

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC JOINT APPLICATION OF	)	
KENTUCKY UTILITIES COMPANY AND	)	Case No.
LOUISVILLE GAS AND ELECTRIC	)	2016-00274
COMPANY FOR APPROVAL OF AN	)	
OPTIONAL SOLAR SHARE PROGRAM	)	
RIDER	)	

ORDER

This matter arises upon a request to intervene in the instant proceedings contained in a letter filed by Gerald Karem ("Mr. Karem") on November 3, 2016. Mr. Karem's letter will be treated as a motion to intervene. Mr. Karem resides on Wooded Lake Drive, Simpsonville, Shelby County, Kentucky, which is located near the site on Connor Station Road where Kentucky Utilities Company ("KU") and Louisville Gas and Electric Company ("LG&E") (jointly "Companies") have proposed constructing new solar photovoltaic facilities with a combined capacity of up to approximately four megawatts ("MW").

As a basis for the motion to intervene, Mr. Karem asserts that the Companies failed to provide proper written notice to customers pursuant to 807 KAR 5:011, Section 8; that the Companies failed to provide proper notice of a meeting for nearby property owners to learn more about the proposed project; that the notice the Companies provided for said meeting was ineffective because it was published one day after the date of the meeting; and that the Companies failed to act in good faith because they failed to conduct additional meetings, failed to study the effect of the proposed project

on property values of nearby property, failed to consider alternative sites, and provided allegedly inconsistent information regarding mitigation.

### DISCUSSION

The only person with a statutory right to intervene in a proceeding before the Commission is the Attorney General.<sup>1</sup> The standards the Commission must consider in exercising discretion to determine permissive intervention are set forth in 807 KAR 5:001, Section 4(11), which states, in pertinent part, that “[a] person who wishes to become a party to a case before the commission may, by timely motion, request leave to intervene,” and that, “[t]he commission shall grant a person leave to intervene if the commission finds that he or she has made a timely motion for intervention . . . .” Additionally, 807 KAR 5:001, Section 4(11)(b), provides that a party requesting intervention must show that his intervention is likely to present issues or develop facts that assist the Commission in fully considering the matter without unduly disrupting the proceedings.

Pursuant to the Commission’s Order of August 12, 2016, a deadline of August 19, 2016, was established for requests to intervene in this matter. Our Order further provided that any motion to intervene filed after August 19, 2016, must show a basis for intervention and good cause for being untimely. Lastly, the Order provided that a party whose untimely motion to intervene was granted must accept and abide by the existing procedural schedule.

Having reviewed the pleadings and being otherwise sufficiently advised, the Commission finds that the motion to intervene should be denied because it was not

---

<sup>1</sup> See KRS 367.150(8)(b). The Attorney General was served with a copy of the Companies’ Application on August 2, 2016, and has not requested to intervene in this matter.

timely filed, nor did Mr. Karem provide good cause to permit leave to file his motion to intervene out of time. The Companies filed their joint Application in this matter on August 2, 2016, and the existing procedural schedule established an August 19, 2016 deadline for requests for intervention to be filed. Mr. Karem received notice of the proposed project in a letter dated August 3, 2016,<sup>2</sup> and attended a meeting hosted by the Companies on August 23, 2016,<sup>3</sup> where neighboring property owners could discuss the project and ask questions of the Companies. The August 3, 2016 letter that Mr. Karem received provided notice that the Companies had filed an application with the Commission on August 2, 2016, to construct a four-MW solar facility on Connor Station Road.<sup>4</sup> Further, Mr. Karem states that notice of the proposed project was published in the Shelbyville Sentinel-News on August 24, 2016.<sup>5</sup> Said notice included the case number, the Commission contact information, and a statement that a person could request leave to intervene.<sup>6</sup> Mr. Karem fails to state any reason, much less good cause, to explain the several months of delay between learning of the pending case and his filing a request to intervene.

---

<sup>2</sup> Letter from Mr. Karem requesting to intervene (filed Nov. 3, 2016) at 3.

