

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE 2008 INTEGRATED)
RESOURCE PLAN OF DUKE)
ENERGY KENTUCKY, INC.)

CASE NO. 2008-00248

O R D E R

On September 2, 2008, Geoffrey M. Young filed a petition to intervene in this proceeding. Mr. Young states that he has "a personal interest in the quality of the air" he breathes, and that the quality of the air "is likely to affect the amount of money [he] will be forced to spend in future years to treat health problems that [he] may suffer because of Duke Energy Kentucky, Inc.'s ("Duke Kentucky's") existing and planned power plants."¹ Mr. Young also states that he is an environmentalist; that he is interested in reducing pollution that harms other people and the environment; and that Kentucky's coal-fired power plants have "massive" environmental impacts which contribute to "some of the worst air pollution in the Midwest," resulting in high rates of respiratory disease and global warming.

Mr. Young further states that if Duke Kentucky were able to reduce the amount of time its East Bend Generating Station in Boone County, Kentucky operates each year "because of improved end-use efficiency in their customers' homes and businesses, or if Duke Kentucky were able to retire the plant sooner than expected and replace it with

¹ Young Petition at 1.

more sustainable supply-side and demand-side resources, the magnitude of environmental hazards arising from the plant would be reduced.”

Finally, Mr. Young’s petition briefly recites his prior experience with energy efficiency programs; claims that, absent his participation, “the special interests I have and the issues I plan to explore via full intervention are not otherwise adequately represented”; and pledges that he will participate in a constructive manner and will not be disruptive.

Based on the petition and being otherwise advised, the Commission finds that the only person entitled to intervene as a matter of right 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.² The first requirement for being granted intervention arises under KRS 278.040(2), which limits the Commission’s jurisdiction to the rates and service of utilities. As stated by Kentucky’s highest court 66 years ago in People’s Gas Co. of Kentucky v. City of Barbourville, 291 Ky. 805, 165 S.W.2d 567, 572 (Ky. 1942), the Commission’s “jurisdiction is exclusively confined ‘to the regulation of rates and service.’”³

Next, in exercising its discretion to determine permissive intervention, the Commission follows its regulation, 807 KAR 5:001, Section 3(8). That regulation

² Inter-County Rural Electric Cooperative Corporation v. Public Service Comm’n of Kentucky, 407 S.W.2d 127, 130 (Ky. 1966).

³ See *also* Benzinger v. Union Light, Heat & Power Co., 293 Ky. 747, 170 S.W.2d 38 (Ky. 1943) (“[I]t was expressly stated that the intention [of KRS 278.040(2)] was to confer jurisdiction only over the matter of rates and service.”)

requires a person seeking intervention to file a request in writing which “shall specify his interest in the proceeding.”⁴ That regulation further provides that:

If the Commission determines that a person has a special interest in the proceeding which is not otherwise adequately represented or that full intervention by party is likely to present issues or to develop facts that assist the commission in fully considering the matter without unduly complicating or disrupting the proceedings, such person shall be granted full intervention.⁵

It is under these statutory and regulatory criteria that the Commission reviews a petition to intervene. We note at the outset of this review that Mr. Young has never previously been granted intervention in a Commission proceeding, although he has previously testified on behalf of others.

The Commission finds that Mr. Young is a resident of Lexington, Kentucky, which is entirely within the exclusive service area of Kentucky Utilities Company. Mr. Young is not a customer of Duke Kentucky, he pays no rates to Duke Kentucky, and he receives no utility service from Duke Kentucky. Thus, Mr. Young's interest in Duke Kentucky's 2008 Integrated Resource Plan (“IRP”) does not arise from his status as a Duke Kentucky ratepayer, since he is not one. Consequently, Mr. Young has no actual legal interest in the rates or service of Duke Kentucky.

⁴ 807 KAR 5:001, Section 3(8)(b). See also the unreported decision in EnviroPower, LLC v. Public Service Commission of Kentucky, 2007 WL 289328 (Ky. App. 2007), wherein the Court of Appeals held that “the PSC retains the power in its discretion to grant or deny a motion for intervention,” and that the “special interest” a person seeking intervention under 807 KAR 5:001, Section 3(8), must have is one relating only to the “‘rates’ or ‘service’ of a utility.”

⁵ Id.

To the extent that Mr. Young's petition is considered as a request for intervention on his own behalf as an environmentalist, his interest in Duke Kentucky's IRP is for the purpose of "reducing pollution that can harm people and the natural environment."⁶ The Commission understands and appreciates Mr. Young's interest as an environmentalist in seeking to reduce pollution, but the Commission has no jurisdiction over the quality of the air he breathes, the "significant health problem" associated with mercury pollution from coal-fired power plants, or "the carbon dioxide released [which] contributes to global warming."⁷ As discussed above, the Commission's jurisdiction is limited to the "rates" and "service" of utilities.

In summary, the Commission finds that, to the extent of Mr. Young's interest as an environmentalist in Duke Kentucky's IRP, the issues he seeks to raise relating to the quality of the air and the level of pollution emitted by Duke Kentucky's coal-fired plants are beyond the scope of the Commission's jurisdiction. To allow Mr. Young to intervene and to raise issues that are beyond the scope of the Commission's jurisdiction would unduly complicate and disrupt this proceeding.

