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December 1, 2011

RECEIVED

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PUBLIC SERVICE  
COMMISSION

**VIA HAND DELIVERY**

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

**RE: Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for a Certificate of Public Convenience and Necessity for the Construction of a Combined Cycle Combustion Turbine at the Cane Run Generating Station and the Purchase of Existing Simple Cycle Combustion Turbine Facilities from Bluegrass Generation Company, LLC in LaGrange, Kentucky**  
**Case No. 2011-00375**

Dear Mr. DeRouen:

Enclosed please find and accept for filing the original and ten copies of a Joint Objection to the Petition of Sierra Club and the Natural Resources Defense Council for Full Intervention 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 via our office courier.

Thank you.

Yours very truly,

W. Duncan Crosby III

WDC:ec

Enclosures

cc: Parties of Record  
Edward George Zuger III  
Kristin Henry  
Shannon Fisk

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**COMMONWEALTH OF KENTUCKY**  
**BEFORE THE PUBLIC SERVICE COMMISSION**

**In the Matter of:**

**JOINT APPLICATION OF LOUISVILLE GAS )  
AND ELECTRIC COMPANY AND KENTUCKY )  
UTILITIES COMPANY FOR A CERTIFICATE )  
OF PUBLIC CONVENIENCE AND NECESSITY )  
AND SITE COMPATIBILITY CERTIFICATE )  
FOR THE CONSTRUCTION OF A COMBINED ) CASE NO. 2011-00375  
CYCLE COMBUSTION TURBINE AT THE )  
CANE RUN GENERATING STATION AND THE )  
PURCHASE OF EXISTING SIMPLE CYCLE )  
COMBUSTION TURBINE FACILITIES FROM )  
BLUEGRASS GENERATION COMPANY, LLC )  
IN LAGRANGE, KENTUCKY )**

**JOINT OBJECTION OF LOUISVILLE GAS AND ELECTRIC COMPANY  
AND KENTUCKY UTILITIES COMPANY TO THE PETITION OF  
SIERRA CLUB AND THE NATURAL RESOURCES DEFENSE COUNCIL  
FOR FULL INTERVENTION**

Louisville Gas and Electric Company (“LG&E”) and Kentucky Utilities Company (“KU”) (collectively, the “Companies”) hereby object to the Petition of Sierra Club and the Natural Resources Defense Council (collectively, the “Environmental Groups”) for full intervention in this proceeding. The Petition is untimely, coming more than two months after the Companies filed their application, an unacceptable delay because the Sierra Club issued a press release about the application the day the Companies filed it. Substantively, the Petition does not demonstrate that the Environmental Groups satisfy any of the requirements for full intervention under 807 KAR 5:001 § 3(8). The Companies therefore respectfully request that the Commission deny the Environmental Groups’ Petition for Full Intervention.

**I. BECAUSE THE ENVIRONMENTAL GROUPS DEMONSTRATED CLEAR KNOWLEDGE OF THE COMPANIES' APPLICATION ON THE DAY THE COMPANIES FILED IT, THE COMMISSION SHOULD DENY THE ENVIRONMENTAL GROUPS' PETITION AS UNTIMELY.**

The Commission should deny the Environmental Groups' Petition for being untimely. Notwithstanding the Sierra Club's clear knowledge of the Companies' application on the day it was filed, the Environmental Groups waited more than two months to file their Petition. The Commission's regulation governing intervention, 807 KAR 5:001 § 3(8), states that "any person who wishes to become a party to a proceeding before the commission may by timely motion request that he be granted leave to intervene." Although this regulation does not define "timely," the Commission has held that a request to intervene filed more than two months after an application was filed was untimely where it would require an amendment to the procedural schedule.<sup>1</sup> Also, the only Commission regulation addressing timeliness of motions to intervene, 807 KAR 5:011 § 8, which sets forth the Commission's public notice requirements for rate changes, expressly states that such notices shall include a statement that "any corporation, association, body politic or person may by motion within thirty (30) days after publication or mailing of notice of the proposed rate changes request leave to intervene." Here, one of the two Environmental Groups demonstrated clear knowledge of the Companies' application in this proceeding on the day it was filed, September 15, 2011, by issuing a press release about it, a copy of which is attached hereto as Exhibit 1.<sup>2</sup> Having undeniably demonstrated knowledge of

