

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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

MEMORANDUM IN SUPPORT OF THE MOTION OF LOUISVILLE GAS AND ELECTRIC COMPANY AND KENTUCKY UTILITIES COMPANY FOR DISMISSAL OF THE COMPLAINT AND A DECLARATION OF LEGAL OBLIGATIONS

Louisville Gas and Electric Company (“LG&E”) and Kentucky Utilities Company (“KU”) (collectively “the Companies”) submit this memorandum in support of their Motion for Dismissal of the Complaint and a Declaration of Legal Obligations.

STATEMENT OF THE CASE

The Companies incorporate by reference in this Memorandum the Statement of the Case set forth in their previous Memorandum, which they filed with the Commission in this proceeding on March 17, 2014.

The Companies are utilities that provide electric service to more than 900,000 customers across Kentucky.¹ In addition to furnishing electric service, the Companies permit cable television providers to attach their equipment to the Companies’ utility poles for an annual fee per attachment that is billed in semi-annual installments. As of December 31, 2012, KU

¹ *Annual Report of Kentucky Utilities Co. for the Calendar Year Ended December 31, 2013* at 4 – 5. *Annual Report of Louisville Gas and Electric Co. for the Calendar Year Ended December 31, 2013* at 4 - 5. LG&E also owns and operates facilities used in the storage, transmission and distribution of natural gas to approximately 320,000 customers in 15 Kentucky counties.

provided this service to 23 cable television service providers² and LG&E provided this service to a single cable television service provider - Time-Warner Cable.³

Kentucky Cable Telecommunications Association (“KCTA”) is a non-profit Kentucky corporation, whose 15 members provide cable television service in various areas of the Commonwealth.⁴ Six of its members have attached their equipment to the Companies’ utility poles.⁵

On January 24, 2014, KCTA filed a complaint with the Commission alleging that the pole attachment fees established in the Commission’s Orders of December 20, 2012 in Case Nos. 2012-00221 and 2012-00222 are incorrectly calculated, fail to follow the Commission’s “pole rate methodology” and are excessive, unjust and unreasonable in violation of Kentucky law.⁶ KCTA further stated that some KCTA “members have not paid the new pole rates implemented by KU and LG&E . . . and await a decision by this Commission as to what pole rates are just and reasonable.”⁷

² KU’s Response to Commission Staff’s Second Request for Information, Item 9 (filed Aug. 14, 2012 in Case No. 2012-00221, *Application of Kentucky Utilities Company for an Adjustment of Its Electric Rates* (Ky. PSC filed June 29, 2012)).

³ LG&E’s Response to Commission Staff’s Second Request for Information, Item 9 (filed Aug. 14, 2012 in Case No. 2012-00222, *Application of Louisville Gas and Electric Company for an Adjustment of Its Electric Gas Rates, a Certificate of Public Convenience and Necessity, Approval of Ownership of Gas Service Line, and a Gas Line Surcharge* (Ky. PSC filed June 29, 2012)).

⁴ These members include: Access Cable TV, Armstrong Cable Services, Big Sandy Broadband, C & W Cable, Comcast, Harlan Community Television, Inter Mountain Cable, Irvine Community TV, Reimer Communications, Lycom Communications, Mediacom, Suddenlink, Time Warner Cable, and TVS Cable. *See* KCTA’s Response to the Commission’s January 17, 2013 Order at 1 (filed Jan. 24, 2013 in Case No. 2012-00544, *The Petition of the Kentucky Cable Telecommunications Association for a Declaratory Order that the Commission Has Jurisdiction to Regulate the Pole Attachment Rates, Terms, and Conditions of Cooperatives that Purchase Electricity from the Tennessee Valley Authority* (Ky. PSC filed Dec. 3, 2012)).

⁵ These members are: Access Cable TV, Comcast, Harlan Community Television, Mediacom, Reimer Communications, LLC, and Time Warner Cable.

⁶ KCTA Complaint at ¶¶ 21 and 22. For the most part, these alleged errors are the same as those that KCTA’s witness alleged in her written testimony in Case Nos. 2009-00548 and 2009-00549. *See* Direct Testimony of Patricia D. Kravtin at 13-23 (filed Apr. 22, 2010 in Case No. 2009-000548); Direct Testimony of Patricia D. Kravtin at 13-23 (filed Apr. 22, 2010 in Case No. 2009-000549).

⁷ KCTA Complaint at ¶ 24.

