

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

GENERAL ADJUSTMENT OF ELECTRIC)	CASE NO.
RATES OF EAST KENTUCKY POWER)	2008-00409
COOPERATIVE, INC.)	

O R D E R

This case is before the Commission on East Kentucky Power Cooperative, Inc.'s ("EKPC") proposed wholesale rate adjustment. On November 17, 2008, Geoffrey M. Young petitioned the Commission for full intervention in this proceeding. Mr. Young states that he is not a customer of EKPC or any of its member cooperatives, but he asserts that he has a special interest in EKPC's rates and services. He further states that he has a "special interest in the quality of air" he breathes, and that the quality of the air "is likely to affect the amount of money" he will be required to spend in future years to treat health problems that he may suffer because of the coal-fired power plants operated or being built by EKPC. He further states that, as an environmentalist, he has an interest in reducing pollution that can harm people and the natural 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 he is a resident of Fayette County and that, as a result of the weather patterns in Kentucky, he is forced to breathe potentially harmful pollutants from EKPC's power plants.

Mr. Young states that, as an environmentalist, he has a special interest in the structure of EKPC's rates because the structure will encourage or discourage the implementation of energy efficiency programs and measures. Finally, Mr. Young expresses his prior experience with energy efficiency programs and asserts that his interests as an environmentalist and a proponent of such programs are not the same as those of the Attorney General and will not be adequately represented absent his participation. He further expresses his willingness to participate in a constructive, non-disruptive manner.

On November 20, 2008, EKPC filed a response in opposition to Mr. Young's petition for intervention.

Based on a review of the petition and response, and being otherwise sufficiently 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.¹ 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.'"²

¹ Inter-County Rural Electric Cooperative Corporation v. Public Service Comm'n of Kentucky, 407 S.W.2d 127, 130 (Ky. 1966).

² 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.")

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."³ 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.⁴

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.

Mr. Young acknowledges that he is not a customer of EKPC. As such, he pays no rates to EKPC and receives no service from EKPC. Thus, his interest in EKPC's rates does not arise from his status as an EKPC ratepayer. Consequently, Mr. Young has no actual legal interest in the rates or service of EKPC.

The Commission understands and appreciates Mr. Young's interest as an environmentalist in seeking to reduce pollution, but the Commission has no jurisdiction

³ 807 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."

⁴ Id.

over the quality of the air he breathes, the “significant health problem” associated with pollution from coal-fired power plants, or the carbon dioxide released into the atmosphere. As discussed above, the Commission’s jurisdiction is limited to the “rates” and “service” of utilities.

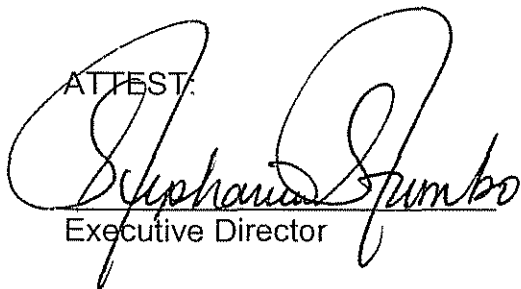
In summary, the Commission finds that, to the extent of Mr. Young’s interest as an environmentalist in EKPC’s rate proceeding, the issues he seeks to raise relating to the quality of the air and the level of pollution emitted by EKPC’s coal-fired plants are beyond the scope of the Commission’s jurisdiction. 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 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 any public hearing that may be held in this proceeding at our offices in Frankfort, Kentucky.

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

Done at Frankfort, Kentucky, this 16th day of December, 2008

By the Commission

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