

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

LOUISVILLE/JEFFERSON COUNTY METRO)	
GOVERNMENT)	CASE NO.
)	2016-00347
VS.)	
)	
LOUISVILLE GAS AND ELECTRIC COMPANY)	

ORDER

On September 19, 2016, Louisville/Jefferson County Metro Government (“Louisville Metro”) filed a complaint against Louisville Gas and Electric Company (“LG&E”) setting forth three claims in opposition to LG&E’s proposed method for recovering the cost of a franchise fee under a gas franchise agreement entered into between Louisville Metro and LG&E on August 30, 2016 (“2016 Franchise Agreement”). Under LG&E’s existing Tariff Sheet No. 90, any franchise fee shall be recovered by a surcharge from “all customers located within local governmental jurisdictions” imposing the fee and “shall be added to the customer’s bill as a separate item.”

Louisville Metro’s first claim is that the franchise fee should be paid for by LG&E and not passed directly on to customers. Louisville Metro’s second claim is that if the Commission determines that the cost of the franchise fee can be passed directly to customers, all of LG&E’s gas customers benefit from the Louisville rights-of-way and, thus, all LG&E gas customers should pay the fee, irrespective of whether they are located within or outside of Jefferson County. Louisville Metro asserts that LG&E is proposing to collect the franchise fee only from certain gas customers within Jefferson

County and that to do so is unfair and contrary to cost-of-service principles. Louisville Metro points out that LG&E has gas customers in Oldham, Bullitt, Spencer, and Shelby counties who receive the benefit of gas service from pipes and mains located under Louisville Metro's rights-of-way. In support of this second claim, Louisville Metro specifically alleges that:

The franchise fee is based on the volume of gas passing through the pipes located in the Louisville rights-of-way. Thus, each customer can be charged the franchise fee based on individual usage. This allows for a fair, just, and reasonable allocation of cost to customers based on their volumetric use of the rights-of-way, whether those customers are located in Jefferson County or a surrounding County. With this means of calculating the franchise fee, there is no basis for concern regarding whether a customer is paying for a cost they themselves did not create.¹

Louisville Metro's third claim is that LG&E should be required to recover costs associated with the franchise fee from all of its gas customers who reside within "the geographic and jurisdictional borders of Louisville [Metro],"² including those Louisville Metro areas outside of the urban service districts and the unincorporated municipalities. To permit LG&E to do otherwise would, according to Louisville Metro, allow some LG&E gas customers within the Louisville Metro area to receive the benefits of Louisville Metro's rights-of-way without paying any portion of the franchise fee. Louisville Metro alleges that such a practice is unfair, unjust, unreasonable, and discriminatory.

Having reviewed the complaint and being otherwise sufficiently advised, the Commission finds that 807 KAR 5:001, Section 20(4)(a), requires us to review each formal complaint upon its filing to determine whether the complaint establishes a *prima*

¹ Complaint at ¶ 37.

² Complaint at ¶ 43.

facie case and conforms to the regulatory requirements set forth in 807 KAR 5:001, Section 20(1). That regulation requires that a formal complaint shall state “[f]ully, clearly, and with reasonable certainty, the act or omission, of which complaint is made, with a reference . . . to . . . other matters, or facts, if any, as necessary to acquaint the commission fully with the details of the alleged failure” A complaint establishes a *prima facie* case when, on its face, it states sufficient allegations that, if uncontradicted by other evidence, would entitle the complainant to the requested relief. If a complaint fails to establish a *prima facie* case, the regulation provides that the complainant be so notified and allowed an opportunity to amend the complaint within a specified time.

The Commission further finds that Louisville Metro’s complaint neither conforms to the requirements of 807 KAR 5:001, Section 20(1), nor establishes a *prima facie* case. Regarding the regulatory requirements of 807 KAR 5:001, Section 20(1), the complaint alleges that “[h]istorically, LG&E has only collected the franchise fee from the urban services district and unincorporated areas of Jefferson County”³ and that “Louisville is unique in the Commonwealth in that dozens of municipalities are located within the geographic and jurisdictional borders of Louisville.”⁴ Louisville Metro further alleges that it is LG&E’s intent to collect the franchise fee at issue only from gas customers who resides with the “urban services district and the unincorporated areas of Louisville, thus excluding all LG&E gas customers located outside those two areas but within Louisville from collection of the fee.”⁵ The complaint, however, does not include

³ Compliant at ¶ 42.

⁴ Complaint at ¶ 43.

⁵ Complaint at ¶ 44.

sufficient facts to acquaint the Commission fully with the details of Louisville Metro's claims. Specifically, the complaint includes no definition or description of either an urban service district or an unincorporated area, and does not describe the extent of the jurisdictional authority of Louisville Metro in each of those areas. Further, the complaint does not provide any description of the jurisdictional authority of Louisville Metro in the areas that are not within the urban service district and the unincorporated areas but that are within Jefferson County. The Commission will allow Louisville Metro an opportunity to amend its complaint to include the facts necessary to fully explain the details of its claims.

With respect to the establishment of a *prima facie* case, one of Louisville Metro's primary claims is that LG&E's gas customers in Jefferson County outside of Louisville Metro, as well as those gas customers in Oldham, Bullitt, Spencer, and Shelby counties, receive the benefit of "gas that travels through the pipes and mains located under the Louisville rights-of-way,"⁶ but those customers will not be required under LG&E's tariff to pay for the franchise fee. Louisville Metro asserts that this method of collecting the franchise fee by LG&E is unjust, unfair, and unreasonable and that all gas customers who benefit from Louisville Metro's rights-of-way should be responsible for their portion of the franchise fee. Louisville Metro, however, provided no support in its complaint for the allegation that all LG&E gas customers receive their gas through mains located under Louisville Metro's rights-of-way. In the absence of such supporting evidence, the Commission finds that Louisville Metro's complaint contains insufficient allegations to entitle it to the relief requested therein, and the complaint, therefore, does not establish a *prima facie* case. The Commission, in accordance with 807 KAR

⁶ Complaint at ¶ 36.

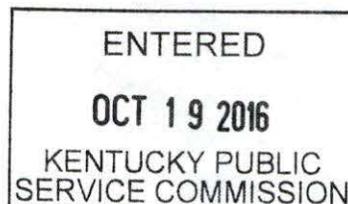
Section 20(4)(a)(1), will provide Louisville Metro an opportunity to amend its complaint to provide support for the allegation that all LG&E gas customers receive their gas through mains located under Louisville Metro's rights-of-way.

IT IS THEREFORE ORDERED that:

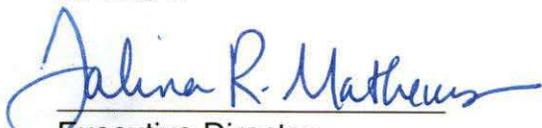
1. Louisville Metro's complaint is rejected for failing to conform to the requirements of 807 KAR 5:001, Section 20(1)(c), and for failing to state a *prima facie* case.

2. Louisville Metro shall have 20 days from the date of this Order to file an amended complaint with the Commission that conforms to the requirements of 807 KAR 5:001, Section 20(1), and that states a *prima facie* case.

By the Commission



ATTEST:


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