

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)	CASE NO. 2012-00222
RATES, A CERTIFICATE OF PUBLIC)	
CONVENIENCE AND NECESSITY,)	
APPROVAL OF OWNERSHIP OF GAS)	
SERVICE LINES AND RISERS, AND A GAS)	
LINE SURCHARGE)	

**LOUISVILLE GAS AND ELECTRIC COMPANY’S MOTION TO STRIKE HESS,
INC.’S TESTIMONY REGARDING BALANCING FREQUENCIES AND BALANCING
TOLERANCE BANDS**

Louisville Gas and Electric Company (“LG&E”) respectfully submits this Motion to Strike the portion of Hess, Inc.’s October 3, 2012 testimony regarding balancing frequencies and balancing tolerance bands because the Commission specifically denied Hess’ intervention with regard to these two issues.

I. The Commission Specifically Denied Hess’ Intervention Regarding Balancing Frequencies and Balancing Tolerance Bands.

Hess moved for full intervention on September 17, 2012.¹ Hess’ Motion to Intervene stated that Hess sought to file testimony on three topics relating to LG&E’s gas tariffs: (1) balancing frequencies; (2) balancing tolerance bands; and (3) volumetric transportation thresholds.² LG&E objected to Hess’s Motion to Intervene because Hess does not satisfy either regulatory standard for permissive intervention.³ LG&E requested the Commission deny Hess’ Motion to Intervene, but also requested that if the Commission was inclined to allow Hess’

¹ Hess Motion to Intervene, p. 1, 5.

² *Id.* at 3.

³ Louisville Gas and Electric Company’s Objection to Hess, Inc.’s Motion to Intervene.

intervention that it limit Hess's intervention to participate solely on the issue of LG&E's gas transportation thresholds.⁴

Following additional motion practice that reiterated the respective positions of the parties, the Commission issued an order on October 2, 2012, that stated "Hess is granted limited intervention solely to participate on the issue of LG&E's gas transportation thresholds and is *specifically denied intervention regarding the issues of balancing frequencies and balancing tolerance demands.*"⁵ Despite the Commission's clear order, Hess nevertheless filed testimony regarding LG&E's balancing frequencies and balancing tolerance demands.⁶

II. The Commission Should Strike the Portions of Hess' Testimony Regarding Balancing Frequencies and Balancing Tolerance Demands.

Hess disregarded the Commission's order in filing the testimony of John Mehling on October 3, 2012 that contained testimony on the topics for which Hess' intervention was expressly denied. Hess alleges that it plans to seek reconsideration of the Commission's order limiting its intervention to gas transportation thresholds and that if its motion for reconsideration is denied, it will agree to strike the portions of Mr. Mehling's testimony regarding balancing frequencies and balancing tolerance demands.⁷ Respectfully, the fact that an intervenor is aggrieved with a Commission's order does not permit the intervenor to disregard the order. Thus, Hess' contention that its testimony on the excluded issues should remain in the record unless and until the Commission denies its not-yet-filed motion for reconsideration is incorrect. Hess has violated the Commission's order by filing testimony on the issues for which the Commission expressly denied intervention. The Commission has previously granted motions to

⁴ *Id.* at 8.

⁵ Case No. 12-00222, Order of October 2, 2012 at p. 6 (emphasis added).

⁶ See Direct Testimony of John Mehling on behalf of Hess Corporation filed October 3, 2012.

⁷ *Id.*; see Letter to Executive Director from Matt Malone, Hess' Counsel, filed October 3, 2012.

strike when parties attempt to misuse evidence.⁸ LG&E therefore requests the Commission exercise its authority to strike the portions of the testimony pertaining to balancing frequencies and balancing tolerance demands. The specific portions LG&E requests be stricken are: page 6, lines 3-11 and 19-21; page 7, lines 1-6; page 9, lines 15-23; page 10, lines 1-4 and 20-23; page 11, lines 1-23; page 12, lines 1-23; page 13, lines 1-4 and 10-11.

III. Conclusion.

For the foregoing reasons, Louisville Gas and Electric Company respectfully requests that the Commission strike the portions of Hess, Inc.'s testimony regarding balancing frequencies and balancing tolerance demands.

Dated: October 4, 2012

Respectfully submitted,



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⁸ See, e.g., *In the Matter of: An Examination by the Public Service Commission of the Application of the Fuel Adjustment Clause of Big Rivers Electric Corporation from November 1, 1991 to April 30, 1992* (Case No. 90-360-C) Order, July 21, 1994; *In the Matter of: Kentucky Utilities Company v. Henderson-Union Rural Electric Cooperative Corporation* (Case No. 89-349) Order, May 21, 1990; *In the Matter of: Bellsouth Telecommunications, Inc. v. Brandenburg Telephone Company* (Case No. 2006-00546) Order, May 12, 2009.

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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 October 4, 2012 electronic filing of the foregoing Motion to Strike 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 October 4, 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 Motion to Strike were placed in the U.S. Mail, postage prepaid, on October 4, 2012 to be delivered to the Commission.



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