

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

AUG 28 2007

**PUBLIC SERVICE
COMMISSION**

IN THE MATTER OF :

JOINT APPLICATION OF LOUISVILLE GAS)	
AND ELECTRIC COMPANY, ASSOCIATION OF)	
COMMUNITY MINISTRIES, PEOPLE ORGANIZED &)	
WORKING FOR ENERGY REFORM AND)	CASE 2007 - 00337
KENTUCKY ASSOCIATION FOR COMMUNITY)	
ACTION FOR THE ESTABLISHMENT OF A)	
HOME ENERGY ASSISTANCE PROGRAM)	

**RESPONSE OF ROBERT L. MADISON TO OBJECTIONS OF LG&E, THE AG,
KACA, ACM AND POWER TO MY REQUEST FOR FULL INTERVENTION AND
DATA REQUEST**

THE JOINT APPLICANTS (JA) AND THE ATTORNEY GENERALS OFFICE (AG) HAVE RAISED NUMEROUS OBJECTION TO MY REQUEST FOR FULL INTERVENTION AND A DATA REQUEST, DATED 17 AUG 2007. THE PSC SHOULD GRANT MY REQUEST FOR FULL INTERVENTION AND REQUIRE THE JOINT APPLICANTS TO ANSWER THE DATA REQUESTS. THE MOTIONS TO STRIKE THE DATA REQUESTS AND STRIKE THE QUESTIONS IN THE INTERVENTION REQUEST SHOULD BE DENIED. I INTEND IN THIS RESPONSE TO RESPOND GENERALLY TO THE ISSUES AND WILL GO INTO LIMITED DETAIL CONCERNING THE PAGE NUMBERS, SPECIFIC KRS REFERENCES AND INCLUDE ONLY SELECTED QUOTES FROM PREVIOUS CASES.

ON OR ABOUT 16 AUG 2007, I BECAME AWARE THAT THE JOINT APPLICANTS HAD FILED ANOTHER HEA CASE. IN A PSC ORDER DATED 15 AUG 2007, A PROCEDURAL SCHEDULE WAS ESTABLISHED THAT INCLUDED SUBMISSIONS OF DATA REQUEST BY 20 AUG 2007. THE JOINT APPLICANTS FILED THE CASE ON OR ABOUT THE END OF JULY 2007 AND DID NOT PROVIDE ME WITH NOTICE OF IT OR A COPY OF IT.

I REGULARLY REVIEW CASES / ORDERS ON THE PSC WEB SITE LOOKING FOR CASES OF INTEREST. ON ABOUT APR 2007, THE PSC WEB SITE CHANGED THE SOFTWARE ON THE BULLET ITEM CONCERNING THE DOCKET REPORTS. ONE OF THE ITEMS ON THE DOCKET REPORT IS A MAIL LOG. THIS CAN BE REVIEWED TO SEE IF ANY NEW CASES HAVE BEEN FILED. THE SOFTWARE CHANGE INCLUDED A MESSAGE THAT PREVIOUSLY HAD THE REPORT ' OPEN IN ANOTHER WINDOW ' TO NOW ' OPENS IN A POP UP MENU. ' FOR WHATEVER REASON, THE DOCKET REPORT, AFTER THE SOFTWARE CHANGE, WOULD NOT WORK ON MY MACINTOSH COMPUTER WITH ITS OPERATING SYSTEM. I TRIED GOING TO A PUBLIC LIBRARY AND THE DOCKET REPORT WOULD NOT WORK BECAUSE POP UP BLOCKER SOFTWARE WAS INSTALLED THERE. I REPEATEDLY E MAILED THE PSC WEB

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SITE ADDRESS AT EFILESSUPPORT@KY.GOV CONCERNING THIS PROBLEM. THEY MADE SEVERAL SUGGESTIONS WHICH DID NOT WORK. I AM RECOMMENDING THE PSC REVERT BACK TO THE OLDER VERSION OF THE SOFTWARE ON THE DOCKET REPORT SO THAT THE VARIOUS REPORTS ARE AVAILABLE.

