

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JOINT APPLICATION PURSUANT TO 1994 HOUSE)
BILL NO. 501 FOR APPROVAL OF KENTUCKY)
POWER COMPANY COLLABORATIVE DEMAND-)
SIDE MANAGEMENT PROGRAMS AND FOR)
AUTHORITY TO IMPLEMENT A TARIFF TO) CASE NO. 2008-00349
RECOVER COSTS, NET LOST REVENUES AND)
RECEIVE INCENTIVES ASSOCIATED WITH)
IMPLEMENTATION OF THREE NEW RESIDENTIAL)
DEMAND-SIDE MANAGEMENT PROGRAMS)
BEGINNING JANUARY 1, 2009)

O R D E R

On November 5, 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 the coal-fired power plants operated by American Electric Power d/b/a Kentucky Power Company ("Kentucky Power") and other pollution-producing power plants that Kentucky Power may need to build or utilize in the future."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.

¹ Young Petition at 1-2.

Mr. Young further states that if Kentucky Power were able to reduce the amount of time its Big Sandy Generating Station in Lawrence County, Kentucky operates each year "because of improved end-use efficiency in their customers' homes and businesses, or if Kentucky Power were able to retire one or both of the plants sooner than expected and replace it with more sustainable supply-side and demand-side resources, the magnitude of environmental hazards arising from the plant would be reduced."²

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.³ 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

² Young Petition at 2-3.

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

(Ky. 1942), the Commission's "jurisdiction is exclusively confined 'to the regulation of rates and service.'"⁴

Next, 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."⁵ 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.⁶

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 Kentucky Power, he pays no rates to Kentucky Power, and he

⁴ 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.")

⁵ 807 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."

⁶ Id.

receives no utility service from Kentucky Power. Thus, Mr. Young's interest in Kentucky Power's demand-side management ("DSM") proceeding does not arise from his status as a Kentucky Power ratepayer. Consequently, Mr. Young has no actual legal interest in the rates or service of Kentucky Power.

To the extent that Mr. Young's petition is considered as a request for intervention solely on his own behalf as an environmentalist, his interest in Kentucky Power's DSM matter is for the purpose of "reducing pollution that can harm people and the natural environment."⁷ 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."⁸ 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 Kentucky Power's DSM application, the issues he seeks to raise relating to the quality of the air and the level of pollution emitted by Kentucky Power'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.

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

⁷ Young Petition at 2.

⁸ Id. at 2.

comments will be entered into the record of this case and fully considered by the Commission in reviewing Kentucky Power's DSM application.

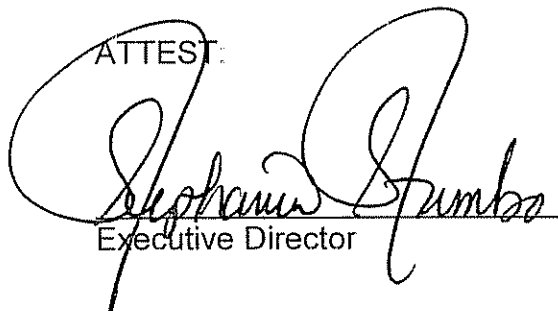
IT IS THEREFORE ORDERED that Mr. Young's petition to intervene is denied.

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

By the Commission

Vice Chairman Gardner abstains.

ATTEST:



Stephanie Fumbo
Executive Director