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January 8, 2004

RECEIVED
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PUBLIC SERVICE COMMISSION
FRANKFORT, KY

VIA HAND DELIVERY

Mr. Thomas M. Dorman
Executive Director
Public Service Commission
211 Sower Boulevard
Frankfort, Kentucky 40602

**RE: *In the Matter of: An Adjustment of the Electric Rates, Terms and Conditions of
Kentucky Utilities Company*
KPSK Case No. 2003-00434
ON&W File No. 1/294**

Dear Mr. Dorman:

Enclosed please find and accept for filing the original and ten (10) copies of Kentucky Utilities Company's Objection to Request of Commonwealth of Kentucky, Environmental and Public Protection Cabinet, Division of Energy for Full Intervention in the above-referenced matter. Please confirm your receipt of this filing by placing the stamp of your Office with the date received on the enclosed additional copy and return it to me in the enclosed self-addressed stamped envelope.

Should you have any questions or need any additional information, please contact me at your convenience.

Yours very truly,

J. Gregory Cornett

JGC/ec

Enclosures

cc: Parties of Record (w/ encl.)
Linda S. Portasik, Esq. (w/ encl.)

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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**PUBLIC SERVICE
COMMISSION**

In Re the Matter of:

**AN ADJUSTMENT OF THE ELECTRIC
RATES, TERMS AND CONDITIONS
OF KENTUCKY UTILITIES COMPANY**

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CASE NO: 2003-00434

**OBJECTION TO REQUEST OF
COMMONWEALTH OF KENTUCKY,
ENVIRONMENTAL AND PUBLIC PROTECTION CABINET,
DIVISION OF ENERGY
FOR FULL INTERVENTION**

Kentucky Utilities Company ("KU"), by counsel, in response to the request for full intervention by the Commonwealth of Kentucky, Environmental and Public Protection Cabinet, Division of Energy ("KDOE") dated January 5, 2004, states as follows:

Pursuant to 807 KAR 5:001, Section 3(8), the Commission may grant intervention only if: (1) the moving party has a special interest in this proceeding which is not otherwise adequately represented; or (2) full intervention by the party is likely to present issues or develop facts that assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings. Under that regulation the Commission has the ability to exercise "discretion in the matter of affording permission to intervene." Inter-County R.E. Coop. Corp. v. Public Service Commission, Ky., 407 S.W.2d 127, 130 (1966). The KDOE's motion to intervene does not meet the requirements of 807 KAR 5:001, Section 3(8), and for that reason the motion should be denied.

A. THE KDOE DOES NOT HAVE A SPECIAL INTEREST IN THIS PROCEEDING WHICH IS NOT OTHERWISE ADEQUATELY REPRESENTED.

The KDOE has asserted that it has a special interest in this proceeding based on its “statutory mandate to ‘develop and implement programs for the development, conservation, and utilization of energy in a manner to meet human needs while maintaining Kentucky’s economy at the highest feasible level.’” KDOE’s Motion to Intervene, p. 1 (citing KRS Chapter 224.10-100). That mandate, however, has absolutely nothing to do with the level of rates for electricity, or the protection of the broader public interest, in connection with, or in the context of, a rate proceeding. Instead, those interests are to be, and will in this case be, protected by the Attorney General, other consumer groups (such as groups advocating the interests of low-income customers) and the Commission Staff.

The KDOE has no interest, much less any mandate, with regard to general utility rates. Instead, the mandate to represent the interests of consumers in proceedings such as this one clearly falls to the Attorney General, who has already moved for intervention in this proceeding. See KRS 367.150 (8) (granting the Attorney General the right and obligation to appear before regulatory bodies of the Commonwealth of Kentucky to represent the interests of consumers). Likewise, it is the Commission Staff, not the KDOE, that is responsible for representing the broader public interest in proceedings like this one. The Commission previously held that:

[t]he Commission, in its role as the enforcer of KRS Chapter 278 and all regulations promulgated pursuant to that Chapter, represents the public interest. See KRS 278.040(1) and (3). See also Philipps, Kentucky Practice, 5th Ed., Civil Rule 24.01 at 422 (“[W]here . . . there is a party charged by law with representing his interest, then there will be a presumption that the representation is adequate.”)