THEREFORE, I HAD ONE WORKING DAY TO MAKE A FULL INTERVENTION REQUEST AND ENTER A DATA REQUEST SO THAT THEY WOULD BE TIMELY ACCORDING TO THE PROCEDURAL SCHEDULE. IDEALLY, THE JOINT APPLICANTS WOULD HAVE SUBMITTED THE APPLICATION SIX MONTHS IN ADVANCE, THE PSC WOULD HAVE OPENED A CASE, ESTABLISHED A PROCEDURAL SCHEDULE THAT PROVIDED 30 DAYS FOR INTERVENTION, REASONABLE OPPORTUNITIES FOR TESTIMONY, DATA REQUESTS, A HEARING, ETC. SINCE I DO NOT HAVE STATUS AS A INTERVENOR, I COULD NOT REQUEST THE PROCEDURAL SCHEDULE BE MODIFIED.

IF I HAD REQUESTED INTERVENTION ONLY BY 20 AUG 2007 AND RECEIVED FULL INTERVENTION, THE JOINT APPLICANTS WOULD HAVE ARGUED THAT ANY DATA REQUESTS FILED AFTER 20 AUG 2007 WERE UNTIMELY. THE JOINT APPLICANTS ARGUMENT SET UP AN IMPOSSIBLE SITUATION WHERE I COULD NOT HAVE GOTTEN IN THE CASE AND FILED AN INFORMATION REQUEST. I HAVE REQUESTED INTERVENTION AND A DATA REQUEST IN A TIMELY MANNER CONSIDERING THE CIRCUMSTANCES.

I HAVE BEEN INVOLVED IN LG&E HEA CASES SINCE 1999. IN CASE 98 - 426 THE AG, THEN BEN CHANDLER, HAD MADE AN AGREEMENT WITH LG&E AND SOME OF THE OTHER INTERVENORS TO SETTLE THE CASE, WHICH INCLUDED A HEA. INTERVENOR KIUC HAD THE AGREEMENT THROWN OUT BY THE PSC DUE TO KIUC BEING SHUT OUT OF THE NEGOTIATIONS. A COURT CASE WAS THE PRECEDENT SITED. THE PSC ULTIMATELY DETERMINED THAT LG&E WAS VIOLATING STATE LAW (KRS) BY ILLEGALLY SUBSIDIZING LOW NATURAL GAS RATES WITH HIGH ELECTRIC RATES. AN APPROXIMATELY 5 % REDUCTION IN ELECTRIC RATES WAS IMPLEMENTED.

IN CASE 2001 - 323 THE PSC DETERMINED THAT SINCE THE AG'S OFFICE HAD NOT COME FORTH WITH ANY INFORMATION CONCERNING THE AG'S INVOLVEMENT WITH APPROVING A HEA, THAT THE CASE VIOLATED STATE LAW (KRS) AND COULD NOT BE IMPLEMENTED. AN ALTERNATIVE WAS OFFERED AND AGREED TO. DURING A PILOT PROGRAM, MHNA VIOLATED STATE LAW (KRS) BY ILLEGALLY (KRS) SUBSIDIZING NATURAL GAS CUSTOMERS TO THE DETRIMENT OF ELECTRIC CUSTOMERS IN PROVIDING HEA ASSISTANCE.

IN THE CURRENT CASE, 2007 - 337, THE SAME ISSUES ARE EVIDENT. THERE IS NO INFORMATION ON THE AG'S ROLE AND AGREEMENT ON THE PARTS OF THE HEA. ANOTHER CONSISTENT ISSUE IS A UTILITY MATCH TO THE HEA. MANY OF THE OTHER UTILITIES IN KENTUCKY PROVIDE A HEA MATCH, BUT LG&E HAS CONSISTENTLY REFUSED TO DO SO.

IN THE LG&E OBJECTIONS (LO) TO MY INTERVENTION REQUEST AND DATA REQUEST THEY SITE PREVIOUS CASES DURING WHICH LG&E HAS NOT

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MADE TIMELY OBJECTIONS TO MY INTERVENTION REQUESTS, DATA REQUESTS, TESTIMONY, BRIEFS FILED, ETC. LG&E IS ACTING IN BAD FAITH BY ATTEMPTING TO RETROACTIVELY RAISE OBJECTIONS AT A LATER DATE WHEN NO TIMELY OBJECTIONS WERE RAISED.

