

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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COMMISSION

In the Matter of:

APPLICATION OF LOUISVILLE GAS AND ELECTRIC)
COMPANY FOR AN AMENDED ENVIRONMENTAL)
COMPLIANCE PLAN, A REVISED SURCHARGE TO)
RECOVER COSTS, AND CERTIFICATES OF PUBLIC) CASE NO. 2011-00162
CONVENIENCE AND NECESSITY FOR THE)
CONSTRUCTION OF NECESSARY)
ENVIRONMENTAL EQUIPMENT)

In the Matter of:

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

**MOTION OF SIERRA CLUB AND NATURAL RESOURCES DEFENSE COUNCIL
FOR RIGHT TO DEPOSE WITNESSES OF THE KENTUCKY UTILITIES COMPANY
AND LOUISVILLE GAS & ELECTRIC**

The Sierra Club and Natural Resources Defense Council (collectively “Environmental Intervenors”) move, pursuant to KRS 278.340, for the right to take depositions of three of Kentucky Utilities Company and Louisville Gas & Electric’s (collectively, the “Companies”) witnesses in these proceedings. The purposes of discovery is to “simplif[y] and clarif[y] the issues in a case; eliminate[] or significantly reduce[] the element of surprise; [and] help[] to achieve a balanced search for the truth, which in turn helps to ensure that trials are fair.”

LaFleur v. Shoney's, Inc., 83 S.W.3d 474, 478 (Ky.2002); *see also Cooper v. Cooper*, 2010 WL 1328656 at *6 (Ky. App. Ct. 2010). Granting Environmental Intervenors the right to take depositions in these complex and important proceedings would satisfy each of those purposes.

At stake in these proceedings is whether the Companies will be authorized to recover \$2.5 billion from their ratepayers in order to install pollution controls on a number of aging coal units, or whether such recovery should be disallowed because retirement or repowering of such units is a less costly method for the Companies' ratepayers. The Companies have offered six witnesses in these proceedings to date, the following three of whom the Environmental Intervenors seek to depose:

1. Gary Revlett – Director, Environmental Affairs – Mr. Revlett offered testimony regarding environmental regulations that the Companies' coal units are facing and why the pollution control projects at issue in this proceeding are purportedly adequate to ensuring compliance with those regulations
2. John Voyles – Vice President of Transmission and Generation Services – Mr. Voyles offered testimony regarding the engineering and construction aspects of the pollution control projects, and operation and maintenance costs related to the projects.
3. Charles Schram – Direct, Energy Planning, Analysis, and Forecasting – Mr. Schram offered testimony regarding the purported cost effectiveness of the pollution control projects and sponsored the report of the Companies' economic modeling.

Environmental Intervenors have filed expert testimony explaining how the Companies' proposals will not be adequate to fully comply with all likely applicable regulatory requirements, identifying significant flaws and omissions in the Companies' economic modeling, and demonstrating that a number of the proposed projects are not cost effective if more reasonable assumptions are used in that modeling. These technical economic and regulatory elements are just some of the points that will be at issue in the hearing in this proceeding.

Depositions would provide an invaluable opportunity to simplify and clarify these technical issues in advance of the hearing, thereby saving the time and resources of the Commission and other parties. Assessment of the testimony and analyses offered by the Companies will require a thorough evaluation of the assumptions and inputs that went into those analyses, the reasons such assumptions and inputs were used, and the bases for rejecting other assumptions and inputs. While the Environmental Intervenors submitted and received responses to a number of written discovery requests, the restricted nature of such discovery hinders the ability to obtain a full understanding of the economic modeling, engineering assessments, and environmental evaluations that the Companies are relying on to support their \$2.5 billion request. While such issues could be explored in wide-ranging and lengthy cross examinations at hearing, it would be more efficient to permit the Environmental Intervenors to undertake the requested depositions so that cross examination can be narrowly focused on the important and relevant areas identified during deposition.