On March 17, 2014, the Companies answered KCTA's Complaint and moved for dismissal of the Complaint. In support of their motion, the Companies asserted that the issues raised in the Complaint would require "the expenditure of valuable and limited public resources to needlessly re-litigate not only the reasonableness of the Companies' pole attachment fees, but of all rates and charges . . . [and would] likely require the involvement and resources of the parties who intervened in the earlier proceedings."⁸ The Companies further asserted that the most efficient means of reviewing the Companies' pole attachment fees was in the Companies' next general rate proceeding, that such proceedings would provide KCTA with a reasonable opportunity to challenge the reasonableness of the pole attachment fees, and that the Companies expected to apply for general rate adjustments within the next 12 months.⁹ The Commission has yet to rule on the Companies' Motion to Dismiss or establish a procedural schedule in this proceeding.

On November 26, 2014, the Companies applied for general rate adjustments.¹⁰ On December 9, 2014, KCTA moved for intervention in those proceedings for the purpose of challenging the reasonableness of the Companies' pole attachment fees. The Companies have not opposed KCTA's motions.¹¹

⁸ Memorandum in Support of the Motion of Louisville Gas and Electric Company and Kentucky Utilities Company to Dismiss the Complaint (filed Mar. 17, 2014) at 12.

⁹ *Id.*

¹⁰ Case No. 2014-00371, *Application of Kentucky Utilities Company for an Adjustment of its Electric Rates* (Ky. PSC filed Nov. 26, 2014); Case No. 2014-00372, *Application of Louisville Gas and Electric Company for an Adjustment of its Electric and Gas Rates* (Ky. PSC filed Nov. 26, 2014).

¹¹ In their responses, however, the Companies have urged the Commission to ensure that KCTA has standing to intervene by requiring as a condition for intervention that KCTA identify its members who are customers of the Companies and who have authorized KCTA to seek intervention.

Since the issuance of the Commission's Orders of December 20, 2012, the Companies, in compliance with their tariffs, have semi-annually issued bills for pole attachments.¹² All pole attachment customers, except one, have paid their bills for pole attachment services in full. The sole exception, a KCTA member, refuses to pay the full amount billed and instead has paid a lesser amount based upon the pole attachment fees in effect prior to January 1, 2013. This customer is currently \$553,832.01 in arrears to KU and \$329,031.96 in arrears to LG&E for pole attachment fees.

ARGUMENT

In light of KCTA's intervention in Case Nos. 2014-00371 and 2014-00372, administrative economy requires the dismissal of KCTA's Complaint. The issues that KCTA raises in its Complaint can be more effectively and efficiently examined in those proceedings. Dismissal of KCTA's Complaint, moreover, will not affect the Commission's review of the Companies' pole attachment fees nor will it impair or impede KCTA's ability to present its interests or prejudice KCTA or KCTA's members.

1. The Companies' Rate Proceedings Afford The Most Effective Forum To Review The Reasonableness of The Companies' Pole Attachment Fees.

The reasonableness of the Companies' pole attachment fees cannot be examined in isolation, but must be considered in light of the Companies' present financial condition.¹³ In other Commission proceedings, KCTA has maintained that a full review of a utility's financial condition is necessary when examining an electric utility's pole attachment fees. For example, in

¹² The Companies' CTAC Rate Schedule provides that attachment charges are to be billed semi-annually based on the number of pole attachments being maintained on December 1 and June 1. *See* KU Tariff, P.S.C. No. 16, Original Sheet No. 40 (issued Jan. 31, 2013); LG&E Tariff, P.S.C. Electric No. 9, Original Sheet No. 40 (issued Jan. 31, 2013). Since the Commission's approval of the current pole attachment fees, the Companies have issued pole attachment billings for the following periods: January 1 – June 30, 2013; July 1 – December 31, 2013; and January 1 – June 30, 2014.

¹³ *See* Case No. 2004-00319, *Application of Jackson Purchase Energy Corporation for Adjustments in Existing Cable Television Attachment Tariff* (Ky. PSC Sept. 14, 2005) at 9.

Case No. 2010-00185,¹⁴ in which an electric utility attempted to revised only its security deposit and its pole attachment fees, KCTA criticized the electric utility’s alleged failure to address all its fees and charges. In its motion for dismissal of the application, KCTA argued:

[Blue Grass Energy’s application] does not offer any information about, or seek to change, its rates for any services other than pole attachments. (The title of its application - “adjustment of security deposit and cable television attachment tariffs” - demonstrates as much). It does not demonstrate its overall revenue requirements, or how they may have changed since its last general rate case just two years ago. And it does not provide the Commission with any of the information required by 807 KAR 5:001 to analyze revenue needs, including “return on net investment rate base, return on capitalization, interest coverage, debt service coverage,” and “[a] reconciliation of the rate base and capital used to determine its revenue requirements.” Instead, Blue Grass seeks a “waiver” from these requirements, as well as many other substantive requirements of KAR 5:001 Section 10. Blue Grass thus seeks to raise certain rates in a vacuum instead of quantifying its overall revenue needs, going through the usual rate-design procedures, and determining the best way to equitably recoup any shortfall.

