

STOLL · KEENON · OGDEN
PLLC

2000 PNC PLAZA
500 WEST JEFFERSON STREET
LOUISVILLE, KY 40202-2828
MAIN: (502) 333-6000
FAX: (502) 333-6099
www.skofirm.com

W. DUNCAN CROSBY III
DIRECT DIAL: (502) 560-4263
DIRECT FAX: (502) 627-8754
duncan.crosby@skofirm.com

December 22, 2008

RECEIVED

VIA HAND DELIVERY

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

DEC 22 2008

PUBLIC SERVICE
COMMISSION

RE: Application of Kentucky Utilities Company for an Adjustment of Base Rates
Case No. 2008-00251

Application of Kentucky Utilities Company to File Depreciation Study
Case No. 2007-00565

Dear Ms. Stumbo:

Enclosed please find and accept for filing the original and ten copies of Kentucky Utilities Company's Response to the Application for Rehearing re the Petition for Full Intervention of Geoffrey M. Young in the above-referenced matters. 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.

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

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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

In the Matter of:

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

RESPONSE OF KENTUCKY UTILITIES COMPANY
TO THE APPLICATION FOR REHEARING RE THE PETITION
FOR FULL INTERVENTION OF GEOFFREY M. YOUNG

Kentucky Utilities Company (“KU”) hereby responds to the Application for Rehearing re the Petition for Full Intervention of Geoffrey M. Young in these proceedings,¹ 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 December 5, 2008 Order denying his Petition for Full Intervention,² 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.³ As if to prove the point, Mr. Young’s Application misconstrues a provision of federal law, which Mr. Young erroneously suggests could require KU to mold its

¹ *In the Matter of: Application of Kentucky Utilities Company for an Adjustment of Base Rates*, Case No. 2008-00251, and *In the Matter of: Application of Kentucky Utilities Company to File Depreciation Study*, Case No. 2007-00565, Application for Rehearing re the Petition for Full Intervention of Geoffrey M. Young (Dec. 15, 2008) (“Young Application for Rehearing”).

² *In the Matter of: Application of Kentucky Utilities Company for an Adjustment of Base Rates*, Case No. 2008-00251, and *In the Matter of: Application of Kentucky Utilities Company to File Depreciation Study*, Case No. 2007-00565, Order (Dec. 5, 2008) (“Dec. 5 Order”).

³ 807 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.”

tariffs to his liking. Therefore, KU respectfully requests that the Commission deny Mr. Young's Application for Rehearing.

I. Like His Application for Full Intervention, Mr. Young's Application for Rehearing States No Commission-Jurisdictional Special Interest Upon Which the Commission Could Grant Him Intervention.

The Commission correctly held in its December 5, 2008 Order denying full intervention to Mr. Young that he does not have a cognizable interest in these proceedings, special or otherwise, sufficient to merit granting him full intervention. As the Commission stated in its December 5 Order,

[T]he Commission's jurisdiction is exclusively confined "to the regulation of rates and service." ... 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.⁴

If there were any doubts remaining about the nature of Mr. Young's claimed interest in these proceedings, his Application for Rehearing has laid them to rest, making it clear that his interest is primarily environmental and therefore non-jurisdictional to the Commission:

[I]n 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.⁵

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 customers⁶

[M]y interests as an environmentalist and a proponent of dramatically enhanced energy efficiency in all sectors of

⁴ Dec. 5 Order at 2, 5 (quoting *People's Gas Co. of Kentucky v. City of Barbourville*, 165 S.W.2d 567, 572 (Ky. 1942); citing *Benzinger v. Union Light, Heat & Power Co.*, 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.")).

⁵ Young Application for Rehearing at 2.

⁶ *Id.* at 6.

