

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE 2011 JOINT INTEGRATED RESOURCE)	
PLAN OF LOUISVILLE GAS AND ELECTRIC)	CASE NO.
COMPANY AND KENTUCKY UTILITIES)	2011-00140
COMPANY)	

O R D E R

On May 16, 2011, Geoffrey M. Young filed a petition requesting full intervenor status in this case, which is a review of a Joint Integrated Resources Plan (“IRP”) of Louisville Gas and Electric Company (“LG&E”) and Kentucky Utilities Company (“KU”) (collectively “LG&E/KU”). Mr. Young states that he is a customer of KU and that he has “a special interest in the rates, services, and disservices provided by KU.”¹ He then defines KU’s services as being its existing and planned demand-side management programs, and its “disservices” as being “the environmental externalities such as air and water pollution that results from the generation, transmission, and distribution of electricity from KU’s power plants and from the mining of fuel to supply these power plants.”

Next, Mr. Young cites the Commission’s IRP regulation, 807 KAR 5:058, Section 8(5)(f), which requires a utility’s IRP filing to include, among other information, a discussion of its future actions needed to address the requirements of the Clean Air Act of 1990, and how such actions impact its resource assessment. Based on this provision

¹ Petition to Intervene at 1.

of the IRP regulation, he claims that environmental considerations are within the Commission's jurisdiction. Mr. Young states that he is an environmentalist and that he has a special interest in this case that is not otherwise represented. He recites his work history, both as an employee of the Commonwealth of Kentucky and as a volunteer for environmental organizations, on efforts to promote cost-effective energy efficiency and the use of renewable energy. Finally, he references prior IRP cases in which he participated; states that his previous participation was in a constructive manner that did not unduly complicate or disrupt those proceedings; and that, if granted intervention here, he would file data requests, testimony, and comments, all in accord with the existing procedural schedule.

On May 23, 2011, LG&E/KU filed a joint response in opposition to Mr. Young's petition. LG&E/KU state that the Commission previously denied Mr. Young's requests to intervene in two other IRP cases, one of which was the last IRP filing by LG&E/KU.² LG&E/KU claim that Mr. Young's special interest is not in their existing and planned demand-side management programs or how they plan to meet the requirements of the Clean Air Act but, rather, in the environmental externalities of the pollution that results from generating electricity and mining the fuel. The environmental impacts of producing and selling electricity are, according to LG&E/KU, beyond the scope of the Commission's jurisdiction. They assert that Mr. Young's only interest in this case is as a ratepayer of KU, and that ratepayer interests are already adequately represented by the Attorney General's Office ("AG").

² Case No. 2008-00148, *The 2008 Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company* (Ky. PSC Jul. 18, 2008).

Next, LG&E/KU claim that Mr. Young's petition fails to demonstrate that, if granted intervention, he will present issues or develop facts that would assist the Commission in its consideration of this case. They state that Mr. Young's only justification for intervention here is his prior work history on issues of energy efficiency and renewable energy, and that the Commission has previously held in prior IRP cases that such justification is not sufficient. Finally, LG&E/KU claim that allowing Mr. Young to intervene here would expand the scope of the case to include environmental issues that are beyond the Commission's jurisdiction and that doing so would unduly complicate and disrupt this IRP proceeding. They also note that Mr. Young is not an attorney, is not represented by an attorney, and that his self-representation might also unduly complicate or disrupt this proceeding.

Based on the motion to intervene and being otherwise sufficiently advised, the Commission finds that the only person who has a statutory right to intervene in a Commission case is the AG, pursuant to KRS 278.367.150(8)(b). Intervention by all others is permissive and is within the sound discretion of the Commission.³

In the recent unreported case of *EnviroPower, LLC v. Public Service Commission of Kentucky*, No. 2005-CA-001792-MR, 2007 WL 289328 (Ky. App. Feb. 2, 2007), the Court of Appeals ruled that "the PSC retains the power in its discretion to grant or deny a motion for intervention," but that this discretion is not unlimited. The Court then enumerated the limits on the Commission's discretion in ruling on motions for intervention: one arising under statute, the other arising under regulation. The statutory

³ *Inter-County Rural Electric Cooperative Corporation v. Public Service Commission of Kentucky*, 407 S.W.2d 127, 130 (Ky. 1996).

limitation, KRS 278.040(2), requires that “the person seeking intervention must have an interest in the ‘rates’ or ‘service’ of a utility, since those are the only two subjects under the jurisdiction of the PSC.”⁴

The regulatory limitation is set forth in 807 KAR 5:001, Section 3(8), which requires a person to demonstrate either (1) a special interest in the proceeding which is not otherwise adequately represented in the case, or (2) that intervention is likely to present issues or develop facts that will assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings.

