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June 30, 2011

RECEIVED

JUN 30 2011

PUBLIC SERVICE  
COMMISSION

**VIA HAND DELIVERY**

Jeff DeRouen  
Executive Director  
Kentucky Public Service Commission  
211 Sower Boulevard  
Frankfort, KY 40601

**RE: Application of Kentucky Utilities Company for Certificates of Public Convenience and Necessity and Approval of its 2011 Compliance Plan for Recovery by Environmental Surcharge**  
**Case No. 2011-00161**

Dear Mr. DeRouen:

Enclosed please find and accept for filing the original and ten copies of the Response of Kentucky Utilities Company to the Motion to Intervene of Benjamin J. Lookofsky in the above-referenced matter.

Should you have any questions please do not hesitate to contact me at your convenience.

Sincerely,

Molly M. Stephens  
Paralegal

Enclosures

cc: Parties of Record

400001.139563/3975210.1

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

JUN 30 2011

In the Matter of:

PUBLIC SERVICE  
COMMISSION

APPLICATION OF KENTUCKY UTILITIES )  
COMPANY FOR CERTIFICATES OF )  
PUBLIC CONVENIENCE AND NECESSITY ) CASE NO. 2011-00161  
AND APPROVAL OF ITS 2011 COMPLIANCE )  
PLAN FOR RECOVERY BY )  
ENVIRONMENTAL SURCHARGE )

**RESPONSE OF KENTUCKY UTILITIES COMPANY TO THE MOTION TO  
INTERVENE OF BENJAMIN J. LOOKOFSKY**

Kentucky Utilities Company (“KU”) (collectively, the “Companies”) respectfully requests that the Commission deny the Motion of Benjamin Lookofsky for intervention. Mr. Lookofsky’s motion should be denied for three reasons: (1) the motion does not state a special interest in the proceeding that is not already represented by the Attorney General; (2) the motion fails to identify any issues or development of facts that will assist the Commission in the resolution of this matter; and (3) Mr. Lookofsky’s intervention would unduly complicate and disrupt the proceeding. As Mr. Lookofsky fails to satisfy any of the requirements for intervention under 807 KAR 5:001 § 3(8), KU respectfully requests that the Commission deny the motion to intervene of Benjamin J. Lookofsky in this proceeding.

**I. The Commission Should Deny Mr. Lookofsky’s Motion to Intervene Because Mr. Lookofsky Does Not Have a Special Interest in this Proceeding.**

The Commission will grant requests for permissive intervention “only upon a determination that the criteria set forth in 807 KAR 5:001, Section 3(8), have been satisfied.”<sup>1</sup> Under the regulation, permissive intervention will only be granted if the person “has a special interest in the proceeding which is not otherwise adequately represented” or that granting full

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<sup>1</sup> *In the Matter of: The 2008 Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company*, Case No. 2008-00148 Order (July 18, 2008).

intervention “is likely to present issues or to develop facts that assist the commission in fully considering the matter without unduly complicating or disrupting the proceedings.”<sup>2</sup> Mr. Lookofsky’s motion does not clearly articulate whether he seeks intervention because he has a special interest in the proceeding which is not otherwise adequately represented, or whether he seeks intervention to present issues or to develop facts that would assist the commission in fully considering the matter. Mr. Lookofsky’s Motion to Intervene consists of a one-sentence motion that states he is a customer of KU.<sup>3</sup> Ostensibly, Mr. Lookofsky claims an interest in this proceeding as a KU residential customer, but the Commission has consistently held that a person’s status as a customer is not a special interest meriting full intervention.<sup>4</sup>

Instead, the Attorney General has a statutory right, pursuant to KRS 367.150(8)(b), to represent customers’ interests in ECR proceedings such as this one. The Attorney General moved to intervene in this proceeding on May 25, 2011. The Commission granted the motion to intervene on June 3, 2011. The Attorney General has significant experience in representing ratepayers’ interests in ECR proceedings, including prior KU cases.<sup>5</sup> Because Mr. Lookofsky’s

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<sup>2</sup> 807 KAR 5:001 § 3(8)(b).

<sup>3</sup> Mr. Lookofsky’s Motion to Intervene is similar to the motion he filed in KU’s last rate case. The Commission denied his motion to intervene, noting that he failed to satisfy either prong of 807 KAR 5:001 § 3(8)(b). *In the Matter of: Application of Kentucky Utilities Company for an Adjustment of Base Rates* (Case No. 2009-00548) Order, March 12, 2010.

