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Lexington-Fayette Urban County Government
DEPARTMENT OF LAW

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July 7, 2014

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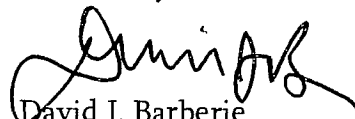
Mr. Jeff Derouen
Executive Director
Public Service Commission
211 Sower Boulevard
P.O. Box 615
Frankfort, Kentucky 40602-0615

Re: PSC Case No. 2014-00204

Dear Mr. Derouen:

Please find enclosed for filing in the referenced matter an original and ten copies of the Lexington-Fayette Urban County Government's Responses to Information Requests. Please contact me with any questions related to this matter.

Yours truly,


David J. Barberie
Managing Attorney

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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

JUL 07 2014

PUBLIC SERVICE
COMMISSION

In the Matter of:

TARIFF FILING OF LEXINGTON-FAYETTE)
URBAN COUNTY GOVERNMENT TO)
INCREASE SANITARY SEWER TAP-ON OR)
CONNECTION FEES APPLIED TO)
JESSAMINE-SOUTH ELKHORN WATER)
DISTRICT)

CASE NO. 2014-00204

**RESPONSES TO INFORMATION REQUESTS IN APPENDIX TO
JUNE 20, 2014 ORDER OF THE PUBLIC SERVICE COMMISSION**

Comes now the Lexington-Fayette Urban County Government (“LFUCG”), by counsel, in accordance with the June 20, 2014 Order of the Public Service Commission, and files the attached responses to the Requests for Information in the Appendix to the Order.

Respectfully submitted,

LEXINGTON-FAYETTE URBAN
COUNTY GOVERNMENT
Department of Law
200 East Main Street
Lexington, Kentucky 40507
(859) 258-3500

BY:



David J. Barberie
dbarberi@lexingtonky.gov
Managing Attorney
Janet M. Graham
jgraham@lexingtonky.gov
Commissioner of Law

PSC CASE NO. 2014-00204
LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT'S
RESPONSES TO REQUESTS FOR INFORMATION

Witness: **Charles Martin and William O'Mara/Legal Objections David Barberie**

1. Provide cost justifications for the sewer connection fees. See 807 KAR 5:011, Section 10(1)(a).

Response:

The Lexington-Fayette Urban County Government ("LFUCG") acknowledges that the Public Service Commission is authorized to review the reasonableness of the rates contained in the agreement between LFUCG and the Jessamine-South Elkhorn Water District (the "District"), which is attached to the Commission's June 3, 2014 letter to LFUCG Chief Administrative Officer Sally Hamilton (the "Agreement"). However, LFUCG does not concede that the approval of sewer tap-on or connection fees assessed or charged by a local government is a utility service which must or should be regulated by the Commission. Moreover, the LFUCG does not concede that the filed tariffs should necessarily be categorized as non-recurring charges pursuant the referenced regulation. For example, tap-on fees are not enumerated within the list of nonrecurring charges in 807 KAR 5:006, Section 9. LFUCG also believes that a local government providing sewer service is not prohibited from including a component in the cost of a sewer tap-on or connection fee which exceeds the actual cost of installing the equipment and facilities necessary to physically link the new property to the sewer system.

Without waiving the above arguments, pursuant to the Agreement the District is required to pay the same sewer fees as those assessed in Fayette County. The tap-on or connection fees are referenced in paragraph 7 of the Agreement.

The issue of whether LFUCG should be required to provide sewer service to certain Jessamine County residents was contested for years and ultimately resulted in the District and LFUCG entering into the Agreement. Unlike a typical arms length transaction, or a situation in which a municipal utility is actively marketing services to a regulated utility, the Agreement was primarily entered into as the result of a Kentucky Division of Water administrative action and approval process for the benefit of certain landowners in Jessamine County. LFUCG's Fayette County sewer customers do not benefit through the inclusion of these additional customers into the system.

LFUCG's sewer system is directly owned and maintained by the government. As a result, all proposed rate changes must be approved by its legislative body, the Urban County Council.

PSC CASE NO. 2014-00204
LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT'S
RESPONSES TO REQUESTS FOR INFORMATION

Response to 1 (continued):

The fees are established pursuant to an ordinance which has been codified in Section 16-60 of the Code of Ordinances, Lexington-Fayette Urban County Government (the "Code"). A copy of the referenced section is attached.

LFUCG interprets the scope of the Commission's June 20, 2014 Order to be limited to the "reasonableness of the proposed revisions" to the tariffs filed by LFUCG on or about May 30, 2014. The proposed tariffs filed with the Commission on May 30, 2014 reflect an automatic across the board cost of living increase of 2% above the current fees.

This adjustment is made pursuant to Section 16-57.1 of the Code (also attached) which provides:

All rates and fees set forth in sections 16-48, 16-59, and 16-60 shall be adjustable each July 1 beginning on July 1, 2010, by an amount based upon the Consumer Price Index for All Urban Consumers, the U.S. City Average ("CPI-u") published monthly by the Bureau of Labor Statistics. These rates shall be adjusted up if so indicated by a factor determined by averaging the monthly CPI-u published for the twelve-month period ending, and including, April of the year before the July 1 adjustment.

Based upon the above language, LFUCG calculated the increase to be effective for July 1, 2014 at 2%. LFUCG believes that the above CPI-u is an accurate and reasonable indicator of the actual cost increases associated with providing the services reflected in the proposed fees.

To the extent that LFUCG is incorrect regarding its interpretation of the scope of this proceeding, the following additional information is provided.