<sup>3</sup> *Id.* at 4–5.

<sup>4</sup> Companies' joint response to Commission Staff's Second Request for Information ("Response to Staff's Second Request") (filed Sept. 26, 2016), Item 10.

<sup>5</sup> Letter from Mr. Karem requesting to intervene at 3.

<sup>6</sup> See Notice of Publication (filed Sept. 19, 2016), Attachment 2, at 1 of 1.

The Commission further finds that Mr. Karem failed to demonstrate that he was likely to present issues or develop facts without unduly disrupting the proceedings. Our August 12, 2016 Order established a procedural schedule with a deadline of October 31, 2016, for parties to request a hearing or a waiver of hearing, and that any party granted an untimely intervention was required to accept and abide by the procedural schedule. On September 30, 2016, the Companies filed a motion to waive a hearing and have the matter decided based upon the written record. No party filed a response to the Companies' motion. Thus, this matter was submitted for a decision on the written record as of October 31, 2016, due to the absence of a request for an evidentiary hearing by a party.

The Commission further finds that Mr. Karem failed to demonstrate that he was likely to present issues or develop facts that assist the Commission in fully considering the matter. Mr. Karem's request to intervene raises many, if not all, of the same issues regarding notice, site selection, and mitigation that he raised in multiple public comments filed in this proceeding between October 25, 2016, and November 3, 2016. The Commission also received a number of letters and e-mails from other residents near, or in the general vicinity, of the proposed site expressing the same or similar concerns as those raised by Mr. Karem regarding notice, site selection, and mitigation.

Mr. Karem argues that the Companies failed to provide notice of the proposed tariff pursuant to the notice-publication requirement of 807 KAR 5:011, Section 8. This is incorrect; the Companies' application requested and they were granted a deviation from the notice-publication requirement of 807 KAR 5:001, Section 8, to allow publishing one time rather than three times in newspaper of general circulation because

the estimated cost to publish notice in the Companies' service area was \$250,000. In our August 12, 2016 Order, we found that, considering the voluntary nature of the proposed tariff, publishing a single notice was sufficient to inform the Companies' customers and to allow for written comments to be filed with the Commission. On September 19, 2016, the Companies provided proof that notice had been published between August 23 and August 25, 2016, in more than 100 newspapers, including the Shelbyville Sentinel-News on August 24, 2016. Thus, the Companies were in compliance with the deviation they were granted regarding tariff notice requirements.

Mr. Karem alleges the notice published in the Shelbyville Sentinel-News on August 24, 2016, was ineffective because it was published one day after a meeting held by the Companies regarding the proposed project. This mischaracterizes the nature of the notice and the nature of the Companies' meeting with neighboring property owners. The notice published on August 24, 2016, was, as is discussed above, in compliance with tariff notice requirements pursuant to 807 KAR 5:011, Section 8, and the purpose of the notice was to inform the Companies' customers of the proposed tariff. For a proposed generating facility of four MW, there is no requirement that a utility include in its notice the location of the proposed generating facility.

The notice the Companies sent to adjoining property owners on August 3, 2016, was for the purpose of informing nearby property owners about the proposed project and to invite them to an "informational open house" to be held on August 23, 2016, in Simpsonville.<sup>7</sup> Mr. Karem was notified of this meeting by letter dated August 3, 2016,

---

<sup>7</sup> Response to Staff's Second Request, Item 10.

and he subsequently attended the August 23, 2016 open house. Thus, Mr. Karem received sufficient notice.

Mr. Karem raises issues regarding the proposed solar facilities' effect on property values, as well as site selection and mitigation. The Commission has jurisdiction over the site selection of electric generating facilities of ten MW or more. Since the proposed solar facilities will in aggregate be less than ten MW, the Companies are exempt under KRS 278.216(1) from the requirement to file a site assessment report and to obtain a site compatibility certificate from the Commission. Due to this exemption for facilities capable of generating ten MW or less, the Companies were not required to file a site assessment report describing the potential changes in property values for adjacent property owners.

