



Metropolitan Housing Coalition

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To: Tom Fitzgerald
From: Cathy Hinko
Re: Gas Line Tracker Fee
Date: 7 August 2013

As of January 1, 2013, there is an additional fee for every gas meter. It is \$2.27 per month for the "Gas Line Tracker". This is a fixed fee, not based on any other factor than having a gas meter. I believe the institution of this fee and the basis for it- transferring to those with meters (rather than property owners) the responsibility of private property improvements without regard to actual cost of doing the work- is in violation of several statutes.

Tenants:

This fee covers the cost of the gas line service running from the street to the house if it had to be dug up. This is an improvement to private property and prior to the institution of this fee it was the landowner's responsibility. Now, for people who rent, it is no longer the land owner's financial responsibility; that responsibility has been transferred to renters. Since this is considered an improvement to the land- which would be part of valuing the land, it is grossly unfair to transfer this financial responsibility

The Uniform Residential Landlord Tenant Act adopted by the Kentucky legislature contains the provision, at K.R.S 383.595 that (1) A landlord shall:(d) {m}aintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators, supplied or required to be supplied by him..." While the landlord shall, at K.R.S 383.595 " (a) comply with the requirements of applicable building and housing codes materially affecting health and safety" , the transfer of the financial responsibility to the tenant unless in a written and signed lease, is not contemplated.

The URLTA must be adopted as whole and was adopted by Louisville and is to be found at J.C.O 385.500 et.seq. I do not believe that the PSC has the power to rewrite the Kentucky Revised Statutes. Nor do I believe the PSC has the power to rewrite the lease of virtually every renter without their knowledge or permission.

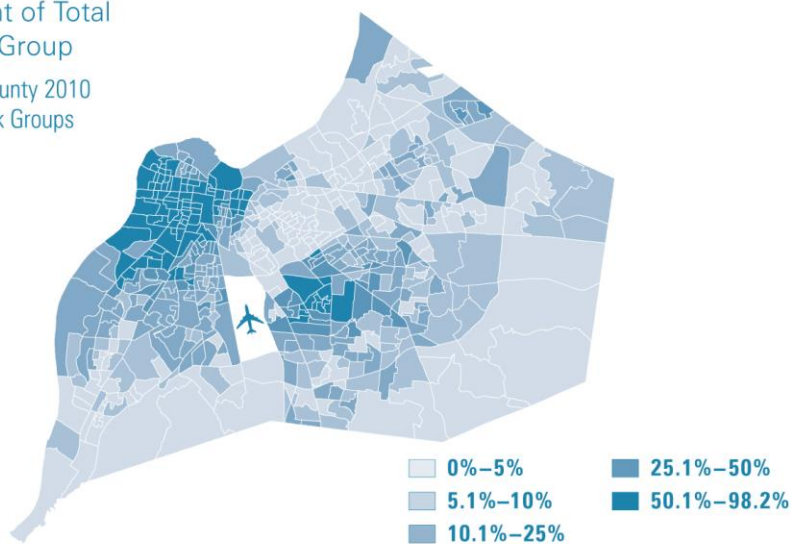
Even public housing residents who have individual utilities now have the responsibility of paying for what the Louisville Metro Housing Authority is responsible for under federal law.

The house I rent an apartment in is divided into three apartments, each of which is responsible for the \$2.27 per month making the total from the one house \$6.81. Next door is a single family home and they pay \$2.27. So we three renters are subsidizing improvements to unknown

owner-occupied single family properties. And only renters in the city have had their rights changed as this does not apply to areas outside the LG&E-KU area.

A great example is District 4 where there are 8,741 housing units, of which 55% are subsidized rental housing and there is an additional percentage of non-subsidized rental housing. The attached map shows the concentration of African Americans in this District.

2010 Black or African American Population
as Percent of Total
by Block Group
Jefferson County 2010
Census Block Groups



Source: 2010 Census Summary File 1

Impact on protected classes

The homeownership rate for African Americans in Metro Louisville is 47.4%, which means that the over 50% of African Americans who rent are now financially responsible for private property improvements that were not their responsibility before this fee. We know the poverty rate for female headed households with children is greater than of other households; disabled persons and elderly on fixed income are disproportionately in lower incomes. You can see from the charts below that where African Americans live there is a high percentage of land zoned for multi-family although only 6% of all land in Jefferson County is zoned multi-family. When you look at the map of where female-headed households with children live, you can also see the impact of density and where multi-family is permitted.

