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April 23, 2010

**VIA HAND DELIVERY**

Jeff DeRouen  
Executive Director  
Kentucky Public Service Commission  
211 Sower Boulevard  
Frankfort, KY 40601

RECEIVED

APR 23 2010

PUBLIC SERVICE  
COMMISSION

**RE: Application of Kentucky Utilities Company for an Adjustment of Base Rates**  
**Case No. 2009-00548**

Dear Mr. DeRouen:

Enclosed please find and accept for filing the original and ten copies of Response of Kentucky Utilities Company to the Petition to Intervene of Geoffrey M. Young in the above-referenced matter.

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

Yours very truly,

Monica H. Braun

MHB:mms  
Enclosures  
cc: Parties of Record

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COMMONWEALTH OF KENTUCKY

RECEIVED

BEFORE THE PUBLIC SERVICE COMMISSION

APR 23 2010

In the Matter of:

PUBLIC SERVICE COMMISSION

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

RESPONSE OF KENTUCKY UTILITIES COMPANY TO THE PETITION TO INTERVENE OF GEOFFREY M. YOUNG

Kentucky Utilities Company ("KU") respectfully requests that the Commission deny the Petition of Geoffrey M. Young for Full Intervention1 in this proceeding. Mr. Young's motion should be denied for four principal reasons: (1) Mr. Young's motion is untimely; (2) Mr. Young's motion fails to demonstrate a special interest in the proceeding as his stated interests are not within the Commission's jurisdiction; (3) Mr. Young's motion neglects to proffer any issues or development of facts that will assist the Commission in the resolution of this matter; and (4) Mr. Young's intervention would unduly complicate and disrupt the proceeding. The merits of Mr. Young's petition have already been resolved by the Commission in seven prior orders in past proceedings—all of which denied Mr. Young's efforts to intervene.2 The petition Mr. Young

1 Young Petition at 1.

2 In the Matter of: The 2008 Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utility Company, Case No. 2008-00148, Order (July 18, 2008); In the Matter of: Filing of East Kentucky Power Cooperative, Inc. to Request Approval of Proposed Changes to Its Qualified Cogeneration and Small Power Production Facilities Tariff, Case No. 2008-00128, Order (April 28, 2008); In the Matter of: Application of Louisville Gas and Electric Company to File Depreciation Study, Case No. 2007-00564 and 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, Order (October 10, 2008); In the Matter of: Application of Kentucky Utilities Company to File Depreciation Study, Case No. 2007-00565 and In the Matter of: Application of Kentucky Utilities Company for an Adjustment of Electric Base Rates, Case No. 2008-00251, Order (December 5, 2008); In the Matter of: The Joint Application Pursuant to 1994 House Bill No. 501 for the Approval of Kentucky Power Company Collaborative Demand-Side Management Programs and Authority to Implement a Tariff to Recover Costs, Net Lost Revenues and Receive Incentives Associated with the Implementation of the Kentucky Power Company Collaborative Demand-Side Management Programs, Case No. 2008-00350, Order (October 13, 2008); In the Matter of: The 2008

filed on April 20, 2010, merely restates, verbatim, the arguments this Commission has found unpersuasive. Quite simply, Mr. Young again seeks “full intervention as an individual environmentalist”<sup>3</sup> despite the Commission’s unwavering position that the issues Mr. Young seeks to develop are beyond the jurisdiction of the Commission. As Mr. Young fails to satisfy any of the requirements for intervention under 807 KAR 5:001 § 3(8), KU respectfully requests that the Commission deny the Petition of Geoffrey M. Young for Full Intervention in this proceeding.

**I. The Commission Should Deny Mr. Young’s Motion to Intervene Because the Petition is Excessively Untimely.**

The threshold requirement for intervention in any proceeding is that the request for intervention must be made by *timely* motion.<sup>4</sup> The Commission has consistently denied untimely motions to intervene.<sup>5</sup> On December 30, 2009, KU submitted its Notice of Intent to file its

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*Integrated Resource Plan of Duke Energy Kentucky, Inc.*, Case No. 2008-00248, Order (November 5, 2008); *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).

<sup>3</sup> Young Petition at Cover Letter.

