

**Commonwealth of Kentucky
Before the Public Service Commission**

In the Matter of:

APPLICATION OF LOUISVILLE GAS AND)	
ELECTRIC COMPANY FOR A DECLARATORY)	Case No.
ORDER REGARDING THE PROPER METHOD)	2016-00137
OF MUNICIPAL FRANCHISE FEE RECOVERY)	

AND

In the Matter of:

Louisville/Jefferson County Metro Government)	
)	
Complainant,)	Case No.
)	2016- 003__
v.)	
)	
Louisville Gas and Electric Company)	
)	
Defendant.)	

**MOTION OF LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT
TO DISMISS CASE NO. 2016-00137 OR IN THE ALTERNATIVE INCORPORATE THE
RECORD INTO CASE NO. 2016-00**

Comes now The Louisville/Jefferson County Metro Government (“Louisville”), and requests that Case No. 2016-00137 be dismissed, or in the alternative the record of Case No. 2016-00137 be incorporated into Case No.2016-00__, Louisville/Jefferson County Metro Government v Louisville Gas and Electric Company, and in support thereof states:

ARGUMENTS

**The Franchise Agreement Anticipated the Louisville Complaint Action Filed
Simultaneously with this Motion.**

1. On August 25, 2016, the Louisville Metro Council passed Ordinance No 214, Series 2016, accepting the bid submitted by LG&E for a gas franchise. The Franchise

Agreement between Louisville and LG&E (hereinafter the “Franchise Agreement”) was executed by the parties on August 30, 2016.¹

2. Section 12 of the Franchise Agreement reads in part: “This Franchise Agreement contemplates that Louisville Metro reserves the right to challenge the Company’s method of recovery of the Franchise Fee at the Kentucky Public Service Commission or any other court of competent jurisdiction.”
3. The agreement between Louisville and LG&E is the process of negotiation by both parties. Thus, LG&E was aware of both the clear language and intent of this provision long before they executed the Franchise Agreement.
4. No such similar provision exists in the Franchise Agreement which could suggest that either party anticipated LG&E clarifying the collection of the Louisville franchise fee via an application for a declaratory order.
5. Both parties anticipated this filing by Louisville, as evidenced by the Franchise Agreement, and the Franchise Agreement language should control.

**KRS § 278.260 is the Controlling Law Governing a City Amending the Rates
of a Franchised Utility.**

6. Per KRS §§ 278.200 and 278.260, the Commission has exclusive jurisdiction over LG&E rates, as well as the Franchise Agreement.
7. The legislature anticipated disagreements regarding rates of a utility to be settled via the procedures provided for in KRS § 278.260 and furthered developed by the Commission at 807 KAR 5:001, Section 20. 807 KAR 5:001, Section 19 does not provide the same procedures or statutory backstop as 807 KAR 5:001, Section 20.

¹ A copy of the Franchise Agreement is attached hereto as Attachment A.

8. Furthermore, the Kentucky Supreme Court has determined that the proper procedure to follow when a city wishes to change the rates for a franchised utility is found in KRS § 278.260. *Southern Bell Telephone & Telegraph Co. v. City of Louisville*, 96 S.W.2d 695 (Ky. 1936).

**The Single Issue LG&E Raises in its Application is Best Addressed Through the
Exploration of the Three Issues Raised by Louisville in its Complaint.**

9. LG&E filed an application seeking a declaratory order stating that “LG&E must calculate and add to the total bill for gas service for all customers located within Louisville Metro’s jurisdiction a surcharge to collect any fees for the 2016 franchise.” LG&E application at 16, Case No. 2016-00137.
10. The Complaint filed today by Louisville makes 3 claims against LG&E. The issue alleged by LG&E will be settled by an exploration of Claim 1 in the Louisville Complaint: “It is improper to allow LG&E to directly pass the cost of a franchise fee onto LG&E Gas Customers as utility bill line item.” Complaint at 4.
11. As the solitary issue raised by the LG&E application will be one of three issues explored by the Louisville Complaint, LG&E will not be prejudiced by the dismissal of its application.
12. The single intervening party in Case No. 2016-00137 is KIUC. Counsel for Louisville has been in contact with KIUC and will ensure that KIUC receives service of the Complaint. KIUC will not be prejudiced by dismissal of the LG&E application, as it may intervene in the Complaint case to ensure its concerns are voiced. Counsel for KIUC is

competent and experienced, and will not be prejudiced by dismissal of the LG&E application.

13. Under 807 KAR 5:001, Section 19(7), the Commission is authorized to dispose of the LG&E application based solely on the written submissions filed. As such, no further action is necessary prior to the Commission dismissing the Application in Case No. 2016-00137.

Judicial Economy is Best Served by Dismissal of the LG&E Application

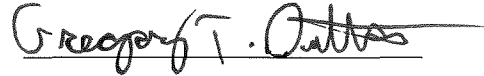
14. Allowing the LG&E application to proceed on a separate track from the complaint case filed today by Louisville is neither in the parties nor the Commission's best interest.
15. As stated previously, the single issue presented by the LG&E application is aptly encompassed by claim 1 of the Louisville Complaint. Litigating the same issue on two different procedural tracks and in two different cases before the Commission is a waste of the Commission's time and resources.
16. As discussed above, no party will be prejudiced by the dismissal of the LG&E application in Case No. 2016-00137. Judicial Economy, and general principles of efficiency, dictates dismissal of the LG&E application.

WHEREFORE, Louisville moves the Commission to dismiss the LG&E Application filed in Case No. 2016-00137, or in the alternative, to incorporate the record of Case No. 2016-00137 in the Louisville Complaint proceeding, and then dismiss Case No. 2016-00137

Respectfully submitted,



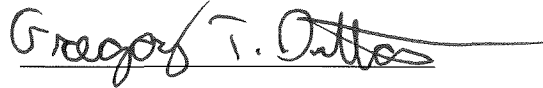
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CERTIFICATE OF SERVICE

This is to certify that a true and accurate copy of this document has been served via electronic mail to the persons listed below.



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