

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC JOINT APPLICATION OF)	
KENTUCKY UTILITIES COMPANY AND)	
LOUISVILLE GAS AND ELECTRIC)	CASE NO.
COMPANY FOR AN ORDER)	2018-00304
APPROVING THE ESTABLISHMENT OF)	
REGULATORY LIABILITIES AND)	
REGULATORY ASSETS)	

ATTORNEY GENERAL'S MOTION TO AMEND THE
PROCEDURAL SCHEDULE AND SCHEDULE A HEARING

Comes now the Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention (“Attorney General”), and hereby moves the Kentucky Public Service Commission (“PSC” or “Commission”) to amend the current procedural schedule and hold a hearing in this matter. In support of his motion, the Attorney General states as follows:

It is crucial that the Commission conduct a hearing in this matter so that the Attorney General, on behalf of consumers, may introduce evidence and conduct cross-examination on witnesses. Additionally, as the Attorney General will explain further, a hearing will assist the Commission in fully considering the matter, namely by narrowing the issues and presenting facts and evidence for its consideration. Louisville Gas and Electric Company’s and Kentucky Utilities Company’s (collectively “LG&E/KU” or “the Companies”) Verified Application (“Application”) requested an order in this matter by December 31, 2018.¹ As the Attorney General will address

¹ Application (Ky. PSC Sept. 12, 2018) at 10.

herein, his motion is made in consideration of the Companies' request, and he will work to ensure the Commission is able to comply with the proposed date, if it so chooses. The purpose of the Attorney General's motion is not to unnecessarily delay the proceeding, but rather to ensure, as the Commission has previously acknowledged as being of utmost importance, that "a reliable and comprehensive evidentiary record be developed."²

The current procedural schedule in this case provides for two rounds of discovery, with the responses to supplemental requests due "no later than [November 12, 2018]."³ The Commission's order setting the procedural schedule states, "motions for extensions of time with respect to the schedule herein shall be made in writing and will be granted only upon a showing of good cause."⁴ Respectfully, the Attorney General's motion herein is not a continuance or an extension of time. The current procedural schedule provides no opportunity for the Attorney General to either, a) provide evidence for Commission consideration, or b) conduct cross-examination on witnesses regarding the Application, and evidence provided in discovery and by the Attorney General.

In carrying out his duties under KRS 367.150, the Attorney General has a responsibility "to represent and be heard on behalf of consumers' interests." The Companies' Application, particularly its request to create "a regulatory asset and defer for future recovery" "extraordinary" storm-related costs has a profound impact on

² Case No. 2003-00266, Investigation into the Membership of Louisville Gas and Electric Company and Kentucky Utilities Company in the Midwest Independent Transmission System Operator, Inc. (Ky. PSC Mar. 10, 2005) at unnumbered 2.

³ Order (Ky. PSC Sept. 19, 2018) Appendix at page 1 of 1.

⁴ Order (Ky. PSC Sept. 19, 2018) at 3.

LG&E/KU customers.⁵ Ignoring the fact that the Companies are requesting deferral accounting for storm-related expenses more often, and increasingly for smaller and smaller amounts,⁶ the request for a regulatory asset is concerning in that the Commission's approval has the effect of nearly guaranteeing recovery of the cost in a subsequent rate case. In fact, the Companies' Application notes that if the Commission grants the regulatory accounting treatment for storm-related costs, the Companies will request recovery of those costs in their current pending base rate cases.⁷

As the Commission is well aware, it no longer "allows utilities to defer, consistent with FASB 980-340-25-1, Major Event Storm and other extraordinary expenses subject to Commission review and approval."⁸ Instead, the Commission put "all jurisdictional utilities on notice that Commission authorization is required before a utility can record as a regulatory asset an expense that meets one or more of the four criteria."⁹ The only exception to the Commission's precedent is that it will allow

⁵ Application at 8.

⁶ See Application at 9-10, citing the increasingly smaller and more frequent requests for regulatory assets resulting from storm-related expenses.

⁷ Application at 9, footnote 8.

⁸ Case No. 2016-00180, Application of Kentucky Power Company for an Order Approving Accounting Practices to Establish Regulatory Assets and Liabilities Related to the Extraordinary Expenses incurred by Kentucky Power Company in Connection with Two 2015 Major Storm Events, Order (Ky. PSC Dec. 12, 2016) at 4.

