

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN INVESTIGATION OF ELECTRIC RATES OF )  
LOUISVILLE GAS AND ELECTRIC COMPANY TO ) CASE NO. 10320  
IMPLEMENT A 25 PERCENT DISALLOWANCE OF )  
TRIMBLE COUNTY UNIT NO. 1 )

O R D E R

The Commission has before it today a motion filed by the City of Louisville to withdraw from this case and a Stipulation filed by the remaining parties which would conclude all pending issues relating to Louisville Gas and Electric Company's ("LG&E") construction of a generating facility in Trimble County, Kentucky. In addition to providing refunds to LG&E's customers, the Stipulation (attached as an Appendix to this Order) would also conclude pending appeals of LG&E's most recent general rate case, Case No. 90-158,<sup>1</sup> pending before Franklin Circuit Court.

This matter has been before the Commission in one form or another for well over a decade. The parties have now reached an agreement which is within the parameters of the Commission's most recent decision in this matter. The parties and the Commission have thoroughly argued both the facts and the law applicable to this case. The parties having now reached an amicable resolution which provides reasonable compensation to LG&E's ratepayers, the Commission should approve their resolution of this matter.

---

<sup>1</sup> Case No. 90-158, Adjustment of Gas and Electric Rates for Louisville Gas and Electric Company.

The Stipulation reached by the parties is not in all respects a decision the Commission would have reached. The amount to be refunded is less than that set forth in our most recent Order. The period over which refunds will be paid could also be argued to be excessive. It is nonetheless, in view of all the circumstances surrounding this matter, in the public interest that it at last be concluded.

IT IS THEREFORE ORDERED that:

1. The motion of the City of Louisville to withdraw is granted.

2. The Stipulation filed by the parties is approved.

Done at Frankfort, Kentucky, this 8th day of December, 1995.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

CONCURRENCE OF VICE CHAIRMAN ROBERT M. DAVIS

In Case No. 93-113,<sup>2</sup> my fellow Commissioners decided, over my dissent, that fairness and equity required refund of the monies at

---

<sup>2</sup> Case No. 93-113, Application of Kentucky Utilities Company to Amortize, by Means of Temporary Decrease in Rates, Net Fuel Cost Savings Recovered in Coal Contract Litigation.

issue in that case to the customers which had actually paid the increased fuel costs. They reached this decision despite the clear language of the fuel adjustment clause and despite predictions that this method of distribution would result in a large portion of the fund escheating to the state rather than helping current customers with their utility bills.

It is therefore surprising that my fellow Commissioners today accept a settlement in which refunds will be paid to current customers, rather than to those who actually paid the excess charges in this case. While recognizing that the Stipulation is inconsistent with recent Commission precedent, I nonetheless join the decision as the result will be consistent with the position I advocated in the Kentucky Utilities Company refund case.

  
Robert M. Davis

CONCURRENCE OF COMMISSIONER LINDA K. BREATHITT

I write separately to emphasize my concerns over several aspects of the parties' Stipulation. As my primary concern is the length of time over which the vast majority of LG&E's customers will receive their share of the refunds, it would likely be counterproductive to impose conditions on the settlement which might cause its withdrawal and lead to further delay in the payment of any refunds for several more years. This reality aside, it troubles me that LG&E will make immediate payments to certain of its industrial customers while requiring the remainder of its

ratepayers to wait for final credits for five more years. I urge LG&E to revise its refund schedule so that this matter might actually be concluded by the end of 1997 rather than after the five years stated in the Stipulation.

I am also disturbed by the lack of standards imposed on the expenditures of the monies LG&E will pay under the Stipulation to the Metro Human Needs Alliance. The needs of the customers served by the Alliance are real and likely to grow as sources of funding at the federal level disappear. It is, therefore, imperative that the monies go directly to assist those who need help with utility bills. The failure of the Stipulation to make this point explicit places a heavy responsibility on the Alliance to ensure proper expenditure of these funds.

