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PUBLIC SERVICE  
COMMISSION

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION  
CASE No. 2009-00019

BRYAN GILLESPIE

COMPLAINANT

vs.

LOUISVILLE GAS AND ELECTRIC COMPANY

DEFENDANT

**COMPLAINANT'S RESPONSE TO  
DEFENDANT'S MOTION TO DISMISS**

The Complainant, Bryan Gillespie, ("Complainant" or "Gillespie"), by counsel, respectfully responds to Defendant Louisville Gas & Electric ("LG&E") Motion to Dismiss (which Complainant did not get a copy of) as follows:

1. LG&E's GROUNDS FOR DISMISSAL:

The Commission has noted in its Order that the following facts merit a dismissal in favor of LG&E:

- The Meter was not defective;
- LG&E properly charged Gillespie;
- Gillespie denied access to the building from October 2006 through March 2007 and couldn't make a meter reading during that period of time;
- The \$14,887.57 April bill could have resulted from a boiler running in a vacant building from October 2006 through March 2007.

2. GILLESPIE'S RESPONSE:

While some facts are in controversy, what isn't contested is the time period: **that the time period for the the alleged gas consumption is from October 2006 through March 2007.**

Attached are two Affidavits from Gillespie (See **Ex. 1**) and from Deborah Cole (See **Ex. 2**). Gillespie confirms that the building was, indeed, vacant; however, he states that when he purchased the building around October 2006, that the main gas line from LG&E was capped. **Ex. 1 ¶4.** He

discovered this when he asked his maintenance company ACCO Inc. (managed by Ms. Cole) to turn on the boilers to a minimum temperature so as not to freeze the pipes. **Ex. 1 ¶3.**

From October through November 2006, no gas was consumed by the building. **Ex. 2 ¶11.** A new gas line was installed sometime around November according to Mr. Gillespie. LG&E approved the new line and hooked up service in December 2006. **Ex. 1 ¶¶5 and 6.**

After December 2006 and through March 2007, minimal consumption of gas occurred as the building remained vacant. The sole purpose was to heat the building to sufficient temperature where water would not freeze in the building's pipes. **Ex. 1 ¶¶6 and 7.**

Ms. Cole, as the person who maintained the building's boilers, confirms this. **Ex. 2 ¶¶7, 8, 9, 10, 11, 12, and 13.** and 7. As for 2007, Ms. Cole states that this year produced one of the warmest years in our history according to the National Oceanic and Atmospheric Administration (NOAA) **Ex. 2 ¶14** (with NOAA public records attached thereto).

Both Gillespie and Ms. Cole swear that they made frequent visits to the building, and never smelled any of the tell-tale odor of gas – which would indicate an unusual leak. **Ex. 1 ¶8** and **Ex. 2 ¶15.**

As for Gillespie denying access to the building, that simply is not true. What better time to examine the meter than the time when LG&E re-hooked up service in December 2006? **Ex. 1 ¶¶10 and 11.** With the hook-up, an LG&E technician could easily have read the meter.

What seems most odd about LG&E's Motion is the issue of the meter. With his cell phone, Gillespie managed to capture LG&E's technician as he removed the culprit gas meter pursuant to a March 27, 2007 work order for "problems" with the meter. The work order states *Been read 4 times – all different* readings. **Ex. 1 ¶12** (with the attachments showing the work order, the meter itself, and

the technician). This would certainly be circumstantial evidence of a defective gas meter.

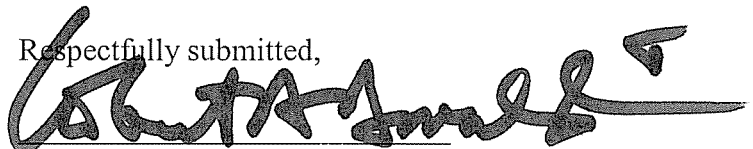
### CONCLUSION

Gillespie has stated a claim which can almost be addressed in his own favor when the Commission accepts LG&E's factual position. For the months in question, Gillespie responds:

- NO GAS WAS CONSUMED FROM OCTOBER THROUGH NOVEMBER 2006 BECAUSE THE GAS LINES LEADING TO THE BUILDING WERE CAPPED;
- MINIMAL GAS WAS CONSUMED FROM DECEMBER 2006 THROUGH MARCH 2007 BECAUSE THE BUILDING REMAINED VACANT WITH ONE BOILER IN MINIMAL OPERATION;
- 2007 WAS UNSEASONABLY WARM CAUSING MINIMAL GAS CONSUMPTION.

