

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

**LOUISVILLE GAS AND ELECTRIC COMPANY’S
RESPONSE TO LOUISVILLE/JEFFERSON COUNTY
METRO GOVERNMENT’S MOTION TO COMPEL**

Louisville Gas and Electric Company (“LG&E” or the “Company”) hereby responds to Louisville/Jefferson County Metro Government’s (“Louisville Metro”) February 3, 2017 Motion to Compel Discovery Responses (“Louisville Metro’s Motion”) in accordance with 807 KAR 5:001, Section 5(2). As set forth below, Louisville Metro’s Motion should be denied because it seeks the production of irrelevant information having nothing to do with whether LG&E’s proposed base rates are “fair, just and reasonable”¹ and is not calculated to lead to admissible evidence. The requested information is also irrelevant because it has nothing to do with the “above the line” expenses used to calculate the proposed rates customers would pay. In other words, it is not included in the cost of service submitted in this case. Instead, the requested information is a “below the line”² expense, meaning that LG&E has not requested and is not requesting rate recovery of this cost from customers. Therefore, the requested information has no bearing on whether the proposed rates are fair, just and reasonable.

¹ KRS 278.030(1).

² In defining “below the line,” the Commission has stated, “[t]hese contributions are . . . which in rate-making terminology is ‘below the line,’ and thus are not included in the cost of service.” *In the Matter of: The Application of Cincinnati Bell, Inc., for Authority to Adjust its Rates and Charges and to Change its Tariffs*, Case No. 8174, Order of September 9, 1981, p. 18.

Louisville Metro's Motion indicates that it seeks to compel responses to nine data requests to which LG&E objected on January 20, 2017 and then identifies those data requests as "Louisville Metro Questions 68-71, and 75-79."³ However, after identifying those nine data requests, Louisville Metro's Motion offers argument on Questions 68, 69, 70, 71, 75, 76, 77, 78 and 97. No argument is offered for Question 79 presumably because although LG&E objected to Question 79, it also indicated it would supplement its objection when it filed its full responses on January 25, 2017. Then, on January 25, 2017, LG&E supplemented its objection and indicated where the requested information (the "total assets of LKE") is publicly available. Therefore, for purposes of responding to Louisville Metro's Motion, LG&E assumes that the data requests at issue are the nine for which Louisville Metro has offered argument: 68-71, 75-78, and 97.

Questions 68, 69, 70, 71 and 97

Questions 68, 69, 70 and 71 are identical in that they all seek the "dates, details, and total expenses to [an entity] of community events that is held or funded during the period from January 1, 2014 to December 31, 2016." Question 68 seeks this information for LG&E; Questions 69 seeks it for "LKS," which is LG&E and KU Services Company, a subsidiary of LKE that provides services to LG&E; Question 70 seeks it for "LKE," which is LG&E and KU Energy LLC, a subsidiary of PPL Corporation and the parent of LG&E; and Question 71 seeks it for "PPL," which is PPL Corporation, the parent holding company of LKE and other subsidiaries.⁴

LG&E has a long and proud history of supporting community events with shareholder funds. Although Louisville Metro does not define "community events" in its discovery requests,

³ Louisville Metro's Motion, p. 1.

⁴ LG&E, LKE and PPL are all registrants with the United States Securities and Exchange Commission ("SEC") which means that a wealth of publicly available information about them is available via the SEC's EDGAR website and information about LKS is available to the public by virtue of its FERC Form 60 filings.

LG&E assumes Question 69 pertains to the exact types of events described in Mr. Staffieri's direct testimony in this case,⁵ which includes shareholder contributions to charitable and civic causes, including children's organizations, family assistance groups, and music festivals. As Mr. Staffieri noted, LG&E has received philanthropic awards for its commitment to the communities it serves.

