

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

O R D E R

On June 13, 2011, Lee Thomason submitted a letter which the Commission will treat as a motion, in which he requested leave to intervene in this proceeding and in Case No. 2011-00161 involving Kentucky Utilities Company ("KU").<sup>1</sup>

In his motion, Mr. Thomason requested intervention, as a rate-paying customer of Louisville Gas and Electric Company ("LG&E"), to assure that the interests of a ratepayer are represented. Mr. Thomason discussed various points of objection to the applications, including the rate of return and costs recoverable under the environmental surcharge statute.

On June 20, 2011, LG&E filed its response alleging that Mr. Thomason's motion fails to satisfy any of the requirements for intervention set out under 807 KAR 5:001, Section 3(8) and requested that the motion be denied. LG&E's response argued that Mr. Thomason's motion does not state a special interest in the proceeding that is not

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<sup>1</sup> Case No. 2011-00161, Application of Kentucky Utilities Company for Certificates of Public Convenience and Necessity and Approval of Its 2011 Compliance Plan for Recovery by Environmental Surcharge.

already represented by the Attorney General, that the motion fails to identify any issues or development of facts that will assist the Commission in the resolution of the matter before it, and that Mr. Thomason's intervention would unduly complicate and disrupt the proceeding. Further, LG&E's response states that Mr. Thomason is a customer of LG&E's gas service, but that he is not an electric customer of the utility. LG&E maintains that, because Mr. Thomason is not an electric customer, he does not have a true interest in the proceeding because, as a gas customer of LG&E, his electric rates or service will not be affected by the outcome of this proceeding. LG&E further argues that Mr. Thomason's status as a gas customer of LG&E is not a special interest warranting intervention in this matter.

On July 30, 2011, Mr. Thomason filed a reply to the LG&E response. The reply states that he should be granted intervention because the issues raised in his motion have not been raised by the Attorney General and that his intervention is likely to present issues or develop facts that would assist the Commission in fully considering the matter.

Based on the motion to intervene and being otherwise sufficiently advised, the Commission finds that the only person that has a statutory right to intervene is the Attorney General, pursuant to KRS 367.150(8)(b). Intervention by all others is permissive and is within the sound discretion of the Commission. In the recent unreported case of *EnviroPower, LLC v. Public Service Commission of Kentucky*, No. 2005-CA-001792-MR, 2007 WL 289328 (Ky. App. Feb. 2, 2007), the Court of Appeals ruled that this Commission retains power in its discretion to grant or deny a motion for intervention but that discretion is not unlimited. The Court then enumerated the

statutory and regulatory limits on the Commission's discretion in ruling on motions for intervention. The statutory limitation, KRS 278.040(2), requires that the person seeking intervention have an interest in the rates or service of a utility as those are the only two subjects under the jurisdiction of the Commission. The regulatory limitation of 807 KAR 5:001, Section 3(8) requires that a person demonstrate a special interest in the proceeding which is not otherwise adequately represented or that intervention is likely to present issues or develop facts that assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings. It is under these statutory and regulatory criteria that the Commission reviews a motion to intervene.

Having reviewed Mr. Thomason's motion and the response of LG&E, the Commission finds no evidence that Mr. Thomason is an electric customer of LG&E. The application in this case is limited to the construction of electric facilities and the recovery of costs incurred to provide electric service. As such, Mr. Thomason has no interest in the electric rates or service of LG&E sufficient to warrant intervention in this proceeding. Even if Mr. Thomason were an electric customer of LG&E, Mr. Thomason has offered no evidence that he has a special interest in the proceeding which is not otherwise adequately represented by the Attorney General. Therefore, we find that the motion for intervention should be denied.

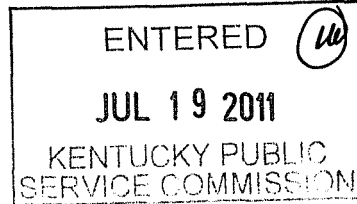
Mr. Thomason will have ample opportunity to participate in this proceeding even though he is not granted intervenor status. Mr. Thomason can review all documents filed in this case and monitor the proceedings via the Commission's website at the following web address:

<http://psc.ky.gov/Home/Library?type=Cases&folder=2011%20cases/2011-00162>.

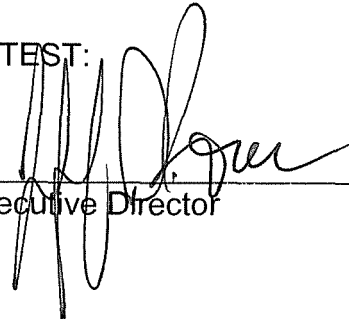
Mr. Thomason may also file comments as frequently as he chooses, and those comments will be entered into the record of this case. Finally, he may also attend and present public comment at the public hearing to be held at our offices in Frankfort, Kentucky. The date for that hearing will be scheduled in the near future.

IT IS THEREFORE ORDERED that Mr. Thomason's motion for intervention is denied.

By the Commission



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