

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

GENERAL ADJUSTMENT OF ELECTRIC)	CASE NO.
RATES OF EAST KENTUCKY POWER)	2008-00409
COOPERATIVE, INC.)	

ORDER

On December 23, 2008, Geoffrey M. Young filed an application for rehearing of the Commission's December 16, 2008 Order denying his petition for intervention. For the reasons cited herein, the Commission denies Mr. Young's petition for rehearing.

Mr. Young contests many of the findings of fact set forth in the Commission's Order denying his intervention, asserting that they are erroneous and not supported by the evidence. Mr. Young begins his objections by asserting that the Commission's interpretation of KRS 278.040(2) is incorrect, "overly restrictive,"¹ and "highly questionable."² The Commission finds no merit to this objection. Our finding that KRS 278.040(2) limits our jurisdiction to "rates" and "services" and that it is the first requirement for being granted intervention is well grounded in Kentucky law. In *Peoples' Gas Co. of Kentucky v. City of Barbourville*, 291 Ky. 805, 165 S.W.2d 567, 572 (Ky. 1942), the Kentucky Court of Appeals, then the state's highest court, declared that the Commission's "jurisdiction is exclusively confined 'to the regulations of rates and service.'" The same Court in 1943 expressly stated that KRS 278.040(2) clearly and

¹ Petition for Rehearing at 2.

² Id. at 4.

unmistakably limits the jurisdiction of the Commission to rates and service. *Benzinger v. Union Light, Heat & Power Co.*, 293 Ky. 747, 170 S.W 2d 38, 41 (Ky. 1943).

In *Enviropower, LLC v. Public Service Commission of Kentucky*, 2007 WL 289328 (Ky. App. 2007), the Kentucky Court of Appeals clearly recognized the relationship between the Commission's jurisdictional authority under KRS 278.040(2) and the Commission's intervention regulation, 807 KAR 5:001, Section 3(8). The *Enviropower* court cogently explained:

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. Second, there is the limitation in the PSC intervention regulation, 807 KAR 5:001, Section 3(8), which requires the showing of either "a special interest in the proceeding which is not otherwise adequately represented," or a showing that intervention "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."

Enviropower, LLC v. Public Service Commission of Kentucky, 2007 WL 289328, 4 (Ky. App. 2007).

Mr. Young goes on to state that, regardless of whether a Court allows the Commission to "get away with its highly questionable reinterpretation of KRS 278.040(2)," he still qualifies for intervention because he has clearly stated that he has a special interest in East Kentucky Power Cooperative, Inc.'s ("EKPC") rate structure and that the Commission failed to challenge the arguments put forth in his petition for intervention. Contrary to Mr. Young's assertions, the Commission considered Mr. Young's arguments and found that he had no actual legal interest in EKPC's rates

or its rate structure. We hereby affirm that finding. While he asserts that his interest in a clean environment constitutes a special interest in EKPC's rate structure, the record indisputably reflects that Mr. Young is not a customer of EKPC or any of its member cooperatives. As stated in our December 16, 2008 Order, our decisions on intervention are based on the statutory and regulatory criteria set forth in KRS 278.040(2) and 807 KAR 5:001, Section 3(8). Mr. Young's claimed interest in the rate structure, based solely on any potential impact on the environment of the Commonwealth, is simply too remote to meet those criteria.

Based on the application for rehearing and being otherwise sufficiently advised, the Commission finds the findings of fact set forth in our December 16, 2008 Order denying Mr. Young's intervention were based on the statements set forth in Mr. Young's petition and finds no error in those findings. Therefore, the Commission will deny Mr. Young's application for rehearing.


As previously stated, Mr. Young may file written comments in this proceeding and may attend and present comment at any public hearing that may be held in this proceeding at our offices in Frankfort, Kentucky.

IT IS THEREFORE ORDERED that Mr. Young's petition for rehearing is denied.

Done at Frankfort, Kentucky, this 12th day of January, 2009.

By the Commission

ATTEST:



Executive Director

Lawrence W Cook
Assistant Attorney General
Office of the Attorney General Utility & Rate
1024 Capital Center Drive
Suite 200
Frankfort, KY 40601-8204

Honorable Michael L Kurtz
Attorney at Law
Boehm, Kurtz & Lowry
36 East Seventh Street
Suite 1510
Cincinnati, OH 45202

Honorable Charles A Lile
Senior Corporate Counsel
East Kentucky Power Cooperative, Inc.
4775 Lexington Road
P. O. Box 707
Winchester, KY 40392-0707