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Ms. Gwen R. Pinson
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, Kentucky 40602

July 16, 2018

Re: Sanctuary Church v. Louisville Gas and Electric Company
Case No. 2018-00181

Dear Ms. Pinson:

Pursuant to ordering paragraph (2) of the Commission's Order dated July 5, 2018 in the above-referenced case, enclosed please find an original and ten (10) copies of the Answer of Louisville Gas and Electric Company to the Complaint of Sanctuary Church.

Please contact me if you have any questions concerning this filing.

Sincerely,

Michael E. Hornung

Enclosures

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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COMMISSION

In the Matter of:

SANCTUARY CHURCH)	
)	
COMPLAINANT)	
)	
v.)	CASE NO.
)	2018-00181
LOUISVILLE GAS AND ELECTRIC COMPANY)	
(LG&E))	
)	
DEFENDANT)	

* * * * *

ANSWER OF
LOUISVILLE GAS AND ELECTRIC COMPANY

In accordance with the Kentucky Public Service Commission's ("Commission") Order of July 5, 2018 in the above-captioned proceeding, Louisville Gas and Electric Company ("LG&E" or the "Company") respectfully submits this Answer to the Complaint of Sanctuary Church ("Complainant") filed on May 16, 2018. In support of its Answer, and in response to the specific averments contained in said Complaint, LG&E states as follows:

1. LG&E admits the allegations contained in paragraphs (a) and (b) of the Complaint, on information and belief.

2. With regard to the allegations contained in paragraph (c) of the Complaint, LG&E states as follows:

a. LG&E records show that Sanctuary Church placed services into their name on April 18, 2016. The account was started on the General Services (“GS”) rate based on the prior account rate in the LG&E Customer Care System. The prior account holder for the building at 930 Mary Street in Louisville, Kentucky was Sojourn Church. Sojourn Church was billed at GS rate, and that rate structure was carried over to the new account holder until their rate of consumption could be determined.

b. GS rates are limited to customers whose 12-month-average monthly maximum loads do not exceed 50 kW. LG&E notified Sanctuary Church that they would be moved to Power Service (“PS”) rate in a letter dated December 29, 2016, after conducting several monthly reviews of Sanctuary Church’s monthly demand readings. A chart of their average monthly maximum load (kW) and consumption (kWh) from April 2016 through May of 2018 is attached as Exhibit A. From April to December of 2016, Sanctuary Church’s average demand was 82.80 kW, well above the threshold 50 kW average required for maintaining a GS billing rate. With regard to any other averments in the first paragraph of (c) of the Complainant’s Complaint, LG&E does not have enough knowledge to admit, and therefore denies same.

c. With regard to the averments in the second paragraph of (c) of the Complainant's Complaint which suggest that LG&E has subjected Sanctuary Church to "unreasonable prejudice and disadvantage", LG&E denies such statement. Sojourn Church was a grandfathered customer under Rate GS at this location. LG&E uses the term "grandfathering" to refer to an exemption a utility grants (with Commission approval) to permit customers taking service under a rate schedule to continue doing so even after the terms for taking service under the schedule change in a way that would otherwise exclude the grandfathered customer from the class of customers served by the particular rate schedule. Once service is taken out of the original customer's name, the grandfathering status no longer applies to the address. LG&E does not have enough knowledge to admit the remaining averments, and therefore denies same.

d. KRS 278.170(2)'s provisions regarding free or reduced rate service are discretionary with the utility and are subject to Commission approval. LG&E does not have such a tariff offering, and to provide such a rate to one church would violate the provisions of KRS 278.170(1). With regard to any other averments in the third paragraph of (c) of the Complainant's Complaint, LG&E does not have enough knowledge to admit, and therefore denies same.

e. With regard to any other averments in the fourth paragraph of (c) of the Complainant's Complaint, LG&E does not have enough knowledge to admit, and therefore denies same.

d. The Filed Rate Doctrine, the applicable statutes in KRS Chapter 278, and LG&E's Electric Tariff require that any customer who receives electricity must be billed for and pay for same. There are no instances of free electric services provided to non-profit or charitable entities of any kind. With regard to any other averments in the fifth, sixth, and seventh paragraphs of (c) of the Complainant's Complaint, LG&E does not have enough knowledge to admit, and therefore denies same.

3. LG&E denies all allegations contained in the Complaint which are not expressly admitted in the foregoing paragraphs of this Answer.

FIRST AFFIRMATIVE DEFENSE

The Complaint, or parts of it, fails to set forth any claim upon which relief can be granted by this Commission and, therefore should be dismissed.

SECOND AFFIRMATIVE DEFENSE

The Complainant has failed to set forth a *prima facie* case that LG&E has violated its tariff or any statute or Commission regulation, and the Complaint should be dismissed for that reason.

