

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF KENTUCKY UTILITIES)
COMPANY TO FILE DEPRECIATION STUDY) CASE NO. 2007-00565

APPLICATION OF KENTUCKY UTILITIES)
COMPANY FOR AN ADJUSTMENT) CASE NO. 2008-00251
OF ELECTRIC BASE RATES)

O R D E R

On September 9, 2008, Jonathan Kern, by counsel, filed a petition requesting full intervention in this proceeding. The petition states that Mr. Kern is a businessman in Lexington, Kentucky, that he is an environmentalist, and that he "is concerned that the environment and the average consumer are not being best served by Kentucky Utilities."¹ The petition also states that electricity is being provided to businesses at a significant cost reduction and that this negatively impacts the cost of electricity to residential customers. The petition further alleges that it does not make environmental sense for Kentucky Utilities Company ("KU") to sell at reduced rates electricity generated by non-renewable resources because there is then no incentive for businesses to adopt conservation or energy efficiency measures. Finally, the petition states that Mr. Kern is requesting intervention "to protect the interests both of the

¹ Kern petition at 1.

residential consumer as well as the environmental issues which are wholly disregarded by KU.”²

On September 15, 2008, KU filed a response objecting to Mr. Kern’s petition to intervene. KU states that the environmental concerns expressed by Mr. Kern are beyond the scope of the Commission’s jurisdiction and, consequently, cannot be used as a basis to grant his intervention. KU further states that Mr. Kern has not stated any non-environmental special interest that is not otherwise adequately represented by the Attorney General (“AG”), nor has he shown that he possesses any special knowledge or expertise that would allow him to present issues or to develop facts that would assist the Commission in fully considering the issues in this case.

Based on the petition and being otherwise sufficiently advised, the Commission finds that the only person entitled to intervene as a matter of right is the AG, pursuant to KRS 367.150(8)(b). Intervention by all others is permissive and is within the sound discretion of the Commission.³

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

² Id.

³ Inter-County Rural Electric Cooperative Corporation v. Public Service Commission of Kentucky, 407 S.W.2d 127, 130 (Ky. 1966).

⁴ 807 KAR 5:001, Section3(8)(b).

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.

The interest raised by Mr. Kern relates to whether KU is under-pricing the electricity it sells to business customers and making up the lost revenue by over-pricing the electricity it sells to residential customers and whether selling electricity at a cost reduction has an adverse impact on the environment. These issues are of interest to all business and residential ratepayers, and Mr. Kern has not shown that his interest is indistinguishable from the interest of every other business or residential ratepayer. In addition, the Commission has already granted intervention to the AG, who has a statutory right to participate "on behalf of consumer interests."⁶ The AG has consistently intervened on behalf of ratepayers in proceedings of this type, and the AG is sufficiently knowledgeable about issues of rate-making and rate design.⁷ Intervention has also been granted to The Kroger Company, which operates retail stores and is a business customer of KU. Thus, the issues raised by Mr. Kern are being adequately

⁵ Id.

⁶ KRS 367.150(8)(b).

⁷ *See, for example*, the AG's direct testimonies filed in KU's prior rate case, Case No. 2003-00434, An Adjustment of the Electric Rates, Terms, and Conditions of Kentucky Utilities Company, covering the issues of rate design, cost-of-capital, and revenue requirements. Available at <ftp://162.114.3.166/PSCSCF/2003%20cases/2003-00434/>. Further, to the extent that energy policies are relevant in this proceeding, the AG has previously well represented those issues with the Commission. *See, for example*, Case No. 2006-00471, The 2006 Integrated Resource Plan of East Kentucky Power Cooperative, Inc.

represented by existing parties to this case, and he has not shown that he has a special interest which is not otherwise adequately represented.

Further, Mr. Kern has not shown that he has any training or experience in the fields of utility regulation or utility rate-making. Consequently, the Commission is unable to find that granting his request for intervention is likely to present issues or develop facts that assist the Commission in fully considering the issues in this proceeding without unduly complicating or disrupting the proceedings.

Mr. Kern will have ample opportunity to participate in this proceeding even though he is not granted intervenor status. He may file comments as frequently as he chooses, and those comments will be entered into the record of this case. He may also attend and present public comment at the regional public hearings that will be scheduled in the near future. Finally, Mr. Kern may attend and present comment at the public hearing to be held at our offices in Frankfort, Kentucky on January 13, 2009.


IT IS THEREFORE ORDERED that the request by Jonathan Kern to intervene is denied.

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

By the Commission

Vice Chairman Gardner abstains.

ATTEST:


Executive Director *for Stephanie Stumbo*
in commission

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