

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

BERNHEIM ARBORETUM AND RESEARCH)	
FOREST)	
)	
COMPLAINANT)	
)	CASE NO.
V.)	2019-00274
)	
LOUISVILLE GAS AND ELECTRIC COMPANY)	
)	
DEFENDANT)	

ORDER

On August 2, 2019, Complainant, Bernheim Arboretum and Research Forest (Bernheim Arboretum), filed a complaint against Defendant, Louisville Gas and Electric Company (LG&E). The complaint states that Bernheim Arboretum owns property in Bullitt County and alleges that LG&E has threatened to condemn Bernheim Arboretum's property through eminent domain authority. Bernheim Arboretum asserts that it has been injured and aggrieved by the actions of LG&E and the Commission stemming from a June 22, 2017, decision by the Commission in Case No. 2016-00371, to grant LG&E a certificate of public convenience and necessity (CPCN) to construct a natural gas pipeline in Bullitt County.¹

The caption of Case No. 2016-00371, indicated that LG&E had filed an application "for an Adjustment of its Electric and Gas Rates and for Certificates of Public Convenience

¹ Case No. 2016-00371, *Application of Louisville Gas and Electric Company for an Adjustment of its Electric and Gas Rates and for Certificates of Public Convenience and Necessity* (Ky. PSC June 22, 2017).

and Necessity.” LG&E’s application and supporting testimony described its request more specifically as an increase in both gas and electric rates and the issuance of CPCNs for the full deployment of Advanced Metering Systems and for a Distribution Automation Project. The requested increase in natural gas rates was due, in part, to the capital investment needed to construct a new 10-12 mile natural gas pipeline in Bullitt County.²

Bernheim Arboretum contends that the June 22, 2017 Order in Case No. 2016-00371, was unlawful because the Commission should have required LG&E to file a separate CPCN application for approval of the construction of the Bullitt County natural gas pipeline, rather than finding that a CPCN was necessary and granting a CPCN for the construction of the Bullitt County natural gas pipeline, as was done in the June 22, 2017 Order. Bernheim Arboretum claims that it has been deprived of due process of law through the Commission’s failure to abide by 807 KAR 5:001, Sections 14(1) and 15(2). According to Bernheim Arboretum, those regulations require a separate CPCN application to be filed for the Bullitt County natural gas pipeline project, which application would have allowed for public notice and an opportunity to be heard regarding the need for the pipeline and the reasonableness of the proposed route.

The Commission notes that 807 KAR 5:001, Section 20, governs the process for formal complaints filed before the Commission. Upon the filing of a formal complaint, 807 KAR 5:001, Section 20(4)(a), requires that the Commission examine and determine whether the complaint establishes a prima facie case. A complaint establishes a prima

² Case No. 2016-00371, Testimony of Lonnie E. Bellar, at 3-4, filed November 23, 2016.

facie case when, on its face, it states sufficient allegations that, if not contradicted by other evidence, would entitle the complainant to the requested relief.³

Upon our review of the instant complaint, the Commission is unable to determine whether a prima facie case has been established. There are two apparent threshold issues related to standing that the Commission finds should be briefed by both Bernheim Arboretum and LG&E. First, the complaint asserts that a separate CPCN application for the Bullitt County natural gas pipeline project would have allowed for public notice. However, the complaint fails to cite any Commission statute or regulation that would require notice be given to the public in general or to potentially affected property owners in connection with an application for a CPCN to construct a natural gas pipeline.⁴ Further, the complaint does not assert that if notice was required to be provided to affected property owners in matters involving a CPCN request for construction of a natural gas pipeline, Bernheim Arboretum would have been entitled to receive notice as a property owner had a CPCN for the pipeline been requested in Case No. 2016-00371. Bernheim Arboretum and LG&E should brief the legal issue of whether Bernheim Arboretum has standing to claim that notice is required upon the filing of a CPCN application for a natural gas pipeline and that it would be entitled to receive notice of a CPCN application by LG&E for construction of the Bullitt County natural gas pipeline.

Second, the Commission notes that the instant complaint appears to essentially be a challenge to, and a request for review of, our June 22, 2017 Order in Case No. 2016-

³ See Case No. 2010-00404, *Bulldog's Enterprises, Inc. d/b/a Bulldog's Road House v. Duke Energy Kentucky, Inc.* (Ky. PSC Nov. 15, 2010).

⁴ The statutory requirements for requesting a CPCN to construct a natural gas pipeline are different than those for construction of an electric transmission line where notice is required under KRS 278.020(9).

00371, notwithstanding that Bernheim Arboretum was not a party to that proceeding. Bernheim Arboretum and LG&E should also brief the issue of whether Bernheim Arboretum had a protected property interest (or any other legally recognized interest) that was allegedly violated by the June 22, 2017 Order in Case No. 2016-00371, and which now creates standing to challenge and seek review of the findings of fact and conclusions of law regarding the Bullitt County pipeline as set forth in the June 22, 2017 Order in Case No. 2016-00371.

The Commission will establish a briefing schedule and the issue of whether the instant complaint establishes a prima facie case will be taken under consideration by the Commission once briefing is completed.

IT IS THEREFORE ORDERED that:

1. Bernheim Arboretum shall file a legal brief addressing the two issues identified herein within 20 days from the date of this Order.
2. LG&E shall file a legal brief in response to Bernheim Arboretum's initial brief within 10 days from the date of the filing of Bernheim Arboretum's initial brief.
3. Bernheim Arboretum shall file a reply brief within 7 days from the date of the filing of LG&E's response brief.

By the Commission

ENTERED
AUG 20 2019
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:


Executive Director

Case No. 2019-00274

*Clay A. Barkley
Strobo Barkley PLLC
239 South 5th Street
Ste 917
Louisville, KENTUCKY 40202

*Rick E Lovekamp
Manager Regulatory Affairs
Louisville Gas and Electric Company
220 W. Main Street
P. O. Box 32010
Louisville, KY 40202

*Randal A. Strobo
Strobo Barkley PLLC
239 South 5th Street
Ste 917
Louisville, KENTUCKY 40202

*Louisville Gas and Electric Company
220 W. Main Street
P. O. Box 32010
Louisville, KY 40232-2010