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June 20, 2011

RECEIVED

JUN 20 2011

PUBLIC SERVICE
COMMISSION

VIA HAND DELIVERY

Jeff DeRouen
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, KY 40601

RE: The Application of Louisville Gas and Electric Company for Certificates of Public Convenience and Necessity and Approval of Its 2011 Compliance Plan for Recovery by Environmental Surcharge
Case No. 2011-00162

Dear Mr. DeRouen:

Enclosed please find and accept for filing the original and ten copies of Louisville Gas and Company's Response to the Motion to Intervene of Lee Thomason in the above-referenced case. Please confirm your receipt of this filing by placing the stamp of your Office with the date received on the enclosed additional copies of this letter and return them to me in the enclosed self-addressed stamped envelope.

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

Yours very truly,


Kendrick R. Riggs

KRR:ec
Enclosures
cc: Parties of Record
Lee Thomason

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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

**THE APPLICATION OF LOUISVILLE GAS AND)
ELECTRIC COMPANY FOR CERTIFICATES)
OF PUBLIC CONVENIENCE AND NECESSITY) CASE NO. 2011-00162
AND APPROVAL OF ITS 2011 COMPLIANCE)
PLAN FOR RECOVERY BY ENVIRONMENTAL)
SURCHARGE)**

**RESPONSE OF LOUISVILLE GAS AND ELECTRIC COMPANY
TO THE MOTION TO INTERVENE OF LEE THOMASON**

Louisville Gas and Electric Company (“LG&E” or “Company”) respectfully requests the Commission deny the motion to intervene of Lee Thomason in this proceeding. Mr. Thomason is a gas customer of LG&E. Mr. Thomason’s motion should be denied for three reasons: (1) the motion does not state a special interest in the proceeding that is not already represented by the Attorney General; (2) the motion fails to identify any issues or development of facts that will assist the Commission in the resolution of this matter; and (3) Mr. Thomason’s intervention would unduly complicate and disrupt the proceeding. As Mr. Thomason fails to satisfy any of the requirements for intervention under 807 KAR 5:001 § 3(8), LG&E respectfully requests that the Commission deny the motion to intervene of Lee Thomason in this proceeding.

I. The Commission Should Deny Mr. Thomason’s Motion to Intervene Because Mr. Thomason Does Not Have a Special Interest in this Proceeding.

The Commission will grant requests for permissive intervention “only upon a determination that the criteria set forth in 807 KAR 5:001, Section 3(8), have been satisfied.”¹ Under the regulation, permissive intervention will only be granted if the person “has a special interest in the proceeding which is not otherwise adequately represented” or that granting full

¹ *In the Matter of: The 2008 Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company*, Case No. 2008-00148 Order (July 18, 2008).

intervention “is likely to present issues or to develop facts that assist the commission in fully considering the matter without unduly complicating or disrupting the proceedings.”²

Mr. Thomason’s motion to intervene seeks intervention pursuant to the first prong of the regulation, as he states that “[I]eave to intervene is sought to assure that the interests of a ratepayer, in respect to the issues set out below, are represented in the record before the Commission.”³ Mr. Thomason identifies four “points of objection” to LG&E’s ECR application: (1) the rate of return; (2) the calculation of capital expenditures; (3) Commerce Clause concerns regarding power generated for customers outside of Kentucky; and (4) the “downstream” impact of the ECR proceeding on local taxes.⁴

The interests Mr. Thomason has conveyed in this proceeding are either adequately represented by the Attorney General or are beyond the scope of the Commission’s jurisdiction. Mr. Thomason’s motion concedes that he seeks to intervene to assure that the interests of ratepayers are adequately represented.⁵ The interests of ratepayers in this proceeding are represented by the Attorney General, and thus, a customer’s interest as a ratepayer is not a special interest warranting intervention.⁶ The Attorney General has a statutory right, pursuant to KRS 367.150(8)(b), to represent customers’ interests in ECR proceedings such as this one. The Attorney General moved to intervene in this proceeding on May 25, 2011. The Commission

² 807 KAR 5:001 § 3(8)(b).

³ Thomason Motion at 1.

⁴ *Id.* at 1-3.

⁵ *Id.* at 1.