THIRD AFFIRMATIVE DEFENSE

The filed rate doctrine requires that utility companies charge only the rates filed with and approved by the Kentucky Public Service Commission (PSC) for service.¹ Kentucky's state and federal courts have recognized and applied the principle,² and the PSC has labeled the doctrine "the bedrock of utility rate regulation."³ Kentucky's treatment of the filed rate doctrine mirrors that of the United States Supreme Court which declared that the filed rate is "for all purposes, the legal rate....The rights as defined by the tariff cannot be varied or enlarged by either contract or tort of the carrier."⁴

Kentucky codifies the filed rate doctrine at KRS 278.160(2). That provision reads:

No utility shall charge, demand, collect, or receive from any person a greater or less compensation for any service rendered or to be rendered than that prescribed in its filed schedules, and no person shall receive any service from any utility for a compensation greater or less than that prescribed in such schedules.⁵

¹ *In the Matter of: North Marshall Water District*, Case No. 95-107, Order at 2 (Ky. PSC Oct. 13, 1995).

² *Commonwealth v. Anthem Ins. Cos., Inc.*, 8 S.W.3d 48, 52 (Ky. App. 1999); *Big Rivers Elec. Corp. v. Thorpe*, 921 F. Supp. 460, 464 (W.D. Ky. 1996).

³ *In the Matter of: North Marshall*, Case No. 95-107, at 3.

⁴ *Anthem*, 8 S.W.3d at 51, quoting *Keogh v. Chicago & Northwestern Ry.*, 260 U.S. 156, 163 (1922). See also *AT&T v. Central Office Telephone*, 524 U.S. 214 (1998).

⁵ KRS 278.160(2).

Strict adherence to published tariffs is required, and the PSC prohibits any departure therefrom, “either by agreement or conduct.”⁶

Utility companies have no discretion to waive or otherwise refuse to charge a tariffed fee that a customer incurs.⁷ Deviation from the tariffed rates is viewed as discrimination and is strictly proscribed by statute,⁸ case law,⁹ and PSC decisions.¹⁰

The PSC has repeatedly noted the “strong public policy to ensure rate uniformity.”¹¹ The PSC has also recognized that some may view adherence to the filed rate doctrine as “dogmatic,” but that fidelity to the doctrine is necessary and in the public interest; therefore, the filed rate doctrine is “a hard and fast rule which must be applied in all cases.”¹²

WHEREFORE, for all of the reasons set forth above, Louisville Gas and Electric Company respectfully requests:

- (1) that the Complaint herein be dismissed without further action taken by the Commission;
- (2) that this matter be closed on the Commission’s docket; and

⁶ *In the Matter of: North Marshall*, Case No. 95-107, at 2; *Cf. Boone County Sand and Gravel Co. v. Owen County Rural Elec. Cooperative Corp.*, 779 S.W.2d 224 (Ky. App. 1989).

⁷ *See In the Matter of: An Investigation into the Business Practices of Western Pulaski County Water District, Alleged Failure to Comply with Administrative Regulation 807 KAR 5:006, and Alleged Violations of KRS 278.160 and KRS 278.170*, Case No. 2002-00013, Order at 6 (Ky. PSC Aug. 9, 2002).

⁸ KRS 278.160; KRS 278.170; *Boone County Sand and Gravel*, 779 S.W.2d at 226 .

⁹ *See, e.g., Sallee Horse Vans, Inc. v. Pessin*, 763 S.W.2d 149, 150 (Ky. App. 1988).

¹⁰ *See, e.g., Joyland Kennel, Inc. v. Boone County Water Dist.*, Case No. 96-218, Order at 2 (Ky. PSC May 23, 1996).

¹¹ *See In the Matter of: Leslie County Tel. Co.*, Case No. 95-517, Order at 4 (Ky. P.S.C. June 21, 1996).

¹² *In the Matter of: Leslie County Tel. Co.* at 8.

(3) that LG&E be afforded any and all other relief to which it may be entitled.

Dated: July 16, 2018

Respectfully submitted,



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Counsel for Louisville Gas and Electric
Company

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Answer was served on the following on the 16th day of July, 2018, U.S. mail, postage prepaid:

Andre F. Regard
269 W. Main Street, Suite 600
Lexington, KY 40507



Counsel for Louisville Gas and Electric
Company

Sanctuary Church
4/18/16 - 5/10/18

EXHIBIT A

Meter Read Date	Consumption in kW	Consumption in kWh
4/18/2016	0	0
5/10/2016	94.1	12,600
6/8/2016	94.1	16,000
7/12/2016	80.9	21,800
8/10/2016	83.6	20,400
9/12/2016	81.5	16,400
10/10/2016	77.4	15,000
11/8/2016	87.1	13,000
12/9/2016	65	9,200
1/12/2017	34.6	10,800
2/8/2017	34.6	8,000
3/8/2017	30.4	7,200
4/7/2017	40	7,600
5/9/2017	84	14,200
6/9/2017	75.4	16,400
7/12/2017	72.9	20,400
8/10/2017	75.6	19,000
9/11/2017	100.7	17,800
10/10/2017	71.1	15,000
11/7/2017	75.1	9,800
12/8/2017	65	9,400
1/9/2018	30.8	8,000
2/7/2018	31.8	8,000
3/7/2018	26.8	7,200
4/9/2018	30.3	8,000
5/10/2018	83.5	8,800