Finally, I am constrained to note that the Stipulation is yet the latest and, because of the amount of money involved, the most obvious example of a recent trend in settlement agreements presented to the Commission. It appears that the utility, the large industrial customers, and the low income customers have had the benefit of ardent and able representation at the bargaining table. It does not appear that the majority of customers who regularly pay their monthly bills have had as strong a voice in the discussions. Having been presented with a settlement which by its terms cannot be modified, the Commission faces the unpleasant prospect of giving its approval while knowing that some ratepayers are bearing an undue burden. However, having concluded, with great reluctance, that any attempt by the Commission to rectify this

situation in this case would likely be counterproductive, I  
join the decision of the Commission.

  
Linda K. Breathitt

ATTEST:

  
Don Mills  
Executive Director

APPENDIX

AN APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION  
IN CASE NO. 10320 DATED DECEMBER 8, 1995

RECEIVED

DEC 01 1995

PUBLIC SERVICE  
COMMISSION

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN INVESTIGATION OF ELECTRIC RATES OF )  
LOUISVILLE GAS AND ELECTRIC COMPANY TO ) CASE NO. 10320  
IMPLEMENT A 25 PERCENT DISALLOWANCE OF )  
TRIMBLE COUNTY UNIT NO. 1 )

**STIPULATION AND SETTLEMENT AGREEMENT**

WHEREAS, the Public Service Commission for the Commonwealth of Kentucky ("the Commission") is a body corporate, has exclusive jurisdiction over the regulation of retail sales and services of public utilities in Kentucky, and has employed technical, legal and other professional employees which it has deemed necessary to carry out the provisions of KRS Chapter 278;

WHEREAS, Louisville Gas and Electric Company ("LG&E") is a Kentucky corporation and a public utility as defined in KRS 278.010(3);

WHEREAS, LG&E began construction of a 495 megawatt coal-fired electric generating plant at a site in Trimble County, Kentucky ("Trimble County plant") after the Commission, pursuant to KRS 278.020 granted LG&E a Certificate of Public Convenience and Necessity and a Certificate of Environmental Compatibility by Order dated October 19, 1978, in PSC Case No. 7113;

WHEREAS, the Commission by its Orders dated July 1, 1988 and April 20, 1989 in PSC Case No. 9934 (entitled "a Formal Review of the Current status of Trimble County No. 1"), determined that 25% of the Trimble County plant was to be disallowed from the rate base of LG&E;

WHEREAS, the Commission, on its own motion, by Order dated July 19, 1988, initiated PSC Case No. 10320, entitled "An Investigation of Electric Rates of Louisville Gas and Electric Company to Implement a 25 Percent Disallowance of Trimble County Unit No. 1";

WHEREAS, certain issues, claims and controversies concerning the Trimble County plant have arisen in Case No. 10320 that have resulted in continual litigation since October, 1989;

WHEREAS, the parties signatory to this Stipulation and Settlement Agreement have, in large measure, been the parties to the litigation and controversies concerning the Trimble County plant since October, 1989, and these parties are desirous of resolving these controversies, and have determined that the resolution of these controversies is in the public interest and in LG&E's interest;

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, it is agreed by and between LG&E, Commonwealth of Kentucky ex rel. P. Chris Garman, Attorney General ("Attorney General"), Jefferson County, Kentucky, ex rel. Michael E. Conliffe, Jefferson County Attorney, Metro Human Needs Alliance, Inc., ("MIINA") et al.; the Kentucky Industrial Utility Customers ("KIUC"); and the United States Department of Defense ("DOD") (collectively referred to as "the Parties") hereby enter into this Stipulation and Settlement Agreement as a full settlement and resolution of all issues raised in this proceeding.

Additionally, the Parties request that this Stipulation and Settlement Agreement be accepted and approved by the Kentucky Public Service Commission, in its entirety.

Further, it should be noted that this Stipulation and Settlement Agreement is the product of extensive negotiations between and among the Parties, and is the result of significant effort, give-and-take, and compromise by all of the Parties involved. It is, further, important to note

and understand that all of the Parties, who represent diverse interests and divergent viewpoints, agree in total that this Stipulation and Settlement Agreement when viewed in its entirety constitutes a reasonable resolution of all issues in this proceeding, and is in the interest of LG&E and its customers.

