

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE 2008 INTEGRATED RESOURCE PLAN OF) CASE NO.
DUKE ENERGY KENTUCKY, INC.) 2008-00248

O R D E R

On November 14, 2008, Geoffrey M. Young filed an application for rehearing of the Commission's November 5, 2008 Order denying his petition for intervention. For the reasons cited herein, the Commission denies his petition for rehearing.

On rehearing, Mr. Young argues that the Commission has contradicted itself because the grounds upon which it denied his intervention are the same grounds upon which it previously granted intervention to the Sierra Club, an environmental organization, in a rate case filed by East Kentucky Power Cooperative, Inc. ("East Kentucky Power").¹ The Commission finds no merit in this argument. In the East Kentucky Power rate case, the Sierra Club's petition to intervene expressly stated, "Many of the people directly affected by these environmental impacts are Sierra Club members and customers of EKPC's member co-ops."² (Emphasis added.) Thus, the Sierra Club was intervening on behalf of customers of the utility and those customers have an interest in the rates of the utility providing them service. By contrast, in the

¹ Case No. 2006-00472, General Adjustment of Electric Rates of East Kentucky Power Cooperative, Inc.

² Case No. 2006-00472, Petition to Intervene of Cumberland Chapter of Sierra Club, at 2.

present case, Mr. Young does not, and cannot,³ represent any person other than himself. There is no dispute that Mr. Young is not a customer of Duke Energy Kentucky, Inc. ("Duke Kentucky"). Consequently, there is no contradiction between the Commission's decision to grant intervention to the Sierra Club in Case No. 2006-00472 and its decision to deny intervention to Mr. Young here.

Mr. Young also challenges the Commission's citation in its November 5, 2008 Order of an unpublished court opinion in EnviroPower, LLC v. Public Service Commission of Kentucky, 2007 WL 289328 (Ky. App. 2007). The Commission cited that case for the proposition that the "special interest" a person seeking intervention under 807 KAR 5:001, Section 3(8), must have is one relating either to the "rates' or 'service' of a utility."

Mr. Young references Civil Rule 76.28(4)(c), which he claims prohibits the use of unpublished opinions "in any court of this state." The Commission rejects Mr. Young's challenge for two reasons. First, the Commission is an Executive Branch administrative agency, not a court. Consequently, while the civil rules are often cited as being instructive for use in Commission proceedings, the civil rules are not applicable *per se*. Second, the civil rule cited by Mr. Young was amended in 2006 to provide, in pertinent part, that "unpublished Kentucky appellate decisions rendered after January 1, 2003, may be cited for consideration by the court if there is no published opinion that would adequately address the issue before the court." The EnviroPower case meets all the

³ Kentucky State Bar Association v. Henry Vogt Machine Co., 416 S.W.2d 727 (Ky. 1967) and Frazee v. Citizens Fidelity Bank & Trust Co., 393 S.W.2d 778 (Ky. 1964), cited in May v. Coleman, 945 S.W.2d 426, 428 (Ky. 1997).

criteria for citation under CR 76.28(4)(c). Therefore, it was proper for the Commission to cite the opinion in support of its Order denying Mr. Young's petition for intervention.

In response to the Commission's Order, which cited several prior Commission cases in which the Attorney General ("AG") had intervened, Mr. Young correctly points out that the AG has not petitioned for intervention in the present case. The Commission regrets this confusion. However, the fact that the AG has not intervened in the present case does not give any further support to Mr. Young's petition for intervention. Under KRS 367.150(8)(b), the AG has the right "[t]o be made a real party in interest to any action on behalf of consumer interests involving a quasijudicial or rate-making proceeding of any state or local governmental branch, commission, department, agency, or rate-making body whenever deemed necessary and advisable in the consumers' interest by the Attorney General." (Emphasis added). Clearly, the AG has discretion under the statute to decide in which Commission cases he deems it necessary and advisable to intervene; and nothing in KRS 367.150 authorizes a private party to intervene in a matter before the Commission simply because the AG has chosen not to do so. As stated above, Mr. Young simply lacks standing to challenge the electric rates of a utility of which he is not a customer.

For all other persons, a request for intervention is granted by the Commission only upon a determination that the criteria set forth in 807 KAR 5:001, Section 3(8), have been satisfied. 807 KAR 5:001, Section 3(8), provides that a person may petition the Commission for full intervenor status in any formal proceeding and that the petition shall be granted if the Commission determines the person has a special interest in the proceeding which is not otherwise adequately represented in the case, if the person is

likely to present issues or develop facts that will assist the Commission in fully considering the matter and the intervention will not unduly complicate or disrupt the proceedings. Mr. Young has not satisfied these standards in this case.

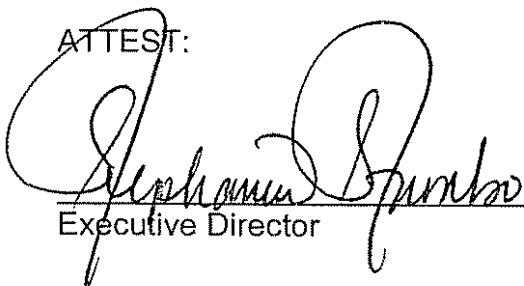
Mr. Young's remaining arguments simply reiterate the arguments raised in his original motion. He offers no basis for the Commission to grant rehearing. The Commission again states that Mr. Young will have ample opportunity to participate in this proceeding even though he is not granted intervenor status. 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 Integrated Resource Plan.

IT IS THEREFORE ORDERED that Mr. Young's petition for rehearing is denied.

Done at Frankfort, Kentucky, this 4th day of December, 2008.

By the Commission

ATTEST:


Executive Director