In the Matter of: Louisville Gas and Electric Company and BellSouth Telecommunications, Inc.
– *Alleged Violation of Commission Regulations 807 KAR 5:041, Section 3 and 807 KAR 5:061,*
Section 3, Case No. 96-246, Order (October 15, 1996) (emphasis added and citation omitted).

The KDOE simply has no special interest in this proceeding. And, to the extent that the KDOE has some general interest in this proceeding, that interest will be adequately protected by the Attorney General, other consumer groups, and the Commission Staff. For those reasons, the Commission should deny the KDOE's motion to intervene.

B. THE KDOE IS NOT LIKELY TO PRESENT ISSUES OR TO DEVELOP FACTS THAT WILL ASSIST THE COMMISSION IN FULLY CONSIDERING THE ISSUES WITHOUT UNDULY COMPLICATING OR DISRUPTING THE PROCEEDINGS.

The KDOE's request also fails to meet the alternative requirement for intervention, since it is not "likely to present issues or to develop facts that assist the commission in fully considering the matter without unduly complicating or disrupting the proceedings." 807 KAR 5:001, Section 3(8). Indeed, the KDOE does not offer any basis for finding that it would present issues or develop facts which would assist the Commission in deciding this matter, other than to simply state that it wants to be able "to provide comments in this rate case." KDOE's Motion to Intervene, p. 1. The KDOE may, of course, provide those comments, on the record, by offering public comments at the start of the hearing, without being afforded the rights of an intervenor. Indeed, the Commission has long held that parties who do not qualify for intervention may nonetheless "fulfill their interest to monitor and follow [the] proceeding by reviewing the Commission's official case file which contains every document in the record, and attending all hearings which are open to the public." *In the Matter of: Adjustment of Gas and Electric Rates of Louisville Gas and Electric Company*, Case No. 10064, Order of January 11, 1988.

Furthermore, it is likely that the KDOE's involvement in this case as a party would only serve to unduly complicate or disrupt the proceedings. The KDOE's interest, as set forth in its motion, relates to "enhanc[ing] the efficiency of energy production and use in all sectors of the economy." The development of those issues by the KDOE would simply not be germane to this rate proceeding, and would only serve to inject unnecessary collateral issues into this case, thus wasting the time and resources of the parties and the Commission and its Staff.

The participation of the KDOE as an intervenor in this case would not assist the Commission in fully considering this matter, and would unduly complicate and disrupt this proceeding. For those further reasons, the Commission should deny the KDOE's motion for intervention.

C. IN THE ALTERNATIVE, THE COMMISSION SHOULD GRANT THE KDOE ONLY LIMITED INTERVENTION.

For all of the reasons previously stated, the best course of action is to deny the KDOE's motion to intervene altogether. Assuming, however, for the sake of argument only, that the Commission determines that the KDOE should be granted intervention in this case, then the Commission should limit that intervention by not certifying the KDOE as a party, and by denying the KDOE the right to request discovery or file testimony. In doing so, the Commission would preclude the KDOE from unnecessarily complicating this proceeding by seeking discovery and filing testimony on issues which are not germane to this proceeding.

As defined by the Commission's regulations:

A person making only a limited intervention shall be entitled to the full rights of a party at the hearing in which he appears and shall be served with the commission's order, but he shall not be served with filed testimony, exhibits, pleadings, correspondence and all other documents submitted by parties. A person making a limited appearance will not be certified as a party for the purposes of receiving service of any petition for rehearing or petition for judicial review.

807 KAR 5:001, Section 3(8). Such limitations are consistent with the basic principle of administrative law that an administrative agency may impose reasonable terms on one seeking to intervene in a pending proceeding. Vinson v. Washington Gas Light Co., 321 U.S. 489, 498 (1944); See 73A C.J.S. Public Administrative Law and Procedure §121.

WHEREFORE, Kentucky Utilities Company respectfully requests that the Commission deny the KDOE's motion to intervene in this proceeding.

Dated: January 8, 2004

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Objection was served this 8th day of January 2004, U.S. mail, postage prepaid, upon:

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