

Geoffrey M. Young
454 Kimberly Place
Lexington, KY 40503
phone: 859-278-4966
email: energetic@windstream.net

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DEC 15 2008

PUBLIC SERVICE
COMMISSION

December 12, 2008

PUBLIC SERVICE COMMISSION

Stephanie Stumbo, Executive Director
Kentucky Public Service Commission
P.O. Box 615, 211 Sower Boulevard
Frankfort, Kentucky 40602-0615

Re: Cases No. 2008-00251 and 2007-00565

Application of Kentucky Utilities Company for an Adjustment of Electric Base Rates;
Application of Kentucky Utilities Company to File Depreciation Study

Dear Ms. Stumbo:

Please find attached for filing with the Commission an original and ten copies of an
Application for Rehearing related to the above-referenced proceedings.

Sincerely,



Geoffrey M. Young

Enclosures

cc: Parties listed on the Certificate of Service

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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DEC 15 2008

PUBLIC SERVICE
COMMISSION

In the Matter of:

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

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

APPLICATION FOR REHEARING RE THE
PETITION FOR FULL INTERVENTION
OF GEOFFREY M. YOUNG

The above-captioned proceedings are an application for a general adjustment of electric rates. On August 12, 2008, I mailed a petition for full intervention to the Commission and it was received and stamped in on the following day. On December 5, 2008, the Commission issued an Order denying my 8/13/08 petition. This document is an application, filed pursuant to KRS 278.400, for a rehearing of that decision. I should note that I am not an attorney and have never held myself out as one.

I must note at the outset that the Commission's failure to issue an Order between 8/13/08 and 12/5/08 – a period of almost four months – itself constitutes highly arbitrary and abusive behavior. The KU rate case is almost over. If the PSC feels free to engage in this type of abuse, it is liable to do so any time in the future that it receives a petition for

intervention that it would rather not deal with in a proper and lawful manner.

In its Order, the Commission cited Inter-County Rural Electric Cooperative Corporation v. Public Service Commission of Kentucky, 407 S.W.2d 127, 130 (Ky. 1966) to support its finding 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.” (Order at 2) I do not challenge this finding, but I will argue below that the Commission did not use sound discretion and did not follow its own regulation when it denied my 8/12/08 petition for full intervention in the KU rate case.

In its Order, the Commission cited People’s Gas Co. of Kentucky v. City of Barbourville, 291 Ky. 805, 165 S.W.2d 567, 572 (Ky. 1942) and Benzinger v. Union Light, Heat & Power Co., 293 Ky. 747, 170 S.W.2d 38 (Ky. 1943), in which the courts held that the Commission’s jurisdiction is exclusively confined to the regulation of a utility’s rates and service. (Id.) In my opinion as a non-attorney, the import of these two cases poses no problem for my petition to intervene, because in my petition of 8/12/08 I stated clearly that I have a special interest in KU’s rate structure. I also clearly described the connection between the utility’s rate structure, as reflected in its tariffs, and my interest in a clean environment. (Young, Petition at 2-3) In view of these facts, both of these cases would actually seem to provide support for my petition for full intervention.

The Commission noted, “Mr. Young has never previously been granted intervention in a Commission proceeding, although he has previously testified on behalf of others.” (Order at 3) This point seems somewhat ironic because the Commission has ensured that outcome by engaging in a pattern of arbitrary and abusive behavior over a period of many

months with respect to my petitions for full intervention in a number of cases. It is reminiscent of the boy who kills his parents and then says to the judge, “Have mercy on me, Your Honor, because I’m only a poor orphan boy!”

The Commission stated that as a KU ratepayer, “Mr. Young and each of KU’s other 500,000 customers have an actual interest in KU’s rates.” (Id.) I object to the Commission’s clear implication that interests other than one’s interest as a customer are not “actual” or legitimate interests. Specifically, I object to the implication that my interests in my future health and medical expenses are not actual or legitimate interests.