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<sup>1</sup> *In the Matter of: Adjustment of Gas Rates of the Union Light, Heat and Power Company*, Case No. 2001-00092, Order at 2 (Sept. 13, 2001) ("First, the request is untimely. The application was originally submitted to the Commission on May 5, 2001. SEC did not seek intervention in this case until July 24, 2001 -- approximately 80 days after ULH&P gave notice and submitted the application. Granting intervention to SEC would require amending the procedural schedule to allow SEC adequate time to participate fully in the proceeding and thus would unduly disrupt and delay the case.").

<sup>2</sup> The Sierra Club's press release is available at: <http://www.sierraclub.org/environmentallaw/lawsuits/0529.aspx>. Although the press release does not explicitly cite the Companies' application, it states, "On September 15, Kentucky Utilities and Louisville Gas & Electric made a landmark announcement to retire three coal-fired power plants in Kentucky – including the hotly-contested, massively polluting Cane Run Plant in Louisville." The

the Companies' application on the day it was filed, it is unacceptable for the Environmental Groups to have waited more than two months to seek to intervene in this proceeding.

Moreover, the Environmental Groups' tardy Petition has already complicated and disrupted this proceeding by procedurally prejudicing the Companies. Contrary to the Environmental Groups' assertion, they have not "compli[ed] with the second discovery deadline" precisely because they have untimely petitioned for intervention.<sup>3</sup> The Environmental Groups are not parties to this proceeding, and non-parties do not have the right to issue discovery requests. By claiming to have complied with the second discovery deadline, the Environmental Groups have simply assumed they will be granted full intervention. But until the Commission rules on the Petition, it would be a potential waste of the Companies' time and resources to work on responses to the Environmental Groups' requests. As the Companies' application and testimony demonstrate, time is of the essence to preserve the favorable pricing the Companies have negotiated. Thus, the Environmental Groups have already deprived the Companies of what would otherwise be their right to object to the Environmental Groups' Petition and be spared the potential waste of time and resources to answer discovery requests while awaiting the Commission's decision on the Petition; indeed, the Companies must await the Commission's order on the Environmental Group's tardy Petition before filing responses precisely because the Companies must know whether there are valid discovery requests to which to respond. Therefore, even without being granted intervention, the Environmental Groups have already

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Companies' September 15, 2011 press release explicitly cites the Companies' application in this proceeding: "In a certificate of public convenience and necessity filing with the Kentucky Public Service Commission today, the companies requested approval to build a 640-megawatt, natural gas combined cycle generating unit (NGCC) at the existing Cane Run site in southwestern Louisville. In addition, the companies requested approval to purchase from Bluegrass Generation Company three additional simple-cycle natural gas combustion turbines located in LaGrange that will provide up to 495 megawatts of peak generation supply." The Companies' press release is attached hereto as Exhibit 2, and is available at: [http://lge-ku.com/newsroom/archive2011/news\\_091511.asp](http://lge-ku.com/newsroom/archive2011/news_091511.asp).

<sup>3</sup> Petition at 2.

caused undue complication and disruption; for that and the other reasons given herein, the Environmental Groups' untimely Petition should be denied.

**II. THE COMMISSION SHOULD DENY THE ENVIRONMENTAL GROUPS' PETITION FOR FULL INTERVENTION BECAUSE THEY DO NOT MEET ANY OF THE CRITERIA FOR BEING GRANTED SUCH INTERVENTION.**

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.”<sup>4</sup> 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 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 proceeding.”<sup>5</sup> The Environmental Groups meet none of the requirements for full intervention, and have demonstrated in the Companies' recent Environmental Cost Recovery (“ECR”) proceedings that they will likely unduly complicate and disrupt this proceeding.<sup>6</sup>

The Commission has consistently held that, as a threshold matter, a person seeking intervention must have an interest in the rates or service of the utility at issue.<sup>7</sup> In three recent orders, the Commission held that the Environmental Groups, as non-customers of the Companies, lacked that interest, although they could represent that interest on behalf of their

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<sup>4</sup> *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).

