

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF LOUISVILLE GAS AND)	
ELECTRIC COMPANY FOR AN ADJUSTMENT)	
OF ITS ELECTRIC AND GAS RATES, A)	
CERTIFICATE OF PUBLIC CONVENIENCE)	CASE NO.
AND NECESSITY, APPROVAL OF)	2012-00222
OWNERSHIP OF GAS SERVICE LINES AND)	
RISERS, AND A GAS LINE SURCHARGE)	

ORDER

On July 23, 2012, Michael Whipple (“Petitioner”) filed a letter, which will be treated as a petition, requesting full intervention in this case. Petitioner argues that Louisville Gas and Electric Company’s (“LG&E”) request to increase electric and gas rates should be denied, contending that no consideration has been given to the fact that gas prices are at a record low at this time. Petitioner also argues that LG&E should not be permitted to increase utility rates contending that the reason given for the increase is due to “overhead” but there is no detail provided by LG&E to the consumer.

On July 27, 2012, LG&E filed a response objecting to Petitioner’s request to intervene. LG&E contends that Petitioner has not established an interest in this matter to justify granting full intervenor status and according to its records is not a customer of LG&E. While LG&E provides service to the address listed on the petition, it is a business account, and Petitioner does not state that he is seeking to intervene on behalf of the business served at that location. As there are no residential accounts in

Petitioner's name, LG&E argues that Petitioner has failed to establish any interest in this proceeding, much less a special interest. Even if Petitioner had proven he was a customer, LG&E contends that the Commission has consistently held that a person's status as a customer is not a special interest meriting full intervention.

While the Petitioner refers to gas prices, LG&E contends that his motion does not identify any expertise in the principles of ratemaking or energy supply costs, and thus Petitioner fails to demonstrate that he is likely to present issues or develop facts that would assist the Commission in fully considering this matter. LG&E further argues that the Petitioner's intervention could unduly complicate and disrupt this proceeding if he is trying to represent the business served at the address on his motion, because the Kentucky Bar Association does not list the Petitioner as a licensed attorney and the Commission has held that a pro se litigant cannot represent interests other than their own.¹

On August 6, 2012, Petitioner filed a reply to LG&E's objection to his motion to intervene. Petitioner asserts that the costs of electricity and gas affects all goods and services to all the citizens of Kentucky and Petitioner is directly affected by the cost to his business and shares the expenses of utilities at his residence. Petitioner also asserts that his motion for intervention does identify important issues and facts that have been ignored or misrepresented to the Commission. Finally, Petitioner states that his motion should delay the proceeding to allow the Commission to establish if there is a conflict of interest between LG&E counsel and the Attorney General ("AG") because the AG "received tens of thousands of dollars in his many and various campaigns, from

¹ Response at 4.

people related to LG&E's counsel in this matter, and it brings into question whether there is a conflict of interests" (emphasis added).²

On August 8, 2012, LG&E filed a sur-reply to further object to Petitioner's motion to intervene. LG&E states that the Petitioner admits that there are no residential accounts in Petitioner's name; that he has no expertise regarding ratemaking or energy supply costs and instead, states that he can "present information from industry experts and facts," and that the Petitioner seeks to "delay the proceeding to allow the Commission to establish if there is a conflict of interest between LG&E counsel and the AG."³ LG&E concludes that the Petitioner has no special interest in this proceeding; that he cannot present issues or develop facts that will assist the Commission in the resolution of this matter; and that the Petitioner's unsupported allegations attempt to create a conflict of interest involving the AG in order to disrupt and delay this proceeding.

Discussion

The only person with a statutory right to intervene is the AG, pursuant to KRS 367.150(8)(b). That statute authorizes the AG to participate "on behalf of consumer interests." On June 21, 2012, the AG petitioned for full intervenor status in this case, noting in his motion that KRS 367.150(8) "grants him the right and obligation to appear before regulatory bodies of the Commonwealth of Kentucky to represent consumers' interests."⁴ The AG's petition was granted by the Commission's Order dated July 6,

² Reply at 3.

³ Sur-reply at 2.

⁴ AG's Motion to Intervene at 1.

