



STOLL · KEENON · OGDEN
P L L C

2000 PNC PLAZA
500 WEST JEFFERSON STREET
LOUISVILLE, KY 40202-2828
MAIN: (502) 333-6000
FAX: (502) 333-6099
www.skofirm.com

W. DUNCAN CROSBY III
DIRECT DIAL: (502) 560-4263
DIRECT FAX: (502) 627-8754
duncan.crosby@skofirm.com

August 19, 2008

VIA HAND DELIVERED

Stephanie L. Stumbo
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, Kentucky 40601

RECEIVED

AUG 19 2008

PUBLIC SERVICE
COMMISSION

**RE: Application of the Adjustment of Electric Rates, Terms and Conditions of
Kentucky Utilities Company**
Case No. 2008-00251

**Application of the Adjustment of the Electric and Gas Rates, Terms and
Conditions of Louisville Gas and Electric Company**
Case No. 2008-00252

Dear Ms. Stumbo:

Enclosed please find and accept for filing two originals and ten copies of Kentucky Utilities Company's and Louisville Gas and Electric Company's Response to the Petitions to Intervene of Geoffrey M. Young in the above-referenced matters. Please confirm your receipt of these filings by placing the stamp of your Office with the date received on the enclosed additional copies and return them to me in the enclosed self-addressed stamped envelope.

Should you have any questions please contact me at your convenience.

Yours very truly,

W. Duncan Crosby III

WDC:ec
Enclosures
cc: Parties of Record

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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

**APPLICATION OF KENTUCKY)
UTILITIES COMPANY FOR AN) CASE NO. 2008-00251
ADJUSTMENT OF BASE RATES)**

In the Matter of:

**APPLICATION OF LOUISVILLE GAS)
AND ELECTRIC COMPANY FOR AN) CASE NO. 2008-00252
ADJUSTMENT OF ITS ELECTRIC)
AND GAS BASE RATES)**

**RESPONSE OF LOUISVILLE GAS AND ELECTRIC COMPANY
AND KENTUCKY UTILITIES COMPANY TO
THE PETITION TO INTERVENE OF GEOFFREY M. YOUNG**

Louisville Gas and Electric Company (“LG&E”) and Kentucky Utilities Company (“KU”) (collectively “LG&E/KU” or the “Companies”) respectfully request that the Commission deny the Petitions to Intervene of Geoffrey M. Young in these proceedings, in which Mr. Young seeks full intervenor status.¹ Mr. Young claims an interest in these proceedings because he is concerned about the air quality and other environmental impacts of coal-fired electricity generation, and because he would like to establish rates that decrease electric consumption, which in turn would decrease “the environmental impacts caused by the generation of ... electricity.”² In other words, according to recent Commission precedent, Mr. Young presents no bases for his intervention that are jurisdictional to the Commission, nor does he state any grounds

¹ The Commission recently denied Mr. Young’s petition for intervention in the Companies’ Integrated Resource Plan (“IRP”) proceeding (Case No. 2008-00148) on the grounds that (1) the Commission does not have jurisdiction over environmental matters and (2) the Attorney General can adequately represent any of Mr. Young’s customer interests. *In the Matter of: The 2008 Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company*, Case No. 2008-00148, Order at 5 (July 18, 2008).

² *In the Matter of: Application of Kentucky Utilities Company for an Adjustment of Base Rates*, Case No. 2008-00251, Petition to Intervene of Geoffrey M. Young at 3 (August 13, 2008) (Young KU Petition); *In the Matter of: Application of Louisville Gas and Electric Company for an Adjustment of Its Electric and Gas Base Rates*, Case No. 2008-00252, Petition to Intervene of Geoffrey M. Young at 3 (August 13, 2008) (Young LG&E Petition).

for full intervention under 807 KAR 5:001 § 3(8). Moreover, Mr. Young is not an LG&E customer,³ necessarily depriving him of any consumer or any other relevant interest in that proceeding. The Companies therefore respectfully request that the Commission deny Mr. Young's Petitions for Intervention in these proceedings.

I. Recent Commission and Unpublished Kentucky Court of Appeals Precedents State that Environmental Concerns, Such as Mr. Young's, Are Not in the Commission's Jurisdiction.

The Commission should deny Mr. Young's Petitions for Intervention because all of his stated interests in these proceedings are environmental or health-related, which are outside the jurisdiction of this Commission. As the Commission stated in its recent order denying Mr. Young intervention in the Companies' current IRP proceeding, "Notably absent from the Commission's jurisdiction are environmental concerns, which are the responsibility of other agencies within Kentucky state government"⁴ In addition to KRS 278.040(2), which states on its face that the Commission's jurisdiction extends to the rates and service of utilities, the Kentucky Court of Appeals, in a decision not to be published, has stated:

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.⁵

Mr. Young's Petitions make it plain that his claimed interests in these proceedings have nothing to do with the Companies' rates or service:

³ Young LG&E Petition at 3 ("I am a retail customer of KU and not LG&E").

