

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

**In the Matter of:**

<b>APPLICATION OF LOUISVILLE GAS AND</b>	)	
<b>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</b>	)	
<b>PUBLIC CONVENIENCE AND NECESSITY</b>	)	

**LOUISVILLE GAS AND ELECTRIC COMPANY'S  
OBJECTION TO AT&T KENTUCKY'S MOTION TO INTERVENE**

Louisville Gas and Electric Company (“LG&E” or the “Company”) respectfully requests that the Commission deny the motion of AT&T Kentucky for intervention. AT&T Kentucky’s motion should be denied for two principal reasons: (1) the motion does not state or demonstrate a special interest in the proceeding that is not adequately represented; and (2) the motion fails to show that AT&T Kentucky will identify any relevant issues or develop relevant facts that will assist the Commission in the resolution of this matter without unduly complicating and disrupting the proceeding. Because AT&T Kentucky has satisfied none of the requirements for intervention under 807 KAR 5:001 § 4(11)(b), its motion should be denied.

**AT&T Kentucky Has Not Demonstrated a Special Interest in This Proceeding**

The Commission may grant AT&T’s intervention only if it meets the requirements of 807 KAR 5:001 § 4(11)(b). AT&T does not satisfy the first basis for permissive intervention, which requires a movant to demonstrate a special interest in the proceeding that is not already represented by another party to the action.<sup>1</sup>

In its motion AT&T Kentucky identifies itself as “an incumbent local exchange telephone company doing business in the state of Kentucky” and asserts that the matters in this case “may

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<sup>1</sup> 807 KAR 5:001 § 4(11)(b).

have a significant impact on, among other things, the rates terms and conditions that apply when AT&T Kentucky . . . place[s] attachments on or otherwise use poles, ducts, or other facilities of Louisville Gas and Electric Company.”<sup>2</sup> It does not identify any specific rate or tariff provision to which it objects or has concerns nor does it explain how the proposed rate schedules might affect its ability to place its attachments on LG&E poles and structures.

As an incumbent local exchange telephone company, AT&T Kentucky’s access to and use of LG&E’s poles and structures are governed by its joint use agreement with LG&E, not by any provision in LG&E’s tariff.<sup>3</sup> No provision of LG&E’s current or proposed tariff modifies or addresses the existing joint-use agreement. The current Cable Television Attachment Charges (“CTAC”) Rate Schedule applies only attachments by cable television (“CATV”) system operators to LG&E’s utility poles.<sup>4</sup> LG&E’s Pole and Structure Attachment Charges (“PSA”) Rate Schedule, which LG&E proposes in this proceeding, expressly exempts from its coverage “facilities of incumbent local exchange carriers with joint use agreements with the Company.”<sup>5</sup>

The Commission has previously rejected claims that a pole user has an interest in a rate proceeding merely because the pole owner proposes changes in the terms and conditions of service for other classes of pole users. In Case No. 2009-00549, the Commission denied a motion for intervention from a competitive local exchange carrier seeking to intervene in a LG&E rate proceeding in which LG&E proposed revisions to terms for the placement of CATV attachments. After declaring that a plain reading of the proposed tariff indicated that the rate

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<sup>2</sup> Motion at 1.

<sup>3</sup> The joint use agreement between LG&E and ATT Kentucky has existed for almost 100 years. It was originally executed on November 1, 1917 between LG&E and the Cumberland Telephone and Telegraph Company. BellSouth Telecommunications, LLC, which does business as AT&T Kentucky, is the successor interest to Cumberland Telephone and Telegraph Company. The joint use agreement was last revised in 1991.

<sup>4</sup> LG&E Tariff, P.S.C. Electric No. 10, Original Sheet No. 40. *See also Application of Louisville Gas and Electric Company for an Adjustment of Electric and Gas Base Rates*, Case No. 2009-00549 (Ky. PSC Apr. 29, 2010).

