

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

FILING OF EAST KENTUCKY POWER COOPERATIVE,)	
INC. TO REQUEST APPROVAL OF PROPOSED)	CASE NO.
CHANGES TO ITS QUALIFIED COGENERATION AND)	2008-00128
SMALL POWER PRODUCTION FACILITIES TARIFF)	

O R D E R

On April 28, 2008, the Commission denied the petition of Geoffrey M. Young for full intervenor status in this case pursuant to 807 KAR 5:001, Section 3(8). We found that Mr. Young’s asserted interest in representing an “environmentalist perspective” and promoting energy efficiency in general was beyond the scope of this proceeding. We also disagreed with his assertions that Section 50 of the 2007 Energy Act¹ had expanded the Commission’s jurisdictional limitations to include the environmental issues

¹ In Section 50 of House Bill 1, enacted during the 2007 Second Extraordinary Session (“2007 Energy Act”), the General Assembly directed the Commission to examine its statutes and make recommendations on or before July 1, 2008 to the Legislative Research Commission (“LRC”) regarding four highly technical energy and regulatory issues:

- i. Eliminating impediments to the consideration and adoption by utilities of cost-effective demand-management strategies for addressing future demand prior to Commission consideration of any proposal for increasing generating capacity;
- ii. Encouraging diversification of utility energy portfolios through the use of renewables and distributed generation;
- iii. Incorporating full-cost accounting that considers and requires comparison of life-cycle energy, economic, public health, and environmental costs of various strategies for meeting future energy demand; and
- iv. Modifying rate structures and cost recovery to better align the financial interests of the utility with the goals of achieving energy efficiency and lowest life-cycle energy costs to all classes of ratepayers.

he seeks to advocate in this case. The Commission further found that Mr. Young was not a customer of any East Kentucky Power Cooperative, Inc. (“EKPC”) member distribution cooperative and did not own qualifying facilities (“QF”) or represent any owners of QF that might benefit from the tariff revisions which are the subject of this proceeding.

On May 15, 2008, Mr. Young filed a petition for rehearing pursuant to KRS 278.400. Mr. Young again argues that his desire to represent an “environmentalist perspective” and to “promote enhanced energy efficiency in all sectors of Kentucky’s economy,” is a “special interest” under 807 KAR 5:001, Section 3(8)(b), which allows the Commission to grant him full intervenor status. On May 21, 2008, EKPC filed a response objecting to Mr. Young’s petition for rehearing.

Mr. Young also asserts that the Commission should allow him to intervene in the present case because, in EKPC’s recent general rate case² (in which he was a witness for the Sierra Club), the Commission found that “a rate case is not the appropriate forum to challenge an existing QF tariff.”³ In that case, the Sierra Club had challenged EKPC’s QF tariffs, arguing that the tariffs discriminated unduly against potential developers of environmentally beneficial cogeneration and small power production projects. Mr. Young argues that it is illogical for the Commission to allow the Sierra Club full intervenor status in the general rate case and rule that QF tariffs cannot be

² Case No. 2006-00472, General Adjustment of Electric Rates of East Kentucky Power Cooperative, Inc.

³ Final Order, Case No. 2006-00472, December 5, 2007, at 41.

challenged in a general rate case and then, in the present case in which the QF tariffs are the subject of the action, deny him, personally, full intervenor status.

The Commission notes the finding in its December 5, 2007 Order in Case No. 2006-00472 that the rate case was not the appropriate forum to consider the QF tariffs because evidence on the factors most relevant to the determination of avoided cost, upon which the QF tariff is based, is not normally made part of a general rate case. That type of evidence was not part of the record in Case No. 2006-00472 and, without such evidence, the Commission could not make a determination regarding the reasonableness of EKPC's existing QF tariff:

[T]he QF tariff is based on a determination of EKPC's avoided cost. The relevant factors that must be considered in determining avoided cost include the fixed and variable cost of existing generation, as well as the fixed and variable cost of future planned generation. A rate case does not typically include evidence on these factors, which are more closely related to a utility's integrated resource plan than to its revenue requirements. Consequently, a rate case is not the appropriate forum to challenge an existing QF tariff.⁴

