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PUBLIC SERVICE  
COMMISSION

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

|  |   |                   |
|--|---|-------------------|
| <b>JOE A. BROWDER, JR.</b>                 | ) |                   |
|  | ) |                   |
| <b>COMPLAINANT</b>                         | ) |                   |
|  | ) |                   |
| <b>v.</b>                                  | ) | <b>CASE NO.</b>   |
|  | ) | <b>2021-00204</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 July 2, 2021 in the above-captioned proceeding, Louisville Gas and Electric Company ("LG&E" or the "Company") respectfully submits this Answer to the Complaint of Joe A. Browder, Jr. ("Complainant") filed on May 7, 2021. 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 its mailing address is 220 West Main Street, Louisville Kentucky 40202.
2. With respect to paragraph (b) of the Complaint, LG&E denies the allegations that LG&E deliberately ignored Complainant's request to terminate his service at 3607 Manslick Road, Apt 13A in Louisville, Kentucky ("the Premises"). To the contrary, LG&E made repeated efforts

to obtain a final meter read on the account but was unable to access the meter for several weeks following Complainant's request.

More specifically, LG&E affirmatively states as follows: Complainant initiated service at the Premises on June 22, 2017. On February 9, 2021, Complainant contacted LG&E requesting the service to the Premises be turned off on February 12, 2021. During this call, the LG&E Customer Service representative advised Complainant that LG&E would need access to the meter to complete the request. On February 12, 2021, Complainant called LG&E requesting to postpone the turn-off request until February 16, 2021.

An LG&E field services technician went to the Premises on February 17, 2021 to obtain a final reading and complete the turn-off request. The meter for the Premises is located inside a locked basement/cellar; therefore, LG&E has a key to access it. When onsite on February 17, 2021, however, the technician was unable to access the cellar due to the stairway being iced over. LG&E Field Services returned to the Premises to complete the turn-off request again on February 22, 24, 25, and 26; but each time the technicians were unable to access the meter because the key did not work. On March 1, 2021, LG&E sent a notice to the customer advising that technicians were unable to gain access to the meter and asking the customer to contact LG&E to resolve the problem. Technicians were onsite at the Premise again on March 11 and April 12, but again were unable to access the meter due to the key issue.

In a continued effort to obtain access to complete the turn-off request, in mid-April, LG&E Customer Service contacted the property management company on record for the Premises to request a new key. LG&E then learned that a new company was now managing the Premises. LG&E contacted the new company, and the management company representative with whom LG&E spoke indicated someone would deliver the key on April 23. But when LG&E's technician

arrived at the Premises that day, no one was there with a new key. LG&E Customer Services contacted the new management company again and this time was finally able to obtain a new key from the management company. LG&E technicians then completed the final meter read for Complainant's account and completed his turn-off request on April 29, 2021.

Per LG&E's tariff, a customer is financially responsible for the account until LG&E can obtain a final meter read. *See* Original Sheet 97 ("Customers who have been receiving electric service shall notify Company when discontinuance of service is desired, and shall pay for all electric service furnished until such notice has been given and final meter readings made by Company.") This is consistent with the applicable Kentucky regulation, 807 KAR 5:006, Section 13, which provides: "(1)(a) A customer who requests that service be terminated or changed from one (1) address to another shall give the utility three (3) working days' notice in person, in writing, or by telephone, if the notice does not violate contractual obligations or tariff provisions. (b) The customer shall not be responsible for charges for service beyond the three (3) day notice period if the customer provides access to the meter during the notice period in accordance with section 20 of this administrative regulation." Here, of course, Complainant did not provide access to the meter as required by subparagraph (b) above. Therefore, LG&E issued Complainant a final bill for all usage up through the date the turn-off was complete on April 29, 2021.

In completing the final bill for the Premises, LG&E's billing department determined that all bills had been estimated since December 10, 2020, which is when the initial key access issue began. Therefore, the Complainant's final bill required making any necessary adjustments for prior estimated usage, which resulted in a subsequent credit on the gas portion of his bill. LG&E's actions in estimating the usage and then performing a "true up" when it was able to obtain an actual meter read is consistent with the process set forth in its tariff at Original Sheet 101: "When

Company is unable to read Customer's meter after reasonable effort, or when Company experiences circumstances which make actual meter readings impossible or impracticable, Customer may be billed on an estimated basis and the billing will be adjusted as necessary when the meter is read.” Each estimated bill sent to Complainant, starting in December of 2020, contained language indicating that the bill was estimated because LG&E was having access issues and directing the customer to contact LG&E to resolves the access issue.

3. 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

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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.

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>

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>

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<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).

<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.

**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

Dated: July 12, 2021

Respectfully submitted,

*Sara V. Judd*

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Allyson K. Sturgeon  
Managing Senior Counsel - Regulatory and  
Transactions  
Sara V. Judd  
Senior Corporate Counsel  
LG&E and KU Services Company  
220 West Main Street  
Louisville, Kentucky 40202  
(502) 627-2088  
(502) 627-4850  
allyson.sturgeon@lge-ku.com  
sara.judd@lge.ku.com

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 12<sup>th</sup> day of July, 2021, U.S. mail, postage prepaid:

Joe A. Browder  
P.O. Box 1071  
Louisville, Kentucky 40201-1071