

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

**In the Matter of:**

<b>ELECTRONIC APPLICATION OF LOUISVILLE</b>	)	
<b>GAS AND ELECTRIC COMPANY FOR AN</b>	)	
<b>ADJUSTMENT OF ITS ELECTRIC AND GAS</b>	)	<b>CASE NO. 2016-00371</b>
<b>RATES AND FOR CERTIFICATES OF PUBLIC</b>	)	
<b>CONVENIENCE AND NECESSITY</b>	)	

**REPLY TO LOUISVILLE GAS AND ELECTRIC COMPANY’S OBJECTION TO  
PETITION FOR FULL INTERVENTION BY JBS SWIFT & CO**

JBS Swift & Co (“JBS”) files this reply to Louisville Gas and Electric Company’s (“LG&E” or the “Company”) objection to the Petition for Full Intervention of JBS Swift & Co. Contrary to the Company’s arguments, JBS’ interest is not common to all customers and is not adequately represented by other parties; and, JBS’ petition, whether heretofore stated or now supplemented, will identify issues and develop facts that will assist the Commission in the resolution of this matter without unduly complicating and disrupting the proceeding.

**JBS Has a Special Interest in This Proceeding That is Not Adequately Represented by  
Any Other Party**

Initially, the Company argues JBS’ intervention should be denied because its only claimed special interest is that of an electric and gas customer of LG&E and the Application may have a significant impact on the rates it pays to LG&E. First, LG&E ignores the fact that JBS is the largest pork processor in **Kentucky** and is the only entity situated to articulate its unique ratepayer status; and, second, JBS clearly stated the

electric and gas rates paid to LG&E represent a significant cost for doing business by JBS and the Application may have a significant impact on the rates paid by JBS to LG&E. The language employed by JBS regarding the significant impact on its rates is the same or similar language used by Kroger and the DOD/FEA as the basis for their being granted intervention. Hence, JBS should clearly be granted full intervention.

LG&E then characterizes JBS as simply a customer and argues the Attorney General adequately represents JBS. Specifically, LG&E claims JBS only has a “generalized interest” in the proceeding. LG&E cites to *In the Matter of: Application of Big Rivers Electric Corporation for a General Adjustment in Rates Supported by Fully Forecasted Test Period* (Case No. 2013-00199) in support of its argument for denying the intervention of JBS as merely a customer adequately represented by the Attorney General. LG&E fails, however, to note the party denied intervention in Case No. 2013-00199 was Big Rivers’ employees - the International Brotherhood of Electrical Workers whose special interest was labor costs, benefits obligations, compensation and working conditions, which could possibly affect the performance of **Big Rivers**. In the instant matter, JBS is a large industrial customer whose operations may be significantly affected by LG&E’s electric and gas rates and not merely employees of LG&E with an interest in better benefits. JBS has a special interest, which the Attorney General cannot adequately represent.

LG&E attempts to categorize JBS as just another industrial customer and, consequently, the intervention by KIUC addresses JBS’ interest. However, JBS has chosen not to be a member of KIUC because JBS does not necessarily agree with KIUC’s

stipulation of ratepayer interests; and, JBS is uncertain as to what KIUC's position may be in this case given KIUC's historical position on certain issues. See *infra*. Hence, to accept LG&E's argument might require JBS to compromise, if not potentially forfeit, its special interests which it attempts to advance. Moreover, KIUC is an association representing various industrial customers which changes on a case by case basis, even when addressing rates by the same utility company<sup>1</sup>. LG&E's argument that an industrial group's participation creates an umbrella for all industrial customers and precludes intervention by other industrial customers leads to an illogical result given KIUC's varying clients. JBS has a special interest it alone can represent and has elected to engage separate counsel to ensure its position is advanced.

In addition, the Commission has granted intervention to Wal-Mart Stores East, LP and Sam's East, Inc., and Kroger - commercial customers which have chosen to intervene independently given their different special interests. Similar to commercial customers, industrial customers may have their own special interests and request independent intervention without being tethered to other parties' positions. Such is the

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<sup>1</sup> Compare KIUC's Petition to Intervene *In the Matter of: The Application of Big Rivers Corporation for General Adjustment of Rates (Case No. 2011-00036)* (wherein KIUC represented Alcan Primary Products Corporation, Century Aluminum of Kentucky, General Partnership, Domtar Paper Co., LLC, Kimberly Clark Corporation and Aleris International, Inc.) Petition, Feb. 23, 2011, versus KIUC's Petition to Intervene *In the Matter of: The Application of Big Rivers Electric Corporation for an Adjustment of Rates (Case No. 2012-00535)* (wherein KIUC represented Domtar Paper Co., LLC, Kimberly Clark Corporation and Aleris International, Inc. but not Alcan Primary Products Corporation or Century Aluminum) Petition, December 12, 2012, and *In the Matter of: The Application of Big Rivers electric Corporation for and Adjustment of Rates (Case No. 2013-00199)* (wherein KIUC represented Domtar Paper Co., LLC, Kimberly Clark Corporation and Aleris International, Inc. but not Alcan Primary Products Corporation or Century Aluminum) Petition, June 14, 2013. Also note in Case. No. 2011-00036, KIUC's petition listed co-counsel for Alcan.

case with JBS where it has a special interest in this proceeding that it alone can address given KIUC's historical position to date. Admittedly, JBS' intervention may create difficulties for LG&E in justifying its request for an increase in rates. However, this does not translate to an undue complication or disruption of the proceeding that is not otherwise contemplated by the regulations when a party has a special interest.

