

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN EXAMINATION BY THE PUBLIC SERVICE)	
COMMISSION OF THE APPLICATION OF THE FUEL)	
ADJUSTMENT CLAUSE OF LOUISVILLE GAS AND)	CASE NO. 96-524-A
ELECTRIC COMPANY FROM NOVEMBER 1, 1996)	
TO APRIL 30, 1997)	
AN EXAMINATION BY THE PUBLIC SERVICE)	
COMMISSION OF THE APPLICATION OF THE FUEL)	
ADJUSTMENT CLAUSE OF LOUISVILLE GAS AND)	CASE NO. 96-524-B
ELECTRIC COMPANY FROM MAY 1, 1997 TO)	
OCTOBER 31, 1997)	
AN EXAMINATION BY THE PUBLIC SERVICE)	
COMMISSION OF THE APPLICATION OF THE FUEL)	
ADJUSTMENT CLAUSE OF LOUISVILLE GAS AND)	CASE NO. 96-524-C
ELECTRIC COMPANY FROM NOVEMBER 1, 1997)	
TO APRIL 30, 1998)	

ORDER

Kentucky Industrial Utility Customers, Inc. (KIUC) has moved to amend the procedural schedule in these matters and to compel Louisville Gas and Electric Company s (LG&E) response to certain requests for information. LG&E opposes the motions. By this Order, the Commission amends the existing procedural schedule and grants KIUC s Motion to Compel in part and denies in part.

On March 11, 1999, the Commission granted LG&E s petition for rehearing in these matters and established a procedural schedule to address the issues of the appropriate line loss factor to use in calculating monthly fuel cost and of interest on any fuel adjustment overcharges. The procedural schedule that we established allowed a

short time for discovery and sought to achieve a prompt resolution to these proceedings.

KIUC now moves to amend that schedule on the grounds that LG&E's failure to furnish certain materials in a timely manner prevents KIUC's compliance with that schedule. More specifically, KIUC asserts that LG&E's failure to provide the information sought in Requests 18, 30, 31, and 32¹ prevents its preparation and submission of testimony. KIUC notes that LG&E has agreed to permit KIUC to inspect this material at LG&E's offices on May 11, 1999. It asserts, however, that without reviewing this information, it cannot submit complete testimony. KIUC's Motion at 2.

Describing KIUC's request as nothing more than a thinly veiled last minute effort to create controversy in order to request an extension of time to file testimony, LG&E opposes the motion. It states that KIUC delayed in making arrangements for an inspection of the requested materials and that any delay in inspection is a result of KIUC's own scheduling requirements. LG&E further states that the information that LG&E has yet to provide will show that an insignificant amount of energy (2045 MWHs) was generated for losses during the periods under review for which LG&E was not reimbursed. Id. at 2.

The information requested in Requests 18, 30, 31, and 32 is necessary to the preparation of testimony on the issue of fuel expenses associated with intersystem sales line loss. In their direct testimony, LG&E witnesses assert that an incremental cost methodology is the appropriate methodology to use when calculating the fuel

¹LG&E has agreed to provide the information requested in Item 32. It is currently reviewing its files and will provide the requested invoices promptly upon completion of the file search. LG&E's Response to KIUC's First Set of Data Requests, Request 32.

expense associated with losses incurred in making intersystem sales for fuel adjustment clause purposes since LG&E uses this methodology to assign fuel costs. Item 18 seeks documentary evidence to support how LG&E dispatches its system and allocates fuel costs for intersystem sales. Requests 30, 31, and 32 address specific intersystem sales transactions that occurred during the periods under review and request billing information about the transaction and the nature of the transmission services provided.²

The Commission finds that KIUC's counsel did not unduly delay in his request for inspection. His request for inspection came on the second business day following receipt of LG&E's response. While the scheduling of the inspection was done to principally accommodate the schedule of KIUC's counsel, the record suggests that LG&E's concerns also played a role.³

Given the significance and complexity of the issues involved in this proceeding, the Commission believes that KIUC should have the opportunity to review the information that it has requested prior to submission of its witnesses testimony. The Commission grants KIUC's motion to amend the procedural schedule.

