion is scheduled to be heard February 9, 2005 at 9:00 a.m. The Attorney General is seeking that Court's guidance regarding the release of the report regarding the Attorney General's investigation of the PSC and matters relating to this rate case to the PSC and other parties. Said report contains information obtained pursuant to Civil Investigative Demands pursuant to KRS 367.250 and subject to the restrictions contained therein. The Motion was filed in Franklin Circuit January 31, 2005 a copy of which is attached hereto. Notice was also provided to the PSC and LG&E on January 31, 2005 consistent with the Commission's prior Order. A copy of said notices is also attached hereto.


Respectfully submitted,

GREGORY D. STUMBO  
ATTORNEY GENERAL

By:   
Pierce Whites, Deputy Attorney General  
Janet Graham, Assistant Deputy Attorney General  
Todd Leatherman, Assistant Attorney General  
Office of the Attorney General  
1024 Capital Center Drive  
Frankfort, Kentucky 40601  
(502) 696-5300

CERTIFICATE OF SERVICE

The undersigned does hereby certify that the foregoing Notice Concerning Attorney General's Motion to Release Report was served upon the parties in the attached service list by first class mail on this the 2d of February, 2005.

  
Assistant Attorney General



COMMONWEALTH OF KENTUCKY  
OFFICE OF THE ATTORNEY GENERAL

STUMBO  
GENERAL

1024 CAPITAL CENTER DRIVE  
SUITE 200  
FRANKFORT, KY 40601-8204

January 31, 2005

*Via facsimile*

Hon. Jonathan Goldberg  
Goldberg & Simpson  
Suite 3000  
101 S. 5<sup>th</sup> Street  
Louisville, KY 40202

Re: Attorney General's Report

Dear Mr. Goldberg:

We have today filed under seal a copy of Attorney General Stumbo's report with the Franklin Circuit Court. As you are aware, KRS 367.250 regulates disclosure of this material by specifying that it be used "for law enforcement purposes in the public interest." While LG&E has waived its objections to this report being filed with the PSC, LG&E is not the only entity discussed in the report. The Attorney General has therefore recognized that it is advisable to seek court guidance as to the proper release of this report.

The PSC has already recognized the important role played by the Franklin Circuit Court in guiding the parameters of the investigation. The Attorney General hopes that a prompt resolution of this issue will result in submission of the report to the PSC.

Accompanying this letter is a copy of the Attorney General's Motion for Release of the Report, which is to be heard on February 9, 2005 in order to provide LG&E ample time to present its argument to the Court. Please contact me with any questions.

Sincerely,  
GREGORY D. STUMBO  
ATTORNEY GENERAL

Pierce B. Whites  
Deputy Attorney General





COMMONWEALTH OF KENTUCKY  
OFFICE OF THE ATTORNEY GENERAL

GREGORY D. STUMBO  
ATTORNEY GENERAL

1024 CAPITAL CENTER DRIVE  
SUITE 200  
FRANKFORT, KY 40601-8204

January 31, 2005

*Via facsimile*

Hon. Sheryl G. Snyder  
Hon. David S. Kaplan  
Frost Brown Todd LLC  
400 West Market Street, 32<sup>nd</sup> Floor  
Louisville, KY 40202-3363

Re: Attorney General's Report

Dear Sheryl and David:

Following please find a motion that the Attorney General has noticed for a hearing on Wednesday, February 9, 2005. The Attorney General is requesting an Order from the Franklin Circuit Court directing release of his report, which has been filed under seal with the Court.

LG&E has been afforded ample time to review the relevant records and present any argument to the Court relating to this motion. Your letter of January 28, 2005, is appended to the motion. We look forward to resolving this important matter.

Sincerely,  
GREGORY D. STUMBO  
ATTORNEY GENERAL

Pierce B. Whites  
Deputy Attorney General



COMMONWEALTH OF KENTUCKY  
FRANKLIN CIRCUIT COURT  
DIVISION 1

CIVIL ACTION NOS. 04-CI-962, 04-CI-970 [CONSOLIDATED]

KENTUCKY PUBLIC SERVICE COMMISSION,  
ON BEHALF OF ITSELF AND SIXTEEN  
CURRENT OR FORMER EMPLOYEES

PLAINTIFFS

v.

GREGORY D. STUMBO, IN HIS OFFICIAL  
CAPACITY AS ATTORNEY GENERAL OF  
THE COMMONWEALTH OF KENTUCKY

DEFENDANT

AND

KENTUCKY UTILITIES COMPANY and  
LOUISVILLE GAS AND ELECTRIC COMPANY

PLAINTIFFS

v.

