

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF LOUISVILLE)	
GAS AND ELECTRIC COMPANY FOR A)	CASE NO.
DECLARATORY ORDER REGARDING THE)	2016-00317
PROPER METHOD OF MUNICIPAL)	
FRANCHISE FEE RECOVERY)	
)	
LOUISVILLE/JEFFERSON COUNTY METRO)	
GOVERNMENT VS. LOUISVILLE GAS)	CASE NO.
AND ELECTRIC COMPANY)	2016-00347

ORDER

The matter is before the Commission upon a motion filed by the Louisville/Jefferson County Metro Government (“Louisville Metro”) requesting a rehearing and clarification of the Commission’s January 25, 2017 Order in Case No. 2016-00347, and a suspension of the procedural schedule in Case No. 2016-00317. In the January 25, 2017 Order in Case No. 2016-00347, the Commission determined, among other things, that Louisville Metro failed to establish a *prima facie* case in its amended complaint challenging Louisville Gas & Electric Company’s (“LG&E”) tariffed methodology for recovering the cost of a gas franchise fee. The Commission, however, found that Louisville Metro provided sufficient evidence to review the allegations contained in its amended complaint, and Case No. 2016-00347 was consolidated into Case No. 2016-00317. Also on January 25, 2017, the Commission issued an Order in Case No. 2016-00317 denying Louisville Metro’s motion to dismiss LG&E’s application and establishing a procedural schedule for the processing of that matter.

In support of its rehearing request, Louisville Metro points out that it had filed a Motion to file Addendum to supplement its Amended Complaint, along with the requested Addendum, but the Commission did not address its motion in the January 25, 2017 Order in Case No. 2016-00347. Louisville Metro notes that the Addendum provided “considerable evidentiary weight to the claims made in the Louisville Metro Complaint.”¹ The Addendum contains two maps. The first map provides the locations of LG&E’s transmission and distribution mains throughout Jefferson County. The second map contains the location of gas transmission lines throughout Kentucky, along with the owners of those lines. Relying on the maps contained in the Addendum, Louisville Metro asserts that all LG&E gas customers, including those in Jefferson County, receive their gas through mains located under Louisville Metro rights-of-way. Based on this information which was not discussed in the January 25, 2017 Order in Case No. 2016-00347, Louisville Metro requests the Commission to rehear its determination that Louisville Metro’s amended complaint failed to state a *prima facie* case.

Louisville Metro also seeks clarification of the language of the January 25, 2017 Order in Case No. 2016-00347 consolidating that matter into Case No. 2016-00317. Specifically, Louisville Metro seeks confirmation that all three claims raised in its complaint will be addressed in the consolidated case and that should Louisville Metro succeed in satisfying its burden of proof, the Commission would consider ruling in favor of Louisville Metro on the those three claims.

¹ Louisville/Jefferson County Metro Government Motion for Rehearing and to Suspend Procedural Schedule at 2.

Last, Louisville Metro requests that the procedural schedule established in Case No. 2016-00317 be suspended. Louisville Metro notes that the procedural schedule provides a deadline of February 28, 2017, for the parties to file direct testimony. Given that KRS 278.400 provides the Commission with up to 20 days to make a determination on a rehearing request, Louisville Metro states that a suspension of the procedural schedule would allow the Commission the full 20-day statutory time period in which to fully consider Louisville Metro's request for rehearing, which was filed on February 14, 2017, and "provide the parties with some certainty as to the issues raised herein in advance of filing testimony"²

On February 17, 2017, LG&E filed a response objecting to Louisville Metro's motion for rehearing. LG&E contends that the Commission's lack of an explicit reference to the Addendum in the January 25, 2017 Order in Case No. 2016-00347 does not show that the Addendum was not considered by the Commission in determining that Louisville Metro's amended complaint failed to state a *prima facie* case. LG&E notes that the maps contained in the Addendum have been incorporated into the record of Case No. 2016-00317 and will be considered in the consolidated case. LG&E argues that the Addendum maps do not conclusively establish that all LG&E customers receive their gas through mains located under a Louisville Metro right-of-way. Rather, LG&E contends that the maps show that LG&E gas customers receive gas through mains located under multiple municipal jurisdictions other than Louisville Metro.

² Louisville/Metro Motion at 5.

LG&E also objects to Louisville Metro's request to suspend the procedural schedule, arguing that Louisville Metro has not established good cause for such relief and that Louisville Metro's request would unduly delay the proceeding. Last, LG&E avers that the language in the January 25, 2017 Order in Case No. 2016-00347 regarding the allegations to be reviewed and each party's respective burden of proof in the consolidated case requires no clarification. Further, LG&E maintains that Louisville Metro's request that the Commission clarify whether it would consider a ruling favorable to Louisville Metro should it meet its burden of proof is tantamount to requesting the Commission to prejudge the matter and the Commission should decline to do so and deny Louisville Metro's motion.