On a vacant building that averaged gas consumption around \$500 per comparable month (after the meter was repaired), it would seem rather a stretch for LG&E to contend that Gillespie's property was averaging \$4,000 during the months when the boiler was operating.

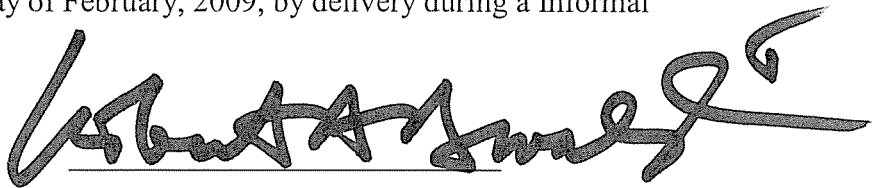
Respectfully submitted,



ROBERT A. DONALD, III  
401 West Main St. Ste 1400  
Louisville, KY 40202  
(502) 587-3183  
COUNSEL FOR COMPLAINANT

### CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing was hand delivered to the following on the 17<sup>th</sup> day of February, 2009, by delivery during a Informal Conference with the Commission.



**In Re: Matter of GILLESPIE V. LG&R**

**AFFIDAVIT OF BRYAN GILLESPIE**

Comes the Affiant, Bryan Gillespie, and after having been first duly sworn, deposes and states as follows:

1. My name is Bryan Gillespie and I a resident of the Commonwealth of Kentucky and the Complainant herein.
2. I am the owner of the building located at 421 West Market Street which was vacant from October 2006 through March 2007.
3. ACCO managed the buildings' two boilers. In order to maintain minimal temperatures, I told ACCO to turn up the temperatures.
4. I discovered that prior to my purchase of the building, LG&E had capped the gas line leading into the building -- so that the boilers could not put out any heat whatsoever.
5. In November 2006, a new line was installed into the building. At that time, LG&E tested and approved the new line, and hooked it into their service line.
6. In December 2006, gas service was restored to the building. ACCO was instructed to fire up only one boiler because the building remained vacant. The temperature was set at sixty (60) degrees.
7. The building remained vacant throughout 2007. Minimal gas consumption occurred during this time (with only one boiler operating).
8. I frequently visited the building from October 2006 through March 2007 and never detected the smell of gas.
9. From October 2006 though March 2007, I never restrained LG&E from access to the building.
10. On several occasions, I met with them to discuss the uncapping of the old gas

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line and the re-installation of the new line.

11. No one from LG&E ever called me to ask for entry into the building.

12. In March 2007, LG&E did contact me to ask that a repair person be permitted to come to the building to remove the gas meter. I was present and shot pictures on my cell phone. These pictures are attached to this Affidavit. They show:

- A picture of Work Order Number 07 0977 for Meter Number 260161 dated 3/27/2007 for "problems" indicating *Been read 4 times – all different readings.*
- A picture of Meter Number 698470;
- A picture of the technician who removed the meter.


Further, Affiant sayeth naught.



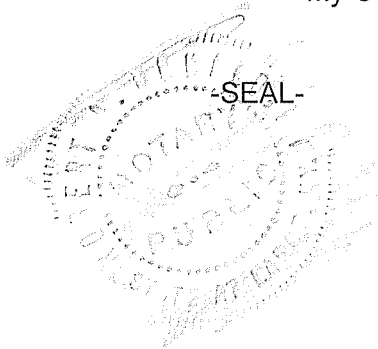
BRYAN GILLESPIE

COMMONWEALTH OF KENTUCKY )  
 ) ss:  
 COUNTY OF JEFFERSON )

Subscribed and sworn to before me by Bryan Gillespie this 17<sup>th</sup> day of February, 2009.  
 My Commission Expires: 5-11-2012



NOTARY PUBLIC  
 STATE-AT-LARGE





HOCH

Work Order Number 07 0977 Date Job Received 3/27/2007

Gas Meter Shop Work Order

Address 421 W Market Apt/Unit Louisville  
Meter Number 260161 Location Code C-Cellar/Basement Size Code 024

MARK  
8-22  
Q  
9:30  
AM

Other Problem:  Meter Down  Damaged  High Bill  Moisture

Other Problem:  Special Instructions:  Been read 4 times-all different readings  Change Index