<sup>4</sup> *In the Matter of Application of Louisville Gas and Electric Company for a Certificate of Public Convenience and Necessity and Approval of Its 2009 Compliance Plan for Recovery by Environmental Surcharge* (Case No. 2009-00198) Order, Aug. 28, 2009 (denying intervention to customer Tammy Stewart on ground she lacked a special interest meriting intervention, as well as expertise that would assist the Commission); *In the Matter of: Application of Kentucky Utilities Company for an Order Approving the Establishment of a Regulatory Asset* (Case No. 2009-00174) Order, June 26, 2009 (denying Rep. Jim Stewart’s Motion to Intervene because he had neither a special interest in the proceeding nor was he likely to assist the Commission to render a decision); *In the Matter of: Joint Application of Louisville Gas and Electric Company, Association of Community Ministries, Inc., People Organized and Working for Energy Reform, and Kentucky Association for Community Action, Inc. for the Establishment of a Home Energy Assistance Program* (Case No. 2007-00337) Order, Sept. 14, 2007 (“[H]old[ing] a particular position on issues pending in ... [a] case does not create the requisite ‘special interest’ to justify full intervention under 807 KAR 5:001, Section 3(8)(b).”).

<sup>5</sup> *In the Matter of: The Application of Kentucky Utilities Company for a Certificate of Public Convenience and Necessity to Construct a Selective Catalytic Reduction System and Approval of Its 2006 Compliance Plan for Recovery by Environmental Surcharge* (Case No. 2006-00206); *In the Matter of: The Application of Kentucky Utilities Company for a Certificate of Public Convenience and Necessity to Construct Flue Gas Desulfurization*

only interest in this proceeding is that of a customer and that interest is already adequately represented, Mr. Lookofsky does not have a special interest in the proceeding and his motion to intervene should be denied.

**II. The Commission Should Deny Mr. Lookofsky’s Motion to Intervene Because Mr. Lookofsky Has Not Demonstrated that He Will Present Issues or Develop Facts that Would Assist the Commission.**

Mr. Lookofsky’s motion to intervene fails to demonstrate that he will present issues or develop facts that would assist the Commission in fully considering this matter without unduly complicating or disrupting the proceeding.<sup>6</sup> Mr. Lookofsky’s motion does not identify how he would present issues or develop facts, instead simply requesting that he would like to intervene in this proceeding “in opposition to any rate increase for Kentucky Utilities Company.”<sup>7</sup> Other than this factual assertion, Mr. Lookofsky does not identify any expertise in ECR proceedings or in the principles of ratemaking and cost recovery. Because Mr. Lookofsky has failed to identify how he will present issues or develop facts that would assist the Commission in fully considering this matter, his motion should be denied.

**III. The Commission Should Deny Mr. Lookofsky’s Motion to Intervene Because Mr. Lookofsky’s Intervention Will Unduly Complicate and Disrupt the Proceeding.**

Even if Mr. Lookofsky could demonstrate that he would present issues or develop facts that would assist the Commission in this proceeding, his intervention would unduly complicate and disrupt this proceeding in contravention of 807 KAR 5:001 § 3(8).

Because Mr. Lookofsky’s motion does not demonstrate any expertise in ECR proceedings, ratemaking, or cost recovery, his intervention could unduly complicate and disrupt the proceeding. The proper means for Mr. Lookofsky to participate in this proceeding is through

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*Systems and Approval of its 2004 Compliance Plan for Recovery by Environmental Surcharge* (Case No. 2004-00426).

<sup>6</sup> 807 KAR 5:001 § 3(8)(b).

<sup>7</sup> Lookofsky Motion at 1.

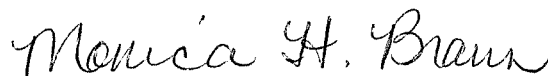
filing public comments and communicating with the Attorney General, who will represent his interest as a ratepayer. Moreover, Mr. Lookofsky may also provide oral comments at the public hearing in this matter or further written comments in the record in this case. These mechanisms ensure that Mr. Lookofsky is given an opportunity to present his comments without unduly complicating the pending action. For these reasons, KU respectfully requests that the Commission deny Mr. Lookofsky's motion to intervene as his involvement would unduly complicate and disrupt this proceeding.

**IV. Conclusion**

As Mr. Lookofsky has failed to present any ground upon which the Commission can grant permissive intervention, the Commission should deny his motion to intervene. Mr. Lookofsky's only interest in this proceeding is as a customer, an interest that is already represented by the Attorney General. Also, the motion does not evince any intent to develop facts or issues that will assist the Commission in the resolution of this matter. Finally, Mr. Lookofsky' intervention will unduly complicate and disrupt the proceeding. Therefore, KU respectfully requests that the Commission deny Benjamin J. Lookofsky's motion to intervene in this proceeding.

Dated: June 30, 2011

Respectfully submitted,



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Counsel for Kentucky Utilities Company

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing Response was served via U.S. mail, first-class, postage prepaid, this 30<sup>th</sup> day of June 2011 upon the following persons:

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