Having reviewed the pleadings and being otherwise sufficiently advised, the Commission finds Louisville Metro has failed to establish any grounds to justify granting a rehearing of the January 25, 2017 Order in Case No. 2016-00347. While the maps contained in the Addendum show the general location of gas transmission and distribution lines, they do not show the boundaries of Louisville Metro or those of other incorporated areas in Jefferson County. A review of the maps does not affirmatively establish that that all LG&E gas customers receive their gas from gas pipelines located under Louisville Metro's rights-of-way. We take administrative notice that LG&E distributes and sells natural gas at retail in Jefferson County and portions of Barren, Bullitt, Green, Hardin, Hart, Henry, Larue, Marion, Meade, Metcalfe, Nelson, Oldham, Shelby, Spencer, Trimble, and Washington counties. The map depicting gas pipelines throughout the state shows that for the counties of Barren, Green, Hart, Marion, Meade, Metcalfe, Oldham, Shelby, and Trimble, there are gas pipelines

owned by companies in addition to those of LG&E's in those counties. Further, as noted by LG&E, the maps also show LG&E gas lines located in jurisdictions other than Louisville Metro. Thus, Louisville Metro has failed to establish a *prima facie* case regarding its claim that all LG&E gas customers receive their gas through mains located within Louisville Metro's jurisdiction. The Commission acknowledges that Louisville Metro's motion to file an addendum remains outstanding and we will take this opportunity to grant Louisville Metro's motion.³

With respect to Louisville Metro's request to clarify the language regarding our review of its claims and the burden of proof in Case No. 2016-00347, we find that no clarification is needed. The language of our January 25, 2017 Order in Case No. 2016-00347 makes clear that Louisville Metro's amended complaint, although failing to state a *prima facie* case, presented sufficient evidence to review the three claims raised in its amended complaint. Those claims are: 1) it is improper to allow LG&E to directly pass the cost of a franchise fee onto LG&E's gas customers as a utility bill line item; 2) if the Commission allows LG&E to pass the cost of a franchise fee directly to customers, then all LG&E gas customers receiving the benefit of the Louisville Metro rights-of-way should pay the gas franchise fee; and 3) if the Commission allows LG&E to pass the cost of a franchise fee directly to customers, then the franchise fee should be collected throughout Louisville Metro. Those claims will be reviewed along with the issues raised by LG&E in its request for a declaratory ruling in connection with the subject gas franchise agreement. Each party will have the burden of proof with

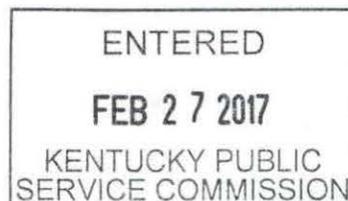
³ The Addendum has already been incorporated into the record of Case No. 2016-00347 pursuant to the January 25, 2017 Order in Case No. 2016-00317.

respect to the issues that it raises. The Commission will make a final determination based on the evidence presented. Last, the Commission finds that Louisville Metro has established good cause to permit a limited modification of the existing procedural schedule.

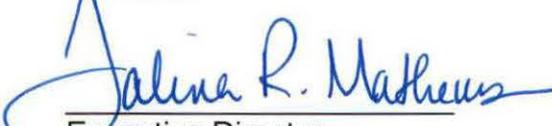
IT IS THEREFORE ORDERED that:

1. Louisville Metro's motion for a rehearing is denied.
2. Louisville Metro's Motion to File Addendum in Case No. 2016-00347 is granted.
3. The existing procedural schedule established pursuant to the January 25, 2017 Order in Case No. 2016-00317 is revised as set forth in the Appendix.
4. The revised procedural schedule set forth in the Appendix supersedes any schedule previously established and shall be followed in this proceeding.
5. Case No. 2016-00347 is closed and removed from the Commission's docket.

By the Commission



ATTEST:


Executive Director

Case No. 2016-00317
Case No. 2016-00347

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2016-00317 DATED **FEB 27 2017**

- Each party shall simultaneously file, in verified form,
its testimony, if any, addressing all relevant
issues no later than 03/14/17
- All requests for information to each party
shall be filed no later than 03/24/17
- Each party shall file responses to requests
for information to it no later than..... 04/07/17
- Each party shall file, in verified form,
its rebuttal testimony, if any, no later than..... 04/21/17
- Formal Hearing to be held in Hearing Room 1
of the Commission's offices at 211 Sower Boulevard,
Frankfort, Kentucky, for the purposes of taking oral
arguments from the parties..... To Be Scheduled

*Honorable Allyson K Sturgeon
Senior Corporate Attorney
LG&E and KU Energy LLC
220 West Main Street
Louisville, KENTUCKY 40202

*Robert Conroy
LG&E and KU Energy LLC
220 West Main Street
Louisville, KENTUCKY 40202

*Gregory T Dutton
Goldberg Simpson LLC
9301 Dayflower Street
Louisville, KENTUCKY 40059

*Louisville Gas and Electric Company
220 W. Main Street
P. O. Box 32010
Louisville, KY 40232-2010

*Jody Kyler Cohn
Boehm, Kurtz & Lowry
36 East Seventh Street
Suite 1510
Cincinnati, OHIO 45202

*Louisville Gas and Electric Company
220 W. Main Street
P. O. Box 32010
Louisville, KY 40232-2010

*Honorable Kurt J Boehm
Attorney at Law
Boehm, Kurtz & Lowry
36 East Seventh Street
Suite 1510
Cincinnati, OHIO 45202

*Honorable Kendrick R Riggs
Attorney at Law
Stoll Keenon Ogden, PLLC
2000 PNC Plaza
500 W Jefferson Street
Louisville, KENTUCKY 40202-2828

*Michael J O'Connell
Jefferson County Attorney
Brandeis Hall of Justice
600 West Jefferson St., Suite 2086
Louisville, KENTUCKY 40202

*Honorable Michael L Kurtz
Attorney at Law
Boehm, Kurtz & Lowry
36 East Seventh Street
Suite 1510
Cincinnati, OHIO 45202