

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

In the matter of: : CASE NO. 2012-00222

THE APPLICATION OF LOUISVILLE GAS & :  
ELECTRIC COMPANY FOR AN ADJUSTMENT :  
OF ELECTRIC AND GAS RATES, A :  
CERTIFICATE OF PUBLIC CONVENIENCE :  
AND NECESSITY, APPROVAL OF GAS SERVICE :  
LINES AND RISORS, AND A GAS LINE :  
SURCHARGE :

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**HESS CORPORATION’S RESPONSE TO LG&E COMPANY’S PETITION FOR  
RECONSIDERATION AND OBJECTION TO HESS CORPORATION’S  
MOTION FOR RECONSIDERATION**

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Hess Corporation (“Hess”) respectfully submits this Response to LG&E Company’s (“LG&E”) Petition for Reconsideration and Objection to Hess Corporation’s Motion for Reconsideration.

**I. BACKGROUND**

Hess initially requested full intervention in the above action. After several Motions and Responses/Replies by both Hess and LG&E, the Commission granted intervention to Hess on October 2, 2012 on the issue of volumetric thresholds but denied intervention on the issues of balancing frequencies and balancing tolerance bands.

Thereafter, Hess filed a Motion for Reconsideration on October 5, 2012 asking the Commission to reconsider allowing Hess to: (1) intervene on balancing frequencies; (2) intervene on balancing tolerance bands; and (3) fully intervene.

LG&E filed a Petition for Reconsideration and Objection to Hess Corporation’s Motion for Reconsideration on October 8<sup>th</sup> arguing three grounds: (1) Hess attempts to place its arguments regarding balancing frequencies and balancing tolerance bands into the record

through its motion; (2) Hess fails to explain how it satisfies the statutory grounds for intervention; and (3) Hess unduly disrupts this proceeding.

## **II. SUMMARY OF HESS' ARGUMENT FOR RECONSIDERATION**

The Commission's Order granting intervention on October 2, 2012 indicates that, "[a]lthough Hess' application to intervene also states its concerns about balancing frequencies and balancing tolerance band, these issues were not included in the Commission's Order in Case No. 2010-00146 as issues to be reviewed in this case, and they will not be included in Hess' limited intervention."

Hess' Motion for Reconsideration requests review of the October 2, 2012 Order and it suggests that the Commission may have unduly tightened the parameters of its intervention in light of: (1) LG&E explaining by its own admission how balancing frequencies and tolerance bands are intrinsically tied to participation thresholds<sup>1</sup> and how LG&E seeks to alter its gas transportation rate design and tariffs in this matter with changes to the balancing frequencies and tolerance bands<sup>2</sup>; (2) Hess' expert witness, John Mehling, explaining the critical differences between LG&E's balancing tolerance bands and frequencies and other Kentucky LDCs and the negative effect that LG&E's proposed tolerance bands and balancing frequencies will have on gas transportation suppliers<sup>3</sup> and LG&E customers; and (3) the Commission's previous holding in Case No. 2010-00146 including "review of each LDC's [transportation] tariffs and rate design in each LDC's next general rate proceeding."<sup>4</sup>

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<sup>1</sup> Direct Testimony of Clay Murphy ("Murphy Testimony"), Case No. 2012-00222, at 29 (dated Jun. 29, 2012)( In his testimony, Mr. Murphy admits that the basis for ratcheting down the tolerance bands for Rates FT and PS-FT is "in part designed to accommodate the system flexibility that will be required to serve customers who will now be eligible for transportation service under Rider TS-2 [due to LG&E's proposed reduction of the TS-2 participation threshold]."

<sup>2</sup> *Id.*

<sup>3</sup> See Direct Testimony of John Mehling on behalf of Hess Corporation filed October 3, 2012 pp. 10-13.