2012. Intervention by all others is permissive and is within the sound discretion of the Commission.⁵

In exercising our discretion to determine permissive intervention, there are both statutory and regulatory limitations on the Commission. The statutory limitation, KRS 278.040(2), requires that “the person seeking intervention must have an interest in the ‘rates’ or ‘service’ of a utility, since those are the only two subjects under the jurisdiction of the PSC.”⁶ The regulatory limitation is set forth in 807 KAR 5:001, Section 3(8). That regulation requires a person seeking intervention to file a request in writing which “shall specify his interest in the proceeding.”⁷ That regulation further provides that:

If the commission determines that a person has a special interest in the proceeding which is not otherwise adequately represented or that full intervention by party 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, such person shall be granted full intervention.⁸

It is under these statutory and regulatory criteria that the Commission reviews a motion for permissive intervention.

Based on a review of the pleadings at issue and being otherwise sufficiently advised, the Commission finds that Petitioner does not have a special interest in the proceeding which is not otherwise adequately represented. Petitioner claims that the

⁵ *Inter-County Rural Electric Cooperative Corporation v. Public Service Commission of Kentucky*, 407 S.W.2d 127, 130 (Ky. 1966).

⁶ *EnviroPower, LLC v. Public Service Comm'n*, No. 2005-CA-001792-MR, 2007 WL 289328 (Ky. App. Feb.2, 2007).

⁷ 807 KAR 5:001, Section 3(8)(b).

⁸ *Id.*

cost of electricity and gas affects the cost of all goods and services to all the citizens of Kentucky and he is directly affected by the cost to his business and shares the expenses of utilities at his residence. He also claims that although he is not an expert in the principles of ratemaking or energy supply costs, he can present information from industry experts. Finally, Petitioner claims that the Commission should take the time to examine and ascertain the seriousness of any conflict of interest between LG&E and the AG before the Commission allows millions of dollars to be added to the burden of Kentucky citizens. Given the statutory restrictions on the Commission's jurisdiction, Petitioner's claims are not sufficient to establish that he has a special interest in this matter, which is not otherwise adequately represented. There are 347,834 residential electric customers located in nine counties⁹ and 292,779 residential gas customers located in 16 counties¹⁰ who, like Petitioner, are customers of LG&E, with many having similar concerns as Petitioner. The AG is statutorily required to represent these customers and has been granted full intervention in this case.

The Commission further finds that Petitioner has failed to establish that he is likely to present issues or to develop facts that will assist the Commission in resolving this matter without unduly complicating or disrupting the proceedings. While the Petitioner may have concerns about the issues he has presented, they are not sufficient to prove that he is knowledgeable about issues of utility ratemaking and rate structures to assist the Commission in fully considering this

⁹ Annual Report of Louisville Gas and Electric Company to the Kentucky Public Service Commission for the Year Ended December 31, 2011 (Electric Operations) at 0.

¹⁰ Annual Report of Louisville Gas and Electric Company to the Kentucky Public Service Commission for the Year Ended December 31, 2011 (Gas Operations) at 0.

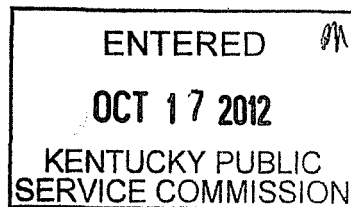
matter. Because the requisites of KRS 278.040(2) and 807 KAR 5:001, Section 3(8), have not been satisfied, the Commission will deny Petitioner's request for intervention.

Petitioner will have ample opportunity to participate in this proceeding even though he has not been granted intervenor status. Petitioner can review all documents filed in this electronic case and monitor the proceedings via the Commission's website at the following web address: <http://psc.ky.gov/efs/EFSearch.aspx?case=2012-00222>. Petitioner may also file comments as frequently as he chooses, and his comments will be entered into the record of this case. All members of the public also may be afforded an opportunity to address the Commission in person, either immediately prior to any evidentiary hearing in this matter or in any meetings the Commission schedules for the express purpose of receiving public comments.

IT IS THEREFORE ORDERED that the Petitioner's petition to intervene is denied.

By the Commission

Commissioner Breathitt is abstaining from this proceeding.



ATTEST



Executive Director

Case No. 2012-00222

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