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PUBLIC SERVICE  
COMMISSION



Kent A. Chandler  
Executive Director  
Kentucky Public Service Commission  
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Frankfort, Kentucky 40602

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State Regulation and Rates  
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April 16, 2020

***Re: William Fox v. Louisville Gas and Electric Company***  
***Case No. 2020-00116***

Dear Mr. Chandler:

Pursuant to ordering paragraph (2) of the Commission's Order dated April 6, 2020, in the above-referenced case, enclosed please find an original copy of the Answer of Louisville Gas and Electric Company to the Complaint of William Fox.

Please contact me if you have any questions concerning this filing.

Sincerely,

A handwritten signature in blue ink, which appears to read 'Michael E. Hornung', is written over the word 'Sincerely,'. The signature is fluid and cursive.

Michael E. Hornung

Enclosures

**COMMONWEALTH OF KENTUCKY**  
**BEFORE THE PUBLIC SERVICE COMMISSION**

**In the Matter of:**

<b>WILLIAM FOX</b>	)	
	)	
<b>COMPLAINANT</b>	)	
	)	
<b>v.</b>	)	<b>CASE NO.</b>
	)	<b>2020-00116</b>
<b>LOUISVILLE GAS AND ELECTRIC COMPANY</b>	)	
	)	
	)	
<b>DEFENDANT</b>	)	

**ANSWER OF**  
**LOUISVILLE GAS AND ELECTRIC COMPANY**

In accordance with the Kentucky Public Service Commission's ("Commission") Order of April 6, 2020 in the above-captioned proceeding, Louisville Gas and Electric Company ("LG&E" or the "Company") respectfully submits this Answer to the Complaint of William Fox ("Complainant") filed on March 3, 2020. In support of its Answer, and in response to the specific averments contained in said Complaint, LG&E states as follows:

1. With respect to the allegations contained in paragraph (a) of the Complaint, LG&E affirmatively states that the service address for Complainant is 138 Buchanan Street, Louisville, Kentucky 40206 and the billing address for the account is 1057 Washington Street. Upon information and belief, LG&E states that the Buchanan and Washington street addresses are two separate entrances to the same facility.
2. LG&E admits the allegations contained in paragraph (b) of the Complaint.

3. With respect to the allegations contained in paragraph (c) of the Complaint, LG&E denies that the Complainant has been improperly characterized in terms of his business's tariff customer classification. LG&E's records indicate that Complainant began receiving gas and electric service from LG&E at 138 Buchanan Street on February 6, 2012 in the name of William I. Fox. On August 15, 2019, Complainant changed the name on the service to Soup Coop, LLC. And on December 14, 2019, Complainant asked LG&E to put the service back into his own name – William I. Fox. The service remains in Complainant's name as of the date of this filing.

Complainant is both an electric and a gas customer of LG&E. When Complainant began taking service in February of 2012, the electric account was initially classified as General Service ("GS") and the gas account was initially classified as Commercial Gas Service ("CGS"). Immediately prior to the transfer of service in February of 2012, the prior occupant of the premises at 138 Buchanan Street was also served by the Company under its GS and CGS rate schedules; and consistent with Company policy, the new occupant began taking under the same rate schedules, as Complainant did not offer any evidence that his business's usage would be substantially different than the prior occupant's or that the infrastructure had changed.

Consistent with the Customer Rate Assignment provision on Original Sheet 101.1 of LG&E's electric tariff, the Company conducted a rate validation review in 2013. After receiving twelve months of data regarding Complainant's actual electric usage, the Company determined that Complainant's usage exceeded the maximum usage allowable under the GS electric rate schedule. Instead, Complainant's electric usage met the Time of Day Secondary ("TODS") rate schedule requirements. Therefore, on June 8, 2013, Complainant's electric account was transferred to the TODS rate. Applicability of the Company's electric rate schedules is not based

on whether the customer is classified as commercial or industrial; rather they are volumetric-based. The customer's actual usage dictates which electric rate applies to the customer.

On July 23, 2013, Complainant's rate classification for its gas service was changed from CGS to Industrial Gas Service ("IGS"). LG&E's gas tariff, at Original Sheet No. 15, defines "industrial customers" to "include customers involved in activities using gas primarily in a process or processes which either involve the extraction of raw materials from the earth, or a change of raw or unfinished materials into another form or product through the application of heat or heat treating, steam agitation, evaporation, baking, extraction, drying, distilling, asphalt production, vehicular fueling of internal combustion engines, and for other similar uses." In reviewing Complainant's account and the activities at Complainant's premise, the Company determined that Complainant's business met the tariff definition of industrial, as the business changes raw products into another form through the application of heat. Complainant's business is a large, wholesale food producer which makes food in a plant setting to be sold in restaurants. The Company conducted two additional rate checks – in 2015 and 2019 – and confirmed that Complainant's business continues to meet the definition of industrial under LG&E's gas tariff.

4. LG&E denies all allegations contained in the Complaint which are not expressly admitted in the foregoing paragraphs of this Answer.