<sup>4</sup> 807 KAR 5:001 § 3(8) (emphasis added). The only exception to the timeliness requirement is that the Attorney General, pursuant to KRS 367.150(8), may claim intervention in Commission proceedings as a matter of right. All other persons and entities must be granted permissive intervention pursuant to 807 KAR 5:001 § 3(8).

<sup>5</sup> *In re Adjustment of Gas Rates of the Union Light, Heat and Power Company*, Case No. 2001-00092, Order (Sept. 13, 2001) (motion to intervene by Stand Energy denied when it was filed 80 days after notice and application was filed); *In the Matter of: Application of Kentucky Frontier Gas, LLC for Approval of Financing and Transfer of Control*, Case No. 2008-00394, Order (February 13, 2009) (denying joint motion to intervene filed by B&H Gas Company and Johnson County Gas fifteen days after final order was issued); *In the Matter of: The Petition of Kentucky-Ohio Gas Company for Approval of a Certificate of Convenience and Necessity to Construct Pipeline Facilities, Approval of Financing and Approval of Special Contract*, Case No. 93-144, Order (September 3, 1993) (denying intervention to Columbia Gas of Kentucky when motion to intervene was filed over four months after the case was established); *In the Matter of: Application of Clark Energy Cooperative, Inc. for Routine Revision of Existing CATV Pole Attachments*, Case No. 2004-00442, Order (March 29, 2005) (denying motion for intervention by Kentucky Cable Telecommunications Association one day before final order entered); *In the Matter of: The Joint Application of Sandy Valley Water District, Southern Water and Sewer District and the City of Pikeville for Approval of the Transfer of Facilities and for the Assumption of Debt by Southern Water and Sewer District*, Case No. 2006-00327, Order (January 29, 2008) (denying as untimely motion to intervene filed by the City of Prestonsburg 85 days following entry of final order); *In the Matter of: Application of Sprintcom, Inc. for Issuance of a Certificate of Public Convenience and Necessity to Construct a Personal Communications Services Facility in the Cincinnati Basic Trading Area [Crittenden Facility]*, Case No. 99-103-UAC, Order (November 4, 1999) (denying motion to intervene filed by the Grant County Planning Commission six months after case was docketed); and *In the Matter of: the Petition of Kentucky-Ohio Gas Company for Approval of Special Contract and Certificate of*

application in this proceeding, which was subsequently filed on January 29, 2010. Prior to filing the application, KU published notices of the filing in newspapers throughout its service area for three consecutive weeks beginning January 22, 2010.<sup>6</sup> Further, KU included information regarding the impending base rate application in customers' bills during the course of the regular monthly billing cycle beginning January 25, 2010.<sup>7</sup> Both notices provided that "any corporation, association, body politic or person with a substantial interest in the matter may by written request, within *thirty (30) days* after publication of the notice of the proposed rate changes, request to intervene."<sup>8</sup> Pursuant to 807 KAR 5:001, § 10(3)(f), KU's notice also stated that intervention may be granted beyond the thirty (30) day period upon a showing of good cause.<sup>9</sup> While Mr. Young, who began his petition by noting that he was a KU customer,<sup>10</sup> has had notice of this proceeding since January, he unjustifiably delayed filing his motion for *81 days* after the application was filed, without alleging any good cause as to why the petition was filed over 50 days beyond the prescribed period for intervention.

More concerning than the mere length of time between the filing of the application and Mr. Young's petition is the untimeliness of the motion in regard to the discovery that has already been completed pursuant to the procedural schedule the Commission established in its February 16, 2010 Order. Under the procedural schedule, all intervenors have had two opportunities to submit requests for information to KU, to which KU has already replied.<sup>11</sup> These two rounds of completed discovery are the only opportunities provided for in the Commission's procedural

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*Convenience and Necessity*, Case No. 92-317, Order (September 21, 1992) (denying motion for intervention filed by Columbia Gas 56 days after filing of petition).

<sup>6</sup> See Certificate of Completed Notice (March 11, 2010).

<sup>7</sup> See *id.* (emphasis added). Additionally, beginning January 29, 2010, notice was displayed for public inspection at KU's offices and places of business in KU's service area.

<sup>8</sup> See *id.* at Exhibit A (emphasis added).

<sup>9</sup> See *id.*

<sup>10</sup> Young Petition at 1.