...

The Legislature has never created a special exception to the single-issue ratemaking rule for cable attachment costs. And that means the rate increase Blue Grass seeks can only be sought “in the context of a general rate case.” Blue Grass’s attempt to bypass that rule and engage in “single-issue ratemaking” must be rejected.¹⁵

If KCTA’s Complaint proceeds, then the Companies’ total financial condition becomes the subject of review and their current expenses, revenues, rate base and return on investment must be examined.

By filing applications for general rate adjustment, the Companies have rendered KCTA’s Complaint unnecessary and irrelevant. In reviewing the Companies’ applications, the Commission and any intervening parties will review all aspects of the Companies’ finances to

¹⁴ Case No. 2010-00185, *Adjustment of Security Deposit and Cable Television Attachment Tariffs for Blue Grass Energy Cooperative Corporation* (Ky. PSC filed June 1, 2010).

¹⁵ Case No. 2010-00185, KCTA’s Motion to Dismiss at 1 – 3 (filed June 18, 2010) (citations omitted).

determine the fair, just and reasonable rates that the Companies should charge. A separate examination of those finances by means of a complaint proceeding is no longer required. Moreover, a review of the Companies' financial condition is better performed in a rate case proceeding in which the Commission's regulations require an applicant to produce significant amounts of information regarding its financial position. The Commission and the parties thus have a better starting point for conducting their review.

The involvement of multiple and diverse parties in a general rate case proceeding ensures a more thorough examination of the applicant's proposed rates. Because the costs and revenues related to the Companies' operation of their utility poles affect the Companies' total revenue requirement and thus their rates for service, others besides KCTA also have an interest in this matter. These customers ensure that the Commission employs a wider perspective in reviewing the evidence and considering the implications of any decision. Their involvement also ensures a greater level of scrutiny of the Companies' financial position and a more developed record upon which the Commission may base a decision than a proceeding with a single complainant.

2. Dismissal of KCTA's Complaint Will Not Prejudice KCTA Or Its Members.

If permitted to intervene in Case Nos. 2014-00371 and 2014-00372, KCTA will suffer no prejudice from the dismissal of its Complaint. KCTA may raise the same issues in the Companies' rate proceedings that it has presented or may present in this proceeding. In prior rate case proceedings involving the Companies, KCTA has presented evidence on the

methodology that the Companies have used to develop their pole attachment fees and on the reasonableness of the Companies' proposed pole attachment fees.¹⁶

Dismissal of KCTA's Complaint will have no practical effect on KCTA's ability to defend its interests. Although KCTA's Complaint has been docketed with the Commission for 11 months, no discovery has occurred, no evidence has been taken, nor any procedural schedule established. If KCTA's Complaint is dismissed, KCTA has not lost any opportunity for discovery nor will it be forced to duplicate any efforts made in this case. It will not experience any additional delay. To the contrary, if KCTA's intervention is permitted, KCTA will be joining a proceeding in which a statutory time limit for Commission action exists, a procedural schedule has been established, and the intervening parties will shortly take discovery in accordance with that procedural schedule.

Dismissal of KCTA's Complaint will not deny or limit the relief presently available to KCTA or its members. In a complaint proceeding, the only relief that the Commission may offer is prospective in nature.¹⁷ If the Commission determines in such proceeding that a utility's rate is unreasonable, it may not retroactively reduce the rate. It may only establish a rate for future use. Similarly, at the conclusion of a general rate proceeding, the Commission establishes rates to be charged prospectively. Accordingly, the same relief is available to KCTA whether pole attachment fees are reviewed in a complaint proceeding or in a general rate proceeding.

¹⁶ See, e.g., Case No. 2009-00549, *Application of Louisville Gas and Electric Company for an Adjustment of Electric and Gas Base Rates* (Ky. PSC Mar. 3, 2010); Case No. 2009-00548, *Application of Kentucky Utilities Company for an Adjustment of Base Rates* (Ky. PSC Mar. 3, 2010). KCTA has intervened in other general rate case proceedings. Case No. 2005-00341, *General Adjustment of Rates of Kentucky Power Company* (Ky. PSC Nov. 10, 2005); Case No. 2005-00125, *Application of Big Sandy Rural Electric Cooperative Corporation* (Ky. PSC Aug. 3, 2005); Case No. 2000-414, *Application of Blue Grass Energy Cooperative Corporation to Adjust Its Rates* (Ky. PSC Oct. 3, 2000); Case No. 2000-373, *Application of Jackson Energy Cooperative Corporation To Adjust Electric Rates* (Ky. PSC Dec. 18, 2000); Case No. 2000-359, *Application of Cumberland Valley Electric, Inc. To Adjust Its Rates* (Ky. PSC Sept. 29, 2000).