The core of the Commission’s argument is its “finding” that I have appointed myself as a “representative of the interests of environmentalists.” (Id.) The finding is false on its face. As a non-attorney representing no one but myself, I am well aware that I am not allowed to claim that I am legally representing anyone else, and in fact I have not done so. The Commission has combed through my petition of 8/12/08 and my reply of 8/22/08 to KU’s and LG&E’s response and found six statements that it claims support its finding. (Id. at 3-4) Statements (1) and (3) are unchallenged statements of fact and have no relevance to the question of whether I have appointed myself as a representative of anyone else. Statement (2) was based on my observation that no other individual environmentalist or environmental organization has been granted full intervenor status in this case. Statements (4) and (5) were based on the statutory mandate of the Attorney General (AG) as set forth in KRS 367.150(8) and my observations over a 15-year period of the positions the AG tends to take compared to the positions that energy-efficiency and environmental organizations tend to take in utility company cases. (Young, 8/22/08, Reply to KU and LG&E at 6-7) Statement (6) was based on my observation that “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.” (Id. at 6) The Commission has not challenged the factual or logical validity of any of these six statements. In short, in an attempt to prove that I am trying to hold myself out as representing other environmentalists, the Commission took a number of my statements out of context and presented them together as a set. The attempt did not succeed, and the Commission’s finding is counterfactual. I am a member of the environmental movement in Kentucky and have been for several years, and I have submitted testimony in previous Commission cases on behalf of the specific energy-efficiency or environmental organization intervening in each given proceeding, but I have never claimed to be an official or chosen representative of Kentucky’s environmental community in any proceeding. To do so would be presumptuous on my part.

To the contrary, in my petition of 8/12/08 I repeatedly spoke only for myself, to wit: “I have a personal interest in the quality of the air I breathe.” (Id. at 1) “As an environmentalist, I have an interest in reducing pollution that can harm other people and the natural environment.” (Id.) “Kentucky’s weather patterns are such that my wife and I are forced to breathe pollutants from these power plants that are potentially harmful to our health.” (Id. at 2) “As an environmentalist and a person specifically concerned with promoting improved energy efficiency, I have a special interest in the structures of the tariffs that will be established at the conclusion of this case.” (Id.) “In the context of this petition, however, I am not presenting myself as a representative of or spokesperson for any organization.” (Id. at 4) Because I am not an attorney, have never held myself out to be an attorney, am explicitly not attempting to “intervene on behalf of environmentalists” other than myself, and am not a prisoner attempting to assist another prisoner with his case, the three court

cases cited by the Commission on page 5 of its Order have no relevance to this proceeding.

Not only is the Commission's central argument unfounded and false, it is virtually identical to the argument it made two months ago in its Denial Order in the LG&E rate case. (Case Nos. 2008-00252 and 2007-00564, 10/10/08 Order at 4-5) Although I filed a detailed, logical rebuttal of this argument on October 18, 2008, the Commission has not altered its argument to take account of any of the points I made. (Young, Application for Rehearing in the LG&E Rate Case, 10/18/08 at 4-6) The Commission did not even bother to say, "We have considered Mr. Young's 10/18/08 arguments and rejected them." For the Commission to pretend that I made no response to its arguments of 10/10/08 constitutes facially unreasonable, arbitrary, and abusive behavior. If two parties are engaged in a debate and the more powerful party starts pretending that the less powerful party's responses were never filed or do not exist, no further communication is possible. By repeating its initial argument verbatim, the powerful party is, in effect, admitting that it has no cogent response to make to the arguments of the other party. An impasse has been reached and the process has become, by definition, an exercise in futility.

