

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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In the Matter of:

APPLICATION OF LOUISVILLE GAS AND)
ELECTRIC COMPANY AND KENTUCKY)
UTILITIES COMPANY FOR A NEW TARIFF-) CASE NO. 2007-00192
BROWNFIELD DEVELOPMENT RIDER)

ATTORNEY GENERAL'S COMMENTS

Comes now the intervenor, the Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention (hereinafter the "Attorney General"), and tenders the following comments in the above-styled matter.

I. Summary of Plan

In its application, Louisville Gas and Electric Company ("LG&E) and Kentucky Utilities Company ("KU") (collectively "the Companies") have requested approval for a new rate schedule for a Brownfield Development Rider ("BDR"). In the application, the Companies state that the purpose of the proposed rider is to: 1) promote economic development, 2) promote the reclamation of environmentally contaminated sites within the state, and 3) utilize the Companies' facilities more efficiently. The Companies note that similar rate schedules are offered by other utilities.

The BDR proposes to reduce the demand component of a participants bill 50% during the first 12 months and would continue on a declining scale of 10% for each 12 month period for the remaining 48 months of a participants' contract (i.e., 50% first year, 40% second year, 30% third year, 20% fourth year, 10% fifth year). After the initial 60 months, participants would be billed at the full applicable tariff.



This discount is limited to customer having loads of 500kW or greater where the Companies already have facilities in place to serve the proposed participant and the service location must have been idle for two years. Participants also must locate on a site that has been designated by the State of Kentucky as a “brownfield” site. The Company notes that the State defines a property as a “brownfield” site if it is “a property that is abandoned or underutilized due to real or perceived contamination.”

As proposed, a participant is required under the tariff to enter into a special contract for service, which would be approved by the Commission, for a minimum of eight years.

The Companies suggest that benefits to the Companies and their other customers include assisting in economic development, improving the environment, and efficient utilization of the Companies facilities and existing infrastructure.

II. Attorney General’s Comments

As a general rule, the Attorney General supports initiatives that promote economic development within the State and efforts to reclaim environmentally damaged sites.

Additionally, the Attorney General believes that the efficient use of the Companies’ facilities benefits ratepayers in all service classes. However, the Attorney General renews his long-standing objection to the use of rates offering discounts from the standard cost of service based rates for customers for any reason not specifically enumerated in KRS 278.170. The Attorney General assert that discounts given to customers to promote economic development, reclamation of environmentally contaminated sites, and/or efficient use of the Companies’ facilities are not among those specifically enumerated in the statute and, therefore, are illegal.

Even if the use of discounts as proposed by the Companies were allowable under KRS

278.170, the Attorney General believes the tariff proposed by the Companies will have little or no effect towards the attainment of the purposes stated in the application.

First, the Companies state that the program will promote economic development within the State. However, in their response to the Request for Information of the Attorney General, Question No. 2, the Companies state that they have no studies or research that support this assertion. Further, in their response to the Request for Information of the Attorney General, Question No. 7, the Companies state that they have no research or studies which support their assertion that customers with a 500 kW load or greater provide any economic benefit to the area in which they locate. In light of the fact that no research or study or any other independent evidence has been offered by the Companies indicating any correlation between the proposed discounted electrical rates and economic development, the proposed rates cannot be reasonably related to the purpose stated by the Companies of encouraging economic development. Thus, the application should be denied.

Additionally, in response to the Request for Information of the Attorney General, Question No. 4, the Companies provided the results of a recent survey comparing average electrical rates for commercial and industrial users which indicates that the Companies rates are among the lowest in the nation even without the discounts proposed in the application. As this data indicates that the Companies are already competitive with regard to their commercial and industrial rates, the discounts proposed by the Companies are not necessary.

