COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE 2008 JOINT INTEGRATED RESOURCE PLAN OF LOUISVILLE GAS AND ELECTRIC COMPANY AND KENTUCKY UTILITIES COMPANY	))))	**CASE NO. 2008-00148**

APPLICATION FOR REHEARING OF PETITION TO INTERVENE OF GEOFFREY M. YOUNG

Pursuant to KRS 278.400, I, Geoffrey M. Young, respectfully request that the Commission reverse its decision of July 18, 2008 and grant me full intervenor status in the above-captioned proceeding, because I believe it is not in the public interest to exclude environmentalists from full participation in cases of this type.

It is well established that all persons other than the Attorney General (AG) must request permissive intervention and show the Commission that they have met one or both of the criteria set forth in 807 KAR 5:001, Section 3(8). (Order, 7/18/08, page 3) It has been a similarly well-established tenet in the environmental community for the past twenty years that the rates, rate structures, and services that energy utilities offer may have significant effects on the environment. The connection between the environment and a utility's rates, rate structures, and services exists because these factors affect the strategies the utility is likely to use to meet its resource needs. These strategies, in turn, are at the center of integrated resource planning (IRP) cases such as the present proceeding.

In its petition to intervene, KIUC stated that "the purpose of KIUC is to represent the industrial viewpoint on energy and utility issues before this Commission," and that "the matters being decided by the Commission in this case may have a significant impact on the rates paid by KIUC for electricity." (KIUC Petition to Intervene, dated 4/28/08, page 1) By granting KIUC's petition, the Commission implicitly confirmed that this IRP case may affect LG&E/KU's future rates. There is nothing surprising about any of this.

In its Order denying my petition to intervene, the Commission reproduced KRS 278.040(2), which states that "the commission shall have exclusive jurisdiction over the regulation of rates and service of utilities..." The Commission went on to assert that this statute implies that it may not lawfully consider environmental impacts or concerns, "which are the responsibility of other agencies within Kentucky state government..." (Order, 7/18/08, page 5) The logical fallacy in this argument is obvious. In granting the Commission exclusive authority to regulate the rates and services of utilities, the legislature did not thereby forbid the Commission, either explicitly or implicitly, from considering certain factors that are relevant to the accomplishment of its statutory mandate. If the proper regulation of the rates and service of jurisdictional energy utilities requires the Commission to consider the fact that certain actions of utility companies have environmental and externalized economic impacts, there is no provision of existing Kentucky law that would prohibit it from doing so.

There are several provisions of existing statutes and regulations that require the Commission to consider factors that have implications for the environment. One example among many is 807 KAR 5.058, section 8(3)(d), which requires the utility, as part of its integrated resource plan, to provide a "description of existing and projected amounts of

electric energy and generating capacity from cogeneration, self-generation, technologies relying on renewable resources, and other nonutility sources available for purchase by the utility during the base year or during any of the fifteen (15) forecast years of the plan." This same IRP regulation requires the utility to provide information describing "each existing and new conservation and load management or other demand-side programs included in the plan." [Ibid., section 8(3)(e)] Section 8(5)(f) requires the utility to describe and discuss "actions to be undertaken during the fifteen (15) years covered by the plan to meet the requirements of the Clean Air Act amendments of 1990, and how these actions affect the utility's resource assessment." The idea that factors such as those listed above, which the Commission is required to consider when it evaluates a utility's IRP, are unrelated to environmental concerns is frankly absurd. While it is true that the legislature has not assigned the Commission the same environment-related tasks that other state agencies are responsible for (e.g., the Division for Air Quality within the Energy and Environment Cabinet), it is also undeniable that the Commission currently has jurisdiction over many aspects of energy utility planning that have clear and direct implications for the environment. The assertion that environmental concerns are "notably absent from the Commission's jurisdiction" is simply untrue. (Order, 7/18/08, page 5)

The Commission stated, "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." (Order, pages 5-6) This formulation is disingenuous. As the Commission is well aware, the issues I am seeking to address are set out in the IRP regulation, and include (but are not limited to) the adequacy and cost-effectiveness of the utility's plans regarding DSM programs,

cogeneration, renewable energy sources, actions to be undertaken during the fifteen years covered by the plan to meet the requirements of the Clean Air Act amendments of 1990, and how these actions affect the utility's resource assessment. These issues are squarely within the subject area of an IRP case, and the Commission knows it.

The Commission notes that the AG is also free to bring up such issues, that he has brought up some of these issues (which the Commission calls "energy policy matters") and offered helpful comments in several prior IRP cases, and that he has already been made a party to this case. (Order, pages 6-8) Although these points are factually correct, they are irrelevant. While the AG might bring up these issues in this case, he might not. His letter requesting intervention mentioned neither these particular issues nor the environmental impacts of the utility's resource plans. (AG's Motion to Intervene, filed 5/18/08) The AG did not submit an initial data request by the due date of May 26, 2008. It is possible that the AG's Office of Rate Intervention does not have sufficient time or resources to participate actively in this case. None of the foregoing statements are intended as criticism of the AG but are merely statements of fact. If the AG does not end up participating actively, and if the Commission excludes environmentalists from full intervention, the issues listed above might not be raised by any party to this case.