⁴ *In the Matter of: The 2008 Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company*, Case No. 2008-00148, Order at 5 (July 18, 2008)

⁵ *EnviroPower, LLC v Public Service Commission of Kentucky*, 2007 WL 289328 at 3 (Ky. App. 2007) (not to be published) (emphasis added).

As an environmentalist, I have an interest in reducing pollution that can harm other people and the natural environment.⁶

As an environmentalist and a person specifically concerned with promoting improved energy efficiency, I have a special interest in the structures of the tariffs that will be established at the conclusion of this case The energy consumption patterns that will result from the set of tariffs and economic incentives established in this proceeding are likely to affect the total amount of electricity consumed and the environmental impacts caused by the generation of that electricity.⁷

If the Commission were to deny this petition, it is likely that the interests of environmentalists and proponents of dramatically enhanced energy efficiency in Kentucky will not be adequately represented.⁸

In short, Mr. Young's claimed concerns are: (1) environmental impacts of generating electricity; (2) how environmental impacts of generating electricity affect human health; and (3) how Mr. Young's environmental views can be implemented through electric rates and energy efficiency programs.⁹ Regardless of the merits of Mr. Young's views on the environment, the Commission and Court of Appeals have clearly stated that the Commission's jurisdiction simply does not extend to environmental issues, depriving Mr. Young of grounds upon which to seek intervention.

II. The Environmental and Public Protection Cabinet, Not the Commission, Has the Statutory Authority and Duty to Address Environmental Issues; Mr. Young Should Address His Concerns and Comments to that Cabinet, Not in these Proceedings.

If Mr. Young desires to pursue his environmental concerns at the state level, he should address them to the state agencies statutorily tasked with addressing such issues, in accord with the Commission's statement that "environmental concerns ... are the responsibility of other

⁶ Young KU Petition at 1; Young LG&E Petition at 1 (emphasis added).

⁷ Young KU Petition at 2-3; Young LG&E Petition at 2-3 (emphasis added).

⁸ Young KU Petition at 4; Young LG&E Petition at 4 (emphasis added).

⁹ Young KU Petition at 1-4; Young LG&E Petition at 1-4.

agencies within Kentucky state government”¹⁰ In the Commonwealth, the Energy and Environment Cabinet (“EEC”) has the statutory responsibility to “[p]repare and develop a comprehensive plan or plans related to the environment of the Commonwealth.”¹¹ Insofar as air emissions are of particular concern to Mr. Young, the Kentucky Division for Air Quality, a division of the EEC, has jurisdiction over such issue: “KRS 224.10-100 requires the Environmental and Public Protection Cabinet [the predecessor cabinet to EEC] to prescribe administrative regulations for the prevention, abatement, and control of air pollution.”¹² In addition to providing Mr. Young direction to the proper forum for addressing his concerns, these statutes and regulations confirm the Commission’s recent holding that such concerns are not within the Commission’s jurisdiction, and are therefore irrelevant to these proceedings.

III. Mr. Young Is Not an LG&E Customer; Therefore He Has No Customer or Other Jurisdictional Interest in that Proceeding.

Because Mr. Young is, according to his Petition, not an LG&E customer, he cannot intervene in LG&E’s rate proceeding. A 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.”¹³ Mr. Young has said he is not an LG&E customer, and has stated no other Commission-jurisdictional interest in the rates or service of LG&E. The Commission should, therefore, deny him intervention in the LG&E rate proceeding.¹⁴

¹⁰ *In the Matter of: The 2008 Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company*, Case No. 2008-00148, Order at 5 (July 18, 2008).

¹¹ KRS 224-10.100(2).

¹² 401 KAR 50:012.

¹³ *EnviroPower, LLC v Public Service Commission of Kentucky*, 2007 WL 289328 at 3 (Ky. App. 2007) (not to be published).

¹⁴ Young LG&E Petition at 3 (“I am a retail customer of KU and not LG&E ...”).

IV. Mr. Young Has Given No Reason Why the Attorney General Cannot Adequately Represent His Commission-Jurisdictional Interests as a KU Customer; Therefore the Commission Should Deny His Petition for Intervention in the KU Rate Proceeding.

First, Mr. Young identifies himself as a KU customer, implying that such status gives him a special interest in this proceeding entitling him to full intervention. The Commission has been clear that a proposed intervenor's status as a customer is not a special interest entitling such person to full intervention, especially when, as here, the Attorney General has been granted full intervention.¹⁵

Second, Mr. Young presents no reason why his interests as a consumer are any different than those of the other members of his rate class; it is only as an environmental advocate that Mr. Young's interests may diverge from those of his fellow rate class members. But as the Commission has correctly held, such environmental interests are not within the Commission's jurisdiction and are therefore irrelevant to this proceeding.

Third, Mr. Young discusses energy efficiency and alternative energy issues, indicating that he intends to introduce these issues into this proceeding. As Mr. Young indicates in his Motion, he has previously attempted to intervene in a Commission proceeding for the purpose of offering testimony on these issues and he was denied full intervention.¹⁶ There, the Commission suggested that Mr. Young's energy efficiency issues could be advanced by either the Sierra Club or the Attorney General. Similarly, Mr. Young's issues can be advanced by the Attorney General, who has intervened here.

