COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF KENTUCKY UTILITIES COMPANY FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND APPROVAL OF ITS 2011 COMPLIANCE PLAN FOR RECOVERY BY ENVIRONMENTAL SURCHARGE	))))))	CASE NO. 2011-00161

O R D E R

On June 24, 2011, Benjamin J. Lookofsky filed a motion to intervene in the above-referenced case. Mr. Lookofsky's motion stated that he was a customer of Kentucky Utilities Company ("KU").

On June 30, 2011, KU filed its response alleging that Mr. Lookofsky's motion fails to satisfy any of the requirements for intervention set out under 807 KAR 5:001, Section 3(8) and requested that the motion be denied. KU's response argued that Mr. Lookofsky's motion does not state a special interest in the proceeding that is not already represented by the Attorney General, that the motion fails to identify any issues or development of facts that will assist the Commission in the resolution of the matter before it, and that Mr. Lookofsky's intervention would unduly complicate and disrupt the proceeding.

On July 12, 2011, Mr. Lookofsky filed a reply to the response of KU. In his reply, he argues that as a customer of KU he is subject to the rate increase and is affected in a significant way. He further states that the notice published by KU did not indicate that a prospective intervenor must be able to identify any issues or develop any facts that

would assist the Commission, nor did it state that the prospective intervenor must meet the criteria set out in 807 KAR 5:001, Section 3(8) in order to be allowed to intervene.

Based on the motion to intervene and the reply, and being otherwise sufficiently advised, the Commission finds that the only person that has a statutory right to intervene is the Attorney General, pursuant to KRS 367.150(8)(b). Intervention by all others is permissive and is within the sound discretion of the Commission. 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 this Commission retains power in its discretion to grant or deny a motion for intervention but that discretion is not unlimited. The Court then enumerated the statutory and regulatory limits on the Commission's discretion in ruling on motions for intervention. The statutory limitation, KRS 278.040(2), requires that the person seeking intervention has an interest in the rates or service of a utility as those are the only two subjects under the jurisdiction of the Commission. The regulatory limitation of 807 KAR 5:001, Section 3(8) requires that a person demonstrate a special interest in the proceeding which is not otherwise adequately represented or that intervention is likely to present issues or develop facts that assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings.

Having reviewed his motion and reply, the Commission finds that Mr. Lookofsky has offered no evidence that he has a special interest in the proceeding, which is not otherwise adequately represented by the Attorney General, nor has he shown that he is likely to present issues or develop facts that would assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings.

Therefore, the Commission finds that Mr. Lookofsky's motion filed June 24, 2011 should be denied.

Mr. Lookofsky will have ample opportunity to participate in this proceeding even though he is not granted intervenor status. Mr. Lookofsky can review all documents filed in this case and monitor the proceedings via the Commission's website at the following web address:

http://psc.ky.gov/Home/Library?type=Cases&folder=2011%20cases/2011-00161.

Mr. Lookofsky may also file comments as frequently as he chooses, and those comments will be entered into the record of this case. Finally, he may also attend and present public comment at the public hearing to be held at our offices in Frankfort, Kentucky. The date for that hearing will be scheduled in the near future.

IT IS THEREFORE ORDERED that Mr. Lookofsky's motion for intervention is denied.

By the Commission

ENTERED
JUL 19 2011
KENTUCKY PUBLIC
SERVICE COMMISSION

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