Income, African-American Population, and Residential Land Use: Louisville Metro's West End Neighborhood by Zip-Codes

Zip-code	Median Household Income	Percentage of African-American Residents	Percentage of Land Zoned Multi-Family	Percentage of Land Zoned Single-Family
40203	\$13,458	63%	25%	3%
40208	\$24,041	26%	17%	14%
40210	\$20,722	91%	24%	28%
40211	\$21,906	95%	20%	31%
40212	\$23,240	55%	34%	42%

Source: 2000 Census

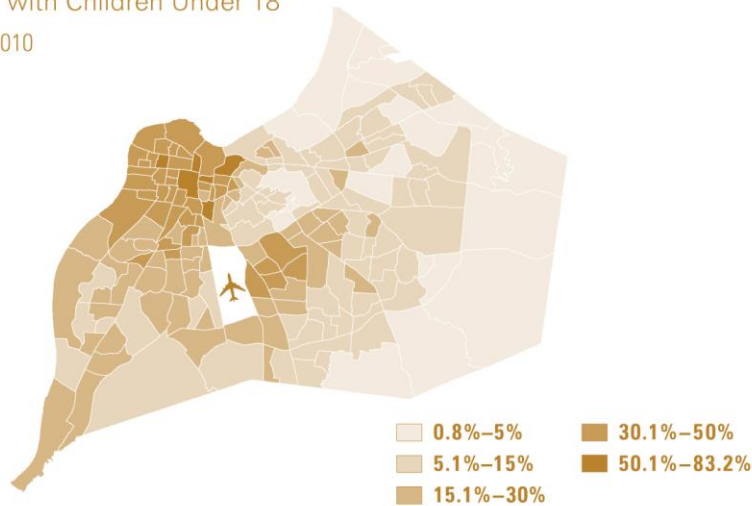
Income, African-American Population, and Residential Land Use: Louisville Metro's East End Neighborhood by Zip-Codes

Zip-code	Median Household Income	Percentage of African-American Residents	Percentage of Land Zoned Multi-Family	Percentage of Land Zoned Single-Family
40207	\$54,050	2%	7%	77%
40222	\$52,259	5%	8%	75%
40242	\$52,406	5%	10%	87%
40245	\$80,634	4%	4%	81%
40059	\$98,316	4%	3%	89%

Source: 2000 Census

Female Householder, No Husband Present,
with Related Children Under 18 As Percent
of All Families with Children Under 18

Jefferson County 2010
Census Tracts



Source: 2010 Census Summary File 1, Table P-39

Impact on areas of high density

Is it fair to anyone? In my urban neighborhood, the line to the street is not long, but the same rate is charged to single family houses on 9,000 square foot lots, so clearly the charge is not related to cost or the length of line to be dug up. In fact, in the house in which I rent the fee generates three times the amount that is generated from a single-family home on a lot of 9,000 square feet.

In addition, due to density, there are more fees collected per mile of road than in areas with 9,000 square foot lots.

I believe that LG&E and the Public Service Commission acted outside their scope of authority in violating federal, state and local fair housing laws and in the disregard of the state laws regulating rental agreements.

This link is about HUD's position that utilities are covered by fair housing laws.

https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&ved=0CCOQFjAA&url=http%3A%2F%2Fportal.hud.gov%2Fhudportal%2Fdocuments%2Fhuddoc%3Fid%3D12huntsville_conciliation.pdf&ei=y3sCUuq5Fpid4AOfyYC4BQ&usg=AFQjCNFdHhBX6pNFbTtFdabgGSWr3wEFOQ&sig2=cBEsynloU0X6sGLr58NeWQ