**JBS Will Present Issues and Develop Facts That Will Assist the Commission in Its Decision**

In its Petition for Full Intervention, JBS provided the obvious conclusion that it would present issues and develop facts in assisting the Commission when it stated:

Operating since the early 1960s, JBS is a pork processing facility in Louisville Kentucky with 1,200 employees and annual livestock payments of \$440 million. Not only is it the only major pork processing facility in Kentucky, but it supplies pork for both domestic and international customers around the globe.

JBS is unique with its operations as an enterprise; and, thus it is the only entity which can adequately present its issues and develop its facts which will aid the Commission in its decision. More importantly, and well known to LG&E, which it has failed to disclose to the Commission<sup>2</sup>, JBS has unique load characteristics and other issues to present and facts to develop which only JBS can provide to the Commission to assist with the decision making.

JBS provides the following comments to better articulate for the Commission the issues to be presented and the facts to be developed in this proceeding. First, JBS has a

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<sup>2</sup> At footnote 9 of the Objection, the Company incredulously suggests that JBS' "operations are of a similar scope to Wal-Mart Stores East, LP and Sam's East, Inc., Department of Defense/ All other Federal Executive Agencies and the Kroger Company."

unique load profile that will be affected by changes to LG&E's Industrial Time-Of Day Primary (TODP) rate; more specifically, JBS utilizes significant power for refrigeration units that are highly sensitive to unscheduled outages, but given adequate notice may be managed for participation in the TODP or Curtailable Service Rider (CSR).

Furthermore, JBS utilizes both natural gas and electricity in ways such that cogeneration of electricity may be physically advantageous, but limited by provisions in the rate schedules, including the Standby Service (SS) rate.

As LG&E is aware, JBS has been evaluating participation in the Curtailable Service Rider over the past couple of months, and has engaged in engineering studies related to self-generation and controls of JBS's extensive refrigeration load. Given that LG&E has proposed changes to the existing CSR that would have a detrimental effect on JBS' use of the program and associated cost of electricity, JBS has a special interest in seeing that the program is adequately evaluated. It is not clear as to whether any of existing KIUC participants utilize controls on refrigeration or potentially cogeneration to fulfill obligations associated with the program. JBS will be uniquely qualified to advise the Commission on its cost and interest in utilizing the program.

In addition, the Firm Transportation gas tariff precludes the use of the schedule for generation on a baseload basis and thus forces generation customers to utilize LG&E supplied natural gas. JBS opposes this tariff provision and will bring arguments to support language that will allow third-party supplied natural gas for pre-scheduled generation. To the best of JBS' understanding, KIUC did not address this issue when it

was initially included in the tariff and JBS has no assurance therefore that they will address it again.

The Company's argument that JBS should be denied intervention because it lacks expertise or experience in rate cases is readily dismissed. As with any party having never appeared before the Commission, any lack of expertise or experience in ratemaking is the responsibility of the undersigned attorney, who in this case has 21 years of experience before the Commission. Moreover, to accept the Company's argument, virtually every potential party, if not all of them, would forever be precluded from intervening at the Commission if they have not done so in the past.

Last, LG&E maintains that the proper means for JBS to participate in this case is by filing public comments or providing oral comments at the hearing. Stated in plain terms, LG&E would have the Commission deny intervention to JBS under 807 KAR 501:001, Section 2(11)(e). This would deprive JBS of its right to meaningful due process at the hearing because it clearly meets the requirements of 807 KAR 5:001, Section 11(b)(1). Moreover, the degree of evidentiary weight assigned to any comments is very questionable given due process constraints, such as but not limited to the deprivation of other parties of the ability to cross-examine any commenter. While any written comments "shall be filed in the case record" under 807 KAR 5:001 Section 2, (11)(e)1, the person making the comments "shall not be deemed a party to the proceeding and need not be named as a party to an appeal." Importantly, if allowed only to file written comments, JBS would have no right to appeal any Commission decision to Franklin Circuit Court since it would not be a party. KRS 278.410. Again, JBS would be denied its

right to meaningful due process in this matter because it clearly meets the requirements of 807 KAR 5:001, Section 11(b) for full intervention.

**CONCLUSION**

WHEREFORE, JBS respectfully requests that it be granted full intervenor status in the above captioned proceeding and overrule or otherwise deny LG&E's objection.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "D. Howard II". The signature is stylized and cursive.

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**CERTIFICATE OF SERVICE**

I certify that the attached petition for Reply to Louisville Gas and Electric Company's Objection to Full Intervention is a true and accurate copy of the document being filed with the Commission in paper medium; that the electronic filing was transmitted to the Commission on January 3, 2017; that there are no parties that the Commission has excused from participation by electronic means in this proceeding; and that one original and six copies of the filing in paper medium are being delivered to the Commission within two (2) business days.



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Dennis G. Howard, II