COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

GARY A. FRYE	)	
	)	
COMPLAINANT	)	
	)	
	)	
V.	)	CASE NO. 94-195
	)	
	)	
LOUISVILLE GAS AND ELECTRIC COMPANY	)	
	)	
DEFENDANT	)	

O R D E R

On May 11, 1994, Gary Frye, a customer of Louisville Gas and Electric Company ("LG&E"), filed a formal complaint[1] against LG&E for alleged improper practices related to a gas main extension. Mr. Frye's complaint contends that LG&E failed to disclose fully the terms of the gas main extension contracts and misled prospective customers. He requests that all persons who subsequently received service through the main extension should bear a pro rata share of that extension's cost.

LG&E responded to the complaint and denied that it misled Mr. Frye and the other applicants, and that LG&E complied fully with Commission regulations and its tariff, approved by and on file with the Commission. In the Commission's August 10, 1994

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[1] Twenty-seven persons who also executed contracts with LG&E have submitted a statement in support of Mr. Frye.

Order, LG&E was directed to respond to a request for information. LG&E filed its response on August 30, 1994.

A public hearing was conducted October 27, 1994. Mr. Frye represented himself and sponsored three witnesses. LG&E was represented by counsel and presented one witness. A decision in this case was held in abeyance pending the Commission's Order in Case No. 95-404.[2]

BACKGROUND

This case involves four separate gas main extensions installed by LG&E in 1994: King's Church #1, which included Mr. Frye, the complainant; Blackstone; Deacon Trace; and King's Church #2.[3] Two of these extensions, Blackstone and Deacon Trace, are in the immediate area of the customers served by the King's Church #1 extension. All three extensions - Blackstone, Deacon Trace and King's Church #2 - are directly connected to King's Church #1.[4]

According to Mr. Frye, in 1992 he was approached by a neighbor in his subdivision about receiving gas service from LG&E. Prior to these projects, natural gas service was not available to Mr. Frye and the other residents in the Country Trace

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2 Case No. 95-404, An Investigation of Louisville Gas and Electric Company's Residential Gas Main Extension Policy and Practice, Order entered February 10, 1997.

3 Case No. 94-195, LG&E's Response to the Commission's August 10, 1994 Order ("Response"), Item 2. Construction on King's Church #1, the extension which included Mr. Frye, began February 26, 1994. LG&E received applications for the Blackstone, Deacon Trace and King's Church #2 extensions shortly thereafter, on March 2, 3 and 8, 1994, respectively.

4 Response, Attachment to Item 1, a color-coded map depicting all four extension projects.

Subdivision area. The nearest gas main operated by LG&E was approximately four miles away. By August 1993, after receiving assurances that future customers would pay a pro rata share of the extension's cost, Mr. Frye and 58 others executed contracts with LG&E to provide a customer contribution of $1,308.22 for the proposed extension.

Soon after construction began on King's Church #1 (February 26, 1994), LG&E received three additional requests for gas service from Country Trace Subdivision residents.[5] Each was treated as a separate request. These applicants executed contracts with LG&E for three separate main extensions; extensions for which persons either paid a lower customer contribution (Blackstone and King's Church #2), or paid none at all (Deacon Trace).

Mr. Frye contends that he was misled by LG&E, and that comments by LG&E at two public meetings resulted in persons dropping out of the King's Church #1 project in favor of separate extensions, which reduced the amount of their customer contribution for separate extensions but increased the customer contribution required to have King's Church #1 constructed.[6] Mr. Frye feels that during the August 31, 1993 meeting LG&E discouraged the audience from expanding its proposal beyond the scope as represented by the original petition.[7]

Mr. Frye also alleges that LG&E failed to disclose fully the terms of the gas main extension contract and how main extensions and laterals are handled in LG&E's tariff

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5 Id., Item 2. Applications for the Blackstone, Deacon Trace and King's Church #2 extensions were received March 2, 3, and 8, 1994, respectively.

6 Case No. 94-195, Transcript of Evidence ("T.E."), pages 8, 17, and 32-34.

7 T.E., pages 34-35.

and Commission regulations. He requests that those persons who subsequently received service from extensions made possible by the King's Church #1 extension share a pro rata amount of his extension's cost.

During the October 27, 1994 hearing, LG&E presented Victor Peek, Jr., a Customer Energy Consultant, as its witness. Mr. Peek was the LG&E representative responsible for liaison with the customers regarding the main extensions discussed in this case.[8]

According to Mr. Peek, LG&E does not actively solicit new customers for natural gas service.[9] It instead relies upon local residents to whom it refers as "project champions." Project champions survey their neighbors about gas service, collect names and addresses of prospective customers, and relay information about gas service extensions between the local residents and LG&E.

