

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

In the Matter of:

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

AND

In the Matter of:

Louisville/Jefferson County Metro Government )	
)	
Complainant, )	Case No.
)	2016- 00347
v. )	
)	
Louisville Gas and Electric Company )	
)	
Defendant. )	

**LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT MOTION FOR  
REHEARING AND TO SUSPEND PROCEDURAL SCHEDULE**

Comes now The Louisville/Jefferson County Metro Government (“Louisville Metro”), pursuant to KRS § 278.400, and files this Motion for rehearing in Case 2016-00347 and consolidated Case No. 2016-00317, and to suspend the procedural schedule during the Public Service Commission’s (“the Commission”) consideration of this motion for rehearing. As support thereof, Louisville Metro states as follows:

1. Authority

Pursuant to KRS § 278.400, any party to a proceeding may seek rehearing of a Commission Order within twenty (20) days of service of the Order. Upon rehearing, the Commission “may

change, modify, vacate or affirm its former orders, and make and enter such order as it deems necessary”.<sup>1</sup> The fact that no hearing occurred is immaterial, based on long-standing Commission precedent.<sup>2</sup>

## 2. Louisville Metro Addendum to Amended Complaint

In Case No. 2016-00347, Louisville Metro proffered a Motion to File Addendum and an Addendum to the Amended Complaint (“Addendum”) on December 5, 2016. The motion provided good cause for filing the addendum separate from the Amended Complaint, as the information contained in the addendum was not acquired by Louisville Metro until after the deadline for filing the Amended Complaint. Considering that the information filed with the Addendum originated from the Commission and Louisville Gas and Electric Co. (“LG&E”), no party experienced any prejudice as a result of the delayed filing. No order has been issued by the Commission either accepting or denying the Motion to file an Addendum. Louisville Metro seeks an Order from the Commission granting Louisville Metro’s Motion, and accepting the Addendum into the record of Case No. 2016-00347 and consolidated Case No. 2016-00317.

The Commission’s Order in Case 2016-00347 dated January 25, 2016, makes no mention of the Motion to File Addendum, the Addendum, or the evidence and arguments included in the Addendum. The Addendum provides considerable evidentiary weight to the claims made in the Louisville Metro Complaint. To the extent the information included in the Addendum was not considered in the Commission’s determination that Louisville Metro failed to state a *prima facie*

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<sup>1</sup> KRS § 278.400.

<sup>2</sup> In the Matter of: 2009 Integrated Plan of E. Kentucky Power Cooperative, Inc., Case No. 2009-00106 (Aug. 19, 2009), at 5. (“[T]he Commission finds that its longstanding practice has been to consider a request for rehearing filed under KRS 278.400 irrespective of whether the determination sought to be reheard was made after a hearing or without a hearing.”)

case, Louisville Metro now seeks rehearing of the Commission’s Order with the inclusion of the information contained in the Addendum.

The Commission notes that the Louisville Metro Amended Complaint avers “most, if not all, of LG&E’s gas passes through the Louisville Metro rights-of-way” and that “[m]any, if not all, of the LG&E gas customers outside of the Louisville Metro rely on Louisville Metro’s rights-of-way to ensure delivery of natural gas.”<sup>3</sup> To the extent this language was relied on by the Commission in its decision that “Louisville Metro still has not provided sufficient allegations to entitle it to the relief requested in its amended complaint,” Louisville Metro respectfully directs the Commission’s attention to the more recent language contained in the Addendum.<sup>4</sup> The information provided in the Addendum allows Louisville Metro to state unequivocally that: “Analyzing this map in conjunction with Exhibit 2, which provides the locations of municipalities within Jefferson County, demonstrates that all the municipalities located within Jefferson County receive natural gas service by utilizing Louisville Metro’s Rights-ofWay.”<sup>5</sup> Next, the Addendum addresses those customers located outside of Jefferson County. Specifically, Louisville Metro states that “[t]his information combined with the information in Exhibits 10 and 4 presents a *prima facie* case that all LG&E gas customers receive their gas through mains located under Louisville Metro rights-of-way.”<sup>6</sup> Taking this information into consideration, Louisville Metro has clearly provided sufficient allegations to entitle it to the relief requested and established a *prima facie* case. Thus, Louisville Metro now seeks rehearing on the Commission’s determination that Louisville Metro failed to state a *prima facie* case.

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<sup>3</sup> Case No. 2016-00347 ( Jan. 25, 2016), at 3.

<sup>4</sup> *Id.* at 3.

<sup>5</sup> Addendum at 1-2.

<sup>6</sup> Addendum at 2.