<sup>5</sup> Proposed LG&E Tariff, P.S.C. Electric No. 11, Original Sheet No. 40 (filed Nov. 23, 2016) (found at Tab 4 of the Application).

schedule at issued applied only the attachments of CATV system operators, the Commission stated:

TW Telecom is not a cable television operator and, therefore, is not eligible to take service under the existing or proposed CATV Tariff. As a telecommunications utility, TW Telecom uses LG&E's poles under the terms of a negotiated joint-use pole agreement and such agreements are not within the scope of the rate application filed by LG&E. Accordingly, the Commission finds that TW Telecom has neither a special interest in these proceedings nor will TW Telecom be likely to present issues or to develop facts that will assist the Commission in resolving this matter.<sup>6</sup>

The Commission further noted that if the carrier believed that the negotiated rates it paid to LG&E under the terms of the joint-use agreement were unreasonable or discriminatory, it had redress by filing an administrative complaint against LG&E with the Commission.<sup>7</sup>

AT&T Kentucky's situation is exactly the same as that of the local exchange carrier in Case No. 2009-00549. It has no special interest in the current proceeding. The proposed PSA Rate Schedule is not applicable to AT&T Kentucky's attachments. Its implementation will not affect AT&T Kentucky in the least. If AT&T Kentucky were to subsequently have a dispute with LG&E regarding the terms under which its facilities are attachment to LG&E's poles and structures, 807 KAR 5:001, Section 20, provides a means of redress.

In its motion, AT&T Kentucky obliquely suggests that it is also seeking intervention on behalf of "various affiliated entities [that] provide wireline and/or wireless services in Kentucky." AT&T Kentucky fails to identify these entities, the areas in which the entities purportedly serve, their relationship to AT&T Kentucky, whether these entities have ever attached facilities to LG&E poles and structures, their interests in the proposed rate schedule revisions, and the possible effects of the proposed rate revisions on their operations.

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<sup>6</sup> *Application of Louisville Gas and Electric Company for an Adjustment of Electric and Gas Base Rates*, Case No. 2009-00549 (Ky. PSC Apr. 29, 2010) at 4.

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

Section 4(11) requires specific, concrete information about the persons or entities seeking intervention. AT&T Kentucky's motion is totally devoid of any information regarding these "affiliates." It fails to provide even their names and legal status. Moreover, the motion contains no evidence to demonstrate that AT&T Kentucky possesses legal authority to seek intervention on behalf of these "affiliates." Without such basic, minimal information, there is no basis for the Commission to find that these "affiliates" possess any interest, much less a special interest, in the proposed rate schedules.

**The Commission Should Deny AT&T Kentucky's Motion to Intervene  
Because AT&T Kentucky Has Not Demonstrated That It Will Present Issues  
or Develop Facts That Would Assist the Commission**

Because AT&T Kentucky lacks a special interest in this proceeding, it may intervene only if it can show that it will present issues or develop facts that will assist the Commission without unduly complicating or disrupting the proceeding. It fails to make such a showing in its motion. AT&T Kentucky does not identify which issues or facts it intends to present and develop; instead it merely alleges that it "intends to play a constructive role in the Commission's decision-making process in this case."<sup>8</sup> Offering opinions on the generalized impact of the proposed tariff revisions that apply to others' use of LG&E utility poles and structures is best accomplished through filing public comments. Testimony on this topic will not assist the Commission in the resolution of this case. Moreover, AT&T Kentucky may also provide oral comments at the public hearing in this matter. These mechanisms ensure that AT&T Kentucky is given an opportunity to present its comments without unduly complicating the pending action.

**Conclusion**

AT&T Kentucky has not satisfied either of the bases for permissive intervention set forth in 807 KAR 5:001 §4(11)(b). AT&T Kentucky does not have a special interest that is not

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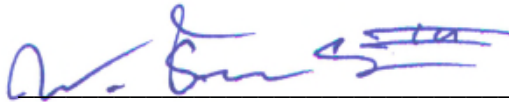
<sup>8</sup> Motion at 2.

already adequately represented by other parties, and it has not shown an ability to present issues or develop facts that will assist the Commission in considering LG&E's proposed rates without unduly complicating and disrupting this proceeding.

**WHEREFORE**, Louisville Gas and Electric Company respectfully requests that the Commission deny the motion to intervene of AT&T Kentucky.

Dated: December 29, 2016

Respectfully submitted,



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**CERTIFICATE OF COMPLIANCE**

This is to certify that Louisville Gas and Electric Company's December 29, 2016 electronic filing of the 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 December 29, 2016; that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding; and that an original and six copies, in paper medium of this Objection will be mailed to the Commission on December 29, 2016. This further certifies that a true and accurate copy of the foregoing was served, via U.S. Mail and electronic mail, on December 29, 2016, upon the following.

Cheryl Winn, Esq.  
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A handwritten signature in blue ink, appearing to read "Cheryl Winn", is written over a horizontal line.

*Counsel for Louisville Gas and Electric Company*