

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

**In the Matter of:**

**APPLICATION OF LOUISVILLE GAS AND )  
ELECTRIC COMPANY FOR AN )  
ADJUSTMENT OF ITS ELECTRIC AND GAS )  
RATES, A CERTIFICATE OF PUBLIC )  
CONVENIENCE AND NECESSITY, )  
APPROVAL OF OWNERSHIP OF GAS )  
SERVICE LINES AND RISERS, AND A GAS )  
LINE SURCHARGE )**

**CASE NO. 2012-00222**

**LOUISVILLE GAS AND ELECTRIC COMPANY'S OBJECTION TO**  
**HESS, INC.'S MOTION TO INTERVENE**

Louisville Gas and Electric Company ("LG&E") respectfully requests that the Commission deny the Motion of Hess, Inc. ("Hess") to intervene in this proceeding. Hess' Motion should be denied for four reasons: (1) Hess is only seeking intervention to advance its own commercial interests; (2) Hess does not have a special interest in this proceeding; (3) the motion fails to demonstrate that Hess will assist the Commission in the resolution of this matter; and (4) Hess' intervention would unduly complicate and disrupt the proceeding. As Hess fails to satisfy either of the requirements for intervention under 807 KAR 5:001 § 3(8), LG&E respectfully requests that the Commission deny Hess' Motion to Intervene in this proceeding.

**I. Hess Only Seeks to Intervene in this Proceeding to Advance Its Own Competitive and Commercial Interests.**

Before explaining why Hess does not meet the requirements for intervention, it is imperative that the Commission understand Hess' motivation in seeking to intervene, which is to further its own commercial interests as a competitor of LG&E. Hess' Motion is quite candid, stating that it seeks to enter the "LG&E market" and therefore wants to establish utility rates and services that will enhance its business position with regard to industrial and commercial

customers in Kentucky.<sup>1</sup> The Commission historically and correctly has refused to allow third parties to use regulatory cases to advance their respective commercial interests. The Commission should not depart from this established practice. To hold otherwise would conflict with the proposition that a person seeking intervention must “have an interest in the rates or service of a utility” because these are the only subjects within the Commission’s jurisdiction.<sup>2</sup>

Notably absent from the Commission’s jurisdiction is allowing third parties, such as Hess - that are not even customers of the utility - to utilize a regulatory proceeding to advance their financial and commercial interests. Such interests do not fall within the “rates or service” of a utility. For example, the Commission has denied motions to intervene when the movant has a pecuniary interest in the proceeding and advancing the movant’s interests is not aligned with the interest of ratepayers.<sup>3</sup> Here, because Hess admittedly seeks to enter the LG&E market and is incentivized to enhance its business position, its interests are not aligned with retail ratepayers. Similarly, the Commission has denied motions to intervene when the movant is a competitor of the utility.<sup>4</sup> In seeking to transport gas for LG&E customers, a service that LG&E currently provides, Hess intends to be a direct competitor of LG&E. Because Hess seeks intervention to advance its own pecuniary interests as part of its efforts to compete with LG&E, LG&E respectfully requests the Commission deny the Motion to Intervene.

---

<sup>1</sup> *Id.* at p. 3.

<sup>2</sup> *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) Order, July 19, 2011.

<sup>3</sup> *In the Matter of: Application of East Kentucky Power Cooperative, Inc. for a Certificate of Public Convenience and Necessity, and a Site Compatibility Certificate, for the Construction of a 278 MW (Nominal) Circulating Fluidized Bed Coal-Fired Unit in Mason County* (Case No. 2004-00423) Order, April 18, 2005.

<sup>4</sup> *In the Matter of: An Investigation of the Financial Condition of East Kentucky Power Cooperative, Inc.* (Case No. 2006-00455) Order, January 30, 2007.

## II. The Commission Should Deny the Motion to Intervene Because Hess Does Not Have a Special Interest in this Proceeding.