OBJECTIONS HAVE BEEN RAISED THAT I DO NOT HAVE THE EDUCATIONAL BACKGROUND OR TECHNICAL TRAINING TO BE AN INTERVENOR. NO EDUCATIONAL OR TECHNICAL QUALIFICATIONS ARE REQUIRED TO BE AN INTERVENOR. THIS CASE IS UNLIKELY TO RAISE ANY TECHNICAL QUESTIONS THAT I AM NOT ALREADY FAMILIAR WITH.

IN THE AG'S OBJECTION TO MY INTERVENTION AND DATA REQUEST (AGO) HE STATES, ON PAGE 1 :

` ... ANY CONSUMER INTERESTS ARE ALREADY ADEQUATELY REPRESENTED BY HIS [AG'S] OFFICE. '

I HAVE REVIEWED MANY PSC CASES OVER THE YEARS, THIS IS THE FIRST TIME I HAVE EVER SEEN THE AG OBJECT TO AN INTERVENTION REQUEST. IN THE APPLICATION FOR THIS CASE, THE ONLY INFORMATION CONCERNING THE AG'S ROLE AND APPROVAL OF AN HEA IS THAT THE AG WAS PROVIDED A COPY OF THE APPLICATION. THE AG WANTS TO STRIKE MY DATA REQUEST WHICH WILL DETERMINE IF THE HEA HAS FOLLOWED THE STATE LAW (KRS). THIS IS A SIMILAR SCENARIO IN CASE 2001 - 323 WHERE THE PSC COULD NOT APPROVE THE HEA.

I BELIEVE THAT THERE ARE ETHICAL ISSUES CONCERNING THE AG'S ACTIONS OPPOSING MY INTERVENTION AND MOVING TO STRIKE MY DATA REQUEST(S). ONE STATUTE ENABLES AND AUTHORIZES THE AG TO INTERVENE IN ANY PSC CASE. IF THE AG DOES NOT PARTICIPATE IN THE HEA DEVELOPMENT A STATE LAW (KRS) PROHIBITS THE PSC FROM APPROVING IT. YET THE AG WANTS AN INTERVENTION REQUEST TO BE DENIED WHICH WILL PROHIBIT A DATA REQUEST FROM BEING ANSWERED PREVENTING THE PSC FROM DETERMINING IF THE LAW IS BEING FOLLOWED OR NOT.

ON PAGE 2 OF THE AGO IT STATES :

` ... MR. MADISON'S EDUCATIONAL BACKGROUND IS AS A CARTOGRAPHER ..."

FOR THE RECORD, I HAVE A BACHELOR OF ARTS DEGREE IN BIOLOGY FROM THE UNIVERSITY OF LOUISVILLE. PART OF MY WORK EXPERIENCE CONSISTS OF FORMERLY BEING A CARTOGRAPHER.

ON PAGE 2 OF THE AGO IT DECLARES :

` MR. MADISON HAS NOT ARTICULATED A SPECIFIC INTEREST THAT IS DIFFERENTIATED ... FROM THE INTERESTS OF THE GENERAL PUBLIC AT LARGE .'

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AS EVIDENCED BY THE WRITTEN PUBLIC COMMENTS IN CASE 2001 - 323, THERE ARE AT LEAST TWO MAJOR OPINIONS OF THE HEA, THE RELATIVELY SMALL PERCENTAGE OF CUSTOMERS WHO RECEIVE BENEFITS FROM THE HEA AND FAVOR IT, THE RELATIVELY LARGE PERCENTAGE WHO ARE BARRED FROM RECEIVING BENEFITS AND OPPOSE IT. MOST MEMBERS OF THE PUBLIC ARE NOT AWARE OF THE ELEMENTS OF THE HEA OR THE VARIOUS LAWS AND REGULATIONS THAT ARE APPLICABLE. THE GENERAL PUBLIC IS NOT AWARE OF THE SPECIFIC ISSUES, LAWS AND REGULATIONS CONCERNING THE HEA, AND WITHOUT INFORMATION CANNOT HAVE SPECIFIC POSITIONS.

