

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)	CASE NO.
CERTIFICATE OF PUBLIC CONVENIENCE)	2012-00222
AND NECESSITY, APPROVAL OF)	
OWNERSHIP OF GAS SERVICE LINES AND)	
RISERS, AND A GAS LINE SURCHARGE)	

ORDER

On September 17, 2012, Hess, Inc. (“Hess”) filed a motion seeking full intervenor status in the instant proceeding. The motion stated that Hess was a gas transportation supplier and that it had concerns about three aspects of LG&E’s gas rates: balancing frequencies; balancing tolerance bands; and volumetric thresholds. On September 19, 2012, Louisville Gas and Electric Company (“LG&E”) filed a response objecting to Hess’ motion for full intervention. Hess then filed a reply to LG&E’s response on September 27, 2012, and LG&E filed a sur-reply objecting to Hess’ motion to intervene on October 1, 2012. On October 2, 2012, the Commission issued an Order granting Hess’ motion in part and denying it in part. Hess was granted limited intervention on the issue of LG&E’s gas transportation thresholds and was specifically denied intervention regarding the issues of balancing frequencies and balancing tolerance bands.

On October 3, 2012, the due date for intervenors to file testimony, Hess filed the direct testimony of John Mehling, which addressed the issue of gas transportation thresholds, as well as the issues of balancing frequencies and balancing tolerance

bands. By letter of explanation,¹ Hess stated that Mr. Mehling's testimony was prepared prior to the Commission's October 2, 2012 Order, which denied intervention on the balancing frequency and balancing tolerance band issues. Hess' letter further stated that Mr. Mehling's testimony, which included these two issues as well as the issue of volumetric threshold, was filed in an effort to comply with the October 3, 2012 due date for intervener testimony.

On October 4, 2012, LG&E filed a motion to strike Hess' testimony regarding balancing frequencies and balancing tolerance bands, stating that the Commission had specifically denied Hess' intervention with regard to these two issues. LG&E argues that Hess disregarded the Commission's Order in filing the testimony of Mr. Mehling on October 3, 2012 that contained the topics on which Hess' intervention was expressly denied. LG&E states that, "Hess' contention that its testimony on the excluded issues should remain in the record unless and until the Commission denies its not-yet-filed motion for reconsideration is incorrect." LG&E requests that the Commission exercise its authority to strike the portions of the testimony pertaining to balancing frequencies and balancing tolerance bands.

On October 5, 2012, Hess filed a motion for reconsideration of the October 2, 2012 Order addressing its intervention and requested that the Commission grant its motion for full intervention (or, in the alternative, limited intervention) to participate on all gas transportation issues, including LG&E's balancing frequencies and balancing

¹ Letter from Matthew Malone, Hurt, Crosbie & May PLLC, Counsel of Record for Hess Inc., to Jeff DeRouen, Executive Director, Public Service Commission (Oct. 3, 2012).

tolerance bands. Hess contends that while the final Order in Case No. 2010-00146² noted that, “existing transportation thresholds bear further examination,”³ the Commission did not explicitly limit the scope of its subsequent review to participation thresholds only. Hess notes that the Commission committed to reviewing the “reasonableness of the existing transportation tariffs of each of the above-named LDC’s [including LG&E] and any proposed changes in rate design and product and service availability in their next individual general rate proceeding.”⁴ Hess states that “House Joint Resolution 141 requested the Commission investigate 15 different elements in Case No. 2010-00146, including but not limited to, (i) stranded costs; (ii) the steps necessary to maintain system integrity; and (iii) access to pipeline storage capacity.” Finally, Hess contends that there was discussion and argument within Case No. 2010-00146 regarding the necessity of a well-structured market and the need to have tariff provisions related to delivery non-compliance charges that are reasonable in scope (such as penalties for failing to meet a delivery requirement on a critical day).⁵

On October 8, 2012, LG&E submitted a petition for reconsideration of the Order granting intervention to Hess and an objection to Hess’ motion for reconsideration. LG&E argues that Hess inappropriately used its motion for reconsideration to place its arguments regarding balancing frequencies and balancing tolerance demands into the record and inappropriately placed into the record, for the second time, Hess’ position on

² Case No. 2010-00146, *An Investigation of Natural Gas Retail Competition Programs* (Ky. PSC Dec. 28, 2010).

³ *Id.* at 23.

⁴ *Id.* at 16.

⁵ *Id.* Interstate Gas Supply, Inc.’s, Southstar Energy Service’s LLC, and Vectren Source’s, Post Hearing Brief at 18, dated Nov. 1, 2010.

evidence that the Commission excluded from consideration in this case. LG&E states that, "Hess' only purpose in this proceeding is to advocate for its own perceived commercial interests." Next, LG&E argues that Hess made no effort to explain how it satisfies the prerequisites for intervention, and that Hess greatly overstated the effect of Case No. 2010-00146 on this proceeding. According to LG&E, Hess "implies that because it is affiliated with a party to Case No. 2010-00146, it should consequentially be permitted to intervene on all the issues it believes the Commission should consider," and that Hess' motion failed to allege how it satisfies the statutory and regulatory standards for intervention. Finally, LG&E argues that Hess, by disregarding the procedural schedule the Commission established and by filing testimony on balancing frequencies and balancing tolerance demands, after the Commission specifically denied Hess' intervention with regard to these issues, has contravened the prohibition against unduly disrupting this proceeding.

