

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

TRACY MATHIS)	
COMPLAINANT)	
V.)	CASE NO.
)	2014-00198
LOUISVILLE GAS AND ELECTRIC COMPANY)	
DEFENDANT)	

ORDER

On June 2, 2014, Complainant Tracy Mathis (“Complainant”) filed a Complaint against Louisville Gas and Electric Company (“LG&E”) for an Order directing LG&E to relocate, at LG&E’s expense, an electric service overhead wire that traverses Complainant’s front yard.

BACKGROUND

Complainant lives in a single-family house in an older residential neighborhood in Louisville, Kentucky. Complainant and her family moved into the house in 2014; prior to that, the home was owned by Complainant’s mother-in-law.

On May 8, 2014, Complainant filed an informal complaint with the Commission against LG&E requesting that LG&E relocate an electric service overhead wire that supplies electric service to a neighbor’s residence and runs diagonally over the Complainant’s front yard. LG&E identified relocation options and informed Complainant that, pursuant to its tariff, relocation costs would be the responsibility of the

homeowner(s). Subsequently, Complainant filed a formal complaint with the Commission on June 2, 2014, requesting that LG&E relocate the wire at LG&E's expense.

The wire at issue runs from a service pole on the left side of Complainant's front yard, as viewed from the street, diagonally crosses the front yard and shared driveway, and then terminates at a neighbor's residence to the right of Complainant's residence. The wire at issue does not supply electric service to Complainant's residence; a separate, second wire located on the same pole supplies electric service to Complainant. Complainant has not raised any issues regarding the safety or location of the wire that serves her residence.

The current pole location and wire configuration were brought about when the pole and wire were relocated in 1994 at the request of the owner at that time, Complainant's mother-in-law. Prior to the relocation in 1994, the pole was located on the right side of Complainant's property, with the wire crossing only the shared driveway.

After the formal complaint was filed, LG&E offered three options for Complainant to select that would address her concerns: 1) place a second pole in Complainant's front yard to the left of the shared driveway and relocate the wire at issue to the second pole; 2) place the neighbor's service underground; or 3) provide additional vertical clearance by raising the service wire attachment on the current drop pole. When Complainant did not respond to the choices, LG&E, on its own initiative, raised the neighbor's service wire on the existing pole to provide additional clearance.

DISCUSSION

There are no intervenors in this case. On September 10, 2014, Staff held an informal conference ("IC") in which it was determined that LG&E's action in raising the service wire failed to satisfy the Complaint. On August 14, 2014, the Commission filed its first request for information to LG&E ("Staff's First Request") and filed a second request for information to LG&E on November 10, 2014 ("Staff's Second Request"). LG&E filed its responses on August 29, 2014, and December 1, 2014, respectively. On September 22, 2014, LG&E provided additional information requested at the IC ("Post-IC Data Request"). On October 6, 2014, the Commission filed its first request for information to Ms. Mathis ("Staff's First Request to Mathis") and filed a second request for information to Ms. Mathis on November 10, 2014. Ms. Mathis filed responses on October 29, 2014, and December 3, 2014, respectively.

Complainant's Position

Complainant argues that the neighbor's service wire presents a safety issue to her family, since her child plays in the front yard and could be harmed if the wire were to snap or fall. Complainant further argues that the wire should not have been configured to supply electric service to a neighbor by crossing Complainant's property. Therefore, Complainant asserts, LG&E should, at LG&E's expense, relocate the wire and any necessary infrastructure into the yard of the home that the wire serves.

1. Relocation Options

Complainant rejected the three relocation options presented by LG&E after the formal complaint was filed. Complainant rejected the option to relocate the wire to a new pole in her front yard because she did not want a second pole in her front yard.

The option to place Complainant's neighbor's electric service underground is not feasible because neither Complainant nor her neighbor are willing to pay the cost of placing the neighbor's electric service underground. Complainant finds the option of raising the wire's vertical clearance unacceptable because it leaves the wire traversing over her yard and because Complainant believes raising the wire places it under greater tension, thereby increasing the likelihood of its falling.

2. Safety Claims

In support of her claim regarding the likelihood of the wire's falling and injuring a family member, Complainant alleges that the wire has fallen into the yard in the past and "could easily [fall] again."¹ Complainant contends that raising a wire inevitably results in higher tension on the line, and therefore, when LG&E raised the wire, it created a greater likelihood of the line's snapping or falling. Complainant also alleges that the wire runs close to a large tree in the yard, and that tree limbs could fall and sever the line. Complainant states that her husband recalls an occasion in the past in which a tree branch dropped on the line, causing it to fall, but that he could not recall the date of the incident or whether any damage resulted. After the informal complaint was filed, Complainant declined LG&E's offer to trim tree limbs Complainant believes could drop on the wire.

