

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF KENTUCKY)
UTILITIES COMPANY FOR AN ADJUSTMENT)
OF ITS ELECTRIC RATES AND FOR CERTIFICATES) CASE NO. 2016-00370
OF PUBLIC CONVENIENCE AND NECESSITY)

-and-

In the Matter of:

ELECTRONIC APPLICATION OF LOUISVILLE GAS)
AND ELECTRIC COMPANY FOR AN ADJUSTMENT)
OF ITS ELECTRIC AND GAS RATES AND FOR) CASE NO. 2016-00371
CERTIFICATES OF PUBLIC CONVENIENCE AND)
NECESSITY)

**ATTORNEY GENERAL’S RESPONSE TO JOINT MOTION OF KENTUCKY
UTILITIES COMPANY AND LOUISVILLE GAS AND ELECTRIC COMPANY
FOR AN INFORMAL CONFERENCE**

Comes now the Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention, and hereby responds to Kentucky Utilities Company and Louisville Gas and Electric Company’s (hereinafter collectively, “Companies”) Joint Motion for an Informal Conference. The Companies have made an extraordinary request herein - that an informal conference be held with all three Public Service Commission Commissioners in attendance in addition to the normal attendees, intervenors and staff. The Attorney General objects to the Commissioners involvement in any informal conference with the Companies and parties in the above-styled matters during the pendency of a case, due in large part to the risk of the appearance of improper *ex parte* contact.

Kentucky courts have previously discussed instances similar to the one at hand, noting that in order to protect the integrity of the administrative process, even the appearance of impropriety regarding *ex parte* meetings between commissioners and parties to a pending case may be reason enough to render an outcome voidable.¹ The Public Service Commission of Kentucky (hereinafter “Commission”) derives its authority to act from statutes and has promulgated regulations since its inception in an attempt to provide for fair, just and reasonable rate-making procedures while promoting transparency. By allowing the Companies to meet with Commissioners behind closed doors, whether or not other parties are present, erodes the public’s perception of what a fair and transparent process looks like.² The concern is not simply whether substantive issues will be discussed, but rather the slippery slope that can devolve from situations like this. Should the Commissioners participate here, the precedent is set that when a jurisdictional utility desires a specific outcome, it may request an informal conference with the agency decisionmakers to ascertain the roadmap most likely to lead to its desired result; this consequence is in no party’s best interest, particularly the Commission’s.

In the Companies’ Joint Motion the Companies request the informal conference for the purpose of discussing “the procedures for conducting settlement discussions.”³ There is no reason an informal conference between the parties to the proceeding and Commission staff is not an adequate opportunity for any party to ascertain what expectations the

¹ Louisville Gas & Electric Co. v. Com. ex rel. Cowan, 862 S.W.2d 897 (Ky. App. 1993).

² In light of recent news reports regarding unhappy and upset customers of Commission-jurisdictional utilities, it would seem to be in the public’s interest for the parties to this proceeding and the Commission to keep in mind the perception of its actions regarding the matter at hand. See, e.g., < <http://www.thegleaner.com/story/news/2017/02/17/kenergy-official-responds-customer-complaints-energy-bills/98049534/>>, < <http://www.wymt.com/content/news/Petition-calling-for-lower-power-bills-collects-more-than-10000-signatures-412349813.html> >

³ Joint Motion of Kentucky Utilities Company and Louisville Gas and Electric Company for an Informal Conference, p. 1. Case Nos. 2016-00371 & 2016-00370.

Commission has in the process or procedure for formulating a settlement. In fact, the Companies are no strangers to the settlement process or informal conferences.⁴ The Companies have not presented any issues or evidence that would necessitate this extraordinary request and merely inviting all the parties is not sufficient to alleviate the issues it raises. Conducting a closed-doors, non-public, meeting between the parties to a proceeding and the agency decisionmakers is a deviation from Commission regulations and procedure.

In the past it has been sufficient to conduct informal conferences according to Commission regulations, with participation limited to Commission staff and parties and their representatives, “for the purpose of considering the possibility of settlement, the simplification or clarification of issues, or any other matter that may aid in the handling and disposition of the case.”⁵ Involving the Commissioners themselves to a closed-door informal conference does nothing more than muddy the waters of an otherwise transparent process and further promotes the public’s perception of a system working against them. Deviating from its own regulation and conducting an informal conference in this manner further belies the trust the public has in an open and fair process.

Regardless of the participation by the Commissioners in an informal conference in this matter, the Attorney General will participate in order to protect the interest of the consumers. Any participation or attendance by the Attorney General should not be construed to suggest or imply his position has changed or that his objection to the Commissioners’ involvement is not adequately preserved.

⁴ See, e.g., Case Nos. 2014-00372, 2014-00371, 2012-00221, 2012-00222, 2009-00548, and 2009-00549.

⁵ 807 KAR 5:001 Section 9(4).

Respectfully submitted,

ANDY BESHEAR
ATTORNEY GENERAL



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Certificate of Service and Filing

Counsel certifies that the foregoing is a true and accurate copy of the same document being filed in paper medium with the Commission within two business days; that the electronic filing has been transmitted to the Commission on March 14, 2017; and that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding.

This 14th day of March, 2017.



Assistant Attorney General