### 3. Clarification of “Review”

The Commission found that “there is sufficient evidence provided by Louisville Metro to *review* the allegations contained in its amended complaint”<sup>7</sup>(emphasis added) and that “[i]n the interest of administrative economy, the Commission will... combine the instant matter into Case No. 2016-00317.”<sup>8</sup> Louisville Metro understands the Commission to mean that all three (3) claims raised in the Louisville Metro Complaint will be addressed in the consolidated Case No. 2016-00317. Additionally, Louisville Metro understands the Commission’s Order to mean that should Louisville Metro succeed in carrying its burden of proof, then the Commission would consider ruling favorable on the three (3) claims raised in Louisville Metro’s complaint. To the extent this understanding is incorrect, Louisville Metro seeks clarification and rehearing.

### 4. Burden

The Commission’s Order notes that after the cases have been consolidated that “Louisville Metro will have the burden of proof with respect to the issues raised in its amended complaint.”<sup>9</sup> As Louisville Metro’s claims have been consolidated into an application for a declaratory order case, Louisville Metro understands the Commission to mean that both LG&E and Louisville Metro will bear the same burden of proof , with respect to each entities individual claims, based on 807 KAR 5:001, Section 19. In short, the Louisville Metro burden will be as if it had filed a stand-alone application for a declaratory order, and LG&E’s burden will be the same. If the Commission intended otherwise, Louisville Metro seeks clarification and rehearing as to the burden it must carry to be successful on its claims in consolidated Case No. 2016-00347.

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<sup>7</sup> Case No. 2016-00347 ( Jan. 25, 2016), at 3.

<sup>8</sup> Id. at 4.

<sup>9</sup> Id. at 4.

#### 5. Establishing a *Prima Facie* Case

Louisville Metro has presented the Commission with legitimate legal discrepancies, for which this Commission holds jurisdiction. In support thereof, Louisville Metro has provided the Commission with numerous maps, citations and exhibits in evidence of the allegations contained within its complaint. The evidence provided by Louisville Metro is more than sufficient to meet the requirements of 807 KAR 5:001, Section 20(1)(c) and to establish a *prima facie* case. By denying Louisville Metro's Complaint, the Commission is establishing a burden on all future complaints that is seemingly impossible to achieve. While the Commission's discretion on this matter is vast, it is not limitless. Here, the Commission should have required LG&E to Answer the Complaint. As such, Louisville Metro seeks rehearing on the Commission's determination that Louisville Metro failed to conform to the requirements of 807 KAR 5:001, Section 20(1)(c) and to establish a *prima facie* case.

#### 6. Suspending the Procedural Schedule

The Commission's Order in Case No 2016-00137, dated January 25, 2017, includes a procedural schedule setting dates and deadlines testimony, discovery and other relevant matters. The next relevant deadline in that schedule is the February 28, 2017 deadline for simultaneous filing of verified testimony. KRS § 278.400 provides the Commission with up to twenty (20) days to make a determination on a Motion for Rehearing. Based on the intended filing date of this rehearing, the Commission would not have a full twenty (20) days to consider the motion prior to the deadline for verified testimony. In Order to provide the Commission with the full time period allowed by statute, and to provide the parties with some certainty as to the issues raised herein in advance of filing testimony, Louisville Metro seeks a suspension of the

procedural schedule until such time as the Commission may rule on this Motion for Rehearing. As a matter of logistical convenience and judicial economy, Louisville Metro respectfully requests an expedited ruling on the Motion to Suspend the schedule, even if that Order is issued separately and in advance of a final decision on the Motion for Rehearing.

WHEREFORE, Louisville Metro moves the Commission to grant the following relief:

1. Suspended the procedural schedule in consolidated Case No. 2016-00317, and
2. Accept the Louisville Metro Motion to File an Addendum, and
3. Issue an Order finding that Louisville Metro has met the requirements of 807 KAR 5:001, Section 20(1)(c) and established a *prima facie* case.

- Or in the Alternative -

1. Suspended the procedural schedule in consolidated Case No. 2016-00317, and
2. Accept the Louisville Metro Motion to File an Addendum, and
3. Confirm Louisville Metro's understanding that the review in consolidated Case No 2016-00317 will include all three (3) Louisville Metro claims, and
4. Confirm Louisville Metro's understanding of its burden in the consolidated case No. 2016-00317.

Respectfully submitted,

M.J. O'Connell w/p/b  
GTD

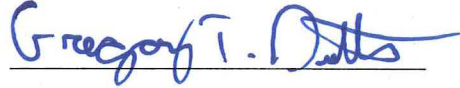
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**CERTIFICATE OF SERVICE**

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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