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PUBLIC SERVICE
COMMISSION

August 12, 2004

HAND DELIVERY

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

RE: Joint Application of Louisville Gas and Electric Company, Metro Human Needs Alliance, Inc., People Organized and Working for Energy Reform, and Kentucky Association for Community Action, Inc. for the Establishment of a Home Energy Assistance Program
Case No. 2004-00304

Dear Ms. O'Donnell:

Enclosed please find and accept for filing the original and ten (10) copies of an Objection to Request of Mr. Robert Madison for Full Intervention and to Motion for the Establishment of a Procedural Schedule 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 copy and return it 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,

Allyson K. Sturgeon

AKS/ec
Enclosures
cc: Parties of Record

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

AUG 12 2004

PUBLIC SERVICE
COMMISSION

In the Matter of:

JOINT APPLICATION OF LOUISVILLE GAS)
AND ELECTRIC COMPANY, METRO HUMAN)
NEEDS ALLIANCE, INC., PEOPLE ORGANIZED)
AND WORKING FOR ENERGY REFORM, AND)
KENTUCKY ASSOCIATION FOR COMMUNITY)
ACTION, INC. FOR THE ESTABLISHMENT OF A)
HOME ENERGY ASSISTANCE PROGRAM)

CASE NO: 2004-00304

**OBJECTION TO REQUEST OF MR. ROBERT L. MADISON
FOR FULL INTERVENTION AND TO MOTION FOR THE
ESTABLISHMENT OF A PROCEDURAL SCHEDULE**

Louisville Gas and Electric Company ("LG&E"), by counsel, in response to the Request for Full Intervention of Mr. Robert L. Madison ("Mr. Madison") and to his Motion for the Establishment of a Procedural Schedule, both dated August 3, 2004, 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).

Mr. Madison's request fails to satisfy the standard for intervention. In fact, the Commission has, on several previous occasions, denied Mr. Madison's recent requests for full intervention. *See In the Matter of: Application of Louisville Gas and Electric Company for an Adjustment of the Gas and Electric Rates, Terms and Conditions*, Case No. 2003-00433, Order of January 21, 2004, *In the Matter of: An Examination by the 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 of October 8, 2003, and *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 of August 13, 2003.

Because Mr. Madison has not been granted intervention into this proceeding, his Motion for the Establishment of a Procedural Schedule should also be denied.

A. MR. MADISON DOES NOT HAVE A SPECIAL INTEREST IN THIS PROCEEDING WHICH IS NOT OTHERWISE ADEQUATELY REPRESENTED.

Mr. Madison fails to assert a special interest in this proceeding. As an electric residential customer of LG&E, Mr. Madison's interest in this case is indistinguishable from that of any other member of the general public. As such, it is the Attorney General, not Mr. Madison, who is charged with the responsibility of representing the interests of residential customers, and it is the Commission, not Mr. Madison, that is responsible for representing the broader public interest.

In support of his request, Mr. Madison argues that the Attorney General has "consistent advocacy of low income positions," and thus his specific concerns have not been represented. However, the Commission has itself already held that:

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.

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 of August 13, 2003, p. 2.

The "concerns" asserted by Mr. Madison are not special or unique to residential electric customers of LG&E. The interests of residential customers have been fairly and adequately

represented by the Attorney General through his participation in the development of the HEA program. To permit Mr. Madison's intervention in these cases "will result in a proliferation of parties, substantial additional expense, and will unduly lengthen the proceedings." *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). Further, if his intervention is allowed in this proceeding, it will be difficult for the Commission to exclude any residential customer who has an opinion on certain issues that differs from that of the Attorney General. Such a result would unduly burden both the Commission and the legitimate participants in these proceedings, and clog the process with issues that are germane only to the self-interests of individuals.

Additionally, the Commission has itself expressly recognized that:

[t]he 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*, 5th 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.")

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).

The Commission has also 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. *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). 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.” *Id.* Mr. Madison’s interest is simply not distinguishable from that of the public generally and therefore is not an adequate basis for his intervention.

In Inter-County R.E. Coop. Corp. v. Public Service Commission, Ky., 407 S.W.2d 127, 130 (1966), the Kentucky Court of Appeals, then the highest court of review, held that this “regulation reposes in the Commission 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. The Commission should exercise its sound discretionary authority and deny Mr. Madison’s request to intervene on the grounds that his general interest as a residential customer is inadequate.

B. MR. MADISON 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.

Mr. Madison’s request also fails to meet the alternate requirement for intervention, since he 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.” 807 KAR 5:001, Section 3(8). Mr. Madison’s educational and professional background as a cartographer and mailhandler, as presented in Enclosure 1 to the Testimony of Robert L. Madison in *In the Matter of: The Joint Application of E.On AG, Powergen PLC, LG&E Energy Corp., Louisville Gas and Electric Company, and Kentucky Utilities Company for Approval of an Acquisition*,

Case No. 2001-104, demonstrates that he lacks the professional and technical ability and training to present issues or develop facts that will assist the Commission in this case.

