

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF)	
LOUISVILLE GAS AND ELECTRIC)	
COMPANY FOR AN ADJUSTMENT OF ITS)	
ELECTRIC AND GAS RATES, A)	CASE NO. 2020-00350
CERTIFICATE OF PUBLIC CONVENIENCE)	
AND NECESSITY TO DEPLOY ADVANCED)	
METERING INFRASTRUCTURE,)	
APPROVAL OF CERTAIN REGULATORY)	
AND ACCOUNTING TREATMENTS, AND)	
ESTABLISHMENT OF A ONE-YEAR)	
SURCREDIT)	

LOUISVILLE GAS AND ELECTRIC COMPANY’S
OBJECTION TO MCDONALD’S OWNERS’ MOTION TO
INTERVENE AND MOTION FOR ENLARGEMENT OF TIME

Louisville Gas and Electric Company (“LG&E” or the “Company”) respectfully requests that the Commission deny McDonald’s restaurant franchisees’ (“McDonald’s Owners”) February 9, 2021 Motion for Enlargement of Time and Motion to Intervene. Regardless of whether the standard is “excusable neglect” under the Civil Rules or “good cause” under the Commission’s explicit Order, the fact remains that “holidays and the Covid-19 pandemic” are simply insufficient to justify a 49-day enlargement of time for seeking intervention. Intervention should be denied for three reasons: (1) the attempted intervention is woefully late and portends a complication and disruption of this proceeding; (2) the request does not demonstrate a special interest in the proceeding because the stated interest is common to all customers (restaurants or not) and is adequately represented by other parties; and (3) the request fails to show that the McDonald’s Owners will identify any issues or develop facts that will assist the Commission in the resolution of this matter without unduly complicating and disrupting the proceeding. Because the

McDonald's Owners have not satisfied the requirements for intervention under 807 KAR 5:001, Section 4(11), LG&E respectfully requests that the Commission deny their intervention.

The McDonald's Owners' Motion to Intervene Is Untimely and Portends Their Intervention Will Cause Complication and Disruption of this Proceeding

The Company filed its Application on November 25, 2020 and the Commission found it sufficient by letter of December 2, 2020. In filing its Application, the Company took numerous steps to notify customers.¹ Those steps included:

- Publication of the abbreviated customer notice in the Courier-Journal (and many other newspapers) for once a week for three consecutive weeks beginning on November 18, 2020;
- Posting of the full customer notice at the Company's office for public inspection beginning on November 18, 2020;
- Posting of the full customer notice on the Company's website beginning on November 18, 2020 and posting of the full Application on the Company's website beginning on November 25, 2020;
- Issuance of press advisories to all known news media organizations in the Company's service territory advising of the Application and providing hyperlinks to the case beginning on November 13, 2020; and
- Inclusion of a general statement about the rate case in customer bills beginning on November 30, 2020.

While it is true that the McDonald's Owners received notice of the Application in their customer bills when they received those bills in December 2020 as described at Paragraph 2 of their Motion for Enlargement of Time, they had notice long before that via a combination of all the steps listed above. Regardless of the timing of when they received notice, the Commission's December 9, 2020, Order is clear that any intervention request must be filed no later than December 23, 2020. The McDonald's Owners' Motions were not filed in completed form until

¹ See Tab 6 of the Company's November 25, 2020 Filing Requirements.

February 10, 2021,² some *49 days* after the Commission’s deadline and after all discovery had been issued to the Company. Their explanation for the delay is “holidays and the Covid-19 pandemic”³ even though the last holiday to which they seem to refer would be New Year’s Day which was some 40 days before they filed their complete Motion to Intervene. They also say that “holidays and the Covid-19 pandemic” were “excusable neglect” justifying their delay. As set forth below, they are not.

