

From: [Pinson, Gwen \(PSC\)](#)
To: FitzKRC@aol.com
Cc: [Pinney, Jeb E \(PSC\)](#); [Raff, Richard G \(PSC\)](#)
Subject: RE: LG&E Bullitt County Pipeline
Date: Friday, April 12, 2019 2:34:00 PM

Mr. Fitzgerald:

We reviewed your April 8, 2019 email regarding a Louisville Gas and Electric Company (LG&E) rate case filed in 2016 and docketed as Case No. 2016-00371. Since you are counsel of record for a party to that case, the Metropolitan Housing Coalition (MHC), we are including your email and this response in the post-case file for Case No. 2016-00371, with service to all parties of record.

Your email discusses the Commission's final Order entered on June 22, 2017, which, among other things, granted a Certificate of Public Convenience and Necessity for the construction of the Bullitt County gas pipeline. You also reference the Commission's Order, entered on January 25, 2019, granting LG&E's petition for confidentiality for certain information related to the Bullitt County pipeline and state the following:

I respectfully request pursuant to 807 KAR 5:001 Section 13(10)(d) [sic] that a determination be made as to whether each document claimed to be entitled to confidential status relating to the Bullitt County pipeline project continues to be entitled to confidential treatment, including: (a) any study of the proposed route and alternative routes; (b) a map of the study area; (c) a map of the selected route; and (d) any study assessing the need for the project and alternatives considered.

The regulation you cite applies "[i]f a request to inspect material granted confidential treatment is made during the period specified in the commission's order" However, our reading of your email does not indicate that you are making a request under the Open Records Act to inspect or receive copies of the referenced material granted confidential treatment. Rather, as noted in the excerpt from your email cited above, you are requesting that the Commission make a determination as to whether the material granted confidential treatment continues to be entitled to confidentiality. As such you are making a substantive request for the Commission to take formal action in this rate case. A request of this nature set forth in an email addressed to me as the Commission's Executive Director and to the Commission's General Counsel cannot be acted upon by the Commission. As counsel of record for MHC, a request for the Commission to reconsider its January 25, 2019 Order granting the LG&E petition for confidentiality must be set forth in a formal pleading filed in the record of Case No. 2016-00371.

Regards,

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From: Ky Resources Council <fitzkrc@aol.com>

Sent: Monday, April 8, 2019 2:04 PM

To: Pinson, Gwen (PSC) <Gwen.Pinson@ky.gov>

Cc: Pinney, Jeb E (PSC) <Jeb.Pinney@ky.gov>

Subject: LG&E Bullitt County Pipeline

Director Pinson and General Counsel Pinney:

I have been asked to look into the compliance by LG&E with applicable regulatory requirements relative to a 12-mile pipeline to be constructed in Bullitt County. The pipeline received a Certificate of Public Convenience and Necessity as part of Case No. 2016-00371. In reviewing the Application filed in that case by LG&E, however, there was no mention of a CPCN request other than for full deployment of AMS meters (which was later withdrawn as part of the settlement) and for the Distribution Automation Project (DA). The Bellar testimony, at pp. 2-3, mentions the pipeline as a "new" pipeline, but there is no indication that a CPCN was sought for that project.

The PSC Order of June 22, 2017 confirmed that there was no application for a CPCN for the Bullitt County pipeline. That Order additionally rejected LG&E's suggestion that the extension was in the usual course of business and didn't need a CPCN under KRS 278.020; concluding that a CPCN was required. Rather than requiring that LG&E file a request for a CPCN, the Commission *sua sponte* made the findings and without notice or opportunity for affected individuals to be heard, issued the CPCN for the Bullitt pipeline project.

The granting of the CPCN by the Commission in the **June 22,**

2017 Order in Case No. 2016-00371 was problematic for several reasons. First, LG&E failed to include the request for a CPCN in its Application, in apparent violation of 807 KAR 5:001 Section 1, which requires that "[e]ach application shall state the full name, mailing address, and electronic mail address of the applicant, and shall contain fully the facts on which the application is based, *with a request for the order, authorization, permission, or certificate desired* and a reference to the particular law requiring or providing for the information." (Italics added) No such request for a certificate was included in the application, and the public notice of the LG&E filing included no reference to the proposed pipeline.