GREGORY D. STUMBO, IN HIS OFFICIAL  
CAPACITY AS ATTORNEY GENERAL OF  
THE COMMONWEALTH OF KENTUCKY

DEFENDANT

**MOTION FOR RELEASE OF ATTORNEY GENERAL'S REPORT**

\*\*\*\*\*

Comes the Defendant, Gregory D. Stumbo, Attorney General of the  
Commonwealth of Kentucky, and moves this Honorable Court for an Order, directing  
that the Report titled "Attorney General Gregory D. Stumbo's Investigation re: The  
Public Service Commission" be released.

In support of this Motion, the Attorney General would show the Court that the  
Report, which is submitted under seal herewith, involves matters within the purview of

the Executive Branch Ethics Commission and the Legislative Ethics commission, and so should be released to these entities. Further, the Report contains information necessary to the effective formulation of state policy, and so should be released to the Governor and Legislature, as required by KRS 367.150. The Report also involves matters relevant to certain rate cases filed with the Public Service Commission, (PSC), by Louisville Gas and Electric Company, (LG&E), and Kentucky Utilities (KU), and so should be released to the PSC. The Report sets forth numerous matters clearly within the public interest, and directly related to law enforcement purposes, as contemplated by KRS 367.250.

#### BACKGROUND

The Attorney General's investigation was challenged immediately upon its inception by LG&E, KU and the PSC. In dismissing this challenge, this Court clearly set the boundaries for the investigation:

The Attorney General has broad authority in consumer protection matters ranging from enforcement of the Commonwealth's law against deceptive business practices (KRS 367.170) to studying rules, orders, and state policies affecting consumers. KRS 367.150. The PSC, as a state agency, is required to cooperate with the Attorney General in carrying out these functions. KRS 367.160(1). Accordingly, the Court believes the Supreme court's rationale in *Strong v. Chandler, Ky.*, 70 S.W.3d 405 (2002), to be applicable in this case. In *Strong v. Chandler* the Supreme Court ruled that the Cabinet for Economic Development had to allow *in camera* inspection of documents so the Attorney General could fulfill his duties as the Commonwealth's chief law officer and as a protector of the state treasury.

Order Consolidating Actions and Overruling Plaintiff's Requests to Quash Subpoena and for Temporary Injunction, of July 27, 2004.

The present report contains the Attorney General's findings regarding a pattern of improper interactions between the PSC and its regulated utilities. A portion of these

findings relate directly to the Rate Cases filed by LG&E and KU (PSC Case Nos. 2003-00433 and 2003-00434). A portion of these findings also relate to an analysis of laws, rules, regulations and state policies affecting Kentucky consumers.

As this Court held in passing upon the propriety of this investigation, the Attorney General is charged with the function, power and duty to make recommendations to the Governor and the Legislature regarding new laws, rules, regulations and state policies in the interests of Kentucky's consumers. The present report will serve as a guide for the Governor and the Legislature in documenting existing improper practices between the PSC and its regulated utilities. The Attorney General has drafted and will support proposed new legislation for the 2005 General Assembly requiring the reporting of executive lobbying expenses incurred in connection with PSC rate and service decisions.

As this report illustrates, numerous other problems exist and should be addressed by the Governor, the Legislature and the PSC, as well as by the Executive Branch Ethics Commission and the Legislative Ethics Commission. It is the purpose of the report to inform the judgment of these parties regarding the following issues:

1. Public utilities' improper provision of things of value to legislators and Executive Branch personnel;
2. Failure to monitor or audit cash reimbursements from legislators and Executive Branch personnel;
3. Improper *ex parte* discussion of matters pending before the PSC;
4. Improper social and business contacts between PSC personnel and public utility executives demonstrating a dismissive attitude toward avoiding the appearance of impropriety.

It is necessary and in the public interest to produce this report so that corrective legislation may be developed and implemented. Only by examining existing problems in detail can state policymakers reach a balanced and considered legislative resolution.

Portions of this report dealing with the rate cases filed by LG&E and KU will be of particular interest to the PSC as it examines the reopened rate cases and evaluates their disposition. Issues relating to the rate cases are intertwined with other findings by the Attorney General and should be reviewed and considered by all recipients of the report.

Pursuant to Agreed Orders entered in this case between the Attorney General and counsel for LG&E, certain specified documents may be reviewed and commented upon by LG&E prior to their disclosure by the Attorney General. All of the relevant documents have been identified by the Attorney General by presenting same to LG&E witnesses under oath, and by identification in a letter sent to LG&E's counsel on January 26, 2005.

LG&E responded to this disclosure by asserting that the Attorney General's Report should be disclosed "only to the PSC on a confidential basis, and without waiver of (LG&E's) right to enforce the five business days notice period for future disclosure of these same documents to other persons or entities." See: Letter From David S. Kaplan to Todd C. Leatherman, Director of the Attorney General's Consumer Protection Division, of January 28, 2005, at p.2, attached hereto. LG&E clearly persists in viewing this matter as being strictly limited to LG&E's rate cases before the PSC, when it has been repeatedly established that this investigation pertains generally to the protection of consumers' interests.



