

**COMMONWEALTH OF KENTUCKY**  
**BEFORE THE PUBLIC SERVICE COMMISSION**

<b>In the Matter of:</b>	)	
	)	
<b>KENTUCKY CABLE TELECOMMUNICATIONS ASSOCIATION,</b>	)	
	)	
<b>COMPLAINANT</b>	)	<b>CASE NO. 2014-00025</b>
	)	
<b>v.</b>	)	
	)	
<b>LOUISVILLE GAS AND ELECTRIC COMPANY AND KENTUCKY UTILITIES COMPANY,</b>	)	
	)	
<b>DEFENDANTS.</b>	)	

**ANSWER OF DEFENDANTS**  
**LOUISVILLE GAS AND ELECTRIC COMPANY**  
**AND KENTUCKY UTILITIES COMPANY**

In accordance with the Kentucky Public Service Commission’s (“Commission”) Order of March 7, 2014 in the above-captioned proceeding, Louisville Gas and Electric Company (“LG&E”) and Kentucky Utilities Company (“KU”) (collectively, the “Companies) respectfully submit this Answer to the Complaint of the Kentucky Cable Telecommunications Association (“KCTA”) filed on January 24, 2014. In support of its Answer, and in response to the specific averments contained in said Complaint, the Companies state as follows:

1. The Companies admit the allegations in paragraph 1 of the Complaint.
2. LG&E admits the allegations in paragraph 2 of the Complaint.
3. KU admits the allegations in paragraph 3 of the Complaint.
4. With regard to the allegations in paragraph 4 of the Complaint, the Companies

admit that the Complaint pertains to the Companies’ pole attachment rates, but specifically deny that the rates “are unreasonable in violation of Kentucky law.”

5. With regard to the allegations in paragraph 5 of the Complaint, KRS 278.040 and *Kentucky CATV Ass'n v. Volz*, 675 S.W.2d 393 (Ky. App. 1983) speak for themselves and the Companies deny any allegation or characterization inconsistent with same.

6. With regard to the allegations in paragraph 6 of the Complaint, KRS 278.040 and *Kentucky CATV Ass'n v. Volz*, 675 S.W.2d 393 (Ky. App. 1983) speak for themselves and the Companies deny any allegation or characterization inconsistent with same.

7. With regard to the allegations in paragraph 7 of the Complaint, KRS 278.030 speaks for itself and the Companies deny any allegation or characterization inconsistent with same.

8. With regard to the allegations in paragraph 8 of the Complaint, the Companies acknowledge Administrative Case No. 251 and the Orders therein, which speak for themselves, and deny any allegation or characterization inconsistent with same. The Companies affirmatively state that the Commission has reviewed and approved their pole attachment rates and the methodology used to calculate those rates.

9. With regard to the allegations in paragraph 9 of the Complaint, the Companies state that KRS 278.260 speaks for itself and deny any allegation or characterization inconsistent with same.

10. With regard to the allegations in paragraph 10 of the Complaint, the Companies state that KRS 278.270 speaks for itself and deny any allegation or characterization inconsistent with same.

11. The Companies admit the allegations in paragraph 11 of the Complaint and affirmatively state that LG&E also sought to adjust its gas rates.

12. The Companies admit the allegations in paragraph 12 of the Complaint.

13. With regard to the allegations in paragraph 13 of the Complaint, the Companies:
  - (a) Admit that KCTA moved to intervene in Cases No. 2009-00548 and No. 2009-00549;
  - (b) Lack sufficient information and knowledge to form a belief as to the truth of the allegations regarding KCTA's motivations in intervening and therefore deny same; and
  - (c) Affirmatively deny that the Companies' rates contravened the Commission's methodology or were unreasonable.
14. The Companies admit the allegations in paragraph 14 of the Complaint.
15. With regard to the allegations in paragraph 15 of the Complaint, the Stipulation and Recommendation, and exhibits thereto, speak for themselves and the Companies deny any allegation or characterization inconsistent with same.
16. The Companies admit the allegations in paragraph 16 of the Complaint.
17. The Companies admit the allegations the paragraph 17 of the Complaint, and affirmatively state that LG&E also sought an adjustment of its gas rates.
18. With regard to the allegations in paragraph 18 of the Complaint, the Companies lack sufficient information and knowledge to form a belief as to the truth of the allegations regarding KCTA's understanding of the Companies' applications and therefore deny same. The Companies affirmatively state that their applications and exhibits thereto in Case Nos. 2012-00221 and 2012-00222 sought to increase pole attachment rates and that notice of the proposed

increase in pole attachment rates was provided in accordance with the Commission's regulations and was consistent with the form of notice that the Companies provided in Case Nos. 2009-00548 and 2009-00549.<sup>1</sup>

