

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JOINT APPLICATION PURSUANT TO 1994)	
HOUSE BILL NO. 501 FOR APPROVAL OF)	CASE NO.
KENTUCKY POWER COMPANY)	2008-00349
COLLABORATIVE DEMAND-SIDE)	
MANAGEMENT PROGRAMS AND FOR)	
AUTHORITY TO 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 December 23, 2008, Geoffrey M. Young filed an application for rehearing of the Commission's December 4, 2008 Order denying his request to intervene. Kentucky Power Company ("Kentucky Power") subsequently filed a response objecting to Mr. Young's request for a rehearing. Shortly thereafter, Mr. Young filed a reply in support of his application for rehearing. The matter now stands submitted for a decision. Based on the following reasons, the Commission denies the application for rehearing.

Mr. Young contends that the Commission erroneously interprets KRS 278.040(2) in order to overly restrict the regulation governing intervention in Commission proceedings, 807 KAR 5:001, Section 3(8). Specifically, Mr. Young argues that KRS 278.040(2) "is not at all clear that it limits the Commission's authority" to regulate only rates and service. Mr. Young further argues that the language of

KRS 278.040(2) is silent on the issue of intervention. Thus, Mr. Young asserts that the Commission has improperly injected the jurisdictional requirements contained in KRS 278.040(2) as an additional factor to consider to those already required for intervention under 807 KAR 5:001, Section 3(8).¹

Mr. Young's argument is without merit. Our finding that KRS 278.040(2) limits our jurisdiction to "rates" and "services" and that it is the first requirement for being granted intervention is well grounded in Kentucky law. In *Peoples' Gas Co. of Kentucky v. City of Barbourville*, 291 Ky. 805, 165 S.W.2d 567, 572 (Ky. 1942), the Kentucky Court of Appeals, then the state's highest court, declared that the Commission's "jurisdiction is exclusively confined 'to the regulations of rates and service.'" The same Court in 1943 expressly stated that KRS 278.040(2) clearly and unmistakably limits the jurisdiction of the Commission to rates and service. *Benzinger v. Union Light, Heat & Power Co.*, 293 Ky. 747, 170 S.W.2d 38, 41 (Ky. 1943).

In *Enviropower, LLC v. Public Service Commission of Kentucky*, 2007 WL 289328 (Ky. App. 2007), the Kentucky Court of Appeals clearly recognized the relationship between the Commission's jurisdictional authority under KRS 278.040(2) and the Commission's intervention regulation, 807 KAR 5:001, Section 3(8). The *Enviropower* court cogently explained:

¹ 807 KAR 5:001, Section 3(8)(b) provides, in relevant part, as follows:

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.

The PSC's exercise of discretion in determining permissive intervention is, of course, not unlimited. First, there is the statutory limitation under KRS 278.040(2) that the person seeking intervention must have an interest in the "rates" or "service" of a utility, since those are the only two subjects under the jurisdiction of the PSC. Second, there is the limitation in the PSC intervention regulation, 807 KAR 5:001, Section 3(8), which requires the showing of either "a special interest in the proceeding which is not otherwise adequately represented," or a showing that intervention "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."

Enviropower, LLC v. Public Service Commission of Kentucky, 2007 WL 289328, 4 (Ky. App. 2007).

Mr. Young goes on to state that, regardless of whether a Court allows the Commission to "get away with its highly questionable reinterpretation of KRS 278.040(2)," he still qualifies for intervention because he has clearly stated that he has a special interest in Kentucky Power's proposed DSM programs. The Commission finds that this argument is also without merit.

Mr. Young is a resident of Lexington, Kentucky. He receives no utility service from Kentucky Power and he pays no rates to Kentucky Power. Thus, neither the structure of Kentucky Power's DSM programs, nor the cost recovery of such programs, will have a direct impact on Mr. Young.

Mr. Young's stated interest in Kentucky Power's proposed DSM programs in this instance is based on his expressed interest in a clean environment. As the Commission stated in the December 4, 2008 Order denying Mr. Young's request for intervention, our jurisdiction is limited to rates and service of utilities. Issues relating to the environmental impacts of generating electricity have been delegated to other agencies, not to the

Commission. Thus, the Commission cannot consider the environmental impact of generating electricity as a factor in establishing rates or rate design.

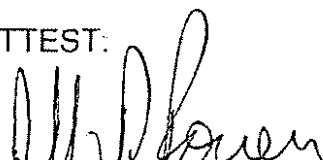
IT IS THEREFORE ORDERED that Mr. Young's petition for rehearing is denied.

Done at Frankfort, Kentucky, this 12th day of January, 2009.

By the Commission

Vice Chairman Gardner Abstains.

ATTEST:



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