11:05  
7/11/07

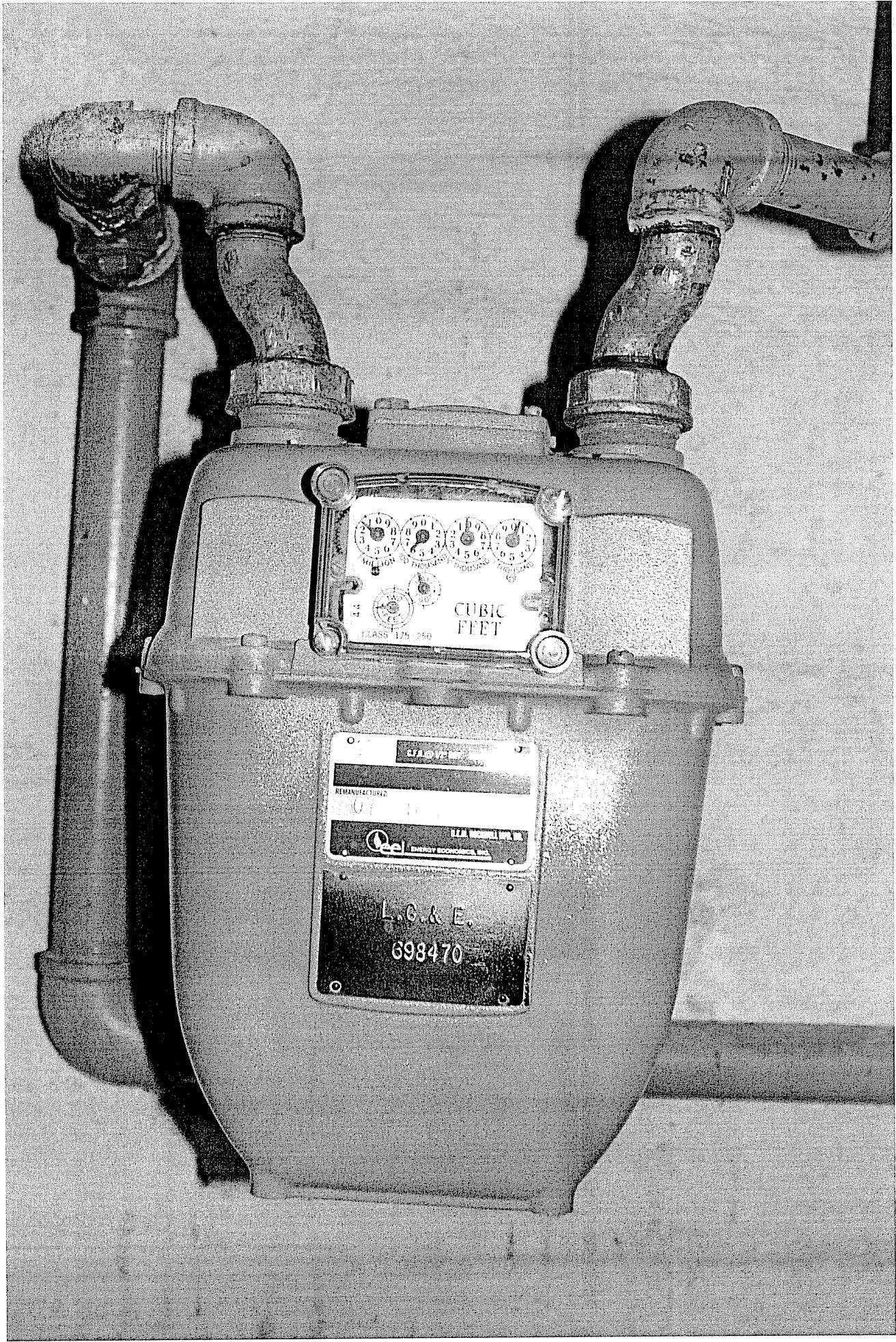
SEND BACK INVESTIGATE MESSAGE COMMENTS  
SEARCHED INDEXED SERIALIZED FILED  
APR 1 2007  
FBI - LOUISVILLE