⁶ *In the Matter of: Application of Kentucky Utilities Company to File Depreciation Study* (Case No. 2007-00565) and *In the Matter of Application of Kentucky Utilities Company for an Adjustment of Electric Base Rates* (Case No. 2008-00251) Order, December 5, 2008. *In the Matter of: Application of Kentucky Utilities Company to Amortize, by Means of Temporary Decreases in Rates, Net Fuel Cost Savings Recovered in Coal Contract Litigation* (Case No. 93-113) Order, December 7, 1993; *In the Matter of: Application of Water Service Corporation of Kentucky for an Adjustment of Rates* (Case No. 2008-563) Order, May 6, 2009; *In the Matter of: An Examination by the Kentucky 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, October 8, 2003.

granted the Attorney General's motion to intervene on June 3, 2011. The Attorney General has significant experience in representing ratepayers' interests in ECR proceedings, including prior LG&E cases.⁷ Thus, the Attorney General will adequately represent customers' interests in this proceeding.

Moreover, Mr. Thomason is a customer of LG&E's gas service, but is not an electric customer of the Company. As set forth in LG&E's application, the projects in LG&E's ECR Plan are confined to the Mill Creek and Trimble electric generating stations. By the terms of the statute, LG&E's ECR Plan is limited to its electric facilities, as its gas facilities do not produce energy from coal.⁸ Thus, the surcharge will not be allocated to Mr. Thomason. Because Mr. Thomason is not an electric customer, he does not have a true interest in this proceeding even as an LG&E gas customer, because his rates or service will not be affected by the outcome of this proceeding. As such, Mr. Thomason's status as a LG&E gas customer is not a special interest warranting intervention in this matter.

Mr. Thomason's motion references four points of objection with LG&E's ECR Plan. The first takes issue with the Company's proposed rate of return and the impact of the return to ratepayers.⁹ As mentioned, the Attorney General represents ratepayers' interest in this proceeding and Mr. Thomason's generalized concern regarding the rate of return applies to all customers, which demonstrates that the Attorney General will adequately represent ratepayers on this issue. As such, this is not a special interest warranting intervention. Moreover, because Mr. Thomason is not an electric customer of LG&E, the rate of return in this case will not impact his

⁷ *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); *In the Matter of: The Application of Louisville Gas and Electric Company for Approval of Its 2006 Compliance Plan for Recovery by Environmental Surcharge* (Case No. 2006-00208).

⁸ KRS 278.183(1) (emphasis added).

⁹ Thomason Motion, p. 1-2.

gas rates, further demonstrating that his concern regarding the proposed rate of return is not a special interest.

The second objection is based upon how LG&E calculated certain “compliance-related” capital expenditures.¹⁰ As with the proposed rate of return, the Attorney General will represent ratepayers’ interests with regard to whether the Company has appropriately accounted for capital expenditures in its ECR Plan. Again, because Mr. Thomason is not an electric customer, the outcome of this proceeding will have no impact on his gas rates.

The third objection refers to the fact that certain of the power produced in Kentucky could potentially be utilized by customers in other states.¹¹ Mr. Thomason is concerned that Kentucky ratepayers are allocated an unfair portion of compliance costs.¹² For over fifteen years, the Commission has required environmental compliance costs be allocated to such off-system sales in the calculation of the ECR surcharge. Once again, the outcome of this proceeding will have no impact on Mr. Thomason’s gas rates. The third objection also makes reference to the Commerce Clause and whether the interstate effects of the surcharge violate the Clause. Both the Kentucky Court of Appeals and the Commission have made clear that a person seeking intervention must have “an interest in the ‘rates’ or ‘service’ of a utility, since those are the only two subjects under the jurisdiction of the PSC.”¹³ Whether the Commerce Clause has been violated is not an issue related to the rates or service of LG&E, and thus, is beyond the scope of the Commission’s jurisdiction. Consequently, it cannot serve as a special interest warranting intervention.

¹⁰ *Id.* at 2.

¹¹ *Id.*

¹² *Id.*

¹³ *EnviroPower, LLC v. Public Service Commission of Kentucky*, 2007 WL 289328 at *4 (Ky. App. 2007) (not to be published); *In the Matter of: The 2008 Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company* (Case No. 2008-148) Order, July 18, 2008.

The fourth objection Mr. Thomason has raised is the “downstream” impact the increased rates will have on city, county, and school taxes.¹⁴ This, too, is beyond the scope of the Commission’s jurisdiction, as the Commission has no authority over city, county, and school taxes. KRS 278.183 delineates the scope of the Commission’s review over ECR proceeding.¹⁵

While the Commission may determine whether the proposed plan is reasonable and cost-effective for compliance with environmental requirements, the impact on the entities identified in Mr. Thomason’s motion is not within its jurisdiction. As such, the fourth objection is beyond the scope of the Commission’s jurisdiction and is not a special interest warranting intervention.

In sum, Mr. Thomason does not have a special interest in this proceeding, as the issues he has raised are either represented by the Attorney General or are beyond the scope of the Commission’s jurisdiction. Moreover, Mr. Thomason is not an electric customer of LG&E. For these reasons, his motion to intervene should be denied.