As discussed above, the Commission does not have jurisdiction over site selection of a facility of this type and size. However, the case record contains robust information regarding the site selection and mitigation considerations. The Companies considered 18 sites for the proposed solar facility, including two locations in Shelby County other than the selected site.<sup>8</sup> Criteria considered in the site selection were cost, visibility, proximity to distribution facilities, space, and overall suitability for solar.<sup>9</sup> The south side of the site abuts Interstate 64 West. This location allows for visibility and access as well as for proximity to existing transmission lines.<sup>10</sup> The east side of the proposed site is buffered by a line of trees. On the west and north sides of the

---

<sup>8</sup> Companies' Response to Commission Staff's Informal Conference Request ("Response to Commission Staff's IC Request") (filed Oct. 24, 2016), Item 3.

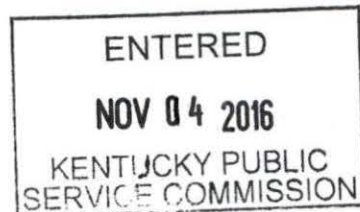
<sup>9</sup> *Id.*

<sup>10</sup> Informal Conference Memo (Ky. PSC Aug. 30, 2016) at 1.

proposed site, the Companies propose to plant six-foot evergreen trees in a staggered pattern, and retain the existing wood plank fence while installing a six-foot black chain-link fence behind the evergreens.<sup>11</sup> The Companies state that there will be approximately 100 feet between Conner Station Road and the western edge of the proposed site.<sup>12</sup> Given that the tallest point of the Solar Share Facilities will be approximately nine feet, the Companies' landscaping plan should limit visibility of the site considerably.<sup>13</sup> In addition, the Companies state that that they will consider building the first Solar Share Facility on the southeast corner of the property in order to make it less visible.<sup>14</sup> Based on these considerations, the Commission finds the Companies' landscaping plans and mitigation efforts to be reasonable.

IT IS THEREFORE ORDERED that Mr. Karem's request to intervene is denied, and his motion shall be considered as public comment.

By the Commission



ATTEST:

  
Executive Director

<sup>11</sup> Informal Conference Memo (Ky. PSC Oct. 24, 2016) at 2.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

\*Honorable Allyson K Sturgeon  
Senior Corporate Attorney  
LG&E and KU Energy LLC  
220 West Main Street  
Louisville, KENTUCKY 40202

\*Sara Veeneman  
LG&E and KU Energy LLC  
220 West Main Street  
Louisville, KENTUCKY 40202

\*Honorable W. Duncan Crosby III  
Attorney at Law  
Stoll Keenon Ogden, PLLC  
2000 PNC Plaza  
500 W Jefferson Street  
Louisville, KENTUCKY 40202-2828

\*Kentucky Utilities Company  
220 W. Main Street  
P. O. Box 32010  
Louisville, KY 40232-2010

\*Jody Kyler Cohn  
Boehm, Kurtz & Lowry  
36 East Seventh Street  
Suite 1510  
Cincinnati, OHIO 45202

\*Louisville Gas and Electric Company  
220 W. Main Street  
P. O. Box 32010  
Louisville, KY 40232-2010

\*Honorable Kurt J Boehm  
Attorney at Law  
Boehm, Kurtz & Lowry  
36 East Seventh Street  
Suite 1510  
Cincinnati, OHIO 45202

\*Honorable Kendrick R Riggs  
Attorney at Law  
Stoll Keenon Ogden, PLLC  
2000 PNC Plaza  
500 W Jefferson Street  
Louisville, KENTUCKY 40202-2828

\*Honorable Michael L Kurtz  
Attorney at Law  
Boehm, Kurtz & Lowry  
36 East Seventh Street  
Suite 1510  
Cincinnati, OHIO 45202

\*Rick E Lovekamp  
Manager - Regulatory Affairs  
LG&E and KU Energy LLC  
220 West Main Street  
Louisville, KENTUCKY 40202