

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

O R D E R

On July 30, 2012, Thomas J. Gerstle (“Petitioner”) filed two letters, which will be treated as one petition, requesting authorization to intervene in this case.¹ Petitioner recommends that Louisville Gas and Electric Company’s (“LG&E”) request to increase residential electric and gas rates should be denied, contending that the magnitude of the proposed rate increases were excessive in comparison to the current rate of inflation and that such an increase in rates would place too much of a burden on his family. Petitioner also recommends that LG&E should not be permitted to assume ownership of gas service risers and service lines because the gas service line and riser for his gas meter is located on his private property. Lastly, Petitioner contends that LG&E should be denied the right to charge for unneeded maintenance or replacement of the gas service line and riser.

On August 3, 2012, LG&E filed a response objecting to Petitioner’s request to intervene. LG&E contends that Petitioner has not established a special interest in this

¹ Although subject line of the two letters indicates a request for intervention, the body of the letters does not include any discussion concerning this request.

matter to justify granting full intervenor status. LG&E further contends that Petitioner failed 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.

On August 13, 2012, Petitioner filed a rebuttal in support of his motion to intervene. Petitioner asserts that the costs and availability of gas and electric services “have a significant impact upon his family’s collective personal finances, education and professional functioning, the details and magnitude of which are not known or adequately represented by the Attorney General.”² Petitioner states that he recently paid to have a new gas service line and service riser installed on his gas meter, and that he opposes any transfer of ownership of these assets to LG&E as this will jeopardize the safety, functionality, and beauty of his personal residence. Petitioner maintains that he possesses the necessary financial skills and legal background to efficiently contribute to the proceedings without undue complication or disruption. Petitioner points out that his business experience in providing rail logistical services to coal powered electric utilities give him unique knowledge and perspective in ratemaking and gas safety.

On August 22, 2012, LG&E filed a sur-reply arguing that Petitioner’s request for intervention should be denied. LG&E contends that Petitioner’s claimed special interests in the rate and services of LG&E and the ownership of gas service risers and service lines are no different than any other customer that supports or opposes one or more aspects of LG&E’s Application in this case. LG&E further contends that the

² Rebuttal at Section I.

Attorney General (“AG”), who is a party to this case, is statutorily required to represent these types of interest and has successfully done so in the past. Lastly, LG&E avers that Petitioner’s business experience does not mean that he has the necessary expertise in ratemaking sufficient to entitle him to full intervention in this matter.

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.”³ The AG’s petition was granted by the Commission’s Order dated July 6, 2012. Intervention by all others is permissive and is within the sound discretion of the Commission.⁴

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.”⁵ The regulatory limitation is set forth in 807 KAR 5:001, Section 3(8). That

³ AG’s Motion to Intervene at 1.

⁴ *Inter-County Rural Electric Cooperative Corporation v. Public Service Commission of Kentucky*, 407 S.W.2d 127, 130 (Ky. 1966).

⁵ *EnviroPower, LLC v. Public Service Comm’n*, No. 2005-CA-001792-MR, 2007 WL 289328 (Ky. App. Feb. 2, 2007).

regulation requires a person seeking intervention to file a request in writing which “shall specify his interest in the proceeding.”⁶ 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.⁷

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’s claims that (1) his gas and electric service are essential to his life and those of his family; and (2) that he has recently expended significant financial resources on his personal residence and does not wish to relinquish ownership rights to his gas line and riser are not sufficient to establish that he has a special interest in this matter which is not otherwise adequately represented. There are 292,779 residential gas customers located in 16 counties⁸ who, like Petitioner, are gas 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.

⁶ 807 KAR 5:001, Section 3(8)(b).

⁷ *Id.*

⁸ 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.

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 Petitioner's knowledge and experience of rail logistical services may be extensive, 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 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/efs_search.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.

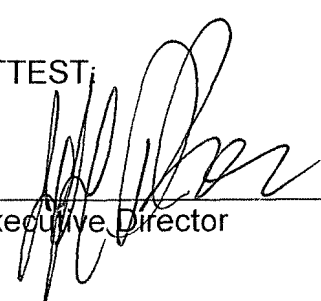
IT IS THEREFORE ORDERED that Mr. Gerstle's petition to intervene is denied.

By the Commission

Commissioner Breathitt is abstaining from this proceeding.

ENTERED *AK*
SEP 07 2012
KENTUCKY PUBLIC
SERVICE COMMISSION

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

Jody M Kyler
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

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

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

Honorable William H May, III
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

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

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