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October 18, 2008

PUBLIC SERVICE COMMISSION

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

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OCT 20 2008
PUBLIC SERVICE
COMMISSION

Re: Cases No. 2008-00252 and 2007-00564

Application of Louisville Gas and Electric Company for an Adjustment of its Electric and
Gas Base Rates;
Application of Louisville Gas and Electric 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. This is the second time I have submitted such an application; the Commission ruled that the first such application was premature.

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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OCT 20 2008

PUBLIC SERVICE
COMMISSION

In the Matter of:

APPLICATION OF LOUISVILLE GAS AND)
ELECTRIC COMPANY FOR AN ADJUSTMENT) CASE NO.
OF ITS ELECTRIC AND GAS BASE RATES) 2008-00252

APPLICATION OF LOUISVILLE GAS AND)
ELECTRIC COMPANY TO FILE) CASE NO.
DEPRECIATION STUDY) 2007-00564

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 and gas rates. I am not an attorney and have never held myself out as one, but I am capable of reading legal documents and thinking about their meaning in the context of any particular proceeding I happen to be involved in personally. On August 12, 2008, I mailed an application for full intervention to the Commission and it was received and stamped in on the following day. On October 2, 2008, the Commission's Executive Director mailed me a letter which I concluded constituted a denial of my petition to intervene, when viewed in the context of certain other events. On October 10, 2008, the Commission issued an Order that formally denied my petition to intervene. It also found that "The October 2, 2008 letter to him from the Commission's Executive Director does not constitute a ruling on his petition to

intervene.” (Order, 10/10/08, at 7) The Commission, however, did not provide any explanation or support for that finding. This document is an application for a rehearing of the Commission’s decision to deny my petition for full intervention, whether that denial was communicated via the Executive Director’s letter of 10/2/08 or the Commission’s Order of 10/10/08, or both.

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. Further, the Commission cited the unreported decision in EnviroPower, LLC v. Public Service Commission of Kentucky, 2007 WL 289328 (Ky. App. 2007), wherein the Court of Appeals held that the “special interest” a person seeking intervention under 807 KAR 5:001, Section 3(8), must have is one relating only to the “‘rates’ or ‘service’ of a utility.” (Order, at 2-3) In my opinion as a non-attorney, the import of these three 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 LG&E’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, 8/12/08, at 2-3) In view of these facts, all three cases would actually seem to provide support for my petition for full intervention.

On page 4 of its 10/10/08 Order, the Commission stated that my “interest [in LG&E’s rate structure] arises from his status as a KU ratepayer who wants to protect LG&E’s rate structure from being inconsistent with KU’s.” This statement is false on its face. I have never stated that my interest in the rate structures of KU or LG&E arise from

my status as a KU ratepayer. The Commission is misrepresenting my clearly-expressed position in order to set up a straw man that it can then knock down. Its finding to the effect that my “interest in LG&E’s rate structure is simply too remote to justify granting [my] request to intervene in this LG&E rate proceeding” is not supported by accurate statements of fact and is therefore unsupported, arbitrary and unreasonable.

On the same page, the Commission stated: “Mr. Young has no actual legal interest in LG&E’s rates or service, and he has not shown that any issue to be resolved in this case will have a financial, legal, or any other impact on him.” This statement too is false on its face. In my petition of 8/12/08, I clearly described the connection between LG&E’s rate structure, as reflected in its tariffs, and my interest in a clean environment, as follows:

Although general rate cases usually focus primarily on issues such as the revenue requirement, cost allocation, and the distribution of revenues among major customer classes, the Commission also routinely determines the utility’s rate structures via rate cases. The rate structures, as embodied in Commission-approved tariffs, establish the economic incentives that will be faced by LG&E and its retail customers. 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, inasmuch as these rate structures will influence both the energy consumption patterns of end-use customers and the willingness of LG&E and its customers to participate actively in demand-side management (DSM) programs. The energy consumption patterns that will result from the set of tariffs and economic incentives 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. Although I am a retail customer of KU and not LG&E, the utilities are jointly owned and jointly develop and implement their DSM plans; it would not make sense to establish one rate structure for KU that encourages energy efficiency and a different rate structure for LG&E that penalizes the utility if customers save energy. (Young, Petition, 8/12/08, at 2-3)