The McDonald’s Owners cite to Kentucky Rule of Civil Procedure 6.02 regarding “excusable neglect” as the basis for enlarging the time permitted to intervene. But the Kentucky Rules of Civil Procedure are only advisory in nature and not binding on the Commission at all.⁴ Instead, the Commission already set the standard for when an untimely motion to intervene may be allowed. In its December 9, 2020, Order in this matter, the Commission spoke very clearly on the timeliness of a motion to intervene at Ordering Paragraph 5: “In addition, any motion to intervene filed after December 23, 2020, shall also show *good cause* for being untimely.” (Emphasis added.) Regardless of whether the standard is “excusable neglect” under the Civil Rules or “good cause” under the Commission’s explicit Order, the fact remains that “holidays and the Covid-19 pandemic” are simply insufficient to justify a *49-day* delay in seeking intervention

² The McDonald’s Owners attempted to file their Motions on February 9, 2021, but both motions were incomplete and were missing a page. In fact, the February 9, 2021, incomplete Motion for Enlargement of Time was missing their attorney’s signature page which is in violation of 807 KAR 5:001, Section 4(3)(a).

³ Motion for Enlargement of Time, Paragraph 2.

⁴ *In the Matter of: Application of Windstream Communications, Inc. for a Declaratory Order Affirming that the Interconnection Regimes Under KRS 278.530 and 47 U.S.C. § 252 are Technology Neutral*, Case No. 2015-00283, Order (Ky. PSC Aug. 6, 2018) (stating, “The Commission finds that, while the Kentucky Rules of Civil Procedure, including the accompanying Rules of Evidence, are at times cited in our proceedings, the applicability of those rules is limited to actions in the Courts of Justice. . . . The Rules of Civil Procedure and the Rules of Evidence are advisory in nature to the proceedings of the Commission. The Commission retains discretion in determining the level of the application of the Rules, if at all. *Inter-County Rural Elec. Co-op Corp. v. Public Service Commission*, 407 S.W.2d 127, 130 (1966).”

and the Motion for Enlargement of Time and Motion to Intervene should be denied on that basis alone.

The McDonald's Owners Motions are a clear indication that they will unduly complicate and disrupt this proceeding. The Motions: (1) were filed 49 days late; (2) were missing critical pages when filed; (3) contain misplaced reliance on the Kentucky Rules of Civil Procedure instead of the Commission's explicit Order requiring "good cause" for untimely motion; and (4) claim a "special interest" that the Commission has specifically said would *not* be adequate to grant intervention.

The McDonald's Owners Do Not Have a Direct or Special Interest in This Proceeding

The Commission may grant a request for intervention only if it meets the requirements of 807 KAR 5:001, Section 4(11)(b). In fact, the Commission's December 9, 2020 Order in this case is clear on what does *not* meet the "special interest" requirement. Ordering Paragraph 5 states:

Therefore, any person requesting to intervene in a Commission proceeding must state with specificity the person's special interest that is not otherwise adequately represented, or the issues and facts that the person will present that will assist the Commission in fully considering the matter. *A mere recitation of the quantity of utility service consumed by the movant or a general statement regarding a potential impact of possible modification of rates will not be deemed to establish a special interest.* (Emphasis added.)

Despite the clear language describing what will not be deemed a special interest, the McDonald's Owners recite precisely what the Commission said will not suffice – quantity of utility service consumed.⁵ And they say they will "present issues" but they do not say what those issues will be. At best, their argument is that their status as restaurant owners is a "special interest" because there are no other restaurant owners in the case. But that status is no different than individual residential customers whose intervention the Commission has denied in this case. The Commission has

⁵ Motion for Enlargement of Time, Paragraph 5.

consistently held that a person's status as a customer is *not* a special interest meriting full intervention.⁶ Thus, the Commission has denied on numerous occasions individual residential customers' petitions to intervene in rate cases.⁷ The fact that the McDonald's Owners are commercial rather than residential customers makes no difference.

