

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JOINT APPLICATION OF LOUISVILLE GAS AND)	
ELECTRIC COMPANY, ASSOCIATION OF)	
COMMUNITY MINISTRIES, INC., PEOPLE)	
ORGANIZED AND WORKING FOR ENERGY)	CASE NO.
REFORM, AND KENTUCKY ASSOCIATION FOR)	2007-00337
COMMUNITY ACTION, INC. FOR THE)	
ESTABLISHMENT OF A HOME ENERGY)	
ASSISTANCE PROGRAM)	

O R D E R

On August 20, 2007, Robert L. Madison, a residential electric customer of Louisville Gas and Electric Company ("LG&E") filed a request for full intervention in this case. Also on August 20, 2007, Mr. Madison filed data requests seeking information from LG&E, the Association of Community Ministries, Inc. ("ACM"), People Organized and Working for Energy Reform ("POWER"), the Kentucky Association for Community Action, Inc. ("KACA"), and the Attorney General of the Commonwealth of Kentucky ("AG").

In his motion for full intervention, Mr. Madison contends that he has a special interest in the case which is not otherwise adequately represented. Mr. Madison asserts that, through his participation, he would likely present issues or develop facts that would assist the Commission without complicating or disrupting the proceedings. Mr. Madison notes several previous LG&E cases in which he was granted full

intervention, and states his belief that the current case is a continuation of Case No. 2001-00323.¹ Mr. Madison further contends that he is a “customer rep.”

On August 21, 2007, KACA filed its objection to Mr. Madison’s full intervention and moved to strike the data request that Mr. Madison served on KACA. KACA contends that any interests Mr. Madison may have in this case are fully and adequately represented by the AG, who has already been granted intervention. KACA argues that Mr. Madison’s intervention is likely to cause undue delay in this case, as illustrated by the numerous data requests issued by Mr. Madison prior to being granted the right to intervene as a full party and by directing the requests to organizations other than LG&E, which has not been authorized by prior Commission Order.² In its motion to strike the data requests, KACA again notes that Mr. Madison has not been granted intervention in the case and that the procedural schedule did not permit the filing of data requests directed to KACA.³

Also on August 21, 2007, LG&E filed its objection to Mr. Madison’s request for intervention and data request. LG&E argues that Mr. Madison does not satisfy either condition for intervention as prescribed by 807 KAR 5:001, Section 3(8), and contends that Mr. Madison “has proven to be an excessively complicating or disrupting presence

¹ Case No. 2001-00323, Joint Application of Louisville Gas and Electric Company, Metro Human Needs Alliance, People Organized and Working for Energy Reform, Kentucky Association for Community Action, and Jefferson County Government for the Establishment of a Home Energy Assistance Program.

² KACA’s Objection to Full Intervention by Robert L. Madison at 1.

³ Motion to Strike Data Request of Robert L. Madison Directed to KACA at 1.

in the proceedings in which he has been allowed to participate.”⁴ LG&E cites numerous references to Mr. Madison’s conduct in Case No. 2004-00304⁵ in support of LG&E’s objection to Mr. Madison’s intervention in this case. LG&E notes that Mr. Madison was denied full intervention in Case No. 2004-00304 for the following reasons: (1) he did not qualify to testify as an expert witness because of his lack of education and professional training; (2) he was not likely to present issues or develop facts that would assist the Commission in considering the case without unduly complicating or disrupting the proceedings; and (3) he had not alleged any interest in the case that differed from that of other residential customers of LG&E. Although Mr. Madison was initially granted limited intervention in Case No. 2004-00304, the Commission subsequently revoked Mr. Madison’s limited intervention status citing his inability or unwillingness to conform to the restrictions imposed upon a limited intervenor.⁶

LG&E further notes Mr. Madison’s practice of filing inflammatory and irrelevant testimony in previous cases in which he has been granted full intervention. LG&E argues that Mr. Madison has already displayed a lack of candor or knowledge concerning the current Home Energy Assistance (“HEA”) program as the current case is

⁴ Objection to Request of Mr. Robert L. Madison for Full Intervention and to Data Request of Robert L. Madison at 1.

⁵ Case No. 2004-00304, 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.

⁶ Objection to Request of Mr. Robert L. Madison for Full Intervention and to Data Request of Robert L. Madison at 2-4.

not a continuation of Case No. 2001-00323, but instead seeks approval of a 5-year HEA program based upon the HEA pilot program approved in Case No. 2004-00304.⁷

LG&E contends that Mr. Madison has no special interest in this case and that his interest does not differ from that of any other LG&E residential customer. LG&E argues that 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, citing previous filings in cases by Mr. Madison and previous Commission Orders concerning Mr. Madison's lack of experience and qualifications.⁸ In view of Mr. Madison's past actions as a limited intervenor, LG&E states that the Commission should deny his motion to intervene.⁹

Concerning its objection to Mr. Madison's data requests, LG&E states that Mr. Madison has not been granted intervention in this case and requests that the Commission strike from the record the questions contained in the data request.¹⁰

On August 22, 2007, the AG filed his objection to the motion of Mr. Madison for full intervention and moved to strike the data requests submitted to his office. The AG argues that pursuant to KRS 367.150(8), his office has the right and obligation to appear before the Commission to represent consumers' interests and that his request to intervene in this case was granted by the Commission's August 14, 2007 Order and thus the consumer interests are already adequately represented. The AG details how

⁷ Id. at 6.