Complainant further contends that the wire violates National Electrical Safety Code ("NESC") standards in effect when the wire was installed because the wire's vertical clearance measures 13 feet, 7 inches where it terminates at the neighbor's house.

¹ Complainant's Response to Staff's First Request to Mathis, Item 1.

3. Wire Supplying Service to Neighbor Crossing Complainant's Property

In support of her claim that the wire should not have been run across her property, Complainant asserts that the current configuration is not "reasonable," and thus violates LG&E's tariff. LG&E Tariff Sheet No. 97.3 reserves the right to cross one customer's premises to provide electric service to another customer's premises so long as the right is exercised in a reasonable manner. Complainant contends that the configuration in this case, running from left to right diagonally across her yard, "would not be considered by anyone to be 'cross[ing] one customer's premises...in a reasonable manner."²

Based upon the above assertions, Complainant asks that the Commission direct LG&E to move the wire from the Complainant's yard to the yard of the home that the wire serves and that LG&E pay all relocation costs.

LG&E's Position

LG&E has agreed to relocate the electric service wire at issue in this matter, with the proviso that, per its tariff, the homeowner(s) pay relocation costs incurred by LG&E. LG&E argues that the current location of the wire does not present a safety hazard, does not violate any applicable NESC standards, and does not violate any statutes or Commission regulations, and thus the complaint should be dismissed.

1. Relocation Options

In initial discussions with Complainant, LG&E identified one relocation alternative as placing a new pole in Complainant's neighbor's front yard, with the service wire running through only the neighbor's property. This option complies with Complainant's request that wire be placed on the property of residence served by the wire. However,

² *Id.*, Item 4.

after visiting the property, LG&E's Engineering & Design representatives determined that this alternative was not feasible. Due to the location of the service drop, LG&E contends, the service wire from a new pole in the neighbor's yard would unavoidably rub the corner of the neighbor's house, creating a possible safety hazard. Therefore, this option was abandoned.

After the formal complaint was filed, LG&E identified three relocation options that were presented to Complainant.

The first relocation option was to place a second pole in Complainant's front yard, to the left of the shared driveway, which would enable LG&E to relocate the wire that supplies electric service to the neighbor's residence. This is the same configuration for the pole and wire as before both were relocated in 1994. Under this configuration, the wire would cross over only the driveway shared by Complainant and her neighbor. Because Complainant's service drop is located on the left side of her residence, the pole on the left side of her property would have to remain in service. Complainant rejected this option for aesthetic reasons, as she did not want a second utility pole in her yard.

The second relocation option was to place the neighbor's service underground. Per LG&E's Tariff Sheet 106.3(H), underground extensions to individual premises are made at no cost where LG&E's engineering or operating convenience require underground extension; otherwise, the customer requesting the extension must pay the cost of the extension, less a credit for the cost of an equivalent overhead extension.³ In this case, LG&E's Engineering & Design representative determined that an underground extension was possible, but would be at the homeowner's expense.

³ LG&E's Tariff Sheet No. 106.3(H), Individual Premises 1-2.

LG&E offered to apply the overhead extension credit toward the cost, with the remaining costs borne by the homeowner(s). Neither Complainant nor the neighbor are willing to pay said costs.

The third relocation option was to raise the service wire on the existing pole, which would provide additional vertical clearance in Complainant's front yard and driveway. When Complainant did not timely indicate her preference among the three options, LG&E unilaterally raised the service wire, and thus raised the clearance. The vertical clearance over the yard and driveway comply with applicable NESC standards.

2. Safety Claims

LG&E denies that the wire presents a safety hazard. LG&E asserts that the wire meets the requirements of the applicable NESC code. LG&E provided documentation that the applicable NESC standards require a vertical clearance of 12.5 feet over the residential yard and driveway.⁴ The lowest overhead clearance above Complainant's front yard measures 14 feet, 4 inches; the lowest point over the shared driveway measures 14 feet, 1 inch; and the clearance at the neighbor's service attachment point on the home is 14 feet.⁵

LG&E has no record of an electric wire's having fallen into Complainant's yard since the pole and wire were relocated in 1994. In 2006, LG&E removed tree limbs located near the service wire.⁶ In February 2008, a cable television wire was reported down in the neighbor's property; it did not impact Complainant's property.⁷ In May

⁴ LG&E's Post-IC Data Response, Attachment 1.

⁵ LG&E's Response to Staff's First Request, Items 5-7.

⁶ LG&E's Response to Staff's Second Request, Item 1.

