

**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 INC.'S REPLY TO LG&E'S RESPONSE AND OBJECTION TO  
HESS INC.'S INTERVENTION MOTION**

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Comes Hess, Inc. ("Hess") in response to LG&E's objection states as follows:

I. **Procedural Background**

Many natural gas suppliers and trade groups took part in case no. 2010-00146<sup>1</sup>, including Hess who had involvement in the case through its membership with the Retail Energy Supply Association ("RESA").<sup>2</sup>

Case number 2010-00146 demonstrated that for industrial and commercial transportation customers, using firm price contracts, such as those offered by Hess, can achieve price certainty and possibly result in lower prices<sup>3</sup> than LG&E's GCA. There by eliminating significant business risk and providing business certainty, for, among other, manufacturers of products where natural gas is a significant component of the cost of the finished goods.

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<sup>1</sup> *An Investigation of Natural Gas Retail Competition*, Case No. 2010-00146.

<sup>2</sup> *see* (Case No. 2010-00146) "Motion for Retail Energy Supplier's Association for Full Intervention", ¶1, fn.1, dated May 28, 2010.

<sup>3</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).

In Case No. 2010-00146, the Commission concluded that existing LDC transportation thresholds bear further examination.<sup>4</sup> Consequently, the Commission committed to evaluating each LDC's natural gas tariffs (including LG&E) in their next general rate case.<sup>5</sup>

This is LG&E's first general rate case since the Commission's 2010-00146 Order. LG&E's Application proposes tariff changes to the eligibility criteria for gas transportation.<sup>6</sup> Moreover, pursuant to a recent Commission order in the current case, "[t]he issue of LG&E's gas transportation thresholds is being investigated in this case as a follow-up to Case No. 2010-00146."<sup>7</sup> Hess has invested significant financial resources, including those directed at building the necessary operational, trading and sales capabilities in an effort to market natural gas supply services within LG&E's service territory. The current (and proposed) balancing frequencies, balancing tolerance bands and volumetric thresholds create insurmountable obstacles for Hess to even enter the market. Such a result would run afoul of the Commission's 2010 Order and the issues Hess seeks to present should be fully vetted by the Commission in this case.

**II. Hess meets the Requirements for full intervention in this proceeding under both possible standards for such intervention.**

Contrary to LG&E's response, there can be no reasonable doubt that Hess meets the requirements for full intervention.

**A. *Hess has a Special Interest Not Otherwise Adequately Represented***

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<sup>4</sup> see PSC Final Order (2010-00146) dated December 28, 2010, p. 23

<sup>5</sup> *Id.*

<sup>6</sup> See, p. 4, Order granting Stand Energy's Intervention.

<sup>7</sup> See, p. 4, Order granting Stand Energy's Intervention.

The first standard requires a potential intervener to have a, “special interest in the proceeding which is not otherwise adequately represented.”<sup>8</sup> “Special Interest” relates to the *rates or service* of a utility.<sup>9</sup>

LG&E’s Application proposes tariff changes to the eligibility criteria for gas transportation.<sup>10</sup> The Commission has held, “based on our findings in Case No. 2010-00146, it is appropriate to conduct an investigation in this case of the reasonableness of LG&E’s gas transportation thresholds”.<sup>11</sup> Hess is a national gas supplier for large industrial and commercial customers who had involvement in Case No. 2010-00146 through RESA and has invested significant financial resources to market natural gas supply resources within LG&E’s service territory. Contrary to LG&E’s response, Hess, as a natural gas supplier, clearly has a *special interest* in LG&E’s *rates and services*, namely those involved in LG&E’s gas transportation program. Specifically, that interest involves the current and proposed balancing frequencies, balancing tolerance bands and volumetric thresholds for transportation. There is a clear and simple nexus between the impact LG&E’s tariff has on Hess, and the supply products Hess can offer to large industrial and commercial customers within LG&E’s territory.

Once granted intervention, Hess will put forth expert testimony regarding transportation gas thresholds, current balancing frequencies and balancing tolerance bands. This differs from Stand Energy in that Stand only seeks to provide testimony on volumetric thresholds. Hess’s ability to formulate rates for customers is dependent on the confluence of all three of these

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<sup>8</sup> 807 KAR 5:001 §3(8)(b); see also: The Commission has consistently held that the “special interest” a person seeking intervention under 807 KAR 5:001, Section 3(8), must have is one relating to the *rates or service* of a utility. (emphasis added) see *In the Matter of: The 2008 Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company*, Case No. 2008-00148, Order dated July 18, 2008 at page 3; See also, the unpublished opinion of *EnviroPower, LLC v. Public Service Commission of Kentucky*, 2007 WL289328 (Ky. App. 2007) at page 3.

<sup>9</sup> *Id.*

<sup>10</sup> See, p. 4, Order granting Stand Energy’s Intervention.

<sup>11</sup> *Id.*

elements, not just volumetric threshold. Therefore, contrary to LG&E's response<sup>12</sup>, Hess has a *special interest* not otherwise adequately represented in this matter relative to Case No. 2010-00146.