⁸ Id. at 9-10.

⁹ Id. at 11-12.

¹⁰ Id. at 6.

Mr. Madison fails to demonstrate having a special interest not already represented. The AG notes that, based on prior cases, Mr. Madison has proved that his presence serves to unduly disrupt or complicate the proceedings in which he participates. The AG contends this behavior is demonstrated in the current case by Mr. Madison's issuance of untimely data requests without first obtaining the status of a party.¹¹

On August 23, 2007, POWER and ACM filed their objection to Mr. Madison's request for full intervention and the data requests served on POWER and ACM. POWER and ACM cite the same objections to Mr. Madison's full intervention as those noted by the other parties in this case. POWER and ACM request that they be allowed to disregard the data requests issued by Mr. Madison.¹² The Commission will treat POWER and ACM's request to disregard the data requests as a motion.

On August 28, 2007, Mr. Madison filed a response to the various objections to his petition for full intervention and motions to strike his data requests. Substantively, Mr. Madison argues that the issues presented in the instant matter are similar to the issues raised in prior LG&E HEA proceedings in which he has been involved since 1999. In particular, Mr. Madison notes that there is no information concerning the AG's role in LG&E's proposed HEA program and no information regarding an agreement on any part of the LG&E HEA program. Mr. Madison further notes that LG&E's refusal to provide an HEA match is another recurring issue.

¹¹ AG's Objection to the Motion of Robert L. Madison for Full Intervention and Motion to Strike the Data Requests Submitted to the AG at 1-3.

¹² Objection of POWER and ACM to Full Intervention of Robert Madison and to Data Requests of Robert L. Madison at 2-3.

Regarding the objections that Mr. Madison fails to qualify as an intervenor due to his lack of relevant educational and professional training, Mr. Madison states that he has a bachelor of arts degree in biology from the University of Louisville and that he has worked as a cartographer. Mr. Madison argues that no educational or technical qualifications are necessary to be an intervenor. He further argues that this case is unlikely to raise any technical matters unfamiliar to him.

Mr. Madison contends that he has a special interest that is differentiated from the interests of the public at large. Citing the written public comments contained in Case No. 2001-00323, Mr. Madison asserts that there are at least two major opinions concerning the HEA program. Mr. Madison states that there is a relatively small percentage of customers who would benefit from the HEA program and favor it, but a relatively large percentage of customers who are barred from receiving HEA and, therefore, oppose the program. Mr. Madison concludes that the general public is not aware of the specific issues, law, and regulations concerning the HEA program and cannot formulate positions without disclosure of relevant information.

Based on the motions and responses and being otherwise sufficiently advised, the Commission finds that Mr. Madison does not have a special interest in this proceeding which is not otherwise adequately represented. Although Mr. Madison asserts in his Request for Full Intervention that he has a special interest, he fails to provide any factual support for his assertion. Mr. Madison also makes a similar unsupported claim that he is a “customer rep.” The fact that Mr. Madison holds a particular position on issues pending in this case does not create the requisite “special interest” to justify full intervention under 807 KAR 5:001, Section 3(8)(b).

The Commission further finds that Mr. Madison's intervention is not likely to present issues or develop facts that assist the Commission in fully considering this matter without unduly complicating or disrupting the proceedings. The Commission notes that Mr. Madison has been denied full intervention in three prior cases¹³ based upon the finding that he lacks the education and professional training to testify as an expert witness. To date, Mr. Madison has not sufficiently established that he possesses the educational and professional background to intervene as an expert witness in this matter.

Having determined that the requisites of 807 KAR 5:001, Section 3(8)(b), have not been satisfied, the Commission will deny Mr. Madison's request for full intervention. Considering that the AG has been granted full intervention in this proceeding, the Commission finds that Mr. Madison is not entitled to limited intervention. The Commission will grant the various motions filed by KACA, LG&E, the AG, POWER, and ACM to strike Mr. Madison's data requests.

IT IS THEREFORE ORDERED that:

1. Mr. Madison's motion for full intervention is denied.
2. The motions of KACA, LG&E, the AG, POWER, and ACM to strike the data requests submitted by Mr. Madison are granted.

¹³ Case No. 2003-00266, Investigation into the Membership of Louisville Gas and Electric Company and Kentucky Utilities Company in the Midwest Independent Transmission System Operator, Inc.; Case No. 2003-00433, An Adjustment of the Gas and Electric Rates, Terms, and Conditions of Louisville Gas and Electric Company; and Case No. 2004-00304.

Done at Frankfort, Kentucky, this 14th day of September, 2007.

By the Commission

Commissioner Clark Abstains.

ATTEST:



Executive Director