

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

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

Louisville Gas and Electric Company (“LG&E”), by counsel, for its response to Louisville/Jefferson County Metro Government’s (“Louisville Metro”) “Request for a Procedural Schedule” states as follows:

1. Louisville Metro’s Request for Procedural Schedule was electronically filed without leave of the Commission or a motion requesting leave to file the pleading.¹ LG&E’s application for declaratory order is properly under submission before the Commission for decision.² The record is closed. Louisville Metro’s “notice of the filing of the following Request for a Procedural Schedule” or “motion for ... discovery and oral arguments” is untimely and otherwise unsupported.³

2. In the course of making its arguments in this most recent pleading, Louisville Metro again makes the two controlling concessions:

“The central basis for both actions is the Franchise Agreement executed between Louisville Metro and Louisville Gas & Electric.”⁴

¹ 807 KAR 5:001 Rules of Procedure Section 5. *Motion Practice*. (1) (“All requests for relief that are not required to be made in an application, petition, or written request shall be by motion. A motion shall state precisely the relief requested.”).

² *Id.*, Section 19. *Application for Declaratory Order*. (7) (“The commission may dispose of an application for a declaratory order solely on the basis of the written submissions filed.”).

³ Louisville Metro *Request for Procedural Schedule*, p. 1 and Par. No.1 at p.2.

⁴ *Id.* at p. 1.

“[T]he issue before the Commission in Case No. 2016-00317 is primarily legal in nature...” And again, “the claim brought by LG&E is largely legal in nature.” And further: “Due to the apparent dispute regarding the legal foundation of placing franchise fees as a line item on customer bills....”⁵

These admissions, combined with the remainder of the record, show that the matter is ripe for decision.⁶ Having taken this matter under submission in accordance with the procedures in 807 KAR 5:001 Section 19, the Commission should resolve this legal dispute by issuing a declaratory order confirming 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 under the Franchise Agreement. In doing, the Commission’s order will render as moot Louisville Metro’s tendered, unverified complaint that did not include affidavits to authenticate its exhibits.⁷

3. In contrast to Louisville Metro’s asserted demands for discovery and an oral argument, the Rules of Procedure make clear that the Commission “may dispose of an application for a declaratory order solely on the basis of the written submissions filed.” Whether the Commission “may take any action necessary to ensure a complete record, to include holding

⁵ *Id.* at Par. Nos. 4 and 5.

⁶ Throughout the raft of pleadings and lengthy tendered unverified complaint, Louisville Metro overlooks one of the most salient express term of the Franchise Agreement in Section 11: “Metro Council makes the Franchise Fee contingent upon the adjudication of an action contemplated in Section 12, LG&E will not collect or remit any Franchise Fee during the time period in which the action is pending, including any appeals therefrom, and LG&E will have no retroactive obligation to remit payment of the Franchise Fee following of the conclusion of the adjudication and any appeals therefrom. **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.**” (Emphasis added.)

⁷ The Commission has dismissed complaints as moot in numerous cases. *In the Matter of: The Villas at Woodson Bend Condominium Association, Inc., et al v. South Fork Development, Inc., et al*, Case No. 2009-00037, Order (Ky. PSC Dec. 19, 2011); *In the Matter of: Bruce William Stansbury v. Shelby Energy Cooperative, Inc.*, Case No. 2008-00277, Order (Ky. PSC Dec. 11, 2008); *In the Matter of: Vandella Caudill v. East Kentucky Waste Control*, Case No. 2004-00354, Order (Ky. PSC Feb. 8, 2007); *In the Matter of: Kentucky Electric Steel, Inc. v. Kentucky Power Company*, Case No. 99-151, Order (Ky. PSC Aug. 2, 1999); *In the Matter of: Western Kentucky Gas Company v. Orbit Gas Company*, Case No. 9406, Order (Ky. PSC Jan. 23, 1985); *In the Matter of: Complaint of Mrs. Alton Tucker, Shepherdsville, Kentucky Against Allied Telephone Company*, Case No. 8554, Order (Ky. PSC Dec. 8, 1982).

oral arguments on the application and requiring the production of additional documents and materials” is matter of Commission discretion.⁸ Louisville Metro’s motion fails to show any good cause for these demands. LG&E has filed a detailed verified application for a declaratory order which fully comports with the requirements in the Rules of Procedure.⁹ Nothing in Louisville Metro’s most recent pleading or in any other filings demonstrates the need to further supplement the record or hold oral argument. This request for declaratory order is ripe for decision. The Commission should reject the request for discovery and oral argument.

4. Finally, Louisville Metro’s motion for a procedural schedule asserts, “[t]hus, should the Commission fail to find Louisville Metro has established a *prima facie* case, Case No. 2016-00347 will continue to proceed until Louisville Metro has had another opportunity to establish a *prima facie* case, regardless of the decision on Louisville Metro's Motion to Dismiss Case No. 2016-00317.”¹⁰ In positing this hypothetical, Louisville Metro contends that amending its unverified tendered complaint is the required legal outcome. As previously demonstrated, the tendered complaint directly conflicts with numerous well-established Commission orders.¹¹ Louisville Metro’s various pleadings have failed to demonstrate why the disposition of the legal issues involving the Franchise Agreement with LG&E cannot be resolved through the declaratory order procedure, or how the complaint procedure somehow trumps the previously filed application for declaratory order procedure. The legal issues before the Commission should

⁸ 807 KAR 5:001 Rules of Procedure Section 19. *Application for Declaratory Order*. (7) (“The commission may dispose of an application for a declaratory order solely on the basis of the written submissions filed.”) and (8) (“The commission may take any action necessary to ensure a complete record, to include holding oral arguments on the application and requiring the production of additional documents and materials ...”)

⁹ *Id.*, Section 19. *Application for Declaratory Order*. (2).

¹⁰ Louisville Metro *Request for Procedural Schedule*, p. 1. Par No. 2.

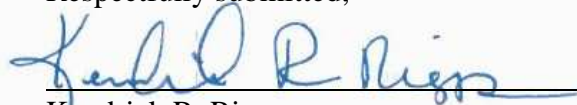
¹¹ LG&E’s *Verified Application for Declaratory Order*, Par. Nos. 27-30.

be resolved through the disposition of LG&E's application for declaratory order. The Commission should then dismiss Louisville Metro's unverified complaint as moot.¹²

WHEREFORE, Louisville Gas and Electric Company respectfully requests the Commission continue to take this matter under submission and issue a declaratory order confirming 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 under the Franchise Agreement. Unless the current regulatory framework is upheld, there will be no end to the increase in these kinds of governmental actions and fees, and no effective means to protect customers that lack representation in the municipality imposing the fees.

Dated: October 18, 2016

Respectfully submitted,



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¹² See authorities cited in footnote 7 in this *Response of Louisville Gas and Electric Company to Louisville/Jefferson County Metro Government Request for a Procedural Schedule*

CERTIFICATE OF SERVICE

In accordance with 807 KAR 5:001, Section 8, this is to certify that the foregoing electronically filed October 18, 2016 Response is a true and accurate copy of the same document being filed in paper medium; that the electronic filing has been transmitted to the Commission on October 18, 2016; that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding; and that an original and six copies, in paper medium, of the Motion are being mailed by first class U.S. Mail, postage prepaid, to the Commission October 18, 2016.

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

Counsel for Louisville Gas and Electric Company