

**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	)	2016-00317
OF MUNICIPAL FRANCHISE FEE RECOVERY	)	

**LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT  
REPLY TO LOUISVILLE GAS AND ELECTRIC COMPANY'S RESPONSE TO  
REQUEST FOR A PROCEDURAL SCHEDULE**

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 Request for a Procedural Schedule and states as follows:

1. It is clear to Louisville Metro that LG&E is making every effort to avoid giving Louisville Metro its day in court as it tries to prevent the arguments brought in the Louisville Metro Complaint from being aired publically. Louisville Metro simply asked for additional procedural steps should the Commission refuse to grant the Motion to Dismiss; a reasonable request. In fact, Louisville Metro has tried to be more than reasonable in all its requests, despite the LG&E tactics to prevent these important issues from being explored and aired publically. Louisville Metro has now sought from this Commission three potential Outcomes: (1) dismissal, (2) incorporation into Case No. 2016-00347 and then dismissal, and (3) if dismissal is denied, then issue a procedural schedule granting discovery and oral argument. LG&E's arguments boil down to one simple position: "We have always done it this way so we better keep doing it this way." Frankly, that's not a legal argument and it's a bad public policy. Louisville Metro believes the way franchise fees have been calculated and

collected is unlawful, unintended by the drafters of the Kentucky Constitution, and has resulted in an unfair, unjust, and unreasonable practice. It is past time to explore the issues raised in the Louisville Metro Complaint, and Louisville Metro should be afforded the opportunity to do just that.

**LG&E's Arguments Regarding the Louisville Metro Complaint are Improper**

2. LG&E argues in its response that an Order in the application case would render moot the Louisville Metro Complaint. There are many problems with this argument. To begin, LG&E is seeking relief without actually filing anything in the relevant case. If LG&E wishes to seek relief in the Louisville Metro Complaint case, then LG&E should locate Case No. 2016-00347 and file there. Second, LG&E raises completely novel issues in its Response. Louisville Metro sought a procedural schedule in this case should the Commission deny the Louisville Metro Motion to Dismiss. A Response to that Request is an improper place to seek new relief. Finally, the cases LG&E cites for the supposition that the Commission could simply dismiss the Louisville Metro complaint actually discredit LG&E's argument. When examining the cases cited by LG&E one notes that the majority of the cases provide the same result: the Commission granted all relief sought in the complaint case via an order in a secondary case before dismissal of the complaint.<sup>1</sup> Therefore, if the Commission wishes to grant, in the case at hand, all the relief sought by Louisville in its Complaint, only then would LG&E's cited precedent support dismissing the Louisville Complaint as moot.

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<sup>1</sup> Case No. 2008-00277, Order dated Dec. 11, 2008 (Relief requested was granted in related proceeding before the Commission); Case No. 2004-00354, Order dated Feb. 8, 2007 (Relief requested was granted in alternative proceeding before the Commission); Case No. 99-151, Order dated Aug. 2, 1999 (Relief requested was granted in alternative proceeding via settlement approved by the Commission); Case No. 9046 (cited in correctly by LG&E as Case No. 9406), Order dated Jan. 23, 1985 (Relief requested granted in alternative proceeding before the Commission).



### Declaratory Order Procedures Do Not Apply to Formal Complaints

3. LG&E repeatedly references that the Louisville Metro Complaint is unverified.<sup>2</sup> Of course it is. LG&E demonstrates a fundamental lack of understanding of the Complaint procedures under KRS § 278.260 and 807 KAR 5:001, Section 20. Only in the procedures outlined in 807 KAR 5:001, Section 19, for declaratory orders is verification required.<sup>3</sup> The Complaint procedures provide:

“The complainant or his or her attorney, if applicable, shall sign the complaint. A complaint by a corporation, association, or another organization with the right to file a complaint, shall be signed by its attorney.”<sup>4</sup>

The Louisville Metro Complaint was signed by two (2) attorneys and thus complied with the regulatory procedures.