In 2012 thousands of LG&E customers were billed a *Gas Line Tracker Fee* as part of a program to raise funding for the maintenance and replacement of gas lines which run on private property. Included in the tracker fee is a 10.25% profit margin, to be provided for LG&E. Historically, these gas lines were owned, maintained and replaced as needed by the property owners. For decades, renters and landlords have entered into lease agreements with the cost of property upkeep and improvements **built** into the cost of **rent**. Today many of these leases are still in effect, but the terms have changed. Tenants now pay a monthly charge in addition to the standard portions of their gas bill, and the property owner is relieved of all responsibility for a vital structure of the property they lease. For decades, a benefit to home-ownership in urban areas was ease of access to existing public pipelines. Today, when pipelines need to be replaced across acres of private property in suburban neighborhoods, the **work** is subsidized by thousands of LG&E customers who live in dense, urban communities, in which (African Americans, minority groups, low income families, single parent homes), are disproportionately impacted. This rate change was approved by the Public Service Commission (PSC) without proper consideration for the disparate impact upon minorities in violation of the Fair Housing Act (Title VIII), the statutory protections of tenants prescribed by the Uniform Residential Landlord Tenant Act (URLTA), or the unilateral modification and interference with the established, bargained for terms of countless lease agreements.

LG&E services one of Kentucky's largest metropolitan communities. Louisville is home to 42% of Kentucky's African American population. Jefferson County and the surrounding counties that LG&E services represents a diverse population, with **neighborhoods of disparate racial demographics and** with great disparity in income. The Supreme Court decision in *Texas Department of Housing and Community Affairs et al. v. Inclusive Communities Project, Inc. et al.* (2015), ruled that disparate impact claims could be filed in violation of Title VIII. Providing adequate access to utilities in a fair manner across racial lines is a key component of the Fair Housing Act. The Public Service Commission's authorization of this gas line tracker fee, without regard for the burden saddled upon Louisville's rental market, which is predominantly African American, is a violation of the Fair Housing Act. The Universal Residential Landlord Tenant Act (URLTA) was enacted to protect the rights and obligations of tenants and landlords. The landlord is statutorily obligated to make repairs and maintain in good working condition all heating facilities and appliances, among other responsibilities. Meanwhile, the tenant is obligated to keep all parts of the premises occupied in clean and sanitary condition. URLTA was enacted to establish a sensible and equitable apportionment of duties between the landlord and the tenant. The PSC, which is not a law making body, does not have the legal right to authorize utility plans that strip tenants of their statutory protections, and that saddles tenants and racial minorities with an un-bargained for obligation, in violation of state and federal law.

The Public Service Commission's regulating authority is based on KRS Chapter 278 which gives the commission state wide power to approve or deny rate proposals for utility services. As a state wide governing body which regulates local utility companies, the commission is obligated to operate in accordance with all local and

federal laws, including URLTA and the Fair Housing Act. Additionally, by statute and by rulings made from the Kentucky Supreme Court, the PSC's decisions must ensure that rates are fair, just, and reasonable. For any proposed rate change to be considered fair, just, and reasonable, it must be administered with some account taken as to which lines will be more costly to replace. It must be administered without a disparate impact on race. It should not require that thousands of renters, living in densely populated neighborhoods, pay the same fee for a service that is more costly in suburban and rural neighborhoods. It is not fair, just, or reasonable to introduce fees for services which were already provided for, impliedly or by law, in the terms of every rental agreement made in the Louisville area. The tracker fee needs several amendments to reflect the limits of many customer's legal obligations. If a solution cannot be reached to lift the burden upon renters, low income communities, and African American communities, the tracker fee should be abolished.

Statement of the Case

On November 27, 2012, the Public Service Commission authorized a settlement between LG&E and various interveners, which concluded LG&E's application for rate changes. The settlement included a gas line tracker fee which was assessed to LG&E customers part of which was to fund the utility's upkeep and replacement of gas lines which run on private property. Included was an application for public convenience and necessity, which allowed for a transfer of ownership of the private gas lines to LG&E. The accepted rates for maintenance and upkeep of the lines included a 10.25% return on equity which was part of the fee.

Summary of the Argument

The Public Service Commission's discretionary authority is granted and legally bound by chapter 278 of the Kentucky Revised Statutes. KSR 278.030 states that the Commission's rate regulating authority shall be used to ensure that proposed rates are *fair, just, and reasonable*. The disparate impact this fee has does not satisfy this standard. (in aggregate, temporally, and by customer, some number crunching to address counterargument that the rates are small.) KRS 278.040 (2) states that the powers invested in the Commission in Chapter 278 shall in no way be construed "to limit or restrict the police jurisdiction, contract rights or powers of cities or political subdivisions." This provision ensures that the enforcement and viability of other state statutes and local codes and regulations is a part the commission's regulatory scheme, and that the statutory protections of tenant's rights should be enforced when considering the legality of a customer charge assessed to tenants for the maintenance and upkeep of private property in which the renter has no ownership. The Public Service Commission changed the state law and tens of thousands of contracts by charging tenants for the upkeep of gas lines on private property which, by law, contract and usage, has been the responsibility of the owner of the property. The Public Service Commission did not have the authority to take this action. The action to change the contracts and governing law for tenants has a negative disparate impact on people in Fair Housing Act protected classes and is in violation of the federal, state and local laws on fair housing.

