

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

VANESSA ALLEN)	
)	
COMPLAINANT)	
)	
V.)	CASE NO.
)	2019-00345
)	
LOUISVILLE GAS AND ELECTRIC COMPANY)	
)	
DEFENDANT)	

ORDER

On September 13, 2019, Complainant, Vanessa Allen, tendered a complaint against Defendant, Louisville Gas and Electric Company (LG&E) regarding the construction of a new 12-inch high-pressure gas pipeline to connect to the Calvary Pipeline in Bullitt County, Kentucky. The Commission granted LG&E a Certificate of Public Convenience and Necessity (CPCN) to construct the new Bullitt County pipeline in 2017.¹

The complaint raised four allegations. The first allegation is that LG&E made fraudulent and deceptive statements pertaining to a condemnation action filed in Bullitt Circuit Court against Ms. Allen by “hid[ing] the true land values” from landowners.² The complaint further alleges that LG&E “withheld information from the courts” to prevent

¹ Case No. 2016-00371, *Electronic 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).

² Complaint, Attachment, at unnumbered page 1.

property owners from receiving just compensation, including filing older survey plats that omitted existing structures.³ The second allegation is that LG&E bullied and intimidated Ms. Allen by making threats to reduce the value of Ms. Allen's property if she would not agree to an easement for the pipeline, entering her property when she asked LG&E not to do so, and posting a statement on LG&E's website that property owners who refuse to sell LG&E easements for the pipeline created a hardship for economic development and potential commercial development in Bullitt County. The third allegation is that LG&E failed to conduct proper environmental surveys to address impacts on cultural artifacts, bats, and Kentucky glade cress, or the impact of sinkholes, caves, and floodplains along the chosen route. The fourth allegation is that LG&E plans to connect the new pipeline to an "antiquated" pipeline that is out of compliance with federal regulations.⁴ For relief, the complaint requests the Commission to: (1) require LG&E to complete a full environmental impact study; (2) hold LG&E accountable for alleged bullying and deceit related to the easement; (3) provide a review of the Bullitt County pipeline project due to fraudulent information submitted by LG&E; and (4) ensure the safety of the planned pipeline path.

Pursuant to Commission regulation 807 KAR 5:001, Section 20(4)(a), upon the filing of a formal complaint, the Commission must determine whether it establishes a *prima facie* case. A complaint establishes a *prima facie* case when, on its face, it states

³ *Id.* at unnumbered pages 1–2.

⁴ *Id.* at unnumbered page 3.

sufficient allegations that, if not contradicted by other evidence, would entitle the complainant to the requested relief.⁵

Based on a review of the complaint and attachments, and being otherwise sufficiently advised, the Commission finds that the complaint, as filed, does not establish a *prima facie* case for the reasons discussed below.

Pursuant to KRS 278.040, the Commission has statutory authority over the rates and service of jurisdictional utilities, which includes LG&E. In regard to the allegation that LG&E made fraudulent statements and withheld information in the state court condemnation action, the Commission has no jurisdiction over condemnation actions in state court. Because the allegation is outside the Commission's statutory jurisdiction, the Commission is unable to provide Ms. Allen the relief requested and that request is properly now denied.

Regarding the allegation that LG&E bullied and intimidated landowners prior to and after filing the condemnation action by threatening to reduce the property value or by unapproved entrance onto Ms. Allen's property, the Commission does not have jurisdiction over the valuation of property or entering property to conduct surveys or negotiate easements with property owners. Because the allegation is outside the Commission's statutory jurisdiction, the Commission is unable to provide Ms. Allen the relief requested and that request is properly now denied.

Regarding the allegation that LG&E failed to complete thorough environmental surveys, the Commission notes that intrastate natural gas pipeline construction permitting

⁵ 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).

processes are complex and involve multiple federal, state, and local agencies, as demonstrated by permits filed by LG&E in the post-case file in Case No. 2016-00371 related to the Bullitt County pipeline construction.⁶ Environmental impact assessments from the construction of a natural gas pipeline, including identifying cultural resources such as artifacts, endangered species, or discharge of dredge or fill material into waterways, are under the jurisdiction of agencies such as the United States Army Corps of Engineers, United States Fish and Wildlife Service, Kentucky Division of Water, and Kentucky Heritage Council, and City of Shepherdsville.⁷ The Commission does not have jurisdiction to require LG&E to obtain an Environmental Assessment in connection with the construction of a gas pipeline. Thus, the Commission is unable to provide Ms. Allen the relief requested related to an Environmental Assessment, and that request is properly now denied.

