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August 15, 2008

VIA HAND DELIVERY

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

**RE: The 2008 Joint Integrated Resource Plan of Louisville Gas and Electric Company and
Kentucky Utilities Company**
Case No. 2008-00148

Dear Ms. Stumbo:

Enclosed please find and accept for filing the original and ten copies of Louisville Gas and Electric Company's and Kentucky Utilities Company's Response to the Application for Rehearing of Petition to Intervene of Geoffrey M. Young and to the CDH Preserve, LLC, Dennis Cunningham, and Cathy Cunningham Application for Rehearing in the above-referenced matter. Please confirm your receipt of this filing 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.

Also, the service list shown on the PSC website reflects only Rick Lovekamp, Manager-Regulatory for E.ON U.S. Services, Inc., as the person to receive orders and pleadings in this case. Please add: Allyson Sturgeon, Senior Corporate Attorney, E.ON U.S. LLC, 220 West Main Street, Louisville, KY 40202 and W. Duncan Crosby III, Stoll Keenon Ogden PLLC, 2000 PNC Plaza, 500 West Jefferson Street, Louisville, KY 40202 to that list.

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
400001 131238/537392 1

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)	CASE NO. 2008-00148
KENTUCKY UTILITIES COMPANY)	

**RESPONSE OF LOUISVILLE GAS AND ELECTRIC COMPANY
AND KENTUCKY UTILITIES COMPANY TO
THE APPLICATION FOR REHEARING OF PETITION TO
INTERVENE OF GEOFFREY M. YOUNG
AND TO THE CDH PRESERVE, LLC, DENNIS CUNNINGHAM,
AND CATHY CUNNINGHAM APPLICATION FOR REHEARING**

Louisville Gas and Electric Company (“LG&E”) and Kentucky Utilities Company (“KU”) (collectively “LG&E/KU” or the “Companies”) respectfully submit this response to the Application for Rehearing of Petition to Intervene of Geoffrey M. Young (“Young Application”) and to the CDH Preserve, LLC, Dennis Cunningham, and Cathy Cunningham (collectively, “the Cunninghams”) Application for Rehearing (“Cunningham Application”). In his Application, Mr. Young presents no new grounds or arguments supporting his petition for intervention. Instead, Mr. Young repeatedly asserts that electric rates may have an indirect impact on the environment. Likewise, the Cunningham Application supplies no new grounds for granting intervention to the Cunninghams or their LLC, but only reiterates their desire to make environmental policy arguments in this proceeding. But the Commission demonstrated clearly in its order denying Mr. Young and the Cunninghams intervention in this proceeding that the Commission’s jurisdiction does not extend to environmental issues. The Companies therefore respectfully request that the Commission deny the Young and Cunningham Applications for Rehearing.

I. The Commission Correctly Denied Intervention to Mr. Young Because He Lacks a Relevant Interest that Will Not Be Adequately Represented in this Proceeding and Because Environmental Concerns Are Not in the Commission's Jurisdiction.

The point Mr. Young reiterates numerous times in his Application for Rehearing is one the Commission refuted in its order denying him intervention in this proceeding, namely that the Commission has jurisdiction to consider his environmental concerns. In fact, as the Commission correctly stated in its order, "Notably absent from the Commission's jurisdiction are environmental concerns, which are the responsibility of other agencies within Kentucky state government"¹ 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.²

Mr. Young's Application makes it plain that his interest in this proceeding has nothing to do with the Companies' rates or service per se, but only their impact on the environment; indeed, he says:

... [t]he 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 customer protection interests are comprehensively represented by the AG is illogical and fundamentally unsound.³

¹ *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) ("Intervention Order").

² *EnviroPower, LLC v. Public Service Commission of Kentucky*, 2007 WL 289328 at 3 (Ky. App. 2007) (not to be published).

³ *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 at 4-5 (August 5, 2008) ("Young Application").

