

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

BERNHEIM ARBORETUM AND
RESEARCH FOREST

COMPLAINANT

V.

LOUISVILLE GAS & ELECTRIC COMPANY

DEFENDANT

ATTORNEY GENERAL'S MOTION TO INTERVENE AND
MOTION TO EXPAND SCOPE TO INVESTIGATE MATTERS RELATED TO
CONSTRUCTION OF THE BULLITT COUNTY PIPELINE

Comes now, the Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention (“Attorney General”), and moves the Public Service Commission of Kentucky (“Commission”) grant him intervention in the instant proceeding and to expand the scope of the matter to include an investigation of the Bullitt County Pipeline at issue in the Complaint, since the final Order in Case No. 2016-00371 was entered.¹ As the Supreme Court of Kentucky has held, “an order of the [C]ommission continues in force until revoked or modified by the [C]ommission.”² It is within the Commission’s jurisdiction to expand this inquiry to ensure compliance, and if necessary, modification of its previous orders.³

¹ Order, Case No. 2016-00371 [“Case No. 2016-00371”], In Re. *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. Commission June 22, 2017).

² *Commonwealth ex rel. Stephens v. South Central Bell Telephone Company*, 545 S.W.2d 927, 931 (Ky. 1976).

³ See *Kentucky Public Service Commission v. Commonwealth ex rel. Conway*, 324 S.W.3d 373, 383 (Ky. 2010) holding “that the PSC ha[s] the plenary authority to regulate and investigate utilities” pursuant to KRS 278.030 and KRS 278.040.

Pipeline location and safety are serious matters that this Commission and Kentucky communities continue to grapple with. Since the recent devastating interstate pipeline explosion,⁴ Kentuckians are asking more questions and expressing concern about pipeline safety.⁵ The Complainant in this matter takes issue with the manner by which Louisville Gas and Electric Company (“LG&E” or “the Company”) has proceeded with its Bullitt County natural gas pipeline project, including the actions and statements made within the context of the 2016 rate case and since. In addition to its obligation to regulate utilities’ rates and service,⁶ “[p]ursuant to KRS 278.495(2), the Kentucky Public Service Commission [] has jurisdiction to regulate the safety of natural gas facilities in Kentucky and to enforce minimum federal pipeline safety standards.”⁷ Based on the allegations in the Complaint, this matter will call for the Commission to exercise its jurisdiction over intrastate pipelines, including LG&E’s compliance with applicable laws regarding the Bullitt County natural gas pipeline. Of course, the Commission has previously evinced its concerns with LG&E’s practices, including LG&E’s willful violation of pipeline safety standards⁸ and the Commission’s admonishment of LG&E for not seeking timely waiver from required periodic assessments of pipeline integrity⁹ — the latter involving the pipeline to which LG&E

⁴ See Pipeline blast kills one in Lincoln County, Kentucky, https://www.wdrb.com/in-depth/pipeline-blast-kills-one-in-lincoln-county-kentucky/article_7ad8621a-b472-11e9-8aa9-17fe4bc6b82d.html

⁵ The Attorney General understands that a separate, but related, Complaint has been conveyed electronically to the Commission, but not yet formally docketed.

⁶ KRS 278.030.

⁷ Order, Case No. 2019-00163, In Re. *George Tapp – Alleged Violation of Underground Facility Damage Prevention Act* (Ky. Commission Jul. 9, 2019) at 1.

⁸ See Order, Case No. 2017-00119, In Re. *Louisville Gas & Electric Company – Alleged Failure to Comply with KRS 278.495, 807 KAR 5:022, and 49 C.F.R. Part 192* (Ky. Commission Mar. 16, 2018).

⁹ Order, Case No. 2017-00482, In Re. *Application of Louisville Gas and Electric Company for Approval of State Waiver of the Reassessment Interval Required by 49 C.F.R. §192.939* (Ky. Commission Jun. 3, 2019).

proposes to connect the Bullitt County pipeline.¹⁰ In light of recent occurrences, Kentuckians deserve to know that pipelines running across their property comply with all legal standards, safety or otherwise.

LG&E supported the Bullitt County pipeline in the 2016 rate case through the testimony of Lonnie Bellar, Vice President of Gas Distribution for LG&E.¹¹ As Vice President of Gas Distribution, Mr. Bellar is “responsible for the safe, reliable and strategic operation of LG&E’s natural gas . . . systems.”¹² Mr. Bellar was also primarily responsible for many of the discovery responses the Commission relied upon in granting LG&E a certificate of public convenience and necessity (“CPCN”) prior to its receipt of numerous Federal, State or local permits.¹³ Of the permits cited that LG&E believed would be required, the vast majority relate to environmental concerns.¹⁴ The Attorney General notes that although a number of the cited permits have been filed with the Commission in the Post Case Correspondence section of the 2016 rate case, there is no evidence that the Commission has reviewed the permits for accuracy or compliance with its orders or with LG&E’s prior representations.¹⁵ In light of the allegations made in the Complaint, the Commission should review LG&E’s compliance regarding the environmental concerns of governmental entities subject to the pertinent permits.