The action to charge a flat fee regardless of the length of line to be replaced on private property has a negative disparate impact on people in Fair Housing Act protected classes as the concentrations of people by race, female head of household and disability area in areas with small lot sizes and the people with large lots, and, consequently, significantly more footage of gas lines on private property are in areas that are white.

The action to charge this fee only in the LG&E service area, which is predominantly in Jefferson County is in violation of the Fair Housing Act in that 42% of Kentucky's

Comment [CH1]: ?

African Americans live in Louisville and this actions singles out, by race, a policy to make African Americans pay for improvements on the land owned by whites.

This action violates contract law and is a tortious interference with contract of tens of thousands of leases in the LG&E service area. Every tenant in Jefferson County is governed by the Uniform Residential Landlord Tenant Act, by local and state law. The law places the burden of upkeep of the gas line on private property on the owner. LG&E and the PSC knew that there were valid residential leases, interfered improperly with those leases, and every tenant in Jefferson County has suffered financial loss.

Universal Residential LL/T Act

The Commission's approval of the tracker fee is in violation of the following provisions and purposes of Chapter 151 of the Louisville Metro ordinances, which is the local adoption of Kentucky's Chapter 383 Uniform Residential Landlord Tenant Act. Section 383.500 requires that local governments adopting the state law to do so in whole and without amendment. Section 383.595, titled "Landlord's maintenance obligations and agreements" state the following:

(1) A landlord shall:

- (a) Comply with the requirements of applicable building and housing codes materially affecting health and safety;
- (b) Make all repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition;
- (c) Keep all common areas of the premises in a clean and safe condition;
- (d) Maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators, supplied or required to be supplied by him; and
- (e) Supply running water and reasonable amounts of hot water at all times and reasonable heat between October 1 and May 1 except where the building that includes the dwelling unit is not required by law to be equipped for that purpose, or the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the tenant and supplied by a direct public utility connection.

The court should consider each of these provisions according to Section 383.505, which states that the statute "shall be liberally construed and applied to promote its underlying purposes and policies." A liberal construction of Section 383.595 (1)(b), would include gas pipes, as they are part of the premises. This provision was in place when many tenants signed their leases with their landlords, and the resulting landlord tenant covenant and contract was made with the basic assumption that this statutory prescription was an implied condition to the lease. The protections of this provision were removed by the Public Service Commission's decision and LG&E's revenue collection plan, and should be invalidated or changed. 383.595 (1)(c) should be construed to include all areas which are not in exclusive possession of any one tenant. Tenants are not held responsible for upkeep, maintenance or improvement of any particular structure or area of the premises of

Comment [DS2]: This is contract/property theory, but involves the same legal provisions, but doesn't require the PSC 040 language.

which they are not in exclusive possession. Regardless of who owns the pipes, whether LG&E or the property owner, the pipes are clearly on the premises, and should thus activate this statute.

383.595 (1)(e) requires that heat be supplied, except (in applicable part), where the heat is generated by an installation within the exclusive control of the tenant. Gas pipes cannot be considered part of a installation that is within the exclusive control of the tenant.

Chapter 156 Louisville Metro Code (Property Maintenance)

The following are definitions taken from the chapter:

(E) Parts. Whenever the words DWELLING UNIT, DWELLING, PREMISES, BUILDING, ROOMING HOUSE, ROOMING UNIT or STORY are stated in this chapter, they shall be construed as though they were followed by the words "or any part thereof."

DWELLING UNIT. A single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

EXTERIOR PROPERTY. The open space on the premises and on adjoining property under the control of owners or operators of such premises.

PREMISES. A lot, plot or parcel of land including any structures thereon.

STRUCTURE. That which is built or constructed or a portion thereof.