Should the Commission find that the McDonald's Owners have a special interest as restaurant owners, that interest is already represented by the Attorney General. The Attorney General has a statutory right, pursuant to KRS 367.150(8)(b), to represent customers' interests in proceedings such as this one. And that right is to represent *all* customers, including restaurant owners. The Attorney General's motion to intervene in this case was granted on November 10, 2020.⁸ The Attorney General has significant expertise and years of experience in representing

⁶ *Electronic Application of Kentucky Utilities Company for an Adjustment of Its Electric Rates*, Case No. 2018-00294, Order (Ky. PSC Nov. 16, 2018) (denying intervention requests of Don Daugherty, Travis Goodin, Conrad Lanham, Teresa Miller, and Elizabeth Shannon because their requests did not articulate a special interest in the proceeding, only a general interest that they shared in common with all other KU customers. Additionally, the Commission noted that these individuals did not show that they were likely to present issues or to develop facts that would assist the Commission in resolving this matter); *Electronic Application of Louisville Gas and Electric Company for an Adjustment of Its Electric and Gas Rates*, Case No. 2018-00295, Order (Ky. PSC Nov. 16, 2018) (denying intervention request of Teresa Miller because her request did not articulate a special interest in the proceeding, only a general interest that she shared with all other LG&E customers. Additionally, the Commission noted that she did not show that she was likely to present issues or to develop facts that would assist the Commission in resolving this matter); *Application of Louisville Gas and Electric Company for a Certificate of Public Convenience and Necessity and Approval of Its 2009 Compliance Plan for Recovery by Environmental Surcharge*, Case No. 2009-00198, Order (Ky. PSC Aug. 28, 2009) (denying intervention to customer Tammy Stewart on ground she lacked a special interest meriting intervention, as well as expertise that would assist the Commission); *Application of Kentucky Utilities Company for an Order Approving the Establishment of a Regulatory Asset*, Case No. 2009-00174, Order (Ky. PSC June 26, 2009) (denying Rep. Jim Stewart's Motion to Intervene because he had neither a special interest in the proceeding nor was he likely to assist the Commission to render a decision); *Joint Application of Louisville Gas and Electric Company, Association of Community Ministries, Inc., People Organized and Working for Energy Reform, and Kentucky Association for Community Action, Inc. for the Establishment of a Home Energy Assistance Program*, Case No. 2007-00337, Order (Ky. PSC Sept. 14, 2007) (“[H]old[ing] a particular position on issues pending in ... [a] case does not create the requisite ‘special interest’ to justify full intervention under 807 KAR 5:001, Section 3(8)(b).”).

⁷ *See, e.g.*, Case No. 2018-00294, Order (Ky. PSC Nov. 16, 2018); Case No. 2018-00295, Order (Ky. PSC Nov. 16, 2018); *Application of Kentucky Utilities Company for an Adjustment of Its Electric Rates*, Case No. 2012-00221, Order (Ky. PSC Aug. 9, 2012) (denying customer Bruce Nunn's request for intervention); *Application of Kentucky Utilities Company for an Adjustment of Its Electric Rates*, Case No. 2012-00221, Order (Ky. PSC Aug. 9, 2012) (denying customer Michael Whipple's request for intervention); *Application of Kentucky Utilities Company for an Adjustment of Base Rates*, Case No. 2009-00548 (Ky. PSC June 2, 2010) (denying customer Geoffrey M. Young's request for intervention); *An Adjustment of the Electric Rates, Terms, and Conditions of Louisville Gas and Electric Company*, Case No. 2003-00433, Order (Ky. PSC Jan. 21, 2004) (denying customer Robert L. Madison's request for intervention).

⁸ Case No. 2020-00350, Order (Ky. PSC Nov. 10, 2020).

ratepayers' interests in rate proceedings, including every prior LG&E rate case.⁹ In an order denying intervention, the Commission reaffirmed that the Attorney General represents the generalized interest the McDonald's Owners claim in this case:

The Commission further finds that Petitioner has failed to establish that it has a special interest in this matter that is not otherwise adequately represented, notwithstanding Petitioner's generalized representation that its current members would be impacted by Big Rivers' application. Big Rivers provides power to approximately 112,000 customers, and each one of those customers will be impacted financially by the issues in this rate case.¹⁰

The same analysis merits denying intervention to the McDonald's Owners.