The Commission stated that I have "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." (Order of 12/5/08 at 5) I would like to propose a thought experiment. Suppose a pollster were to ask a representative sample of KU's customers the following question: "Do you believe it is critically important to alter KU's rate structures, as reflected in its tariffs, in such a way as to give the utility company a strong economic incentive to promote cost-effective energy efficiency programs in which its customers may participate?" I would venture to guess that most customers would say

something like the following: “All I care about is keeping my electric bills and rates from going up, and I couldn’t care less about whether the utility company makes money or not. In fact, I’d prefer that they lose money for a few years in order to make them less arrogant and teach them a lesson about the importance of frugality.” My interests as an environmentalist and a proponent of dramatically enhanced energy efficiency in all sectors of Kentucky’s economy are significantly different from the short-term consumer interests of most of KU’s 500,000 customers; the Commission’s statement is therefore groundless.

The Commission went on, “Thus, Mr. Young’s interest as a ratepayer is not a special interest.” (*Id.*) That is correct, but my interests as an environmentalist and a proponent of dramatically enhanced energy efficiency in all sectors of Kentucky’s economy are special interests that are not otherwise represented in this proceeding. Moreover, they are legitimate special interests, regardless of the Commission’s repeated attempts to misrepresent, minimize, ignore, or impugn them over the past several months.

The Commission’s next rhetorical ploy was to imply that the AG would raise all the issues I was planning to raise if I had been granted full intervenor status. (*Id.*) On October 30, 2008, the AG’s Office of Rate Intervention filed a 289-page document containing the direct testimony of certain expert witnesses engaged by the AG. Although there was substantial testimony related to KU’s rate structures (Robert J. Henkes, Direct Testimony at 21 [i.e., page 29 of 289]; Glenn A. Watkins, Direct Testimony at 218-289 of 289), none of the AG’s witnesses raised any of the issues related to KU’s rate structure that I would have raised. None made any rate structure proposals that would decouple the utility’s sales from its revenue and net income. As I have stated on several previous occasions, the statutory mandate of the AG is simply not the same as my interests as an environmentalist and a

proponent of dramatically enhanced energy efficiency in all sectors of Kentucky's economy. The record in the KU rate case to date clearly bears out that conclusion. The comments the Commission made about the AG's testimony in previous rate cases and IRP cases are therefore irrelevant. (Order of 12/5/08 at 5) Please note that I am not making any criticism, express or implied, of the AG's testimony or its entirely appropriate manner of participating in the KU rate case.

The Commission stated that it "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." (Id.) As I have stated in writing on several previous occasions, I have never asked the Commission to regulate Kentucky's air quality or perform any of the tasks that the Kentucky General Assembly has statutorily assigned to the Kentucky Division for Air Quality – either in my petition of 8/12/08 or in any other document I have filed with the Commission during the past 15 years. No agency of state government other than the Public Service Commission has any jurisdiction over KU's tariffs and rate structures [KRS 278.040(2)], and my petition for full intervention clearly and explicitly stated and explained my interest in these tariffs and rate structures. (Young, Petition, 8/12/08, at 1-3)

The logical fallacy in the Commission's argument is obvious. In granting the Commission exclusive authority to regulate the rates and service 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 ways in which the utility's rate structure will affect the economic incentives

for improving energy efficiency in its service territory, there is no provision of existing Kentucky law that would prohibit it from doing so. In fact, existing Federal law could be taken to imply that rates cannot be considered fair, just and reasonable if the rate structures establish economic incentives that reward the utility company when customers waste more energy and penalize the utility when customers use energy more efficiently. [16 USC Chapter 46, Subchapter II, Section 2621(d)(8)]

Moreover, there are several provisions of Kentucky statutes and regulations that require the Commission to consider factors that have implications for the environment. (Young, 8/05/08 Application for Rehearing of Denial of Petition to Intervene in the LG&E IRP case, Case No. 2008-00148, at 2-3) It is undeniable that the Commission currently has sole jurisdiction over many aspects of energy utility operations, including their rate structures, that have clear and direct implications for the environment. To attempt to argue otherwise, as the Commission did in the passage cited above, is to resort to arguments that would be considered invalid or illogical by a reasonable person.