The Commission will grant requests for permissive intervention “only upon a determination that the criteria set forth in 807 KAR 5:001, Section 3(8), have been satisfied.”<sup>5</sup> Under the regulation, permissive intervention will only be granted if the person “has a special interest in the proceeding which is not otherwise adequately represented” or that granting full intervention “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.”<sup>6</sup> Hess alleges that because it is a gas transportation supplier, it has a special interest in this proceeding.<sup>7</sup> Hess claims that its status as a supplier is significant because in Case No. 2010-00146, *Investigation of Natural Gas Retail Competition*, the Commission stated that it would review each LDC’s natural gas tariffs and rate design in the LDC’s next general rate case.<sup>8</sup> While LG&E acknowledges that Hess is a gas transportation supplier and that the Commission is reviewing LG&E’s gas tariffs and rate design in this proceeding, neither of these points confers upon Hess a special interest in this proceeding nor otherwise lowers the regulatory standard for intervention.

With regard to Hess’ relationship with LG&E, the following facts are undisputed: (1) Hess is not a customer and is not served under a pooling rate schedule and (2) Hess has not transported gas for any LG&E customer. In short, Hess is a gas supplier that has ***no current retail business relationship*** with LG&E’s retail gas customers. Hess attempts to circumvent these undisputed facts by alleging that it has “sought to be a certified gas transportation supplier

---

<sup>5</sup> *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, July 18, 2008.

<sup>6</sup> 807 KAR 5:001 § 3(8)(b).

<sup>7</sup> Hess Motion, p. 3.

<sup>8</sup> *Id.* at p. 2.

within LG&E's territory."<sup>9</sup> Hess' claim about its intended future involvement with LG&E is inapposite and perplexing, because LG&E does not have a program to "certify" gas marketers operating in its service area. In simple terms, Hess is claiming that although it presently does not transport gas for any LG&E customer, it would like to in the future and plans to use this proceeding to advocate for favorable terms that, if achieved, would provide it a greater business opportunity to market its services to potential customers in LG&E's service territory.

The contingent interest Hess has advanced is, at best, highly speculative. The Commission has denied requests to intervene where the movant's interest is speculative and dependent upon future events. In Case No. 96-616, *In the Matter of: The Application of Winchester Municipal Utilities for Approval of the Collection of System Development Charges*, Kentucky-American Water Company sought to intervene in the proceeding because it had entered into an asset purchase agreement with Boonesboro Water Association, Inc., but no transfer of the assets would occur until the Commission approved the transaction.<sup>10</sup> In denying the motion to intervene, the Commission held that:

Kentucky-American currently has no interest in the proposed system development charge. It is not a customer of WMU and will not be affected by the proposed rate. While the Asset Purchase Agreement may eventually provide Kentucky-American with an interest in these proceedings, such interest will exist only if all conditions of the Agreement are met and the Commission approves the transfer of assets. As of this date, these conditions have not been met.<sup>11</sup>

The Commission's holding is on all fours with Hess' Motion to Intervene. In this case, Hess has no current interest in LG&E's gas tariffs and rate design because it is not a customer and does not transport gas for any LG&E customer. While Hess may eventually transport gas for an

---

<sup>9</sup> *Id.* at p. 3.

<sup>10</sup> *In the Matter of: The Application of Winchester Municipal Utilities for Approval of the Collection of System Development Charges* (Case No. 96-616) Order, August 8, 1997.

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

LG&E customer, it currently does not, and even if it did, such a relationship would not constitute a special interest. Regardless, because the conditions precedent to Hess having even a colorable special interest claim has not been met, the Commission, in keeping with its precedent, should deny the Motion to Intervene.

If the Commission permits gas suppliers that have no retail relationship with LG&E to intervene, while advantageous to the suppliers, the purpose of this case, which is to establish rates that are just and reasonable for LG&E's *customers*, will be jeopardized. For these reasons, LG&E respectfully requests that the Commission deny Hess' Motion to Intervene.

