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IN THE KENTUCKY PUBLIC SERVICE COMMISSION

IN RE: INVESTIGATION:

Case No. 2003-00433  
AN ADJUSTMENT OF THE GAS AND ELECTRIC RATES  
TERMS, AND CONDITIONS OF LOUISVILLE GAS AND  
ELECTRIC COMPANY

and

Case No. 2003-00434  
AN ADJUSTMENT OF THE ELECTRIC RATES, TERMS, AND  
CONDITIONS OF KENTUCKY UTILITIES COMPANY

\* \* \*

SWORN STATEMENT

OF

MICHAEL L. KURTZ

JULY 25, 2005

---

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*Michael Kurtz*

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I N D E X

Exhibit No. 1.....	6
(June 29, 2005 letter to Mike Kurtz from Jonathan D. Goldberg)	
Exhibit No. 2.....	9
(Sign-in sheets for May 4, 2004, May 5, 2004 and May 6, 2004)	

R E Q U E S T S

Mr. Goldberg to the witness .....	14
(Dates of any meetings with LG&E/KU personnel)	

A P P E A R A N C E S

SPECIAL GENERAL COUNSEL TO THE PUBLIC SERVICE  
COMMISSION:

JONATHAN D. GOLDBERG  
Goldberg & Simpson  
3000 National City Tower  
101 South Fifth Street  
Louisville, Kentucky 40202

1                   The sworn statement of MICHAEL L.  
2 KURTZ, taken in the offices of the Public Service  
3 Commission, 211 Sower Boulevard, Frankfort, Kentucky,  
4 on Monday, the 25th day of July, 2005, at  
5 approximately 11:00 a.m.

6  
7                   EXAMINATION

8  
9 BY MR. GOLDBERG:

10                Q.       All right, sir. Would you state your  
11 name for me.

12                A.       Michael L. Kurtz.

13                Q.       All right, sir. And your business  
14 address?

15                A.       1510 URS Center, Cincinnati, Ohio,  
16 45202.

17                Q.       All right, sir. And your occupation,  
18 please?

19                A.       Lawyer.

20                Q.       And where are you a lawyer?

21                A.       I'm licensed in Ohio, Kentucky,  
22 Pennsylvania and Michigan.

23                Q.       All right, sir. And what kind of law  
24 do you practice?

25                A.       Public utility regulatory law.

1 Q. And how long have you done that?

2 A. Since 1986.

3 Q. All right, sir. And do you practice  
4 in a firm?

5 A. Practice in the firm of Boehm, Kurtz &  
6 Lowry.

7 Q. And you are a partner in that firm?

8 A. Yes.

9 Q. And Mr. David Boehm is your partner.

10 A. Yes.

11 Q. Okay. I want to talk to you about  
12 a -- two rate-making cases. The first one is case  
13 No. 2003-0433, which you would probably refer to as  
14 the LG&E rate-making case, and the other is case No.  
15 2003-00434, which you would refer to as the Kentucky  
16 Utilities case. With regard to those rate-making  
17 cases, did you have a client or clients involved?

18 A. Yes. My firm represented Kentucky  
19 Industrial Utility Customers.

20 Q. All right. For the record, would you  
21 tell me what that is?

22 A. It's a trade group that intervenes at  
23 the commission on behalf of large industrial  
24 customers of the various utilities in Kentucky.

25 Q. All right, sir. Now, with regard to

1 the two rate-making cases, do you have a recollection  
2 of when you first became aware of their being filed?

3 A. I believe I became aware of it in the  
4 end of December 2003 when the company made -- I think  
5 the case was filed December 29th, '03, and that's, I  
6 believe, when I became aware of it.

7 Q. All right, sir. Were you sent a copy  
8 of it by the company?

9 A. I think LG&E made the rounds and  
10 came -- personally came and visited myself and my  
11 partner, and I believe they said that they were  
12 making the rounds with the other major players in the  
13 case.

14 Q. All right, sir. Do you -- do I take  
15 it you and your partner, Mr. Boehm, had represented  
16 KIUC before the Kentucky Public Service Commission  
17 before?

18 A. Yes. I've done it for 18 years, and  
19 he's represented them for 25 years or thereabouts.

20 Q. Just for my edification, do you know  
21 how long KIUC has been an organization?

22 A. Probably like about the 25 years that  
23 I mentioned.

24 Q. All right, sir. Let me first show you  
25 the letter that I sent you, and we're going to mark

1 that as an exhibit to this statement.

2 (DEPOSITION EXHIBIT NO. 1 PREVIOUSLY  
3 MARKED)

4 Q. And simply stated, I sent this to you  
5 to arrange for your statement and to explain what I  
6 was doing, which is investigating various activity  
7 with regard to the rate-making case, and specifically  
8 ex parte contact between individuals and the PSC  
9 staff and/or the PSC commissioners.

10 I have, as I indicated to you prior to  
11 going on the record, taken the sign-in sheets which,  
12 as you know, is the practice here at the PSC, to  
13 determine who actually comes to the various  
14 functions. And I am communicating to you that April  
15 the 28th, 2004 was the first informal conference with  
16 regard to this matter. I did not see your name or  
17 Mr. Boehm's name on the sign-in sheets. Do you have  
18 a recollection of having participated in an informal  
19 conference --

20 A. It would have --

21 Q. -- in these two rate-making cases?

22 A. It would have been -- we certainly  
23 would have been advised. We certainly would have  
24 tried to attend. I don't remember if one of us did  
25 attend. It's possible that we just didn't sign the

1 sign-in sheet because that is definitely the type of  
2 thing we would have been in, as KIUC is -- and the  
3 attorney general are considered generally to be the  
4 two major players.