The following is the chapter's intent:

§ 156.003 INTENT. This chapter shall be construed to secure its expressed intent, which is to ensure public health, safety and welfare insofar as they are affected by the continued occupancy and *maintenance of structures and premises*. Existing structures and premises that do not comply with these provisions shall be altered or repaired to provide a minimum level of health and safety as required herein. The chapter's prescribed construction includes an explicit emphasis on ensuring public welfare as it relates to the maintenance of structures and premises. The chapter defines a *dwelling unit* to be complete with facilities and permanent provisions for modern living. Facilities is the term used to describe the heating requirements of landlords, but whether the gas lines should be more accurately considered a facility or piece of equipment that is to be installed upon the premises, or if the pipe should be considered part of the structure of the dwelling itself, it is a key portion of any residential parcel of land and must be provided for and maintained by the landlord.

Title VIII Fair Housing portion of the Civil Rights Act

LG&E's gas line tracker fee targets residential tenants in a unique way by transferring to them the cost of maintaining and replacing gas lines which lay on private property, eliminating responsibility altogether for many property owners who themselves do not live on the property they rent out. No effort is made to consolidate funding responsibilities among tenants who live in multi-unit dwellings due to the fact that a large number of customers share a relatively small length of

private gas line. The same inequitable practice places a disproportionate burden on customers who own small parcels of land, who must pay the same price as customers who live on large tracts of land. The Supreme Court decision in *Texas Department of Housing and Community Affairs et al. v. Inclusive Communities Project, Inc. et al.* (2015), ruled that disparate impact claims could be filed in violation of Title VIII fair housing act. The increased burden on renters and owner of small property lots represents a disparate impact on those groups more likely to rent and live in urban areas. Affected groups include racial minorities, impoverished communities, and single parent and female led households which are more likely to rent, or live in neighborhoods with small lot sizes. All of these groups suffer from the disparate impact that violates 42 U.S. Code § 3604 (b) - *Discrimination in the sale or rental of housing and other prohibited practices*, and 42 U.S.C. SS 3605 - *Discrimination in residential real estate-related transactions*.

The following is the text of code 3604(b):

42 U.S. Code § 3604 - Discrimination in the sale or rental of housing and other prohibited practices

(b)

To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin.

The Public Service Commission's approval of LG&E's tracker fee allows LG&E to assess a charge that carries a disparate impact upon our community's poor and minority neighborhoods on a discriminatory basis. This discrimination interferes with the provision of utility services by making them less affordable and thereby restricting access to these and other essential commodities which comprise a substantial portion of low income family budgets. Charging relatively more for this service on a discriminatory basis, failing to take any action whatsoever to adjust tracker fee rates by length of the gas lines of private property, and unexpectedly straddling renters with a liability that has never been considered theirs, and certainly was not when they signed a contract with their landlord, is an improper and illegal decision by the Public Service Commission.

The gas line tracker fee also interferes with the terms and conditions of rental agreements, because at the time these rental agreements were made, it was an implied term of the lease that the landlords were responsible for the maintenance of the gas lines upon their property. The assumption of ownership of these lines, coupled with the assessment of this fee which includes a 10.25% return on equity, represents a market wide takeover by a sanctioned monopoly that modifies every rental agreement in the LG&E service area, without bargaining with or consent from the newly burdened customers. This uniquely burdens renters because they were never responsible for the maintenance of private gas lines up to this point, just as they were never responsible for foundation, walls, roof, or internal plumbing of the house. Such costs assessed to the landlord were already represented in the price of

rent, and already included a reasonable, market driven, rate of return, which was held low by the presence of competition among landlords, and varied according to the condition and age of the pipes, which varies property by property, neighborhood by neighborhood, throughout the Louisville community. LG&E's assumption of ownership of these pipes for the purposes of billing their customers regardless of their relation to the property on which the pipes lay is an unexpected and unilateral modification to thousands of independently bargained rental contracts, which results in a windfall for landlords and LG&E at the expense of renters who represent disproportionately the cities single parent and minority families.

charging relatively more for this service on a discriminatory basis, failing to take any action whatsoever to adjust tracker fee rates by length of the gas lines of private property, and unexpectedly straddling renters with a liability that has never been considered theirs, and certainly was not when they signed a contract with their landlord, is an improper and illegal decision by the Public Service Commission.