The Commission claimed that I lack “an understanding of fundamental rate-making principles,” and that I suggested that “a utility’s right to fair, just, and reasonable rates” should “be conditioned...upon the degree of the utility’s cooperation with environmentalists.” (Order, 12/5/08 at 5-6) Both of these findings are erroneous. My comments about environmentalists were nothing more than my guesses about how they might respond under certain hypothetical conditions in the future, based on my experience of working with a number of them over the past few years. I am quite familiar with KRS 278.030(1), and I have no cause to question the cited opinion of Kentucky’s highest court in Commonwealth ex rel. Stephens v. South Central Bell Tele. Co., 545 S.W.2d 927, 930 (Ky. 1976), having

been an active participant in three general rate cases. (Case No. 2003-00433, *An Adjustment of the Gas and Electric Rates, Terms and Conditions of Louisville Gas & Electric Company*; Case No. 2003-00434, *An Adjustment of the Electric Rates, Terms and Conditions of Kentucky Utilities Company*; and Case No. 2006-00472, *General Adjustment of Electric Rates of East Kentucky Power Cooperative, Inc.*)

In all three of these cases, the utility and intervenors attempted to reach agreed settlements that included the level of revenue requirements that should be recommended jointly for approval by the Commission. There is no single dollar amount for the revenue requirement that is fair, just and reasonable, with all other numbers being clearly unfair, unjust and unreasonable; rather, there is typically a range of numbers that could meet the cited standard. In some situations this range is rather narrow, while in others it is relatively wide. Support for a given level of revenue requirements sometimes becomes a bargaining chip that various intervenors use in seeking to further their special interests. As a result of its strict *ex parte* communication rules, it is possible that the Commission is not very familiar with what typically goes on during these negotiating sessions.

On March 23, 2007, Howard Bush and Greg Ferguson of KU and LG&E presented a seminar on “Ratemaking 101” for the members of the Kentucky Energy Efficiency Working Group, of which I am the co-chair. I attended this session, which covered the process by which an energy utility and the PSC calculate revenue requirements and arrive at rates and tariffs that are fair, just and reasonable. For the Commission to state that I lack “an understanding of fundamental rate-making principles” (*Id.* at 5) is unsupported and incorrect.

The Commission’s allegation that I made “statements that a utility’s revenues and

financial health be tied to its degree of cooperation with environmentalists” (Id. at 6) is a fallacious straw-man argument. The Commission put words in my mouth in order to construct a straw-man that it could then knock down.

Finally, even if my understanding of rate-making principles is not precisely identical to that of the Commission, that would have no logical effect on whether my petition for full intervention meets the two prongs of 807 KAR 5:001, Section 3(8), the regulation that governs whether a petitioner shall be granted full intervention. If my understanding of rate-making principles is deficient in any minor respect, my full intervention in the KU rate case would quickly correct my understanding. The Commission has not shown that its allegation, even if true, has any logical bearing on its decision whether to grant full intervention.

The Commission stated, “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.” (Id.) The PSC could use precisely analogous arguments to deny any party’s petition for full intervention (other than the AG himself). The following hypothetical exchange of documents illustrates how the Commission might have proceeded against KIUC’s 7/15/08 petition for full intervention, and how it might proceed in any future case in which KIUC requests intervention:

a) KIUC (via timely petition): Please grant this petition for full intervention because KIUC represents the industrial viewpoint on utility and energy issues before the Commission, and because the matters being decided in this case may have a significant impact on the rates our clients pay for electricity.

b) Commission: (No response until after one or more dates on the procedural schedule pass by.)

c) KIUC: This letter is to inquire when the Commission will issue an intervention Order.

d) Commission (via written Order): KIUC's petition makes it clear that its real interest is to promote the economic prosperity of certain industrial corporations. By statute, that type of issue is handled by the Kentucky Cabinet for Economic Development, and it would be unlawful for the Commission to become involved in it. KIUC therefore has no actual legal interest in this case. To the extent that KIUC does have an interest in KU's rates, we find that the AG comprehensively represents all consumers' economic interests and KIUC cannot have any pertinent information to add. KIUC's petition is therefore denied.

