

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matters of:

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

-and-

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

**JOINT MOTION OF ATTORNEY GENERAL, WAL-MART STORES EAST, LP
AND SAM’S EAST, INC., LEXINGTON-FAYETTE URBAN COUNTY
GOVERNMENT, KENTUCKY LEAGUE OF CITIES, and LOUISVILLE /
JEFFERSON COUNTY METRO GOVERNMENT, TO DISMISS WITHOUT
PREJUDICE; ALTERNATIVE MOTIONS TO STRIKE OR REVISE PROCEDURAL
SCHEDULES**

Come now the Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention, Wal-Mart Stores East, LP and Sam’s East, Inc., Lexington-Fayette Urban County Government, Kentucky League Of Cities, and Louisville / Jefferson County Metro Government all by counsel [hereinafter jointly referred to as: “Joint Movants”], and respectfully move the Commission to dismiss the above-styled actions, or in the alternative, move the Commission to either strike the Companies’ Cost of Service Studies in these matters, or to issue revised procedural schedules in both matters. Joint Movants assert that the Companies’ actions prejudice every party to this case as well as the Commission. In support of these motions Joint Movants state as follows.

Nearly four (4) months ago, Louisville Gas & Electric Co. and its sister company

Kentucky Utilities [hereinafter: “LG&E-KU” or “Companies”] filed written direct testimony in these cases from numerous witnesses, including that of William Steven Seelye regarding cost-of-service studies [“COSS”]. Mr. Seelye’s testimony relies in great part upon a rate methodology heretofore unused in this Commonwealth known as the Loss of Load Probability [“LOLP”]. In order to develop his LOLP methodology, Mr. Seelye relied upon forecasted test year hourly loads as well as its forecasted hourly generation output by unit, provided by the Companies.

On March 3, 2017 the Attorney General’s Office of Rate Intervention filed written direct testimony from several witnesses, including that of Mr. Glenn Watkins, who therein proffered his own COSS based in part upon data in the exclusive possession of LG&E-KU, which the Companies provided in response to the Attorney General’s discovery requests.¹ Furthermore, the other Joint Movants also filed written direct testimony from witnesses on the subject of cost of service, revenue allocation and/or rate design, using the Companies’ provided COSS results from Mr. Seelye’s testimony, and the data the Companies provided which was utilized to create the COSS.² On this same date, intervenor Kentucky Industrial Utility Customers [“KIUC”] filed the direct testimony of Mr. Stephen J. Baron, who, *inter alia*, identified profound and troubling flaws in the Companies’ forecasted test year class hourly loads, upon which Mr. Seelye’s COSS is predicated.

On March 28, 2017, LG&E-KU filed “revised” responses to discovery requests in

¹ See for example, OAG 1-275 and 1-277 in Case No. 2016-00370; and OAG 1-292 and 1-294 in Case No. 2016-00371.

² See Testimony of Gregory W. Tillman on behalf of Walmart in Case No. 2016-00371 and Case No. 2016-00370; Testimony of Jeff Pollock on behalf of Kentucky League of Cities in Case No. 2016-00370 and on behalf of Louisville/Metro Government; Testimony of Douglas Jester on behalf of Lexington-Fayette Urban County Government in Case No. 2016-00370.

which they provided major revisions to Mr. Seelye's COSS.^{3,4} *Significantly*, Joint Movants note that these revised responses were filed at approximately 2:30 p.m., mere minutes following the conclusion of a significant hearing held in these two cases on March 28, 2017, which lasted until after 2:00 p.m. The Companies made no representation to the Commission or any of the Joint Movants at the hearing that such a significant revision would be contemporaneously filed into the record in this case. As such, Joint Movants believe the timing suggests a lack of candor to this Commission.

In "revising" the four (4) Cost of Service Studies (two (2) for each company), LG&E-KU have essentially conceded that Mr. Seelye's original COSS is inherently unreliable. Moreover, the Companies would have this Commission believe that Mr. Seelye's "revised" data should now be fully accepted by the Commission without any additional scrutiny or review.⁵ These new COSS studies are effectively new evidence, as the Companies "revisions" of data was significant. Thus, the Companies have now provided two different COSS upon which they have based their allocation of revenues while no discovery or testimony has been conducted on the most recent COSS. Moreover the Companies have not provided justification for basing the currently proposed allocations on the new COSS. Joint Movants are not willing to allow the "revised" data to evade proper examination to the detriment of all involved, and they urge the Commission to rule accordingly.