Therefore, the Parties hereby stipulate and agree to the following terms and conditions:

1. LG&E shall refund to its current electric customers the sum of Twenty-Two Million Dollars (\$22,000,000). Of this amount, Five Million Three Hundred Thousand Dollars (\$5,300,000) will be refunded in lump sum payments to those LP-TOD and Special Contract customers listed on Appendix A to this Stipulation and Settlement Agreement based upon their respective kwh usage within sixty (60) days after the Commission approves the Stipulation and Settlement Agreement. The remaining amount of Sixteen Million Seven Hundred Thousand Dollars (\$16,700,000) shall be refunded to all other electric customers through a per kilowatt-hour credit on bills at a rate of Three Million Three Hundred and Forty Thousand Dollars (\$3,340,000) per year for five (5) years, commencing with bills rendered on or after the date of the first billing cycle of the month which falls at least thirty (30) days after the Commission approves this Stipulation and Settlement Agreement. The per kilowatt-hour credit shall be calculated each year by dividing the annual refund amount of \$3,340,000 by the estimated Kwh sales for the relevant twelve-month period. The credit shall be used to reduce the electric rates of all retail customers except those listed in Appendix A to this Stipulation and Settlement Agreement, and shall be applied to actual Kwh sales until the full amount is returned to such customers.

2. LG&E shall, for the purpose of funding energy assistance programs that will benefit its low-income residential customers, pay to the MHNA, a Louisville-based non-profit



corporation, the sum of Nine Hundred Thousand Dollars (\$900,000) per year for five years, beginning in the first quarter of 1996, for a total of Four Million Five Hundred Thousand Dollars (\$4,500,000). The sums paid shall be used solely for funding low-income energy assistance programs for qualified customers of LG&E, such programs to be administered by Affordable Energy Corporation, Inc. and such other corporations, agencies, associations or individuals as determined by MINA.

3. LG&E shall modify the methodology under which it calculates the DSM Revenue From Lost Sales (DRLS) element of the DSM Cost Recovery Component (DSMRC) pursuant to both its Electric Tariff Sheet No. 23-C (3rd Rev.), Demand-Side Management Cost Recovery Mechanism, and its Gas Tariff Sheet Nos. 11 (2nd Rev.) and 11-A (15th Rev.), Demand-Side Management Cost Recovery Mechanism, so that the relevant language of each Tariff sheet shall be revised as follows, where the strike-out indicates old language, and the bold indicates new language:

#### **ELECTRIC TARIFF SHEET NO. 23-C**

**DRLS = DSM REVENUE FROM LOST SALES.** For Residential Rate R, revenues from lost sales due to DSM will be recovered through the decoupling of revenues from actual sales. At the end of each twelve month period after implementation of the Demand-Side Management Cost Recovery mechanism, the non-variable revenue requirement (total revenue requirement less variable costs) approved for Residential Rate R in LG&E's most recent general rate case will be adjusted to reflect changes in the number of customers and the usage per customer as follows: (1) the non-variable revenue requirement ~~will be multiplied by the factor obtained by dividing the number of customers at the end of the twelve-month period by the number of residential customers at the end of the test year in the most recent general rate case,~~ and in LG&E's most recent general rate case will be divided by the test-year-end number of customers in order to obtain the average non-variable revenue requirement per customer, which will then be multiplied by the average number of customers during the twelve-month period (i.e., the sum of the monthly number of customers divided by twelve), (2) . . . .

**GAS TARIFF SHEET NOS. 11 AND 11-A**

**DRLS = DSM REVENUE FROM LOST SALES.** For Residential Gas Service Rate RGS, revenues from lost sales due to DSM will be recovered through the decoupling of revenues from actual sales. At the end of each twelve month period after implementation of the Demand-Side Management Cost Recovery mechanism, the non-variable revenue requirement (total revenue requirement less variable costs) approved for this rate class in LG&E's most recent general rate case will be adjusted to reflect changes in the number of customers and the usage per customer as follows: (1) ~~the non-variable revenue requirement will be multiplied by the factor obtained by dividing the number of customers at the end of the twelve-month period by the number of residential customers at the end of the test year in the most recent general rate case,~~ and in LG&E's most recent general rate case will be divided by the test-year-end number of customers in order to obtain the average non-variable revenue requirement per customer, which will then be multiplied by the average number of customers during the twelve-month period (i.e., the sum of the monthly number of customers divided by twelve), (2) . . . .

