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January 6, 2004

**VIA HAND DELIVERY**

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

**RE: In the Matter of: An Adjustment of the Gas and Electric Rates, Terms and Conditions of Louisville Gas and Electric Company**  
**KPSC Case No. 2003-00433**  
**ON&W File No. 1/294**

Dear Mr. Dorman:

Enclosed please find and accept for filing the original and ten (10) copies of Louisville Gas and Electric Company's Objection to Request of Mr. Robert Madison for Full Intervention in the above-referenced matter. Please confirm your receipt of this filing by placing the stamp of your Office with the date received on the enclosed additional copy and return it to me in the enclosed self-addressed stamped envelope.

Should you have any questions or need any additional information, please contact me at your convenience.

Yours very truly,

  
J. Gregory Cornett

JGC/ec

Enclosures

cc: Parties of Record (w/ encl.)  
Linda S. Portasik, Esq. (w/ encl.)

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

**In the Matter of:**

|                                     |   |                            |
|-------------------------------------|---|----------------------------|
| <b>AN ADJUSTMENT OF THE GAS</b>     | ) |                            |
| <b>AND ELECTRIC RATES, TERMS</b>    | ) |                            |
| <b>AND CONDITIONS OF LOUISVILLE</b> | ) | <b>CASE NO: 2003-00433</b> |
| <b>GAS AND ELECTRIC COMPANY</b>     | ) |                            |

**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 January 3, 2004, states as follows:

Mr. Madison's request fails to satisfy the standard for intervention set forth in 807 KAR 5:001, Section 3(8), as described more fully below. 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 December 18, 2003. The Commission has, on two previous occasions, denied Mr. Madison's recent requests for full intervention. *See In the Matter of: An Examination by the Public Service Commission of the Environmental Surcharge Mechanism of Louisville Gas and Electric Company for the Two-Year Billing Period Ending April 30, 2003, Case No. 2003-00236, Order of October 8, 2003 and In the Matter of: 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, Order of August 13, 2003.

Pursuant to 807 KAR 5:001, Section 3(8), 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. 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 January 3, 2004, 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, because he has "taken different positions on issues than those" taken by the Attorney General. The Commission has itself already held that:

The fact that Mr. Madison has previously disagreed with certain positions previously taken by the AG does not demonstrate that the AG is not adequately representing consumer interests or that Mr. Madison has a special interest that justifies his individual participation as an intervenor.

*In the Matter of: 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, Order of August 13, 2003, p. 2.

In fact, 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 December 18, 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 in this proceeding, it will be difficult for the Commission to exclude any residential customer who has an opinion on certain issues that differs from that of the Attorney General. Such a result would unduly burden both the Commission and the legitimate participants in these proceedings, and clog the process with issues that are germane only to the self-interests of individuals unwilling to accept the legitimate representation of the Attorney General.

As an electric residential customer, Mr. Madison's interest in this case is indistinguishable from that of any other member of the general public. As such, it is the Attorney General, not Mr. Madison, who is charged with the responsibility of representing the interests of residential customers, and it is the Commission, not Mr. Madison, that is responsible for representing the broader public interest. The Commission previously held that:

[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, 5<sup>th</sup> 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).* As a matter of law, therefore, the General Assembly charged the Attorney General with the responsibility of representing Mr. Madison’s interest in this proceeding. KRS 367.150(8). Moreover, Kentucky law presumes that representation to be adequate. Mr. Madison has failed entirely to allege any facts that would rebut this presumption.

The Commission has also 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.

The Commission has previously held 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,” and therefore has previously denied his request to intervene in highly technical and complex proceedings such as the one at bar. *In the Matter of: 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, Order of August 13, 2003, pp. 2-3 (citing *In the Matter of: Application for Amended Environmental Compliance*

*Plan and a Revised Surcharge to Recover the Costs*, Case No. 2002-00146, Order of February 11, 2003, p. 17).

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 a recent brief filed with the Franklin Circuit Court on December 17, 2003 in the appeal of the Commission’s decision in Case No. 2001-00323, Mr. Madison made a number of gratuitous comments on social issues of dubious value (i.e., “the low income advocates have political and social agendas that are pro African American and pro female”). Brief of Robert L. Madison filed in Metro Human Needs Alliance v. Commonwealth of Kentucky, Civil Action No. 02-CI-00991, Div. II, p. 6. See also, 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.

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.

This Commission has long held that parties who do not possess the "requisite special interest to justify full intervenor status" can "fulfill their interest to monitor and follow [the] proceeding by reviewing the Commission's official case file which contains every document in



the record, and attending all hearings which are open to the public.” *In the Matter of: Adjustment of Gas and Electric Rates of Louisville Gas and Electric Company*, Case No. 10064, Order of January 11, 1988.

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. 2003-00433.

Dated: January 6, 2004

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing Objection was served this 6th day of January 2004, U.S. mail, postage prepaid, upon:

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