¹⁰ Complaint Exhibit 1, at 4.

¹¹ Complaint at 2.

¹² Complaint Exhibit 1, Direct Testimony of Lonnie E. Bellar, Case No. 2016-00371 (Ky. Commission Nov. 23, 2016) at 1.

¹³ Complaint, at 3; Complaint Exhibit 3, at pages 1-2 of 3.

¹⁴ Complaint Exhibit 3, at pages 1-2 of 3.

¹⁵ See Post Case Correspondence, Case No. 2016-00371.

The Complaint further provides concerning language from LG&E regarding the tactics used to complete the pipeline.¹⁶ For instance, as displayed in Exhibit 6 of the Complaint, LG&E used its website and incumbency to coerce the remaining land owners to grant easements, stating that the holdouts are creating “a hardship for economic development and customers wanting low-cost natural gas service.”¹⁷ LG&E’s inappropriate use of its monopoly status to pressure others into agreeing with its projects is not new to the Company. In its application for its solar share program in 2016, the Company and its sister utility, Kentucky Utilities (together with LG&E, “the Companies”) provided letters of support for their proposal. Notably, many of those letters were from entities that either have board members employed by the Companies and/or from entities to whom the Companies have provided significant monetary support.¹⁸ Interestingly in that case, the Companies requested approval for a project through a tariff filing, although the Commission noted that they should have sought a

¹⁶ Complaint, at 4 ¶ 12; Complaint Exhibit 6.

¹⁷ Complaint Exhibit 6, page 1 of 2.

¹⁸ See Direct Testimony of John P. Malloy, Case No. 2016-00274, In Re. *Joint Application of Kentucky Utilities Company and Louisville Gas and Electric Company for Approval of an Optional Solar Share Program Rider* (Ky. Commission Aug. 2, 2016) at JPM-1 Pages 2, 4, 10, 11, 12, 14; Application, Filing Requirement 807 KAR 5:001 Section 16(8)(f), Case No. 2016-00371 (Ky. Commission Nov. 23, 2016); Application, Filing Requirement 807 KAR 5:001 Section 16(8)(f), Case No. 2016-00370, In Re. *Electronic Application of Kentucky Utilities Company for an Adjustment of its Electric Rates and for Certificates of Public Convenience and Necessity* (Ky. Commission Nov. 23, 2016); Application, Filing Requirement 807 KAR 5:001 Section 16(8)(f), Case No. 2018-00294, In Re. *Electronic Application of Kentucky Utilities Company for an Adjustment of its Electric Rates* (Ky. Commission Sep. 28, 2018); Application, Filing Requirement 807 KAR 5:001 Section 16(8)(f), Case No. 2018-00295, In Re. *Electronic Application of Louisville Gas and Electric Company for an Adjustment of its Electric and Gas Rates* (Ky. Commission Sep. 28, 2018); Response of Kentucky Utilities Company to the Attorney General’s Initial Data Requests for Information, Case No. 2018-00294 (Ky. Commission Nov. 13, 2018) at Volume II, Response to Question No. 93; 2018 Bluegrass Tomorrow Board of Directors, <https://bluegrasstomorrow.org/2018-bluegrass-tomorrow-board-of-directors/>; Commerce Lexington Board of Directors, <https://www.commercelexington.com/board-of-directors1.html>; Greater Louisville Inc. Board of Directors, <https://www.greatertlouisville.com/chamber/board-of-directors/>; The Housing Partnership Inc. Board of Directors, <https://wearehpi.org/who-we-are/>; Kentucky Chamber of Commerce Board of Directors, <https://www.kychamber.com/about-kentucky-chamber/board-of-directors>.

declaration that a CPCN was not necessary.¹⁹ The Commission's order in the solar share case put LG&E on notice that for novel matters it should seek a Commission declaration that a project is in the ordinary course of business, and thus exempted from a CPCN, if it believes that to be case.²⁰ Nevertheless, just weeks later LG&E filed its 2016 rate case application where, as the Complainant notes,

Buried in testimony provided by Lonnie Bellar, Vice President of Gas Distribution for LG&E, LG&E for the first time, stated, "LG&E will also invest in non-GLT related projects including: installing a natural gas pipeline in Bullitt County and a distribution pipeline in Jefferson County to ensure reliable and adequate gas supplies."²¹

No CPCN or request for declaratory ruling for the Bullitt County pipeline was sought. The Commission has ample evidence that LG&E's process in determining whether it should seek a CPCN is woefully inadequate. Following the solar share and Bullitt County pipeline matters, the Company was asked what changes it has made in its internal analysis regarding CPCNs.²² LG&E's response indicates that no changes were made to its analyses following the Commission's decisions in those matters, since every case they cited in support of their internal determinations was decided prior to November 2016.²³ In light of the Company's flawed internal analysis, serious questions stand regarding the previously granted CPCN and the Company's determination of same.