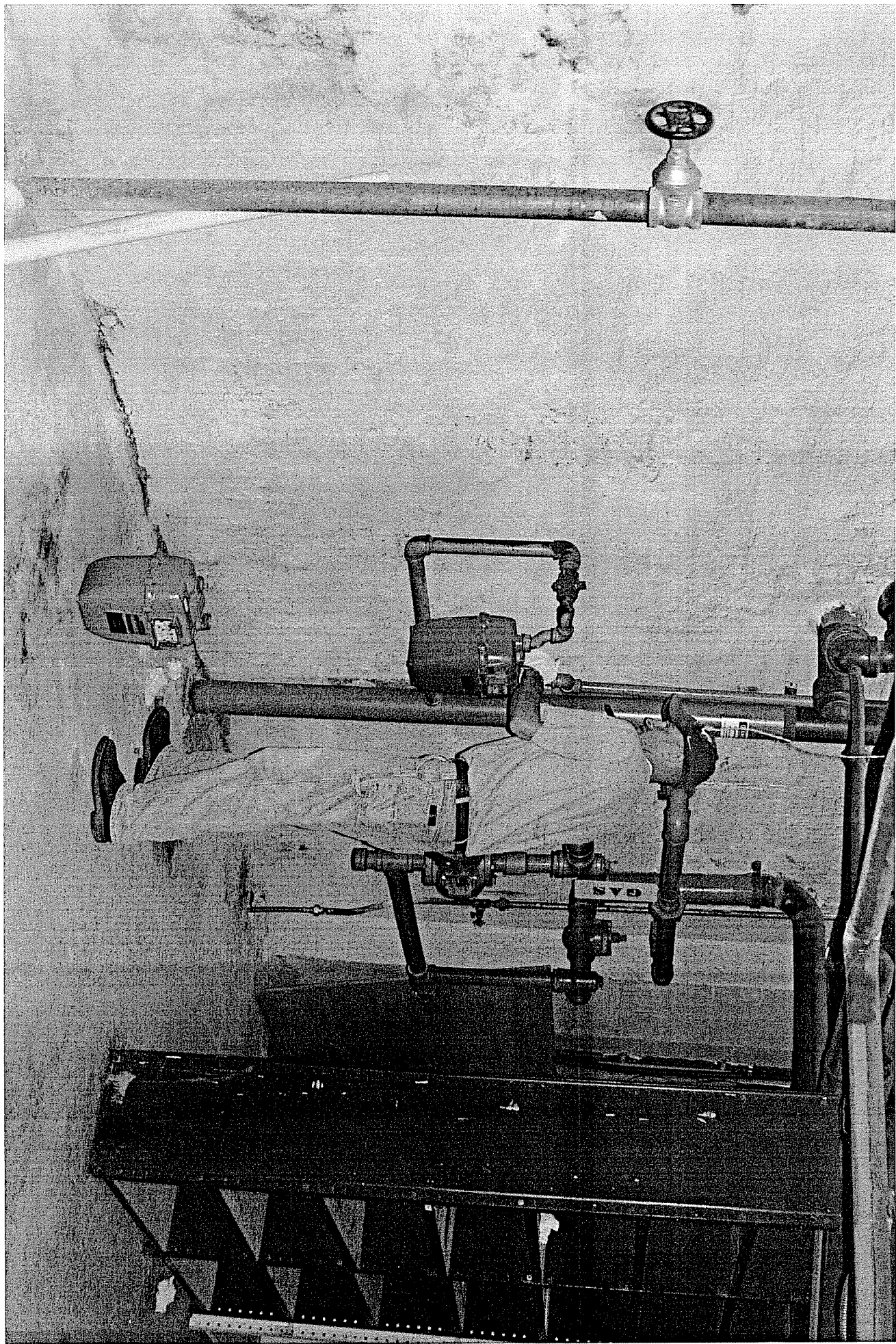
SEARCHED INDEXED SERIALIZED FILED  
APR 1 2007  
FBI - LOUISVILLE

