

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF KENTUCKY UTILITIES)
COMPANY FOR AN ADJUSTMENT OF BASE) CASE NO.
RATES) 2009-00548

O R D E R

The matter is before the Commission upon a petition filed by Geoffrey M. Young seeking full intervention in this proceeding. In support of his petition, Mr. Young states that he is a customer of Kentucky Utilities Company ("KU"), an environmentalist, and a proponent of improved energy efficiency. Mr. Young asserts that, as an environmentalist, he has "a special interest in the quality of the air" he breathes, and that the quality of the air he breathes 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 KU's existing and planned power plants."¹ Mr. Young further asserts 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.

Mr. Young states that, as a promoter of energy efficiency, he has a special interest in the structure of KU's rates since rate structures impact: (1) the consumption of energy; (2) "the environmental impacts caused by the generation of that electricity,"

¹ Young Petition at 3.

and (3) the success of demand-side management programs. Finally, Mr. Young claims that such issues are not otherwise adequately represented by any other parties to the instant proceeding, including the Attorney General (“AG”), and pledges that he will participate in a constructive and non-disruptive manner.

KU has filed a response in opposition to Mr. Young’s petition to intervene.

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.² As stated by Kentucky’s highest court 68 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.’”³

In exercising its decision 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:

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

³ 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 to the matter of rates and service”).

⁴ 807 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 to the “‘rates’ or ‘service’ of a utility.”

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 a person shall be granted full intervention.⁵

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.

Although Mr. Young is a ratepayer of KU, he has not shown that, as a ratepayer, his interest in KU's rate structure for purposes of improving energy efficiency is different from the interests of KU's other 500,000 ratepayers. Thus, Mr. Young's interest as a ratepayer is not a special interest. His interest as a ratepayer is already adequately represented by the AG. The AG consistently intervenes on behalf of ratepayers in proceedings of this type. Indeed, the AG has been granted intervention in this proceeding, and the AG is sufficiently knowledgeable about issues of rate-making and rate structure.⁶

To the extent that Mr. Young's petition is considered a request for intervention solely on his own behalf as an environmentalist, his interest in KU's rate application is for the purpose of "reducing pollution that can harm other people and the natural

⁵ Id.

⁶ See, for example, the AG's direct testimonies of his three expert witnesses filed in this matter on April 23 and 26, 2010. Further, to the extent that energy policies are relevant to 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. (Ky. PSC Feb. 11, 2008).

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 air he breathes, the “significant health problem” associated with mercury pollution from coal-fired power plants, or the “carbon dioxide released to the atmosphere when coal is burned [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 Mr. Young’s interest as a ratepayer in KU’s rate structure is not a special interest and that interest is adequately represented by the AG. Mr. Young’s interest in the quality of air and the level of pollution emitted by KU’s coal-fired plants is 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.

Having determined that the requisites of 807 KAR 5:001, Section 3(8), have not been satisfied, the Commission will deny Mr. Young’s request for intervention. However, Mr. Young will have ample opportunity to participate in these proceedings even though he is not granted intervenor status. Mr. Young may submit comments that will be entered in the record of this case. Mr. Young may also keep abreast of the status of the case and filings by monitoring the KU case’s electronic file located at [http://psc.ky.gov/Home/Library?type=Cases&folder=2009 cases/2009-00548](http://psc.ky.gov/Home/Library?type=Cases&folder=2009%20cases/2009-00548). Finally,

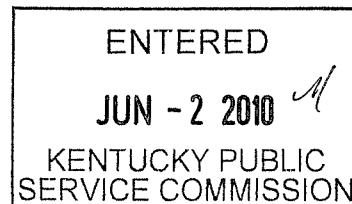
⁷ Young Petition at 3.

⁸ Id.

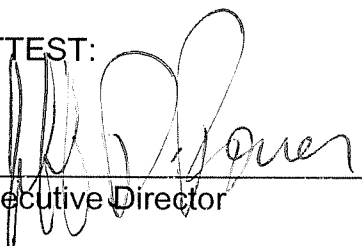
Mr. Young may attend and present comment at the public hearing to be held at our offices in Frankfort, Kentucky on June 8, 2010.

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

By the Commission



ATTEST:



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