¹⁵ *In the Matter of: An Investigation Into East Kentucky Power Cooperative, Inc.'s Continued Need for Certificated Generation*, Case No. 2006-00564, Order at 4-5 (April 19, 2007) ("The interests of ratepayers are represented, as a matter of law, by the Attorney General. See KRS 367.150(8)(a). The Sierra Club's interest in costs to ratepayers is too remote to stand out as an interest not otherwise adequately represented in this proceeding.")

¹⁶ *In the Matter of: An Investigation of the Energy and Regulatory Issues in Section 50 of Kentucky's 2007 Energy Act*, Administrative Case No. 2007-00477, Order (December 27, 2007).

Fourth, Mr. Young states that he has testified on behalf of entities that were granted full intervention in other proceedings. That circumstance is not support for his Petition. The Commission addressed the same argument by an entity seeking full intervention and denied the motion in *In the Matter of: Application of Kentucky-American Water Company for Approval of Accounting Accruals*, Case No. 2003-00478, stating: “As to FLOW’s claim that it is entitled to a presumption that it is likely to assist the Commission in this case because it has assisted the Commission in past cases, each case and each party’s request to intervene in such cases must be considered individually.”¹⁷

Fifth and finally, because Mr. Young states repeatedly in his Petitions that his interests in these proceedings are, at base, purely environmental, his participation in these proceedings would serve only to disrupt them without adding information relevant to them. 807 KAR 5:001 §3(8)(b) provides that one basis for granting intervention is that the petitioner “is likely to present issues or develop facts that assist the commission in fully considering the matter without unduly complicating or disrupting the proceedings ...” Mr. Young claims expertise in environmental issues, which are irrelevant per se because they are outside the Commission’s jurisdiction, and in energy efficiency matters, which are not at issue in these base rate proceedings. Mr. Young therefore cannot “present issues or develop facts that assist the commission in fully considering the[se] matter[s],” meaning that any participation by him as a full intervenor could serve only to complicate or disrupt unduly these proceedings.

V. Conclusion

Because Mr. Young has not presented any ground upon which the Commission can grant him intervention, the Commission should deny him intervention in these proceedings. Mr.

¹⁷ *In the Matter of: Application of Kentucky-American Water Company for Approval of Accounting Accruals*, Case No. 2003-00478, Order at 3 (May 3, 2004).

Young has clearly stated that his interests in these proceedings are purely environmental, but the Commission, citing an unpublished Kentucky Court of Appeals decision, has recently held that environmental concerns are outside the Commission's jurisdiction. As a KU customer, Mr. Young has not stated a Commission-jurisdictional customer interest that the Attorney General cannot adequately represent; because Mr. Young is not an LG&E customer, he cannot have any such interests. Therefore, the Companies respectfully request that the Commission deny in these proceedings the Petitions to Intervene of Geoffrey M. Young.

Dated: August 19, 2008

Respectfully submitted,



Kendrick R. Riggs
W. Duncan Crosby III
Stoll Keenon Ogden PLLC
2000 PNC Plaza
500 West Jefferson Street
Louisville, Kentucky 40202-2828
Telephone: (502) 333-6000

Robert M. Watt III
Stoll Keenon Ogden PLLC
300 West Vine Street, Suite 2100
Lexington, Kentucky 40507-1801

Allyson K. Sturgeon
Senior Corporate Attorney
E.ON U.S. LLC
220 West Main Street
Louisville, Kentucky 40202
Telephone: (502) 627-2088

Counsel for Louisville Gas and Electric Company
and Kentucky Utilities Company

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served on the following persons on the 19th day of August, 2008, by United States mail, postage prepaid:

Dennis G. Howard II
Assistant Attorney General
Office of the Attorney General
Office of Rate Intervention
1024 Capital Center Drive, Suite 200
Frankfort, KY 40601-8204

W. Henry Graddy, IV
W. H. Graddy & Associates
103 Railroad (Main) Street
P. O. Box 4307
Midway, KY 40347

Michael L. Kurtz
Boehm, Kurtz & Lowry
36 East Seventh Street, Suite 1510
Cincinnati, OH 45202

Geoffrey M. Young
454 Kimberly Place
Lexington, KY 40503

Willis L. Wilson
Leslye M. Bowman, Director of Litigation
Lexington-Fayette Urban County Government
Department of Law
200 East Main Street, P. O. Box 34028
Lexington, KY 40588-4028

Joe F. Childers
Getty & Childers, PLLC
1900 Lexington Financial Center
250 West Main Street
Lexington, KY 40507

David C. Brown
Stites & Harbison, PLLC
400 West Market Street, Suite 1800
Louisville, KY 40202

Lisa Kilkelly
Legal Aid Society
416 West Muhammad Ali Blvd.
Louisville, KY 40202



Counsel for Louisville Gas and Electric Company
and Kentucky Utilities Company