**A. HESS' MOTION FOR RECONSIDERATION HAS MERIT AND IT IS NOT PUT FORTH TO UNDULY COMPLICATE THESE PROCEEDINGS**

Hess' Motion for Reconsideration asked for three things: (1) to intervene on balancing frequencies; (2) to intervene on balancing tolerance bands; and (3) to fully intervene. First, Hess understands that this is a general rate increase case for LG&E and not a docket entirely addressing natural gas retail competition programs. However, the Commission has clearly declared that, "there was a need to review the transportation tariffs of natural gas local distribution companies in their next base rate proceeding".<sup>5</sup> Allowing Hess to intervene on the tolerance band and balancing frequency issues is reasonable given (i) that balancing tolerance bands and balancing frequencies are part of LG&E's transportation tariffs;<sup>6</sup> and (ii) that LG&E seeks to ratchet balancing frequencies and balancing tolerance bands down in this very proceeding.<sup>7</sup>

As such, Hess' Motion for Reconsideration has merit and it is not to disrupt these proceedings, but rather to make sure that the Commission has a full evidentiary record from which it can rule on these issues. Without consideration of these issues, LG&E could reduce gas transportation threshold levels, but see no corresponding increase in gas transportation customers or gas suppliers coming into LG&E's service territory. For example, by decreasing thresholds but also ratcheting down balancing frequencies and balancing tolerance bands, LG&E is creating a paradigm where gas transportation suppliers cannot economically participate in the LG&E

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<sup>4</sup> (emphasis added) Case No. 2010-00146, Final Order, dated December 28, 2010, p. 23.

<sup>5</sup> Case No. 12-00222, Order of October 2, 2012 at p. 5.

<sup>6</sup> Fn. 1 *supra*

<sup>7</sup> *Id.*

market, which will directly hurt consumers by reducing competition in the marketplace. Such an outcome is not in the public interest or consistent with Case No. 2010-00146.<sup>8</sup>

Contrary to LG&E's Objection<sup>9</sup>, Hess' Motion for Reconsideration merely by including references to testimony and discussion regarding balancing frequencies and balancing tolerance bands creates no harm to LG&E. First of all, motions and argument of counsel are not evidence<sup>10</sup> and the only *evidence* in the record regarding balancing tolerance bands and balancing frequencies would be the testimony of LG&E employee, Clay Murphy and Hess employee, John Mehling – Hess has already agreed to strike portions of John Mehling's testimony regarding balancing frequencies and balancing tolerance bands if the Motion for Reconsideration is denied. By extension and in an effort to simplify matters, if the Commission strikes the testimony related to balancing frequencies and balancing tolerance bands, Hess would also agree to a blanket order striking references to John Mehling's testimony on these specific issues anywhere within this docket. Notably, after the October 2, 2012 Order denying intervention on balancing tolerance bands and balancing frequencies, Hess also sought to address its concern over balancing tolerance bands and balancing frequencies in a reasonable manner by agreeing to strike testimony addressing those issues if the Motion for Reconsideration is denied.<sup>11</sup>

**B. Hess Meets the Standard for Intervention**

After several Motions and Responses/Replies by both Hess and LG&E, on October 2, 2012, the Commission granted Hess limited intervention on the issue of gas transportation

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<sup>8</sup> The EIA data on marketer and LDC prices for commercial customers, contrary to the data on prices for residential customers, reflects that the average marketer price was lower than the average LDC price in the majority of states. *see* PSC Final Order (2010-00146) dated December 28, 2010, p. 20 (referencing Appendix C).

<sup>9</sup> See, LG&E's Objection, p.2.

<sup>10</sup> "Evidence" being, "[s]omething (including testimony, documents, and tangible objects) that tends to prove or disprove the existence of an alleged fact." Black's Law Dictionary, Second Pocket Edition, 1996.

thresholds.<sup>12</sup> In its original motion for intervention in this matter and correlating reply, Hess did not expand upon the intricacies of the balancing frequencies and balancing tolerance bands and their corresponding relationship to a viable gas transportation market because inclusion of substantive information regarding these two issues appeared unnecessary and premature for a motion to intervene.