19. With regard to the allegations in paragraph 19 of the Complaint, the Companies:

(a) Admit that KCTA did not intervene in Cases No. 2012-00221 and No. 2012-00222;

(b) Admit that the Commission approved new pole attachment rates for KU and LG&E of \$9.96 and \$9.11 respectively;

(c) Affirmatively state that the Attorney General, who represents customers' interests under KRS 367.150(8), actively participated in both proceedings; and

(d) Affirmatively state that the Commission, by its Order of June 14, 2013 revising KU's rate to \$9.69 per year per attachment to correct a typographical error.

20. The Companies admit the allegations in paragraph 20 of the Complaint.

21. With regard to the allegations in paragraph 21 of the Complaint, the pole attachment rates that the Commission approved in Cases No. 2009-00548, No. 2009-00549, No. 2012-00221, and No. 2012-00222 speak for themselves and the Companies deny any allegations inconsistent with same. The Companies deny that the "new rates do not follow the Commission's pole rate methodology as set forth in PSC decisions, including Administrative Case No. 251, and are unjust and unreasonable in violation of Kentucky law."

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<sup>1</sup> True and accurate copies of the proof of publication that LG&E and KU filed with the Commission in the records of their respective rate cases Case Nos. 2012-00221 and 2012-00222 are available at: [http://psc.ky.gov/pscecf/2012-00221/robert.conroy@lge-ku.com/08062012/KU\\_Certificate\\_of\\_Completed\\_Notice\\_8\\_6\\_12.pdf](http://psc.ky.gov/pscecf/2012-00221/robert.conroy@lge-ku.com/08062012/KU_Certificate_of_Completed_Notice_8_6_12.pdf) and [http://psc.ky.gov/pscecf/2012-00222/robert.conroy@lge-ku.com/08062012/LGE\\_Certificate\\_of\\_Completed\\_Notice\\_8\\_6\\_12.pdf](http://psc.ky.gov/pscecf/2012-00222/robert.conroy@lge-ku.com/08062012/LGE_Certificate_of_Completed_Notice_8_6_12.pdf).

22. The Companies deny the allegations in paragraph 22 of the Complaint, which largely repeat the KCTA's direct testimony in Case Nos. 2009-00548 and 2009-00549, and affirmatively state:

(a) The Companies do not reduce their pole costs by 15 percent reflective of minor appurtenances because minor appurtenances are not included in the cost of poles on the Companies' books.

(b) The rates of return that the Companies apply to their investment in poles are the actual rates of return approved by the Commission in Cases No. 2012-00221 and No. 2012-00222 and are not the rates of return that the Companies proposed in those cases.

(c) The methodology that the Companies use to calculate their investment in poles has been transparently presented and explained to the Commission. KCTA's proposed changes to this methodology will result in the Companies under-recovering their pole attachment costs and will adversely affect the Companies and all other customer classes.

(d) Tree trimming costs, including those for which a regulatory asset has been approved by the Commission, are properly included in the determination of the pole attachment charge. To do otherwise would provide cable television providers with the benefits of storm restoration activities without paying any of the corresponding costs associated with those activities.

(e) The Companies' calculation of its unit investments in Cases No. 2012-00221 and No. 2012-00222 are accurate and were subject to discovery in those cases.

23. With regard to the allegations in paragraph 23 of the Complaint, the Companies admit that KCTA has requested that the Companies revise their Commission-approved pole

attachment rates and affirmatively state that no revision to the Companies' rates or methodology is necessary.

24. With regard to the allegations in paragraph 24 of the Complaint, the Companies admit that one KCTA member has an outstanding balance of over \$200,000 for pole attachment charges for the January 1 to June 30, 2013 period. To the extent that this member "await[s] a decision by this Commission as to what pole rates are just and reasonable," it is seeking retroactive rate relief, which is prohibited by KRS 278.160 and KRS 278.270.

25. With regard to the allegations in paragraph 25 of the Complaint, the Commission's Orders in Case No. 99-393 speak for themselves and the Companies deny any allegation or characterization inconsistent with same. The Companies expressly reserve the right to challenge the applicability of the February 25, 2000 Order in Case No. 99-393 to KCTA's efforts in this proceeding.

