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August 21, 2007

VIA HAND DELIVERY

Elizabeth O'Donnell
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
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RECEIVED

AUG 21 2007

PUBLIC SERVICE
COMMISSION

RE: Joint Application of Louisville Gas and Electric Company, Association of Community Ministries, Inc., People Organized and Working for Energy Reform, and Kentucky Association for Community Action, Inc. for the Establishment of a Home Energy Assistance Program
KPSC Case No. 2007-00337

Dear Ms. O'Donnell:

Enclosed please find and accept for filing the original and ten copies of Louisville Gas and Electric Company's Objection to Request of Mr. Robert L. Madison for Full Intervention and to Data Request of Robert L. Madison 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 copies and return them to me in the enclosed self-addressed stamped envelope.

Should you have any questions please contact me at your convenience.

Very truly yours,

W. Duncan Crosby III

WDC/ec
cc: Parties of Record

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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JOINT APPLICATION OF LOUISVILLE GAS)
AND ELECTRIC COMPANY, ASSOCIATION OF)
COMMUNITY MINISTRIES, INC., PEOPLE)
ORGANIZED AND WORKING FOR ENERGY) CASE NO: 2007-00337
REFORM, AND KENTUCKY ASSOCIATION FOR)
COMMUNITY ACTION, INC. FOR THE)
ESTABLISHMENT OF A HOME ENERGY)
ASSISTANCE PROGRAM)

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

Louisville Gas and Electric Company (“LG&E”), by counsel, hereby objects to the Request of Mr. Robert L. Madison (“Mr. Madison”) for Full Intervention and to the Data Request of Robert L. Madison, both dated August 17, 2007. In support of its objection, LG&E states as follows:

The Commission must 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). As shown below, Mr. Madison satisfies neither condition, but rather has proven to be an excessively complicating or disrupting presence in the proceedings in which he has been allowed to participate.

A. THE DIFFICULT HISTORY OF MR. MADISON'S PARTICIPATION IN PAST COMMISSION PROCEEDINGS DEMONSTRATES THAT THE COMMISSION SHOULD DENY HIS REQUEST FOR INTERVENTION.

In LG&E's most recent Home Energy Assistance ("HEA") program application proceeding, Case No. 2004-00304, Mr. Madison requested full intervention, but the Commission ultimately denied him even limited intervention because of the vexatious and abusive discovery he propounded on all the parties. Mr. Madison's tendered discovery in this proceeding demonstrates the abusive discovery tactics, if his intervention is granted, will occur again. He has already propounded to LG&E a Data Request of thirteen questions with seven additional subparts, in addition to discovery requests he has made of other intervenors. This action alone is a sound basis to deny his Request for intervention.

In its Order denying Mr. Madison full intervention in Case No. 2004-00304, the Commission stated:

Based on the motions and being otherwise sufficiently advised, the Commission finds that some years ago Mr. Madison was granted full intervention in certain proceedings involving LG&E, but that more recently his requests to intervene have been denied. Those denials, in Case Nos. 2003-00266 and 2003-00433, were based upon findings that Mr. Madison lacks the education and professional training to testify as an expert witness. Consequently, he is not likely to present issues or develop facts that will assist the Commission in fully considering this case without unduly complicating or disrupting the proceedings. Further, Mr. Madison has not alleged any interest in this proceeding that differs from that of any other residential customer of LG&E. Under these circumstances, Mr. Madison lacks the requisite special interest necessary to justify intervention.¹

Denying Mr. Madison the full intervention he requested, the Commission instead granted him limited intervention, "entitl[ing] him to the full rights of a party at any hearing in which he

¹ *In the Matter of Joint Application of Louisville Gas and Electric Company, Metro Human Needs Alliance, Inc., People Organized and Working for Energy Reform, and Kentucky Association for Community Action, Inc., for the Establishment of a Home Energy Assistance Program, Case No. 2004-00304, Order at 2 (Aug. 25, 2004).*

appears” and to service of the Commission’s orders, but denying him all other intervention rights, including the right to participate in any appeal of the Commission’s orders.²

It was not long, however, before Mr. Madison began to abuse even the limited right of intervention the Commission had granted him. Mr. Madison propounded to LG&E thirty-four data requests with ninety-five additional subparts, in addition to burdening other parties with data requests as well.³ (In this regard, too, Mr. Madison’s history appears already to be repeating itself in this proceeding.)⁴ In response to motions by LG&E and two intervenors, on September 17, 2004, the Commission granted LG&E and the intervenors their requested protective orders from Mr. Madison’s discovery, and further clarified that Mr. Madison’s limited intervention included only the right to be heard at hearing and to receive service of the Commission’s orders.⁵

