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November 16, 2007

**VIA HAND DELIVERY**

Elizabeth O'Donnell  
Executive Director  
Kentucky Public Service Commission  
211 Sower Boulevard  
Frankfort, Kentucky 40601

**RECEIVED**

NOV 16 2007

PUBLIC SERVICE  
COMMISSION

**RE: Application of Louisville Gas and Electric Company for Approval of a Revised  
Collection Cycle for Payment of Bills**  
**Case No. 2007-00410**

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 Petition to Intervene of AARP and Motion to Treat AARP Comments as Public Comments 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 or need any additional information, please contact me at your convenience.

Very truly yours,

W. Duncan Crosby III

WDC/ec  
Enclosures  
cc: Parties of Record

400001.125958/499679.1

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

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NOV 16 2007

PUBLIC SERVICE  
COMMISSION

In the Matter of:

APPLICATION OF LOUISVILLE GAS AND )  
ELECTRIC COMPANY FOR APPROVAL OF A ) CASE NO. 2007-00410  
REVISED COLLECTION CYCLE FOR PAYMENT )  
OF BILLS )

**OBJECTION TO PETITION TO INTERVENE OF AARP  
AND MOTION OF LOUISVILLE GAS AND ELECTRIC COMPANY  
TO TREAT AARP COMMENTS AS PUBLIC COMMENTS**

Louisville Gas and Electric Company (“LG&E”), by counsel, hereby objects to the November 13, 2007 Petition to Intervene of AARP (“Association for the Advancement of Retired People”) because the interests of the people AARP purports to represent are fully and ably represented in this proceeding by the Office of the Attorney General of Kentucky, Office of Rate Intervention (“Attorney General” or “AG”). Also, LG&E respectfully moves the Commission to treat the November 15, 2007 AARP Comments as ordinary public comments due to AARP’s non-intervener status. In support of its objection and motion, 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, AARP satisfies neither condition.

**A. AARP DOES NOT HAVE A SPECIAL INTEREST IN THIS PROCEEDING WHICH IS NOT OTHERWISE ADEQUATELY REPRESENTED.**

AARP fails to assert a special interest in this proceeding. As it describes itself in its Petition, AARP is “a nonprofit, nonpartisan membership organization dedicated to making life better for people 50 and older,” with approximately 483,000 members in Kentucky, some of whom are a “meaningful cross-section of the consumers that are served by [LG&E].”<sup>1</sup> If AARP truly represents such a large percentage of LG&E’s customers, then its interest in this proceeding can hardly be “special,” but rather is indistinguishable from the interest of LG&E’s residential customers generally. 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.<sup>2</sup> 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.”<sup>3</sup> AARP’s interest simply is not distinguishable from that of the public generally and therefore is not an adequate basis for its intervention.

Moreover, it is the Attorney General, not AARP, who is charged with the responsibility of representing the interests of residential customers.<sup>4</sup> Indeed, 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, which includes the interests of residential customers:

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<sup>1</sup> AARP Petition to Intervene at 1.

<sup>2</sup> *In the Matter of: Application of Sprint Spectrum, L.P. on behalf of Wirelesco, 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).

<sup>3</sup> *Id.*

<sup>4</sup> *See, e.g., 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 at 2 (Aug. 13, 2003) (“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.”).

The Department of Law shall have the following functions, powers and duties:

...

(8) (a) To appear before any federal, state or local governmental branch, commission, department, rate-making or regulatory body or agency, to represent and be heard on behalf of consumers' interests[.]

And the Commission, not AARP, is responsible for representing the broader public interest. The Commission has expressly recognized:

The 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.”)<sup>5</sup>

Therefore, because the Attorney General and the Commission already represent in this proceeding the interests of those persons AARP claims to represent, to permit AARP's intervention in this proceeding “will result in a proliferation of parties, substantial additional expense, and will unduly lengthen the proceedings.”<sup>6</sup>

Furthermore, the Kentucky Court of Appeals has held, “[T]he Commission [has] 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.<sup>7</sup> Here, where AARP's interests are indistinguishable from those of the public generally, the Commission should

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<sup>5</sup> *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).

<sup>6</sup> *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).

<sup>7</sup> *Inter-County R.E. Coop. Corp. v. Public Service Commission*, 407 S.W.2d 127, 130 (Ky. 1966).

exercise its sound discretionary authority and deny AARP's request to intervene on the grounds that its general interest in representing residential customers is inadequate as too remote.

**B. AARP 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.**

AARP's request also fails to meet the alternate requirement for intervention, because it 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."<sup>8</sup> Again, AARP has claimed to represent a large portion of the LG&E customer population, rendering its interests indistinguishable from those of residential customers generally. Moreover, AARP has not claimed that it can 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."<sup>9</sup> Given that AARP has not claimed it can meet this standard, and that AARP's claimed interests are represented by the Attorney General and the Commission, participation by AARP as an intervener in this case will unduly complicate and disrupt this proceeding. As a result, the Commission should deny AARP's request for intervention into this proceeding.

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<sup>8</sup> 807 KAR 5:001, Section 3(8).

<sup>9</sup> *The Goodyear Tire and Rubber Company v. Thompson*, 11 S.W.3d 575,578 (Ky. 2000).

**C. BECAUSE AARP IS A NON-INTERVENER AND SHOULD NOT BE GRANTED INTERVENER STATUS, THE COMMISSION SHOULD TREAT ITS NOVEMBER 15, 2007 COMMENTS AS ORDINARY PUBLIC COMMENTS.**

Without first having obtained intervener status, AARP filed Comments with the Commission in this proceeding on November 15, 2007. As shown above, AARP's current non-intervener status should not change. For that reason, LG&E respectfully moves the Commission to treat AARP's Comments as ordinary public comments, and not to ascribe to them the evidentiary weight afforded to the comments of full parties to this proceeding.

**WHEREFORE**, Louisville Gas and Electric Company respectfully requests that the Commission deny AARP's Petition to Intervene, and respectfully moves the Commission to treat the AARP's November 15, 2007 Comments as ordinary public comments.

Dated: November 16, 2007

Respectfully submitted,



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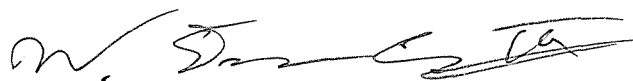
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Counsel for Louisville Gas and Electric Company

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing Objection and Motion was served on the following persons on the 16th day of November 2007, United States mail, postage prepaid:

Dennis G. Howard II  
Assistant Attorney General  
Office of the Attorney General  
Office of Rate Intervention  
1024 Capital Center Drive, Suite 200  
Frankfort, Kentucky 40601-8204



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Counsel for Louisville Gas and  
Electric Company