<sup>5</sup> 807 KAR 5:001, § 3(8).

<sup>6</sup> *In the Matter of: The Application of Kentucky Utilities Company for Certificates of Public Convenience and Necessity and Approval of Its 2011 Compliance Plan for Recovery by Environmental Surcharge*, Case No. 2011-00161; *In the Matter of: 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.

<sup>7</sup> *See, e.g., In the Matter of: The Application of Kentucky Utilities Company for Certificates of Public Convenience and Necessity and Approval of Its 2011 Compliance Plan for Recovery by Environmental Surcharge*, Case No. 2011-00161, Order at 7 (July 27, 2011); *In the Matter of: 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, Order at 7 (July 27, 2011); *In the Matter of: Application of Columbia Gas of Kentucky, Inc. for an Adjustment in Rates*, Case No. 2009-00141, Order at 4 (July 15, 2009).

members (who, in this proceeding, are nameless non-parties, unlike the situation in any of the three cited orders, and in violation of well-established Commission orders requiring groups to name the customers they represent).<sup>8</sup> But the Commission further held in those three recent orders that the Environmental Groups' interest in demand-side management, energy efficiency, and renewable resources on behalf of their members who are the Companies' customers was no different than that of any other of the Companies' customers, and that those interests were adequately represented by the Attorney General.<sup>9</sup> The Attorney General is a party to this proceeding, as is the Kentucky Industrial Utility Customers, Inc., a group deeply interested in maintaining low utility rates. Because the Environmental Groups' claims in their Petition are no different than those in the petitions at issue in the three other cited proceedings, the Commission's determination of the issue should be the same.

Because the Environmental Groups do not have a special interest in these proceedings under which permissive intervention is warranted, the Commission can grant full intervention to the Environmental Groups only if they will present issues or develop facts that will assist the Commission in considering these proceedings without unduly complicating or disrupting the proceedings.<sup>10</sup> Other than conclusory statements about their purported qualifications and a list of other jurisdictions in which their witnesses have testified, the Petition provides no evidence of

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<sup>8</sup> *In the Matter of: The Application of Kentucky Utilities Company for Certificates of Public Convenience and Necessity and Approval of Its 2011 Compliance Plan for Recovery by Environmental Surcharge*, Case No. 2011-00161, Order at 7-8 (July 27, 2011); *In the Matter of: 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, Order at 7-8 (July 27, 2011); *In the Matter of: The 2011 Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company*, Case No. 2011-00140, Order at 6 (July 11, 2011). The Commission held in *In the Matter of: Application of Columbia Gas of Kentucky, Inc. for an Adjustment in Rates*, Case No. 2009-00141, Order at 4 (July 15, 2009) ("Only persons who have an interest in a utility's rates or service are eligible to be granted intervener status. SEC Customer Group is not a customer of Columbia Gas and, thus, has no individual interest in the rates or service at issue in this case. Rather, SEC Customer Group is asserting an interest as the representative of certain unnamed customers of Columbia Gas. The Commission has, on prior occasions, required a customer representative to identify the specific customers being represented.").

<sup>9</sup> *Id.*

<sup>10</sup> 807 KAR 5:001 § 3(8).

the Environmental Groups' ability to present issues or develop facts that will assist the Commission.<sup>11</sup>

Indeed, the Environmental Groups may be singularly unqualified to present issues or develop facts that will assist the Commission in this proceeding. Notably absent from their Petition is any indication that they have ever issued, evaluated, or had to make actual business decisions based on the results of a request for proposals. Instead, the Petition contains claims of expertise in analyzing items such as "the potential for cost-effective energy efficiency."<sup>12</sup> But this proceeding is about the actual resources available to meet real customers' demand, not abstract discussions about various potentials. It is an RFP-reviewing, number-crunching exercise concerning actual business proposals. As described further below, the Environmental Groups showed themselves to be inexpert in economic analysis in the Companies' most recent ECR proceedings. Therefore, the Environmental Groups have provided no reason to believe they will be able to present issues or develop facts that will assist the Commission in this proceeding.