ON PAGE 1 OF THE AGO HE STATES :

' ... THE ATTORNEY GENERAL ... MOVES THE COMMISSION TO STRIKE THE DATA REQUEST SUBMITTED BY MR. MADISON TO HIS [AG'S] OFFICE. '

ON PAGE 3 OF THE AGO IT DECLARES :

' ... THE ATTORNEY GENERAL ... MOVES THE COMMISSION TO STRIKE THE DISCOVERY REQUESTS SERVED BY MR. MADISON UPON ... THE OTHER PARTIES. '

THE AG IS ASKING FOR TWO DIFFERENT THINGS HERE. I DO NOT THINK THE AG HAS LEGAL STANDING TO MOVE TO STRIKE THE DATA REQUEST FILED ON OTHER PARTIES. AT A MINIMUM THE MOTION IS DEFICIENT.

THE JOINT APPLICANTS OBJECTIONS (JAO) HAVE RAISED ISSUES CONCERNING MY INTERVENTION REQUEST AND DATA REQUESTS IN CASE 2004 - 304. IN THAT CASE, I REQUESTED FULL INTERVENTION, WHICH WAS DENIED. I WAS GRANTED LIMITED INTERVENTION ON 25 AUG 2004. ON 31 AUG 2004, THE PSC ESTABLISHED A PROCEDURAL SCHEDULE THAT REQUIRED DATA REQUEST TO BE FILED BY 07 SEP 2004 AND ESTABLISHED A DATE OF 23 SEP 2004 FOR REQUESTS FOR AN INFORMAL CONFERENCE OR HEARING. THE LAW ENABLES A PARTY TO REQUEST RECONSIDERATION OF A PSC ORDER WITHIN A CERTAIN TIME FRAME. THIS TIME FRAME WAS RUNNING WHILE THE TIME FOR DATA REQUESTS AND REQUESTS FOR A HEARING OR INFORMAL CONFERENCE WERE ESTABLISHED. IF MY REQUEST FOR RECONSIDERATION OF FULL INTERVENTION WAS GRANTED, I WOULD NOT HAVE BEEN ABLE TO SUBMIT A TIMELY DATA REQUEST OR REQUEST A FORMAL HEARING OR INFORMAL CONFERENCE. I SUBMITTED A DATA REQUEST DATED 07 SEP 2004, FOR SEVERAL REASONS SO IF MY REQUEST FOR RECONSIDERATION WAS GRANTED I WOULD HAVE FILED A TIMELY DATA REQUEST.

ON 10 SEP 2004, THE AG WAS GRANTED INTERVENTION.

IN A LETTER DATED 15 SEP 2004, I REQUESTED RECONSIDERATION OF THE DENIAL OF FULL INTERVENTION. IN A MOTION DATED 21 SEP 2004, I REQUESTED A FORMAL HEARING. ON 30 SEP 2004, THE PSC DENIED MY REQUEST FOR RECONSIDERATION AND REVOKED MY LIMITED INTERVENTION. APPARENTLY, THE PSC INTERPRETED MY ACTIONS AS BAD

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FAITH, THEY WERE NOT. NO HEARING WAS HELD IN THIS CASE.

IN ANOTHER ORDER DATED 30 SEP 2004, THE PSC ON PAGE 7 DETERMINED :

` ... THE COMMISSION FINDS THAT THE RECORD IS INSUFFICIENT TO JUSTIFY APPROVING THE SPECIFIC DETAILS OF THE HEA PROGRAMS ...'

THE PSC DENIED MY PARTICIPATION IN THIS CASE PARTIALLY ON THE BASIS THAT I WOULD NOT PRESENT ISSUES OR DEVELOP FACTS THAT WOULD ASSIST THE COMMISSION AND THEN THE PSC DETERMINED THAT THE LACK OF THOSE SAME FACTS AND ISSUES PROHIBITED THE PSC FROM APPROVING THE CASE.