Since the data upon which Mr. Seelye's original COSS were fundamentally flawed, the Commission should not now allow this COSS to serve as the basis for allocating any

³ See March 28, 2017 revised responses to PSC 1-53 and attachments thereto, and to PSC 2-109 and attachments thereto in Case No. 2016-00371; and to PSC 1-53 and attachments thereto, and to PSC 2-97 and attachments thereto in Case No. 2016-00370.

⁴ See March 29, 2017 revised response to OAG 1-291 in Case No. 2016-00371, and OAG 1-274 in Case No. 2016-00370.

⁵ As the procedural schedule stands, no discovery would be permitted to these revised COSS, which provides new results as compared to the Companies' original COSS. KIUC's Motion and LG&E/KU's response to allow more time for Rebuttal Testimony does not fully cure this blatant deficiency.

increase in revenues which the Commission might choose to award in these cases. Lacking any fair, just and reasonable basis for allocating any potential increase, the above-styled matters must be dismissed without prejudice until such time as: (a) the companies have submitted a *verifiably accurate* COSS; and (b) the parties have had adequate opportunity to propound full and robust discovery of not only the COSS but any matters – including allocations- affected by the revisions.⁶ The Companies bear the burden of demonstrating that the COSS and proposed allocations are fair, just and reasonable, and they have clearly failed to meet that burden in this instance. Thus, dismissal is appropriate.

In the alternative the Commission should allow the parties to file supplemental testimony limited to the effects LG&E-KU's revised COSS, and revision to COSS data, necessary to advance the interest of their clients and to conduct an additional round of discovery limited to these same issues. Additionally, the parties should be provided the opportunity to issue discovery and explore whether the revenue allocations proposed by LG&E and KU require amendment as a result of the updated COSS. Given the updated responses and the “revised” COSS provided by the Companies, a fair procedural schedule going forward is provided as Appendix A.

The goal-posts have been moved in the fourth quarter of the game, to the detriment of the Commission, its Staff, and the Intervenors. To allow these cases to continue given the current situation not only prejudices every party except the Companies but also significantly impacts the availability of due process and transparency in these proceedings going forward. In order to adequately complete the record on which this matter must be determined, the Joint Movants respectfully move the Commission to provide a reasonable conclusion to this

⁶ Joint Movants note that LG&E-KU's March 30, 2017 Response to KIUC's Petition to Amend Procedural Schedule fails to provide for a new round of discovery regarding Mr. Seelye's revised COSS data.

issue; dismissal, strike or adopt the procedural schedule provided below.

After correspondence, counsel for the following parties have authorized the Joint Movants to advise the Commission that they do not oppose this motion: CAC,⁷ Sierra Club⁸ and KCTA.⁹ Further, counsel for JBS Swift and Co. has authorized the Attorney General to advise the Commission that JBS has no objection to the Joint Motion to amend the procedural schedule.

⁷ CAC in these matters is the Community Action Council for Lexington-Fayette, Bourbon, Harrison and Nicholas Counties, Inc.

⁸ Although they do not oppose this Motion, counsel for Sierra Club note they are not able to agree to start the hearing on May 15, 2017.

⁹ KCTA in these matters is The Kentucky Cable Telecommunications Association.

Respectfully submitted,

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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 31, 2017; that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding.

This 31st day of March, 2017.



Assistant Attorney General

Appendix A

Parties whose experts provided testimony on
cost of service, revenue allocation or rate design
may provide supplemental testimony in light
of the Companies' "revision" no later than.....04/14/17

Discovery by all parties limited to: "revised" cost of service studies,
supplement cost of service testimony or supplemental rate design
testimony shall be filed no later than04/21/17

Responses to all discovery requests propounded on
April 21st, 2017 shall be filed no later than04/28/17

A formal hearing in these matters may begin on or about05/15/17