<sup>11</sup> *In the Matter of: Application of Kentucky Utilities Company for an Adjustment of Base Rates*, Case No. 2009-00548, Order (February 16, 2010).

schedule for intervenors to submit information requests to KU. Mr. Young, however, has ignored the procedural schedule the Commission established, stating in his petition that he is capable of “submitting information requests.”<sup>12</sup> Thus, Mr. Young, while providing the Commission no reason for the significant delay in filing his intervention motion, expects to disregard the procedural schedule that KU—as well as the other intervenors—have diligently abided by throughout these proceedings.

Further, the procedural schedule required all intervenor testimony to be filed by April 22, 2010.<sup>13</sup> Thus, the time period during which Mr. Young could have submitted verified testimony in this proceeding, had intervention been granted, has passed. As all discovery to KU has been completed and intervenor testimony has been submitted, Mr. Young’s motion is certainly untimely. Granting his motion would allow Mr. Young, who is not an attorney, to participate in the evidentiary hearing as a *pro se* litigant. The developments that have already occurred in this proceeding, along with the unjustifiable delay in filing this motion, make Mr. Young’s untimely. As the petition fails to satisfy this threshold requirement under 807 KAR 5:001 § 3(8), KU respectfully requests the Commission deny Mr. Young’s motion to intervene.

## **II. The Commission Should Deny Mr. Young’s Motion to Intervene Because Mr. Young Does Not Have a Special Interest in the Proceeding.**

The Commission will grant requests for permissive intervention “only upon a determination that the criteria set forth in 807 KAR 5:001, Section 3(8), have been satisfied.”<sup>14</sup> Under the regulation, permissive intervention will only be granted if the person “has a special interest in the proceeding which is not otherwise adequately represented” or that granting full

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<sup>12</sup> Young Petition at 5.

<sup>13</sup> *In the Matter of: Application of Kentucky Utilities Company for an Adjustment of Base Rates*, Case No. 2009-00548, Order (February 16, 2010). Although the procedural schedule required all intervenor testimony to be submitted by April 22, 2010, the Attorney General requested an extension until Monday, April 26, 2010. All other intervenors submitted testimony in accordance with the procedural schedule.

<sup>14</sup> *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 (July 18, 2008).

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.”<sup>15</sup> Mr. Young’s motion alleges both of these criteria are satisfied.<sup>16</sup> Beginning with the first basis for intervention, Mr. Young’s motion to intervene fails to establish a special interest in this proceeding.

Mr. Young’s stated interest in KU’s base rate proceeding is the “protection of the environment or human health as it may be affected by pollution.”<sup>17</sup> In keeping with Mr. Young’s previous motions to intervene in a host of past proceedings, the petition is replete with allegations regarding Mr. Young’s status as an “active environmentalist and a proponent of improved energy efficiency, and have been such for virtually my entire adult life.”<sup>18</sup> Further, his petition states that his “entire professional career has been devoted to the goal of protecting the environment by helping to eliminate impediments to improving energy end-use efficiency in all sectors of Kentucky’s economy.”<sup>19</sup> The Commission has held, in denying a remarkably similar motion to intervene filed by Mr. Young in a past proceeding that it was clear from “Mr. Young’s petition and response that his asserted interest in LG&E’s rate structure arises not from his status as a KU ratepayer, but as a self-appointed representative of the interests of environmentalists.”<sup>20</sup>

While KU does not question the veracity of Mr. Young’s interest in the environment, neither the intensity of his beliefs, nor the number of times he advances these arguments will bring these interests within the Commission’s jurisdiction. Both the Kentucky Court of Appeals and the Commission have made clear that a person seeking intervention must have “an interest in

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<sup>15</sup> 807 KAR 5:001 § 3(8)(b).

<sup>16</sup> Young Petition at 1.

<sup>17</sup> *Id.* at 4.

<sup>18</sup> *Id.* at 1.

<sup>19</sup> *Id.* at 2.

