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May 23, 2011

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PUBLIC SERVICE
COMMISSION

VIA HAND DELIVERY

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

**RE: The 2011 Joint Integrated Resource Plan of Louisville Gas and Electric
Company and Kentucky Utilities Company**
Case No. 2011-00140

Dear Mr. DeRouen:

Enclosed please find and accept for filing the original and ten copies of Response of Louisville Gas and Electric Company and 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.

Sincerely,

Molly M. Stephens
Paralegal

Enclosures

cc: Parties of Record

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MAY 23 2011

COMMONWEALTH OF KENTUCKY
BEFORE THE KENTUCKY PUBLIC SERVICE COMMISSION PUBLIC SERVICE
COMMISSION

In the Matter of:

THE 2011 JOINT INTEGRATED)
RESOURCE PLAN OF LOUISVILLE GAS) CASE NO. 2011-00140
AND ELECTRIC COMPANY AND)
KENTUCKY UTILITIES COMPANY)

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, the “Companies”) respectfully request that the Commission deny the Petition of Geoffrey M. Young for full intervention¹ in this proceeding. Mr. Young’s motion should be denied for three principal reasons: (1) Mr. Young’s motion does not demonstrate a special interest in the proceeding because his stated interests are either not within the Commission’s jurisdiction or are adequately represented by other parties; (2) Mr. Young’s motion fails to identify any issues or development of facts that will assist the Commission in the resolution of this matter; and (3) 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 two prior orders in which the Commission has denied Mr. Young’s efforts to intervene in Integrated Resource Plan (“IRP”) cases such as this one, including the Companies’ last IRP proceeding.² The Commission has likewise denied similar motions filed by 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 Utilities Company* (Case No. 2008-148) Order, July 18, 2008; *In the Matter of: The 2008 Integrated Resource Plan of Duke Energy Kentucky, Inc.* (Case No. 2008-00248) Order, November 5, 2008.

in numerous other proceedings, as well.³ Despite the Commission's unwavering position regarding its jurisdiction over environmental issues in IRP proceedings, Mr. Young again seeks intervention on those grounds. As Mr. Young fails to satisfy any of the requirements for intervention under 807 KAR 5:001 § 3(8), LG&E and KU respectfully request that the Commission deny the Petition to Intervene of Geoffrey M. Young in this proceeding.

I. The Commission Should Deny Mr. Young's Motion to Intervene Because Mr. Young Does Not Have a Special Interest in this 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."⁴ 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 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."⁵ Mr. Young's motion alleges both of these criteria are satisfied.⁶ Beginning with the first basis for intervention, Mr. Young's motion to intervene fails to establish a special interest in this proceeding.

³ *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: 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); *In the Matter of: Application of Kentucky Utilities Company for an Adjustment of Base Rates* (Case No. 2009-00548) Order, June 2, 2010.

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 (July 18, 2008).

⁵ 807 KAR 5:001 § 3(8)(b).

⁶ Young Petition at 2-3.

Mr. Young's motion to intervene attempts to assert that his special interest is in KU's existing and planned demand-side management programs and in the regulation requiring KU and LG&E to report on actions taken to meet the requirements of the Clean Air Act in IRP proceedings.⁷ A careful review of the motion, however, reveals that Mr. Young's actual stated special interest is in advancing the environmental concerns he has previously sought to interject into IRP proceedings. For example, Mr. Young's motion states that he has an interest in "*environmental externalities such as air and water pollution that result from the generation, transmission, and distribution of electricity from KU's power plants and from the mining of fuel to supply these power plants.*"⁸ Mr. Young further asserts that "environmental considerations are explicitly within the purview of the Commission in the context of IRP cases, including the current proceeding."⁹ While Mr. Young's motion to intervene attempts to allege that his special interest is in programs and regulations within the Commission's jurisdiction, the thrust of his motion, including his statement that environmental considerations are within the scope of an IRP proceeding, demonstrate that Mr. Young is again seeking intervention only to advance environmental concerns that are expressly beyond 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 the 'rates' or 'service' of a utility, since those are the only two subjects under the jurisdiction of the PSC."¹⁰ The Commission held, in denying Mr. Young's motion to intervene in the Companies' last IRP proceeding, that KRS 278.040(2) defines the parameters of its jurisdiction and,

⁷ *Id.* at 1.

⁸ *Id.* (emphasis added).

⁹ *Id.* at 2.

¹⁰ *EnviroPower, LLC v. Public Service Commission of Kentucky*, 2007 WL 289328 at *4 (Ky. App. 2007) (not to be published); *In the Matter of: The 2008 Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company* (Case No. 2008-148) Order, July 18, 2008.

Notably absent from the Commission's jurisdiction are environmental concerns, which are the responsibility of other agencies within Kentucky state government....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.¹¹

The Commission thus rejected Mr. Young's contention that environmental issues are properly within the Commission's jurisdiction in an IRP proceeding. Despite the Commission's clear rejection of this argument, Mr. Young, in the pending motion, has again argued to the contrary.

While Mr. Young references the Clean Air Act in his present motion in an effort to tie his petition to a regulation involved in this proceeding, he likewise states that he has an interest in the "air and water pollution" arising from KU's "disservices."¹² This is a restatement of Mr. Young's motion in the last IRP proceeding, in which the Commission expressly found that the impact of air emissions is not properly considered in an IRP proceeding.¹³ Mr. Young has failed to provide the Commission with any authority that would warrant such an abrupt departure from the longstanding and well-established precedent regarding the extent of the Commission's jurisdiction over environmental concerns. Because Mr. Young's stated special interest is beyond the scope of the Commission's jurisdiction, his petition to intervene should be denied.