This revised methodology shall be applied to results from calendar years 1995 and 1996 in order to calculate the DRLS element of the DSMRC to be billed to residential customers during 1996 and 1997. The Parties estimate that this revision will result in residential customers being billed a total of One Million Eight Hundred Thousand Dollars (\$1,800,000) less over the two year period of 1996 and 1997 under the DSM decoupling mechanism than would have otherwise been billed under the existing tariff language.

4. Upon the Commission's approval of this Stipulation and Settlement Agreement, the relevant parties will dismiss, with prejudice, the Complaint and all crossclaims pending before the Franklin Circuit Court in its Case No. 91-CI-01536, regarding the Commission's Orders in Case No. 90-158, LG&E's last general rate case.

5. Furthermore, LG&E agrees that the voluntary rate reductions (of \$8,500,000) and the refunds (of \$2,500,000) granted to customers as a result of the Agreement between LG&E and

the Commission Staff in this proceeding, the approval of which was overturned by the Kentucky Court of Appeals, shall remain as the full entitlement of LG&E's customers, and LG&E will make no claim in any proceeding of any kind, character, or description for the return of such funds.

6. All Parties agree that LG&E shall not be the subject of or to any further challenges or reviews of the prudence of initiating or continuing the construction of the Trimble County plant by any of the Parties.

7. The performance by LG&E of the terms of this Stipulation and Settlement Agreement shall constitute full performance and satisfaction of LG&E's obligations under the Orders of the Commission previously entered in this proceeding on July 19, 1995, and August 28, 1995, and no further action shall be required or sought of LG&E by the Commission or any party to this proceeding with regard to those Orders.

8. This Stipulation and Settlement Agreement represents a negotiated settlement for the sole purpose of resolving all issues in this proceeding, and none of the Parties shall be prejudiced or bound in any manner by the terms of the Stipulation and Settlement Agreement in any other proceeding, except as may be necessary to fully implement and effectuate this Stipulation and Settlement Agreement.

9. Except to the extent specified herein, no party shall be deemed to have approved or acquiesced in any ratemaking principles or any method of cost determination or cost allocation underlying or allegedly underlying the Stipulation and Settlement Agreement and the rates provided for herein.

10. This Stipulation and Settlement Agreement has resulted from extensive negotiations between the Parties and the terms hereof are interdependent. In the event the Commission does

not accept and approve this Stipulation and Settlement Agreement in its entirety, this Stipulation and Settlement Agreement shall be void and withdrawn by the Parties hereto from further consideration by the Commission and all of the Parties agree that none of the Parties shall be bound by any of the provisions herein.

11. In the event the Commission issues an order which accepts and approves this Stipulation and Settlement Agreement in its entirety, the Parties hereby waive their rights under KRS 278.400 to file an application for rehearing and their rights under KRS 278.410 to file a complaint in the Franklin Circuit Court regarding such order.

WHEREFORE, the Parties respectfully request that the Commission issue an order:

(A) Approving the specific terms and conditions of this Stipulation and Settlement Agreement;

(B) Authorizing LG&E to file revised tariffs and rate schedules that give full effect to the provisions of this Stipulation and Settlement Agreement.




John R. McCall  
Douglas M. Brooks  
LOUISVILLE GAS AND ELECTRIC  
COMPANY

P.O. Box 32010  
Louisville, Kentucky 40232  
(502) 627-2557

and

James Park, Jr.  
Katherine Randall  
BROWN, TODD & HEYBURN  
2700 Lexington Financial Center  
250 W. Main St.  
Lexington, KY 40507-1749  
(606) 231-0000



---

Anthony G. Martin  
Attorney at Law  
P.O. Box 1812  
Lexington, KY 40593  
(606) 278-3405

and

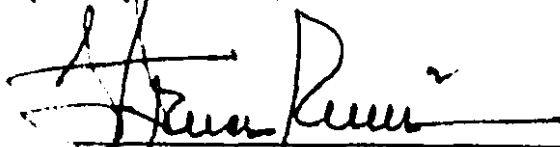
Kay Guinane  
7915 Bounding Bend  
Derwood, MD 20855  
METRO HUMAN NEEDS ALLIANCE,  
ET AL.



