

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ANDY MCDONALD, JACK MORRIS, CARL	)	
BOGEL, ALICE HOWELL, ANDREA WILSON	)	
MUELLER, NANCY GIVENS, WALLACE	)	
MCMULLEN AND ROGER OHLMAN	)	
	)	
COMPLAINANTS	)	CASE NO.
	)	2018-00120
v.	)	
	)	
KENTUCKY UTILITIES COMPANY AND	)	
LOUISVILLE GAS AND ELECTRIC COMPANY	)	
	)	
DEFENDANTS	)	

ORDER

On March 27, 2018, Andy McDonald, Jack Morris, Carl Bogel, Alice Howell, Andrea Wilson Mueller, Nancy Givens, Wallace McMullen, and Roger Ohlman (collectively “Joint Complainants”) filed a written complaint against Kentucky Utilities Company (“KU”) and Louisville Gas and Electric Company (“LG&E”) (collectively “KU/LG&E”). Joint Complainants, customers of KU/LG&E, allege that KU/LG&E’s advertisements and website contain unsubstantiated, inaccurate and misleading statements in support of House Bill 227<sup>1</sup>, which was proposed, but not enacted, during the 2018 Session of the General Assembly. Joint Complainants request that the Commission initiate an investigation to determine whether the KU/LG&E advertisements and website have misrepresented the facts, contain false and misleading statements, or

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<sup>1</sup> An Act Related to Net Metering, H.B. 227, 2018 Gen Assemb., Reg. Sess (Ky. 2018), (“Net Metering Bill”).

make unsubstantiated claims. And if, upon conclusion of the investigation, the Commission determines that the Joint Complainants' allegations are true, they request relief by an order directing KU/LG&E to 1) cease advertising related to House Bill 227, or net metering, that contain misleading content; 2) run advertisements in all newspapers in which they have previously run advertisements regarding House Bill 227 apologizing for any misrepresentations and correcting false statements; and 3) send a letter to all Kentucky legislators at the conclusion of a Commission investigation to inform them of this complaint and the Commission findings.

Under KRS 278.040(2), the Commission has exclusive jurisdiction over rates and service. KRS 278.010(12) defines a "rate" as:

[A]ny individual or joint fare, toll, charge, rental, or other compensation for service rendered or to be rendered by any utility, and any rule, regulation, practice, act, requirement, or privilege in any way relating to such fare, toll, charge, rental, or other compensation, and any schedule or tariff or part of a schedule or tariff thereof

KRS 278.010(13) defines "service", in pertinent part as,

[A]ny practice or requirement in any way relating to the service of any utility, including the voltage of electricity, . . . and in general the quality, quantity, and pressure of any commodity or product used or to be used for or in connection with the business of any utility

Based upon these statutory definitions, the content of a utility's advertising does not fall under the definition of either "rate" or "service" and the Commission has no jurisdiction over the content of advertisements. The Commission, therefore, has no authority to either conduct the investigation requested or grant the relief sought by Joint Complainants as both are outside the Commission's jurisdiction.

Joint Complainants also allege a violation of 807 KAR 5:016. Joint Complainants request the Commission open an investigation into whether the expenditures of KU/LG&E for advertising and payments to lobbyists to promote House Bill 227 constitute political advertising that is not recoverable from ratepayers pursuant to 807 KAR 5:016. As a basis for this request, Joint Complainants contend it is inappropriate for a utility to use ratepayer funds to lobby in support of House Bill 227.

Based on a review of the complaint, the Commission hereby finds that a challenge under 807 KAR 5:016 to the inclusion of advertising costs in a utility's cost of service may properly be raised only in a general rate case. The regulation governing rate recovery of advertising costs, 807 KAR 5:016, states in pertinent part as follows:

The purpose of this administrative regulation is to insure that no direct or indirect expenditures may be includable in a gas or electric utility's cost of service for rate-making purposes which are for promotional advertising, political advertising or institutional advertising. . . .“Advertising” means the commercial use of any media, including newspaper, printed matter, radio and television, in order to transmit a message to a substantial number of members of the public or to utility consumers.<sup>2</sup>

807 KAR 5:016, Section 2(1), further provides that:

No advertising expenditure of a utility shall be taken into consideration by the commission for the purpose of establishing rates unless such advertising will produce a material benefit for the ratepayers.

The regulation also imposes upon a utility the burden of proving that, “any advertising cost or expenditures proposed for inclusion in its operating expenses for ratemaking purposes within a given test year fall within the categories,” specified in the regulation.<sup>3</sup>

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<sup>2</sup> 807 KAR 5:016, Section 1.

<sup>3</sup> 807 KAR 5:016, Section 5.

Thus, the Commission's jurisdiction extends only to determining whether advertising costs may be included in rates and does not include any issue related to advertising paid for by shareholders. The issue of whether or not KU/LG&E may recover the costs relating to the advertising addressing House Bill 227 will only be ripe *if* KU/LG&E seek to recover, in their next general rate case, any of the costs associated with that advertisement. The Commission, therefore, cannot provide the Joint Complainants' requested relief.

However, even assuming that an independent right exists under 807 KAR 5:016 to challenge advertising costs, Joint Complainants have failed to present a *prima facie* case. Pursuant to KRS 278.260(1), the Commission has original jurisdiction over a complaint against a utility "that any rate in which the complainant is directly interested is unreasonable or unjustly discriminatory." The Complaint filed by Joint Complainants does not allege that prohibited advertising costs are being recovered through rates by KU/LG&E. Rather, Joint Complainants merely allege that KU/LG&E's political advertising costs may be included in gas or electric utility costs for ratemaking purposes, and, based on that unsubstantiated allegation, request that the Commission initiate an investigation. Joint Complainants' position is devoid of merit. Advertising, even if determined to be political in nature, by gas or electric utilities is not prohibited *per se*. Rather, 807 KAR 5:016 only prohibits the recovery of such costs in rates, assuming that a utility cannot prove that the advertising costs fall within the categories enumerated in 807 KAR 5:016, Section 3.<sup>4</sup>

Joint Complainants have failed to disclose any evidence to indicate that the challenged advertising is currently being recovered in rates by KU/LG&E. Based on the

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<sup>4</sup> See 807 KAR 5:016, Section 3.

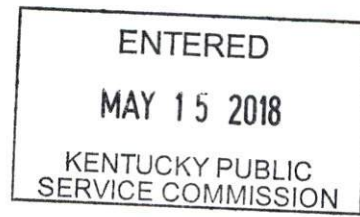
findings herein, no hearing is necessary for the public interest or for the protection of substantial rights.

IT IS THEREFORE ORDERED that:

1. The Complaint is dismissed for lack of jurisdiction.
2. This case is closed and removed from the Commission's docket.

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By the Commission



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