¹⁹ Order, Case No. 2016-00274, In Re. *Joint Application of Kentucky Utilities Company and Louisville Gas and Electric Company for Approval of an Optional Solar Share Program Rider* (Ky. Commission Nov. 4, 2016) at 13-15.

²⁰ *Id.* at 14.

²¹ Complaint, at 2; Internal citations omitted.

²² Attorney General's Supplemental Data Requests, Case No. 2018-00295 (Ky. Commission Dec. 13, 2018) Attorney General's Request No. 60.

²³ See Response of Louisville Gas and Electric Company to the Attorney General's Supplemental Data Requests for Information, Case No. 2018-00295 (Ky. Commission Mar. 29, 2019) Response to Question No. 60 (a), citing Response of Louisville Gas and Electric Company to Commission Staff's Third Request for Information, Case No. 2018-00295 (Ky. Commission Jan. 2, 2019) Response to Question No. 20.

Last, but not least, LG&E has previously provided evidence that it has already, before beginning construction, encountered cost overruns on this pipeline. In its 2016 rate case, LG&E stated that the proposed pipeline was estimated to cost “approximately \$27.6 million,”²⁴ while in 2018 it inexplicably budgeted \$38.7 million for the project.²⁵ Importantly, the reason that LG&E ostensibly sought confidential protection²⁶ for the proposed route of the Bullitt County pipeline was because if the route was publicly disclosed, it could drive up land prices, “forcing LG&E to spend more to construct the pipeline.”²⁷ Although the Company used the risk of increased costs to shield from public view certain information, it has failed to explain why the price of the pipeline has nevertheless increased nearly 50% in just two years. These cost increases further warrant an expanded investigation of the pipeline at issue in this case.

KRS 367.150 (8) provides the Attorney General the power and duty to appear before regulatory bodies of the Commonwealth of Kentucky in order to represent and be heard on behalf of consumers’ interests, and to be made a real party in interest in quasi-judicial proceedings, “whenever deemed necessary and advisable . . . by the Attorney General.” “The Attorney General, having a statutory right to intervene, is unlike any other intervenor and is not required to demonstrate his interest in the rates and service of a utility to be granted intervention, and the Commission, in ruling upon his motion to intervene, is not required to make any findings regarding his interest in

²⁴ Complaint Exhibit 1, at 4.

²⁵ Response of Louisville Gas and Electric Company to the Attorney General’s Supplemental Data Requests for Information, Case No. 2018-00295 (Ky. Commission Mar. 29, 2019) Response to Question No. 60.

²⁶ See Complaint Exhibit 3, at 2.

²⁷ Petition of Louisville Gas and Electric Company for Confidential Protection, Case No. 2016-00371 (Ky. Commission Feb 20, 2017) at 4-5.

the rates or service of a utility.”²⁸ Just recently, the Commission granted the Attorney General’s intervention in a similar complaint proceeding.²⁹ The Attorney General has determined that it is in the consumers’ interest for him to be made a real party in interest in this matter, and hereby moves the Kentucky Public Service Commission to grant him full intervenor status in this action.

Wherefore, the Attorney General respectfully moves the Commission to 1) grant him intervention in this matter, and 2) expand the scope of this proceeding to include any and all matters related to or pertaining to the Bullitt County pipeline that is the subject of the Complaint.

Respectfully submitted,

Andy Beshear
Attorney General



Kent A. Chandler
Rebecca W. Goodman
Justin M. McNeil
Lawrence W. Cook
Assistant Attorneys General
700 Capital Ave., Suite 20
Frankfort, KY 40601-8204
(502) 696-5453
Kent.Chandler@ky.gov
Rebecca.Goodman@ky.gov
Justin.McNeil@ky.gov
Larry.Cook@ky.gov

²⁸ Order, Case No. 2016-00054, In Re. *Application of Caldwell County Water District for Rate Adjustment Pursuant to 807 KAR 5:0076* (Ky. Commission May 11, 2016) at 4.

²⁹ Order, Case No. 2019-00138, In Re. *Sarah Sperry, Complainant v. Atmos Energy Corporation, Defendant* (Ky. Commission May 10, 2019) at 1.

Certificate of Service and Filing

Counsel certifies that an original and ten (10) photocopies of the foregoing were served and filed by hand delivery to Gwen R. Pinson, Executive Director, Public Service Commission, 211 Sower Boulevard, Frankfort, KY 40601; counsel further states that true and accurate copies of the foregoing were mailed via First Class U.S. Mail to:

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 40202

This 16th day of August 2019.



Assistant Attorney General