

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

In the Matter of:

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

**LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT REPLY TO LG&E
OBJECTION TO MOTION FOR ORAL ARGUMENT AND WITHDRAWAL OF
PENDING CLAIM**

Comes now The Louisville/Jefferson County Metro Government (“Louisville Metro”), and replies to the Louisville Gas and Electric Company (“LG&E”) Response to the Louisville Metro Motion seeking an opportunity for oral argument on pending legal issues and to withdraw an issue currently before the Commission. In support thereof, Louisville Metro states as follows:

1. Louisville Metro’s Motion for Oral Argument Should be Granted

Per the Commission’s Order dated February 27, 2017, “[e]ach party will have the burden of proof with respect to the issues that it raises.”¹ Respectfully, Louisville Metro acknowledges that it bears the burden of proof on the two issues it currently asserts and believes the best method to carry that burden at this time is via oral arguments with and in front of the Commissioners. Louisville Metro is confident that dialogue with the Commissioners and opposing counsel on the legal issues in this matter is the most efficient and effective method to prove our assertions. Obviously LG&E agrees, otherwise they would not have objected to our request and sought briefing as an alternative.² If LG&E wishes to forego oral arguments on its lone issue and

¹ Order at 5.

² LG&E Response at 3.

instead file simultaneous briefs following oral arguments on Louisville Metro's remaining two issues, then Louisville Metro is willing to accommodate LG&E.

Since filing its complaint in Case No. 2016-00347, Louisville Metro has filed nine (9) additional pleadings on behalf of its claims, not including this Reply, that contained some degree of legal analysis and assertions.³ Taken as a whole, Louisville Metro has already made extensive legal arguments regarding its claims, and frankly would be surprised if the Commission wishes to review additional legal briefing at this time. Louisville Metro would prefer, at this juncture, to address any pending questions or issues the Commissioners may have by direct examination. Should any questions or doubts remain following the Commissioners direct examination of Louisville Metro's legal positions, Louisville Metro will be happy to provide the Commission with a legal brief.

2. Louisville Metro's Motion for Withdrawal of Pending Claim Should be Granted

Withdrawing from consideration Louisville Metro's Claim 2 preserves judicial economy. The fact is, as stated in Section 1 above, "[e]ach party will have the burden of proof with respect to the issues that it raises."⁴ Louisville Metro no longer seeks any affirmative relief on Claim 2, and by abdicating the burden of proof on said issue, is attempting to limit the scope of the Commission's investigation and preserve judicial economy. In layman's terms, why would we waste the Commission's time with an issue LG&E has repeatedly argued against, and Louisville Metro no longer wishes to pursue?

³ Motion to Intervene and Response to LG&E's Application (Sept. 19, 2017), a Motion to Dismiss LG&E's Application (Sept. 19, 2016), a Reply to LG&E's Response to the Louisville Metro Motion to Dismiss (Oct. 4, 2016), a Request for a Procedural Schedule (Oct. 14, 2016), an Amended Complaint (Nov. 9, 2016), an Addendum to the Amended Complaint (Dec. 5, 2016), a Motion for Rehearing (Feb. 14, 2017), a Motion to Compel Discovery from LG&E (April 20, 2017), and a Motion for Oral Argument and Withdrawal of Issue (June 16, 2017).

⁴ Supra.

Second, Claim 2 is non-essential to the analysis of claims 1 and 3. In reality, Claims 1 and 3 are the more narrowly focused claims, and it should prove easier to analyze and reach a final determination without the presence of Claim 2. Thus, granting Louisville Metro’s motion should simplify and expedite the conclusion of this proceeding. Contrary to LG&E’s assertion that “the Commission must consider whether it is appropriate for all customers to pay for the franchise fee in base rates, as alleged in Claim 2,” Louisville Metro has never alleged that all customers should pay for the franchise fee in base rates. This assertion by LG&E is noticeably, and rather typically, made without any citation to the record because no such assertion has ever been made by Louisville Metro. Theoretically, even if LG&E’s proposal that Claim 2 is necessary to resolve Claims 1 and 3 was accurate, Louisville Metro still bears the burden on Claims 1 and 3. Thus, if any party were to be disadvantaged by the withdrawal of Claim 2, it’s Louisville Metro.

Finally, precedent exists to support a determination that Louisville Metro may withdraw its Claim 2 and proceed with Claims 1 and 3. Just this month, the Commission granted a Motion to Withdraw Issue filed by East Kentucky Power Cooperative (“EKPC”) in an Application for Declaratory Order case, which is of course the exact same type of case at hand.⁵ There, the Commission allowed EKPC to withdraw a single issue yet continue with its remaining claims.⁶ LG&E itself has recently withdrawn issues mid-case from consideration by the Commission. In 2014, LG&E filed an application for a CPCN of a 750 MW natural gas combined cycle combustion turbine facility and a 10 MW solar photovoltaic facility.⁷ Following 8 months of analysis and discovery, LG&E sought to withdraw from the Commission’s consideration the 750

⁵In The Matter Of: The Application Of East Kentucky Power Cooperative, Inc. For A Declaratory Order Confirming The Effect Of Kentucky Law And Commission Precedent On Retail Electric Customers' Participation In Wholesale Electric Markets, Case No. 2017-00129, Order (June 6, 2017).

⁶ Id.

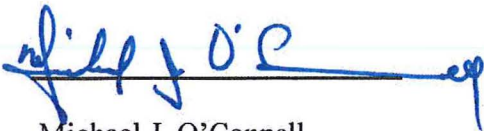
⁷ In The Matter Of: Joint Application Of Louisville Gas And Electric Company And Kentucky Utilities Company For Certificates Of Public Convenience And Necessity For The Construction Of A Combined Cycle Combustion Turbine At The Green River Generating Station And A Solar Photovoltaic Facility At The E.W. Brown Generating Station; Case No. 2014-00002, Joint Application (Jan. 17, 2004).

MW facility and to proceed with the case on only the remaining issue of the 10 MW facility.⁸ The Commission ultimately allowed LG&E to withdraw the issue of the 750 MW facility and continue only on the issue of the 10 MW facility.⁹ Thus, consistent with Commission precedent, the Commission should grant Louisville Metro's motion to withdraw Claim 2 and continue only with Claims 1 and 3.

WHEREFORE, Louisville Metro renews its request for the Commission to grant the following relief:

1. Allow Louisville Metro to withdraw from the Commission's consideration claim 2, which states: "if the Commission allows LG&E to pass the cost of a franchise fee directly to customers, then all LG&E gas customers receiving the benefit of the Louisville Metro rights-of-way should pay the gas franchise fee;" and
2. Schedule a date for oral argument on the remaining two Louisville Metro claims.

Respectfully submitted,



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⁸ Id., Notice of Withdrawal (Aug. 22, 2014).

⁹ Id., Order (Aug. 29, 2014).