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July 8, 2011

VIA HAND DELIVERY

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

RECEIVED

JUL 08 2011

PUBLIC SERVICE
COMMISSION

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

Dear Mr. DeRouen:

Yesterday afternoon we received in the mail Mr. Geoffrey Young's pleading, served July 6, 2011, and styled: "Reply to KU's and LG&E's Joint Response re Application for Rehearing of Geoffrey M. Young." On pages 7 and 8 of that Reply, Mr. Young takes exception with the following sentence contained in the Companies' Joint Response, "The Companies likewise noted that in their last IRP proceeding, after being denied intervention, Mr. Young sent multiple letters to Chairman Armstrong, despite being informed by the Commission that such communications were considered *ex parte* communications."

I write to clarify that the docket and record publicly available on the Commission's website for Case No. 2008-00148 shows that Mr. Young sent a copy of a letter to Chairman Armstrong, and sent additional letters to Ms. Stephanie Stumbo, Executive Director of the Public Service Commission. The copy of the letter Mr. Young sent to Chairman Armstrong is included in two places on the on-line docket. It is first included as an attachment to Ms. Stumbo's August 20, 2008 letter; that copy of Mr. Young's letter does not contain a file stamp indicating when it was received. A second copy of Mr. Young's letter to Chairman Armstrong is also included as a public comment that was received on August 15, 2008 and placed on the online docket on August 19, 2008. The same letter thus appears in the record in multiple locations and on two different dates. To the extent Mr. Young asserts that he sent his letter of August 14, 2008 only once to the Chairman of the Commission, counsel will accept that representation. The letters from Mr. Young, and Ms. Stumbo's responses thereto, all contained in the record, speak for themselves.

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Further, in the interest of lowering the level of confrontation, enclosed is an Amended and Restated Joint Response of Louisville Gas and Electric Company and Kentucky Utilities to the Application for Rehearing of Petition to Intervene of Geoffrey M. Young, amending the sentence with which Mr. Young takes exception. The amended and restated pleading is filed solely to address Mr. Young's position, and without any implication of the Kentucky Rules of Civil Procedure or the Kentucky Supreme Court Rules.

The undersigned understands Mr. Young continues to disagree with the characterization of his prior communications and regrets any consternation the argument of counsel may have caused Mr. Young.

Yours very truly,



Kendrick R. Riggs

KRR:krr
Enclosures

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COMMONWEALTH OF KENTUCKY
BEFORE THE 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)	

**AMENDED AND RESTATED JOINT RESPONSE OF LOUISVILLE GAS AND
ELECTRIC COMPANY AND KENTUCKY UTILITIES TO THE APPLICATION FOR
REHEARING OF PETITION TO INTERVENE OF GEOFFREY M. YOUNG**

Louisville Gas and Electric Company (“LG&E”) Kentucky Utilities Company (“KU”) (collectively, the “Companies”) hereby respond to the Application for Rehearing of Petition to Intervene of Geoffrey M. Young and respectfully asks the Commission to deny Mr. Young’s Application. Mr. Young’s Application provides no grounds under 807 KAR 5:001 § 3(8)(b) for altering the Commission’s June 10, 2011 Order denying his Petition for Full Intervention,¹ stating neither a jurisdictional special interest of Mr. Young’s, nor does it demonstrate that Mr. Young could assist the Commission in fully considering the matter by presenting issues or developing facts without unduly complicating or disrupting the proceedings.²

I. Mr. Young’s Petition for Full Intervention and Application for Rehearing States No Interest in this Proceeding that is Within the Commission’s Jurisdiction that Is Not Represented by the Attorney General.

The Commission correctly held in its June 10, 2011 Order denying full intervention to Mr. Young that he does not have a special interest in this proceeding warranting intervention because “the issues that Mr. Young seeks to pursue as an intervenor are either already well

¹ *In the Matter of: The 2011 Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company* (Case No. 2011-00140) Order, June 10, 2011.

² 807 KAR 5:001 § 3(8)(b) states in relevant part: “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 person shall be granted full intervention.”

represented by the AG or are beyond the scope of the Commission’s jurisdiction.”³ Mr. Young’s Application for Rehearing utterly misconstrues the special interest requirement set forth in 807 KAR 5:001 § 3(8), but Mr. Young’s statements therein, however erroneous, further makes clear that to the extent Mr. Young has an interest in this proceeding that is within the Commission’s jurisdiction, it is represented by the Attorney General.