CHANGE METER INFO

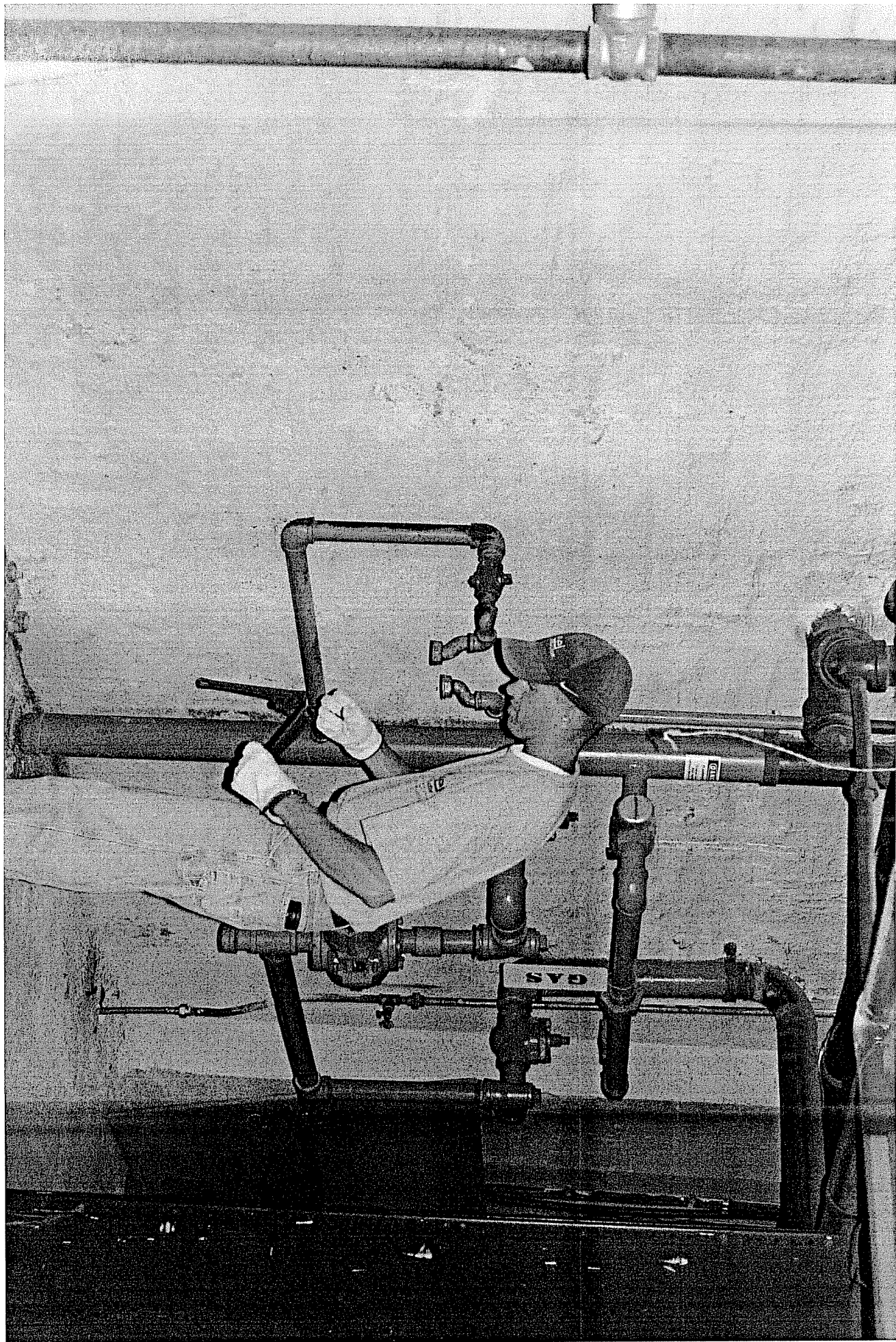
DATE	TIME	METER NO.	SIZE	TYPE	REASON	REMARKS

SEARCHED INDEXED SERIALIZED FILED  
APR 1 2007  
FBI - LOUISVILLE









**In Re: Matter of GILLESPIE V. LG&R**

**AFFIDAVIT OF DEBORAH COLE**

Comes the Affiant, Deborah Cole, and after having been first duly sworn, deposes and states as follows:

1. My name is Deborah Cole and I a resident of the Commonwealth of Kentucky.
2. I am employed with ACCO, Inc. which is a company that does maintenance work for commercial buildings in and around Louisville, KY.
3. I am familiar with the building located at 421 West Market Street, as my company does has done maintenance to the boilers located in that building both before October 2006 as well as thereafter.
4. In particular, ACCO was responsible for maintenance on the two boilers at 421 West Market Street from a period beginning October 2006 through and including March 2007 (the "concerned time period").
5. During the concerned time period, the building at 421 West Market was vacant, and therefore did not have any tenants.
6. My records show that Mr. Gillespie called ACCO late in October 2006 to ask that heat be restored to the building – which would have required gas service.
7. ACCO, Inc. responded to that request on November 1, 2006. It was determined that both boilers had been turned off because LG&E had capped the gas lines leading into the building prior to Mr. Gillespie's possession.
8. Mr. Gillespie then contacted LG&E to restore service, which occurred on December 4, 2006 when ACCO returned to the building.
9. At that time, Mr. Gillespie instructed ACCO to turn on only one boiler and to set the temperature at the minimum of sixty (60) in order to be high enough to keep the water in the