5 Q. All right, sir. Now, prior to --  
6 again using April 28th, because that is the first  
7 getting together of all the parties, did you have  
8 opportunity to talk to KU or LG&E counsel about the  
9 rate-making case? This is prior to April 28th, 2004?

10 A. Yes, yes.

11 Q. Okay. And do you believe you had  
12 opportunity to talk to, in addition to LG&E and KU  
13 counsel, the attorney general staff prior to  
14 April 28, 2004?

15 A. Certainly had opportunity to, yes.

16 Q. Did you actually do that?

17 A. I don't remember. It wouldn't be  
18 unusual if we did. Oftentimes, we'd coordinate with  
19 the attorney general.

20 Q. Okay. What do you recall being the  
21 issues involved with regard to these two rate-making  
22 cases?

23 A. They were very complicated. There  
24 were really five cases. There was the North American  
25 Stainless complaint case that got rolled into these

1 two rate cases. There were two earnings sharing  
2 mechanism cases where the companies had in place a  
3 new temporary experimental type of rate-making called  
4 earnings sharing that was intertwined with the  
5 standard general base rate cases. So there were  
6 really two ESM cases, two general rate cases,  
7 electric.

8 Q. ESM standing for earnings sharing?

9 A. Earnings sharing mechanism. There  
10 were the two electric cases. There was a North  
11 American Stainless complaint case. They were  
12 contesting what their new contract should look like.  
13 And I believe there was a gas rate case as well.

14 Q. Do you believe that was LG&E or KU?

15 A. Definitely LG&E. KU does not have gas  
16 operations.

17 Q. All right, sir.

18 A. So there were all those cases  
19 combined.

20 Q. Do you believe they were all  
21 consolidated prior to April 28, 2004?

22 A. Don't know.

23 Q. Your recollection is that at some  
24 point along the line they were consolidated.

25 A. Yes.



1 (DEPOSITION EXHIBIT NO. 2 PREVIOUSLY  
2 MARKED)

3 Q. Okay. Let me show you what is a  
4 sign-in sheet for May the 4th. Do you see your name,  
5 sir?

6 A. Yes.

7 Q. Okay. Do I take it, then, you recall  
8 having appeared here at the Public Service Commission  
9 and participated in the rate-making cases?

10 A. I certainly participated. I don't  
11 know if I remember this particular meeting.

12 Q. All right, sir. And then I'm showing  
13 you the sign-in sheets for the 5th. Do you find your  
14 signature there?

15 A. Yes.

16 Q. And finally for the 6th. Do you see  
17 your name there, sir?

18 A. Yes.

19 Q. Okay.

20 A. I see my partner signed my name for  
21 me.

22 Q. All right. Now, armed with the  
23 knowledge of having taken his statement, I presume  
24 that you would agree with him that sometimes you  
25 would appear upon behalf of KIUC, sometimes he would,

1 and then sometimes together.

2 A. Yes.

3 Q. Okay. Now, prior to April 28th, 2004,  
4 do you have a recollection of having talked about  
5 these two rate-making cases with any member of the  
6 PSC staff?

7 A. Well, certainly none of the  
8 commissioners. I certainly never spoke to any of the  
9 commissioners about these cases at any time. The  
10 commission staff, I don't recall exactly, but it  
11 certainly would not have been unusual to contact the  
12 commission's lawyer. So that could very well have  
13 happened. I don't know if it did.

14 Q. All right. I take it you have no  
15 present sense recollection of having had a  
16 conversation with the PSC's lawyer prior to April 28,  
17 2004.

18 A. Not specifically, but again, it could  
19 very well have happened.

20 Q. All right. And what types of things,  
21 if it indeed occurred, would you have discussed with  
22 counsel for the PSC?

23 A. Typically procedural. Typically  
24 procedural. That would be -- but I don't recall if  
25 there were anything even in procedural conversations.

1 Q. Fair enough. Prior to April 28, 2004,  
2 would you have had conversations, settlement or  
3 otherwise, with persons from LG&E and KU?

4 A. Yes. They -- what they -- the process  
5 that they used in this case, because it was so  
6 complicated, so many different cases involved, and  
7 big dollars as well -- they, I believe, made the  
8 rounds with all the major parties. Met with KIUC,  
9 myself and my partner on at least one time, probably  
10 more. I believe they met with the attorney general.  
11 I believe they met with various interveners to the  
12 case to try to -- try to work out a negotiated  
13 resolution. So we certainly met with LG&E and KU  
14 prior to -- you say April 28th. I think it was prior  
15 to that because I remember it was cold, but I don't  
16 remember the exact dates.

17 Q. All right, sir.

18 A. It was early on in the process.

19 Q. You have a recollection of them having  
20 come to your office at least on one occasion?

21 A. Yes, they did. And we also met them  
22 in Northern Kentucky on one occasion as well.

23 Q. Okay.

24 A. I believe they came to our offices,  
25 but I'm absolutely positive we met with them in

1 Northern Kentucky.

2 Q. All right. Any other than those two?

3 A. We met with them at the Embassy Suites  
4 also, I think, in Lexington, right across from the  
5 Griffin Gate. Sort of a middle place to meet in  
6 their efforts to try to, you know, address the -- the  
7 issues that were raised by the parties, which  
8 probably would have occurred after we filed our  
9 testimony and we stated what our issues were.

10 Q. And do you have a date that you can  
11 refer to of when that would have occurred?

12 A. I don't have my calendar with me, but  
13 it -- it's very possible it's in my calendar.

14 Q. I trust that would have been after the  
15 beginning of the proceeding, meaning after April 28,  
16 2004, of the first informal conference?