Thus, Mr. Young undermines his own argument for intervention by admitting that his interest in this proceeding is outside the realm of rates and service, the traditional area of consumer protection in utility matters and the only areas of Commission jurisdiction.⁴

Mr. Young then attempts – unconvincingly – to equate his interest in “protecting the trees, animals, microorganisms, watersheds, airsheds, and ecosystems of the Commonwealth” with the environmentally related issues properly at issue in this proceeding under the Commission’s Integrated Resource Plan (“IRP”) regulation, 807 KAR 5:058. He misconstrues 807 KAR 5:058 § 8(3)(d), claiming that it “require[s] the Commission to consider factors that have implications for the environment.”⁵ In fact, 807 KAR 5:058 § 8(3) requires utilities to include in their IRPs extensive information about “existing and planned resources,” including all kinds of traditional carbon-based-fuel-fired generating units; electricity purchases, sales, or exchanges; cogeneration, self-generation, renewable resources, and non-utility sources; and conservation, load management, and demand-side management options. It is clear that the purpose of the 807 KAR 5:058 §8(3) requirement is to ensure that utilities’ IRPs are exhaustive in describing and evaluating available generating resources.

It is equally clear that 807 KAR 5:058 § 8(5)(f), which Mr. Young cites in support of his Application, does not invite or authorize the Commission to engage in environmental regulation. That part of the IRP regulation requires a utility, in its resource assessment and acquisition plan, to discuss and describe numerous factors surrounding and impacting those topics, including, “Actions to be taken 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[.]” In other words, this section of the IRP regulation does not contemplate

⁴ See also *Inter-County Rural Electric Co-operative Corp v Public Service Com* , 407 S.W.2d 127, 130 (Ky. 1966) (affirming Commission’s denial of intervention to entity whose interest in the proceeding was “just too remote”).

⁵ Young Application at 2.

discussions of environmental impacts per se, but rather how complying with federal environmental regulations impacts resource assessments. This view finds support in the “Necessity, Function, and Conformity” statement of the IRP regulation:

NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.040(3) provides that the commission may adopt reasonable administrative regulations to implement the provisions of KRS Chapter 278. This administrative regulation prescribes rules for regular reporting and commission review of load forecasts and resource plans of the state's electric utilities to meet future demand with an adequate and reliable supply of electricity at the lowest possible cost for all customers within their service areas, and satisfy all related state and federal laws and regulations.⁶

In sum, there is a world of difference between discussing how to protect airsheds and microorganisms, and evaluating how achieving standards set by other governmental authorities will impact utility planning to ensure low-cost rates and service in the future; the Commission rightly held that its jurisdiction extends only to the latter, necessitating that Mr. Young be denied intervention.

It is also important to note that, against Mr. Young's assertions, his interest in this proceeding cannot rationally be equated to that of an established consumer group, such as the interest of the Kentucky Industrial Utilities Customers, Inc. (“KIUC”) or a low-income advocacy group.⁷ Mr. Young asserts that part of the Commission's rationale for denying him intervention, namely that the Attorney General is responsible for representing consumers' interests, should also exclude the KIUC and low-income advocacy groups, as well as all other potential intervenors, from participating in proceedings such as this.⁸ But Mr. Young's assertion overlooks two key factors that distinguish him and other environmental advocates from these established consumer groups. First, KIUC and low-income advocacy groups represent

⁶ 807 KAR 5:058 (emphasis added)

⁷ See Young Application at 2, 6.

⁸ *Id.* at 6.

identifiable consumer populations, whereas Mr. Young claims to represent the interests of the trees and other parts of nature – but Mr. Young states, “The trees that cover most of the Appalachian Mountains are not ‘consumers’ in any meaningful sense.” Second, the Attorney General cannot adequately represent simultaneously the divergent interests of groups like the KIUC and the low-income advocacy groups; though such groups jointly favor lower utility rates, they often disagree about what their particular rate classes should pay. The same cannot be said for environmentalists as consumers; indeed, taken strictly as consumers, there is no reason why environmentalists’ interests should be any different than those of other members of their respective rate classes. It is only as environmental advocates that their interests may diverge from those of their 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.

II. The Commission Correctly Denied Intervention to the Cunninghams Because They Lack a Relevant Interest that Will Not Be Adequately Represented in this Proceeding and Because Environmental Concerns Are Not in the Commission’s Jurisdiction.

