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October 26, 2011

VIA HAND DELIVERY

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

RE: ***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

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 two originals and fifteen copies each of the Joint Response of Kentucky Utilities Company and Louisville Gas and Electric Company to the Motion of The Sierra Club and Natural Resources Defense Council to Depose Witnesses in the above-referenced matters. Please confirm your receipt of these filings 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.

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

Yours very truly,

Kendrick R. Riggs

KRR:ec
Enclosures
cc: Parties of Record

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COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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:

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 OF KENTUCKY UTILITIES COMPANY AND LOUISVILLE GAS AND ELECTRIC COMPANY TO THE MOTION OF THE SIERRA CLUB AND NATURAL RESOURCES DEFENSE COUNCIL TO DEPOSE WITNESSES

Kentucky Utilities Company ("KU") and Louisville Gas and Electric Company ("LG&E") (collectively, the "Companies") respectfully request that the Commission deny the motion ("Motion") of the Sierra Club and the Natural Resources Defense Council (collectively, the "Movants") to take depositions of the Companies' witnesses for the following reasons: (1) the November 9 hearing in this matter is imminent and will provide an opportunity for Movants to cross examine the Companies' witnesses, each of whom have already filed sworn testimony and each of whom will attend the hearing; (2) granting the Motion at this stage would have the practical result of causing portions of cross-examination to take place out of the presence of the Commissioners and will increase the parties' costs and disrupt their efforts (as well as those of Commission Staff) to prepare for the hearing; and (3) the Motion is untimely, coming after the

time prescribed by the procedural order for parties to conduct discovery has passed and testimony has been filed.

I. AS THE COMMISSION HAS HELD, DEPOSITIONS ARE UNNECESSARY WHEN, AS HERE, MOVANTS WILL SOON BE ABLE TO EXPLORE ALL RELEVANT ISSUES WITH THE WITNESSES AT HEARING.

Deposing witnesses at this late stage of the proceedings is duplicative and unnecessary. As even the Movants recognize, they will have a full opportunity to examine these same witnesses at the hearing in a matter of days.[1] Under these circumstances, the Commission has been quick to exercise its discretion pursuant to KRS 278.340 to deny a motion to take depositions, reasoning that "[a]ll relevant issues about which [movants] seek to depose ... witnesses may be thoroughly explored ... at the December 11, 1990 hearing."[2] Similarly, in Case No. 99-498,[3] the Commission made it abundantly clear that a deposition is entirely unnecessary when a key witness will be present at hearing: although it directed BellSouth to produce a key employee to testify at the hearing in that case, it denied Bluestar Networks' motion to depose that same BellSouth employee.

Here, each of the witnesses has already provided sworn testimony and will be on the stand and available for cross examination at the hearing beginning on November 9. There is no reason to require these witnesses to testify twice in less than a two-week period.

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[1] Motion, at 3 (admitting that the "issues could be explored" at the hearing, but arguing for the "efficiency" of taking depositions as well).

[2] *In the Matter of An Investigation of Toll and Access Charge Pricing and Toll Settlement Agreements for Telephone Utilities Pursuant to Changes to be Effective January 1, 1984,* Case No. 8838, Phase I; *Detariffing Billing and Collection Services,* Admin. Case No. 306 (Dec. 6, 1990) (consolidated cases).

[3] *In the Matter of the Interconnection Agreement Negotiations Between Bluestar Networks, Inc. and BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996* (April 28, 2000).

II. CONDUCTING DEPOSITIONS AT THIS STAGE OF THE PROCEEDINGS WOULD BE WASTEFUL AND DISRUPTIVE.

Movants essentially ask that the Companies – and probably all of the parties to the case, along with Commission Staff, and their attorneys,[4] -- convene *twice* in less than two weeks for the examination of three of the Companies' witnesses -- and, despite the November 9 hearing date, Movants also claim to "reserve the right" to depose *additional* witnesses.[5] The grounds for their request are an alleged desire for "efficiency"[6] and need to "eliminate any element of surprise."[7]