The granting of the CPCN without a requirement that the utility file an application for same deprived those interested and potentially affected parties from being heard on the proposed project necessity in a meaningful manner and meaningful time, through intervention or public comment.

KRS 278.020 imposes the requirement to obtain a CPCN, and provides in part in subsection (1)(b) that "Upon the filing of an application for a certificate, and after any public hearing which the commission may in its discretion conduct *for all interested parties*, the commission may issue or refuse to issue the certificate, or issue it in part and refuse it in part." (Italics added). The use of the phrase "for all interested parties" suggests that there are more parties than merely the applicant, and presupposes some form of public notice to parties who might be interested or affected.

The lack of meaningful and timely public notice that the LG&E application for an adjustment of rates and service, and for a CPCN for the AMS and DA also included a new 12-mile pipeline, prevented those interested and potentially affected from being able to challenge the necessity, and the absence of wasteful duplication, that are the criteria for the issuance of a

CPCN.

The lack of ability to participate in the 2016-00371 case a manner that would protect their interests has been aggravated by the Commission's belated approval on January 25, 2019 of a February 20, 2017 request that the study, map, and proposed route of the Bullitt County pipeline be kept confidential. That decision deprives the public of access to information essential to protecting their rights as landowners in any discussion or negotiations with LG&E, and also their ability to defend against any eminent domain proceeding.

The information for which confidential protection was requested by LG&E in 2017 and granted by the Commission in 2019, was in response to Question 24 of the Commission Staff's Third Request For Information, which asked that LG&E "[e]xplain how LG&E determined the pipeline route, and describe the status of LG&E's negotiations and acquisitions of private easements. Include the number of private easements necessary for the project, the number of private easements obtained to date, and whether LG&E anticipates any changes to the project scope, timeline, or estimated cost as a result of its current status for obtaining private easements." The necessity for the project and explanation of how the route was determined, and what other options were considered, is pivotal to the Commission being able to reasonably conclude that a CPCN was justified both because of the need for the new service and because of the absence of wasteful duplication resulting from the construction.

I respectfully request pursuant to 807 KAR 5:001 Section 13(10(d) that a determination be made as to whether each document claimed to be entitled to confidential status relating to the Bullitt County pipeline project **continues to be entitled to confidential treatment**, including: (a) any study of the proposed route and alternative routes; (b) a map of the study area; (c) a map of the selected route; and (d) any study assessing the need for the project and alternatives considered.

In support of this request, I note that the justification for the original request, which was the LG&E assertion that disclosure of this information would

create a competitive disadvantage for LG&E, was specious, since LG&E is a regulated utility with a defined service area in which it has a right of exclusive gas utility service. The assertion that confidential treatment was justified "because LG&E has not notified property owners, obtained easement rights, or requested survey rights [so that] [d]isclosure of this information may increase the value of the land through which the pipeline crosses or landholder may resist construction and force LG&E to spend more to construct the pipeline[.]" is not a basis for confidential treatment. LG&E's assertion that its responses to Items 8(a) and 24 are exempt from public disclosure pursuant to KRS 61.878(1)(c)(1) is likewise in error, since that exception to records disclosure is limited to records "generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records[.]"

The claim of entitlement to the 61.878(1)(c)(1) exception is misplaced, since landowners living in the path of the proposed pipeline are not "competitors."

With respect to whether the routing of utility transmission projects, such as gas pipelines, are intended by the General Assembly to be entitled to be kept from the public under KRS Chapter 278, KRS 278.714 is illustrative of the General Assembly intent with respect to disclosure of such information. That statute, which governs issuance of certificates for construction of merchant electric transmission lines and carbon dioxide transmission pipelines, requires public notice and disclosure of routing information and impacts. Plainly, the General Assembly believes such information should be public.

I appreciate in advance your consideration of this request for review and release the requested confidential information related to the Bullitt County pipeline information, and will await a response from the Commission and from LG&E concerning the status of that information.

Cordially,

Tom FitzGerald
Kentucky Resources Council

Power at its best is love implementing the demands of justice.
Justice at its best is love correcting everything that stands
against love.

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