

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. In support of its motion, Hess filed a memorandum asserting that it has met the legal requirements for full intervention defined by 807 KAR 5:001, Section 3(8)(b), which provides in pertinent part:

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 [the] 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.

Hess states that it should be allowed to intervene because it has a special interest in this matter, has abundant experience that uniquely positions it to evaluate Louisville Gas and Electric Company’s (“LG&E”) current gas transportation program and it will not unduly complicate or disrupt the proceedings because it will take the record as it currently stands and will comply with the existing procedural schedule. Specifically, Hess states that:

Hess is one of the largest competitive natural gas transportation suppliers in the country, specifically offering natural gas supply products and services to large commercial and industrial customers in over eighteen (18) states throughout the Midwest and East Coast. Hess currently serves large commercial and industrial customers [footnote removed] within several LDC territories bordering the Commonwealth of Kentucky . . . . Hess has been in the energy business since 1933 . . . .

Finally, Hess notes that, in Case No. 2010-00146,<sup>1</sup> the Commission committed to evaluating each local distribution company's ("LDCs") natural gas tariffs (including LG&E's) in their next rate case and that "[a]s a gas transportation supplier, Hess has important concerns regarding LG&E's current rates; specifically regarding: (1) balancing frequencies; (2) balancing tolerance bands; and (3) volumetric thresholds."

On September 19, 2012, LG&E filed an objection to Hess' motion for full intervention. LG&E argues that Hess' only interest in this proceeding is to further its own commercial interests as a competitor of LG&E, noting that the Commission lacks jurisdiction to allow a third party, such as Hess—that is not even a customer of the utility—to utilize a regulatory proceeding to advance its financial and commercial interests. LG&E further argues that Hess admittedly seeks to enter the LG&E market and is incentivized to enhance its business position and its interest is not aligned with the interest of retail ratepayers. In seeking to transport gas for LG&E customers, a service that LG&E currently provides, Hess intends to be a direct competitor of LG&E.

Although LG&E acknowledges that the Commission stated, in Case No. 2010-00146, that it would review the transportation tariffs of natural gas local distribution companies, like LG&E, in their next base rate proceedings, LG&E argues that Hess is

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<sup>1</sup> Case No. 2010-00146, *An Investigation of Natural Gas Retail Competition Programs* (Ky. PSC Dec. 28, 2010).

not a customer and has not transported gas for any LG&E customer and has no current retail business with LG&E's retail gas customers. LG&E disputes Hess' position that because it is "an experienced and reliable competitive natural gas supplier" it will present issues or develop facts that would assist the Commission, as Hess does not have any experience as a supplier for an LG&E customer.

LG&E argues that:

simply because Hess seeks to advocate a position regarding certain aspects of LG&E's rate design and tariffs does not mean it will assist the Commission. Hess' lack of familiarity with LG&E's customers and business practices with regard to gas transportation will likely diminish the use of the expert testimony Hess seeks to provide.

Finally, LG&E argues that Hess' intervention would unduly complicate and disrupt this proceeding because the filing of Hess' motion is exceedingly out of time and by "continuing to allow the intervention of commercial third parties at this late stage creates a complexity in this case that can prejudice LG&E and other consumer groups' ability to contest positions taken by the commercial third parties."

On September 27, 2012, Hess replied to LG&E's objections to its motion to intervene and argues that it is a national gas supplier for large industrial and commercial customers who were involved in Case No. 2010-00146 through the Retail Energy Supply Association ("RESA") and has "invested significant financial resources to market natural gas supply resources within LG&E's service territory" and that, it clearly has a special interest in LG&E's rates and services, namely those involved in LG&E's gas transportation program.

Hess argues that through its expert testimony, it will identify concerns with the barriers to participation that differences in LG&E's transportation thresholds, balancing

frequencies, and balancing tolerance bands present and will be consistent with the Commission's directive that this docket shall include a continuation of the investigation of gas transportation thresholds from Case No. 2010-00146.

Hess also states that its participation will not unduly complicate or disrupt the proceedings due to the recent amendment of the procedural schedule that will permit intervenor testimony to be filed on or before October 3, 2012, and that Hess stands ready to file same.