17 A. No. The beginning of the proceeding  
18 is when they filed their case. I mean, they -- they  
19 filed their case -- I don't remember if they filed  
20 their case on December 28th, 29th, or if that was the  
21 notice, the 30-day notice that they were going to  
22 file. But once they filed their testimony, their  
23 case is laid out. Typically the commission  
24 establishes a schedule where there's two rounds of  
25 discovery and then intervener and attorney general

1 testimony is due, and then our position is laid out,  
2 and there was some more discovery and then a hearing.  
3 So by April 28th the case was well under way. The  
4 company's -- all their testimony was filed. There  
5 were many, many -- there were rounds of discovery.  
6 Not many, many. There were only a couple. And then  
7 I wouldn't be surprised if our position was stated in  
8 pretrial testimony as well.

9 Q. And you remember a conference with  
10 LG&E/KU at around the time you filed your testimony.

11 A. I don't remember when we filed. If  
12 you looked at the procedural schedule in the case, it  
13 would say. The hearing in this case was late May, I  
14 believe.

15 Q. Actually, 4, 5, 6 and then 12 was the  
16 announcement.

17 A. Oh, 4, 5 and 6 were the hearing dates?  
18 Oh, our testimony was filed well before April 28th,  
19 then. At least a month before.

20 Q. Okay. Who attended those three  
21 meetings, same people each time?

22 A. I can't recall from the company's  
23 side, but my partner and I both attended. And then  
24 various people from LG&E. Their lawyer, Kendrick  
25 Riggs, the people who were running the case.

1 Probably Mike Beer, probably their accounting people,  
2 Valerie something. Probably people like Kenneth  
3 Blake or John Wolfram, they have a regulatory team in  
4 charge of these cases.

5 Q. Anybody --

6 A. Probably Steve Seelye, their  
7 outside -- their outside witness.

8 Q. Anybody besides LG&E/KU people in  
9 these meetings?

10 A. Not at these particular meetings, no.  
11 Like I say, I think LG&E was making the rounds and  
12 meeting with all the major parties.

13 Q. Okay. Any way for you to fix on your  
14 calendar when those days were?

15 A. Possibly. I didn't go back and check,  
16 but I believe I have my 2004 calendar, and it would  
17 probably be there.

18 Q. Could I ask you to do that for me?

19 A. And state your question?

20 Q. What I'm looking for is the date of  
21 the three meetings that you've told me about with  
22 KU/LG&E personnel.

23 A. Okay. And I -- with this  
24 clarification, I'm not sure if there were three or  
25 two or --

1 Q. However many you've got.

2 A. -- however many there were, but I will  
3 look back on my calendar and try to get you those  
4 dates.

5 Q. I'm sensing, just for frame of  
6 reference, that you had -- they came to see you at  
7 your office shortly after filing, that you remember  
8 one in Northern Kentucky and one in Lexington.

9 A. Yes. And the one -- I think this is  
10 the case where they came to our offices and announced  
11 that they were filing. I think this is the case.  
12 I'm not exactly sure about that. And if it was, that  
13 was nothing more than we filed for a rate increase  
14 and it was this many dollars. I think they had done  
15 that before on a different case, but I'm not exactly  
16 sure.

17 Q. All right, sir.

18 A. That would have been mostly just a  
19 courtesy, a nonsubstantive courtesy.

20 Q. You could check your calendar for me  
21 and just send me a letter at this address and tell me  
22 what dates that you have, if you can find them. Go  
23 ahead.

24 A. No. I was just going to ask for a  
25 copy of your letter --

1 Q. Sure.

2 A. -- or your card so --

3 Q. I will get that to you.

4 A. That's fine.

5 Q. Do I take it, then, the only persons  
6 who participated in those meetings were you,  
7 Mr. Boehm and LG&E/KU personnel?

8 A. Yes.

9 Q. Okay. Did you have occasion at any  
10 time after filing the rate-making case in December of  
11 2003, to meet with the attorney general's personnel?

12 A. Yes.

13 Q. And who from the attorney general's  
14 office did you meet with?

15 A. Betsy Blackford and/or Dennis Howard.

16 Q. Okay. And tell me what you recall of  
17 your meetings with them.

18 A. Well, they were involved -- we were  
19 involved in negotiations with the attorney general  
20 and the company and I believe the staff to try to get  
21 resolution of some of the issues. Like I say, we had  
22 an earnings sharing mechanism case where there was  
23 not all the interveners from the rate case. It was  
24 just -- just LG&E/KU, the attorney general, KIUC I  
25 believe were the only interveners. That case was



1 intertwined with the rate case, so we were trying to  
2 settle that matter as well as the rate case.

3 I remember going down to the attorney  
4 general's office on a Friday afternoon to meet with  
5 LG&E/KU and the attorney general. And I remember at  
6 that point the staff lawyer, Richard Raff, was called  
7 by the cell -- he was not at the meeting, but we got  
8 to the point where everyone, including the attorney  
9 general, felt it was appropriate to call Mr. Raff,  
10 and we did on his cell phone. This was in context of  
11 the settlement negotiations of all the cases.

12 Q. And was the attorney general present  
13 in the room?

14 A. Absolutely. In fact, we placed the  
15 call from their conference room to Mr. Raff. I  
16 believe -- I believe he was at Churchill Downs  
17 attending the race right before the Kentucky Derby.  
18 I believe that was a Friday afternoon we talked to  
19 him. We were very close to settling all the cases,  
20 and for some reason we all felt, including the  
21 attorney general, that we needed to get a staff's  
22 input. So I believe a call was placed to him from  
23 the attorney general's office. I'm sure.

