

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN INVESTIGATION OF LOUISVILLE)
GAS AND ELECTRIC COMPANY S) CASE NO. 2002-00232
PREPAID GAS AND ELECTRIC SERVICE)

O R D E R

There are four motions now pending before the Commission: two filed by Louisville Gas and Electric Company (LG&E); one filed by Metro Human Needs Alliance and People Organized and Working for Energy Reform (MHNA/POWER); and one filed by Kentucky Association for Community Action and Community Action Council for Lexington-Fayette, Bourbon, Harrison and Nicholas Counties (KACA/CAC).

LG&E s first motion, filed on August 1, 2002, requests the opportunity to file rebuttal testimony and to incorporate by reference, pursuant to Administrative Regulation 807 KAR 5:001, Section 5(5), the entire record of Case No. 2000-00548 in which LG&E s prepaid gas and electric service was initially approved.¹ No objections were filed to the motion. The Commission finds the motion to be reasonable and will grant the relief requested.

LG&E s second motion, filed October 3, 2002, requests confidential treatment for certain information related to the salary, benefits, bonuses and payroll taxes of one

¹ Case No. 2000-00548, The Tariff Filing of Louisville Gas and Electric Company to Establish Prepaid Gas and Electric Service.

named LG&E employee whose time has been largely devoted to the prepaid meter program. LG&E bases its request for confidentiality on the claims that the salary information is of a personal nature; that it is not publicly available even within LG&E; and that its disclosure would constitute a clearly unwarranted invasion of that employee's personal privacy. MHNA/POWER responded by objecting to LG&E's motion, stating that the public's right to have access to this information outweighs the privacy rights of the employee. MHNA/POWER's response included the third pending motion, which requests that, due to the delay caused by LG&E's confidentiality request, the procedural schedule be amended to provide additional time for the parties to file their testimony after the confidentiality issue is resolved. LG&E filed a reply stating that it attempted to resolve the confidentiality issue with MHNA/POWER in a manner that did not disclose employee-specific compensation but was unable to reach a compromise. LG&E also states that it objects to MHNA/POWER's request to amend the procedural schedule. MHNA/POWER filed a further response stating that none of LG&E's proposed resolutions would allow the salary information to be disclosed in a public hearing and that the information was needed by MHNA/POWER for use in their testimony and in cross-examination.

In resolving this issue of confidentiality, the Commission notes at the outset that LG&E is not a public agency and that its records are not public records required to be disclosed pursuant to KRS 61.870 to 61.884. Rather, LG&E is a private entity whose records are filed with the Commission in conjunction with the regulation of its business as a utility pursuant to KRS Chapter 278. Further, while the salaries of utility officers and directors have traditionally been subject to public disclosure both at this

Commission and the Securities and Exchange Commission, the salary information at issue here is that pertaining to a relatively lower level employee.

As the Court of Appeals stated in Zink v. Commonwealth of Kentucky, Dept. of Workers Claims, Ky.App., 902 S.W.2d 825, 829 (1994), [F]ew things in our society are deemed of a more intimate nature than one's income. This information is commonly treated circumspectly. Thus, the Commission finds that the salary information at issue here is of a personal nature. Next, we must determine whether the disclosure thereof would constitute a clearly unwarranted invasion of personal privacy. KRS 61.878(1)(a). The employee is not an officer or director, and disclosing the salary information will not further the purpose of the Open Records Act, which focuses on the citizen's right to be informed as to what their government is doing. Zink at 829. The Commission further finds that while MHNA/POWER has a right to know the costs associated with LG&E's prepaid electric and gas service, it has not shown why this one named employee's salary needs to be publicly disclosed. Therefore, the Commission finds that LG&E's request for confidentiality should be granted.

MHNA/POWER's motion to amend the procedural schedule requests an opportunity to file testimony no sooner than one week after the Commission's ruling on LG&E's confidentiality request. LG&E filed an objection, stating that MHNA/POWER could have filed its testimony when due under the existing procedural schedule on all issues except the one pending LG&E's request for confidentiality, and then filed supplemental testimony after the confidentiality request was resolved. While LG&E's objection has merit, the Commission notes that there is no statutory deadline in this

case and the brief delay in filing testimony will not prejudice any party. Therefore, we will grant MHNA/POWER's motion.

The fourth motion was filed by KACA/CAC, and it requests authorization to file in this case the Direct Testimony and Exhibits of Roger D. Colton as filed in Case No. 2000-00548, along with relevant portions of the hearing transcript from that case, in lieu of presenting Mr. Colton as a witness in this case. LG&E objected to KACA/CAC's attempt to incorporate selected portions of the record in Case No. 2000-00548, but does not object to incorporating by reference the entire record in that prior case. Based on the Commission's decision to grant LG&E's earlier motion to incorporate by reference the entire record in Case No. 2000-00548, KACA/CAC's motion is rendered moot.

IT IS THEREFORE ORDERED that:

1. The entire record of Case No. 2000-00548 is incorporated by reference into the record of this case.

2. The motion of KACA/CAC to file in this case the Direct Testimony and Exhibits of Roger D. Colton as filed in Case No. 2000-00548, and portions of the hearing transcript in that case is denied as moot based on the incorporation by reference of the entire record in Case No. 2000-00548.

3. LG&E's motion for confidential treatment of the salary, bonuses, benefits, and payroll taxes of one LG&E employee named in response to the Supplemental Information Request of MHNA/POWER, Item No. 9(b) is granted.

4. MHNA/POWER's motion to amend the procedural schedule to permit it to file testimony no sooner than one week from the date of this Order is granted.

5. LG&E's motion to amend the procedural schedule to provide it an opportunity to file rebuttal testimony is granted.

6. The procedural schedule set forth in the July 29, 2002 Order in this case is amended as provided in Appendix A attached hereto.

Done at Frankfort, Kentucky, this 17th day of October, 2002.

By the Commission

ATTEST:


Executive Director

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2002-00232 DATED OCTOBER 17, 2002

Intervenor testimony, if any, shall be filed in
verified prepared form no later than 10/25/2002

Requests for information to intervenors
shall be filed no later than 11/06/2002

Intervenors shall file responses to requests
for information no later than 11/19/2002

LG&E s rebuttal testimony, if any, shall be filed
in verified prepared form no later than..... 12/02/2002

Public Hearing, if necessary, for the purpose
of cross-examination of witnesses To be scheduled