Rather than contributing valuable expertise, it is clear from the Environmental Groups' Petition that they will unduly complicate this proceeding. The Petition contains numerous references to environmental,<sup>13</sup> health,<sup>14</sup> and national economic concerns,<sup>15</sup> all of which are outside the Commission's jurisdiction. As the Commission has stated many times, its jurisdiction extends only to the rates and service of utilities, not to any other matters,<sup>16</sup> and it

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<sup>11</sup> See, e.g., Petition at 3-7.

<sup>12</sup> Petition at 6.

<sup>13</sup> E.g., Petition at 8 ("Movants believe that increasing renewable generation in Kentucky can help move our nation economically and environmentally in the right direction.").

<sup>14</sup> E.g., Petition at 2-3 ("Moreover, growing awareness of the public health, environmental, and economic impacts of energy production have increased the importance of the pursuit of energy efficiency and renewable energy resources from both a cost and environmental perspective.").

<sup>15</sup> E.g., Petition at 8 ("Movants believe that increasing renewable generation in Kentucky can help move our nation economically and environmentally in the right direction.").

<sup>16</sup> See, e.g., *In the Matter of: The Application of Kentucky Utilities Company for Certificates of Public Convenience and Necessity and Approval of Its 2011 Compliance Plan for Recovery by Environmental Surcharge*, Case No.

does not have jurisdiction under KRS Chapter 278 to consider externalities.<sup>17</sup> Moreover, the Commission has repeatedly held that permitting an intervener to address issues beyond the scope of the proceeding will unduly complicate and disrupt the proceeding.<sup>18</sup> Therefore, given the Environmental Groups' focus on issues outside the jurisdiction of the Commission in their Petition seeking intervention, permitting them to intervene will necessarily unduly complicate and disrupt this proceeding.

Further complicating and disrupting this proceeding are the Environmental Groups' proposed discovery requests, a number of which have already been asked and answered in the Companies' Integrated Resource Planning proceeding and the Companies' ECR proceedings, e.g., "Produce a copy of any documents, studies, or analyses regarding the potential for or cost of combined heat and power within the Companies' service territory, in the State of Kentucky, or in one of the states contiguous to Kentucky created by or for the Companies."<sup>19</sup> As discussed

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2011-00161, Order at 6 (July 27, 2011); *In the Matter of: 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, Order at 6 (July 27, 2011).

<sup>17</sup> Administrative Case No. 2005-00090, *In Re: An Assessment of Kentucky's Electric Generation, Transmission and Distribution Needs*, Order Appendix A at 50 (September 15, 2005), *See also* Administrative Case No. 2007-00477, *In Re: An Investigation of the Energy and Regulatory Issues in Section 50 of Kentucky's 2007 Energy Act, Report to the General Assembly*, at 46.

<sup>18</sup> *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).

<sup>19</sup> Environmental Groups' Proposed DR No. 11; *In the Matter of: The 2011 Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company*, Case No. 2011-00140, Proposed Interveners Rick Clewett, Drew Foley, Janet Overman, Gregg Wagner, Natural Resources Defense Council, and Sierra Club's First Set of Interrogatories and Requests for Production of Documents to Louisville Gas and Electric Company and Kentucky Utilities Company, RPD No. 32 (July 15, 2011) ("Produce a copy of any assessment of the potential for or cost of combined heat and power within the Companies' service territory, in the State of Kentucky, or in one of the states contiguous to Kentucky performed by or for the Companies as part of the planning process."); *In the Matter of: The Application of Kentucky Utilities Company for Certificates of Public Convenience and Necessity and Approval of Its 2011 Compliance Plan for Recovery by Environmental Surcharge*, Case No. 2011-00161, Environmental Interveners' RPD No. 23 (July 12, 2011); *In the Matter of: The Application of Louisville Gas and Electric Company for Certificates of Public Convenience and Necessity and Approval of Its 2011 Compliance Plan*



above, this proceeding does not concern abstract potentials, but the actual options available in the marketplace to meet customers' real demand for electricity. Cluttering the record of this proceeding with matters already addressed in other proceedings would be wasteful and duplicative, and would certainly unnecessarily complicate and disrupt this proceeding.