Upon receipt and review of the application for the King's Church #1 extension, Mr. Peek mailed out a survey to each of the 86 names on the petition to determine each person's level of interest. Since the initial response was not very good, he spent the next several weeks contacting individual residents from the petition list. The first public meeting was conducted March 2, 1993 at the site of the proposed extension. At that time, Mr. Peek explained that each resident would receive 100 feet of main extension at no cost; that the actual cost per person would depend upon the length of the extension and the final number of residents in the group; and that extensions or laterals

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8 Id., pages 102-103.

9 Id., page 170.

(from this group's extension) would not be part of any potential refunds as a result of new customers connecting onto the King's Church #1 extension once completed.[10]

LG&E ultimately mailed contracts to 66 persons, including Mr. Frye. A second public meeting with the prospective customers was held August 31, 1993 due to the slow response in returning signed contracts.[11] During this meeting Mr. Peek explained a new LG&E tariff provision, approved by the Commission in June 1993, whereby each customer who connects to a gas main extension requiring a customer contribution, within a 10 year period from the effective date of the contract, must pay a "pro rata" share. Once again, the issue of extensions and laterals was discussed during this meeting, and LG&E reiterated that its tariff rules and Commission regulations required that extensions and laterals from the proposed extension be treated separately.[12]

On January 12, 1994, the King's Church #1 extension was approved by LG&E to proceed and construction began February 26, 1994. Construction followed on the Blackstone extension with 8 persons; Deacon Trace with one; and King's Church #2 with 76 people. According to LG&E, only the Blackstone project included persons who were part of the original petition group of 86 for King's Church #1.[13]

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10 Id., pages 111-113.

11 Id., page 118.

12 Id., pages 123-124.

13 Id., pages 128 and 130-131, and Response, Item 2. Construction on the Blackstone Extension began May 23, 1994; on Deacon Trace, May 12, 1994; and, King's Church #2, July 20, 1994.

During the hearing Mr. Peek stated that while the King's Church #1 extension was under discussion, persons subsequently involved in the Blackstone and Deacon Trace extensions had "either no interest or negative interest" in it.[14] He also explained that LG&E cannot dictate which applicants belong in what group or even force individuals to participate.[15] During the King's Church #1 discussion Mr. Peek had no knowledge of anyone's interest for gas service in the area where the King's Church #2 extension was later installed.[16]

LG&E contends that all work relating to these four extensions was performed in compliance with LG&E's tariff and Commission regulations. Pursuant to these requirements, LG&E explained to each group the applicable tariff provisions and regulations, and to the applicants their rights and obligations as participants in an extension project. According to LG&E, it is not uncommon for prospective customers to form their own groups for separate extension projects.

DISCUSSION

This complaint arises due to the way in which four separate extensions were handled by LG&E. All four projects were located in close proximity to each, and three subsequent extensions could not have been installed without the initial construction of King's Church #1, Mr. Frye's extension.

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[14] Id., page 133.

[15] Id., page 134.

[16] Id., page 140.

LG&E argues that Commission regulations and LG&E's own tariff provisions allow situations like this case to happen; and that under these present conditions nothing can be done.[17] However, LG&E misses the point. The Commission's regulations pertaining to main extensions, and LG&E's related tariff provisions, address the amount of main provided at no cost, and applicable refund provisions for future hook-ups on the extension. The issue in this case is the manner in which the scope of the extension requested was determined.

Notwithstanding the Commission's regulation on main extensions and LG&E's related tariff provisions, the Commission is of the opinion that two LG&E practices contributed to what should have been one extension being treated as four and the King's Church #1 group paying more than they should have. These two practices - LG&E's internal coordination of extension requests, and its reliance on project champions for information gathering - resulted in LG&E becoming less actively involved in defining the scope of the project than it should have been. This failure led to an extension project more narrowly defined than should have been presented to the initial group, which resulted in an unreasonable calculation of the customer contribution for Mr. Frye's group.