As Mr. Young's stated special interest is not within the Commission's jurisdiction, the only true interest Mr. Young has in this proceeding is that he is a KU customer.¹⁴ 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. Young's interest as a ratepayer is not a special

¹¹ *In the Matter of: The 2008 Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company* (Case No. 2008-148) Order, July 18, 2008 at 5-6.

¹² Young Petition at 1.

¹³ *In the Matter of: The 2008 Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company* (Case No. 2008-148) Order, July 18, 2008 at 5-6.

¹⁴ *Id.*

interest. His interest as a ratepayer is already adequately represented by the AG.”¹⁵ The Attorney General, who is statutorily required, pursuant to KRS 367.150(8)(b), to represent customers’ interests in IRP proceedings, filed a motion to intervene on May 20, 2011. In fact, the Commission has held that the “AG has participated in numerous IRP cases and has offered helpful comments concerning the energy policy issues Mr. Young seeks to advocate in this matter.”¹⁶ The Commission then held,

....the AG, as the statutorily authorized representative of Kentucky’s utility customers, has a continuing interest in articulating and advocating support for renewable energy and energy conservation issues – the same issues that Mr. Young seeks to advocate in this proceeding. The Commission further finds that the AG has consistently exercised his statutory duty to investigate these energy policy issues and to advocate their consideration by the Commission in its examination of the IRPs filed by Kentucky’s jurisdictional electric utilities over the past several years.¹⁷

This decision demonstrates that Mr. Young’s interest as a ratepayer interested in energy policy is adequately represented by the Attorney General in IRP proceedings such as this one.

In denying Mr. Young’s motion to intervene in Duke Energy’s IRP proceeding, the Commission noted that the Attorney General will represent Mr. Young’s interest with regard to the portions of the IRP action that are related to environmental issues within the Commission’s jurisdiction, including “demand-side management, non-coal electric generation, and energy efficiency.”¹⁸ These are the precise, and only, issues identified in Mr. Young’s motion that are

¹⁵ *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).

¹⁶ *In the Matter of: The 2008 Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company* (Case No. 2008-148) Order, July 18, 2008 at 7.

¹⁷ *Id.* at 8.

¹⁸ *In the Matter of: The 2008 Integrated Resource Plan of Duke Energy Kentucky, Inc.* (Case No. 2008-00248) Order, November 5, 2008 at 4.

within the jurisdiction of the Commission. As this interest is adequately represented, the petition for invention should be denied.

II. 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 this matter without unduly complicating or disrupting the proceeding.¹⁹ Mr. Young's purported explanation as to the issues and facts that would assist the Commission is his previous experience as a Kentucky Division of Energy employee in which he participated in IRP proceedings.²⁰ This is the same justification Mr. Young asserted in the Companies' last IRP proceeding.²¹ The Commission held that because the environmental issues Mr. Young seeks to develop are beyond the Commission's jurisdiction and related policy concerns are statutorily represented by the Attorney General, "Mr. Young has not adequately demonstrated that he will present issues or develop facts that would assist the Commission in fully considering the issues in this case without undue complications or disrupting the proceeding."²² For these reasons, Mr. Young's motion to intervene should be denied.

III. 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 this proceeding in contravention of 807 KAR 5:001 § 3(8). Permitting Mr. Young's intervention, which would result in expanding the scope of the proceeding to encompass

¹⁹ 807 KAR 5:001 § 3(8)(b).

²⁰ Young Petition at 2.

²¹ *In the Matter of: The 2008 Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company* (Case No. 2008-148) Order, July 18, 2008 at 2.

²² *Id.* at 9.

environmental concerns that are not within the Commission's jurisdiction, would inevitably unduly complicate and disrupt the Companies' IRP proceeding.²³ The Commission has repeatedly held that allowing an intervenor to raise issues that are beyond the scope of the Commission's jurisdiction would unduly complicate and disrupt the proceeding.²⁴

Finally, Mr. Young is not an attorney and not represented by an attorney in his Petition to Intervene. 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 communicating with the Attorney General, who will represent Mr. Young's interest as a ratepayer. These mechanisms ensure that Mr. Young is given an opportunity to present his arguments without unduly complicating the pending action. For these reasons, the Companies respectfully request that the Commission deny Mr. Young's motion to intervene as his involvement would unduly complicate and disrupt this proceeding.

IV. 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 this proceeding. Consistent with Mr. Young's previous motions for intervention that have been denied by this Commission, the interests advanced in the pending motion to intervene are purely

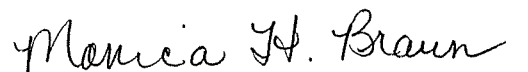
²³ In the Companies' last IRP proceeding, Mr. Young, after being denied intervention, sent multiple letters to Chairman Armstrong, despite being informed by the Commission that such communications were considered *ex parte* communications. Mr. Young's failure to abide by the Commission's directives in the last IRP proceeding demonstrates that his participation in this proceeding may unduly complicate and disrupt the action.

²⁴ *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).

environmental and outside of the Commission's jurisdiction, despite Mr. Young's attempt to construe the regulations in a manner previously rejected by the Commission. Moreover, Mr. Young's motion fails to allege a special interest in this proceeding, does not demonstrate that his full intervention will present issues or develop facts that would assist the Commission, and would unduly complicate and disrupt the proceedings. Therefore, LG&E and KU respectfully request that the Commission deny the Petition to Intervene of Geoffrey M. Young in this proceeding.

Dated: May 23, 2011

Respectfully submitted,



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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 May 2011 upon the following persons:

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