

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF LOUISVILLE	)	
GAS AND ELECTRIC COMPANY FOR RENEWAL	)	CASE NO.
AND PROPOSED MODIFICATIONS OF ITS	)	2023-00411
PERFORMANCE-BASED RATEMAKING	)	
MECHANISM	)	

ORDER

This matter arises upon Louisville Gas and Electric Company (LG&E) tendering an application on December 29, 2023, to modify its natural gas tariff pertaining to recovery under its performance-based ratemaking (PBR) mechanism. There are no intervenors in this matter. As discussed in more detail below, the Commission, on its own motion, finds that LG&E’s application should be rejected for filing due to LG&E’s failure to comply with the notice requirements found in 807 KAR 5:011, Section 8.

LEGAL STANDARD

KRS 278.160(1) requires each utility to “file with the commission, within such time and in such form as the commission designates, schedules showing all rates and conditions for service established by it.” KRS 278.160(2) prohibits a utility from charging “greater or less compensation for any service rendered or to be rendered than that prescribed in its filed schedules.” KRS 278.180 prohibits a utility from amending a rate in its filed schedules without 30 days’ notice to the Commission (or 20 days-notice upon a showing of good cause).

Commission regulations prescribe that a utility's schedule showing all rates and conditions for service be filed in the form of a tariff, or in the form of a special contract establishing rates, charges, or conditions of service not contained in its tariff.<sup>1</sup> Among other things, a tariff must contain a clear statement of all rates in the schedule.<sup>2</sup> A new or revised tariff shall be placed in effect by:

(a) Order of the commission; or

(b) Issuing and filing with the commission a new tariff or revised sheet of an existing tariff and providing notice to the public in accordance with Section 8 of this administrative regulation and statutory notice to the commission.<sup>3</sup>

If the Commission orders a change in the rates or rules of a utility, the utility shall file a new tariff or revised sheet of an existing tariff establishing the revised rate, classification, charge, or rule.<sup>4</sup>

Pursuant to 807 KAR 5:011, Section 8, a utility is required to provide public and customer notice if a charge, fee, or rule regarding the provision of service is changed, revised, or initiated and the change will affect the amount that a customer pays for service or the quality, delivery, or rendering of a customer's service.<sup>5</sup> However, periodic recalculation of a formulaic rate that does not involve a revision of the rate and that is

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<sup>1</sup> See 807 KAR 5:011 (generally setting forth the requirement that schedules containing rates be filed in the form of a tariff); 807 KAR 5:011, Section 13 (requiring that utilities file a copy of any "special contract" establishing rates, charges, or conditions of service not contained in its tariff); see also 807 KAR 5:001, Section 16 (requiring that tariffs be filed with any application for a general rate adjustment).

<sup>2</sup> 807 KAR 5:011, Section 4.

<sup>3</sup> 807 KAR 5:011, Section 6; see also 807 KAR 5:011, Section 9 (discussing how a rate may go into effect by operation of law).

<sup>4</sup> 807 KAR 5:011, Section 7.

<sup>5</sup> 807 KAR 5:011, Section 8; see also 807 KAR 5:001, Section 17 (setting forth similar notice requirements for general rate adjustments).

performed in accordance with provisions of an effective rate schedule or administrative regulation does not require notice pursuant to that section.<sup>6</sup> In “special cases, for good cause shown, the commission shall permit deviations” from the notice requirements 807 KAR 5:011, Section 8.<sup>7</sup>

### DISCUSSION AND FINDINGS

The PBR mechanism is a cost sharing mechanism intended to incentivize utilities to make cost saving decisions for its fuel procurement practices by granting additional revenue should gas be obtained below an established market cost baseline. While customers do not see the PBR mechanism as a defined line item on their bill, they do see its impact through the Gas Cost Recovery (GCR) rate.

The last modification of LG&E’s PBR mechanism occurred in Case No. 2019-00437, in which LG&E sought to amend its PBR tariff to change the determination of benchmark prices and change the savings sharing ratio calculation as between LG&E and its customers.<sup>8</sup> The Commission denied LG&E’s requested modifications but did issue an Order approving an extension of LG&E’s PBR mechanism with certain other modifications.<sup>9</sup> LG&E’s PBR mechanism was then extended without modification in Case

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<sup>6</sup> 807 KAR 5:011, Section 8(6).

<sup>7</sup> 807 KAR 5:011, Section 15.

<sup>8</sup> Case No. 2019-00437, *Electronic Application of Louisville Gas and Electric Company for Renewal and Proposed Modification of Its Performance-Based Ratemaking Mechanism*, Application (filed Dec. 27, 2019), Exhibit A at 13-14.

<sup>9</sup> Case No. 2019-00437, Oct. 26, 2020 Order at 10.