#### **FIRST AFFIRMATIVE DEFENSE**

The Complaint, or parts of it, fails to set forth any claim upon which relief can be granted by this Commission and, therefore should be dismissed.

#### **SECOND AFFIRMATIVE DEFENSE**

The Complainant has failed to set forth a *prima facie* case that LG&E has violated its tariff or any statute or Commission regulation, and the Complaint should be dismissed for that reason.

### **THIRD AFFIRMATIVE DEFENSE**

The filed rate doctrine requires that utility companies charge only the rates filed with and approved by the Kentucky Public Service Commission (PSC) for service.<sup>1</sup> Kentucky's state and federal courts have recognized and applied the principle,<sup>2</sup> and the PSC has labeled the doctrine "the bedrock of utility rate regulation."<sup>3</sup> Kentucky's treatment of the filed rate doctrine mirrors that of the United States Supreme Court which declared that the filed rate is "for all purposes, the legal rate....The rights as defined by the tariff cannot be varied or enlarged by either contract or tort of the carrier."<sup>4</sup>

Kentucky codifies the filed rate doctrine at KRS 278.160(2). That provision reads:

No utility shall charge, demand, collect, or receive from any person a greater or less compensation for any service rendered or to be rendered than that prescribed in its filed schedules, and no person shall receive any service from any utility for a compensation greater or less than that prescribed in such schedules.<sup>5</sup>

Strict adherence to published tariffs is required, and the PSC prohibits any departure therefrom, "either by agreement or conduct."<sup>6</sup>

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<sup>1</sup> *In the Matter of: North Marshall Water District*, Case No. 95-107, Order at 2 (Ky. PSC Oct. 13, 1995).

<sup>2</sup> *Commonwealth v. Anthem Ins. Cos., Inc.*, 8 S.W.3d 48, 52 (Ky. App. 1999); *Big Rivers Elec. Corp. v. Thorpe*, 921 F. Supp. 460, 464 (W.D. Ky. 1996).

<sup>3</sup> *In the Matter of: North Marshall*, Case No. 95-107, at 3.

<sup>4</sup> *Anthem*, 8 S.W.3d at 51, quoting *Keogh v. Chicago & Northwestern Ry.*, 260 U.S. 156, 163 (1922). See also *AT&T v. Central Office Telephone*, 524 U.S. 214 (1998).

<sup>5</sup> KRS 278.160(2).

<sup>6</sup> *In the Matter of: North Marshall*, Case No. 95-107, at 2; Cf. *Boone County Sand and Gravel Co. v. Owen County Rural Elec. Cooperative Corp.*, 779 S.W.2d 224 (Ky. App. 1989).

Utility companies have no discretion to waive or otherwise refuse to charge a tariffed fee that a customer incurs.<sup>7</sup> Deviation from the tariffed rates is viewed as discrimination and is strictly proscribed by statute,<sup>8</sup> case law,<sup>9</sup> and PSC decisions.<sup>10</sup>

The PSC has repeatedly noted the “strong public policy to ensure rate uniformity.”<sup>11</sup> The PSC has also recognized that some may view adherence to the filed rate doctrine as “dogmatic,” but that fidelity to the doctrine is necessary and in the public interest; therefore, the filed rate doctrine is “a hard and fast rule which must be applied in all cases.”<sup>12</sup>

**WHEREFORE**, for all of the reasons set forth above, Louisville Gas and Electric Company respectfully requests:

- (1) that the Complaint herein be dismissed without further action taken by the Commission;
- (2) that this matter be closed on the Commission’s docket; and
- (3) that LG&E be afforded any and all other relief to which it may be entitled.

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<sup>7</sup> See *In the Matter of: An Investigation into the Business Practices of Western Pulaski County Water District, Alleged Failure to Comply with Administrative Regulation 807 KAR 5:006, and Alleged Violations of KRS 278.160 and KRS 278.170*, Case No. 2002-00013, Order at 6 (Ky. PSC Aug. 9, 2002).

<sup>8</sup> KRS 278.160; KRS 278.170; *Boone County Sand and Gravel*, 779 S.W.2d at 226.

<sup>9</sup> See, e.g., *Sallee Horse Vans, Inc. v. Pessin*, 763 S.W.2d 149, 150 (Ky. App. 1988).

<sup>10</sup> See, e.g., *Joyland Kennel, Inc. v. Boone County Water Dist.*, Case No. 96-218, Order at 2 (Ky. PSC May 23, 1996).

<sup>11</sup> See *In the Matter of: Leslie County Tel. Co.*, Case No. 95-517, Order at 4 (Ky. P.S.C. June 21, 1996).

<sup>12</sup> *In the Matter of: Leslie County Tel. Co.* at 8.

Dated: April 16, 2020

Respectfully submitted,

*Sara V. Judd*

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Allyson K. Sturgeon  
Managing Senior Counsel - Regulatory and  
Transactions

Sara V. Judd

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Counsel for Louisville Gas and Electric Company

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing Answer  
was served on the following on the 16<sup>th</sup> day of April, 2020, U.S. mail, postage prepaid:

William I Fox  
1057 Washington Street  
Louisville, Kentucky 40206