#### **First Affirmative Defense**

The Complaint fails to set forth any claim upon which relief can be granted by this Commission and therefore should be dismissed.

#### **Second Affirmative Defense**

The Complaint is an improper and unlawful collateral attack on the Commission's Orders of December 20, 2012 in Case Nos. 2012-00221 and No. 2012-00222. The doctrine of *res judicata* bars KCTA from re-litigating the reasonableness of the pole attachment rates that the Commission approved in those Orders.

#### **Third Affirmative Defense**

The Complaint is contrary to public policy and administrative economy as it will require the expenditure of valuable and limited resources of the Commission, the Companies and the intervening parties of Case Nos. 2012-00221 and 2012-00222 to needlessly re-litigate the

reasonableness of rates that were only recently examined in fully litigated rate proceedings in which KCTA deliberately chose not to intervene.

#### **Fourth Affirmative Defense**

The Complaint, while requesting review of rates that the Commission approved only a year earlier and after a lengthy and extensive rate proceeding, fails to contain any supporting evidence or analytical studies and, therefore, should be dismissed. *See* Case No. 2009-00096, *Chris Schimmoeller and Connie Lemley v. Kentucky-American Water Co.* (Ky. PSC Nov. 24, 2009) (“a new investigation should not be commenced based upon unsupported allegations and without some supporting testimonial or analytical evidence”). *See* also Case No. 9847, *Kentucky Industrial Utility Customers v. Louisville Gas & Electric Co.* (Ky. PSC Feb. 21, 1987) (dismissing complaint because “KIUC has included no analysis of LG&E's current cost of capital or LG&E's current earnings to substantiate its request for the Commission to initiate hearings to adjust LG&E's rates”).

#### **Fifth Affirmative Defense**

807 KAR 5:001, Section 20(4)(a), requires the Commission to determine whether a complaint establishes a prima facie case before the issuance of an Order to Satisfy or Answer to the utility that is the object of the complaint. As the Commission is unable to find that the Complaint establishes a prima facie case, 807 KAR 5:001, Section 20(4)(a), requires either the Complaint's dismissal or notice to KCTA that the Complaint fails to establish a prima facie case.

#### **Sixth Affirmative Defense**

As KCTA is not a customer of KU or LG&E and has not identified in its Complaint its members who are customers of KU or LG&E, it lacks standing to bring its complaint. *See* Case No. 2009-00426, *John Patterson v. East Kentucky Power Cooperative, Inc.* (Ky. PSC Dec. 22, 2009).

**Seventh Affirmative Defense**

KRS 278.160 and 278.270 bar the Complaint's request for a reduction of the Companies' current pole attachment rates for service rendered prior to the date of a final Order in this proceeding.

**Eighth Affirmative Defense**

KRS 278.160 and KRS 278.270 bar that portion of the Complaint that seeks to allow KCTA's members to pay a rate other than the approved tariffed rate in effect from January 1, 2013 to present.

**WHEREFORE**, for all of the reasons set forth above, the Companies respectfully request:

1. That the Complaint be dismissed with prejudice;
2. In the alternative, an opportunity to conduct discovery, file written testimony and other forms of evidence and a full evidentiary hearing;
3. That following a full evidentiary hearing, the Commission determine that the Companies' pole attachment rates remain just and reasonable and that the Companies have lawfully billed KCTA's members for their pole attachments; and
4. That the Companies be afforded any and all other relief to which they may be entitled.



Dated: March 17, 2014

Respectfully submitted,

A handwritten signature in blue ink, reading "Kendrick R. Riggs", is written over a horizontal line.

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*Counsel for Louisville Gas and Electric Company  
and Kentucky Utilities Company*

**CERTIFICATE OF COMPLIANCE**

In accordance with 807 KAR 5:001, Section 7, this is to certify that Kentucky Utilities Company's and Louisville Gas and Electric Company's March 17, 2014 electronic filing is a true and accurate copy of the documents being filed in paper medium; that the electronic filing has been transmitted to the Commission on March 17, 2014; that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding; and that an original and one copy of the filing is being mailed to the Commission on March 17, 2014.

A handwritten signature in blue ink, reading "Gerald R. Rigg", is written over a horizontal line. The signature is cursive and appears to be written on a light-colored background.

*Counsel for Louisville Gas and Electric Company  
and Kentucky Utilities Company*