

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 REPLY IN SUPPORT OF HIS  
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 provides the Kentucky Public Service Commission (“PSC” or “Commission”) his Reply in Support of his Motion to Amend the Procedural Schedule and Schedule a Hearing (“Motion”). In further support of his Motion, the Attorney General states as follows:

In Response to the Attorney General’s Motion, Louisville Gas and Electric Company and Kentucky Utilities Company (collectively “LG&E/KU” or “the Companies”) filed a response, arguing, for the second time in as many months, that the Attorney General “misunderstands” the Companies’ requested relief.<sup>1</sup> With all

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<sup>1</sup> Response to Attorney General’s Motion to Amend the Procedural Schedule and Schedule a Hearing (“Response”) (Ky. PSC Oct. 26, 2018 ) at 1; *See also* Case No. 2018-00250, Joint Application of Kentucky Utilities Company and Louisville Gas and Electric Company for a Declaratory Order Establishing the Form of Notice and Number of Copies of Certain Documents Filed in Support of Upcoming Applications for Rate Adjustments, Response of Kentucky Utilities Company and Louisville Gas and Electric Company to Attorney General’s Motion to File Comments and Comments (Ky. PSC Aug. 23, 2018) at 1.

due respect, the Attorney General fully comprehends the Companies' application, so much so that he is requesting a hearing for the purpose of providing the Commission with the evidence necessary to deny LG&E/KU's requests as it pertains to the regulatory assets. The Companies went out of their way in their Response to ignore the purpose of the Motion: for the Attorney General, on behalf of consumers, to introduce evidence and conduct cross-examination.<sup>2</sup> LG&E/KU's Response argues for a scenario where they control the flow of all information, and no interested party, including the public, gets a say in the matter. The Companies argue that the Motion is untimely under the logic that because the procedural schedule did not provide for a hearing (or a brief for that matter), the Attorney General should have played a soothsayer and known he needed one before discovery ever began.<sup>3</sup> The Companies' logic begs two questions: 1) when would the Attorney General have had to file his Motion for LG&E/KU to have considered it timely or not for the purpose of delay, and 2) why are the Companies worried about the Attorney General being heard on this issue?

The Companies' argument that the Commission should deny the Attorney General's Motion merely because the law does not require a hearing must be summarily disregarded.<sup>4</sup> If a hearing in this matter were required, why would the Attorney General need to ask for one? The Commission must also disregard the Companies' companion position that the Attorney General can argue against the reasonableness of the expenses in a subsequent rate case.<sup>5</sup> LG&E/KU's position in

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<sup>2</sup> Motion at 2.

<sup>3</sup> Response at 4-5.

<sup>4</sup> Response at 3.

<sup>5</sup> *Id.*

this regard overlooks recent Commission precedent and the content and context of this matter. The Commission (and the Attorney General) have conducted discovery in this matter that goes to the heart of the issue; are the expenses incurred by the Companies of the type and to the level required to defer them for later rate recovery? It is upon this matter that the Attorney General wishes to introduce evidence and conduct cross-examination. Requiring the Attorney General to wait until the rate case to argue the reasonableness of deferring instead of expensing the storm costs has the ultimate effect of ignoring him outright. If the Commission approves the Companies' requested relief, the die has been cast and consumers silenced.

If accepted by the Commission, the Companies' position places the Attorney General in an untenable situation. Here, the Companies argue to effectively freeze out the Attorney General from being able to introduce evidence. Even if the Commission permits briefs, the Attorney General can hardly believe the Companies will acquiesce in the event the Attorney General attempts to introduce out-of-record evidence in his brief for the purpose of opposing portions of the application. The Companies' posture comes just months after a different investor-owned electric utility argued the Attorney General could not make his opinion even known on issues for the first time in a post-hearing brief.<sup>6</sup> The trend is clear. First, utilities argue that the Attorney General has to tell the utility what he is going to say before he is required to say it, and now two utilities are arguing that even if the Attorney General is allowed to file a brief, he is