Kentucky's economy are special interests that are not otherwise represented in this proceeding.⁷

As the Commission correctly held, Mr. Young's environmental and health interests and concerns, whatever their merits, are simply beyond the jurisdiction of the Commission, giving him no ground for intervention.⁸

Concerning Mr. Young's claimed interest in enhanced energy efficiency, though energy efficiency matters are generally jurisdictional to the Commission,⁹ they are neither jurisdictional nor relevant in these proceedings, which concern proposed changes to KU's electric rates, terms, and conditions. The ultimate question before the Commission in these proceedings is whether KU's proposed rates, terms, and conditions are fair, just, and reasonable, which has nothing to do with energy efficiency programs, making any commentary thereon irrelevant.¹⁰ Moreover, the sole statute giving the Commission jurisdiction over demand-side management and energy efficiency ("DSM/EE") programs, KRS 278.285, states that the Commission may consider such DSM/EE programs as utilities themselves propose, but it does not give the Commission jurisdiction to consider DSM/EE-related proposals from other sources.¹¹ KU has made no DSM/EE proposals in these proceedings, so, in addition to being irrelevant, Mr. Young's claimed interest in energy efficiency is also non-jurisdictional to the Commission in these proceedings.

Finally, though the Commission held that Mr. Young has an interest in these proceedings as a KU customer, the Commission accurately stated that his interest as a customer is no

⁷ *Id.*

⁸ Dec. 5 Order at 5.

⁹ *See* KRS 278.285.

¹⁰ *See, e.g.*, KRS 278.030; KRS 278.190.

¹¹ KRS 278.285(1) states: "The commission may determine the reasonableness of demand-side management plans proposed by any utility under its jurisdiction."

different than that of any other customer.¹² Mr. Young's Application for Rehearing confirms the Commission's assessment: "The Commission went on, 'Thus, Mr. Young's interest as a ratepayer is not a special interest.' ... That is correct"¹³ Given that Mr. Young has no special interest as a KU customer, it is important to note that the Commission has denied intervention – even to customers – who can state no more than that they have particular positions on issues, which is all Mr. Young has done in these proceedings. In Case No. 2004-00304, the Commission ultimately denied all intervention to Robert Madison, an LG&E customer, in a case concerning LG&E's Home Energy Assistance Program, even though Mr. Madison asserted that not all customers shared his views. The Commission wrote: "[T]he mere fact that Mr. Madison has a particular position on issues pending in this case does not create the requisite 'special interest' sufficient to justify full intervention under 807 KAR 5:001, Section 3(8)(b). Mr. Madison's request for reconsideration contains no additional facts or arguments to demonstrate that his interest in these proceedings differs from that of any other residential customer of LG&E."¹⁴ In Case No. 2003-00266, the Commission relied on similar reasoning to deny Mr. Madison intervention in a proceeding to evaluate the membership of LG&E and KU in the Midwest Independent Transmission System Operator, Inc. ("MISO"), stating:

[T]he Commission finds that Mr. Madison has not demonstrated that, as a residential consumer, he has any interest in this case that differs from the interests of LG&E's other 334,000 residential electric customers. The AG has been granted full intervention in this case, and he is charged by statute with representing the interests of all consumers. The fact that Mr. Madison has previously disagreed with certain positions previously taken by the AG does not demonstrate that the AG is not adequately

¹² Dec. 5 Order at 5.

¹³ Young Application for Rehearing at 6.

¹⁴ *In the Matter of: Joint Application of Louisville Gas and Electric Company, Metro Human Needs Alliance, Inc., People Organized and Working for Energy Reform, and Kentucky Association for Community Action, Inc., for the Establishment of a Home Energy Assistance Program*, Case No. 2004-00304, Order at 3-4 (Sept. 30. 2004).

representing consumer interests or that Mr. Madison has a special interest that justifies his individual participation as an intervenor.¹⁵

The Commission has likewise denied intervention to customers who claim to represent a particular segment of a utility's customer base.¹⁶

In sum, Mr. Young's environmental and health concerns are not Commission-jurisdictional, and therefore cannot be a basis upon which to grant him intervention. Mr. Young's claimed interest in energy efficiency is neither relevant nor jurisdictional to the Commission in these proceedings, and therefore cannot be a basis upon which to grant him intervention. Finally, Mr. Young has provided no reason to believe that his relevant *jurisdictional* interests (i.e., customer interests) are different than those of any other KU customer, even if his positions on certain issues may differ; indeed, he has affirmatively stated that his customer interests do not differ from those of other customers. Mr. Young has, therefore, given the Commission no basis upon which to grant him intervention as someone having a "special interest in the proceeding which is not otherwise adequately represented"

II. Mr. Young's Application for Rehearing Does Not Demonstrate that He Could Present Issues or Develop Facts to Aid the Commission in Fully Considering Matters Relevant and Jurisdictional to these Proceedings; Rather, He Misconstrues Federal Law.