Finally, the Environmental Groups' late filing of their Petition in this proceeding and the history of their participation in the Companies' most recent ECR proceedings demonstrate as a practical matter that the Environmental Groups' participation will serve to disrupt and complicate this proceeding. In the ECR proceedings, the Environmental Groups claimed to have an "unparalleled comprehension" of the relevant issues.<sup>20</sup> But as the ECR rebuttal testimony of David S. Sinclair showed, the Environmental Groups' allegedly sophisticated modeling was rendered useless because the modelers had taken nominal values to be real values.<sup>21</sup> In a last-minute effort to fix their mistake, the Environmental Groups attempted to file new testimony and discovery responses mere days before the hearing was scheduled to begin.<sup>22</sup> But for the settlement of the ECR cases (which prompted the withdrawal of the Environmental Groups' motion to file the "corrected" testimony) a wasteful evidentiary conflict would have consumed

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*for Recovery by Environmental Surcharge*, Case No. 2011-00162, Environmental Interveners' RPD No. 23 (July 12, 2011).

<sup>20</sup> *In the Matter of: The Application of Kentucky Utilities Company for Certificates of Public Convenience and Necessity and Approval of Its 2011 Compliance Plan for Recovery by Environmental Surcharge*, Case No. 2011-00161, Joint Response Supporting Petition for Full Intervention at 11 (July 1, 2011); *In the Matter of: 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, Joint Response Supporting Petition for Full Intervention at 11 (July 1, 2011).

<sup>21</sup> *In the Matter of: The Application of Kentucky Utilities Company for Certificates of Public Convenience and Necessity and Approval of Its 2011 Compliance Plan for Recovery by Environmental Surcharge*, Case No. 2011-00161, and *In the Matter of: 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, Rebuttal Testimony of David S. Sinclair at 6-8 (Oct. 24, 2011).

<sup>22</sup> *In the Matter of: The Application of Kentucky Utilities Company for Certificates of Public Convenience and Necessity and Approval of Its 2011 Compliance Plan for Recovery by Environmental Surcharge*, Case No. 2011-00161, Joint Motion of Environmental Interveners to File Corrected Direct Testimony of Dr. Jeremy Fisher (Nov. 3, 2011); *In the Matter of: 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, Joint Motion of Environmental Interveners to File Corrected Direct Testimony of Dr. Jeremy Fisher (Nov. 3, 2011).


days of hearing. This type of behavior is not conducive to the development of a sound record or a careful and deliberative weighing of tested evidence, and is certainly disruptive. The Environmental Groups' untimely filing of their Petition in this proceeding should cause the Commission to doubt seriously that the Environmental Groups' intervention would not unduly complicate and disrupt this proceeding

### **III. CONCLUSION**

The Environmental Groups have not satisfied either of the bases for permissive intervention set forth in 807 KAR 5:001 § 3(8). Neither have the Environmental Groups articulated a special interest within the scope of these proceedings that is not already adequately represented by the Attorney General, nor have they shown an ability to present issues or develop facts that will assist the Commission in considering the Companies' application. Finally, the Environmental Groups will, if permitted to intervene, unduly complicate and disrupt these proceedings, as they already have done with their untimely Petition. To the extent the Environmental Groups wish to express their views, they, like other members of the public, can submit written public comments in the record. For these reasons, the Commission should deny their Petition to intervene.

Dated: December 1, 2011

Respectfully submitted,



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*Counsel for Louisville Gas and Electric Company  
and Kentucky Utilities Company*

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing Joint Objection was served via U.S. mail, first-class, postage prepaid, this 1st day of December 2011 upon the following persons:

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