No. 2021-00028 pursuant to a Commission Order and was allowed to be in effect through October 31, 2024.<sup>10</sup>

LG&E tendered an application and tariff in this matter on December 29, 2023, in which it proposed to extend the period in which its PBR mechanism would remain effective and proposed to amend its underlying PBR formula. LG&E proposed an effective date of November 1, 2024, for its amended PBR mechanism. LG&E did not give public or customer notice in this case.

Given that LG&E is proposing to amend the underlying PBR formula, and not merely proposing a periodic recalculation of an already approved formulaic rate, 807 KAR 5:011, Section 8 applies and requires that LG&E give notice to the public and its customers.<sup>11</sup> This issue was recently addressed by the Commission in Case No. 2023-00067, in which a utility sought to change the definition and calculation of certain inputs to its GCR formulaic rate.<sup>12</sup> The Commission in that case found that notice was required pursuant to 807 KAR 5:011, Section 8 because the utility was changing the manner in which the GCR rate was calculated, and thus, revising a “charge, fee, condition of service, or rule regarding the provision of service [ which] will affect the amount that a customer pays for service.”<sup>13</sup>

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<sup>10</sup> Case No. 2021-00028, *Electronic Application of Louisville Gas and Electric Company for Modification of Its Performance-Based Ratemaking Mechanism* (Ky. PSC Nov. 29, 2021), Order at 8-9.

<sup>11</sup> The fact that LG&E is requesting a change to the formula also precludes the utility from invoking the notice exception in 807 KAR 5:011, Section 8(6).

<sup>12</sup> Case No. 2023-00067, *Electronic Application for Revised Quarterly Gas Cost Recovery Schedules for Kentucky Frontier Gas, LLC* (filed Feb. 24, 2023), Application at 1-3.

<sup>13</sup> Case No. 2023-00067, Apr. 10, 2023 Order at 8-9.

The Commission recognizes that LG&E filed previous applications to modify or extend PBR mechanisms without evidence of public or customer notice and that the Commission issued orders approving such rates in whole or in part. However, as discussed above and in Case No. 2023-00067, the Commission believes that 807 KAR 5:011, Section 6 and 807 KAR 5:011, Section 8, by their plain language, require, at minimum, public and customer notice in the case of an amendment to a charge proposed by a utility.<sup>14</sup> Thus, unless LG&E obtains a deviation pursuant to 807 KAR 5:011, Section 15, the Commission finds LG&E must provide public and customer notice pursuant to 807 KAR 5:011, Section 8 before its application in this matter is accepted for filing.

The Commission also recognizes that certain aspects of 807 KAR 5:011, Section 8 may not be logically applicable to changes to a formula in a formulaic rate. However, to the extent that is the case, 807 KAR 5:011, Section 15 allows a utility to request a deviation from such requirements. For instance, in Case No. 2023-00067, the Commission granted a deviation that allowed the utility to comply with 807 KAR 5:011, Section 8(4)(c-d) by providing what the average per Mcf effect of the proposed change would have been for a previous year.<sup>15</sup> While providing notice to customers regarding the proposed changes to the PBR mechanism may well pose similar hurdles, without a motion requesting deviation, that question is not properly before the Commission.

For the reasons discussed above, the Commission finds that LG&E's application to modify its PBR tariff should be rejected for filing due to lack of notice. The Commission

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<sup>14</sup> The Commission recognizes that there are other notice requirements that might apply in other specific circumstances, such as an application filed pursuant to 807 KAR 5:076, but absent the applicability of those requirements, the Commission believes that the default requirement in 807 KAR 5:011, Section 8 would apply.

<sup>15</sup> Case No. 2023-00067, Apr. 10, 2023 Order at 9.

further finds that this case should stay open for 30 days to give LG&E the opportunity to provide and file proof of compliant notice or to request any deviation.<sup>16</sup>

IT IS THEREFORE ORDERED that:

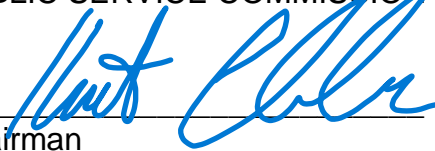
1. LG&E's application to modify its PBR tariff is rejected for filing due to lack of notice.

2. This matter will remain open for 30 days on the Commission's docket to allow LG&E the opportunity to provide and file proof of compliant notice or to request a deviation.

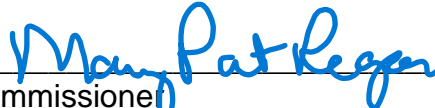
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<sup>16</sup> The Commission recognizes that it may be necessary to extend the 30-day period if LG&E requests a deviation.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ENTERED  
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KENTUCKY PUBLIC  
SERVICE COMMISSION

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