LG&E's internal review of extension requests includes two steps which should be better coordinated to be more helpful to the applicants and develop information which LG&E can use to assist in the focus and scope of a proposed project. Presently, as in this case, after an extension request is received the LG&E estimator visits the site to determine the length of the extension needed. The estimator does not look at the

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[17] Id., page 193.

surrounding area.[18] Later, LG&E sizes the pipeline extension to accommodate potential growth in the area, but only after the applicants have executed contracts.[19] With the King's Church #1 extension, LG&E chose to size the pipeline for expansion purposes.[20]

LG&E's decision to size Mr. Frye's extension for future growth was not shared with the applicants. The information LG&E used in deciding to increase the size of the pipe needed for King's Church #1 should have been included in the discussion with applicants. More importantly, after reaching such a conclusion LG&E should have taken the initiative and refocused the discussion. LG&E should have been the final arbiter for the scope of the extension to be constructed, not the prospective customers.[21] Applicants decide themselves whether to participate in a project based upon all the relevant information available, including the costs and the number of people who choose to participate.

LG&E characterizes extension requests as customer-driven; customers define the scope.[22] Even if LG&E wishes to rely upon prospective customers to initiate an extension request, a practice which we feel LG&E relies upon too much, it must assume

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18 Id., page 173.

19 Id., page 174.

20 Id., page 158.

21 No one knows what would have happened if LG&E had been able to share its future growth analysis with the King's Church #1 group. The Commission's point here, though, is that all information should be included in such a discussion, both information from the applicants and LG&E. At some point in such a discussion, LG&E must decide what the proper scope of a proposed extension should be.

22 T.E., page 194.

a direct role in formulating the scope of a proposed extension project. LG&E is the party responsible for providing utility service, and the party with the expertise to determine the most appropriate way to extend service. Therefore, LG&E should define the scope of these projects, not prospective customers.

The project champion provides the initial information, which LG&E uses to frame the discussion for contract purposes. LG&E personnel should provide more information about the surrounding area where an extension is requested, including such information with that provided by the applicants, all of which becomes part of the decision-making process. Decisions which are made not only by the applicants, but also by LG&E about the scope of an extension based upon economic, engineering and other considerations.

In the instant case, despite two public meetings, and more than 14 months between the time LG&E received the King's Church #1 request and construction began, LG&E failed to broaden the scope of discussion. Given the geographic proximity of the four areas, and the decision by LG&E to size the King's Church #1 extension for expansion, LG&E should have presented the applicants with a project incorporating all four areas. Any customer contribution required would have been determined by the number of customers wishing to participate in the project proposed, and existing regulation and tariff provisions would have determined any appropriate refunds due for future hook-ups.

Based upon our review of the record in this case and being otherwise sufficiently advised, the Commission hereby finds that:

1. LG&E's internal review practice of customer requests for gas main extensions, and its practice of reliance upon the use of project champions as the sole source of information on which to calculate customer contributions for main extensions, are in violation of KRS 278.170(1) by subjecting the applicants who agreed to the King's Church #1 extension to unreasonable prejudice and disadvantage.

2. LG&E's two practices described herein resulted in unreasonable prejudice and disadvantage to Mr. Frye and the other members of the King's Church #1 extension group and are insufficient for the purposes described and in violation of KRS 278.170(1). Use of the project champion in this case, in lieu of LG&E's own efforts, did not gather adequate information on which LG&E could base a reasonable decision. LG&E's internal review practice which determined the proper pipe size for the King's Church #1 extension was improperly excluded from the scope of the project presented to the applicants for consideration.

3. LG&E should recalculate the customer contribution[23] for the King's Church #1 group in the following manner: Consider King's Church #1, Deacon Trace, Blackstone and King's Church #2 extensions as one by adding together the total customer contributions received in all four, and divide the total contributions by the total number of customers who participated. Compare the customer contribution previously

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[23] Based upon the information provided by LG&E, the recalculation of the King's Church #1 group's customer contribution should be derived from the following: 66 applicants were involved with King's Church #1, while a total of 149 applicants comprised all four extension projects; and the total amount of customer contributions (deposits) provided by applicants in all four projects was $124,452.52.

paid by the King's Church #1 applicants with the recalculated amount ordered herein, and refund the difference to each of the 66 members of King's Church #1 group. None of the applicants who provided customer contributions for Deacon Trace, Blackstone and King's Church #2 should be rebilled.

IT IS THEREFORE ORDERED that:

1. LG&E's two practices described herein are in violation of KRS 278.170(1).

2. LG&E should recalculate the customer contribution for the King's Church #1 group in the manner described in finding no. 3 of this Order.

3. Within 30 days of the date of this Order, LG&E shall file with the Commission copies of the journal entries which reflect the refunds made to the King's Church #1 group.

Done at Frankfort, Kentucky, this 2nd day of April, 1997.

PUBLIC SERVICE COMMISSION

Linda K Breathitt
Chairman

Vice Chairman

B. J. Helton
Commissioner

ATTEST:

Don Mills
Executive Director