In analyzing the pending motion to intervene, we find that Mr. Young is an electric customer of KU, but he does not receive electric or natural gas service from LG&E, and he is not a customer of LG&E. Mr. Young describes himself as an environmentalist. He has previously participated in IRP proceedings as a witness on behalf of his prior employer, the Kentucky Division of Energy, but he has never been granted status as an intervenor in any Commission case.

Mr. Young’s petition to intervene alleges a special interest in “the rates, services, and disservices provided by KU.” The terms “rate” and “service” have statutory definitions as set forth in KRS 278.010(12) and (13), respectively. The term “disservices” is defined in Mr. Young’s petition as “the environmental externalities such as air and water pollution that results from the generation, transmission, and distribution of electricity from KU’s power plants and from the mining of fuel to supply these power plants.” The Commission has previously held that issues of environmental externalities, including the impacts of air and water pollution from generating electricity or mining fuel,

⁴ 2007 WL 289328, at 3.

are beyond the scope of the Commission's jurisdiction. For example, in adjudicating Mr. Young's prior petition to intervene in LG&E/KU's 2008 IRP proceeding, the Commission determined that:

Notably absent from the Commission's jurisdiction are environmental concerns, which are the responsibility of other agencies within Kentucky state government, including the Division for Air Quality within the Energy and Environment Cabinet, which issues air quality permits to coal-burning electric generating facilities in Kentucky. To the extent that Mr. Young seeks to address issues in this proceeding that deal with the impact of air emissions on human health and the environment, this is not the proper venue for those issues to be considered.⁵

Under the Commission's IRP regulation, a utility must disclose the actions it will need to take to meet the provisions of the Clean Air Act. However, the inclusion of that information does not grant the Commission jurisdiction, either explicitly or implicitly, over issues of environmental externalities, such as air and water pollution as referenced by Mr. Young, or land pollution. All of those issues are under the jurisdiction of other state and federal agencies.

As to Mr. Young's interest in LG&E/KU's demand-side management and energy efficiency programs, that interest is one that he shares in common with other LG&E/KU customers and that interest is adequately represented by the AG. The AG has actively participated in many prior IRP proceedings, and he has previously filed comments on demand-side management and energy efficiency programs, as well as on the acquisition of renewable resources.⁶ Thus, the issues that Mr. Young seeks to pursue

⁵ Case No. 2008-00148, Order July 18, 2008, at 5-6.

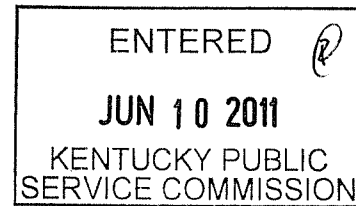
⁶ Id. at 7-8.

as an intervenor are either already well represented by the AG or are beyond the scope of the Commission's jurisdiction. Mr. Young has not demonstrated that he is likely to present issues or develop facts that will assist the Commission in considering this case without unduly complicating or disrupting the proceeding.

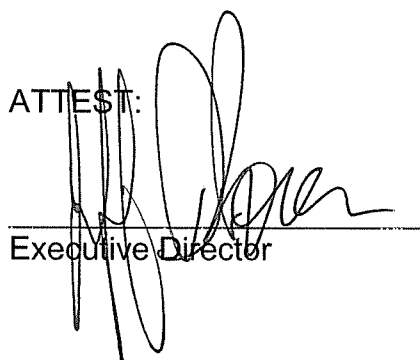
Based on these findings, the Commission will deny Mr. Young's petition to intervene. However, Mr. Young may make his position known on the LG&E/KU IRP issues by filing public comments as frequently as he chooses, and he may also contact the AG to provide input to that office on these issues.

IT IS THEREFORE ORDERED that Mr. Young's petition to intervene is denied.

By the Commission



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