LFUCG is subject to a federal consent decree order requiring it to spend hundreds of millions of dollars to enhance and maintain its sanitary sewer system. (*United States & Commonwealth of Kentucky v. Lexington Fayette Urban County Government*, United States District Court for the Eastern District of Kentucky, Civil Action No. 5:06-cv-386-KSF). This order was based upon the premise that for years LFUCG underfunded its sanitary sewer system, which created environmental issues.

PSC CASE NO. 2014-00204
LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT'S
RESPONSES TO REQUESTS FOR INFORMATION

Response to 1 (continued):

In 2008 LFUCG raised its then existing sanitary sewer fees by approximately 35% across the board as a result of the above-referenced lawsuit. LFUCG Ordinance No. 34-2008. This included all of the categories of sewer tap-on or connection fees listed in LFUCG's tariff filing of May 30, 2014. Any additional increases since that time have been based upon the automatic CPI-u clause calculation in section 16-57.1 of the Code.

PSC CASE NO. 2014-00204
LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT'S
RESPONSES TO REQUESTS FOR INFORMATION

Witness: Charles Martin and William O'Mara/Legal Objections David Barberie

2. Indicate if the sewer connection fees yield only enough revenue to pay for the expenses incurred. See 807 KAR 5:011, Section 10(2).

Response:

See response to Question 1, above, which is incorporated herein by reference.

PSC CASE NO. 2014-00204
LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT'S
RESPONSES TO REQUESTS FOR INFORMATION

Witness: Charles Martin and William O'Mara/Legal Objections David Barberie

3. Provide a detailed explanation of the proposed fees.

Response:

See response to Question 1, above, which is incorporated herein by reference. The fees are intended to reasonably compensate LFUCG for the total overall costs associated with using its sewer system without unduly penalizing existing rate payers for the additional burdens placed on the system through the inclusion of these additional users.

The categories of the fees are based upon various land use designations which are intended to fairly and reasonably differentiate between various intended uses of properties and the projected impact of those uses to the system.

The different categories of fees are reflected in LFUCG's May 30, 2014 tariff filing. However, many of the fees have never been assessed against the Jessamine-South Elkhorn Water District. According to LFUCG records, there have only been 166 total tap-on fees paid by the District, with the majority of those in the single family residence category.

PSC CASE NO. 2014-00204
LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT'S
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4. Explain the utility's position that the proposed fees comply with requirements of 807 KAR 5:006, Section 9.

Response:

See response to Question 1, above, which is incorporated herein by reference.

LFUCG believes that the proposed fees comply with the referenced regulation. The fees are uniformly applied in both Fayette County and to the District. There is clearly a benefit to the District and its customers in being able to use LFUCG's sewer system, and the addition of these customers does not benefit LFUCG's other existing customers.

Sec. 16-60. Tap-on or connection fees.

(a) Prior to every future tap-on or connection to any sewer pipe, main lateral, trunk line, interceptor or other installation or facility of the sanitary sewer system, there shall be paid to the director, division of revenue, a fee or charge, hereby established, which shall be solely for the privilege of connecting to the system and which shall be in addition to the requirement, as prescribed in section 16-38, that connections to the system be made at the sole expense of the connecting property owner. Such tap-on, connection or privilege fee is established and fixed as follows:

(1) Single-family residences, town homes and duplexes (per unit) occupying lots:

	Effective July 2011
Of ¼ acre or less	\$ 857.11
From ¼ to ½ acre	1,591.62
From ½ to ¾ acre	2,328.18
From ¾ to 1 acre	3,185.29
Larger than 1 acre	4,042.39

(2) Apartments, condominiums, hospitals, and nursing homes:

	Effective July 2011
Each efficiency unit	343.25
Each 1-bedroom unit	636.44
Each 2-bedroom unit	832.59
3- or 4-bedroom unit	1,029.75
Minimum for each building	1,714.21

(3) Motels:

	Effective July 2011
Each living unit	636.44

(4) Trailer parks:

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	Effective
	July 2011
The fee for each urban county government sewer connection, per square foot of floor space	0.490

- (b) However, neighborhoods which are served by septic tanks and which are identified for sewer installation in the urban county government's 1976 201 Facilities Plan for Wastewater Treatment Works and were further identified in a capacity reservation resolution as at the previous rate, shall pay the tap-on fee rates in effect prior to July 1, 1986.

(Ord. No. 126-83, § 1, 7-21-83; Ord. No. 164-84, § 1, 9-20-84; Ord. No. 35-86, § 3, 3-18-86; Ord. No. 183-91, § 1, 8-29-91; Ord. No. 23-2001, § 3, 2-8-01; Ord. No. 87-2001, § 5, 4-19-01; Ord. No. 23-2001, § 3, 2-8-01; Ord. No. 87-2001, § 5, 4-19-01; Ord. No. 34-2008, § 5, 2-21-08; Ord. No. 35-2012, §§ 1—10, 3-22-2012)

Note—Formerly, § 16-58.

CERTIFICATION

I, Meredith Nelson, Clerk of the Urban County Council, do hereby certify that the foregoing is a true and correct copy of Section 16-60 of the Lexington-Fayette Urban County Government Code of Ordinances.

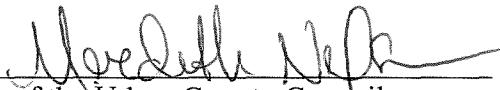
Given under my hand and Seal of the Lexington-Fayette Urban County Government this 26th day of June, 2014.


Clerk of the Urban County Council

CERTIFICATION

I, Meredith Nelson, Clerk of the Urban County Council, do hereby certify that the foregoing is a true and correct copy of Section 16-57.1 of the Lexington-Fayette Urban County Government Code of Ordinances.

Given under my hand and Seal of the Lexington-Fayette Urban County Government this 26th day of June, 2014.


Clerk of the Urban County Council