After the October 2, 2012 Order, Hess submitted its Motion for Reconsideration to specifically explain (i) why LG&E's proposed tolerance bands and balancing frequencies are intrinsically tied to its proposed gas transportation thresholds; and (ii) that Hess will present evidence in this case to develop facts that will assist the Commission in fully considering the matter without unduly complicating or disrupting the proceeding. And, to the extent there remains questions on Hess' meeting the standard for intervention above and beyond the grant of limited intervention thus far; Hess reincorporates the arguments set forth in its original motion for full intervention filed on September 17, 2012 as if completely set forth herein and Hess submits that for the additional reasons set forth in its Motion for Reconsideration, this Response and testimony of John Mehling, Hess is likely to present issues (e.g. issues on balancing frequencies or balancing tolerance bands) or develop related facts that assist the Commission in fully considering the matter of gas transportation without unduly complicating or disrupting the proceeding consistent with 807 KAR 5:001 §3(8)(b) and the holding of Case No. 2010-00146.<sup>13</sup> Furthermore, as the Commission can resolve the matter of balancing frequencies or balancing tolerance bands one way or another with one Order – Hess' request is not unduly complicating this proceeding.

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<sup>11</sup> See Hess' Response to LG&E Company's Motion to Strike the Testimony of John Mehling filed October 10, 2012 and the letter of undersigned counsel dated October 3, 2012 to the executive director of the Commission.

<sup>12</sup> Case No. 12-00222, Order of October 2, 2012 at p.6 (emphasis added).

<sup>13</sup> (emphasis added) Case No. 2010-00146, Final Order, dated December 28, 2010, p. 23

Regarding full intervention, Hess respectfully disagrees with the Commission's previous ruling denying full intervention for Hess in the October 2, 2012 Order. However, as mentioned above, Hess understands that this is general rate case and not a gas transportation-only docket. For all practical purposes, Hess' Motion for Reconsideration specifically seeks intervention on the additional issues balancing frequencies and balancing tolerance bands and whether full intervention or limited intervention is the best means to present evidence on these matters is a distinction that has little substantive difference *in this proceeding* provided Hess can address these two additional issues which are intricately involved with gas transportation participation thresholds.<sup>14</sup>

Additionally, contrary to LG&E's argument<sup>15</sup>, Hess complied with the procedural schedule by filing testimony within the times prescribed by the Commission. If Hess had filed its testimony with no mention of balancing tolerance bands and balancing frequencies along with filing its motion for reconsideration, and the Commission later granted the motion for reconsideration, then Hess would have had to file a motion for leave to file its complete testimony (addressing balancing frequencies and balancing tolerance bands) out of time with the procedural schedule.

Finally, LG&E takes issue<sup>16</sup> with the fact that Hess referenced that, "Hess reserves the right to file Supplemental Testimony" in its testimony. Hess withdraws this suggestion as it was merely superfluous language added at the end of testimony. Hess will continue to comply with the Procedural Schedule as set forth in the September 25, 2012 Order.

WHEREFORE, Hess respectfully requests that the Commission grant Hess intervention on the issues of balancing frequencies and balancing tolerance bands beyond the grant of limited

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<sup>14</sup> See fn.1 above.

<sup>15</sup> See LG&E's Objection, p. 5.

intervention of gas transportation thresholds and Hess respectfully requests that the Commission overrule LG&E's Objection.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

In accordance with Ordering Paragraph No. 10 of the Commission's June 22, 2012 Order, this is to certify that Hess' October 12, 2012 electronic filing has been transmitted to the Commission on October 12, 2012; that there are currently no parties exempt from participation by electronic means in this proceeding; that an original and one copy of the filing is being mailed to the Commission on October 12, 2012; and that on October 12, 2012 electronic mail notification of the filing will be provided to the following:

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<sup>16</sup> See LG&E's Objection, p. 4.

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