¹⁷ See KRS 278.270. See also Case No. 94-453, *Big Rivers Electric Corporation's Proposed Mechanism to Credit Customers Amounts Recovered in Judicial Proceedings Involving Fuel Procurement Contracts* (Ky. PSC Feb. 21, 1997) at 5-6 ("While KRS 278.260(1) and KRS 278.270 give the Commission authority to investigate existing rates and establish new rates, the power is limited to prospective rate changes.").

3. The Commission Should Affirm The Companies' Legal Obligation To Collect The Pole Attachment Rental Fees Set Forth In Their Filed Rate Schedules.

In its Complaint, KCTA implies on behalf of its members a right to refuse to pay pole attachment rental fees that, although established by the Commission, their members consider to be unreasonable. At least one KCTA member has refused to pay the pole attachment fees that the Commission approved, that are set forth in the Companies' filed rate schedule, and that the Companies have billed. This KCTA member has elected to ignore the Commission's Orders of December 20, 2012 that established the Companies' pole attachment fees and to instead pay the fee that was in effect prior to those Orders.

The Commission should not allow this situation to pass without comment. The Commission has long asserted that a utility must collect the rates and charges set forth in the utility's filed rate schedules.¹⁸ KRS 278.270¹⁹ provides that the Commission may change rates only prospectively. As such, a customer's belief that a rate or fee is unreasonable does not eliminate or change that customer's obligation to pay the filed rate.²⁰ Moreover, KRS 278.160(2) prohibits a utility from collecting or receiving from "any person a greater or less compensation for any service rendered or to be rendered than that prescribed in its filed schedules." In Case No. 10205,²¹ the Commission interpreted this statute to "require a utility to exercise all reasonable efforts to collect the full amounts due for service rendered." It further

¹⁸ See, e.g., *Americoal Corporation v. Boone County Water and Sewer District* (Ky. PSC Apr. 24, 1992); *Case No. 10205, Green River Electric Corporation Application for an Order Approving Proposed Resolution of Underbilling to Town and Country Mobile Home Park* (Ky. PSC Jan. 19, 1990).

¹⁹ "Whenever the commission, upon its own motion or upon complaint as provided in KRS 278.260, and after a hearing had upon reasonable notice, finds that any rate is unjust, unreasonable, insufficient, unjustly discriminatory or otherwise in violation of any of the provisions of this chapter, the commission shall by order prescribe a just and reasonable rate to be followed in the future."

²⁰ See, e.g., *Case No. 95-011, Kentucky Industrial Utility Customers, Inc. v. Big Rivers Electric Corporation* (Ky. PSC April 1, 1997) ("The rule against retroactive ratemaking is a 'generally accepted principle of public utility law which recognizes the prospective nature of utility ratemaking and prohibits regulatory commissions from rolling back rates which have already been approved and become final.'").

²¹ *Case No. 10205, Green River Electric Corporation Application for an Order Approving Proposed Resolution of Underbilling to Town and Country Mobile Home Park* (Ky. PSC Jan. 19, 1990)

provided that the failure to exercise such efforts would subject the utility to penalty under KRS 278.990.

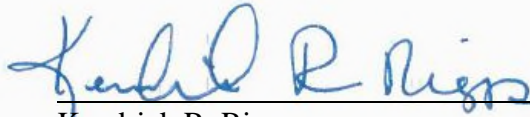
Accordingly, the Companies request that the Commission again acknowledge its long-held and often stated precedent that a utility must charge the fees set forth in the utility's filed rate schedule, that a utility has an obligation to collect such fees, that these fees remain the lawful and appropriate fees until the Commission establishes a new fee, and that a fee cannot be applied retroactively but only prospectively.

CONCLUSION

Should the Commission permit KCTA to intervene in Case Nos. 2014-00371 and 2014-00372, it should dismiss KCTA's Complaint in this proceeding. Case Nos. 2014-00371 and 2014-00372 provide a more efficient and effective forum for the Commission to examine the reasonableness of the Companies' pole attachment rental fees. Dismissal of the Complaint, moreover, will not result in any prejudice to KCTA or its members. Finally, the Commission should reaffirm its long-standing precedent regarding a customer's obligation to pay the rates set forth in a utility's filed rate schedule and a utility's obligation to collect those rates.

Dated: December 16, 2014

Respectfully submitted,



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CERTIFICATE OF COMPLIANCE

In accordance with 807 KAR 5:001, Section 8, this is to certify that Louisville Gas and Electric Company's December 16, 2014 electronic filing is a true and accurate copy of the document being filed in paper medium; that the electronic filing has been transmitted to the Commission on December 16, 2014; that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding; and that the original in paper medium is being mailed to the Commission on December 16, 2014.

A handwritten signature in blue ink, appearing to read "Gerald R. Nye", is written over a horizontal line.

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