Depositions would also help to eliminate any element of surprise at hearing. While Environmental Intervenors certainly expect the Companies' witnesses to offer responses at hearing that are consistent with the written testimony and discovery responses that have been provided. However, only the back and forth questioning that occurs at a deposition can provide some certainty that additional information or reasoning will not be sprung on Intervenors at hearing. The Environmental Intervenors also expect the Companies' witnesses to submit rebuttal testimony on October 24. In the absence of depositions, the Intervenors would not have

the opportunity to explore the bases and assumptions for such testimony in advance of hearing. Depositions, therefore, are necessary to avoid surprise.¹

The most efficient and effective way to ensure a balanced search for the truth in proceedings as complex as these is to get all of the relevant opinions, assumptions, and reasoning out in the open in advance of hearing. And the only way to ensure that happens is to grant the Environmental Intervenors the right to depose the witnesses who are presenting the core economic, regulatory, and environmental evaluations upon which the Companies attempt to base their request for \$2.5 billion in ratepayer money. As such, the Environmental Intervenors respectfully move the Commission to authorize them to take the depositions of Gary Revlett, John Voyles, and Charles Schram.

Dated: October 21, 2011

Respectfully submitted,



Edward George Zuger III, Esq.
Zuger Law Office PLLC
Post Office Box 728
Corbin, Kentucky 40702
(606) 416-9474

¹ The Environmental Intervenors reserve the right to seek authorization to depose additional witnesses in these proceedings in the event that other witnesses submit rebuttal testimony addressing the testimony of the Environmental Intervenors' witnesses.

Of counsel:

Shannon Fisk
Senior Attorney
Natural Resources Defense Council
2 N. Riverside Plaza, Suite 2250
Chicago, IL 60660
Phone: (312) 651-7904
Fax: (312) 234-9633
sfisk@nrdc.org

Kristin Henry
Staff Attorney
Sierra Club
85 Second Street
San Francisco, CA 94105
Phone: (415) 977-5716
Fax: (415) 977-5793
kristin.henry@sierraclub.org

Dated: October 21, 2011

CERTIFICATE OF SERVICE

I certify that I mailed a copy of this **MOTION OF SIERRA CLUB AND NATURAL RESOURCES DEFENSE COUNCIL FOR RIGHT TO DEPOSE WITNESSES OF THE KENTUCKY UTILITIES COMPANY AND LOUISVILLE GAS & ELECTRIC** by first class mail on October 21, 2011 to the following:

Lonnie Bellar
Vice President, State Regulation & Rates
LG&E and KU Services Company
220 West Main Street
Louisville, KY 40202

Allyson K. Sturgeon
Senior Corporate Attorney
Louisville Gas & Electric and Kentucky
Utilities
220 West Main Street
Louisville, KY 40202

Robert M. Conroy
Director, Rates
Louisville Gas & Electric and Kentucky
Utilities Company
220 W. Main Street
P.O. Box 32010
Louisville, KY 40232-2010

Kendrick R. Riggs, Esq.
Stoll, Keenon & Odgen, PLLC
2000 PNC Plaza
500 West Jefferson Street
Louisville, KY 40202

Dennis G. Howard II
Lawrence W. Cook
Attorney General's Office of Rate
Intervention
1024 Capital Center Drive, Suite 200
Frankfort, KY 40601-8204

Michael L. Kurtz
Kurt J. Boehm
Boehm, Kurtz & Lowry
36 East Seventh Street, Suite 1510
Cincinnati, OH 45202

David J. Barberie, Attorney Senior
Leslye M. Bowman, Director of Litigation
Government Center (LFUCG)
Department of Law
200 East Main Street
Lexington, KY 40507

Iris G. Skidmore
415 West Main Street, Suite 2
Frankfort, KY 40601

David C. Brown, Esq.
Stites & Harbison, PLLC
400 W. Market Street, Suite 1800
Louisville, KY 40202

Tom FitzGerald
P.O. Box 1070
Frankfort, KY 40602

Robert A. Ganton, Esq.
General Attorney - Regulatory Law
U. S. Army Legal Services Agency
9275 Gunston Road
ATTN: JALS-RL/IP
Fort Belvoir, VA 22060-5546

Edward George Zuger III

Edward George Zuger III, Esq.
Counsel for Movants