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<sup>6</sup> See Case No. 2017-00321, The Electronic Application of Duke Energy Kentucky, Inc. for: 1) An Adjustment of the Electric Rates; 2) Approval of an Environmental Compliance Plan and Surcharge Mechanism; 3) Approval of New Tariffs; 4) Approval of Accounting Practices; and 5) All other Required Approvals and Relief, Response to the Attorney General's Petition for Rehearing of the Commission's April 13, 2018 Order and Motion to Strike (Ky. PSC May 10, 2018).

limited only to the evidence they provide.<sup>7</sup> Kentucky's investor-owned utilities continue to move the goal posts in an attempt to guard against consumers having equal footing before the Commission.

The Companies' attempts to act as if the Commission has not set a new direction regarding storm expense deferral accounting is disconcerting and unbelievable. In fact, in the shadow of Case No. 2016-00180<sup>8</sup>, LG&E/KU, along with the Commonwealth's two other investor-owned electric utilities, requested a meeting with the Commission in order to "seek guidance regarding expenses and creation of regulatory assets and liabilities."<sup>9</sup> It is hard to believe that the Companies truly believe the Commission's Orders in Case No. 2016-00180 "only reconfirm[] the Commission's precedent," when the order was troubling enough to cause all of the investor-owned electric utilities to request a meeting immediately following it to discuss the outcome. All of the Companies' citations and arguments regarding precedent predate Case No. 2016-00180, and have little to no bearing on the current Motion.

Finally, the Companies take issue with the Attorney General's earliest proposed date for hearing in this matter: November 15, 2018. The Attorney General merely provided that date in order to head off any attempt by the Companies to smear

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<sup>7</sup> This ignores of course the reality that under the Companies' arguments, the Attorney General would be precluded from filing a brief in this matter because, ostensibly: 1) he can do so in the rate case, 2) the law doesn't require one be filed, 3) a motion to request to do so would be untimely because it was not requested when the Companies filed their application, and/or 4) the Companies have received deferral approval before, so nothing can be said against the proposal before the Commission now.

<sup>8</sup> 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.

<sup>9</sup> See Attachment 1, an emailed invitation from Commission Staff to attend the meeting requested by the utilities just weeks after the Commission's order in Case No. 2016-00180.

his Motion as being for the purpose of delay. The Attorney General should have known under the Companies' "kitchen sink" approach to opposing his Motions that they would have found a way to turn a good faith overture into an argument against his requested relief. November 15, 2018, or any date for the next six months for that matter, would be anything but convenient for the Attorney General, but he nevertheless requests an opportunity to introduce evidence and have a voice in this matter. If it is more convenient for the Companies to have a hearing at a later date, such as December 31, 2018, the Attorney General will gladly make himself available.

**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



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# Attachment 1

**From:** [Gillum, Kathy \(PSC\)](#)  
**To:** [Goad, Angela \(KYOAG\)](#); [Chandler, Kent A \(KYOAG\)](#); [Faulkner, Samantha M \(KYOAG\)](#); [Goodman, Rebecca \(KYOAG\)](#); [Napier, Heather \(KYOAG\)](#); [Cook, Larry \(KYOAG\)](#)  
**Cc:** [Raff, Richard G \(PSC\)](#)  
**Subject:** Meeting # 821 (LG&E-KU. Ky Power, Duke)  
**Date:** Tuesday, January 03, 2017 9:55:55 AM

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This is to inform you that a meeting has been requested by LG&E-KU, Kentucky Power, and Duke Energy Kentucky to discuss investor-owned regulatory concerns and seek guidance regarding expenses and creation of regulatory assets and liabilities. The meeting is to be held at the Commission's offices on **Wednesday, January 25, 2017** at **10:00 a.m.** in Conference Room #1. This meeting is scheduled to have a 2 hour duration.

If you or a member of your staff would like to attend or participate via teleconference, please let me know by using the **voting buttons** on the top of this e-mail. If you wish to participate via teleconference, please dial **502-782-2663**, then enter **43940 #** when prompted, just prior to the scheduled time of the meeting.

*Kathy Gillum*

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Public Service Commission

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