There are hundreds of legitimate special interest groups in our society. In general, their interests are not the same as the interest the legislature has assigned to the AG pursuant to KRS 367.150(8). The latter interest can be expressed as consumer protection. (KRS 367.110 to 367.360, the Consumer Protection Act) Environmentalists pretty much share the AG's interest in consumer protection, but we are also interested in protecting the trees, animals, microorganisms, watersheds, airsheds, and ecosystems of the

Commonwealth. The trees that cover most of the Appalachian Mountains are not "consumers" in any meaningful sense of the term. The two interests – consumer protection and environmental protection – overlap to some extent but are simply not the same. The Commission's argument that environmentalists' perspectives must be excluded because consumer protection interests are comprehensively represented by the AG is illogical and fundamentally unsound. (Order, pages 6-9)

There are hundreds of legitimate special interest groups in our society, but few of them focus on issues that are relevant to the rates and services of utility companies. I am a member of a group that tries to reduce racism in the Bluegrass area, for example, and it is hard for me to imagine how that cause could be relevant to any PSC proceeding. The special interests of environmentalists, however, are directly affected by several types of proceedings that the Commission routinely undertakes. The following list outlines how certain types of cases are relevant to the special interests of environmentalists.

- CPCN cases – because the types of power plants built and the location of transmission lines will affect the environment for many years;
- IRP cases - because the types of power plants built and the magnitude and effectiveness of DSM programs will affect the environment for many years;
- DSM cases – because well-designed and well-administered energy efficiency programs can reduce the amount of coal that needs to be mined and burned;
- General rate cases – because the rates, and more particularly, the rate structures, will determine whether customers and the utility have an adequate economic incentive to improve energy efficiency;

- QF tariff cases – because the rates, terms and conditions will affect the amounts and types of cogeneration and small power capacity that will be developed in Kentucky;
- Other types of cases – where a serious applicant can show that the subject matter of a proceeding is reasonably likely to have an impact on the environment.

The Commission's argument that the AG automatically represents all consumer interests, and that consumer interests are the only interests that the PSC can lawfully consider, constitutes an airtight rationale for excluding any special interest group whatsoever from full intervention. The Commission could easily apply that argument to large industrial or low-income customers and routinely deny full intervention to KIUC or low-income advocacy groups because the interests of their clients as consumers are fully and comprehensively represented by the AG. The argument could be used to ensure that in almost every PSC proceeding, the only parties at the table would be the utility company, the AG, and the Commission itself. Such an outcome would be unreasonable and contrary to the public interest because it would excessively restrict the range of viewpoints and information available to the Commission. What has been going on recently, however, is that the Commission has been employing its hermetic defense against environmentalists and routinely allowing the special interests of large industrial and low-income customers to be represented via full intervention. This policy is arbitrary, discriminatory and unjust.

The Commission can benefit when a serious environmentalist or environmental organization offers to provide information and constructive input in the types of cases listed above. Little or no harm is done when the environmentalists' perspectives are included on an equal basis with other special interests, and substantial benefits may accrue in the form of more fully-informed Commission decisions. If the Commission finds

environmentalists' arguments unpersuasive in a given case, it has a great deal of discretion to discount or find against them. To exclude these points from serious consideration at the outset, however, by denying environmentalists full intervention, is bad public policy. I am confident that the Commission will change its attitude about environmentalists in the near future, before very many orders are issued in the absence of our valuable contributions. I hope the three Commissioners are reading this.

It is not a productive use of anyone's limited time to wrangle for weeks and weeks over whether environmentalists should be excluded from a particular case. I am not advocating that the Commission automatically grant intervention to environmentalists in every single case, but when a serious environmentalist applicant is able to show that the subject matter of a case has clear environmental implications, Commission approval of full intervention should be pretty much automatic and reasonably prompt, as it is whenever KIUC submits a petition to intervene. The efforts of the applicant and the Commission's staff could then be constructively directed toward the subject matter of the case rather than expended in drafting long, detailed, intricate denials of intervention, requests for reconsideration, and complaints to the Franklin Circuit Court.

WHEREFORE, I respectfully request that I be granted full intervenor status in the above-captioned proceeding.

Respectfully submitted,

Geoffrey M. Young 8/5/08

Geoffrey M. Young Date

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CERTIFICATE OF SERVICE

I hereby certify that an original and ten copies of the foregoing application for rehearing of my petition to intervene were delivered to the office of Stephanie Stumbo, Executive Director of the Kentucky Public Service Commission, 211 Sower Boulevard, Frankfort, KY 40601, and that copies were mailed to the following parties of record on this 5th day of August, 2008.

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A courtesy copy was also mailed to:

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Signed,

Geoffrey M. Young — 8/5/08

Geoffrey M. Young — Date