

Geoffrey M. Young  
454 Kimberly Place  
Lexington, KY 40503  
phone: 859-278-4966  
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December 22, 2008

PUBLIC SERVICE COMMISSION

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

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DEC 23 2008

PUBLIC SERVICE  
COMMISSION

Re: Case No. 2008-00349

Dear Ms. Stumbo:

Please find attached for filing with the Commission an original and ten copies of an Application for Rehearing re the Petition for Intervention of Geoffrey M. Young in Case No. 2008-00349.

Sincerely,



Geoffrey M. Young

Enclosures

cc: Parties listed on the Certificate of Service

**COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION**

**In the Matter of:**

<b>JOINT APPLICATION PURSUANT TO 1994</b>	)	
<b>HOUSE BILL NO. 501 FOR THE APPROVAL</b>	)	
<b>OF KENTUCKY POWER COLLABORATIVE</b>	)	
<b>DEMAND-SIDE MANAGEMENT PROGRAMS,</b>	)	
<b>AND FOR AUTHORITY TO IMPLEMENT A</b>	)	
<b>TARIFF TO RECOVER COSTS, NET LOST</b>	)	<b>CASE NO.</b>
<b>REVENUES AND RECEIVE INCENTIVES</b>	)	<b>2008-00349</b>
<b>ASSOCIATED WITH THE IMPLEMENTATION</b>	)	
<b>OF THE KENTUCKY POWER COMPANY</b>	)	
<b>COLLABORATIVE DEMAND-SIDE</b>	)	
<b>MANAGEMENT PROGRAMS BEGINNING</b>	)	
<b>JANUARY 1, 2009</b>	)	

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

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On December 4, 2008, the Commission issued an Order denying my 11/5/08 petition for full intervention in the above-styled proceeding. Pursuant to KRS 278.400, I respectfully request that the Commission grant a hearing to reconsider and reverse its determination of 12/4/08.

**1. The Commission's Denial Order is virtually identical to its Denial Order of 10/13/08 in Case No. 2008-00350.**

At the outset of this analysis, I must note with regret that the Commission's Denial Order is virtually identical to its Order of 10/13/08 in Case No. 2008-00350, the other

recent Kentucky Power DSM case. This is despite the fact that on November 5, 2008, I submitted a detailed response that addressed every argument the Commission made in its previous Order.

It is important to ponder the meaning of this chain of events. The Commission did not even bother to say, "We have considered Mr. Young's 11/5/08 arguments in Case No. 2008-00350 and rejected them." For the Commission to pretend that I made no response to its arguments of 10/13/08 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 arguments 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 is saying, in effect, "We will just wait to see what the Courts will say about this matter."

**2. I hereby incorporate my 11/5/08 Application for Rehearing in Case No. 2008-00350, in its entirety, as if it were fully restated herein.**

**3. KRS 278.040(2) has nothing to do with the question of permissive intervention. In the alternative, if the statute in fact adds a new requirement to the intervention regulation, I have met it.**

The Commission wrote: "The first requirement for being granted intervention arises under KRS 278.040(2), which limits the Commission's jurisdiction to the rates and service of utilities." (Order at 2) Although I am not an attorney, I believe that the first clause of this statement is false on its face. The relevant part of the statute reads as

follows:

(2) The jurisdiction of the commission shall extend to all utilities in this state. The commission shall have exclusive jurisdiction over the regulation of rates and service of utilities...

This section clearly prohibits government agencies other than the PSC from attempting to regulate the rates and service of jurisdictional utilities. That is what the word “exclusive” means in this context. Because this particular statute is an enabling statute for the Commission rather than a limiting one, it is not at all clear that it limits the Commission’s authority in any way. Perhaps one might be justified in concluding that by specifying “rates and service” in this statute, the legislature was thereby prohibiting the Commission from regulating anything beyond or other than the jurisdictional utilities’ rates and services. Such an interpretation, however, is not at all self-evident and might be overly restrictive of the Commission’s authority. If the restrictive interpretation is valid, it would limit the types of proceedings the Commission may lawfully initiate and conduct. To my knowledge, the Commission has never initiated a case the subject matter of which exceeded the limitation that may be inferred from the restrictive interpretation of KRS 278.040(2) that the Commission has apparently adopted. It was undeniably lawful for the Commission to initiate Case Nos. 2008-00349 and 2008-00350.

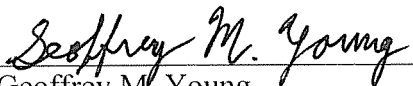
What is much more pertinent to the topic under debate here is the fact that the statute says nothing whatsoever about parties that submit petitions for full intervention in Commission cases. KRS 278.040(2) is completely silent on that issue. What the Commission has been trying to argue in a series of recent cases, however, is that KRS 278.040(2) not only limits the authority of the Commission but also limits the types of special interests that may be granted permissive intervention in Commission cases. The

Commission has been trying to construct, in effect, a third prong to add to the two prongs of the regulation that actually governs permissive intervention in Commission cases, 807 KAR 5:001, Section 3(8). The Commission has been arguing that a petition for full intervention must first meet the requirement the Commission has inferred from its interpretation of KRS 278.040(2), and only then may be examined to see whether it meets one of the two prongs set forth in 807 KAR 5:001, Section 3(8). (Order at 2-3) A government agency is bound by the regulations it promulgates. [Hagan v. Farris, 807 S.W.2d 488, 490 (Ky. 1991)] An agency may not arbitrarily add to or subtract from them. (Kentucky Constitution, Section 2) To summarize, the Commission's assertion to the effect that KRS 278.040(2) has anything to do with the question of permissive intervention is unfounded and erroneous. (Order at 2)

In the alternative, if in fact it is necessary for a petitioner to demonstrate that he has a special interest in the utility's rates and service, I have done so in my petition. (Petition, 11/5/08 at 1-3) The Commission has not challenged the factual or logical validity of any aspect of my reasoning. In other words, even if the Commission is allowed by the Courts to get away with its highly questionable reinterpretation KRS 278.040(2) in order to add a novel restriction to 807 KAR 5:001, Section 3(8), none of that would serve to disqualify my petition for full intervention in this case because I have fully complied with the Commission's artificial new restriction anyway. (Id.)

**WHEREFORE**, I respectfully request that the Commission grant a hearing to reconsider and reverse its determination of 12/4/08 to deny my petition for full intervention in this proceeding. I also request that the Commission allow me to serve an information request upon Kentucky Power and require the utility to respond to it.

Respectfully submitted,

  
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12/22/08  
Date

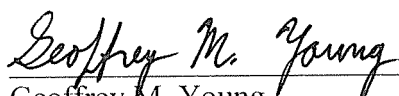
**CERTIFICATE OF SERVICE**

I hereby certify that an original and ten copies of the foregoing Application for Rehearing were delivered to the office of Stephanie Stumbo, Executive Director of the Kentucky Public Service Commission, 211 Sower Boulevard, PO Box 615, Frankfort, Kentucky 40602-0615, and that copies were mailed to the following parties of record on this 22nd day of December, 2008.

Timothy C. Mosher  
American Electric Power  
101A Enterprise Drive  
P.O. Box 5190  
Frankfort, KY 40602

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

Signed,

  
Geoffrey M. Young

12/22/08  
Date

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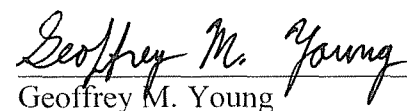
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