The thrust of Mr. Young’s Application for Rehearing erroneously argues that because he has an interest in “[e]nergy efficiency and DSM programs,” he must be permitted to intervene so that he can ask the Commission to “assess the environment-related considerations on KU’s rates and services.”⁴ This premise is erroneous. As made clear in the Commission’s Order denying full intervention, while Mr. Young has claimed an interest in the Companies’ demand-side management and energy efficiency programs, that “interest is adequately represented by the AG.”⁵ Mr. Young’s interest is no different than that of any other KU customer. The Commission has expressly so held in previous cases, holding denying intervention that “the motion does not show how the impact on [the proposed intervenors] will differ from the impact on the rest of KU’s 536,000 ratepayers. The Commission finds that the interest of [the proposed intervenors] in the KU proceeding is the same general interest that is held by every one of KU’s 536,000 customers.”⁶

Mr. Young attempts to obfuscate this issue by arguing that the Attorney General cannot represent his interests, because the “interests of an individual environmentalist and energy

³ *In the Matter of: The 2011 Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company* (Case No. 2011-00140) Order, June 10, 2011 at 5-6.

⁴ Young Application, p. 3, 6.

⁵ *In the Matter of: The 2011 Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company* (Case No. 2011-00140) Order, June 10, 2011 at 5.

⁶ *In the Matter of: The Application of Kentucky Utilities Company for a Certificate of Public Convenience and Necessity and Approval of its 2009 Environmental Compliance Plan for Recovery by Environmental Surcharge* (Case No. 2009-00197) and *In the Matter of: The Application of Louisville Gas and Electric Company for a Certificate of Public Convenience and Necessity and Approval of its 2009 Environmental Compliance Plan for Recovery by Environmental Surcharge* (Case No. 2009-00197) Order, October 30, 2009.

efficiency specialist such as myself are simply not identical to the interests of the AG.”⁷ This statement demonstrates Mr. Young’s lack of understanding regarding the Commission’s jurisdiction. As noted in the Commission’s June 10, 2011 Order, other than his interest in demand-side management and energy efficiency, Mr. Young’s stated interests are beyond the scope of the Commission’s jurisdiction.⁸ Despite the Commission’s repeated decisions that make clear that the environmental issues Mr. Young seeks to assert are not within its jurisdiction,⁹ Mr. Young attempts to circumvent these clear principles by asserting that because demand-side management and energy efficiency are within the Commission’s jurisdiction, so too are the environmental externalities, including the impacts of air and water pollution, of generating electricity through mining fuel. This argument is entirely devoid of support and does not provide a basis to alter the Commission’s June 10, 2011 Order.

The Commission’s Order was cogent and clear: Mr. Young’s interests that are within the Commission’s jurisdiction are represented by the Attorney General. His interests regarding environmental externalities are not within the Commission’s jurisdiction.¹⁰ As such, Mr. Young

⁷ Young Application, p. 7.

⁸ *In the Matter of: The 2011 Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company* (Case No. 2011-00140) Order, June 10, 2011 at 6-7.

⁹ *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.

¹⁰ *In Re: An Assessment of Kentucky’s Electric Generation, Transmission and Distribution Needs* (Administrative Case No. 2005-00090) Order Appendix A at 50, September 15, 2005; see also, *In Re: An Investigation of the Energy and Regulatory Issues in Section 50 of Kentucky’s 2007 Energy Act* (Administrative Case No. 2007-00477) Report to the General Assembly, at 46.

does not have a special interest in this proceeding that is not adequately represented by another party to this proceeding. The Commission's June 10, 2011 Order was correct and should not be modified.

II. Mr. Young's Petition for Full Intervention and Application for Rehearing Fail to Demonstrate that Mr. Young Could Present Issues or Develop Facts to Aid the Commission in Fully Considering Matters Relevant and Jurisdictional to these Proceedings.

Mr. Young's Application for Rehearing states no qualifications, experience, or background that could assist the Commission to consider fully facts and issues that are relevant and jurisdictional, giving no basis upon which the Commission should alter its determination to deny intervention to Mr. Young. Mr. Young's Application contains no factual assertions beyond those already found insufficient in the Commission's June 10, 2011 Order. Indeed, as if to underline the point that he will not be helpful to the Commission in fairly and accurately deliberating upon the issues in these proceedings, Mr. Young misconstrues the Kentucky Constitution by asserting that the Commission's denial of his intervention violated Section 2 of the Kentucky Constitution regarding absolute and arbitrary power.¹¹

This misconstruing of law demonstrates that Mr. Young's input will not assist the Commission in fully, fairly and accurately considering this matter. Because he has provided no additional assertions regarding his qualifications, experience, or background that demonstrate his ability to consider fully the facts and issues relevant to proceeding, the Commission's June 10, 2011 Order should remain undisturbed.

¹¹ Young Application, p. 11.

III. Mr. Young's Conduct Since Filing His Application for Rehearing Demonstrates that He Will Unduly Complicate and Disrupt these Proceedings.