On October 10, 2012, Hess responded to LG&E's motion to strike Hess' testimony regarding balancing frequencies and balancing tolerance bands. Hess contends that its inclusion of these two issues in its motion to intervene was consistent with LG&E's application related to its gas transportation thresholds. Hess defends filing its prepared testimony, which includes testimony on all three issues (gas transportation thresholds, balancing tolerance bands and balancing frequencies), as having been prepared in advance of the Commission's ruling that allowed Hess' intervention, but limited its intervention to the issue of gas transportation thresholds. Hess states that it did not receive the Commission's Order until the afternoon of October 2, 2012 and filed its prepared testimony on October 3, 2012, after informing LG&E's counsel of its

intention to file a motion for reconsideration along with agreeing to strike portions of its testimony if the motion for reconsideration is denied.

The Commission has reviewed LG&E's and Hess' opposing motions for reconsideration of the October 2, 2012 Order granting Hess limited intervention in this matter. LG&E contends that Hess should not have been granted intervention in this proceeding, even on a limited basis, and points out that by Hess' pre-filing testimony that addresses two excluded issues, Hess demonstrates that its intervention has and will continue to unduly disrupt this proceeding. Hess argues that in addition to the issue of gas transportation thresholds, it should also have been granted intervention on the issues of balancing tolerance bands and balancing frequencies. The Commission, having considered the arguments made by both LG&E and Hess, and being otherwise sufficiently advised, finds that its October 2, 2012 Order relating to Hess' intervention in this matter should stand as written. After conducting a thorough investigation of natural gas competition in Case No. 2010-00146, the Commission concluded that, "existing transportation thresholds bear further examination, and the Commission will evaluate each LDC's tariffs and rate design in each LDC's next general rate proceeding." Thus, the only issue of gas competition to be evaluated in this LG&E rate case is transportation thresholds. Consequently, Hess' intervention should be limited to the issue of gas transportation thresholds. The testimony of Hess' witness, John Mehling, should be stricken and an opportunity provided for Hess to refile its testimony with all references to balancing tolerance bands and balancing frequencies deleted.

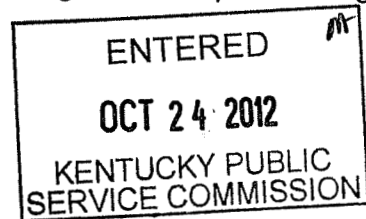
IT IS THEREFORE ORDERED that:

1. LG&E's and Hess' motions for reconsideration of the Commission's Order of October 2, 2012 granting Hess limited intervention on the sole issue of gas transportation thresholds are both denied.

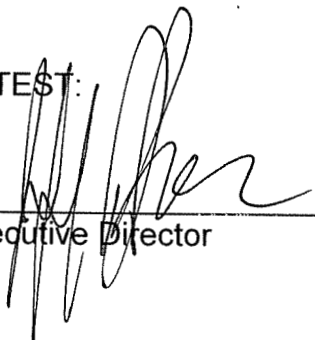
2. The testimony filed by Hess on October 3, 2012 is stricken from the record and Hess shall have seven days from the date of this Order to refile its testimony addressing only the issue of transportation thresholds.

By the Commission

Commissioner Breathitt is abstaining from this proceeding.



ATTEST:



Executive Director

Case No. 2012-00222

Lonnie E Bellar
Vice President, State Regulation & Rates
Louisville Gas and Electric Company
220 W. Main Street
P. O. Box 32010
Louisville, KY 40202

Honorable Michael L Kurtz
Attorney at Law
Boehm, Kurtz & Lowry
36 East Seventh Street
Suite 1510
Cincinnati, OHIO 45202

Honorable Kurt J Boehm
Attorney at Law
Boehm, Kurtz & Lowry
36 East Seventh Street
Suite 1510
Cincinnati, OHIO 45202

Jody M Kyler
Boehm, Kurtz & Lowry
36 East Seventh Street
Suite 1510
Cincinnati, OHIO 45202

David Brown
Stites & Harbison, PLLC
1800 Providian Center
400 West Market Street
Louisville, KENTUCKY 40202

Honorable Matthew R Malone
Attorney at Law
Hurt, Crosbie & May PLLC
The Equus Building
127 West Main Street
Lexington, KENTUCKY 40507

Larry Cook
Assistant Attorney General
Office of the Attorney General Utility & Rate
1024 Capital Center Drive
Suite 200
Frankfort, KENTUCKY 40601-8204

Honorable William H May, III
Attorney at Law
Hurt, Crosbie & May PLLC
The Equus Building
127 West Main Street
Lexington, KENTUCKY 40507

Honorable John M Dosker
General Counsel
Stand Energy Corporation
1077 Celestial Street
Building 3, Suite 110
Cincinnati, OHIO 45202-1629

Eileen Ordovery
Legal Aid Society
416 West Muhammad Ali Boulevard
Suite 300
Louisville, KENTUCKY 40202

Honorable Dennis G Howard II
Assistant Attorney General
Office of the Attorney General Utility & Rate
1024 Capital Center Drive
Suite 200
Frankfort, KENTUCKY 40601-8204

Honorable Kendrick R Riggs
Attorney at Law
Stoll Keenon Ogden, PLLC
2000 PNC Plaza
500 W Jefferson Street
Louisville, KENTUCKY 40202-2828

Honorable Lisa Kilkelly
Attorney at Law
Legal Aid Society
416 West Muhammad Ali Boulevard
Suite 300
Louisville, KENTUCKY 40202