



Louisville Gas and Electric Company
220 West Main Street
PO Box 32010
Louisville, Kentucky 40232

July 25, 2003

Mr. Thomas Dorman
Executive Director
Public Service Commission
211 Sower Boulevard
Frankfort, Kentucky 40602

**RE: INVESTIGATION INTO THE MEMBERSHIP OF LOUISVILLE
GAS AND ELECTRIC COMPANY AND KENTUCKY UTILITIES
COMPANY IN THE MIDWEST INDEPENDENT TRANSMISSION
SYSTEM OPERATOR, INC. – CASE NO. 2003-00266**

Dear Mr. Dorman:

Please find enclosed and accept for filing the original and ten (10) copies of the Objection of Louisville Gas and Electric Company to Request of Mr. Robert L. Madison for Full Intervention in the above-referenced case.

Please contact me if you have any questions regarding this filing.

Sincerely,

F. Howard Bush
Manager, Regulatory Compliance

Cc: Hon. Elizabeth E. Blackford
Hon. Michael L. Kurtz
Mr. Robert L Madison

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**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

In the Matter of:

**INVESTIGATION INTO THE MEMBERSHIP)
OF LOUISVILLE GAS AND ELECTRIC)
COMPANY AND KENTUCKY UTILITIES) Case No. 2003-00266
COMPANY IN THE MIDWEST INDEPENDENT)
TRANSMISSION SYSTEM OPERATOR, INC.)**

**OBJECTION TO
REQUEST OF MR. ROBERT L. MADISON
FOR FULL INTERVENTION**

Louisville Gas and Electric Company (“LG&E”), by counsel, in response to the request for full intervention of Mr. Robert L. Madison (“Mr. Madison”) dated July 21, 2003, states as follows:

Mr. Madison’s request fails to satisfy the standard for intervention set forth in 807 KAR 5:001, Section 3(8). This regulation does not provide an absolute right to any person seeking to intervene in the proceeding. Only the Attorney General holds a comparable right to intervene because of his standing under KRS 367.150(8). The Attorney General has in fact exercised that right in its motion to intervene filed on July 23, 2003.

The Commission may grant intervention only if (1) the moving party has a special interest in this proceeding which is not otherwise adequately represented, or (2) full intervention by the party is likely to present issues or develop facts that assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings. 807 KAR

5:001, Section 3(8). Mr. Madison's request to intervene does not meet either of these requirements and should be denied.

A. MR. MADISON DOES NOT HAVE A SPECIAL INTEREST IN THIS PROCEEDING WHICH IS NOT OTHERWISE ADEQUATELY REPRESENTED.

Mr. Madison fails to assert a special interest in this proceeding. His motion relies on the blanket statement that he represents "the concerns of an electric residential customer." (Madison Motion to Intervene filed July 21, 2003, p. 1.). Although he recognizes that the Attorney General's Office of Rate Intervention (the "Attorney General") "represents all classes of customers," he argues that he would not be effectively represented by the Attorney General. Despite this representation, Mr. Madison's interest as a consumer of electric service is adequately and effectively represented by both the Attorney General and the Commission Staff. On August 23, 2003, the Attorney General filed a motion to intervene in this proceeding pursuant to KRS 367.150 (8), which grants him the right and obligation to appear before regulatory bodies of the Commonwealth of Kentucky to represent the interests of consumers. The "concerns" asserted by Mr. Madison are not special or unique to residential electric customers of LG&E. The interests of residential customers will be fairly and adequately represented by the Attorney General in this case. To permit his intervention in these cases "will result in a proliferation of parties, substantial additional expense, and will unduly lengthen the proceedings." *In the Matter of: Notice of South Central Bell Telephone Company of an Adjustment in its Intrastate Rates and Charges and The Volume Usage Measured Rate Service and Multiline Service Tariff Filing of South Central Bell Telephone Company*, Case Nos. 8847 and 8879, Order (October 18, 1983). Further, if his intervention is allowed, any number of other

customers promoting their own self-interests may seek to intervene in this case or future proceedings.

As an electric residential customer, Mr. Madison's interest in this case is no different from the other members of the general public. The Commission, not Mr. Madison, represents the public interest. In stating that it represents the public interest, the Commission has held:

[t]he Commission, in its role as the enforcer of KRS Chapter 278 and all regulations promulgated pursuant to that Chapter, represents the public interest. See KRS 278.040(1) and (3). See also Philipps, Kentucky Practice, 5th Ed., Civil Rule 24.01 at 422 (“[W]here . . . there is a party charged by law with representing his interest, then there will be a presumption that the representation is adequate.”)

In the Matter of: Louisville Gas and Electric Company and BellSouth Telecommunications, Inc.

– *Alleged Violation of Commission Regulations 807 KAR 5:041, Section 3 and 807 KAR 5:061, Section 3, Case No. 96-246, Order (October 15, 1996) (emphasis added and citation omitted).*

The party charged by the General Assembly with representing Mr. Madison's interest in this proceeding is the Attorney General. KRS 367.150(8). Kentucky law thus presumes that the Attorney General's representation is adequate.

The Commission has historically recognized that where, as here, a movant's “interest appears to be indistinguishable from that of the public generally,” his motion to intervene should be denied. *In the Matter of: Application of Sprint Spectrum, L.P. on behalf of Wirelessco, L.P. for Issuance of a Certificate of Public Convenience and Necessity to Construct a Personal Communication Services Facility in the Louisville Major Trading Area (Prospect PCS Facility LV03C075B2)*, Case No. 96-322, Order (January 17, 1997). Rather, in such case, the interested party “may attend the hearing and may offer public comment prior to the taking of evidence on this matter as may any member of the general public.” *Id.* Mr. Madison's request simply claims

in part that he is a member of the general public. That interest is not distinguishable from that of the public generally and therefore is not an adequate basis for his intervention.

