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October 28, 2008

VIA HAND DELIVERY

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

**RE: Application of Louisville Gas and Electric Company for an Adjustment of Its
Electric and Gas Base Rates**
Case No. 2008-00252

Application of Louisville Gas and Electric Company to File Depreciation Study
Case No. 2007-00564

Dear Ms. Stumbo:

Enclosed please find and accept for filing two originals and ten copies of the Louisville Gas and Electric 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 LOUISVILLE GAS)
AND ELECTRIC COMPANY TO FILE) **CASE NO. 2007-00564**
DEPRECIATION STUDY)

In the Matter of:

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

**RESPONSE OF LOUISVILLE GAS AND ELECTRIC COMPANY
TO THE APPLICATION FOR REHEARING RE THE PETITION
FOR FULL INTERVENTION OF GEOFFREY M. YOUNG**

Louisville Gas and Electric Company (“LG&E”) respectfully responds to the Application for Rehearing re the Petition for Full Intervention of Geoffrey M. Young in these proceedings, and 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 October 10, 2008 Order denying his Petition for Full Intervention, stating neither a jurisdictional special interest of Mr. Young’s, nor any evidence 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.¹ As if to prove the point, Mr. Young’s Application misconstrues a provision of federal law, which Mr. Young erroneously suggests could require LG&E to mold its tariffs to his liking. Therefore, LG&E respectfully requests that the Commission deny Mr. Young’s Application for Rehearing.

¹ 807 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.”

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 October 10, 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. First, Mr. Young stated explicitly in his Application that he has *no* consumer interest in these proceedings. He reiterated that he is not an LG&E customer,² and asserted, "I have never stated that my interest in the rate structures of KU or LG&E arise from my status as a KU [Kentucky Utilities Company] ratepayer."³

Second, the Commission correctly held in denying Mr. Young's Petition for Full Intervention that his expressed environmental and health interests in these proceedings are not jurisdictional to the Commission. Even in his Application for Rehearing, Mr. Young has been quite clear that his purpose in seeking to intervene in these proceedings has nothing to do with LG&E's rates and service *per se* (as a non-customer of LG&E, he can have no direct interest in such), but rather in manipulating LG&E's tariffs to serve his environmental agenda: "In my petition of 8/12/2008, I clearly described the connection between LG&E's rate structure, as reflected in its tariffs, and my interest in a clean environment"⁴ Citing the Kentucky Court of Appeals, the Commission correctly stated:

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 pollution from coal-fired power plants, or "the carbon dioxide released [which] contributes to global warming." ... [T]he

² Young Application for Rehearing at 3 ("Although I am a retail customer of KU and not LG&E ... [.]").

³ Young Application for Rehearing at 2-3.

⁴ Young Application for Rehearing at 3.

Commission's jurisdiction is limited to the "rates" and "service" of utilities.⁵

Mr. Young's Application presents no reason to alter this analysis, but merely restates the position he took in his Petition.

Third, 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."⁶ 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

⁵ *In the Matter of: Application of Louisville Gas and Electric Company to File Depreciation Study*, Case No. 2007-00564, and *In the Matter of: Application of Louisville Gas and Electric Company for An Adjustment of Its Electric and Gas Base Rates*, Case No. 2008-00252, Order at 6 (Oct. 10, 2008).

⁶ *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.⁷

The Commission has likewise denied intervention to customers who claim to represent a particular segment of a utility's customer base.⁸ Therefore, even if Mr. Young were an LG&E customer (which he is not), he has provided no reason to believe that his *jurisdictional* interests, if such exist, are any different than an LG&E customer, even if his positions on certain issues may differ.

The Commission has also denied intervention to non-customers seeking to advocate for positions on particular issues. In Case No. 2005-00214, Bluegrass FLOW, Inc., petitioned to intervene in a proceeding in which Kentucky-American Water Company sought Commission approval to transfer its ownership and control of Jacobson Park to the Lexington-Fayette Urban County Government.⁹ FLOW stated that its special interest in the proceeding was to advance the position, “[I]t is in the public interest that local water facilities should be locally owned.”¹⁰ In denying FLOW's petition to intervene, the Commission stated:

FLOW has failed to demonstrate any special interest in this proceeding. It is not merely enough that a party articulate or espouse a position on an issue that is before the Commission. That party must be directly affected by the requested relief. FLOW has not identified the effects of the proposed transfer of ownership of Jacobson Park on its members. As FLOW fails to identify in its motion the persons or groups that comprise its membership, we are

⁷ *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).

⁸ *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.”).

⁹ *In the Matter of: The Petition of Kentucky-American Water Company for Approval of the Transfer of Control and Ownership of Jacobson Park*, Case No. 2005-00214, Order at 1 (Dec. 16, 2005).

¹⁰ *Id*

unable to determine if those persons are affected by the proposed transfer.¹¹

Though it may not have been clear whether FLOW counted Kentucky-American customers among its members, there is no doubt in this case that Mr. Young is not an LG&E customer. Because he has not stated a special interest and cannot have such an interest in this proceeding because he is not an LG&E customer, the Commission should deny Mr. Young's Application for Rehearing.

II. Mr. Young's Application for Rehearing Provides No Evidence 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 additional qualifications, experience, or background that give reason to believe that he 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 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."¹² 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

¹¹ *Id.* at 2.

¹² Young Application for Rehearing at 7.

“statements indicat[ing] that he lacks an understanding of fundamental rate-making principles,”¹³ 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 October 10, 2008 Order denying him intervention in these proceedings, the Commission should deny his Application for Rehearing.

Dated: October 28, 2008

Respectfully submitted,



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¹³ *In the Matter of: Application of Louisville Gas and Electric Company to File Depreciation Study*, Case No. 2007-00564, and *In the Matter of: Application of Louisville Gas and Electric Company for An Adjustment of Its Electric and Gas Base Rates*, Case No. 2008-00252, Order at 6 (Oct. 10, 2008).

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served on the following persons on the 28th day of October, 2008, by United States mail, postage prepaid:

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