The Commission has previously held that Mr. Madison “does not possess the experience or qualifications necessary to present testimony as an expert in the areas of rate-making or rate design.” *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 of August 13, 2003, pp. 2-3 (citing *In the Matter of: Application for Amended Environmental Compliance Plan and a Revised Surcharge to Recover the Costs*, Case No. 2002-00146, Order of February 11, 2003, p. 17).

Mr. Madison clearly does not 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.” *The Goodyear Tire and Rubber Company v. Thompson*, Ky., 11 S.W.3d 575,578 (2000).

Mr. Madison’s participation in past cases has itself demonstrated that his testimony is neither relevant nor reliable. In Case No. 2000-386, for example, it became apparent that Mr. Madison had no understanding of fundamental ratemaking principles. See Madison Response to the Commission’s First Set of Data Requests dated February 2, 2001, Items 2 and 5, in *In the Matter of: The Application of Louisville Gas and Electric Company for Approval of the an Amended Compliance Plan for Purposes of Recovering the Costs of New and Additional*

Pollution Control Facilities and to Amend its Environmental Cost Recovery Surcharge Tariff. Additionally, in a brief filed with the Franklin Circuit Court on December 17, 2003 in the appeal of the Commission's decision in Case No. 2001-00323, Mr. Madison made a number of gratuitous comments on social issues of dubious value (i.e., "the low income advocates have political and social agendas that are pro African American and pro female"). Brief of Robert L. Madison filed in Metro Human Needs Alliance v. Commonwealth of Kentucky, Civil Action No. 02-CI-00991, Div. II, p. 6. See also, Testimony of Mr. Madison filed on September 15, 2001, pp. 10-12, in *In the Matter of: A Review of the Adequacy of Kentucky's Generation Capacity and Transmission System*, Administrative Case No. 387.

As discussed above, participation by Mr. Madison as an intervenor in this case will unduly complicate and disrupt this proceeding. As a result, the Commission should deny Mr. Madison's request for intervention into this proceeding.

C. IN THE ALTERNATIVE, THE COMMISSION SHOULD GRANT MR. MADISON LIMITED INTERVENTION

If the Commission determines that Mr. Madison should be granted intervention in this case, then the Commission should limit his intervention by not certifying him as a party and by denying him the right to request discovery or file testimony. As defined by the Commission's regulations:

A person making only a limited intervention shall be entitled to the full rights of a party at the hearing in which he appears and shall be served with the commission's order, but he shall not be served with filed testimony, exhibits, pleadings, correspondence and all other documents submitted by parties. A person making a limited appearance will not be certified as a party for the purposes of receiving service of any petition for rehearing or petition for judicial review.

807 KAR 5:001, Section 3(8). As any member of the general public, Mr. Madison should be allowed to attend the hearing and offer public comment prior to the taking of evidence. Such

limitations are consistent with the basic principle of administrative law that an administrative agency may impose reasonable terms on one seeking to intervene in a pending proceeding. Vinson v. Washington Gas Light Co., 321 U.S. 489, 498 (1944); See 73A C.J.S. Public Administrative Law and Procedure §121.

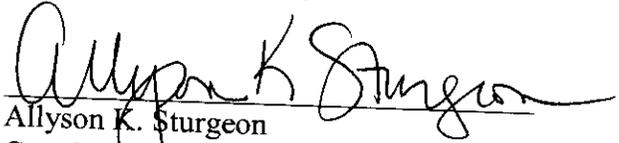
This Commission has long held that parties who do not possess the “requisite special interest to justify full intervenor status” can “fulfill their interest to monitor and follow [the] proceeding by reviewing the Commission’s official case file which contains every document in the record, and attending all hearings which are open to the public.” *In the Matter of: Adjustment of Gas and Electric Rates of Louisville Gas and Electric Company*, Case No. 10064, Order of January 11, 1988.

For the reasons previously stated, however, the best course of action is to deny his motion to intervene.

WHEREFORE, Louisville Gas and Electric Company respectfully requests that the Commission deny Mr. Robert L. Madison's Request for Full Intervention and his Motion for the Establishment of a Procedural Schedule in Case No. 2004-00304.

Dated: August 12, 2004

Respectfully submitted,



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CERTIFICATE OF SERVICE

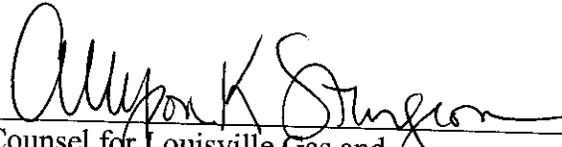
The undersigned hereby certifies that a true and correct copy of the foregoing was served on the following persons on the 12th day of August 2004, United States mail, postage prepaid:

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