<sup>20</sup> *In the Matter of: Application of Louisville Gas and Electric Company to File Depreciation Study*, Case No. 2007-00564 and *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, Order (October 10, 2008).

the ‘rates’ or ‘service’ of a utility, since those are the only two subjects under the jurisdiction of the PSC.”<sup>21</sup> Further, Kentucky’s highest court has noted that the Commission’s “jurisdiction is exclusively confined ‘to the regulation of rates and service.’”<sup>22</sup> The Commission, in denying a motion to intervene filed by Mr. Young, has stated that “[n]otably absent from the Commission’s jurisdiction are environmental concerns, which are the responsibility of other agencies within Kentucky state government...”<sup>23</sup> The Commission has previously found that Mr. Young’s *verbatim* argument regarding his interests in mercury pollution from coal-fired power plants, as well as carbon dioxide’s contribution to global warming are not within the Commission’s jurisdiction of “rates” and “service” of utilities.<sup>24</sup> Further, “to the extent that Mr. Young seeks to address issues in this proceeding that deal with the impact of air emissions on human health and the environment, *this is not the proper venue* for those issues to be considered.”<sup>25</sup> As Mr. Young’s current motion to intervene again seeks to address these very same issues—none of which are related to rates and service—KU’s rate proceeding is certainly not the proper venue for these issues to be considered.

As Mr. Young’s stated special interests, which all involve environmental concerns, are not within the Commission’s jurisdiction, the only true interest Mr. Young has in this proceeding is that he is a KU customer.<sup>26</sup> This interest is insufficient to warrant intervention because Mr. Young’s interest as a ratepayer is already well-represented, as the Commission has held that “Mr.

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<sup>21</sup> *EnviroPower, LLC v. Public Service Commission of Kentucky*, 2007 WL 289328 at \*4 (Ky. App. 2007) (not to be published);

<sup>22</sup> *People’s Gas Co. of Kentucky v. City of Barbourville*, 165 S.W.2d 567, 572 (Ky. 1942).

<sup>23</sup> *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 (July 18, 2008).

<sup>24</sup> *In the Matter of: The Joint Application Pursuant to 1994 House Bill No. 501 for the Approval of Kentucky Power Company Collaborative Demand-Side Management Programs and Authority to Implement a Tariff to Recover Costs, Net Lost Revenues and Receive Incentives Associated with the Implementation of the Kentucky Power Company Collaborative Demand-Side Management Programs*, Case No. 2008-00350, Order (October 13, 2008).

<sup>25</sup> *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 (July 18, 2008).

<sup>26</sup> Young Petition at 1.

Young's interest as a ratepayer is not a special interest. His interest as a ratepayer is already adequately represented by the AG."<sup>27</sup> The Attorney General, who was granted intervention in this proceeding on February 19, 2010, is statutorily required to represent consumers' interests in ratemaking proceedings.<sup>28</sup> Mr. Young seems to concede that his interest is the same as other ratepayers, as his motion states that his interests are "generally consistent" with KU's customers.<sup>29</sup> As Mr. Young cannot demonstrate that he has a special interest in this proceeding and his interest as a ratepayer is adequately represented by the Attorney General, KU respectfully requests the Commission deny Mr. Young's motion to intervene.

**III. The Commission Should Deny Mr. Young's Motion to Intervene Because Mr. Young Has Not Demonstrated that He Will Present Issues or Develop Facts that Would Assist the Commission.**

Mr. Young's motion to intervene fails to demonstrate that he will present issues or develop facts that would assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings.<sup>30</sup> Mr. Young's purported explanation as to the issues and facts that would assist the Commission are based upon Mr. Young's "entire professional career" being devoted to energy efficiency and conservation issues.<sup>31</sup> Thus, Mr. Young's claimed expertise involves environmental issues that are irrelevant to the resolution of this proceeding as such issues are beyond the Commission's jurisdiction. More specifically, the Commission has previously noted that Mr. Young's suggestions regarding the role of environmentalists in customers' overall willingness to participate in energy efficiency programs

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<sup>27</sup> *In the Matter of: Application of Kentucky Utilities Company to File Depreciation Study*, Case No. 2007-00565 and *In the Matter of: Application of Kentucky Utilities Company for an Adjustment of Electric Base Rates*, Case No. 2008-00251, Order (December 5, 2008).

<sup>28</sup> *In the Matter of: Application of Kentucky Utilities Company for an Adjustment of Base Rates*, Case No. 2009-00548, Order (February 19, 2010); KRS 367.150(8)(b).

<sup>29</sup> Young Petition at 5.

<sup>30</sup> 807 KAR 5:001 § 3(8)(b).