24 Q. Okay. So that I have a sense of it,  
25 who was in the attorney general's office?

1           A.       Probably -- probably Dennis Howard and  
2 Betsy Blackford.

3           Q.       And yourself.

4           A.       Yes.

5           Q.       LG&E and KU were not present?

6           A.       Oh, they were there.

7           Q.       They were all there.

8           A.       Yes, yes.

9           Q.       And do you recall who from LG&E and  
10 KU?

11          A.       No. It would be the normal cast of  
12 characters.

13          Q.       All right. Mr. Riggs?

14          A.       Yes.

15          Q.       And anybody else beside those three?

16          A.       No. Well, other people from LG&E/KU,  
17 their normal regulatory team, but no other parties.

18          Q.       All right, sir. And call made to  
19 Mr. Raff.

20          A.       Yes.

21          Q.       Anybody besides Mr. Raff from the PSC  
22 participating in this discussion?

23          A.       Not on that phone call, no.

24          Q.       All right. And how long did the  
25 conversation occur; do you recall?

1           A.           With Mr. Raff -- we met -- I drove  
2 down to Frankfort Friday afternoon to meet with the  
3 attorney general and the companies. We were very  
4 close to getting a resolution. I remember -- I don't  
5 remember what the issue was, but there was one  
6 sticking point issue. And Dennis Howard told  
7 Kendrick, "Don't come down unless you're willing to  
8 budge on that issue." And we all came on over. At  
9 first the company didn't budge on that issue,  
10 whatever it was. Eventually they were worn down and  
11 they did make some concessions.

12                       I think the phone call went out to  
13 Mr. Raff to -- I don't know, to get his impression,  
14 his opinions. We all felt it was appropriate to call  
15 Richard at that time, and ultimately, as you know, of  
16 course, the attorney general pulled out of the  
17 settlement that we reached on revenue requirements.

18           Q.           How long was Mr. Raff on the phone?

19           A.           Probably ten minutes, fifteen minutes.

20           Q.           All right, sir. And do you have a  
21 recollection of the conversation as it involved  
22 Mr. Raff? If you don't, you don't.

23           A.           It was involved with the rate-making  
24 aspects of the case. And this case was also  
25 complicated by the fact that I believe there was an

1 environmental surcharge issue intertwined in all  
2 these cases involving KU and the appropriate  
3 rate-making for the power contract that it has with  
4 Owensboro Municipal Utilities and how that would be  
5 factored into the rate case versus the environmental  
6 surcharge. And I think that could have been one of  
7 the issues discussed that afternoon at the attorney  
8 general's office.

9 Q. All right, sir. Do you have a  
10 recollection of that being the day before Derby?

11 A. I'm pretty sure of that. I'm pretty  
12 sure of that because I don't think Richard Raff,  
13 who -- typically goes to the Derby or horse races in  
14 general, but he was not in the office on Friday and  
15 we reached him on his cell phone. I believe that's  
16 where he was.

17 Q. All right. And do you know where the  
18 attorney general was? Was he in his office?

19 A. I've only met the attorney general one  
20 time at the commission, and I have no idea where  
21 he -- where he personally was at this time.

22 Q. All right. Did he participate in the  
23 conversation?

24 A. No.

25 Q. He did not. Just his staff.

1           A.       Yes.

2           Q.       Okay.  Other than that particular  
3 meeting, do you have a recollection of having met  
4 with the attorney general's personnel other than as a  
5 meeting of all the parties involved?

6           A.       Oh, absolutely.  Meeting in the sense  
7 of phone calls.

8           Q.       Phone calls and/or --

9           A.       Absolutely.  We had numerous calls  
10 with Dennis Howard and Betsy Blackford about the  
11 case, about their position versus the company's  
12 position, where we could compromise, where he could  
13 compromise, what -- where our case was strong, where  
14 our case was weak, how we would resolve all of these  
15 intertwined cases, these environmental surcharge  
16 cases, the earnings sharing mechanism case, the gas  
17 case, the two electric cases.  And so there were a  
18 lot of phone calls, as there would typically be on a  
19 case of that complexity in any state in any  
20 jurisdiction.  And I've practiced in front of  
21 probably 15 public utility commissions around the  
22 country.  That's absolutely standard.

23          Q.       All right, sir.  Just in terms of  
24 ballparking the number, any way for you to do that  
25 with the attorney general?

1           A.       With the attorney general's lawyers,  
2 Ms. Blackford and Mr. Howard, couldn't ballpark the  
3 number. Well, I'll try to ballpark the number.  
4 Probably in those -- in those hectic days right  
5 before we had these marathon negotiation sessions at  
6 the commission, probably a half dozen phone calls.

7           Q.       Okay. Other than the ten-minute phone  
8 call when Mr. Raff was presumably at the racetrack,  
9 do you recall him participating in any other  
10 conversations other than those where all parties were  
11 present?

12          A.       First of all, I don't remember or it  
13 wouldn't be out of character if he was. Remember,  
14 all parties -- in the rate case there were lots of --  
15 pretty much anybody can intervene in a rate case.  
16 The commission has very loose standards, as do all  
17 commissions, and you get any number of very minor  
18 parties. For a while there, there was an individual  
19 out of Louisville, just a residential customer named  
20 Robert Madison who would intervene and come to the  
21 commission and watch as sort of a hobby. So he was a  
22 rate payor, so he had standing, the commission ruled.  
23 This rate case had department of -- Kentucky  
24 Department of Energy, who fully participated in the  
25 settlement talks at the commission but was in no way

1 part of the core settlement negotiations because they  
2 didn't file revenue requirements testimony.

3 See, people have the right to state  
4 their positions in pretrial testimony. And if they  
5 don't testify on it, the presumption is that they  
6 don't have a position on it. So these negotiations  
7 probably early on were divided between core and  
8 noncore participants.

9 Kroger Company was a core participant.  
10 They filed testimony on revenue requirements and  
11 other things and -- so -- but some of these -- these  
12 secondary players -- I don't remember who it was.  
13 There's probably -- for example, some of the low  
14 income groups, Joe Childress and some of his clients,  
15 they may not have participated in very many  
16 conversations at all. They were -- and they probably  
17 didn't file testimony to speak of either. So that's  
18 the way these rate cases are -- are handled  
19 everywhere that I'm -- that I practice.