Moreover, as this case is being treated as a follow-up<sup>13</sup> to Case No. 2010-00146, Hess has a *special interest* in this proceeding consistent with the Commission's previous invitation<sup>14</sup> for marketers to intervene in 2010-00146 recognizing that such an invitation now would only extend to transportation marketers in each of the LDC(s) rate cases after Case No. 2010-00146<sup>15</sup> based on the Commission's final holding in Case No. 2010-00146 that only transportation thresholds (not retail Choice programs) for all LDC(s) bear further examination.<sup>16</sup>

**B. Hess is, "likely to present issues or to develop facts that assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings."**

Contrary to LG&E's argument<sup>17</sup>, the Commission has already ruled that, "[s]ince the issue of LG&E's gas transportation thresholds is being investigated in this case as a *follow-up* to Case No. 2010-00146, we find that Stand Energy is likely to present issues or to develop facts

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<sup>12</sup> LG&E's argument is misplaced that Hess does not have a *special interest* in this matter based on the Commission's Order, August 6, 2001 *In the Matter of: Adjustment of Gas Rates of Union Light, Heat and Power Company* (Case No. 2001-00092)(holding, "[t]he Commission, have considered the motion by SEC (Stand Energy Corporation) and the response by ULH&P, and being otherwise sufficiently advised, finds that SEC has failed to demonstrate how its differing commercial goals indicate that it has a special interest in the proceeding. SEC also has failed to demonstrate any manner in which its experience will assist the Commission in reaching its decision in this matter. Therefore, the Commission finds that SEC's request should be denied.") This Order in Case No. 2001-00092 is immaterial and inapposite because (1) the case at bar is the *next rate* case after Case No. 2010-00146 and the Commission has ordered that the current docket should involve a continuation to the transportation threshold issues raised in Case No. 2010-00146 resulting in Hess having a *special interest* and (2) although it is unclear based solely on the previous Order it appears that the differing commercial goals may have been between the LDC (ULH&P) and SEC as opposed to two natural gas suppliers.

<sup>13</sup> See, p. 4, Order granting Stand Energy's Intervention.

<sup>14</sup> see PSC Final Order (2010-00146) dated December 28, 2010, p. 3, "[t]he Commission also ordered its Executive Director to cause a copy of the initiating order to be sent to the Office of the Kentucky Attorney General ("AG"), all natural gas marketers known to provide natural gas service in the Commonwealth now or in the past, representatives of consumer groups and representatives of all customer classes that have frequently intervened in Commission proceedings of this nature."

<sup>15</sup> see PSC Final Order (2010-00146) dated December 28, 2010, p. 23

<sup>16</sup> *Id.*

<sup>17</sup> LG&E's Objection p. 5-6.

that assist the Commission in our investigation of that issue”.<sup>18</sup> Hess’ involvement with Case No. 2010-00146 was as a member of RESA<sup>19</sup> and Hess is by any reasonable measure, “likely to present issues or to develop facts that assist the commission in fully considering the matter without unduly complicating or disrupting the proceedings.”<sup>20</sup>

Through its expert testimony of John Mehling<sup>21</sup>, a former LG&E Energy Marketing employee, Hess will identify concerns with the barriers to participation that differences in LG&E’s transportation thresholds, balancing frequencies and balancing tolerance bands present; compare LG&E’s gas transportation program parameters to other Kentucky LDCs; and offer recommendations to improve the gas transportation program for the Commission’s review and consideration. As such, Hess’ participation in this case will be consistent with the Commission’s directive that this docket shall include a continuation of the investigation of gas transportation thresholds from Case No. 2010-00146.<sup>22</sup>

Hess will not unduly complicate or disrupt the proceeding. The Commission granted Stand Energy’s intervention on September 14, 2012 (thirteen days ago). The procedural schedule has been amended to permit intervenor testimony to be filed on or before October 3, 2012 and Hess stands ready to file same.

LG&E faces no prejudice from Hess’ involvement and Hess’ involvement will not unduly complicate or disrupt the proceeding – especially in light of Stand Energy *already* being granted intervention. LG&E was a party to Case No. 2010-00146 and the Commission’s Final

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<sup>18</sup> (emphasis added) see, p. 4, Order granting Stand Energy’s Intervention.

<sup>19</sup> see (Case No. 2010-00146) “Motion for Retail Energy Supplier’s Association for Full Intervention”, ¶1, fn.1, dated May 28, 2010.

<sup>20</sup> 807 KAR 5:001 §3(8)(b)

<sup>21</sup> John B. Mehling’s entire career essentially has been in gas marketing and he has previously worked as the Director of Gas Operations for Proliance Energy, LLC for ten years and Sigcorp Energy for three (3) years before Proliance Energy, LLC; Mr. Mehling has abundant experience in tariff review and analysis, rate review and analysis, LDC and pipeline relationship management and volumetric management – in fact also working for LG&E Energy Marketing in 1997 and 1998.

Order in Case No. 2010-00146 clearly committed to evaluating each LDC's natural gas tariffs (including LG&E) in their next general rate case.<sup>23</sup> That Order which the Commission reaffirmed in granting of Stand Energy's intervention totally voids any assertion by LG&E that these matters will not be a part of the current matter and LG&E certainly can make no credible claim that it will face any prejudice from Hess's intervention.

**Wherefore**, Hess respectfully requests that it be granted full intervenor status in the above captioned proceeding or alternatively if the Commission is not inclined to grant full intervention Hess respectfully request the Commission grant Hess intervention on the issues set forth above, specifically, transportation gas thresholds, current balancing frequencies, and balancing tolerance bands.

Respectfully submitted,



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<sup>22</sup> *see*, p.4, Order granting Stand Energy's Intervention.

<sup>23</sup> *see* PSC Final Order (2010-00146) dated December 28, 2010, p. 23.

## CERTIFICATE OF SERVICE

In accordance with Ordering Paragraph No. 10 of the Commission's June 22, 2012 Order, this is to certify that Hess' September 27, 2012 electronic filing has been transmitted to the Commission on September 27, 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 September 27, 2012; and that on September 27, 2012 electronic mail notification of the filing will be provided to the following:

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