² While LG&E may be correct that KIUC's request for information (Item 32) will only show that an insignificant amount of energy (2045 MWhs) was generated for losses . . . for which LG&E was not reimbursed, KIUC is not required to take LG&E's word for it. KIUC has the right to review this information and confirm LG&E's characterization of the evidence. This is one of the very purposes of the discovery process.

³ See Letter of Michael L. Kurtz to Kendrick Riggs of 4/27/1999 (suggesting dates of May 6 and May 7 as possible dates for KIUC's inspection).

KIUC has also moved to compel LG&E's responses to Requests 27 and 29. In its Request 27, KIUC asked whether it is LG&E's position that the Kentucky Public Service Commission can elect not to reflect certain aspects of LG&E's FERC [Federal Energy Regulatory Commission] approved transmission tariffs for retail rate-making purposes. In its Request 29, KIUC requests a copy of the LG&E and Kentucky Utilities Company's Joint Code of Conduct and asks how a Commission Order which permits the use of a one percent line loss factor will comply with that Code. LG&E objects to the form of the requests and asserts that the requests seek information in the form of legal conclusions that is irrelevant to these proceedings.

LG&E argues that the motion should be dismissed because of KIUC's failure to attempt to professionally resolve this matter prior to bringing its motion. The Commission agrees with the proposition that disputes regarding discovery matters should be resolved informally whenever possible.⁴ Neither the Commission's regulations nor the provisions of KRS Chapter 278, however, require such compliance. Any failure to attempt to professionally resolve discovery disputes, therefore, cannot alone serve as the basis for denying a party's motion to compel.

⁴ The Commission expects all parties to act in a professional manner and to comply with the Commission's procedural orders. It advises the parties that disputes regarding discovery issues should be resolved informally whenever possible. All parties are expected to timely review responses and, if a response is deemed unresponsive, to promptly request the opposing party's compliance. The Commission further expects that reasonable requests for compliance will be promptly met. Where parties are unable to resolve their differences, a timely motion to compel is then appropriate.

Having reviewed Requests 27 and 29, the Commission finds that KIUC's Motion to Compel should be granted in part and denied in part. To the extent that LG&E's witnesses have discussed the applicability of LG&E's FERC tariffs to this proceeding,⁵ LG&E has opened the door on this issue and should be required to respond to Request 27. Moreover, since the Joint Code of Conduct addresses transmission functions and such functions are an issue in this proceeding, the Commission finds that LG&E should be required to provide a copy of this Code as requested in Request 29. As to the remaining portion of Request 29, the Commission finds that its form is improper and sustains LG&E's objection.

IT IS THEREFORE ORDERED that:

1. KIUC's Motion to Amend Procedural Schedule is granted.
2. The parties shall follow the procedural schedule set forth in the Appendix to this Order.
3. KIUC's Motion to Compel is granted in part and denied in part.
4. LG&E shall within 7 days of this Order serve upon KIUC its response to Request 27 and shall provide a copy of its Joint Code of Conduct as requested in KIUC Request 29.
5. LG&E's objection to the remaining portions of KIUC Request 29 are sustained.

⁵ See Prefiled Direct Testimony of William A. Bosta at 4-5.

Done at Frankfort, Kentucky, this 7th day of May, 1999.

By the Commission

ATTEST:

Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION
IN CASE NOS. 96-524-A, 96-524-B, and 96-524-C DATED MAY 7, 1999

Intervenor testimony, if any, shall be filed with the Commission
and served upon all parties of record in verified prepared form
no later than 05/14/99

All requests for information to
Intervenors shall be served no later than 05/26/99

Intervenors shall file with the Commission and serve upon all parties
of record its responses to requests for information no later than..... 06/07/99

LG&E rebuttal testimony, if any, shall be filed with the Commission
and served upon all parties of record in verified prepared form
no later than 06/21/99

Last day for LG&E to publish notice
of hearing date 06/22/99

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 06/29/99

Written briefs shall be filed with the Commission
and served upon all parties of record no later than 07/29/99