20 Q. All right, sir. Going back to my  
21 question, you do recall participating in what you  
22 described as marathon negotiations, 3rd, 4th, 5th?

23 A. At the commission.

24 Q. At the commission.

25 A. Yes.

1           Q.       Okay.  And with regard to those  
2           conversations, do you recall any sidebar  
3           conversations with any member of the staff where  
4           other -- all persons did not participate?

5           A.       I'm sure there were.  Sidebar in the  
6           sense that we were there for three solid days and  
7           into the nights.  And the way those negotiations went  
8           was all the rate payors, including staff typically,  
9           would be on one side, and then the companies, the  
10          utilities, would be isolated on the other side.  And  
11          there were oftentimes situations where the company  
12          was asked to leave the room and all of the rate payor  
13          entities, including staff, conferred about what would  
14          be a reasonable counteroffer to what the utility was  
15          proposing.  The utility was isolated and off by  
16          themselves, and it was typically all of the other  
17          parties who sort of teamed up on the utilities, which  
18          also is standard fair for the way these cases go all  
19          around the country.

20          Q.       All right.  I may have misled you with  
21          the use of the term "sidebar."  I take it that this  
22          was a negotiation amongst a group of people that was  
23          fluid in nature but that ultimately all conversations  
24          reported to the whole group as a function of the  
25          negotiation.



1           A.       Yes, absolutely. That's exactly the  
2 way it -- it resembled a large bankruptcy settlement  
3 process where there would be big meetings followed by  
4 large spaces of time where people were conferring  
5 with their clients and trying to work things out.  
6 And in that context, I mean, you couldn't help  
7 talking to someone from the staff, although this  
8 staff is particularly close to the vest, particularly  
9 tight-lipped and particularly very sensitive about  
10 not communicating very much to anybody, far more  
11 close to the vest than any other staff I've dealt  
12 with. So to the extent that there were conversations  
13 with staff, they were probably fairly limited.

14           Q.       All right, sir. And I take it part of  
15 this whole large process of negotiation with all the  
16 parties.

17           A.       Yes. It -- everybody who was a party  
18 to the case was invited to these large settlement  
19 negotiations. And like I say, it was pretty much  
20 everybody against the utilities. The low income  
21 people had their little pet issue which got resolved  
22 in the settlement. The department -- Kentucky  
23 Department of Energy had their energy conservation  
24 pet issue that got resolved as part of the  
25 settlement. They were in it for very limited

1 purposes, the parties that were sort of more global,  
2 more KIUC, the attorney general, the staff and the  
3 companies. The other parties were second tier and  
4 had very limited understanding and very limited  
5 issues.

6 Q. What was your sense of how many days  
7 the negotiation took?

8 A. I'm going from these three sheets that  
9 it was three days, and that sounds about right. Oh,  
10 and North American Stainless was in there as well,  
11 and they had -- they had their own particular issue,  
12 and they had probably three or four lawyers at a time  
13 in there.

14 Q. And when you say three days, 4th, 5th  
15 and 6th, I take it?

16 A. I'm assuming that those are correct.

17 Q. All right, sir. The 12th is the date  
18 that the settlement was announced. Do you have a  
19 recollection of having been here at the Public  
20 Service Commission?

21 A. Well, then, I am confused because I  
22 remember we announced the settlement -- there were  
23 two aspects of the settlement. There was revenue  
24 requirements and then there was everything else.  
25 Everyone, including the attorney general, agreed to

1 the "everything else" settlement, and that was  
2 announced whenever it was announced. If it was  
3 announced May 12, then the agreement was reached the  
4 day before, would be my recollection.

5           There was a tentative agreement the  
6 night before on revenue requirements, but then the  
7 next morning the attorney general pulled out of the  
8 deal. But my recollection was we negotiated -- we  
9 clearly went to the hearing at the commission. There  
10 was an announcement to the commissioners that maybe  
11 it would be more productive if we all broke off and  
12 started settlement talks rather than hold the  
13 hearing. The commissioners agreed and we started  
14 these marathon sessions. I thought that as a result  
15 of those marathon sessions we stayed there until we  
16 announced a deal on the nonrevenue requirements  
17 aspects of the case. And then everybody except the  
18 attorney general who agreed and then unagreed,  
19 announced an agreement on the revenue requirements.  
20 That's my recollection of how it occurred.

21           Q.       All right. And you have a  
22 recollection and memory of an announcement being made  
23 by the parties that there was some form of settlement  
24 on whatever issues were agreed to?

25           A.       I believe so. There must have been.

1           Q.       And do you have knowledge of whether  
2 or not a more formal agreement was subsequently  
3 submitted?

4           A.       Oh, perhaps that was it.  Maybe the  
5 more formal agreement was issued on May 12th, but we  
6 announced agreement I guess maybe the last of these  
7 May dates.

8           Q.       May 6th?

9           A.       May 6th.  That could have very well  
10 been what happened.

11          Q.       All right, sir.  Tell me what you  
12 recall about the process whereby the attorney general  
13 you thought was in agreement on both issues and then  
14 suddenly you were informed that he was not.  When I  
15 say "attorney general," I'm really talking about his  
16 staff.

17          A.       They agreed -- they agreed to the  
18 nonrevenue requirements issue where they did very  
19 well.  They got their litigation position on many  
20 issues on cost allocation.  Then there was also  
21 tentative agreement on revenue requirements.  We'd  
22 been back and forth and back and forth, and we all  
23 reached a number that we thought was -- was fair.  
24 And then the next morning we learned that the  
25 attorney general himself had decided that the deal

1 wasn't good enough, apparently. And then we were  
2 informed that they were out of everything except the  
3 revenue requirements.