⁹ Case No. 2016-00180, Order (Ky. PSC Nov. 3, 2016) at 9; See also Case No. 2008-00436, The Application of East Kentucky Power Cooperative, Inc. for an Order Approving Accounting Practices to Establish a Regulatory Asset Related to Certain Replacement Power Costs Resulting from Generation Forced Outages, Order at 4, explaining the historical instances where "the Commission has exercised its discretion to approve regulatory assets" including where a utility has incurred "an extraordinary, nonrecurring expense which could not have reasonable been anticipated or included in the utility's planning," citing Case No. 2008-00456, Application of Louisville Gas and Electric Company for an Order Approving the Establishment of a Regulatory Asset; Case No. 2008-00457, Application of Kentucky Utilities Company for an Order Approving the Establishment of a Regulatory Asset; Case No. 2008-00308, Joint Application of Duke Energy Kentucky, Inc., Kentucky Power Company, Kentucky Utilities Company and Louisville Gas and Electric Company for an Order Approving Accounting Practices to Establish Regulatory Assets and Liabilities Related to Certain Payments Made to the Carbon Management Research Group and the Kentucky Consortium for Carbon Storage; and Case No. 2001-00169, Joint Application of Louisville Gas and Electric Company and

utilities to defer Major Event storm expense occurring in the fourth quarter of the fiscal year, subject to Commission notice and an application for deferral within a specific time.¹⁰ The Companies' request is not merely for accounting purposes only, but is for the express approval of the actual costs incurred, for eventual recovery in Case Nos. 2018-00295 and 2018-00294.¹¹ Given this reality, the Commission must investigate the reasonableness of the actual expenses and give serious consideration as to whether or not the storm-related expenses rise to the level necessitating deferral accounting. The time to determine whether these costs should be deferred for eventual recovery is now. The Attorney General intends to provide evidence at the hearing in this matter that will go to the heart of the issue as to whether the expenses incurred, or expected to be incurred, rise to the level required for the Commission to consider regulatory deferral accounting. Furthermore, the Attorney General expects to conduct cross-examination that he believes will help the Commission in deciding this matter.

In light of the Commission's recent precedent, the Attorney General understands the sensitivity and time constraint an application for deferral accounting this time of year creates.¹² In consideration of the Companies' request and the current time of year, the Attorney General is prepared to participate on a hearing date in this matter as early as November 15, 2018. This date is a mere three days after LG&E/KU's responses to supplemental discovery are due, and only two days after

Kentucky Utilities Company for an Order Approving Proposed Deferred Debits and Declaring the Amortization of the Deferred Debits to Be Included In Earnings Sharing Mechanism Calculations.

¹⁰ Case No. 2016-00180, Order (Ky. PSC Dec. 12, 2016) at 4-5.

¹¹ Application at 10, stating, "[t]he Companies respectfully request the Commission to state explicitly in its order that it is authorizing the Companies to accumulate in regulatory assets and defer for future recovery the actual incremental amounts of extraordinary operations and maintenance expenses the Companies incurred to repair damage and restore service to customers following the July 2018 Storm in regulatory assets."

¹² See Case No. 2016-00180, Order (Ky. PSC Dec. 12, 2016) at 4-5.

the Attorney General must provide discovery in the Companies' pending base rate cases. Although the Attorney General understands that a hearing date even as early as November 15, 2018, provides the Commission approximately only 45 days to enter an order, he believes it is nevertheless necessary to conduct the hearing. Should the Attorney General request to provide a brief in this matter after hearing, or should the Commission request he provide one, he is willing to do so five (5) days following the conclusion of any hearing. Although the Attorney General believes a hearing is necessary in this matter and he has adequately shown good cause for this Commission to grant same, he nevertheless is willing to be flexible in accommodating the schedules and requirements of the Companies and the Commission. Finally, unless the Commission decides otherwise, the Attorney General believes a ½-day hearing would suffice in this matter.

WHEREFORE, in consideration of the foregoing, the Attorney General respectfully moves the Commission grant his Motion to Amend The Procedural Schedule and Schedule A Hearing, and to set the hearing at the Commission's earliest convenience.

Respectfully submitted,

ANDY BESHEAR
ATTORNEY GENERAL



KENT A. CHANDLER
REBECCA W. GOODMAN
JUSTIN M. MCNEIL
LAWRENCE W. COOK
ASSISTANT ATTORNEYS GENERAL
700 CAPITAL AVE., SUITE 20
FRANKFORT KY 40601-8204
(502) 696-5453
Kent.Chandler@ky.gov
Rebecca.Goodman@ky.gov
Justin.McNeil@ky.gov
Larry.Cook@ky.gov