

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 MOTION FOR ORAL ARGUMENT AND WITHDRAWAL OF PENDING CLAIM**

Louisville Gas and Electric Company (“LG&E” or “Company”), hereby responds and objects to Louisville/Jefferson County Metro Government’s (“Louisville Metro”) June 16, 2017, *Motion for Oral Argument and Withdrawal of Pending Claim* (“Motion”). LG&E respectfully requests the Kentucky Public Service Commission (“Commission”) (1) refuse to withdraw Louisville Metro’s pending claim so that it may fully and completely resolve this case and (2) establish a briefing schedule to resolve the legal issues in the case in lieu of a hearing.

The Motion first requests the withdrawal of Louisville Metro’s Claim 2. In Claim 2, Louisville Metro states that “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 Louisville Metro rights-of-way should pay the gas franchise fee.”¹ Louisville Metro states in its Motion that it “wishes to withdraw this claim from review by the Commission in order to hone the scope of inquiry,” but does not concede its argument that Louisville Metro should collect the franchise fee from all gas customers.² Louisville Metro’s Motion next requests oral argument. Louisville Metro argues that because the determination of the issues hinges on a legal analysis, “the

¹ Motion at 1. Louisville Metro’s complaint in Case No. 2016-00347, now consolidated with this case, presents the same claim. *In the Matter of: Louisville/Jefferson County Metro Government v. Louisville Gas and Electric Company*, Case No. 2016-00347, Amended Complaint (Ky. PSC Nov. 9, 2016).

² *Id.* at 2.

Commission may benefit from an open exchange regarding each party’s individual interpretation of the relevant legal provisions and decisions.”³

LG&E first objects to Louisville Metro’s withdrawal of Claim 2 and requests that the Commission deny it so that the relevant legal issues are finally and completely resolved. Louisville Metro has made three related claims regarding the assessment of any franchise fee collected under the Franchise Agreement. First, that the fee should not be collected as a line item on customer bills; second, that it should be assessed to *all* gas customers receiving the benefit of Louisville Metro’s rights-of way; and third, that the franchise fee should be collected from all customers within Jefferson County.⁴ These three claims require resolution of two issues: (1) should the franchise fee be collected from all LG&E customers not as a line item on customer bills; or (2) should the franchise fee be collected from certain classes of customers, such as those residing in Louisville Metro’s franchising authority, as a line item.

The Franchise Agreement specifically contemplates that the Commission will resolve all disputes regarding the assessment and collection of the franchise fee.⁵ Given the inextricable nature of the claims Louisville Metro has raised, Claim 2 should not be withdrawn. As an example, Louisville Metro’s Claim 1 alleges that it is improper for LG&E to pass the cost of the franchise fee to customers as a utility bill line item. In considering Claim 1, the Commission must consider whether it is appropriate for all customers to pay for the franchise fee in base rates,

³ *Id.* at 2-3.

⁴ Louisville Metro advanced these three claims in its complaint in Case No. 2016-00347. *In the Matter of: Louisville/Jefferson County Metro Government v. Louisville Gas and Electric Company*, Case No. 2016-00347, Amended Complaint (Ky. PSC Nov. 9, 2016).

⁵ The *Franchise Agreement* states that LG&E and Louisville Metro “reserve the right to seek all administrative relief from the Kentucky Public Service Commission or any other court of competent jurisdiction.” The *2016 Franchise Agreement* is attached as Exhibit 1 to LG&E’s application in Case No. 2016-00317.

as alleged in Claim 2.⁶ Thus, the Commission cannot fully resolve these issues without considering Claim 2.

Because Louisville Metro has refused to concede the merits of Claim 2, Louisville Metro may advance this argument at a later time, such as in a rate case or new complaint case, if the Commission does not reach a final resolution on the issue in this case. Neither equity nor administrative efficiency supports such a scenario; both parties – and customers – need to have this issue resolved.

Second, LG&E respectfully requests the Commission establish a briefing schedule to resolve the issues in this case in lieu of a hearing. In its Motion, Louisville Metro notes that the resolution of this case hinges on the legal analysis of the issues. LG&E agrees that resolving this case requires the Commission to analyze and consider predominantly legal issues. LG&E believes that briefing will allow each party to best present its legal arguments. Accordingly, LG&E requests that the Commission establish a schedule for initial and reply briefs to be simultaneously filed by LG&E, Louisville Metro, and Kentucky Industrial Utility Customers. If, following the submission of the briefs, the Commission believes oral argument would assist it in reaching a decision, the Commission can then schedule the oral argument. LG&E does not oppose such an oral argument.

WHEREFORE, Louisville Gas and Electric Company respectfully requests the Commission enter an order denying the withdrawal of Louisville/Jefferson County Metro Government's Claim 2 and establishing a briefing schedule in lieu of a hearing to resolve this matter.

⁶ In addition to asserting that the franchise fee should be recovered in base rates instead of passed on to customers as a utility bill line item, Louisville Metro also argues that the cost should be borne by shareholders.

Dated: June 23, 2017

Respectfully submitted,



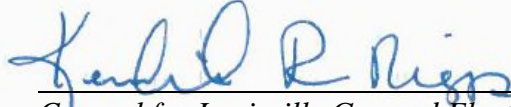
Kendrick R. Riggs
Stoll Keenon Ogden PLLC
2000 PNC Plaza
500 West Jefferson Street
Louisville, KY 40202-2828
Telephone: (502) 333-6000
Facsimile: (502) 627-8722
kendrick.riggs@skofirm.com

Allyson K. Sturgeon
Senior Corporate Attorney
Sara Veeneman Judd
Corporate Attorney
LG&E and KU Energy LLC
220 West Main Street
Louisville, KY 40202
Telephone: (502) 627-2088
Facsimile: (502) 627-3367
allyson.sturgeon@lge-ku.com
sara.judd@lge-ku.com

Counsel for Louisville Gas and Electric Company

CERTIFICATE OF SERVICE

This is to certify that Louisville Gas and Electric Company's June 23, 2017 electronic filing 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 June 23, 2017; and that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding.

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

Counsel for Louisville Gas and Electric Company