Shortly thereafter, Mr. Madison proved to be such a nuisance that the Commission denied him intervention altogether. On September 30, 2004, the Commission, clearly exasperated with Mr. Madison’s conduct, issued an Order that stated the following:

The fact that the procedural schedule in this case did not provide for intervenor testimony does not provide a basis to justify granting full intervention to a person who is neither qualified as an expert witness nor is likely to present issues or develop facts that would assist the Commission in deciding this case without unduly complicating or disrupting the proceedings. To the contrary, for a limited intervenor to issue an extensive data request and file motions to establish a procedural schedule, to schedule a hearing, and to provide an opportunity to file post-hearing briefs does unduly complicate and disrupt the proceedings. Furthermore, the Commission notes that in Mr. Madison’s response to the request for a protective Order, he stated that a possible outcome of a protective Order

² *Id.* at 3.

³ *In the Matter of Joint Application of Louisville Gas and Electric Company, Metro Human Needs Alliance, Inc., People Organized and Working for Energy Reform, and Kentucky Association for Community Action, Inc., for the Establishment of a Home Energy Assistance Program*, Case No. 2004-00304, Order at 1-2 (Sept. 17, 2004).

⁴ The docket report for this proceeding available on the Commission’s website indicates that Mr. Madison has propounded data requests upon LG&E, People Organized and Working for Energy Reform, the Association of Community Ministries, the Kentucky Association for Community Action, and the Attorney General.

⁵ *In the Matter of Joint Application of Louisville Gas and Electric Company, Metro Human Needs Alliance, Inc., People Organized and Working for Energy Reform, and Kentucky Association for Community Action, Inc., for the Establishment of a Home Energy Assistance Program*, Case No. 2004-00304, Order at 1-2 (Sept. 17, 2004).

would be that he would spend time at the hearing asking the questions that had been included in his data request.

In summary, Mr. Madison has failed to present any persuasive reasons why his request for full intervention should be granted. Further, based on his pleadings, it is clear that Mr. Madison is either unable or unwilling to conform to the restrictions imposed upon a limited intervenor. Considering that the Attorney General has been granted full intervention in this proceeding, the Commission finds it reasonable to grant LG&E's request for reconsideration and to deny Mr. Madison limited intervention.

As noted above, Mr. Madison appears to be up to his old tactics, having already propounded data requests upon LG&E and the intervenors on this proceeding.⁶ Moreover, to LG&E's knowledge, Mr. Madison has not since Case No. 2004-00304 acquired any additional education or professional training to enable him to testify as an expert witness, nor does his Motion make any demonstration of this point. And he has not articulated an interest in this proceeding that differs from that of any other residential customer. LG&E therefore respectfully urges the Commission reach the same conclusion to which it ultimately came in Case No. 2004-00304, namely that Mr. Madison's presence in this proceeding can only detract from it, and that Mr. Madison should have no right of intervention herein.

Indeed, the Commission has, on several other previous occasions, denied Mr. Madison's recent requests for full intervention.⁷ The denials are sound, because Mr. Madison has demonstrated not only a preference for abusive discovery practices, but also for producing inflammatory and irrelevant testimony. For example, in the LG&E HEA program proceeding in

⁶ See n.4.

⁷ See *In the Matter of: Application of Louisville Gas and Electric Company for an Adjustment of the Gas and Electric Rates, Terms and Conditions*, Case No. 2003-00433, Order of January 21, 2004, *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.

which the Commission did grant Mr. Madison intervention, Case No. 2001-00323, Mr. Madison included the following remarks in his written testimony:

DISCUSSION: THE CURRENT ASAP PLAN CONSIST OF 65% BLACK. (THERMORETEC EVALUATION APPENDIX, PAGE 13) ...THIS IS A PROPORTION OF 3.4 TIMES HIGHER THAN THE POPULATION PERCENTAGE. THIS IMPLIES A DISCRIMINATORY POLICY THAT GIVES A DISPROPORTIONATE AMOUNT OF MONEY TO THE CITY LIMITS OF LOUISVILLE. THIS WOULD CONSIST OF ANOTHER LEVEL OF SUBSIDY ON THE CLASS OF CUSTOMER.⁸

At the hearing in that proceeding on December 6, 2001, under cross-examination, Mr. Madison confirmed the scurrilous content of his testimony when he said:

Q: Is it your testimony that the current ASAP gives a disproportionate amount of financial assistance to African Americans?

A: It is a concern of mine.

Q: Is it your testimony that race should be a factor in determining whether someone should qualify or be eligible for financial assistance under the program?