The Commission notes that the Integrated Resource Plan ("IRP") issues to be examined in this case which are within the ambit of our jurisdiction include demand-side management, non-coal electric generation, and energy efficiency. All of these issues are also within the scope of the AG's representation of Kentucky consumers under KRS 367.150.

⁶ Young Petition at 1.

⁷ Id. at 2.

The AG has participated in numerous prior IRP cases⁸ and has offered helpful comments concerning the energy policy issues Mr. Young seeks to advocate in this matter. In East Kentucky Power Cooperative, Inc.'s ("EKPC") 2006 IRP case, the AG wrote extensive comments, which were summarized as follows:

First, EKPC needs to improve its process of identifying and screening supply side options. This IRP indicates that EKPC considered only three baseload and two peaking alternatives. EKPC needs to provide more details on supply side resource assessment and resource optimization. Second, EKPC needs to treat DSM options in a methodically consistent manner as it treats supply side resources. All options, supply-side and demand-side, should be part of the optimization process. Third, EKPC needs to conduct sensitivity and risk analyses that are wider in scope so as to evaluate resource plan sensitivity to DSM, environmental and other regulations, allowance and construction cost changes. It needs to show how the results of these sensitivities are factored into the choice of its final resource plan.⁹

In EKPC's 2003 IRP case, the AG's comments included a discussion of renewable energy sources and the need for EKPC to factor in the cost of mitigating carbon dioxide emissions in future considerations of its generation resources:

The AG further notes that the only renewable option with significant potential for East Kentucky is hydropower because it is the only renewable option available that could supply enough power to replace the fossil-fuel additions reflected in the IRP. The AG suggests that when East Kentucky considers hydro options, it should factor in the absence of carbon dioxide emissions. Finally, the AG notes that, while it is unlikely that wind generators will initially be

⁸ See, e.g., Case No. 2006-00471, 2006 Integrated Resource Plan of East Kentucky Power Cooperative, Inc.; Case No. 2003-00051, 2003 Integrated Resource Plan of East Kentucky Power Cooperative; Case No. 2002-00428, 2002 Integrated Resource Plan of Big Rivers Electric Corporation.

⁹ See Attorney General's March 21, 2007 Comments filed in Case No. 2006-00471, 2006 Integrated Resource Plan of East Kentucky Power Cooperative, Inc.

cost effective for East Kentucky, it should do what it can to gain experience with the rapidly emerging wind technology.¹⁰

In 2002, the AG filed comments on Big Rivers Electric Corporation's IRP, including recommendations regarding such issues as demand-side management, net metering, and small-scale renewable energy alternatives:

The AG provided several comments on Big Rivers' DSM efforts. His comments were generally favorable, although he disagrees with Big Rivers' plan to review the results of the LG&E and KU net metering programs before proceeding with its own program. The AG encourages Big Rivers to move forward with a net metering program rather than wait until the LG&E and KU pilot programs are complete. The AG cited LG&E's and KU's not informing customers about their net metering programs as the reason why few customers are likely to participate. The AG expects current benefits for Big Rivers' distribution cooperatives if they participate in net metering. He suggested a pilot program with a limit on the number of participants in order to minimize possible liability for Big Rivers until it becomes comfortable with net metering. The AG believes a net metering program would encourage the development of small-scale renewable energy projects and provide good will and publicity for Big Rivers at little cost.¹¹

The Commission finds that the AG, as the statutorily authorized representative of Kentucky's utility consumers, has a continuing interest in articulating and advocating support for renewable energy and energy conservation issues – the same issues that Mr. Young seeks to advocate in this proceeding. The Commission further finds that the AG has consistently exercised his statutory duty to investigate these energy policy issues and to advocate their consideration by the Commission in its examination of the

¹⁰ Staff Report on Case No. 2003-00051, The 2003 Integrated Resource Plan Report of East Kentucky Power Cooperative, at 15.

¹¹ Staff Report on Case No. 2002-00428, The 2002 Integrated Resource Plan Report of Big Rivers Electric Corporation, at 10-11.

IRPs filed by Kentucky's jurisdictional electric utilities over the past several years. As the AG has intervened in this case, the Commission finds that the issues that Mr. Young seeks to promote as a full intervenor in this matter are already well represented, and, as such, Mr. Young has not adequately demonstrated that he will present issues or develop facts that would assist the Commission in fully considering the issues in this case without unduly complicating or disrupting the proceeding. Therefore, the Commission will deny his petition for full intervenor status on those grounds.

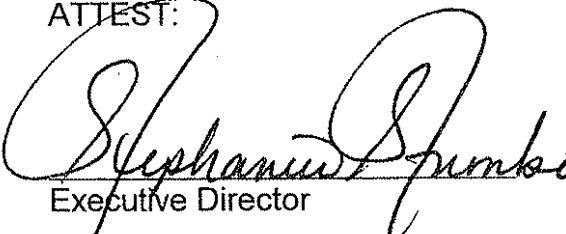
Mr. Young will have ample opportunity to participate in this proceeding even though he is not granted intervenor status. He may file comments, and those comments will be entered into the record of this case and will be fully considered by Commission Staff in issuing its report on Duke Kentucky's IRP.

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

Done at Frankfort, Kentucky, this 5th day of November, 2008.

By the Commission

ATTEST:


Executive Director