4                   And by the way, I should add, the  
5 biggest -- the biggest victim of that, so to speak,  
6 was the utilities, because what happened to the  
7 utilities is they went forward with their agreement  
8 and gave the attorney general a free shot. In other  
9 words, we had established a ceiling, an effective  
10 ceiling that in reality the rate increase was not  
11 going to be more than the announced revenue  
12 requirements settlement. So the company was at risk  
13 that it may go lower, but it certainly wasn't going  
14 to go higher once it was publicly agreed to at that  
15 number.

16                   So the utilities gave the attorney  
17 general a free shot to try to get -- to try to get a  
18 lower revenue requirement. But, of course, the  
19 attorney general was not successful because the  
20 commission ultimately concluded that the revenue  
21 requirement agreed to by everyone except the attorney  
22 general was reasonable.

23                   Q.       And you say -- your use of the term  
24 "revenue requirement," am I taking that as the  
25 overall rate increase?

1           A.       Yes.

2           Q.       So to put it in a sort of vernacular,  
3 the attorney general did not agree -- well, he agreed  
4 and then disagreed subsequently to the amount of the  
5 rate increase.

6           A.       Yes.

7           Q.       But he was at all times in agreement  
8 with how the increase was to be divided up.

9           A.       Yes.

10          Q.       Okay.

11          A.       Where -- we structured a settlement  
12 where the attorney general got its litigation  
13 position on that issue. Did as well as it could have  
14 possibly done.

15          Q.       All right, sir. Other than -- this is  
16 you, Mike Kurtz personally. Other than the  
17 10 minutes of phone conversation where other parties  
18 were present with Mr. Raff, were you aware of any  
19 other conversations between any of the parties with  
20 PSC staff other than during this large negotiation  
21 period?

22          A.       Like I said at the beginning, it would  
23 have been common to talk to the staff attorney about  
24 procedural matters, how the case progressed and these  
25 type of things. It would not be uncommon for

1 Mr. Howard or Ms. Blackford to pick up the phone and  
2 call Mr. Raff about the same topics. So it's very  
3 possible that I spoke to Mr. Raff about something  
4 related to the case other than that one horse race  
5 phone call. It's very possible. I don't remember.

6 Q. Okay. You simply have no  
7 recollection.

8 A. Correct.

9 Q. All right. Now, let me ask you that  
10 same question. Other than Mr. Raff, did you have any  
11 conversations with any other member of the staff  
12 other than at the joint negotiating session of all  
13 the parties?

14 A. Not that I recall. I can say  
15 categorically I never spoke to any of the  
16 commissioners. And I'm fairly well certain I spoke  
17 to no member of the staff, although that is a far  
18 more rare occurrence that I would have a technical  
19 accounting type of question where I'd pick up the  
20 phone and call a staff person on that. I don't  
21 recall if it happened during this rate case or not.  
22 It would certainly -- if such a call occurred, it  
23 would have been advert -- I mean, the attorney  
24 general and KIUC are on the same side of revenue  
25 requirements, of how big the rate increase should be.

1 We both want it to be as small as possible. So the  
2 attorney general and all of the rate payors gang up,  
3 so to speak, on the utility, who is the only party to  
4 the room that wants the rate increase to be as large  
5 as possible. Staff sides with the rate payors in an  
6 effort to get the rate increase to be as low as  
7 possible.

8 Q. Let me give you some names of some  
9 individuals who are staff members and/or  
10 commissioners and ask you a specific question,  
11 whether you had any conversations with any of these  
12 persons other than as part of the negotiation where  
13 all parties were present.

14 Ms. Beth O'Donnell?

15 A. No.

16 Q. Okay. Chairman Mark David Goss?

17 A. No.

18 Q. Commissioner Williams, Ellen Williams?

19 A. No.

20 Q. Commissioner Marty Huelsman?

21 A. No. And I would just say about Ellen  
22 Williams, I believe her sort of -- her first day or  
23 confirmation --

24 Q. Reception?

25 A. Reception was on a Monday and the



1 hearing started on Tuesday. I didn't even make it to  
2 the reception because I was preparing for the  
3 hearing.

4 Q. Fair enough, sir. Commissioner Gary  
5 Gillis?

6 A. No, not about this case. Was he even  
7 on the commission at that time?

8 Q. He was phasing out. He did attend  
9 some of the hearings.

10 A. Okay. The answer is no, did not talk  
11 to him.

12 Q. All right. Mr. Tom Dorman, who was  
13 the executive director and in transition.

14 A. No, that I -- not that I recall.

15 Q. Okay. Isaac Scott, member of the  
16 staff?

17 A. Not that I recall.

18 Q. Bob Amato, who you may or may not  
19 know?

20 A. Don't know him. Definitely did not  
21 talk to. I do know who he is, but he's not the type  
22 of person I would ever --

23 Q. Okay. Andrea Edwards.

24 A. Definitely not.

25 Q. Faud Sharifi?

1 A. Definitely not.

2 Q. Martha Morton?

3 A. Morton? Definitely not.

4 Q. Jeff Shaw?

5 A. Don't recall. I have spoken to Jeff  
6 over the last 18 years on the phone, and I don't  
7 remember what the cases were.

8 Q. You have no present sense recollection  
9 of having talked to Mr. Shaw about these rate cases?

10 A. I do not know for certain.

11 Q. All right. And finally, I've been  
12 asking you about you, Mike Kurtz, with regard to  
13 these conversations. Do you know of any  
14 conversations between the staff and/or the  
15 commissioners and other parties not at a settlement  
16 discussion?

