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PUBLIC SERVICE
COMMISSION

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of: Case No. 2011-11162

THE APPLICATION OF LOUISVILLE GAS AND ELECTRIC COMPANY [etc.]
FOR RECOVERY BY ENVIRONMENTAL SURCHARGE

REPLY TO LG&E OPPOSITION
TO THE MOTION TO INTERVENE.

INTRODUCTION.

The Petitioner opposes intervention based on as narrow a reading as possible of the statute, the administrative code, and on inapposite, nonprecedential caselaw.

Intervention should be granted because (1) the issues raised in the motion have not been raised by the Honorable Attorney General, and even so, (2) intervention by the movant “is likely to present issues or to develop facts that assist the commission in fully considering the matter.”

Reply to Opposition.

In opposition, the petitioner conjures up a notion that the issues or facts likely to be presented could be “unduly” complicated, or worse, that disruptive. This notion rests upon ...? ...nothing, expressly identified in the opposition. It points to no issue raised in the motion that it too complicated for the agency to consider. The rules of practice before the agency disallow disruption, and those rules will be honored by the intervenor.

The opposition urges several questionable legal arguments. It contends that the environmental surcharge statute, which contemplates review of economic impact, somehow prohibits consideration of the impact on local governmental budgets. No word, no clause, no phrase in K.R.S. §278.183(2) states or implies that, or puts any ‘blindness’

on the commission. In fact, the (2) of the surcharge statute (cited at fn. 15 of the opposition) requires that the petitioner “plan shall include” data on the impact on “individual rate classes,” which surely is inclusive of rates charged to “classes” of city, county, and local government users. The commission must assess what is “reasonable,” and the commission is not as hampered in its inquiry as the opposition urges.

Next, the opposition urges that the unpublished *EnviroPower* decision precludes intervention in an environmental surcharge proceeding (cited at fn. 13 of opposition, but not provided for commission to consider). The *EnviroPower* case does not interpret the surcharge statute, but rather an “interested parties” standard in another statute, which says “after any public hearing which the commission may in its discretion conduct for all **interested parties** [*em. add.*].” In opposition, this is miscast as applicable to all matters. Wholly ignored is the finding in *EnviroPower* that there is a express “statutory limitation under KRS 278.040(2) [on] the person seeking intervention,” and a disappointed bidder is not among the “interested parties” within that statute.

EnviroPower is not as universally applicable as the opposition would ask to be believed. The environmental surcharge statute does not have the “statutory limitation” considered in *EnviroPower*. Had the legislature wanted it there, then it would be there; conversely, the absence of that limitation indicates that intervention in a surcharge proceeding is more permissive than in matters with such a “statutory limitation.”

On the challenge to standing, in place of citation to numerous cases on the zone of interest that enable intervention in a ratemaking proceeding, suffice it to say that the second part of 807 KAR 5:001 §3.8(b) is very permissive, and not limited by the first part of that rule. Unless it can be shown that the issues or facts are “unduly complicating or

disrupting,” which sounds like a very high standard, then intervention should not be barred. The second part of rule 3.8(b) serves to invite, not exclude, the presentation of “issues or ... facts that assist the commission in fully considering the matter.”

Conclusion.

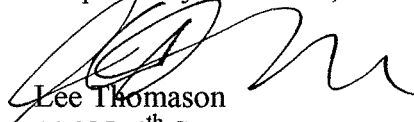
The opposition intends to suppress issues and fact that may assist this commission in fully considering the matter. It would restrict the scope of what the commission may consider, based on arguments not grounded in the express terms of the applicable statute, or in caselaw pertaining that statute.

It recalls the anecdote of someone approaches you, and asks for your opinion, but then when you start to opine, they retort ‘who asked you what you think!’ LG&E sends a notice in its bill, informing of and soliciting input on its environmental surcharge plan, but when input is offered, then it acts to suppress comment.

Based on the foregoing, the opposition to intervention should be viewed as urging limits on this commission that are not stated in the statutory or regulatory law, nor in the caselaw cited by the opposition. The motion should be granted for full intervention.

Date: *29 JUNE 2011*

Respectfully submitted,



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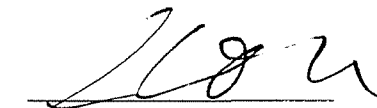
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I certify that the foregoing service was effected on this 29th day of June 2011.



Charles L. Thomason