In Inter-County R.E. Coop. Corp. v. Public Service Commission, Ky., 407 S.W.2d 127, 130 (1966), the Kentucky Court of Appeals, then the highest court of review, held that this “regulation reposes in the Commission the responsibility for the exercise of a sound discretion in the matter of affording permission to intervene” and the exercise of such discretion by the Commission in denying a request to intervene on the grounds that it was “just too remote” was not in error. The Commission should exercise its sound discretionary authority and deny Mr. Madison’s request to intervene on the grounds that his general interest as an electric only customer and as a member of the general public is not adequate.

B. MR. MADISON IS NOT LIKELY TO PRESENT ISSUES OR TO DEVELOP FACTS THAT WILL ASSIST THE COMMISSION IN FULLY CONSIDERING THE ISSUES WITHOUT UNDULY COMPLICATING OR DISRUPTING THE PROCEEDINGS.

Mr. Madison’s request also fails to meet the alternate requirement for intervention, since he is not “likely to present issues or to develop facts that assist the commission in fully considering the matter without unduly complicating or disrupting the proceedings.” 807 KAR 5:001, Section 3(8). Mr. Madison’s educational and professional background as a cartographer and mailhandler, as presented in Enclosure 1 to the Testimony of Robert L. Madison in *In the Matter of: The Joint Application of E.On AG, Powergen PLC, LG&E Energy Corp., Louisville Gas and Electric Company, and Kentucky Utilities Company for Approval of an Acquisition*, Case No. 2001-104, demonstrates that he lacks the professional and technical ability and training to present issues or develop facts that will assist the Commission in this case.

Mr. Madison clearly does not meet the requirements for an expert witness under Rule 702 of the Kentucky Rules of Evidence:

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

In order for a trier of fact to determine whether an expert meets this standard, “proffered expert testimony, which is based on ‘scientific, technical, or other specialized knowledge,’ must be both relevant and reliable.” The Goodyear Tire and Rubber Company v. Thompson, Ky., 11 S.W.3d 575,578 (2000).

Mr. Madison’s participation in recent cases has itself demonstrated that his testimony is neither relevant nor reliable. In Case No. 2000-386, for example, it became apparent that Mr. Madison had no understanding of fundamental ratemaking principles. See Madison Response to the Commission’s First Set of Data Requests dated February 2, 2001, Items 2 and 5, in *In the Matter of: The Application of Louisville Gas and Electric Company for Approval of the an Amended Compliance Plan for Purposes of Recovering the Costs of New and Additional Pollution Control Facilities and to Amend its Environmental Cost Recovery Surcharge Tariff*. Additionally, in Administrative Case No. 387, Mr. Madison filed extensive testimony on social issues of dubious value. Testimony of Mr. Madison filed on September 15, 2001, pp. 10-12, in *In the Matter of: A Review of the Adequacy of Kentucky’s Generation Capacity and Transmission System*, Administrative Case No. 387.

The Commission has itself recognized Mr. Madison’s inability to make a substantive contribution in a proceeding like this:

the Commission believes the record adequately demonstrates that Mr. Madison does not possess the experience or qualifications necessary to present testimony as an expert in the areas of rate-making or rate design. Consequently, the Commission has given his proposals the same consideration that would be given to public comment by any ratepayer.

In the Matter of: The Application of Louisville Gas and Electric Company for Approval of its 2002 Compliance Plan for Recovery by Environmental Surcharge, Case No. 2002-00147, Order of February 11, 2003, p. 17.

As discussed above, participation by Mr. Madison as an intervenor in this case will unduly complicate and disrupt this proceeding. As a result, the Commission should deny Mr. Madison's request for intervention into this proceeding.

C. IN THE ALTERNATIVE, THE COMMISSION SHOULD GRANT MR. MADISON LIMITED INTERVENTION

If the Commission determines that Mr. Madison should be granted intervention in this case, then the Commission should limit his intervention by not certifying him as a party and by denying him the right to request discovery or file testimony. As defined by the Commission's regulations:

A person making only a limited intervention shall be entitled to the full rights of a party at the hearing in which he appears and shall be served with the commission's order, but he shall not be served with filed testimony, exhibits, pleadings, correspondence and all other documents submitted by parties. A person making a limited appearance will not be certified as a party for the purposes of receiving service of any petition for rehearing or petition for judicial review.

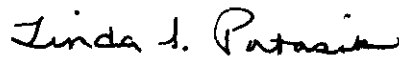
807 KAR 5:001, Section 3(8). As any member of the general public, Mr. Madison should be allowed to attend the hearing and offer public comment prior to the taking of evidence. Such limitations are consistent with the basic principle of administrative law that an administrative agency may impose reasonable terms on one seeking to intervene in a pending proceeding. Vinson v. Washington Gas Light Co., 321 U.S. 489, 498 (1944); See 73A C.J.S. Public Administrative Law and Procedure §121.

For the reasons previously stated, however, the best course of action is to deny his motion to intervene.

WHEREFORE, Louisville Gas and Electric Company respectfully requests that the Commission deny Mr. Robert L. Madison's request to intervene in Case No. 2003-00266.

Dated: July 25, 2003

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served this 25th day of July, 2003, U.S, mail, postage prepaid upon:

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