

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matters of:

AN EXAMINATION BY THE PUBLIC SERVICE)
COMMISSION OF THE APPLICATION OF THE)
FUEL ADJUSTMENT CLAUSE OF THE) CASE NO. 96-524-A
LOUISVILLE GAS AND ELECTRIC COMPANY)
FROM NOVEMBER 1, 1996 TO APRIL 30, 1997)

and

AN EXAMINATION BY THE PUBLIC SERVICE)
COMMISSION OF THE APPLICATION OF THE)
FUEL ADJUSTMENT CLAUSE OF THE) CASE NO. 96-524-B
LOUISVILLE GAS AND ELECTRIC COMPANY)
FROM MAY 1, 1997 TO OCTOBER 31, 1997)

and

AN EXAMINATION BY THE PUBLIC SERVICE)
COMMISSION OF THE APPLICATION OF THE)
FUEL ADJUSTMENT CLAUSE OF THE) CASE NO. 96-524-C
LOUISVILLE GAS AND ELECTRIC COMPANY)
FROM NOVEMBER 1, 1997 TO APRIL 30, 1998)

O R D E R

The Louisville Gas and Electric Company (LG&E) and Kentucky Industrial Utility Customers (KIUC) have petitioned for rehearing on the Commission s Orders of February 9, 1999 in the above-styled matters. KIUC has moved to strike portions of LG&E s Petition for Rehearing. By this Order, the Commission grants rehearing for the purpose of determining the appropriate line loss factor to use in calculating monthly fuel cost and the appropriate level of interest, if any, on all fuel adjustment clause (FAC)

overcharges determined in these cases. We further grant in part and deny in part KIUC's Motion to Strike.

LG&E's Petition for Rehearing

On February 9, 1999, the Commission issued Orders in the above-styled cases in which we found that LG&E had incorrectly calculated its FAC charge for the period from November 1, 1996 to April 30, 1998 and directed LG&E to reduce its monthly fuel cost on a one-time basis by \$1,999,167 to reflect unreported fossil fuel costs recovered through intersystem sales during the review period. More specifically, we found that in calculating its cost of fuel for each month within the review period, LG&E failed to include in the cost of fossil fuel recovered through intersystem sales the cost of fuel associated with line losses incurred to make such sales. We further found that a 3 percent line loss factor should be used to calculate the cost of fossil fuel recovered through intersystem sales.

In a consolidated petition for rehearing that addresses these cases and Case No. 96-524,¹ LG&E requests that these Orders be vacated as unlawful and unreasonable. In the alternative, LG&E requests that the Orders be modified so that the Commission's interpretation of Administrative Regulation 807 KAR 5:056 and the method for calculating FAC charges be made effective only prospectively and that the additional evidence be taken on the issue of the appropriate line loss factor to use in calculating monthly fuel cost. By Order issued this day in Case No. 96-524, the Commission has addressed most of the issues presented in LG&E's Petition. In this Order, the Commission focuses exclusively upon LG&E's allegation that the Commission's delay in issuing its final Order in Case No. 96-524 deprived LG&E of its right to substantive due process in the cases at bar.

¹ Case No. 96-524, An Examination By The Public Service Commission of The Application of The Fuel Adjustment Clause of The Louisville Gas And Electric Company

On November 14, 1996, the Commission initiated Case No. 96-524 to review the operation of LG&E's FAC for the two-year period ending October 31, 1996. It subsequently initiated Cases No. 96-524-A, No. 96-524-B, and No. 96-524-C to review and evaluate the operation of LG&E's FAC for six month periods ending April 30, 1997, October 31, 1997, and April 30, 1998, respectively. The Commission issued final Orders in each proceeding on February 9, 1999.

LG&E contends that it was "wooled around" by the Commission's delay in issuing Orders in each proceeding. This delay, LG&E contends, has compounded LG&E's risk of exposure and subjected it to larger than necessary refunds. If the Order in Case No. 96-524 had been issued in a more timely fashion, LG&E further argues, it would have been afforded the opportunity to change the value of the line loss used to calculate the fuel clause and ask the Commission sooner rather than later to review the change in one of the six month hearings. LG&E's Petition at 13.

In making this argument, LG&E conveniently refuses to accept responsibility for its own actions and decisions. LG&E was clearly placed upon notice that its method for calculating the cost of fossil fuel recovered through intersystem sales was at issue in Case No. 96-524 and the subsequent cases. Intervenors presented testimony on this method and the appropriate line loss factor to use in calculating monthly fuel cost. LG&E chose not to present rebuttal testimony on these points or to articulate an alternative position should the Commission accept the Intervenors' position. Despite the obvious implication that any Commission interpretation issued in Case No. 96-524 would be applied to all subsequent FAC reviews and despite continued Intervenor questioning of LG&E's

practices in those subsequent reviews, LG&E chose not to present any new argument or testimony in those reviews.