### The Commission’s Order In Case No. 2016-00347 Demonstrates the Benefit of Conducting Discovery In This Case

4. The Commission issued an Order in Case No. 2016-00347 on October 19<sup>th</sup> seeking additional factual information from Louisville Metro before the Commission would make a determination that the Complaint satisfied the regulation and the standard for a *Prima Facie* case. The Order essentially seeks additional information on the jurisdictional authority of Louisville and information on the LG&E gas distribution system located

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<sup>2</sup> Response of LG&E to Louisville Metro Request for a Procedural Schedule at paragraphs 2, 4, and footnote 6; LG&E Response to Louisville Metro Motion to Dismiss at 5, and 6.

<sup>3</sup> 807 KAR 5:001, Section 19(6). (“Each application... shall be supported by affidavit or shall be verified.”)

<sup>4</sup> 807 KAR 5:001, Section 20(2).

under Louisville Metro's rights-of-way. While Louisville Metro fully intends to provide the Commission with additional supporting information as requested, the best logical source for information pertaining to LG&E's gas infrastructure is from LG&E itself. Considering that evidence pertaining to LG&E's gas infrastructure would certainly better inform Louisville Metro and the Commission, allowing Louisville Metro and the Commission an opportunity to seek discovery from LG&E seems very reasonable.

### **Louisville Metro Must be Afforded an Opportunity to Air its Arguments Publicly**

5. The Commission has discretion under 807 KAR 5:001, Section 19(8) whether or not to hold oral arguments on the declaratory application. However, KRS § 278.200, gives the Commission jurisdiction over the Franchise Agreement and the fee set by the Franchise Agreement. While KRS § 278.200 provides jurisdiction, it also requires that:

“no such rate or service standard shall be changed, nor any contract, franchise or agreement affecting it abrogated or changed, until a hearing has been had before the Commission in the manner prescribed in this chapter.”

That statute applies to both the Complaint case and the Application case at hand. If the Commission does rule against Louisville Metro in the case at hand, then the Commission will be changing the rate of the franchise fee, which LG&E concedes and actually emphasizes in its Response. LG&E's Response quotes the Franchise Agreement and adds emphasis on the following passage: **“Should the adjudication and any appeals therefrom, conclude that the franchise fee should be recovered from the Company's ratepayers as a line item on the bills of customers only in the franchise area, the**

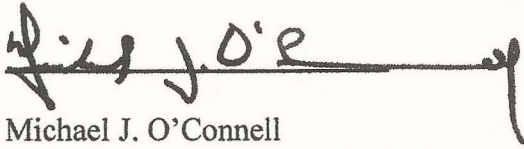
**amount of the fee will automatically revert to zero and no fee will be due from the Company.**<sup>5</sup> (Bold and underline added by LG&E). Thus, unless the Commission renders a decision either denying the LG&E Application or granting the Louisville Metro Motion to Dismiss, then the Commission must hold a hearing. If the Commission is to hold a hearing on an Application filed under 807 KAR 5:001, Section 19, then it stands to reason the Commission would hold oral arguments as provided for under Section 19(8).

WHEREFORE, Louisville Metro moves the Commission to dismiss the LG&E Application filed in Case No. 2016-00317, or to incorporate the record of Case No. 2016-00317 into Case No. 2016-00347 and then dismiss Case No. 2016-00317, or if dismissal is not granted then to issue a procedural schedule in the case at hand allowing for discovery on LG&E and opportunity for oral argument.

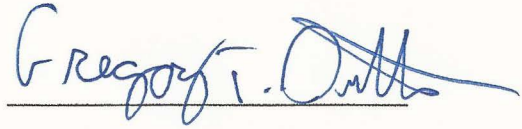
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<sup>5</sup> At footnote 6 (citing Franchise Agreement Section 11).

Respectfully submitted,

Handwritten signature of Michael J. O'Connell in black ink, written over a horizontal line.

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