

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF KENTUCKY UTILITIES) CASE NO. 2007-00565
COMPANY TO FILE DEPRECIATION STUDY)

APPLICATION OF KENTUCKY UTILITIES)
COMPANY FOR AN ADJUSTMENT) CASE NO. 2008-00251
OF ELECTRIC BASE RATES)

O R D E R

On August 13, 2008, Geoffrey M. Young filed a petition to intervene in this proceeding. Mr. Young states that he is a customer of Kentucky Utilities Company ("KU"), that he has "a personal interest in the quality of the air" he breathes, and that the quality of the air "is likely to affect the amount of money [he] will be forced to spend in future years to treat health problems that [he] may suffer because of KU's existing and planned power plants."¹ Mr. Young also states that he is an environmentalist; that he is interested in reducing pollution that harms other people and the environment; and that Kentucky's coal-fired power plants have massive environmental impacts which contribute to "some of the worst air pollution in the Midwest," resulting in high rates of respiratory disease and global warming.

Mr. Young further states that, as an environmentalist and having a desire to promote energy efficiency, he has a special interest in the structure of KU's rates since

¹ Young Petition at 1.

rate structures impact: (1) the consumption of energy; (2) “the environmental impacts caused by the generation of that electricity”; and (3) the success of demand-side management programs. Finally, Mr. Young’s petition briefly recites his prior experience with energy efficiency programs, claims that, absent his participation, “it is likely that the interests of environmentalists and proponents of dramatically enhanced energy efficiency in Kentucky will not be adequately represented,” and pledges that he will participate in a constructive manner and will not be disruptive.

On August 19, 2008, KU filed a response in opposition to Mr. Young’s petition to intervene. Mr. Young then filed a reply on August 25, 2008, and KU filed a sur-reply on August 28, 2008.

Based on the petition and being otherwise advised, the Commission finds that the only person entitled to intervene as a matter of right is the Attorney General (“AG”), pursuant to KRS 367.150(8)(b). Intervention by all others is permissive and is within the sound discretion of the Commission.² As stated by Kentucky’s highest court 66 years ago in People’s Gas Co. of Kentucky v. City of Barbourville, 291 Ky. 805, 165 S.W.2d 567, 572 (Ky. 1942), the Commission’s “jurisdiction is exclusively confined ‘to the regulation of rates and service.’”³

Next, in exercising its discretion to determine permissive intervention, the Commission follows its regulation, 807 KAR 5:001, Section 3(8). That regulation

² Inter-County Rural Electric Cooperative Corporation v. Public Service Comm’n of Kentucky, 407 S.W.2d 127, 130 (Ky. 1966).

³ See also Benzinger v. Union Light, Heat & Power Co., 293 Ky. 747, 170 S.W.2d 38 (Ky. 1943) (“[I]t was expressly stated that the intention [of KRS 278.040(2)] was to confer jurisdiction only over the matter of rates and service.”)

requires a person seeking intervention to file a request in writing which "shall specify his interest in the proceeding."⁴ That regulation further provides that:

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.⁵

It is under these statutory and regulatory criteria that the Commission reviews a petition to intervene. We note at the outset of this review that Mr. Young has never previously been granted intervention in a Commission proceeding, although he has previously testified on behalf of others.

Mr. Young is a ratepayer of KU. Thus, Mr. Young and each of KU's other 500,000 customers have an actual interest in KU's rates. However, it is clear from the statements in Mr. Young's petition and response that his asserted interest in KU's rate structure arises not from his status as an individual ratepayer, but as a self-appointed representative of the interests of environmentalists. This finding is based on Mr. Young's statements such as:

(1) The energy consumption patterns that will result from the [rate structures] established in this proceeding are likely to affect the total amount of electricity consumed and the environmental impacts caused by the generation of that electricity.⁶

⁴ 807 KAR 5:001, Section 3(8)(b).

⁵ Id.

⁶ Young Petition at 3.

(2) If the Commission were to deny this petition, it is likely that the interests of environmentalists and proponents of dramatically enhanced energy efficiency in Kentucky will not be adequately represented.⁷

(3) [M]any aspects of energy utility operations, including their rate structures, . . . have clear and direct implications for the environment.⁸

(4) The interests of environmentalists are not identical to those of the AG.⁹

(5) 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.¹⁰

(6) If the Commission were to allow environmentalists to participate fully in proceedings where an impact on the environment is likely, there is no danger that the floodgates will thereby be opened to various special interests of other types.¹¹

The description of Mr. Young's education as set forth in his petition does not include any formal legal training. As a non-attorney, he cannot intervene on behalf of environmentalists in an administrative proceeding such as this.¹²

⁷ Id. at 4.