IN THE KACA OBJECTIONS (KO) TO MY DATA REQUEST THEY DECLARE ON PAGE 1 :

` EVEN IF MR. MADISON IS PERMITTED TO INTERVENE ... THE COMMISSION ... ONLY [ALLOWS] DATA REQUESTS DIRECTED TO ... LG&E ... '

I AM GOING TO ASSUME THAT THE INTENT OF THE PSC PROCEDURAL SCHEDULE PERMITS DATA REQUESTS TO JOINT APPLICANTS AND INTERVENORS.

IN THE LG&E OBJECTIONS (LO), ON PAGE 5, IT STATES :

` ... IN ADMINISTRATIVE CASE NO. 387, MR. MADISON FILED EXTENSIVE AND IRRELEVANT TESTIMONY ON **SOCIAL ISSUES CLEARLY OUTSIDE THE SCOPE OF THE PROCEEDING** ... ' (EMPHASIS ADDED)

IN ADMINISTRATIVE CASE 387, IN AN ORDER DATED 13 JUL 2001, THE PSC PRODUCED A PROCEDURAL SCHEDULE THAT INCLUDED ON 13 AUG 2001 :

` FIRST PUBLIC HEARING ... FOR THE PURPOSE OF RECEIVING TESTIMONY FROM EXPERT WITNESSES ON ECONOMIC AND POPULATION GROWTH ... "

ON 13 AUG 2001, RON CROUCH, OF THE KENTUCKY STATE DATA CENTER OF THE UNIVERSITY OF LOUISVILLE, TESTIFIED. HE PRESENTED DEMOGRAPHIC INFORMATION ON IMMIGRATION, MIGRATION FLOWS FOR BLACKS, POPULATION DATA BASED ON RACE AND AGE, EDUCATIONAL LEVELS BY RACE, MARRIAGE, URBAN VERSUS RURAL, BIRTH RATES, DEATH RATES, RETIREMENT, PUBLIC ASSISTANCE, ETC. ONE OF THE SOURCES OF THE INFORMATION WAS THE U.S. CENSUS BUREAU.

THE PSC DETERMINED THAT DEMOGRAPHIC DATA AND SOCIAL ISSUES WERE WITHIN THE SCOPE OF THE PROCEEDING.

HOW COULD LG&E MAKE SUCH AN ERRONEOUS CONCLUSIONS CONCERNING A PAST PSC CASE ? IS THIS A DELIBERATE MISDIRECTION ? COULD THE ENTIRE POSITION IN THE LO BE CHARACTERIZED AS

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UNRELIABLE AND BIASED ?

ON PAGE 6 OF THE LO IT DECLARES :

` CONTRARY TO MR. MADISON'S ASSERTIONS ... THIS PROCEEDING IS IN NO WAY A " CONTINUATION OF " CASE NO. 2001 - 323 ... '

I DISAGREE, IN A PREVIOUS CASE IN THE 1990'S CONCERNING THE BUILDING OF THE LG&E TRIMBLE COUNTY PLANT, LG&E PROVIDED ALL THE FUNDING FOR A FIVE YEAR HEA IN A LAW SUIT SETTLEMENT. ALSO IN CASE 98 -426, 2000 - 095 AND 2001 - 104, THERE WERE ATTEMPTS FOR A HEA TO BE ESTABLISHED. THESE CASES, INCLUDING THE ONES SPECIFICALLY FOR A HEA, ARE A CONTINUATION OF THE SAME ISSUE. I WOULD ESTIMATE THIS ISSUE HAS BEEN AROUND AND FUNDED FOR ABOUT 14 YEARS.

DOES THE FRANKLIN CIRCUIT COURT CASE, 06 - CI - 269, HAVE ANY IMPACT ON PSC CASE 2007 - 337 ? SHOULD THIS HEA CASE BE SUSPENDED ? SHOULD THE ISSUE BE BRIEFED ? SHOULD A HEA LINE ITEM CHARGE BE ADDRESSED ONLY IN A BASE RATE CASE ?

I CERTIFY THAT ON 27 AUG 2007, COPIES OF THIS RESPONSE WERE MAILED, REGULAR MAIL, TO ALL PARTIES OF RECORD.

SINCERELY,



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