The Attorney General requests that this matter be set for hearing on Wednesday, February 9, 2005, giving LG&E approximately two weeks to review its records and raise any objections. The Court may then rule on any issue raised without the prospect of extended and repeated revisiting of this matter.

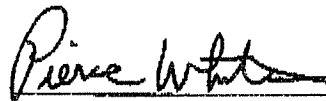
For the foregoing reasons, Movant requests that this Motion for Release of Attorney General's Report be granted.

NOTICE

This motion shall come for Hearing on Wednesday, February 9, at 9:00 a.m. or as soon thereafter as counsel may be heard.

Respectfully submitted,

GREGORY D. STUMBO  
ATTORNEY GENERAL



---

Deputy Attorney General  
Pierce B. Whites

Janet M. Graham  
Assistant Deputy Attorney General

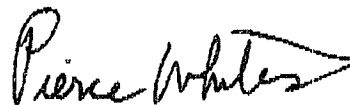
Todd E. Leatherman  
Director, Consumer Protection Division

CERTIFICATE OF SERVICE

Please take notice that the foregoing Motion For Release of Attorney General's Report has been served by facsimile and by first class mail, postage prepaid upon the following, this 31st day of January, 2005:

Hon. Sheryl G. Snyder  
Hon. David S. Kaplan  
Hon. Christopher J. Coffman  
Frost Brown Todd LLC  
400 West Market Street, 32<sup>nd</sup> Floor  
Louisville, KY 40202-3363

Jonathan D. Goldberg  
Goldberg & Simpson, P.S.C.  
Suite 3000, 101 S. Fifth Street  
Louisville, KY 40202-3118



---

Deputy Attorney General

**Frost  
Brown Todd** LLC  
ATTORNEYS

KENTUCKY · OHIO · INDIANA · TENNESSEE

David S. Kaplan  
(502) 568-0356  
DKAPLAN@FBTLAW.COM

January 28, 2005

**VIA FACSIMILE**

Janet M. Graham

~~Assistant Deputy Attorney General~~  
Office of the Attorney General  
1024 Capital Center Drive, Suite 200  
Frankfort, KY 40601-8204

Re: Notice of Intended Disclosure under Orders dated 10/12/04 and 1/10/05.

Dear Janet:

I am writing to follow up my voicemail left with you on Wednesday and to acknowledge receipt of your letter dated January 26, 2005 serving LG&E and KU (the "Companies") with notice of the intended disclosure of Covered Documents, as defined in the Franklin Circuit Court Orders dated October 12, 2004 and January 10, 2005 (the "Orders") and further clarified by agreements of counsel on the record on January 21, 2005. The notice set forth in your letter includes Covered Documents shown to witnesses at the interviews held on January 21, 24, and 25, plus various other documents not shown to these witnesses or made exhibits to the transcripts (the "New Covered Documents") which we are now in the process of reviewing.

The Orders require the Attorney General to seek an explanation of a Covered Document from counsel for the Companies prior to giving notice of the intent to disclose it. The Companies have not yet been provided this opportunity with respect to the New Covered Documents, which were not shown to our witnesses or made exhibits to the transcripts. Therefore, under the Order, the Attorney General's notice of intended disclosure is premature with respect to these New Covered Documents. Nonetheless, without waiver of their right to explain Covered Documents prior to their disclosure in all future instances, the Companies will permit the Attorney General to treat New Covered Documents in the same manner as the Covered Documents set forth in your letter.


This is also to confirm that the Attorney General's intended disclosure of Covered Documents will be only to the Public Service Commission for the purposes of filing his confidential report on January 31, 2005, and they will not be disclosed to any other person or entity for any other purpose without a separate five day notice pursuant to the Orders.

Janet M. Graham  
January 28, 2005  
Page 2

As you are no doubt aware, the Orders provide for a notice period of five business days prior to disclosure to any third-party. Written notice was received by the Companies on January 26, 2005 at 5:17 p.m. Thus, the court-ordered notice period extends through the close of business on Wednesday, February 2, 2005. Obviously, the Attorney General cannot comply with this notice period and include Covered Documents in his January 31 report to the PSC. The Companies are willing to waive their right to five business days notice of disclosure upon receipt of written confirmation that the disclosure on January 31 will be only to the PSC on a confidential basis, and without waiver of their right to enforce the five business days notice period for future disclosures of these same documents to other persons or entities. If we do not receive written confirmation of your intent to disclose Covered Documents only in your confidential report to the PSC, we will have to insist on the full five business days notice to permit a sufficient opportunity to seek a protective order from Judge Crittenden.

---

Please contact me or Sheryl if you have any questions about this understanding.

Yours truly,  
  
David S. Kaplan

DSK:skn

cc: Todd E. Leatherman  
Dorothy E. O'Brien  
Sheryl G. Snyder

LOCLibrary 00008CJ.0526330 431210v.1

---

Frost  
Binkley Todd, LLC