Second, the Company asserts that the tariff will encourage reclamation of environmentally contaminated sites within the state. While the reclamation of these sites is a desirable goal, the Companies cannot provide any direct correlation between a discount on electrical rates and reclamation of environmentally contaminated sites. In fact, in its response to

the Request for Information of the Attorney General, Question No. 2, the Companies are unable to provide any research or studies which indicate the tariff will encourage the reclamation of environmentally contaminated sites. Since there has been no evidence submitted indicating a relationship between the tariff and the stated purpose of reclamation of contaminated sites, the proposed tariff discounting electrical rates is inappropriate and, therefore, the application should be denied.

Third, the Companies assert that by offering the proposed tariff, the proposed participants would use existing facilities and infrastructure that already exist upon these sites and that such use would be a more efficient use of the Companies' facilities and infrastructure. However, this argument is meaningless. While the Companies cannot estimate the number or the possible load of these potential customers, it is clear that the Companies will generate electricity to meet the demand of their customers. If these sites were to be re-utilized, the efficiency of the Companies operations would not be effected in any meaningful way. Arguably, the lower demand resulting from these sites being un-utilized benefits society and existing customers more than re-utilization of these sites because the demand upon the Companies' system is lower, which requires less coal to be burned by the Companies and, therefore, introduces less pollution and green-house gases into the environment. The lower demand also supports the inference that maintenance costs are lower due to the equipment not being run as hard, increasing the plant life, etc. Simply put, this broad argument has no reasonable evidence on which to evaluate it and the correlation between the tariff and the efficient use of the Company's use of its facilities and infrastructure is tenuous at best. There is no reasonable basis for a tariff predicated upon this argument and, therefore, the application should be denied.

Next, the Attorney General notes that should the tariff be approved, it must address the

taxes to be charged to potential customers. While the amount billed to potential customers under the proposed tariff would be less than that under the standard rates, the taxes charged should reflect the amount due under standard rates and any discount in the tax paid resulting from the proposed tariff is beyond the scope of the Commission's authority. Utility taxes are implemented and rates set by the appropriate legislative authority, be it a local school board, municipality, state legislature, etc. Since these charges are passed through to consumers and are not based upon the utilities cost of service, they are not subject to the jurisdiction of the Commission. Therefore, it is inappropriate for the Commission to allow any method of discounting electrical rates to affect the tax paid as this would negatively affect the revenues of local school boards, the general fund, or other governing body.

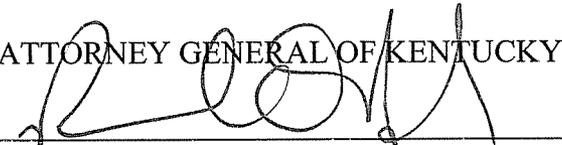
III. Conclusion

Statutory authority does not exist under KRS 278.170 for the Commission to allow discounts from standard cost based rates for the purposes proposed by the Companies. However, assuming arguendo, that authority does exist, the Companies have not provided any evidence indicating any correlation between the proposed tariff and the stated purposes of economic development, reclamation of environmentally contaminated sites, and efficient utilization of the Companies' resources. Further, data provided by the Company indicates that the Companies' rates for commercial and industrial customers are competitive with other utilities without the proposed discount. For these reasons, the Attorney General recommends the Commission not approve the application.

Respectfully submitted,

GREGORY D. STUMBO

ATTORNEY GENERAL OF KENTUCKY



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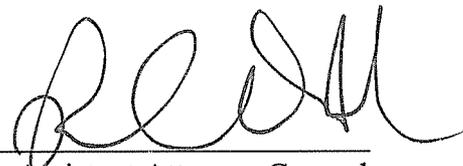
CERTIFICATE OF SERVICE AND NOTICE OF FILING

I hereby give notice that this the 21st day of September, I have filed the original and ten copies of the foregoing Attorney General's Comments with the Kentucky Public Service Commission at 211 Sower Boulevard, Frankfort, Kentucky, 40601 and certify that this same day I have served the parties by mailing a true copy of same, postage prepaid, to those listed below.

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