⁸ Young Reply at 5.

⁹ Young Reply at 6.

¹⁰ Id.

¹¹ Id.

¹² Kentucky State Bar Association v. Henry Vogt Machine Co., 416 S.W.2d 727 (Ky. 1967) and Frazee v. Citizens Fidelity Bank & Trust Co., 393 S.W.2d 778 (Ky. 1964), cited in May v. Coleman, 945 S.W.2d 426, 428 (Ky. 1997).

To the extent that Mr. Young's petition is considered as a request for intervention solely on his own behalf, he has not shown that, as a ratepayer, his interest in KU's rate structure for purposes of improving energy efficiency is different from the interests of KU's other 500,000 ratepayers. Thus, Mr. Young's interest as a ratepayer is not a special interest. His interest as a ratepayer is already adequately represented by the AG. The AG consistently intervenes on behalf of ratepayers in proceedings of this type, the AG has been granted intervention in this proceeding, and the AG is sufficiently knowledgeable about issues of rate-making and rate structure.¹³

The Commission understands and appreciates Mr. Young's interest as an environmentalist in reducing pollution, but the Commission has no jurisdiction over the quality of the air he breathes.¹⁴

A number of Mr. Young's statements indicate that he lacks an understanding of fundamental rate-making principles. His Reply states that:

[I]f the utilities help their customers dramatically improve the efficiency with which they use energy, environmentalists will support the establishment of revenue and net income levels sufficient to maintain the utilities' financial health.¹⁵

* * *

¹³ See, for example, the AG's direct testimonies filed in KU's prior rate case, Case No. 2003-00434, An Adjustment of the Electric Rates, Terms, and Conditions of Kentucky Utilities Company, covering the issues of rate design, cost-of-capital, and revenue requirements. Available at <ftp://162.114.3.166/PSCSCF/2003%20cases/2003-00434/>. Further, to the extent that energy policies are relevant in this proceeding, the AG has previously well represented those issues with the Commission. See, for example, Case No. 2006-00471, The 2006 Integrated Resource Plan of East Kentucky Power Cooperative, Inc.

¹⁴ Young Petition at 2.

¹⁵ Young Reply at 11.

If the Companies reject a cooperative approach to Kentucky's environmentalists, they and the Commission should be aware that there are other ways to improve a state's energy efficiency that do not depend on the participation of regulated utility companies and are not developed with their financial interests in mind.¹⁶

Under Kentucky law, a utility has an unqualified right to "demand, collect and receive fair, just and reasonable rates" ¹⁷ As Kentucky's highest court has stated, "Rates are non-confiscatory, just and reasonable so long as they enable the utility to operate successfully, to maintain its financial integrity, to attract capital and to compensate its investors for the risks assumed."¹⁸ Thus, a utility's right to fair, just, and reasonable rates cannot be conditioned, as Mr. Young suggests, upon the degree of the utility's cooperation with environmentalists.

In summary, the Commission finds that Mr. Young's interest as a ratepayer in KU's rate structure is not a special interest and that interest is adequately represented by the AG. Mr. Young's interests relating to the quality of the air are beyond the scope of the Commission's jurisdiction in this proceeding. Based on Mr. Young's statements that a utility's revenues and financial health be tied to its degree of cooperation with environmentalists, the Commission finds that his intervention is not likely to present issues or to develop facts that assist us in fully considering KU's rate case without unduly complicating or disrupting the proceeding.

¹⁶ Id. at 10.

¹⁷ KRS 278.030(1).

¹⁸ Commonwealth ex rel. Stephens v. South Central Bell Tele. Co., 545 S.W.2d 927, 930 (Ky. 1976).

Mr. Young will have ample opportunity to participate in this proceeding even though he is not granted intervenor status. He may file comments as frequently as he chooses, and those comments will be entered into the record of this case. He may also attend and present public comment at the regional public hearings that will be scheduled in the near future. Finally, Mr. Young may attend and present comment at the public hearing to be held at our offices in Frankfort, Kentucky on January 13, 2009.

IT IS THEREFORE ORDERED that Mr. Young's petition to intervene is denied.

Done at Frankfort, Kentucky, this 5th day of December, 2008

By the Commission

Vice Chairman Gardner abstains.

ATTEST:


Executive Director *for Stephanie Stumbo*
12/10/08

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