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January 24, 2014

HAND DELIVERY

Jeff DeRouen
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, KY 40601

RECEIVED

JAN 24 2014

PUBLIC SERVICE
COMMISSION

**Re: Formal Complaint of the Kentucky Cable Telecommunications
v. Louisville Gas and Electric Company and Kentucky Utilities
Company, Case No. 2014-_____**

Dear Mr. DeRouen:

Please accept for filing the attached Formal Complaint, the original and ten copies of which are provided and an additional four copies for service. A copy is also included for return to me after file stamping.

With this letter, the Kentucky Cable Telecommunications Association (“KCTA”) hereby requests a waiver from the paper-filing requirements of 807 KAR 5:001 to permit the use of electronic case-filing procedures concerning the attached Petition. KCTA requests a deviation from the regulation and asks the Commission to accept this case in electronic form only for both filing and service purposes.

Persons who should receive notice of all orders, pleadings, and other communications in this proceeding and their email addresses are
Laurence J. Zielke (lzielke@zielkefirm.com),
Janice Theriot (jtheriot@zielkefirm.com),
Gardner Gillespie (ggillespie@sheppardmullin.com) and
Amanda M. Lanham (alanham@sheppardmullin.com).

Hon. Jeff DeRouen
January 24, 2014
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KCTA respectfully requests that the Commission accept this Petition for filing and issue, at its earliest convenience, an order approving the requested waiver and assigning an electronic-case number to permit electronic filing in the case.

Sincerely,

A handwritten signature in cursive script, appearing to read "Janice M. Theriot".

Janice M. Theriot

Encl.

**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

In the Matter of:

Kentucky Cable Telecommunications Association,)
)
)
 Complainant,)
)
 v.)
)
Louisville Gas and Electric Company and)
Kentucky Utilities Company,)
)
 Defendants.)

Case No. 2014-_____

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COMMISSION

FORMAL COMPLAINT

The Kentucky Cable Telecommunications Association (“KCTA”), pursuant to KRS 278.260, KRS 278.270, KRS 278.040, KRS 278.030, and 807 KAR 5:001 Section 19, for its formal complaint against Louisville Gas and Electric Company (“LG&E”) and Kentucky Utilities Company (“KU”), collectively (“Utilities”) hereby states as follows:

PARTIES

1. The Complainant is the Kentucky Cable Telecommunications Association, 609 Chamberlain Avenue, Frankfort, Kentucky, 40601. KCTA is a non-profit organization consisting of cable companies throughout the Commonwealth. KCTA’s members attach to utility poles owned and controlled by the Utilities, and KCTA has represented its members in numerous proceedings before this Commission.

2. The Defendant is Louisville Gas and Electric Company, Post Office Box 32010, 220 West Main Street, Louisville, Kentucky 40232. LG&E is a utility engaged in the electric and gas business.

3. The other Defendant is Kentucky Utilities Company, P.O. Box 32010, 220 West Main Street, Louisville, Kentucky 40232. KU is a utility engaged in the electric business.

4. The facts supporting this complaint are set forth more fully below, but briefly, this complaint concerns LG&E's and KU's pole attachment rates that became effective January 1, 2013, which are unreasonable in violation of Kentucky law.

APPLICABLE LAW

5. The Kentucky Public Service Commission ("Commission") has exclusive jurisdiction over the pole attachment rates, terms, and conditions of regulated utilities. KRS 278.040; *see also Kentucky CATV Ass'n v. Volz*, 675 S.W.2d 393, 396 (Ky. App. Ct. 1983).

6. A "pole attachment is itself a 'service,'" and the rates a utility charges for pole attachments are "rates" within the meaning of the KRS 278.040. *Kentucky CATV Ass'n*, 675 S.W.2d at 396.

7. Kentucky law provides that utilities may only charge rates that are "just and reasonable" in exchange for their services. KRS 278.030(1).

8. To ensure just and reasonable pole attachment rates, the Commission has established a uniform methodology for utility companies under its jurisdiction to calculate cable television pole attachment rates. *See* Administrative Case No. 251, *The Adoption of a Standard Methodology for Establishing Rates for CATV Pole Attachments* (Aug. 12, 1982).

9. KRS 278.260 vests the Commission with original jurisdiction over any complaint as to reasonableness of the rates or service of any utility and empowers the Commission to investigate and remedy such complaints.

10. Additionally, KRS 278.270 provides that once the Commission receives a complaint pursuant to KRS 278.260, and after reasonable notice and a hearing, if it "finds that

any rate is unjust [or] unreasonable . . . the Commission shall by order prescribe a just and reasonable rate to be followed in the future.”

STATEMENT OF FACTS

11. On January 29, 2010, KU and LG&E filed concurrent Applications for an Adjustment of their Electric Rates in Case Numbers 2009-00548 and 2009-00549.¹

12. The Applications included proposals to increase the Utilities’ pole attachment rates. Specifically, KU and LG&E sought to increase their pole attachment rates to \$8.93 and \$8.55, respectively.

13. KCTA moved to intervene in the rate-making proceeding because its members were adversely affected by LG&E’s and KU’s proposed increases in their pole attachment rates, which did not follow the Commission’s methodology and were unreasonable.

14. The Commission granted KCTA’s motion on March 3, 2010.

15. On June 8, 2010, KU, LG&E, and the intervenors, including KCTA, filed a Stipulation and Recommendation that addressed all of the issues raised by the intervenors in the two ratemaking proceedings. The proposed tariff sheets attached to the Stipulation at Exhibits 4 and 5 show that the parties agreed that the per-attachment rental charge would be \$5.40 for KU and \$5.35 for LG&E, substantially less than the pole attachment rates the Utilities sought in their initial applications.