**III. The Commission Should Deny Hess' Motion to Intervene Because Hess Has Not Demonstrated that It Will Present Issues or Develop Facts that Would Assist the Commission.**

Because Hess does not have a special interest in this proceeding, it only can intervene if the Commission finds that Hess is likely to present issues or develop facts that will assist the Commission in fully considering the matter without unduly complicating or disrupting the proceeding.<sup>12</sup> Hess alleges that it can satisfy this standard because it is an "experienced and reliable competitive natural gas supplier" that will provide expert testimony regarding balancing frequencies, balancing tolerance bands, and volumetric thresholds.<sup>13</sup>

As to Hess' first claim, while Hess has experience as a gas supplier, it does not have any experience as a supplier for an LG&E customer. This is an important distinction between Hess and Stand Energy Corporation, which was permitted to intervene because the Commission found it was likely to present issues or develop facts that would assist the Commission.<sup>14</sup> Although LG&E objected to Stand Energy Corporation's intervention, Stand Energy Corporation does

---

<sup>12</sup> 807 KAR 5:001, Section 3(8)(b).

<sup>13</sup> Plaintiffs' Motion, p. 4.

<sup>14</sup> *In the Matter of: Application of Louisville Gas and Electric Company for an Adjustment of Its Electric and Gas Rates, a Certificate of Public Convenience and Necessity, Approval of Ownership of Gas Services Lines and Risers, and a Gas Surcharge* (Case No. 2012-00222) Order, September 14, 2012.

provide gas to certain LG&E customers. If the Commission finds that Hess, who does not provide gas to any LG&E customers, could likewise present issues or develop facts that would assist the Commission, this proceeding could become a continuation of Case No. 2010-00146 for all of the various third parties who wish to optimize their respective business models through the regulatory process, instead of a proceeding appropriately focused on LG&E's customers and specific rate design and tariffs.

As to Hess' second claim, simply because Hess seeks to advocate a position regarding certain aspects of LG&E's rate design and tariffs does not mean it will assist the Commission. Hess' lack of familiarity with LG&E's customers and business practices with regard to gas transportation will likely diminish the use of the expert testimony Hess seeks to provide. Moreover, the Commission has already permitted Stand Energy Corporation to intervene on the issue of LG&E's gas transportation thresholds.<sup>15</sup> For these reasons, LG&E respectfully requests that the Commission deny Hess' Motion to Intervene.

#### **IV. Hess' Intervention Would Unduly Complicate and Disrupt this Proceeding.**

Even if Hess could demonstrate that it would present issues or develop facts that would assist the Commission in this proceeding, its intervention would unduly complicate and disrupt this proceeding in contravention of 807 KAR 5:001 § 3(8). Principally, Hess' Motion to Intervene is exceedingly out of time. LG&E filed this application on June 29, 2012. Three months ago notice of the proceeding, including the proposed changes in LG&E's gas transportation tariffs, was published in newspapers for three consecutive weeks, beginning with the week of June 18, 2012. Two rounds of discovery have already been completed. Permitting

---

<sup>15</sup> *Id.* Although Hess claims that its interest is different from Stand Energy Corporation's the Commission has rejected the argument that a movant can intervene simply because it has "differing commercial goals" than other parties to the case. *In the Matter of: Adjustment of Gas Rates of Union Light, Heat and Power Company* (Case No. 2001-00092) Order, August 6, 2001.

parties to intervene at this advanced stage of the proceeding will disrupt and complicate a case that has been actively litigated by a variety of consumer groups and representatives. The Commission has repeatedly denied motions to intervene that were untimely filed.<sup>16</sup> While Hess states it will not seek to modify the procedural schedule, continuing to allow the intervention of commercial third parties at this late stage creates a complexity in the case that can prejudice LG&E's and the other consumer groups' ability to contest the positions taken by the commercial third parties.