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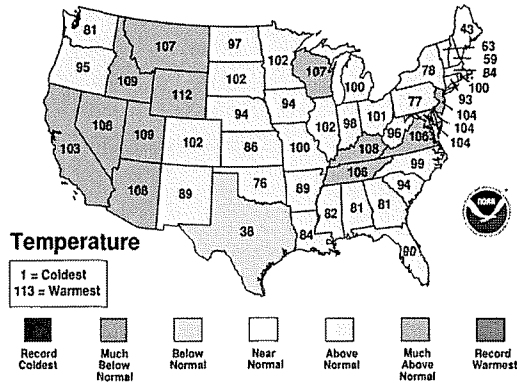


## 2007.....A review of this past year's weather.

Perhaps the overall theme for the weather this past year will be drought and overall warm temperatures. Yearly precipitation until late totaled substantially below the amounts of the prior several years, and much of southern and eastern Kentucky suffered from severe or extreme drought at one time. Several of these past 12 months were very warm; especially August, which was exceptionally hot. The graph below shows how warm Kentucky was this past year.

### January-November 2007 Statewide Ranks

National Climatic Data Center/NESDIS/NOAA



Out of the last 113 years, 2007 was the 6<sup>th</sup> warmest of record for Kentucky through the month of November. Only Texas stands out as within the coldest third of the last 113 years. Excessive rainfall and cloudiness during the spring and late summer kept Texas so cool.

Here are the monthly temperature statistics for Bowling Green, Lexington, and Louisville's Standiford Airport. The average temperature for several of these months fell within the warmest or coldest 10 months on record.

Average monthly temperature (Departure from Normal)	Louisville Standiford Airport	Lexington	Bowling Green
January	38.8 (+5.8)	36.9 (+4.9)	38.7 (+4.5)
February	30.0 (-7.6)	27.5 (-8.9) *9	33.0 (-5.6) *10
March	55.2 (+8.3) *4	52.3 (+6.7) *7	55.9 (+8.1) *8
April	55.5 (-0.9)	52.8 (-1.8)	55.6 (-1.3)
May	70.5 (+4.7)	67.8 (+4.0)	69.7 (+3.9)
June	77.2 (+3.0)	74.2 (+2.1)	76.0 (+1.6)
July	77.6 (-0.8)	74.8 (-1.3)	77.6 (-0.9)
August	85.0 (+8.0) *1	80.7 (+5.9) *2	85.0 (+8.2) *1
September	76.3 (+6.2) *3	72.2 (+4.2)	74.5 (+4.9)
October	65.9 (+7.4) *2	62.7 (+6.1) *9	63.7 (+5.8)
November	48.9 (+1.3)	45.5 (-0.4)	47.1 (-0.3)
December	41.9 (+4.3)	40.1 (+3.8)	42.6 (+4.3)
Total year	60.2 (+3.3)	57.3 (+2.1)	60.0 (+2.8)

\*.....Rank within the top 10 warmest months on record.

\*.....Rank within the top 10 coldest months on record.

# Winter

In general, this winter was uneventful. Just like last year, snowfall was sparse.

Snow total (Monthly average)		Louisville	Lexington	Bowling Green
January 2007		0.1 inch	0.4 inch	Trace
February 2007		4.4 inches	5.9 inches	4.7 inches
March 2007		Trace	Trace	Trace
April 2007		0.1 inch	0.8 inch	Trace
November 2007		Trace	Trace	0
December 2007		1.4 inch	Trace	Trace
2006 – '07 total		5.2 inches	7.8 inches	4.7 inches

2007's only snowstorm that produced 3 inches or more arrived in early February. This snow, which brought 6 inches to Cincinnati, was characterized as a southeastward moving Alberta Clipper.



February was an unusually cold month. Mean temperatures for the month across the region averaged from 5 to 9 degrees below normal. Lexington's mean temperature of 27.5 degrees made February 2007 the 9<sup>th</sup> coldest February on record. Bowling Green experienced its 10<sup>th</sup> coldest February with a monthly average of 33 degrees.

# Spring

During the spring of 2007, precipitation deficits continued to grow across central and southern Kentucky. Bowling Green had rainfall deficits for each month. Farther north, Louisville and Lexington at least had near normal rainfall for the month of April.