



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

September 15, 2008

RECEIVED

SEP 15 2008

PUBLIC SERVICE
COMMISSION

VIA HAND DELIVERY

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

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 Petition to Intervene of Jonathan Kern 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.

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 129265/541021 1

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF KENTUCKY)	
UTILITIES COMPANY TO FILE)	CASE NO. 2007-00565
DEPRECIATION STUDY)	
APPLICATION OF KENTUCKY)	
UTILITIES COMPANY FOR AN)	CASE NO. 2008-00251
ADJUSTMENT OF BASE RATES)	

**RESPONSE OF KENTUCKY UTILITIES COMPANY TO
THE PETITION TO INTERVENE OF JONATHAN KERN**

Kentucky Utilities Company (“KU”) respectfully requests that the Commission deny the Petition to Intervene of Jonathan Kern in this proceeding, in which Mr. Kern seeks full intervenor status.¹ Mr. Kern claims an interest in this proceeding because electric rates affect his cost of doing business and because he “would like to intervene to protect the interests both of the residential consumer as well as the environmental issues which are wholly disregarded by KU.”² As the Commission and the Kentucky Court of Appeals have recently stated, however, environmental issues are not jurisdictional to the Commission.³ Also, Mr. Kern has not shown that he has a special interest in this proceeding that another party, such as the Attorney General, will not adequately represent, nor has he shown that he will present issues or develop facts that will help the Commission fully consider KU’s Application; in other words, Mr. Kern presents no

¹ The Commission recently denied Geoffrey Young’s petition for intervention in the Companies’ Integrated Resource Plan (“IRP”) proceeding (Case No. 2008-00148) on the grounds that (1) the Commission does not have jurisdiction over environmental matters and (2) the Attorney General can adequately represent any of Mr. Young’s customer interests. *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).

² Kern Petition at 1-2.

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 App. 2007) (not to be published); *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

grounds for full intervention under 807 KAR 5:001 § 3(8)(b). KU therefore respectfully requests that the Commission deny Mr. Kern's Petition to Intervene in this proceeding.

I. Recent Commission and Unpublished Kentucky Court of Appeals Precedents State that Environmental Concerns, Such as Mr. Kern's, Are Not in the Commission's Jurisdiction.

Mr. Kern's environmental concerns are outside the jurisdiction of this Commission and cannot be grounds for full intervention. As the Commission stated in a recent order denying a petition for intervention, "Notably absent from the Commission's jurisdiction are environmental concerns, which are the responsibility of other agencies within Kentucky state government"⁴ 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.⁵

Therefore, insofar as Mr. Kern's Petition for intervention relies upon his claimed environmental concerns, KU respectfully submits that the Commission must deny it.

II. Mr. Kern Has Given No Reason Why the Attorney General Cannot Adequately Represent His Interests as a KU Customer, Nor Any Evidence that He Will Present Issues or Develop Facts that Will Help the Commission Fully Consider KU's Application; The Commission Should Therefore Deny His Petition.

Mr. Kern claims an interest in this proceeding as a KU business and residential customer, but the Commission has held previously that a person's status as a customer is not a special interest meriting full intervention, especially where, as here, the Attorney General has been

⁴ *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).

⁵ *EnviroPower, LLC v. Public Service Commission of Kentucky*, 2007 WL 289328 at 3 (Ky. App. 2007) (not to be published) (emphasis added).

granted full intervention.⁶ In that proceeding, the Commission stated, “The interests of ratepayers are represented, as a matter of law, by the Attorney General. *See* KRS 367.150(8)(a). The Sierra Club’s interest in costs to ratepayers is too remote to stand out as an interest not otherwise adequately represented in this proceeding.”⁷ Mr. Kern’s Petition states no non-environmental special interest that the Attorney General cannot or will not adequately represent in this proceeding. For that reason, KU respectfully submits that Mr. Kern cannot receive full intervener status in this proceeding under the first prong of 807 KAR 5:001 § 3(8)(b).

Furthermore, Mr. Kern’s Petition is silent with respect to the second prong of 807 KAR 5:001 § 3(8)(b), not even suggesting that Mr. Kern might “present issues or to develop facts that [would] assist the commission in fully considering the matter without unduly complicating or disrupting the proceedings.” The Petition presents no evidence of special knowledge or expertise Mr. Kern could bring to this proceeding to assist the Commission in its deliberations. KU therefore respectfully submits that Mr. Kern cannot receive full intervener status in this proceeding under the second prong of 807 KAR 5:001 § 3(8)(b), either.

III. Mr. Kern Will Be Able to Offer Comments at Public Hearing.

To the extent Mr. Kern, as a customer of KU, desires to express his beliefs and opinions concerning KU’s application for a change in base rates, he may do so by either submitting his public comments in writing to the Commission or appearing at the public portion of the hearing in this case and expressing his views in person. He will, therefore, have a complete opportunity to express his views and ideas in this proceeding.

⁶ *In the Matter of: An Investigation Into East Kentucky Power Cooperative, Inc.’s Continued Need for Certificated Generation*, Case No. 2006-00564, Order at 4-5 (April 19, 2007).


⁷*Id.*

IV. Conclusion

Because Mr. Kern has not presented any ground upon which the Commission can grant him full intervention, KU respectfully requests that the Commission deny his Petition to Intervene.

Dated: September 15, 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 15th day of September, 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

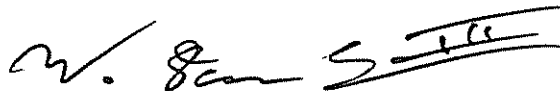
David C. Brown
Stites & Harbison, PLLC
400 West Market Street, Suite 1800
Louisville, KY 40202

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

Steven A. Goodman, Esq.
Lynch, Cox, Gilman & Mahan, P.S.C.
500 W. Jefferson Street, Suite 2100
Louisville, KY 40202

Willis L. Wilson
Leslye M. Bowman, Director of Litigation
Lexington-Fayette Urban County Government
Department of Law
200 East Main Street, P. O. Box 34028
Lexington, KY 40588-4028

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



Counsel for Kentucky Utilities Company