Second, Hess' Motion acknowledges that its business objective is to enter the Kentucky market and to affect the outcome of rate design and tariffs established in this proceeding to enhance Hess's business opportunities with industrial and commercial customers within LG&E's territory.<sup>17</sup> Allowing an entity that admittedly seeks to become a competitor of LG&E to intervene solely for the business purpose of obtaining favorable terms on which to compete with the utility will unfairly disrupt and complicate this proceeding. Because Hess is not a customer and does not transport gas for any LG&E customer, its only purpose in seeking to intervene is to further its own commercial interest, which the Commission has specifically held does not warrant intervention.<sup>18</sup>

---

<sup>16</sup> See, e.g., *In the Matter of: Application of Ohio County Water District for (1) Issuance of a Certificate of Public Convenience and Necessity for Construction of the Series III Water System Improvements; (2) Authorization to Issue Series III Revenue Bonds in the Amount of \$1,890,000; and (3) Authorization to Adjust Rates to Pay for the Additional Indebtedness* (Case No. 2003-00034) Order, November 12, 2003; *In the Matter of: Application of Sprint Spectrum, L.P. on Behalf of Wirellessco, L.P. for Issuance of Certificate of Public Convenience and Necessity to Construct a Personal Communication Services Facility in the Louisville Major Trading Area* (Case No. 96-322) Order, January 17, 1997).

<sup>17</sup> Hess Motion, p. 3.

<sup>18</sup> *In the Matter of: The Application of East Kentucky Power Cooperative, Inc. for a Certificate of Public Convenience and Necessity, and a Site Compatibility Certificate, for the Construction of a 278 MW (Nominal) Circulating Fluidized Bed Coal Fired Unit and Five 90 MW (Nominal ) Combustion Turbines in Clark County, Kentucky* (Case No. 2005-00053) Order, April 18, 2005.

**V. Conclusion.**

Hess' Motion to Intervene neither sets forth a special interest in this proceeding nor demonstrates that it will present issues or develop facts that will assist the Commission in the resolution of this proceeding, but instead only seeks to further its commercial interests. Moreover, because the Motion is untimely, if Hess is permitted to intervene, the intervention and possibly subsequent interventions by other similar commercial parties would likely disrupt and complicate this proceeding. For the foregoing reasons, LG&E respectfully requests that the Commission deny Hess' Motion to Intervene. If the Commission, however, is inclined to permit Hess to intervene, LG&E respectfully requests that the Commission limit Hess' intervention to solely participate on the issue of LG&E's gas transportation thresholds.

Dated: September 19, 2012

Respectfully submitted,



Kendrick R. Riggs  
W. Duncan Crosby III  
Barry L. Dunn  
Stoll Keenon Ogden PLLC  
2000 PNC Plaza  
500 West Jefferson Street  
Louisville, Kentucky 40202-2828  
Telephone: (502) 333-6000

Allyson K. Sturgeon  
Senior Corporate Attorney  
LG&E and KU Energy LLC  
220 West Main Street  
Louisville, Kentucky 40202  
Telephone: (502) 627-2088


Robert M. Watt III  
Lindsey W. Ingram III



Monica H. Braun  
Stoll Keenon Ogden PLLC  
300 West Vine Street, Suite 2100  
Lexington, KY 40507-1801  
*Counsel for Louisville Gas and Electric Company*

**CERTIFICATE OF COMPLIANCE**

In accordance with Ordering Paragraph No. 10 of the Commission's June 22, 2012 Order, this is to certify that Louisville Gas and Electric Company's September 19, 2012 electronic filing of the foregoing Objection is a true and accurate copy of the same document being filed in paper medium; that the electronic filing has been transmitted to the Commission on September 19, 2012; that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding; and that an original and two copies in paper medium of the Objection were placed in the U.S. Mail, postage prepaid, on September 19, 2012 to be delivered to the Commission. A paper copy of the Objection has also been sent via U.S. mail to Hess, Inc.'s counsel on September 19, 2012.



*Counsel for Louisville Gas and Electric Company*