LG&E is not asking and has never asked for rate recovery of the dollars it spends to support such community events. And the Commission historically has not permitted recovery of charitable contributions.⁶ Given the positions of LG&E and the Commission, the information regarding "community events" Louisville Metro asks the Commission to compel LG&E to produce cannot be relevant. Although the forward-looking test period in this case is from July 1, 2017 to June 30, 2018, the requests themselves are limited to the years 2014-2016. Thus, by definition, the requested community event expenses are not within the time period relevant for ratemaking purposes. But regardless of the time period in question, whether and how much LG&E spends on these events is a shareholder decision and only shareholder funds are used.⁷ Although LG&E is proud of its commitment to the communities it serves, that commitment and the level of that commitment are not relevant to evaluating the proposed changes in base rates. Any profit made by LG&E belongs to shareholders, and shareholders alone get to choose how

⁵ Mr. Staffieri's Direct Testimony, pp. 11-15.

⁶ *In the Matter of: Adjustment Of Rates Of Columbia Gas of Kentucky, Inc.*, Case No. 10498, Order of October 6, 1989, pp. 22-23 ("The AG/LFUCG propose to disallow contributions Columbia made to the United Way, Forward in the Fifth, and to the Chamber of Commerce. The three organizations may be classified as charitable and the Commission believes that they are worthwhile. However, it has been the position of the Commission in the past to disallow charitable contributions as a ratemaking item on the grounds that such contributions are not essential to the provision of services and are below the line items, the expense of which should be borne by shareholders."); *See In the Matter of: Notice of Continental Telephone Company of Kentucky Of An Adjustment In Its Intrastate Rates*, Case No. 8182, Order of September 21, 1981, p.9.

⁷ Mr. Staffieri's Direct Testimony, p. 12.

that profit is used.⁸ To the extent those profits are donated to community events, they are accounted for “below the line” and are not included in the cost of service to customers. Therefore, they are not relevant to a rate proceeding.

This Commission has explicitly held that these “below the line” expenses are not relevant. When an intervenor in a general rate case for Salt River Rural Electric Cooperative Corporation brought a motion to compel the production of information concerning a utility’s donations and Christmas gifts, the Commission held that such information was not included in the utility’s request for rate recovery, and therefore was not relevant.⁹ In other words, because those “below the line” expenses had no bearing on whether the proposed rates were “fair, just and reasonable,” they were not relevant and not discoverable. The Commission’s own regulation recognizes the difference between “above the line” and “below the line” expenses in a rate case. In requiring summary schedules for certain expenses, 807 KAR 5:001, Section 16(8)(f) permits a utility to segregate its summary expenses between recoverable and not recoverable.¹⁰ In accordance with that directive, when LG&E filed its Schedule F-2 related to its charitable contributions for the base period and forecasted period, it identified those contributions by charity but also explicitly stated that rate recovery was not being sought.¹¹ Thus, Louisville

⁸ Case Nos. 98-474 and 98-426, Order of August 11, 1999, pp. 2-3 ([T]he proposal is a voluntary undertaking similar to charitable contributions frequently made by utilities. These contributions are made from shareholder funds which are considered below the line for ratemaking purposes. Consequently, the administration of such funds is within the sole discretion of the contributors.”)

⁹ *In the Matter of: Adjustment of Rates of Salt River Rural Electric Cooperative Corporation*, Case No. 92-560, Order of April 20, 1993, p. 2 (“As Salt River did not include these items in its application for rate-making purposes, this information is not relevant to the Commission’s determination of the reasonableness of the proposed rates and need not be provided.”)

¹⁰ 807 KAR 5:001 Section 16(8)(f) “Each application seeking a general adjustment in rates supported by a forecasted test period shall include ...[s]ummary schedules for both the base period and the forecasted period (*the utility may also provide a summary segregating those items it proposes to recover in rates*) of organization membership dues; initiation fees; expenditures at country clubs; charitable contributions; marketing, sales, and advertising expenditures; professional service expenses; civic and political activity expenses; expenditures for employee parties and outings; employee gift expenses; and rate case expenses” (Emphasis added).

¹¹ See Tab 59, Schedule F, attached to LG&E’s November 23, 2016 Application.

Metro already has a summary of charitable contributions for the base and forecasted period.¹² Further, the Commission’s regulation recognizes as a matter of law the critical significance of the “below the line” status of such expenses and its *Salt River* Order explicitly finds such information to be irrelevant.

