

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF LOUISVILLE	)	
GAS AND ELECTRIC COMPANY FOR A	)	CASE NO.
DECLARATORY ORDER REGARDING THE	)	2016-00317
PROPER METHOD OF MUNICIPAL FRANCHISE	)	
FEE RECOVERY	)	

ORDER

On June 16, 2017, Louisville/Jefferson County Metro Government (“Louisville Metro”) filed a motion requesting that an oral argument on the pending legal issues be scheduled. Louisville Metro also seeks to withdraw the second of its three claims that the franchise fee at issue should be recovered by all of Louisville Gas and Electric Company’s (“LG&E”) gas customers who benefit from Louisville Metro’s rights-of-way. This second claim will be referred to as Issue 2 herein. In support of its request to schedule oral argument, Louisville Metro asserts that the issues before the Commission are primarily legal issues, which will require an interpretation of the relevant laws and Commission precedent. As such, Louisville Metro states that an oral argument would assist the Commission in its consideration of these legal issues. In support of its request to withdraw Issue 2, Louisville Metro states that upon further review of the record in this matter it desires to withdraw Issue 2 in order to narrow the scope of inquiry.

On June 23, 2017, LG&E filed a response objecting to Louisville Metro’s motion. LG&E contends that Louisville Metro’s request to withdraw Issue 2 should be denied because Louisville Metro has raised three related claims regarding the assessment of

any franchise fee collected under the franchise agreement at issue, and all three legal issues should be adjudicated by the Commission, given the inextricable nature of those claims. LG&E argues that the franchise agreement at issue in this matter specifically provides that the Commission will resolve all disputes regarding the recovery of the franchise fee. Lastly, LG&E contends that a briefing schedule be established in lieu of a hearing so that each party will be allowed to present its legal arguments, and that following submission of briefs, oral argument can then be scheduled if the Commission determines that such is needed.

On June 27, 2017, Louisville Metro filed a reply in support of its motion, contending that it has the burden of proof with respect to the issues it has raised and that the best method to carry that burden is via oral arguments. Louisville Metro also asserts that Issue 2 is independent from Louisville Metro's other two claims, and that withdrawing Issue 2 from consideration would promote administrative economy by narrowing the scope of the Commission's investigation.

On July 5, 2017, LG&E filed a motion requesting leave to file a sur-reply, arguing that the sur-reply was necessary to correct certain inaccurate statements made by Louisville Metro. LG&E asserts that Louisville Metro's statement asserting that it has never alleged that the franchise fee should be collected in base rates is inconsistent with Louisville Metro's other statements in the record. LG&E also asserts that judicial economy is best served by having all the pending issues resolved at once, rather than in piecemeal fashion.

On July 10, 2017, Louisville Metro filed a response to LG&E's motion for leave to file a sur-reply. Louisville Metro contends that LG&E has not provided a sufficient reason

to permit it to submit a sur-reply. Louisville Metro reiterates that it has never alleged that all of LG&E's gas customers should pay for the franchise fee through base rates.

Having reviewed the pleadings and being otherwise sufficiently advised, the Commission finds that Louisville Metro has established good cause to permit the scheduling of a hearing for oral arguments on the legal issues presented in this matter. The Commission further finds that the parties should file briefs addressing the legal issues in advance of the hearing for oral arguments. Lastly, the Commission finds that all of the claims raised by Louisville Metro are interrelated and should be fully adjudicated in this proceeding, including Issue 2 raised by Louisville Metro. Accordingly, the Commission will deny Louisville Metro's request to withdraw its Issue 2.

IT IS THEREFORE ORDERED that:

1. Louisville Metro's motion requesting the scheduling of oral arguments is granted.
2. Louisville Metro's motion requesting approval to withdraw its Issue 2 is denied.
3. The parties shall file simultaneous initial briefs addressing the legal issues presented in this matter on or before August 31, 2017.
4. The parties shall file simultaneous reply briefs on or before September 15, 2017.
5. Any request for a formal evidentiary hearing, along with a detailed description of material issues of fact, shall be submitted on or before September 15, 2017.
6. A hearing for receiving oral arguments on the legal issues presented in this matter shall be held on Thursday, September 28, 2017, at 9:00 a.m. Eastern Daylight

Time, at the offices of the Public Service Commission at 211 Sower Boulevard, Frankfort, Kentucky.

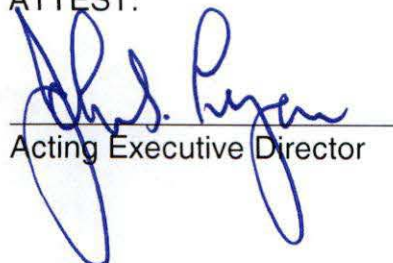
7. LG&E shall present its oral argument first, followed by the presentation of oral argument from Louisville Metro.

8. If a formal evidentiary hearing is requested by a party to this proceeding, such hearing will be held at the conclusion of the oral arguments scheduled for September 28, 2017.

By the Commission



ATTEST:

  
Acting Executive Director

Case No. 2016-00317

\*Honorable Allyson K Sturgeon  
Senior Corporate Attorney  
LG&E and KU Energy LLC  
220 West Main Street  
Louisville, KENTUCKY 40202

\*Robert Conroy  
LG&E and KU Energy LLC  
220 West Main Street  
Louisville, KENTUCKY 40202

\*Gregory T Dutton  
Goldberg Simpson LLC  
9301 Dayflower Street  
Louisville, KENTUCKY 40059

\*Louisville Gas and Electric Company  
220 W. Main Street  
P. O. Box 32010  
Louisville, KY 40232-2010

\*Jody Kyler Cohn  
Boehm, Kurtz & Lowry  
36 East Seventh Street  
Suite 1510  
Cincinnati, OHIO 45202

\*Louisville Gas and Electric Company  
220 W. Main Street  
P. O. Box 32010  
Louisville, KY 40232-2010

\*Honorable Kurt J Boehm  
Attorney at Law  
Boehm, Kurtz & Lowry  
36 East Seventh Street  
Suite 1510  
Cincinnati, OHIO 45202

\*Honorable Kendrick R Riggs  
Attorney at Law  
Stoll Keenon Ogden, PLLC  
2000 PNC Plaza  
500 W Jefferson Street  
Louisville, KENTUCKY 40202-2828

\*Michael J O'Connell  
Jefferson County Attorney  
Brandeis Hall of Justice  
600 West Jefferson St., Suite 2086  
Louisville, KENTUCKY 40202

\*Honorable Michael L Kurtz  
Attorney at Law  
Boehm, Kurtz & Lowry  
36 East Seventh Street  
Suite 1510  
Cincinnati, OHIO 45202