17 A. I don't know.

18 Q. Okay. And nobody has made you aware  
19 of any.

20 A. No, I certainly don't -- no, I don't  
21 know.

22 MR. GOLDBERG: Fair enough. That's  
23 all I have.

24 THE WITNESS: Okay.

25 MR. GOLDBERG: Appreciate it much.

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(STATEMENT CONCLUDED AT 11:45 A.M.)

\* \* \*

1 STATE OF KENTUCKY )(
2 COUNTY OF JEFFERSON )( SS:

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I, ELLEN L. COULTER, Notary Public, State of Kentucky at Large, hereby certify that the foregoing sworn statement was taken at the time and place stated in the caption; that the appearances were as set forth in the caption; that prior to giving testimony the witness was first duly sworn by me; that said testimony was taken down by me in stenographic notes and thereafter reduced under my supervision to the foregoing typewritten pages and that said typewritten transcript is a true, accurate and complete record of my stenographic notes so taken.

I further certify that I am not related by blood or marriage to any of the parties hereto and that I have no interest in the outcome of captioned case.

My commission as Notary Public expires November 5, 2007.

Given under my hand this the 3rd day of August, 2005, at Louisville, Kentucky.

Handwritten signature of Ellen L. Coulter

ELLEN L. COULTER
NOTARY PUBLIC

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I, the undersigned, MIKE KURTZ, do hereby certify that I have read the foregoing sworn statement, and that, to the best of my knowledge, said sworn statement is true and accurate, with the exception of the corrections, if any, listed on the errata sheet.

*Mike Kurtz*

MIKE KURTZ

Subscribed and sworn to before me this \_\_\_\_\_ day of Sept 29, 2005.

*Kimberly Walton*



PUBLIC  
KIMBERLY WALTON  
Notary Public, State of Ohio  
My commission expires 08/26/2009

My commission expires \_\_\_\_\_

COULTER REPORTING, LLC  
101 EAST KENTUCKY STREET, SUITE 200  
LOUISVILLE, KY 40203

ERRATA SHEET

NAME MIKE KURTZ DATE OF DEPOSITION 2/25/05

After having read my deposition, I wish to make the following changes:

Page 14 Line 2  
Change Kenneth to Kent  
Reason for change \_\_\_\_\_

Page 22 Line 22  
Change rate payor to ratepayer  
Reason for change \_\_\_\_\_

Page 24 Line 8  
Change rate payors to ratepayers  
Reason for change \_\_\_\_\_

Page 29 Line 3  
Change revenue requirements to non-revenue requirements  
Reason for change \_\_\_\_\_

Page \_\_\_\_\_ Line \_\_\_\_\_  
Change \_\_\_\_\_  
Reason for change \_\_\_\_\_

Page \_\_\_\_\_ Line \_\_\_\_\_  
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Reason for change \_\_\_\_\_

# GOLDBERG & SIMPSON, PSC

June 29, 2005

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Boehm Kurtz & Lowry  
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CHARLES H. CASSIS  
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JAN M. WEST  
SHERY R. PORTER  
K. GAIL RUSSELL  
DAVID B. GRAY  
MARC A. YUSMAN  
JERROLD R. FERCHIK\*\*  
WAYNE F. WILSON  
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RICHARD T. FRANK  
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J. MICHAEL WELLS  
BRYAN C. PIERCE  
STACEY A. HUSE  
KEVIN P. WEIS  
MATTHEW J. MARTINEZ  
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OF COUNSEL  
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MARY A. MAPLE (1993-2003)

\*ALSO ADMITTED OHIO  
\*\*ALSO ADMITTED INDIANA  
\*ALSO ADMITTED ALABAMA  
\*\*ALSO ADMITTED DISTRICT OF COLUMBIA  
\*ALSO ADMITTED ILLINOIS

RE: Before the Public Service Commission in the Matter of: Application of Louisville Gas and Electric Company for an Adjustment of the Gas and Electric Rates, Terms and Conditions; CASE NO. 2003-00433; and, in the Matter of: Application of Kentucky Utilities Company for an Adjustment of the Electric Rates, Terms and Conditions; CASE NO. 2003-00434

Dear Mr. Kurtz:

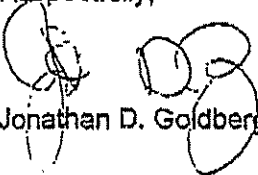
The undersigned is special general counsel to the Public Service Commission ("PSC").

We are conducting a civil investigation on behalf of the PSC of potential ex parte communication(s) in the above-referenced case. We have identified you as a participant in the proceeding by analysis of the public record of this case. We will be seeking the cooperation of all the participants in this case, and would very much appreciate your assistance by giving a voluntary statement concerning the proceedings in this case. As I am sure you know, the PSC does possess the power to command your presence by subpoena. We trust and hope that will be unnecessary.

I estimate your statement will require only 30 to 45 minutes, and wish to take it at the office of the PSC in Frankfort or if you unavailable in person telephonically. Please notify my office by contacting Ms. Michaela Nowell of a time that will accommodate your schedule on July 25, 2005.

I would very much appreciate your prompt response, so that the investigation may be completed as soon as possible. If you have any questions, please do not hesitate to call upon me.