LG&E respectfully disagrees with Louisville Metro’s claims that “below the line” expenses “have previously been found to be relevant by the Commission in rate cases using both historical and future test years,”¹³ and Louisville Metro cites no Commission orders to support that assertion. Louisville Metro cites several discovery requests in cases where Commission Staff sought to ascertain whether certain expenses were below or above the line. But those discovery requests do not reflect a relevance inquiry. The focus of those requests was *whether or not* certain expenses were included in the cost of service to be recovered from customers, *i.e.*, below or above the line.¹⁴ In this case, there is no question that the expenses at issue are, in fact, below the line and not included in the cost of service.

As set forth above, LG&E’s contribution expense relating to community events (Question 68) is not relevant because it is not included in the cost of service. As for LKS (Question 69), LKE (Question 70), and PPL (Question 71), the relevance of such information is even more tenuous. Here again, the appropriate inquiry is whether an expense item is included in LG&E’s cost of service—is it an expense LG&E is attempting to recover from its customers? Though LG&E has included in its cost of service certain costs incurred for the services provided by LKS to LG&E and LG&E has disclosed and fully described those costs,¹⁵ none of those costs are in any way related to community events. As for LKE and PPL, they have no charges for

¹² LG&E also provided a detailed listing of its charitable contributions in response to PSC 1-52(c).

¹³ Louisville Metro’s Motion, pp. 1-2.

¹⁴ See footnote 1 on page 2 of Louisville Metro’s Motion.

¹⁵ LKS performs services for LG&E and bills LG&E for those services. For the detail of those billings for 2012-2016, the base year, and the forecasted test year, see LG&E’s response to KIUC 1-37.

community events in LG&E's service territory and none that are included in LG&E's cost of service, so their expenditures are also not relevant.

With respect to Question 97, which seeks expenditures incurred from 2014-2016 by 11 various entities ranging from LG&E to PPL for "ticket or subscriptions" to KFC Yum Center and Louisville Slugger Field,¹⁶ any such expenditures have no relevance to this rate proceeding. Here again, to the extent such expenditures have been made, they are "below the line" and not included in the cost of service. No rate recovery is sought for those expenses. For all of the reasons set forth above proving that expenses for community events are not relevant, expenses for tickets and subscriptions are likewise not relevant.

Finally, Louisville Metro cites to a September 1, 2011 Order in Case No. 2011-00162 in support of its Motion to Compel community event and ticket/subscription expenses.¹⁷ In that case, LG&E was seeking approval of its Environmental Compliance Plan, which would ultimately result in requested cost recovery from customers for the environmental projects in that plan. KIUC argued that future cost projections of the Environmental Compliance Plan were relevant and should be discoverable and the Commission agreed *because* those costs would ultimately be the subject of a rate recovery request.¹⁸ But in that same Order the Commission also held that information used to develop financial projections that were not limited to environmental compliance was *not* relevant because it had nothing to do with the environmental compliance projects in the case or the associated rate recovery of those projects.¹⁹ Thus, in the Order Louisville Metro cites, the Commission made a clear distinction between what is relevant

¹⁶ The 11 named entities are: LKE, LG&E, LKS, LG&E and KU Capitol LLC, PPL Corp., PPL Electric Utilities Corp., PPL Services Corp., PPL Capitol [*sic*] Funding, Inc., PPL Energy Funding Corp., PPL Energy Supply, LLC, and PPL Montour, LLC.

¹⁷ *In the Matter of: Application of Louisville Gas and Electric Company for Certificates of Public Convenience and Necessity and Approval of its 2011 Compliance Plan for Recovery by Environmental Surcharge*, Case No. 2011-000162, Order of September 1, 2011.

¹⁸ *Id.*, p. 6.