e) KIUC: Please grant a rehearing because, as we stated before, we have a direct interest in KU's rates.

f) Commission: We find no error in our finding that KIUC's interest in economic development is simply too remote from the Commission's statutory mandate, which is to regulate utility companies' rates and service. Any information KIUC plans to submit related to economic development would unduly complicate the proceedings. If KU's rates do increase as a result of this case, all of the increases might be borne by customer classes other than industrial customers, which would leave KIUC's self-proclaimed, so-called "interests" unaffected. Because KIUC's full intervention would add no pertinent information and would unduly complicate this proceeding, we hereby deny its request for rehearing.

When the Commission's arguments are applied to KIUC, it is easy to see how fallacious, illogical, unreasonable, arbitrary, and unjust they are. The Commission could make the same arguments against virtually any other party requesting full intervention in

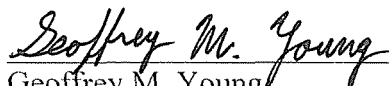
virtually any Commission proceeding.

I believe there are no additional arguments the Commission made in its Order of 12/5/08 other than the ones I have refuted above.

It seems to me that in the end, all of the Commission's elaborately-crafted, poorly-founded, and illogical arguments boil down to two simple things: a desire to discriminate unlawfully and arbitrarily against environmentalists and a desire to discriminate unlawfully and arbitrarily against individuals who are not represented by an attorney. Neither of these factors is mentioned in the regulation that governs the question of who should be granted full intervention, 807 KAR 5:001 Section 3(8). Because they lack grounding in law or regulation, both of the Commission's desires or *de facto* policies are inappropriate, unlawful, and unworthy of any public agency of the Commonwealth of Kentucky.

WHEREFORE, I respectfully request that the Commission grant a rehearing of its 12/5/08 Denial Order in the KU rate case.

Respectfully submitted,



Geoffrey M. Young
454 Kimberly Place
Lexington, KY 40503
Phone: 859-278-4966
E-mail: energetic@windstream.net

12/12/08

Date

CERTIFICATE OF SERVICE

I hereby certify that an original and ten copies of the foregoing Application for Rehearing were mailed to the office of Stephanie Stumbo, Executive Director of the Kentucky Public Service Commission, P.O. Box 615, 211 Sower Boulevard, Frankfort, Kentucky, 40602-0615, and that copies were mailed to the following parties of record on this 12th day of December, 2008.

Lonnie E. Bellar
KU and LG&E
220 W Main St
PO Box 32010
Louisville, KY 40202

Robert M. Watt III
Stoll Keenon Ogden PLLC
300 W Vine St, Suite 2100
Lexington, KY 40507-1801

Allyson K. Sturgeon
Senior Corporate Attorney
KU and LG&E
220 W Main St
Louisville, KY 40202

Kendrick Riggs / Duncan Crosby
Stoll Keenon Ogden PLLC
2000 PNC Plaza
500 W Jefferson St
Louisville KY 40202-2828

Dennis G. Howard II
Office of the Attorney General
Utility & Rate Intervention Division
1024 Capital Center Drive, Suite 200
Frankfort, KY 40601-8204

Joe F. Childers
Getty & Childers, PLLC
1900 Lexington Financial Center
250 W Main St
Lexington, KY 40507


Michael L. Kurtz
Boehm, Kurtz & Lowry
36 E Seventh St, Suite 1510
Cincinnati, OH 45202

David C. Brown
Stites & Harbison, PLLC
1800 Providian Center
400 W Market St
Louisville, KY 40202

Willis L. Wilson
Attorney Senior, Department of Law
Lexington-Fayette Urban Vounty Govt
P.O. Box 34028
Lexington, KY 40588

Lisa Kilkelly
Legal Aid Society
416 W Muhammad Ali Blvd Suite 300
Louisville, KY 40202

Signed,



Geoffrey M. Young



Date