<sup>31</sup> Young Petition at 2.

are not likely to present issues or develop facts that will assist the Commission's decision.<sup>32</sup> The Commission has further held that when a proposed intervenor's interests are adequately represented by another party, the proposed intervenor will not present issues or develop facts that would assist the Commission.<sup>33</sup> As discussed, energy efficiency concerns within the Commission's jurisdiction are being addressed by the Attorney General. For these reasons, KU respectfully requests that the Commission deny Mr. Young's motion to intervene as he has failed to establish that he will present issues or develop facts that would assist the Commission.

**IV. The Commission Should Deny Mr. Young's Motion to Intervene Because Mr. Young's Intervention Will Unduly Complicate and Disrupt the Proceeding.**

Even if Mr. Young could demonstrate that he would present issues or develop facts that would assist the Commission in this proceeding, his intervention would unduly complicate and disrupt the proceeding in contravention of 807 KAR 5:001 § 3(8). First, Mr. Young's intervention would unduly complicate and disrupt the proceeding because, as discussed, two rounds of discovery have already been completed and intervenor testimony has already been submitted. While Mr. Young's motion to intervene states that he would abide by the existing procedural schedule, the procedural schedule would have to be amended if Mr. Young is to be permitted to submit information requests.<sup>34</sup> Amending the schedule to permit initial requests for information at this juncture of the proceeding—when KU is actively preparing data requests and drafting rebuttal testimony—would unduly complicate and disrupt the proceedings. Intervention at this late stage is additionally unwarranted as the environmental issues Mr. Young seeks to address are not within the Commission's jurisdiction. The Commission has repeatedly held that

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<sup>32</sup> *In the Matter of: Application of Louisville Gas and Electric Company to File Depreciation Study*, Case No. 2007-00564 and *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, Order (October 10, 2008).

<sup>33</sup> *In the Matter of: The 2008 Integrated Resource Plan of Duke Energy Kentucky, Inc.*, Case No. 2008-00248, Order (November 5, 2008).

<sup>34</sup> Young Petition at 5.

allowing an intervenor to raise issues that are beyond the scope of the Commission's jurisdiction would unduly complicate and disrupt the proceeding.<sup>35</sup> Finally, Mr. Young is admittedly not an attorney and not represented by an attorney in his Motion to Intervene.<sup>36</sup> His self-representation as an intervenor could also result in undue complication and disruption of these proceedings. The proper means for Mr. Young to participate in this proceeding is through filing public comments and attending and participating in the public hearings the Commission has scheduled. These mechanisms ensure that Mr. Young is given an opportunity to present his arguments without unduly complicating the pending action. For these reasons, KU respectfully requests that the Commission deny Mr. Young's petition to intervene as his involvement in the proceedings would unduly complicate and disrupt the proceeding.

## **V. Conclusion**

As Mr. Young has failed to present any ground upon which the Commission can grant permissive intervention, the Commission should deny his request for full intervention in these proceedings. Consistent with Mr. Young's previous motions for intervention, all of which have been denied by this Commission, the interests advanced in the pending motion to intervene are purely environmental and outside of the Commission's jurisdiction. Additionally, Mr. Young's motion is excessively untimely, fails to allege a special interest in the proceeding, does not demonstrate that full intervention will present issues or develop facts that would assist the Commission, and would unduly complicate and disrupt the proceedings. Therefore, KU

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<sup>35</sup> *In the Matter of: Application of Louisville Gas and Electric Company to File Depreciation Study*, Case No. 2007-00564 and *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, Order (October 10, 2008); *In the Matter of: The Joint Application Pursuant to 1994 House Bill No. 501 for the Approval of Kentucky Power Company Collaborative Demand-Side Management Programs and Authority to Implement a Tariff to Recover Costs, Net Lost Revenues and Receive Incentives Associated with the Implementation of the Kentucky Power Company Collaborative Demand-Side Management Programs*, Case No. 2008-00350, Order (October 13, 2008).

<sup>36</sup> Young Petition at 3.

respectfully requests that the Commission deny the Petition of Geoffrey M. Young for Full Intervention in this proceeding.

Dated: April 23, 2010

Respectfully submitted,

Monica H. Braun

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**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing Response was served via U.S. mail, first-class, postage prepaid, this 23rd day of April 2010 upon the following persons:

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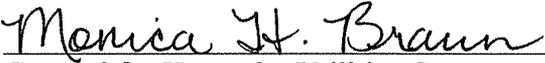
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