¹⁹ *Id.*

and what is not, and that distinction turned on whether the information would ultimately be related to a charge or potential charge to customers. If it did not, it was not relevant. So, in this case, information related to community events, tickets, and subscriptions—items for which LG&E is not seeking rate recovery—is unquestionably irrelevant.²⁰

Questions 75, 76, 77 and 78

Questions 75, 76, 77 and 78 seek information regarding “how much money” has been and is expected to be “transmitted” between: KU and LKE (Question 75); LKS and LKE (Question 76); and unregulated entities and LKE, including whether and where such transfers are publicly disclosed (Question 77).²¹

For Question 75 regarding transfers between KU and LKE, LG&E objected on the basis that KU’s transfers to LKE have no bearing on the rates LG&E has proposed. Transfers of money between LG&E and LKE, on the other hand, are relevant, which is why LG&E provided that information without objection in its response to Louisville Metro’s Question 74. But transfers between KU and LKE are not relevant to LG&E’s rate case because, of course, they are not a part of LG&E’s cost of service, dividend payments, capital structure, or capital contributions.

As for transfers of money between LKS and LKE (Question 76) and unregulated entities and LKE and where such transfers would be publicly disclosed (Question 77), here again, the

²⁰ As support for its motion, Louisville Metro asserts that LG&E has acknowledged that “similar information pertaining to LKE is relevant” by responding to Louisville Metro Questions 79 and 99. But an examination of these responses shows that to be untrue. In response to Louisville Metro Question 79, LG&E answered in pertinent part: “LKE is an SEC registrant and its assets are shown in its 10-K filing available on the EDGAR website.” In response to Louisville Metro Question 99, LG&E answered in pertinent part: “Dividends paid by LKE and PPL are available in their 10-K filing on the SEC’s Edgar web site” Nowhere in these responses did LG&E acknowledge the relevance of information pertaining to below the line expenses; rather, LG&E merely pointed Louisville Metro to publicly available information about LKE and PPL.

²¹ Questions 75, 76, and 77 begin with the phrase “Regarding LG&E’s answer to the PSC’s 1st and 2nd data request” LG&E does not know what that reference means, but notes that it could be referring to Item No. 2 of Commission Staff’s First Request for Information.

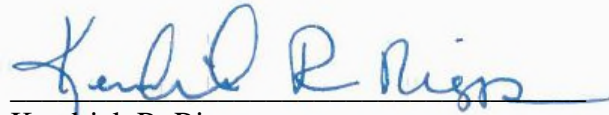
requested information is irrelevant. To the extent there are any such transfers, they are not included in LG&E's cost of service in this case and do not affect LG&E's requested rates. For the same reasoning relied upon by the Commission in *Salt River* discussed above, expenses not included in cost of service are not relevant and thus not discoverable.

The concept of relevance in the discovery context exists so that reasonable limits are applied to the scope and volume of discovery. In this case, LG&E has already responded to an unprecedented number of data requests (1,942 including subparts) and LG&E will be responding to another 778 supplemental data requests (including subparts) by February 20, 2017. In its January 25, 2017 discovery responses, LG&E produced 15,396 pages, 91 Excel files, 26 other files (PROSYM) on CD, and uploaded 471.4 megabytes of information. It also produced 5,010 pages of confidential information. LG&E does not cite these statistics to complain about the volume of discovery. But they are illustrative of the great lengths LG&E has gone to provide relevant information to the Commission and the intervenors in the case, as well as LG&E's reluctance to object to discovery requests. But LG&E has objected to requests such as those at issue in Louisville Metro's Motion, and the Commission should sustain those objections. The Commission must apply, as it has previously, the concept of relevance to ensure that discovery requests are limited to relevant information that is germane to the issue of whether the proposed rates are fair, just and reasonable pursuant to KRS 278.030(1).

WHEREFORE, Louisville Gas and Electric Company respectfully requests that the Commission deny Louisville Metro's Motion.

Dated: February 10, 2017

Respectfully submitted,

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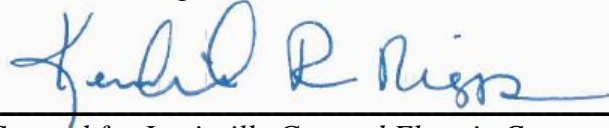
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CERTIFICATE OF COMPLIANCE

This is to certify that Louisville Gas and Electric Company's February 10, 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 February 10, 2017; that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding; and that an original in paper medium will be hand delivered to the Commission within two business days of the electronic filing.

A handwritten signature in blue ink, appearing to read "Gerald R. Nigg", is written over a light gray rectangular background.

Counsel for Louisville Gas and Electric Company