⁷ *Id.*

2008, a neighbor's tree limb pulled the service wire down at the residence to the left of Complainant's residence; the fallen limb caused the service wire to Complainant's property to hang low, but it remained in service.⁸

3. Wire Supplying Service to Neighbor Crossing Complainant's Property

LG&E did not specifically address Complainant's assertion that the location of the wire is not reasonable. LG&E has asserted that the location of the wire does not violate its tariff. LG&E's tariff permits infrastructure on one customer's premises to be used to supply electric service to neighboring property. LG&E Tariff Sheet 97.3 states:

The construction of electric facilities to provide service to a number of customers in a manner consistent with good engineering practice and the least public inconvenience sometimes requires that certain wires, guys, poles, or other appurtenances on a customer's premises be used to supply service to neighboring customers. Accordingly, each customer taking Company's electric service shall grant to Company such rights on or across his or her premises as may be necessary to furnish service to neighboring premises, such rights to be exercised by Company in a reasonable manner and with due regard for the convenience of the customer.

In a response to Staff's requests for information, LG&E notes that the wire was placed in this location at the request of the previous owner and has remained in the same configuration for 20 years.⁹

For all of these reasons, LG&E requests that the Complaint be dismissed. LG&E has offered to move the pole and wire, and asserts that neither the current location nor LG&E's refusal to bear the relocation costs violates any statute, Commission regulation, or its tariff.

⁸ *Id.*

⁹ LG&E's Response to Staff's First Request, Item 8.

FINDINGS

Having reviewed the record and being otherwise sufficiently advised, the Commission finds that Complainant has not adequately established that LG&E should be required to relocate the electric service wire at LG&E's expense. The Commission further finds that the Complaint should be dismissed without a hearing pursuant to KRS 278.260(2).

A hearing is not statutorily required when a complaint is filed. KRS 278.260(2) provides that the Commission may "dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest or for the protection of substantial rights." Based upon the case record in this matter, the Commission finds that a hearing is not in the public interest or for the protection of substantial rights.

A party who files a complaint with the Commission has the burden of providing evidence to support that party's assertion.¹⁰ In this matter, Complainant failed to provide any factual basis to support her contention that the current wire configuration presents a safety issue or any legal basis to support her contention that LG&E should relocate the service wire at no cost to the Complainant.

Under the facts presented here, Complainant has not demonstrated that the wire is likely to fall into her yard, and thus should be relocated at LG&E's expense. Complainant's allegation regarding the wire's having fallen in the past is not borne out by LG&E's service records, the accuracy of which Complainant did not challenge. Moreover, Complainant declined LG&E's offer to trim, as a preventative measure, any tree limbs that Complainant concludes might fall on the wire. Further, Complainant did not dispute that the wire met NESC standards, with the exception of the vertical

¹⁰ See *Energy Regulatory Comm'n v. Kentucky Power Co.*, 605 S.W.2d 46, 50 (Ky. App. 1980).

clearance of the wire at the neighbor's service attachment point. However, the wire at the neighbor's service attachment point measures 14 feet, which meets both Commission regulations and NESC standards in effect at the time of the relocation.¹¹

Complainant failed to provide any legal basis for shifting the cost of relocating the wire onto LG&E. Complainant failed to provide evidence that LG&E has not exercised its rights in a reasonable manner and with due regard for the convenience of the customer, in conformance with LG&E's tariff. The wire was placed in the current location at the request of the previous owner and has remained in the same configuration for 20 years.

Based upon the case record, the only feasible option remaining is to place the neighbor's service underground. Per LG&E's tariff, the cost of this option must be borne by the customer where, as is the case here, a customer requests to move the line and the relocation is not justified by operational, safety, or engineering concerns.¹² Further, under the filed rate doctrine set forth in KRS 278.160, a utility is required to charge its tariffed rates, no more and no less, to all of its customers. Thus, both LG&E's tariff and the filed rate doctrine preclude relocating the electric service infrastructure at no cost to Complainant or her neighbor, given the facts of this case.

Additionally, LG&E is precluded from offering discriminatory rate or service preference under KRS 278.170(1). If LG&E were required to pay all costs associated with extending the neighbor's service underground, other LG&E customers would ultimately subsidize Complainant's request. Complainant's request for LG&E to bear

¹¹ See 807 KAR 5:041, Section 19(1), which states that the overhead wire entrance on the exterior of a building must be at a point not less than 12 feet; and LG&E's Post-IC Data Response, Attachment 1. NESC standards 1994 edition.

¹² LG&E's Tariff Sheet No. 106.3(H), Individual Premises 1-2.

the expense of relocating the wire at issue amounts to an unlawful departure from the filed rate doctrine in contravention of KRS 278.160 and would unreasonably disadvantage other ratepayers in violation of KRS 278.170(1).

IT IS THEREFORE ORDERED that the Complaint is dismissed and this case is closed.

By the Commission

ENTERED
FEB 09 2015
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:



Executive Director

*Tracy Mathis
163 Crescent Ave.
Louisville, KENTUCKY 40206

*Ed Staton
VP - State Regulation and Rates
Louisville Gas and Electric Company
220 W. Main Street
P. O. Box 32010
Louisville, KY 40202

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