In regard to the allegation regarding pipeline safety, the complaint fails to comply with 807 KAR 5:001, Section 20(1)(c), by failing to state with specificity the act or omission that is alleged. First, regarding the allegation that the new pipeline will connect to a pipeline that failed routine assessments, Ms. Allen failed to identify with specificity the pipeline that she claims failed routine assessments. If Ms. Allen is referring to the Calvary Pipeline in-line tool safety inspection, Ms. Allen's allegation is untrue. LG&E informed the Commission on August 29, 2018, that it completed an in-line inspection of the Calvary

⁶ Case No. 2016-00371 post-case filings can be viewed at https://psc.ky.gov/PSC_WebNet/ViewCaseFilings.aspx?Case=16-371 and by clicking on the POST Case Files folder located on the left of the screen.

⁷ See Case No. 2016-00371, LG&E Pre-Construction Notification Permit Submitted to the United States Army Corps of Engineers (Filed Apr. 11, 2019) (maps with location of potential sinkholes, potential roost tree, Federally designated critical habit area, existing wetland, federally designated glad cress critical habit area, and 100 year floodway).

Pipeline.⁸ Second, it is unclear if the complaint is alleging a safety issue regarding the identification of floodplains, sinkholes, caves, and underground springs on surveys of the pipeline route. To the extent that Ms. Allen is alleging a safety issue, the Commission notes that LG&E, as the operator of a gas distribution system, is subject to the safety jurisdiction of the United States Department of Transportation Pipeline and Hazardous Materials Safety Administration (PHMSA). One of the federal requirements enacted by PHMSA is that “The operator must take all practicable steps to protect each transmission line or main from washouts, floods, unstable soil, landslides, or other hazards that may cause the pipeline to move or to sustain abnormal loads.”⁹ Further, a review of LG&E’s preconstruction notification application to the United States Army Corps of Engineers that was filed with the Commission identifies floodplains, sinkholes, caves, underground springs, and streams on several surveys and maps of the proposed pipeline location.¹⁰

In addition to the requested relief addressed above, Ms. Allen requested that the Commission review the Bullitt County pipeline project in light of the alleged fraudulent information. However, the complaint only alleges fraudulent information in connection with the condemnation action in state court, which, as discussed above, is outside the scope of the Commission’s statutory authority. If the complaint intended to reference the underlying administrative case, Case No. 2016-00371, then the complaint fails to comply

⁸ Case No. 2017-00482, *Application of Louisville Gas And Electric Company For Approval of State Waiver Of The Reassessment Interval Required By 49 C.F.R. Section 192.939* (Ky. PSC June 3, 2019), at 7-8.

⁹ 49 C.F.R. Section 192.317(a).

¹⁰ LG&E Preconstruction Notification Application, https://psc.ky.gov/pscecf/2016-00371/rick.lovekamp@lge-ku.com/04112019075507/Closed/3-PCN_20190228.pdf; and Figure 1, https://psc.ky.gov/pscecf/2016-00371/rick.lovekamp@lge-ku.com/04112019075507/Closed/5-20190304_AreasWITHIN100ft_Bullitt.pdf.

with 807 KAR 5:001, Section 20(1)(c), which provides that a complaint must set forth “[f]ully, clearly, and with reasonable certainty, the act or omission, of which complaint is made.” We note that to be entitled to relief on a claim of fraud in Kentucky, a person must establish six elements. They are: (1) material misrepresentation; (2) which is false; (3) known to be false or made recklessly; (4) made with inducement to be acted upon; (5) acted in reliance thereon; and (6) causing injury.¹¹

IT IS THEREFORE ORDERED that:

1. Ms. Allen’s complaint is rejected for failing to conform to the requirements of 807 KAR 5:001, Section 20, and for failing to state a *prima facie* case.

2. Ms. Allen’s request that the Commission order LG&E to conduct an Environmental Assessment is denied.

3. Ms. Allen’s request that the Commission review LG&E’s alleged fraudulent statements in the state court condemnation action is denied.

4. Ms. Allen’s request that the Commission hold LG&E accountable for alleged bullying and intimidation regarding property valuation and entry onto the property to conduct surveys or negotiate easements with Ms. Allen is denied.

5. Ms. Allen shall have 20 days from the date of entry of this Order to file an amended complaint with the Commission that conforms to the requirements of 807 KAR 5:001, Section 20, and that states a *prima facie* case.

¹¹ *United Parcel Service v. Rickert*, 996 S.W.2d 464 (Ky. 1999).

By the Commission

ENTERED
OCT 02 2019
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:


Executive Director

Case No. 2019-00345

Vanessa Allen
9090 Cedar Grove Road
Shepherdsville, KENTUCKY 40165

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

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