The Cunninghams assert that they should be granted intervention in this proceeding on two grounds, neither of which is new and both of which the Commission rejected in its previous order: (1) they claim to have an interest in this proceeding that no other party will adequately represent; and (2) they would like to offer input on environmental issues, particularly with respect to the “Aggressive Green Scenario” discussed in the Companies’ IRP.⁹ Turning to the first item, though the Cunninghams claim to have a unique interest that no other party will

⁹ *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 at 4-7 (August 7, 2008) (“Cunningham Application”).

adequately represent, they do not state what that unique interest is.¹⁰ They further assert, “[T]he Commission should support the participation of members of the public, in particular where such members have been or will be particularly and uniquely impacted by Commission actions.”¹¹ Yet this IRP proceeding, which the Cunninghams describe as “toothless,”¹² will not result in a change of rates or service, the issuance of a Certificate of Public Convenience and Necessity, or the siting approval of generation, transmission, distribution, or any other utility facility; indeed, the IRP regulation prescribes that the only product of this proceeding will be “a [Commission staff] report summarizing its review [of the IRP] and offering suggestions and recommendations to the utility for subsequent filings.”¹³ Therefore it is not true that this proceeding will “particularly and uniquely impact[]” the Cunninghams; indeed, there is no evidence that it will impact them at all, and certainly not “particularly and uniquely.” For that reason, the Commission correctly held that the Attorney General will adequately protect the Cunninghams’ interests as consumers.

With respect to the Cunninghams’ assertion that the Commission should allow them to intervene so they may express their environmental views, the Commission rightly denied both Mr. Young and the Cunninghams intervention on that ground, as the Companies discuss at length above. But the Cunninghams further use their Application to mischaracterize the Companies’ “Aggressive Green Scenario,” deriding it as a “straw man” the Companies “dismiss[] and disparag[e],” as well as to claim that the Companies’ analysis of such a scenario has opened the door to discussing environmental concerns in this proceeding. In fact, the Companies’ Aggressive Green Scenario is part of their response to one of the Commission’s

¹⁰ See generally *id.* at 4-6.

¹¹ *Id.* at 6.

¹² *Id.* at 5.

¹³ 807 KAR 5:058 § 11(3)

recommendations resulting from the Companies' 2005 IRP: "LG&E/KU should continue to examine and report on the potential impact of increasing competition and future environmental requirements and how these issues are incorporated into future load forecasts."¹⁴ Moreover, far from a "straw man" to "dismiss[] and disparag[e]," the Companies developed the Aggressive Green Scenario "to understand the potential impact that the widespread, accelerated adoption of energy efficiency measures could have on electricity sales"¹⁵ Thus, neither the Commission's direction to the Companies that gave rise to the Aggressive Green Scenario, nor the Companies' inclusion of the scenario in the IRP, constitutes a discussion of environmental issues *per se*; rather, both accord with the injunction of the IRP regulation to address the Companies' plan "to meet future demand with an adequate and reliable supply of electricity at the lowest possible cost for all customers within their service areas, and satisfy all related state and federal laws and regulations."¹⁶

In evaluating the Cunningham Application, the Commission should also recall that Mr. and Mrs. Cunningham, through CDH, own real estate in Hardin County, Kentucky, over which the Companies propose to construct a 345 kV transmission line. Mr. Young has appeared in at least three proceedings as a witness for the Cunninghams opposing the construction of the line and the right to condemn an easement for the transmission line. Given that the Commission has already granted the Companies a certificate of public convenience and necessity to construct the 345 kV transmission line, which certificate is the subject of an appeal by the Cunninghams, this proceeding is not the place to continue to contest the plans to construct the line, which appears to be the Cunninghams' true interest in this proceeding.

¹⁴ *In the Matter of: The 2008 Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company*, Case No. 2008-00148, IRP Application, Vol. III at 1 (April 21, 2008) (emphasis added).

¹⁵ *Id.*

¹⁶ 807 KAR 5:058 (emphasis added)

III. Conclusion

Because neither Mr. Young nor the Cunninghams have presented any new arguments upon which the Commission can grant them intervention, the Commission should adhere to its previous order denying them intervention in this proceeding. Neither Mr. Young nor the Cunninghams have stated a relevant consumer interest that the Attorney General cannot adequately represent. Moreover, the Applicants for Rehearing have stated that their sole interest in this proceeding is to address environmental issues, which is not within the Commission's jurisdiction to consider in this proceeding, as KRS 278.040(2), 807 KAR 5:058, and a recent unpublished opinion of the Kentucky Court of Appeals make clear. Therefore, the Companies respectfully request that the Commission deny the Applications for Rehearing of Mr. Young and the Cunninghams.

Dated: August 15, 2008

Respectfully submitted,



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CERTIFICATE OF SERVICE

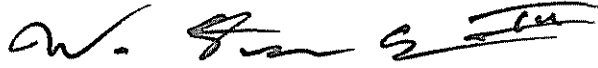
The undersigned hereby certifies that a true and correct copy of the foregoing was served on the following persons on the 15th day of August, 2008, by United States mail, postage prepaid:

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