Given the truly staggering mass of information that has already been produced in this case, together with the sworn testimony already filed by the witnesses Movants seek to depose, Movants' alleged fear of surprise and claim of efficiency do not hold water. In responding to the 947 requests for information and subparts through two rounds of discovery, the Companies have produced over 514,000 pages of printed and electronic discovery. In providing over a *half million* pages of information, there is no question that the intervenors and Commission Staff have issued thorough data requests to which the Companies have replied fully and in good faith. The Companies' cases in chief are of record, the witnesses the Movants seek to depose have already filed their testimony, and the issues are on the table for all to see. There will be no surprise and there is no efficiency in conducting last-minute multiple depositions of individuals who have provided sworn testimony and who will be at the hearing.[8]

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[4] It is unlikely that the parties or their attorneys could comfortably permit these depositions of key witnesses to proceed in their absence.
[5] Motion at 4, n. 1.
[6] Motion at 4.
[7] Motion at 3.
[8] Movants propose to take the depositions of the witnesses who are also responsible for preparing the information requested by the Commission in its October 24, 2011 Order, the responses to which are due by November 4, 2011.

III. THE MOTION IS UNTIMELY AND IMPROPER.

Movants were granted intervention based in part on the Commission's finding that Movants' participation would not "unduly complicat[e] or disrupt[]" the Commission's review of these cases.[9] But undue complication and disruption would be the automatic result of tacking depositions onto the procedural schedule at the eleventh hour. The procedural schedule has never included depositions, even though it has been amended, without objection, upon these same Movants' request.[10] Not until now, a mere 11 business days before the hearing, and months after the date for Movants to seek discovery from the Companies, do Movants seek to amend the procedural schedule by demanding depositions.[11] If Movants wished to conduct discovery by means of depositions, they should have filed a motion to modify the procedural order to include depositions months ago. They did not do so.

Movants cite no Commission or other administrative cases in support of their extraordinary motion. They cite only two court cases, *LaFleur v. Shoney's, Inc.*, 83 S.W.3d 474 (Ky. 2002) and *Cooper v. Cooper*, 2010 WL 1328656 (Not Reported in SW3d) (Ky. App. 2010). Neither case is germane. Both opinions contain a general discussion of the purposes of pretrial discovery in civil lawsuits, not PSC proceedings where sworn testimony is required to be filed before the hearing actually takes place. The purpose of depositions in lawsuits – simplification and clarification of issues, reduction in the element of surprise, and the like – is normally served in PSC proceedings by the requirement that sworn testimony be provided *in writing* prior to the hearing.

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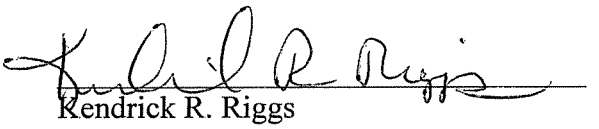
[9] PSC Order of July 27, 2011, at 8.
[10] PSC Order of October 3, 2011 (allowing Movants to file supplemental testimony by September 23).
[11] The June 28, 2011 procedural order in these cases demonstrates the Commission's concern for efficiency in a case that is, after all, circumscribed by a six-month deadline, requiring that "[a]ny ... motions relating to discovery ... shall be filed upon four business days' notice or the filing party shall explain, in writing, why such notice was not possible."

Moreover, it is not the general practice of the civil courts to permit parties to ignore scheduling orders or to conduct last-minute discovery. *See, e.g., Humana of Kentucky, Inc. v. McKee,* 834 S.W.2d 711, 724 (Ky. App. 1992) (upholding the trial court's denial of a motion to depose witnesses filed "less than one month prior to trial" on the ground that it was "untimely").

Nothing justifies Movants' eleventh hour request for depositions, particularly as the very witnesses they seek to examine will be available at hearing in less than two weeks. Movants know exactly what the witnesses will say in their direct testimony. They have known for months, because the testimony was filed on June 1, 2011 or five months before the November 9, 2011 hearing. The parties to this case, as well as the Commission Staff, should be permitted to prepare for hearing rather than participate in the burdensome, expensive, and duplicative process Movants seek.

Dated: October 26, 2011

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Joint Response was served via U.S. mail, first-class, postage prepaid, this 26th day of October 2011 upon the following persons:

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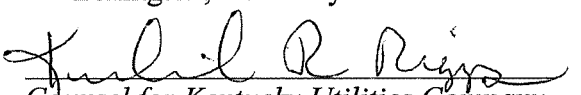

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