A: It appears that for whatever reason that race is a result of the poverty guidelines and what the poverty guidelines do for example for not considering non cash income has possibly affected the behavior of African Americans resulting in them receiving more benefits under the plan.⁹

Again, in Administrative Case No. 387, Mr. Madison filed extensive and irrelevant testimony on social issues clearly outside of the scope of the proceeding:

Other reasons for declining [sic] fertility were the end of the draft in 1973, increased access to birth control and equal employment opportunity. When the draft was ended the military incentive for a deferment to get married or have children was eliminated. The increasing access to birth control and abortion has made it possible for couples to control their number of children. With the advancement in equal employment opportunity women now have the educational and employment options that were not available in the past when women were

⁸ *In the Matter of Joint Application of LG&E, MHNA, POWER, KACA and Jefferson County for the Establishment of a Home Energy Assistance Program*, Case No. 2003-00323, Testimony of Robert L. Madison at 10 (Nov. 28, 2001)(Punctuation in Original)

⁹ *In the Matter of Joint Application of LG&E, MHNA, POWER, KACA and Jefferson County for the Establishment of a Home Energy Assistance Program*, Case No. 2003-00323, Video tape hearing testimony beginning at 7:42:33 (Dec. 6, 2001).

institutionally discriminated against. Now women can, if they have educational and employment skills, can independently support themselves without a male partner.

...

In the late 1990s the U.S. Congress passed a law giving judges jurisdiction over the proceedings in life insurance. Previously the policy holder could designate any individual to be the beneficiary. The purpose of this law was so ex-wives could be awarded additional revenues in property settlements.

According to the U.S. Census Bureau women get custody of the children 85% of the time with in 1997 an average judgement of \$346 a month. A woman could collect \$41,520 in a ten year period, tax free, at that rate.¹⁰

Mr. Madison's history of filing this sort of irrelevant and inflammatory testimony is strong reason for the Commission to deny him intervention in this proceeding.

In addition to all of the above concerns, Mr. Madison has already displayed in this proceeding a disturbing lack either of candor or of knowledge concerning the course of LG&E's HEA program proceedings before the Commission. Contrary to Mr. Madison's assertion in his Request for Full Intervention, this proceeding is in no way "a continuation of" Case No. 2001-00323, an HEA proceeding in which Mr. Madison was a full intervenor. Rather, LG&E's application in this proceeding is for a new, five-year HEA program that is based upon the three-year HEA pilot the Commission approved in Case No. 2004-00304, one of the many proceedings in which the Commission denied Mr. Madison full intervention.

Furthermore, because Mr. Madison has not been granted intervention in this proceeding, LG&E respectfully requests the Commission strike from the record the questions contained in Mr. Madison's Request for Full Intervention and in his Data Request.

¹⁰ *In the Matter of: A Review of the Adequacy of Kentucky's Generation Capacity and Transmission System*, Administrative Case No. 387, Testimony of Mr. Madison at 10-12 (Sept. 15, 2001).

B. 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. As a residential electric customer of LG&E, Mr. Madison's interest in this case is indistinguishable from that of any other LG&E customer. As such, it is the Attorney General, not Mr. Madison, who is charged with the responsibility of representing the interests of residential customers, as the Commission has itself already held:

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. Furthermore, the Commission, not Mr. Madison, is responsible for representing the broader public interest.

Because the Attorney General has the duty under KRS 367.150(8)(a) to appear before the Commission to represent and be heard on behalf of consumers' interests, including of representing residential customers; and the Commission itself is responsible for protecting the broader public interest, there is no substance to Mr. Madison's claim to be a "customer rep" under "KRS 278.285 (f) (1) [*sic*]". Moreover, Mr. Madison does not state of whom he is a "rep", nor does he provide any account of why the Attorney General and the Commission will not adequately represent and protect customers' interests, nor does he explain how KRS 278.285(1)(f) provides any ground for intervention, given that it is a statute that does not address intervention. Thus, Mr. Madison's unsupported assertion to be a customer representative provides him no valid basis to claim a right to intervene.

Rather, to permit Mr. Madison’s 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. Moreover, because of the expedited nature of this proceeding, as demonstrated by the procedural schedule the Commission created for this proceeding by Order dated August 15, the Commission should be particularly wary of granting Mr. Madison full intervention, empowering him to slow the proceeding with questions and interests otherwise fully and adequately represented.

Additionally, the Commission has itself expressly recognized 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*, 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 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 interest is simply 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 a residential customer is inadequate.

C. 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.” *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*, 11 S.W.3d 575,578 (Ky. 2000).

Mr. Madison’s participation in past 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 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.

D. 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 for Full Intervention and that the Commission permit LG&E not to respond to the questions contained in Mr. Madison’s Request for Full Intervention and those contained in his Data Request of Robert L. Madison in Case No. 2007-00337.

Dated: August 21, 2007

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served on the following persons on the 21st day of August 2007, United States mail, postage prepaid:

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