16. The Commission approved these stipulated pole attachment charges on July 30, 2010.

¹ On July 14, 1997, LG&E and KU filed an application with the Commission for approval to merge. The Commission approved the merger of LG&E and KU on September 12, 1997, although the utilities continue to file separate applications for rate adjustments.

17. On June 29, 2012, KU and LG&E filed concurrent Applications for an Adjustment of Electric Rates in Case Numbers 2012-00221 and 2012-00222.

18. KCTA mistakenly understood that these applications sought only increases in electric rates, not pole attachment rates. Thus KCTA did not intervene in the 2012 ratemaking proceeding on behalf of its members.

19. In the absence of participation by either KCTA or any of its members, the Commission approved KU and LG&E's new pole attachment rates of \$9.96 and \$9.11, respectively, on December 20, 2012.

20. The new pole attachment rates took effect January 1, 2013.

21. KU's and LG&E's new pole attachment rates reflect increases of 84 and 70 percent, respectively, over the pole attachment rates approved by the Commission pursuant to stipulation in 2010. The new rates do not follow the Commission's pole rate methodology as set forth in PSC decisions, including Administrative Case No. 251, and are unjust and unreasonable in violation of Kentucky law.

22. KU's and LG&E's new pole attachment rates are incorrectly calculated and result in excessive rates based on the Commission's seminal decision in Administrative Case No. 251, and follow-on cases, in at least the following respects:

- a. Both KU and LG&E fail to reduce their pole costs by 15% reflective of minor appurtenances that are included in the cost of poles on the companies' books. See *In the Matter of: The CATV Pole Attachment Tariff of the Union Light, Heat and Power Co.*, Administrative Case NO. 251-27, July 14, 1983, at 2-3 ("Therefore, to confirm to the Commission's Amended Order of September 17, 1982, ULH&P should reconstruct separate cost records for

major appurtenances, such as anchors, cross-arms, and braces, and estimate bare pole costs by deducting the cost of major appurtenances, plus 15 percent for minor appurtenances, such as aerial cable clamps and pole top pins . . .”); *In the Matter of: The CATV Pole Attachment Tariff of Kentucky Power Co.*, Administrative Case No. 251-24, July 6, 1983, at 3 (utility “should either show” data supporting its actual bare pole costs “or deduct 15 percent for minor appurtenances according to the Commission’s uniform method of estimating bare pole costs.”).

- b. Both KU and LG&E have applied the rates of return they proposed in their rate filing to their gross investment in poles. First, the pole rates must be adjusted to reflect that actual rates of return ultimately authorized by the Commission, not simply that proposed by the utilities. *See, e.g., In the Matter of: The CATV Pole Attachment Tariff of Kentucky Utilities Co.*, Administrative Case No. 251-25, June 1, 1983, at 2 (“The calculation should be modified to include a cost of money component equal to the return on net investment allowed in its last rate case.”); *In the Matter of: The Pole Attachment Tariff of the Union Light Heat and Power Co.*, Administrative Case No. 251-27, June 1, 1983, at 5. In addition, they must apply the rates of return to net (depreciated) investment, or must adjust the rates of return to be applied to gross investment, *see, e.g., In the Matter of: Application of Blue Grass Energy Cooperative to Adjust Its Rates*, Case No. 2000-414, May 30, 2001, at 4 “(It is today, and has for decades been, a basic rate-making principle in Kentucky that a utility’s rate of return is determined based on net

rather than gross investment.”); *In the Matter of Application of Cumberland Valley Electric, Inc. to Adjust Its Rates*, Case No. 2000-359, Feb. 26, 2001, at 4 (same, in effort to “definitively resolve this issue”).

- c. LG&E and KU appear to have carried forward in their maintenance factors of the carrying charge certain extraordinary storm-related expenses in the tree-trimming component. Since some or all of this expense are set to be recovered by the utilities from their rate payers over a five-year period, inclusion of the amounts here will result in over-recovery to the Utilities and unfairly require KCTA members to pay excessive charges.
- d. The Utilities’ calculations are based on unit investment numbers that are 40 percent higher than the corresponding 2009 figures. In light of the modest increases in the Handy Whitman index for pole plant during this period, it appears that the companies have made adjustments (to the number of poles, the investment in poles, or both) that must be explained in a hearing. Without the benefit of any discovery, KCTA is unable to account for this anomalous average increase in pole investment.

23. KCTA has attempted, without success, to convince KU and LG&E to revise their rates to be consistent with PSC decisions, including Administrative Case No. 251.

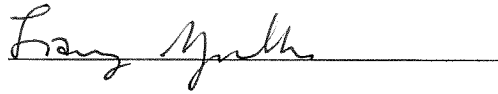
24. Some of KCTA’s members have not paid the new pole rates implemented by KU and LG&E in January 13, 2013, and await a decision by this Commission as to what pole rates are just and reasonable.

25. Because KCTA did not participate in the 2012 ratemaking proceeding, it is not estopped from now asserting that LG&E’s and KU’s pole attachment rates are unreasonable. *See*

In the Matter of Fidelity Corp. Real Estate, LLC v. The Union Light, Heat, and Power Co., Case No. 99-393, Order Filed Feb. 25, 2000, at 3 (finding that complainant was not estopped from challenging a utility's rate under KRS 278.260(1) because complainant was not a participant in the initial ratemaking proceeding).

WHEREFORE, KCTA respectfully requests that the Commission make a determination that a *prima facie* case has been established that LG&E's and KU's pole attachment rates are not fair, just, and reasonable and that the Commission require LG&E and KU to answer this formal complaint.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Laurence J. Zielke", is written over a solid horizontal line.

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**ATTORNEYS FOR THE KENTUCKY CABLE
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