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 to the Commission, giving no basis upon which the Commission should alter

¹⁵ *In the Matter of: Investigation into the Membership of Louisville Gas and Electric Company and Kentucky Utilities Company in the Midwest Independent Transmission System Operator, Inc.*, Case No. 2003-00266, Order at 2 (Aug. 13, 2003).

¹⁶ *See, e.g., In the Matter of: General Adjustments in Electric Rates of Kentucky Power Company*, Case No. 2005-00341, Order at 1 (Feb. 6, 2006) ("This matter arises upon the letters filed by Croma Tackett, requesting intervention on behalf of herself and other low-income residential ratepayers. Based on the letters, which will be treated as a motion, the Commission finds that intervention has already been granted to the Attorney General's Office, on behalf of all residential customers, and to the Kentucky Association of Community Action, Inc., on behalf of low-income residential customers. Since the interests sought to be protected by the movant are adequately being protected by existing intervenors, the motion should be denied.").

its determination to deny intervention to Mr. Young. 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 16 U.S.C. § 2621(d)(8) as possibly “imply[ing] 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.”¹⁷ In fact, 16 U.S.C. § 2621(a) states that state regulatory agencies must consider and determine whether to adopt the various provisions of 16 U.S.C. § 2621(d), which provisions have no force of law on their own, by implication or otherwise. This misconstruing of law and Mr. Young’s “statements indicat[ing] that he lacks an understanding of fundamental rate-making principles,”¹⁸ demonstrate that, rather than assisting the Commission in fully, fairly, and accurately considering this matter, Mr. Young’s input is likely to introduce confusion into these proceedings, leading to the undue complication and disruption thereof.

III. Conclusion

Because Mr. Young’s Application presents no ground upon which the Commission can grant him intervention, and therefore no ground upon which to reconsider its December 5, 2008 Order denying him intervention in these proceedings, the Commission should deny his Application for Rehearing.

¹⁷ Young Application for Rehearing at 8

¹⁸ Dec. 5 Order at 5.

Dated: December 22, 2008

Respectfully submitted,



Kendrick R. Riggs
W. Duncan Crosby III
Stoll Keenon Ogden PLLC
2000 PNC Plaza
500 West Jefferson Street
Louisville, Kentucky 40202-2828
Telephone: (502) 333-6000

Robert M. Watt III
Stoll Keenon Ogden PLLC
300 West Vine Street, Suite 2100
Lexington, Kentucky 40507-1801

Allyson K. Sturgeon
Senior Corporate Attorney
E.ON U.S. LLC
220 West Main Street
Louisville, Kentucky 40202
Telephone: (502) 627-2088

Counsel for Kentucky Utilities Company

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served on the following persons on the 22nd day of December, 2008, by United States mail, postage prepaid:

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

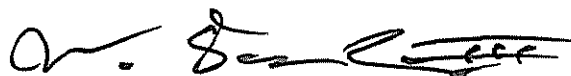
David C. Brown
Stites & Harbison, PLLC
400 West Market Street, Suite 1800
Louisville, KY 40202

Michael L. Kurtz
Boehm, Kurtz & Lowry
36 East Seventh Street, Suite 1510
Cincinnati, OH 45202

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

Willis L. Wilson
Lexington-Fayette Urban County Government
Department of Law
200 East Main Street
Post Office Box 34028
Lexington, KY 40588-4028

Geoffrey M. Young
454 Kimberly Place
Lexington, KY 40503



Counsel for Kentucky Utilities Company