That finding in Case No. 2006-00472 was not a pre-determination by the Commission that Mr. Young's status as a witness for an intervenor in that case automatically qualified him to be an intervenor in the present case. To intervene on his own behalf, as he now seeks to do, Mr. Young must have a "special interest," pursuant to 807 KAR 5:001, Section 3(8)(b), that is personal to himself, such as an interest held by a customer of an EKPC member cooperative. Here, Mr. Young holds no personal

⁴ Id. at 40-41.

interest.⁵ By the same token, a coal or natural gas supplier would not have a “special interest” that would allow them full intervenor status in this type of case, even though (arguably) such a supplier might lose some profits if non-fossil-fuel QF generation is added to EKPC’s system.

Mr. Young also asserts that he should be allowed to participate as a full intervenor because he will present issues or develop facts that will assist the Commission in fully considering the issues in this case without unduly complicating or disrupting the proceedings. However, based on Mr. Young’s actions in this case to date, as discussed below, the Commission finds that allowing him to participate as a full intervenor likely would unduly complicate and disrupt the proceedings.

On May 12, 2008,⁶ Mr. Young proffered a data request to the Commission consisting of nineteen questions—the majority of which contained multiple parts—including several hypothetical scenarios and several requests regarding the interpretation of 807 KAR 5:054, the administrative regulation which governs QF tariffs. Mr. Young requested that EKPC respond to his questions or, in the alternative, that Commission Staff ask the proffered questions to EKPC through the Staff’s own data request.

⁵ The Commission notes that, on May 16, 2008, it received an e-mail message from the senior vice president of “Recycled Energy Development” (“RED”) who stated that his company “seeks to build cogeneration and waste-heat-recovery projects in Kentucky,” and urged the Commission to grant Mr. Young’s petition for full intervenor status in this case. However, RED has not petitioned for intervention in this proceeding, and neither Mr. Young nor RED has asserted that he is a representative of RED.

⁶ Pursuant to the Commission’s April 28, 2008 Order, May 12, 2008 was the deadline for initial data requests to EKPC.

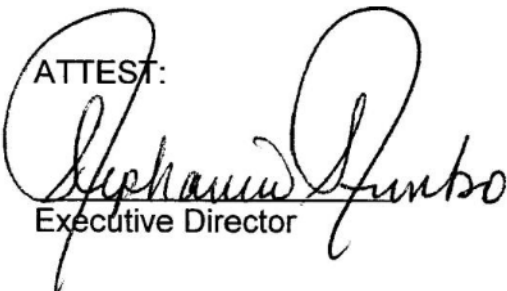
The Commission finds that, as a non-party, it is not appropriate for Mr. Young to serve data requests upon a party to the case. The Commission further finds that the proffered questions were too numerous and complicated to allow Commission Staff to review them in less than a day, to determine if any of the questions should be asked through its own data request to EKPC.⁷ This is the type of action that both complicates and disrupts the proceedings. Therefore, the Commission upholds its prior finding that Mr. Young should not be allowed to participate as a full intervenor in this case.

The Commission reiterates that it will give due consideration to comments filed by Mr. Young. However, we find that Mr. Young's efforts to proffer data requests to EKPC will not help develop facts that will assist us in fully considering the issues in this case. Rather, the Commission finds that a set of narrative comments, which appropriately and accurately reference the record in this matter will be much more helpful and will allow the Commission to better understand Mr. Young's positions regarding the issues in this case.

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

Done at Frankfort, Kentucky, this 3rd day of June, 2008.

By the Commission

ATTEST:

Executive Director

⁷ The Commission notes that the Commission Staff did take time to carefully consider Mr. Young's proffered questions and that some of the questions—although reworded—were incorporated into Commission Staff's Second Data Request issued on May 30, 2008.