COMMONWEALTH OF KENTUCKY EX  
REL. CHRIS GORMAN, ATTORNEY  
GENERAL

1024 Capital Center Dr.  
P.O. Box 2000  
Frankfort, KY 40602-2000  
(502) 573-4994

Respectfully submitted,



J. Bruce Miller  
J. BRUCE MILLER LAW GROUP  
621 W. Main St., 4th Floor  
Louisville, KY 40202  
(502) 587-0900  
JEFFERSON COUNTY, KENTUCKY  
ex rel. MICHAEL E. CONLIFFE,  
JEFFERSON COUNTY ATTORNEY



David Boehm  
BOEHM, KURTZ AND LOWRY  
2110 CBLD Center  
36 E. 7th St.  
Cincinnati, OH 45202  
(513) 421-2255  
KENTUCKY INDUSTRIAL UTILITY  
CUSTOMERS, INC.  
Signed by authority of David Boehm

---

**John R. McCall**  
**Douglas M. Brooks**  
**LOUISVILLE GAS AND ELECTRIC**  
**COMPANY**  
**P.O. Box 32010**  
**Louisville, Kentucky 40232**  
**and**  
**James Park, Jr.**  
**Katherine Randall**  
**BROWN, TODD & HEYBURN**  
**2700 Lexington Financial Center**  
**250 W. Main St.**  
**Lexington, KY 40507-1749**

---

**J. Bruce Miller**  
**J. BRUCE MILLER LAW GROUP**  
**621 W. Main St., 4th Floor**  
**Louisville, KY 40202**  
**JEFFERSON COUNTY, KENTUCKY**  
**ex rel. MICHAEL B. CONLIFFE,**  
**JEFFERSON COUNTY ATTORNEY**

---

**Dennis Howard**  
**Assistant Attorney General**  
**Public Service Litigation Branch**  
**P.O. Box 2000**  
**Frankfort, KY 40602-2000**  
**ATTORNEY GENERAL FOR THE**  
**COMMONWEALTH OF KENTUCKY**


---

**Anthony G. Martin**  
**Attorney at Law**  
**P.O. Box 1812**  
**Lexington, KY 40593**  
**and**  
**Kay Guinane**  
**7915 Bounding Bend**  
**Derwood, MD 20855**  
**METRO HUMAN NEEDS ALLIANCE,**  
**ET AL.**

---

**David Boehm**  
**BOEHM, KURTZ AND LOWRY**  
**2110 CBLD Center**  
**36 E. 7th St.**  
**Cincinnati, OH 45202**  
**KENTUCKY INDUSTRIAL UTILITY**  
**CUSTOMERS, INC.**

---

  
**David A. McCormick**  
**Regulatory Law Office**  
**Office of the Judge Advocate General**  
**Department of the Army (DAJA-RL 3786)**  
**901 N. Stuart St.**  
**Room 713**  
**Arlington, VA 22203-1837**  
**U.S. DEPARTMENT OF DEFENSE**

## CERTIFICATE OF SERVICE

This is to certify that a true copy of the foregoing instrument was served upon the attached list by first class mail on this the 3<sup>rd</sup> day of November, 1995.

  
\_\_\_\_\_  
Douglas M. Brooks

J. Bruce Miller  
J. Bruce Miller Law Group  
621 W. Main St., Fourth Floor  
Louisville, KY 40202

Dennis Howard  
Assistant General Counsel  
Public Service Litigation Branch  
P.O. Box 2000  
Frankfort, KY 40202

Kay Guinane  
7915 Bounding Bend  
Derwood, MD 20855

Anthony G. Martin  
P.O. Box 1812  
Lexington, KY 40593

David Boehm  
Boehm, Kurtz and Lowry  
2110 CBLD Center  
36 E. Seventh St.  
Cincinnati, OH 45202

David A. McCormick  
Regulatory Law Office  
Department of the Army (DAJA-RL)  
901 N. Stuart St., Room 713  
Arlington, VA 22203-1837

## APPENDIX A

**General Electric Appliance Park**

**Philip Morris (3 plant locations)**

**Ford Kentucky Truck Plant**

**Ford Louisville Assembly Plant**

**Rohm and Haas**

**Protein Technologies**

**Du Pont**

**Geon**

**Olin**

**Carbide/Graphite**

**Kosmos Cement**