On October 1, 2012, LG&E filed a sur-reply in objection to Hess' motion to intervene. LG&E argues that Hess' belief that, because it was a member of RESA, an organization that intervened in Case No. 2012-00146, and because Stand Energy was granted limited intervention in this case, Hess automatically has the right to intervene is erroneous. LG&E restates its earlier claim that Hess' sole focus in seeking intervention is to advocate for its own competitive interest against that of LG&E, and that Hess' intervention will disrupt this proceeding.

#### DISCUSSION

Having reviewed Hess' motion and LG&E's objections thereto, and being otherwise sufficiently advised, the Commission finds that the only person that has a statutory right to intervene is the AG, pursuant to KRS 367.150(8)(b). Intervention by all others is permissive and is within the sound discretion of the Commission.

In the unreported case of *EnviroPower, LLC v. Public Service Commission of Kentucky*, No. 2005-CA-001792-MR, 2007 WL 289328 (Ky. App. Feb. 2, 2007), the Court of Appeals ruled that this Commission retains power in its discretion to grant or deny a motion for intervention but that discretion is not unlimited. The Court then

enumerated the statutory and regulatory limits on the Commission's discretion in ruling on motions for intervention. The statutory limitation, KRS 278.040(2), requires that the person seeking intervention have an interest in the rates or service of a utility, as those are the only two subjects under the jurisdiction of the Commission.

The regulatory limitation of 807 KAR 5:001, Section 3(8), requires that a person demonstrate a special interest in the proceeding which is not otherwise adequately represented or that intervention is likely to present issues or develop facts that assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings. It is under these statutory and regulatory criteria that the Commission reviews a motion to intervene.

In Case No. 2010-00146, an investigation to which both LG&E and Hess, as a member of RESA, a non-profit trade association of independent corporations, were parties, the Commission expressly stated that there was a need to review the transportation tariffs of natural gas local distribution companies in their next base rate proceeding. This case represents the Commission's first such opportunity to review LG&E's gas transportation tariffs, and LG&E's application does propose tariff changes to the eligibility criteria for gas transportation. The Commission finds that based on our findings in Case No. 2010-00146, it is appropriate to conduct an investigation in this case of the reasonableness of LG&E's gas transportation thresholds. Further, on September 14, 2012, Stand Energy Corporation ("Stand Energy") was granted limited intervention in this case on the sole issue of LG&E's gas transportation thresholds, one of the issues raised by Hess in its motion to intervene. Further, Hess, as a participant in Case No. 2010-00146 as a member of RESA, and like Stand Energy being a gas

marketer concerned about gas transportation thresholds, we find that Hess is likely to present issues or to develop facts that assist the Commission in our investigation of that issue. For these reasons, we will grant Hess limited intervention to participate solely on the issue of gas transportation thresholds. Although Hess' application to intervene also states its concerns about balancing frequencies and balancing tolerance bands, these issues were not included in the Commission's Order in Case No. 2010-00146 as issues to be reviewed in this case, and they will not be included in Hess' limited intervention.

IT IS THEREFORE ORDERED that:

1. Hess is granted limited intervention solely to participate on the issue of LG&E's gas transportation thresholds and is specifically denied intervention regarding the issues of balancing frequencies and balancing tolerance bands.

2. Hess shall be entitled to the rights of a limited intervenor on the issue of LG&E's gas transportation thresholds and shall be served with electronic notice of the issuance of all Commission Orders issued after the date of this Order and of all documents filed by any party to this proceeding.

3. Hess shall comply with all provisions of the Commission's Order of June 22, 2012 related to the electronic filing of documents.

4. Hess shall take the record in this case as it currently stands and Hess shall comply with the amended procedural schedule.

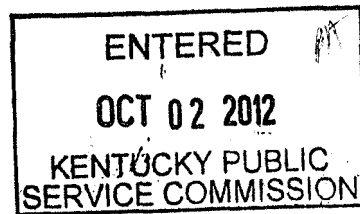
5. Within five days of entry of this Order, Hess shall:

a. Notify the Commission and all other parties of record in writing of the electronic mail address to which all electronic notices and messages related to this proceeding should be served.

b. File a written statement as to whether it, or its agent, is capable of receiving electronic transmissions, and whether it waives its right to service of Commission Orders by United States mail in return for electronic notification of the issuance of such Orders.

By the Commission

Commissioner Breathitt is abstaining from this proceeding.



ATTEST

  
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Executive Director

Case No. 2012-00222

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