The Commission has not attempted to challenge the validity of any aspect of this logical argument. In its Order, the Commission left the following points completely

unchallenged: a) the Commission determines a utility's rate structure when it approves a tariff; b) the rate structures establish the economic incentives that will be faced by LG&E and its retail customers; c) I am an environmentalist and a person specifically concerned with promoting improved energy efficiency; d) the structures of the tariffs that will be established at the conclusion of this case will influence both the energy consumption patterns of end-use customers and the willingness of LG&E and its customers to participate actively in demand-side management (DSM) programs; and e) the energy consumption patterns that will result from the set of tariffs and economic incentives 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. Having failed or declined to challenge any of the logical building blocks of my argument, the Commission nevertheless concluded, in the absence of sound logic or evidence, that I have "no actual legal interest in LG&E's rates or service." (Order, 10/10/08, at 4) In arriving at its desired conclusion, the Commission improperly ignored the logical argument I had set out in my petition and substituted in its place an argument I had not made, i.e., that my interest in LG&E's rate structure arises from my status as a KU ratepayer. It should be noted that "a decision wholly unsupported by the evidence is arbitrary and capricious." (*Kentucky Administrative Law*, Ch. 11, "The Final Order, Record and Judicial Review of Administrative Decisions," Mark R. Overstreet and Judith A. Villines, 1999, at 11-24)

The Commission found that I have appointed myself as a "representative of the interests of environmentalists." (Order, 10/10/08, at 4) 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 the Companies' response and found six statements that it claims support its finding. (Order, 10/10/08, at 4-5) 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 the 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.

Arguing in the alternative, the Commission went on to state as follows:

To the extent that Mr. Young’s petition is considered as a request for intervention solely on his own behalf as an environmentalist, his interest is for the purpose of “reducing pollution that can harm other people and the natural environment.” (Young Petition at 1) The Commission understands and appreciates Mr. Young’s interest as an environmentalist in seeking to reduce pollution, but the Commission has no jurisdiction over the quality of the air he breathes, the “significant health problem” associated with mercury from coal-fired power plants, or “the carbon dioxide released [which] contributes to global warming.” As discussed above, the Commission’s jurisdiction is limited to the “rates and service” of utilities. (Order, 10/10/08, at 6)

I have never asked the Commission to regulate Kentucky’s air quality, order utilities to reduce the amount of mercury or carbon dioxide their power plants emit, 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 LG&E’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, Application for Rehearing of Denial of Petition to Intervene, Case No. 2008-00148, 8/05/08, 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 claims 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, 10/10/08, at 6-7) 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 page 7 of its Order, the Commission clearly implies that it believes I “seek to raise” issues in this proceeding “relating to the quality of the air and the level of pollution emitted by LG&E’s coal-fired plants.” This belief is unfounded and false. As I stated in my petition, the only issues I seek to raise in this proceeding relate to LG&E’s rates, rate structures, and service. (Young, Petition, 8/12/08, at 2-3) The Commission is taking pieces of my logical argument out of context in an effort to construct a straw man that it can then knock down. The Commission is using this invalid straw-man argument to provide support for its desired conclusion that my full intervention “would unduly complicate and disrupt this proceeding.” (Order, at 7)

The Commission argued in the alternative, as follows:

Further, 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, even if he had an interest in LG&E’s rates, his intervention is not likely to present issues or to develop facts that assist us in fully considering LG&E’s rate case without unduly complicating or disrupting the proceeding. (*Id.*)

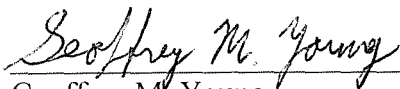
As I have shown above, I never stated that the Commission should tie a utility’s revenues and financial health to its degree of cooperation with environmentalists. The premise of the Commission’s finding is false, therefore the conclusion based upon it is also false.

I believe there are no additional arguments the Commission made in its Order of 10/10/08 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 and unworthy of any public agency of the Commonwealth of Kentucky.

WHEREFORE, I respectfully request that the Commission grant a rehearing of what I believe to be its decision, which it committed to writing either on 10/2/08 or 10/10/08, or both, that I have been denied full intervenor status in the above-captioned proceeding. I also respectfully request that the Commission modify the procedural schedule to allow me to submit at least one information request to LG&E. It might be easier for the Commission to contemplate such a modification in view of its recent Order extending the rate cases' anticipated end date by approximately 35 days. (Oral statement of David S. Samford, General Counsel, informal conference, October 6, 2008; Order Amending the Procedural Schedule, October 6, 2008).

Respectfully submitted,



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10/18/08
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 18th day of October, 2008.

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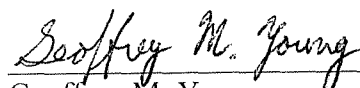
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