II. The Commission Should Deny Mr. Thomason’s Motion to Intervene Because Mr. Thomason Has Not Demonstrated that He Will Present Issues or Develop Facts that Would Assist the Commission.

Mr. Thomason’s motion to intervene fails to demonstrate that he will present issues or develop facts that would assist the Commission in fully considering this matter without unduly complicating or disrupting the proceeding.¹⁶ While Mr. Thomason’s motion states four objections to LG&E’s ECR Plan, all of his objections relate to matters adequately represented by the Attorney General or beyond the scope of the Commission’s jurisdiction. The Commission has held that when stated interests are beyond the scope of its jurisdiction, the proposed

¹⁴ Thomason Motion at 3.

¹⁵ KRS 278.183(2).

¹⁶ 807 KAR 5:001 § 3(8)(b).

intervenor will not present issues or develop facts that would assist the Commission.¹⁷ Moreover, Mr. Thomason does not demonstrate any specialized knowledge of ratemaking, cost recovery, or rate of return issues that would assist the Commission. Because certain of Mr. Thomason's interests are beyond the scope of the Commission's jurisdiction and he does not evince any expertise in the technical issues involved in this proceeding, he has failed to satisfy the requisite standards for intervention. Accordingly, his motion should be denied.

III. The Commission Should Deny Mr. Thomason's Motion to Intervene Because Mr. Thomason's Intervention Will Unduly Complicate and Disrupt the Proceeding.

Even if Mr. Thomason could demonstrate that he would present issues or develop facts that would assist the Commission in this proceeding, his intervention would unduly complicate and disrupt this proceeding in contravention of 807 KAR 5:001 § 3(8). Permitting Mr. Thomason's intervention would result in expanding the scope of the proceeding to encompass Commerce Clause and local taxation issues that are not within the scope of the Commission's jurisdiction. This would inevitably unduly complicate and disrupt the proceeding. In fact, the Commission has repeatedly held that allowing an intervenor to raise issues that are beyond the scope of the Commission's jurisdiction would unduly complicate and disrupt the proceeding.¹⁸

The proper means for Mr. Thomason to participate in this proceeding is through filing public comments. Moreover, Mr. Thomason may also provide oral comments at the public hearing in this matter. These mechanisms ensure that Mr. Thomason is given an opportunity to present his comments without unduly complicating the pending action. Mr. Thomason's motion

¹⁷ *In the Matter of: The 2008 Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company* (Case No. 2008-148) Order, July 18, 2008 at 2.

¹⁸ *In the Matter of: Application of Louisville Gas and Electric Company to File Depreciation Study*, Case No. 2007-00564 and *In the Matter of: Application of Louisville Gas and Electric Company for an Adjustment of Its Electric and Gas Base Rates*, Case No. 2008-00252, Order (October 10, 2008); *In the Matter of: The Joint Application Pursuant to 1994 House Bill No. 501 for the Approval of Kentucky Power Company Collaborative Demand-Side Management Programs and Authority to Implement a Tariff to Recover Costs, Net Lost Revenues and Receive Incentives Associated with the Implementation of the Kentucky Power Company Collaborative Demand-Side Management Programs*, Case No. 2008-00350, Order (October 13, 2008).

to intervene concludes by stating that he requests leave for the points outlined in his motion to be considered in the record.¹⁹ LG&E does not object to Mr. Thomason's motion being included as part of the public comments received in this proceeding. For these reasons discussed above, LG&E respectfully requests that the Commission deny Mr. Thomason's motion to intervene as his involvement would unduly complicate and disrupt this proceeding.

IV. Conclusion

As Mr. Thomason has failed to present any ground upon which the Commission can grant permissive intervention, the Commission should deny his motion to intervene. Also, the motion does not evince any specialized ability to develop facts or issues that will assist the Commission in the resolution of this matter. Finally, Mr. Thomason's intervention will unduly complicate and disrupt the proceeding. Therefore, LG&E respectfully requests that the Commission deny Lee Thomason's motion to intervene in this proceeding.

Dated: June 20, 2011

Respectfully submitted,



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¹⁹ Thomason Motion, p. 3.
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CERTIFICATE OF SERVICE

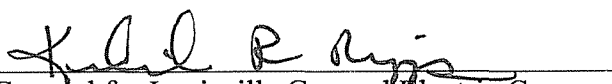
I hereby certify that a true copy of the foregoing Response was served via U.S. mail, first-class, postage prepaid, this 20th day of June 2011 upon the following persons:

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