Notwithstanding these actions, the Commission concedes that earlier issuance of the Commission's decision in Case No. 96-524 would have allowed LG&E the opportunity to respond to that decision in the subsequent 6 month review proceedings and to present testimony on the appropriate line loss factor to use in calculating monthly fuel cost. Fairness therefore requires that LG&E be afforded such an opportunity. Accordingly, the Commission finds that rehearing should be granted on the issue of the appropriate line loss factor to use in calculating monthly fuel cost.

KIUC's Petition for Rehearing

KIUC requests that the Commission require the addition of interest on all fuel adjustment overcharges determined in these cases. Its request is based upon fundamental economic fairness. It contends that, unless interest is awarded, the Commission will have allowed LG&E to profit from its overcollection of FAC charges. It further contends that the Commission has the authority to make such award based upon prior legal and administrative precedent.

LG&E opposes KIUC's request. It argues that the Commission lacks the legal authority to make an award of interest. Even if such authority exists, it argues, interest is not appropriate as its actions were based upon a reasonable interpretation of the law and made in good faith belief. Finally, it argues that interest, if awarded, should be computed from February 9, 1999 and should be based upon the average of the Three-Month Commercial Paper Rate as reported by the Federal Reserve Statistical Release.

Having considered these arguments, the Commission finds that rehearing should be granted on the issue of interest. The parties will be required to present more detailed

argument on this issue, especially as it is affected by our decision today to grant rehearing on the line loss factor issue, in their written briefs to be submitted at the conclusion of this proceeding.

KIUC s Motion to Strike

KIUC has moved to strike the affidavits of William A. Bosta, J. Scott Williams, and Paul M. Normand that were attached to LG&E s Petition for Rehearing. Adopting the reasoning set forth in our Order of this day in Case No. 96-524, we find that the affidavits of Williams and Normand should be struck.

Conclusion

IT IS THEREFORE ORDERED that:

1. KIUC s Motion to Strike is granted in part and denied in part.
2. The affidavits of Paul M. Normand and J. Scott Williams, which are attached to the LG&E s Petition for Rehearing, are stricken.
3. LG&E s Petition for Rehearing is granted on the issue of the appropriate line loss factor to use in calculating monthly fuel cost and is denied on all other issues.
4. KIUC s Petition for Rehearing is granted on the appropriate level of interest, if any, on all FAC overcharges determined in these cases.
5. Cases No. 96-524-A, No. 96-524-B, and No. 96-524-C are consolidated for purposes of rehearing and final decision on rehearing.

6. The procedural schedule set forth in the Appendix to this Order shall be followed.

7. All requests for information and responses thereto shall be appropriately indexed. All responses shall include the name of the witness who will be responsible for responding to the questions related to the information provided, with copies to all parties of record and 10 copies to the Commission.

8. LG&E shall give notice of the hearing in accordance with the provisions set out in 807 KAR 5:011, Section 8(5). At the time publication is requested, it shall forward a duplicate of the notice and request to the Commission.

9. At any hearing in this matter, neither opening statements nor summarization of direct testimony shall be permitted.

10. Motions for extensions of time with respect to the schedule herein shall be made in writing and will be granted only upon a showing of good cause.

11. All documents that this Order requires to be filed with the Commission shall be served upon all other parties by first class mail or express mail.

12. To be timely filed with the Commission, a document must be received by the Secretary of the Commission within the specified time for filing except that any document shall be deemed timely filed if it has been transmitted by United States express mail, or by other recognized mail carriers, with the date the transmitting agency received said document from the sender noted by the transmitting agency on the outside of the container used for transmitting, within the time allowed for filing.

13. Service of any document or pleading shall be made in accordance with Administrative Regulation 807 KAR 5:001, Section 3(7), and Kentucky Civil Rule 5.02.

Done at Frankfort, Kentucky, this 11th day of March, 1999.

By the Commission

ATTEST:

Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION
IN CASES NO. 96-524-A , 96-524-B, and 96-524-C DATED MARCH 11, 1999

- LG&E shall file with the Commission and serve upon each party a detailed line loss study and the direct testimony in written verified form of each witness that it intends to call 03/31/99

- All requests for information to LG&E shall be served upon LG&E no later than..... 04/12/99

- LG&E shall file with the Commission and serve upon all parties of record its responses to the requests for information no later than 04/22/99

- Intervenor testimony, if any, shall be filed with the Commission and served upon all parties of record in verified prepared form no later than 05/03/99

- All requests for information to Intervenor shall be served no later than 05/13/99

- Intervenor shall file with the Commission and serve upon all parties of record its responses to requests for information no later than 05/24/99

- Last day for LG&E to publish notice of hearing date 05/26/99

- Public Hearing is to begin at 9:00 a.m., Eastern Daylight Time, in Hearing Room 1 of the Commission's offices at 730 Schenkel Lane, Frankfort, Kentucky, for the purpose of cross-examination of witnesses 06/02/99

- Written briefs shall be filed with the Commission and served upon all parties of record no later than 06/30/99
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