As noted in the Companies' Joint Response, 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.¹² As set forth above, Mr. Young is attempting to expand the scope of this proceeding to encompass environmental externalities that are within the purview of state and federal agencies *other* than the Commission.

The Companies likewise noted that in their last IRP proceeding, after being denied intervention, Mr. Young exchanged multiple letters with the Commission's Executive Director on the application of the *ex parte* doctrine to his August 14, 2008 communication with the Governor, a copy of which was sent to the Chairman of the Commission. In this proceeding, after being denied intervention, Mr. Young emailed Andrew Melnykovich, PSC Public Information Officer, requesting that he print out one of the Commission's press releases regarding environmental surcharges (notably, these proceedings are not about environmental surcharges) and attach it as an exhibit to his Application for Rehearing. Jeff DeRouen, PSC Executive Director, mailed Mr. Young a letter stating that the "actions you request Mr. Melnykovich to take on your behalf are improper and violate the Commission's Rules of Procedure...." Mr. Young's conduct in the Companies' last proceeding and in this proceeding demonstrate that, if granted intervention, he will unduly complicate and disrupt these

¹² *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.

proceedings in contravention of 807 KAR 5:001 § 3(8). For these reasons, the Commission should not alter its June 10, 2011 Order.

IV. Mr. Young's Application for Rehearing Misstates the Commission's Authority.

Much of Mr. Young's Application for Rehearing focuses upon the authority and limitations on the Commission's discretion to grant or deny motions for intervention. While these arguments do not address whether Mr. Young has satisfied the regulatory standards for intervention, the arguments create a straw man by which Mr. Young attempts to conclude, that in denying his petition to intervene, the Commission has exceeded its discretion and acted in an arbitrary manner.¹³ This is simply inaccurate.

In 2010, the Kentucky Court of Appeals – in a case involving Mr. Young – reiterated that “reposes in the Commission the responsibility for the exercise of a sound discretion in the matter of affording permission to intervene.”¹⁴ Moreover, the *EnviroPower* decision that Mr. Young erroneously describes as dictum is equally clear: “The PSC has acted to adopt specific rules governing all commission proceedings. Intervention is specifically addressed in 807 KAR 5:001, Section 3(8). Under this regulation, the PSC retains the power in its discretion to grant or deny a motion for intervention.”¹⁵ In fact, in *EnviroPower*, the Court of Appeals held that it would be an abuse of discretion for the Commission to permit intervention when an intervenor does not have an interest in the rates or service of a utility.¹⁶ These decisions demonstrate that the Commission is afforded significant discretion to grant or deny petitions to intervene.¹⁷ Counter to Mr. Young's arguments in his Application for Rehearing, to permit his intervention based

¹³ Young Application, p. 5.

¹⁴ *Young v. Public Service Commission*, 2010 WL 4739964 (Ky. App. 2010) (not to be published) (citing *Inter-County Rural Elec. Co-op. Corp. v. Public Service Commission*, 407 S.W.2d 127, 130 (Ky. 1966)). A copy of this decision has been attached to this Response.

¹⁵ *EnviroPower, LLC v. Public Service Commission of Kentucky*, 2007 WL 289328 at *4 (Ky. App. 2007) (not to be published). A copy of this decision has been attached to this Response.

¹⁶ *Id.* at 4.

¹⁷ See also, *Inter-County Rural Elec. Co-op. Corp. v. Public Service Commission*, 407 S.W.2d 127, 130 (Ky. 1966)

upon issues that are decidedly not within the Commission's jurisdiction would constitute an abuse of discretion.

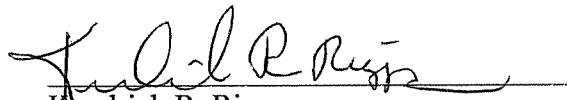
The Commission acted in its discretion in denying Mr. Young's petition to intervene and his constitutional arguments are inapposite because the Commission simply applied the plain meaning of 807 KAR 5:001, Section 3(8) and adhered to long-standing precedent in denying Mr. Young's petition.

V. Conclusion

Because Mr. Young's Application for Rehearing presents no ground upon which the Commission can grant him intervention, and therefore no ground upon which to reconsider its June 10, 2011 Order denying him intervention in these proceedings, the Commission should deny the Application for Rehearing.

Dated: July 8, 2011

Respectfully submitted,



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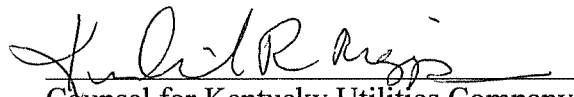
CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Response was served via U.S. mail, first-class, postage prepaid, this 8th day of July 2011 upon the following persons:

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