The McDonald's Owners Have Not Demonstrated That They Will Present Issues or Develop Facts That Would Assist the Commission

Because the McDonald's Owners lack an interest in this proceeding that is not adequately represented by other parties, they may only intervene only if they can show they will present issues or develop facts that will assist the Commission without unduly complicating or disrupting the proceeding.¹¹ The Motion to Intervene fails to do so. The request does not allege any expertise or experience with ratemaking. The request does not identify any specific issue or component of the case that they will address, or the facts they intend to develop. The request does not allege whether they will file expert testimony. There is only an unexplained reference to demand and

⁹ See, e.g., *Electronic Application of Louisville Gas and Electric Company for an Adjustment of Its Electric and Gas Rates*, Case No. 2018-00295; *Application of Louisville Gas and Electric Company for an Adjustment of Its Electric and Gas Rates and for Certificates of Public Convenience and Necessity*, Case No. 2016-00371; *Application of Louisville Gas and Electric Company for an Adjustment of Its Electric and Gas Rates*, Case No. 2014-00372; *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 Riders, and a Gas Line Surcharge*, Case No. 2012-00222; *Application of Louisville Gas and Electric Company for an Adjustment of Electric and Gas Base Rates*, Case No. 2009-00549; *Application of Louisville Gas and Electric Company for an Adjustment of Its Electric and Gas Base Rates*, Case No. 2008-00252.

¹⁰ *Application of Big Rivers Electric Corporation for a General Adjustment in Rates Supported by Fully Forecasted Test Period*, Case No. 2013-00199, Order (Ky. PSC Nov. 12, 2013).

¹¹ Case No. 2020-00350, Order (Ky. PSC Dec. 9, 2020) (stating the requirements for a person requesting permissive intervention in a Commission proceeding).

usage charges¹² coupled with an allegation that the Company's rate structure that includes demand and energy charges is "antiquated and inconsistent with many more progressive states."¹³ Every electric and gas utility subject to the Commission's jurisdiction assess demand and energy charges for service. The Company's rate structure, including the demand and energy charges, is based on established cost of service. The McDonald's Owners fail to say how the existence of demand and usage charges will lead to a presentation of issues or development of facts that will assist the Commission.

The proper way for the McDonald's Owners to participate in this case is through filing written public comments or offering verbal comment at public hearings.¹⁴ These mechanisms ensure that they are given an opportunity to present their position without unduly complicating the pending action.

Conclusion

The McDonald's Owners have not satisfied either of the bases for permissive intervention set forth in 807 KAR 5:001, Section 4(11)(b). They do not have a special interest that is not already adequately represented by the Attorney General, and they have not shown an ability to present issues or develop facts that will assist the Commission in considering the Company's proposed rates without unduly complicating and disrupting this proceeding.

WHEREFORE, Louisville Gas and Electric Company respectfully requests that the Commission deny the Motion for Enlargement of Time and Motion to Intervene.

¹² Motion for Enlargement of Time, Paragraph 10.

¹³ *Id.*

¹⁴ *See* 807 KAR 5:001, Section 4(11)(e).

Dated: February 11, 2021

Respectfully submitted,

A handwritten signature in blue ink, reading "Kendrick R. Riggs", is written over a horizontal line. The signature is contained within a light gray rectangular background.

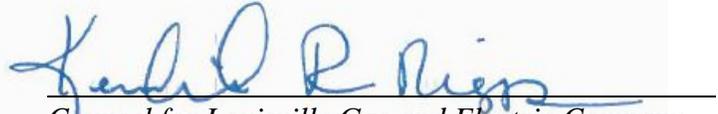
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CERTIFICATE OF COMPLIANCE

In accordance with 807 KAR 5:001 Section 8(7), this is to certify that Louisville Gas and Electric Company's February 11, 2021 electronic filing is a true and accurate copy of the documents being filed in paper medium; that the electronic filing has been transmitted to the Commission on February 11, 2021; that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding; and that a true and correct copy in paper medium will be delivered to the Commission within 30 days of the lifting of the State of Emergency.



Kenneth R. Rieps
Counsel for Louisville Gas and Electric Company