The following is text from code 3605:

42 U.S. Code § 3605 - Discrimination in residential real estate-related transactions

(a) IN GENERAL

It shall be unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color, religion, sex, handicap, familial status, or national origin.

(b) "RESIDENTIAL REAL ESTATE-RELATED TRANSACTION" DEFINED

As used in this section, the term "residential real estate-related transaction" means any of the following:

(1) The making or purchasing of loans or providing other financial assistance—

(A)

for purchasing, constructing, improving, repairing, or maintaining a dwelling. The Public Service Commission's approval of LG&E's gas line tracker fee allows LG&E to assess a charge that carries a disparate impact upon our community's poor and minority neighborhoods on a discriminatory basis, as explicitly stipulated against in section (b)(1)(A)'s definition of a "residential real estate-related transaction" which includes constructing, improving, repairing or maintaining a dwelling. 42 U.S.C. 3602 (b) defines a dwelling as "means any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a

residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.” Maintaining gas lines on private property fixed to a residence will certainly be considered part of a comprehensive plan to maintain a dwelling, and charging relatively more for this service on a discriminatory basis, failing to take any action whatsoever to adjust tracker fee rates by length of the gas lines of private property, and unexpectedly straddling renters with a liability that has never been considered theirs, and certainly was not when they signed a contract with their landlord, is an improper and illegal decision by the Public Service Commission. The fee results in several unjustified and illegal shifts in responsibility for these private gas lines, and are delineated as follows:

1. Tenants who have no ownership stake in the property or any permanent structure or any portion of the dwelling, are saddled with the management and maintenance of the gas pipes that were formally owned by the owners of the property who were responsible for them.
 - a. The additional burden placed on tenants eviscerates the statutory protections of the Uniform Residential Landlord Tenant Act, which requires landlords to provide for these basic essentials of a home.
 - i. It would be similar to MSD taking ownership of toilets and charging for their replacement.
 - ii. One of the reasons for URLTA was to portion the responsibilities of property maintenance among landlords and tenants to ensure that neither party would be subject to unreasonable responsibilities. Requiring tenants to provide funding to replace pipes on property they share no stake in is unreasonable, and unlike any of the responsibilities which tenants are tasked with in the code. It’s for this reason that landlords are not responsible for maintaining a clean and sanitary condition. Landlords are reasonably situated to prepare for this expenditure due to the particularized knowledge that comes with home ownership. They have access to knowledge of when pipes were laid and should be replaced and can start saving accordingly. The alternative is charging rental customers an indefinite rate that comes out of their budgets, which is already consumed with fixed spending to a much larger extent than home owners, leaving even less for discretionary spending and saving.
 - iii. URLTA has been a longstanding supplement to rental agreements made in Louisville and in many other areas across the country. Many of their provisions give guidance to landlords as to what terms are enforceable when drafting lease agreements. This means when landlords and tenants agree to a lease, they have operated within the law, which is designed to protect both parties from surprise liabilities and obligations. But here we have just that. Landlords have routinely executed rental agreements where the rent prices were set with the foresight that gas lines need to be replaced after a certain amount of time. Just like any other expense, such as providing indoor plumbing and electric, landlords could factor the cost into the rental

agreement just as any other business would, and they did. This surprising transfer of responsibilities from landlords to renters should be treated as a unilateral modification of the lease without the consent of either of the affected parties.

- b. LG&E customers who rent are disproportionately represented by minorities, low income families, single parent families, and female led households.
 - i. These customers are being asked to foot an unreasonable share of this project. This revenue pool practice results in the many LG&E customers who live in dense urban areas, many of which are economically vulnerable, are carrying burden for a project which benefits customers on an unequal basis.
 1. Renting in multiunit dwellings that house many customers in a small area results in many customers served by a small length of gas line. However, their rates are the same as those who live in houses with large acreage which requires a larger amount of gas line to reach their dwelling from the public pipelines, and these lines typically only serve a single customer.
 2. Customers who rent single unit dwellings still often live in dense neighborhoods with comparatively small lots, which requires less lengthy gas lines. They suffer the same complaint.
 3. Customers who own single unit dwellings or own condominiums in multiunit dwellings have a similar complaint. Although they were responsible for gas line maintenance, it was proportional to their lot size, and condominium owners have fees associated with the maintenance of such gas lines.