Respectfully,

  
Jonathan D. Goldberg



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## Hearing Sign-In Sheet

Hearing: LG+E/KU
Case Number: 2003-00433/2003-00434
Location: HR#1
Today's Date: 5/4/04

NAME	COMPANY
Allyson Sturgeon	Counsel for LG+E/KU
Alex Cornes	Counsel for LG+E/KU
Mike Kurtz	KIUC
John Wolfgram	LG+E/KU
Paul Thompson	} }
Chris Henneman	
Bertie Lockenill	
Robert Rowland	
Robert W. ...	
Kent W. Blum	
Walter Sales	
John McCall	
Don Wiggins	Concerned Citizens of Businessmen of Central Va, Inc
David A. McCormick	US Dept. of Defense or Federal Agencies
Vil Stuffer	LG+E
BRAD RIVER	LG+E
HOWARD BUSTO	LG+E
Dennis Howard	OAR
Hebert Bowman	FEWPO

**EXHIBIT**

KURTZ  
7/25/05 2



## Hearing Sign-In Sheet

Hearing: LG+E / KU
Case Number: 2003-00433 / 2003-00434
Location: HR#1
Today's Date: 5/4/04

NAME	COMPANY
David Bloom	Kroger
Jay Brew	NAS
Rebecca Brangiers	KACA
Joe Despaen	Protec.
Martyn Gidler	LEBB
Edward Gardner	LFUGG
Jack Burrell	COMMUNITY ACTION COUNCIL
Maquel Sanchez	NAS
William Jones	NAS
Scott Douglas	Capital Link (NAS)
Geoff Young	Ky. Division of Energy
Chuck Burchel	NAS
Stephen Ceebs	WDRB-TV
Tim Skidmore	EPPC - OLS
Bob Kelly	MHNA + POWER
Ben Allen	Yunker + Associates
Joe Childers	KACA / CAC
Carl Weaver	AT Gen Otc

## Hearing Sign-In Sheet

Hearing: LG+E/KU
Case Number: 2003-00433/2003-00434
Location: HR#1
Today's Date: 5/4/04

NAME	COMPANY
Bobby Bhatnagar	AAE
Robert Venker	AAE
Chris Whelan	LG+E
Chris Kroling	"
Ardi Markov	"
Mike Beza	"
DAVID BOEHM	RIUC
Frank E. ...	ONCAMP LG+E/KU
Clay Munday	LG+E
Pam ...	LG+E
DAVE BARBOUR	CJ
DR. ...	LG+E
John ...	Stand Energy
Pat ...	NAE
... ..	A O
... ..	ATTY

## Hearing Sign-In Sheet

Hearing:	LG+E / KU
Case Number:	2003-00433/2003-00434
Location:	HR 41
Today's Date:	5/4/04

NAME	COMPANY
Marlene Herrington	Court Reporter
David Freiberg	KU / LG+E
Valerie Smartt	LG+E
Bill Wolf	Courier Journal
Keith Velade	MHN.A
Jon Parkers	CAC
Carol Mink	WHAS TV
Forrest Clann	WHAS TV
NAT Adams	North American Stainless
Carla Wade	WTVQ
Charlie Watson	WTVQ
Russel Hudson	LG & E
Tom Prisco	DOD

Hearing Sign-In Sheet

Hearing: ,	LG+E/KU
Case Number:	2003-00433/2003-00434
Location:	HR#2
Today's Date:	5/5/04

NAME	COMPANY
David A. McCormick	DOD
Thomas J. Prisco	DOD
Inis Skidmore	EPAC
Mike Kurtz	KIUC
Carl Weaver	AG/ARAC
Manlene Herington	LOWT REPORT
Chris Uhlend	LG+E
Chip Keeley	"
Robert Hender	AG
William H Jones	NAS
Joe Childers	KACA/CAC
Don Killeby	MHNA/POWER
Keith Velade	MHNA
BRAD RIVER	LG/E/KU
Maquiel Sanchez	NAS
Robert Ramsey	LG/E
Robert Watt	LG/E
Walt Sales	LG/E

## Hearing Sign-In Sheet

Hearing: LG+E / KU
Case Number: 2003-00433 / 2003-00434
Location: HR#1
Today's Date: 5/5/04

NAME	COMPANY
Allison Sturgeon	Counsel for LG+E / KU
Gret Corbett	" " "
Howard Bush	LGE
Mark Beale	C. Ross Brumwell
Frank Baker	ONW LG+E / KU
David Brown	Kroger
Marilyn Galus	LGE
Rusty Hudson	LGE
John Wolfson	LGE / KU
ORRIN	"
J. B. Bick	AEP
G. Powell	Carter
John Dosker	Stant Energy Corp.
Geoffrey Young	KY Division of Energy
Charlie Freidant	LGE
Benny (unclear)	LGE
Justin (unclear)	E.ON

## Hearing Sign-In Sheet

Hearing: LG+E/KU
Case Number: 2003-00433/2003-00434
Location: HR#1
Today's Date: 5/5/04

NAME	COMPANY
Paul Thompson	LG+E
Tom Garcia	Peine Group
Bob Carr	
Dennis Nardoff	OAG
Clay Mynler	LG+E
Chris Ginneth	LG+E
Ken Miller	LG+E
Robert A Bowman	FEU/PB
David A McCormick	DOD
CHARS HELMANN	UOE
Clay Mynler	"
Chris Whelan	LG+E
Chip Keeley	"
DAVE CARBON	LPUCB
Jay Brown	NAS
Paul Johnson	AG's Office
<del>Bob Carr</del>	
Betsy Blackford	OAG

## Hearing Sign-In Sheet

Hearing: LGE/KU
Case Number: 2003-00433 + 2003-00434
Location: HR#1
Today's Date: 5/6/04

NAME	COMPANY
Kent Blank	LGE/KU
Robert Watt	LGE/KU
HOWARD BUSH	LGE/KU
David A. McCormick	DOD
Thomas J. Prisco	DOD
David Gray	KU/KU
Earl M. Palmer	AUS Consultants
Walter Sales	LGE/KU
Allyson Simpson	Counsel LGE/KU
Greg Cornett	" " "
<del>Robert Rimmer</del>	LGE
RONALD RIVES	LGE/KU
David Beckman	AIRC
Melissa Kaddy	"
Mike [unclear]	LGE
Dennis Howard	AG
[unclear]	LGE
Steve Seelye	LGE

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addition [1] 7/12	attended [2] 13/20 13/23	card [1] 16/2
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