

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

LOUISVILLE/JEFFERSON COUNTY METRO	)	
GOVERNMENT	)	CASE NO.
	)	2016-00347
VS.	)	
	)	
LOUISVILLE GAS AND ELECTRIC COMPANY	)	

ORDER

On September 19, 2016, Louisville/Jefferson County Metro Government (“Louisville Metro”) filed a complaint against Louisville Gas and Electric Company (“LG&E”) setting forth three claims in opposition to LG&E’s tariffed methodology for recovering the cost of a franchise fee under a gas franchise agreement entered into between Louisville Metro and LG&E on August 30, 2016 (“2016 Franchise Agreement”). Under LG&E’s existing Tariff Sheet No. 90, any franchise fee shall be recovered by a surcharge from “all customers located within local governmental jurisdictions” imposing the fee and “shall be added to the customer’s bill as a separate item.”

Louisville Metro’s first claim is that the franchise fee should be paid for by LG&E and not passed directly on to customers. Louisville Metro’s second claim is that if the Commission determines that the cost of the franchise fee can be passed directly to customers, all of LG&E’s gas customers benefit from the Louisville Metro rights-of-way and, thus, all LG&E gas customers should pay the fee, irrespective of whether they are located within or outside of Jefferson County. Louisville Metro asserts that LG&E is proposing to collect the franchise fee only from certain gas customers within Jefferson

County and that to do so is unfair and contrary to cost-of-service principles. Louisville Metro points out that LG&E has gas customers in Oldham, Bullitt, Spencer, and Shelby counties who receive the benefit of gas service from pipes and mains located under Louisville Metro's rights-of-way. In support of this second claim, Louisville Metro specifically alleges that:

The franchise fee is based on the volume of gas passing through the pipes located in the Louisville rights-of-way. Thus, each customer can be charged the franchise fee based on individual usage. This allows for a fair, just, and reasonable allocation of cost to customers based on their volumetric use of the rights-of-way, whether those customers are located in Jefferson County or a surrounding County. With this means of calculating the franchise fee, there is no basis for concern regarding whether a customer is paying for a cost they themselves did not create.<sup>1</sup>

Louisville Metro's third claim is that LG&E should be required to recover costs associated with the franchise fee from all of its gas customers who reside within "the geographic and jurisdictional borders of Louisville [Metro],"<sup>2</sup> including those Louisville Metro areas outside of the urban service districts, as well as those in the unincorporated municipalities. To permit LG&E to do otherwise would, according to Louisville Metro, allow some LG&E gas customers within the Louisville Metro area to receive the benefits of Louisville Metro's rights-of-way without paying any portion of the franchise fee. Louisville Metro alleges that such a practice is unfair, unjust, unreasonable, and discriminatory.

By Order dated October 19, 2016, the Commission found that Louisville Metro's complaint neither conformed to the requirements of 807 KAR 5:001, Section 20(1), nor

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<sup>1</sup> Complaint at ¶ 37.

<sup>2</sup> Complaint at ¶ 43.

established a *prima facie* case. The October 19, 2016 Order rejected Louisville Metro's complaint, but allowed Louisville Metro an opportunity to amend its complaint so that it conforms to the requirements of 807 KAR 5:001, Section 20(1), and states a *prima facie* case.

On November 9, 2016, Louisville Metro filed an amended complaint providing additional support for the allegation that all LG&E gas customers receive their gas through mains located under Louisville Metro's rights-of-way. The amended complaint avers that "most, if not all, of LG&E's gas passes through the Louisville Metro rights-of-way."<sup>3</sup> The amended complaint further avers that "[m]any, if not all, of the LG&E gas customers outside of the Louisville Metro rely on Louisville Metro's rights-of-way to ensure delivery of natural gas."<sup>4</sup>

Having reviewed the amended complaint and being otherwise sufficiently advised, the Commission finds that Louisville Metro still has not provided sufficient allegations to entitle it to the relief requested in its amended complaint. The Commission, however, further finds that there is sufficient evidence provided by Louisville Metro to review the allegations contained in its amended complaint. The Commission takes administrative notice that similar issues relating to LG&E's gas franchise tariff are pending in Case No. 2016-00317<sup>5</sup> involving LG&E's request for a declaratory ruling in connection with the 2016 Franchise Agreement. The issues raised in Louisville Metro's amended complaint and the issues averred in LG&E's declaratory

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<sup>3</sup> Amended Complaint at ¶ 29.

<sup>4</sup> Amended Complaint at ¶ 30.

<sup>5</sup> Case No. 2016-00317, *Electronic Application of Louisville Gas and Electric Company for a Declaratory Order Regarding the Proper Method of Municipal Franchise Fee Recovery* (filed Aug. 30, 2016).

ruling application all implicate policy considerations that require the Commission to determine whether and which LG&E customers should be obligated to pay for the franchise fee. These two cases also touch upon legal issues as to whether a utility's shareholders can constitutionally be required to absorb an operating expense in the nature of a franchise fee. In the interest of administrative economy, the Commission will, pursuant to 807 KAR 5:001, Section 4(14), combine the instant matter into Case No. 2016-00317. We note that after these two cases have been consolidated, LG&E will have the burden of proof with respect to the issues related to its declaratory ruling application, and Louisville Metro will have the burden of proof with respect to the issues raised in its amended complaint.

IT IS THEREFORE ORDERED that:

1. Louisville Metro's complaint is rejected for failing to conform to the requirements of 807 KAR 5:001, Section 20(1)(c), and for failing to state a *prima facie* case.
2. Pursuant to 807 KAR 5:001, Section 4(14), Case No. 2016-00347 shall be physically consolidated into Case No. 2016-00317 for the purpose of further investigating the issues raised therein.
3. Case No. 2016-00347 is closed and removed from the Commission's docket.

By the Commission



ATTEST:

  
Executive Director

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