

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE 2008 JOINT INTEGRATED)	
RESOURCE PLAN OF LOUISVILLE)	CASE NO.
GAS AND ELECTRIC COMPANY AND)	2008-00148
KENTUCKY UTILITIES COMPANY)	

O R D E R

On June 12, 2008, Geoffrey M. Young, a resident of Lexington, Kentucky, filed a petition for full intervenor status in the above-styled Integrated Resource Planning (“IRP”) case filed by Louisville Gas and Electric Company and Kentucky Utilities Company (jointly “LG&E/KU”). On June 13, 2008, Bluegrass Generation Company (“Bluegrass”) filed a petition for full intervenor status in this matter. And on June 16, 2008, CDH Preserve LLC, Dennis and Cathy Cunningham, and their attorney, Elizabeth R. Bennett, also filed a petition for full intervenor status in this case (“CDH/Cunningham/Bennett petition”). On June 19, 2008, LG&E/KU filed a response objecting to the petition for intervention filed by Bluegrass and a separate response objecting to the CDH/Cunningham/Bennett petition and the petition filed by Mr. Young.

Bluegrass seeks to intervene in this matter on grounds that it “operates a natural gas-fired peaking generation facility located in Oldham County, Kentucky, which is interconnected with the transmission system of Louisville Gas and Electric Company.”¹

¹ Bluegrass Petition for Intervention at 1.

The CDH/Cunningham/Bennett petitioners seek to intervene on grounds that they are opposed to the air pollution emissions (including carbon emissions) from current LG&E/KU facilities and to air pollution emissions which may result from future development by LG&E/KU of coal-fired electric generating facilities. They also seek to intervene on grounds that certain transmission lines slated to be built by LG&E/KU may not be necessary if other means of generating electricity were used or if additional demand-side management programs were implemented by LG&E/KU. The CDH/Cunningham/Bennett petitioners assert their status as customers of KU (CDH and the Cunninghams) and LG&E (Bennett) as additional grounds for their petition to intervene in this matter.

Mr. Young seeks to intervene in this matter on a number of grounds. As outlined in his petition, Mr. Young asserts that he has a special interest in this proceeding as: (1) a customer of KU; (2) an opponent of air pollution from facilities that burn coal to produce electricity; (3) a proponent of demand-side management and non-coal supply-side electricity generation which might replace some portion of LG&E/KU's future coal-fired generation; (4) a proponent of energy efficiency; and (5) a former employee of the Kentucky Division of Energy (now the Department for Energy Development and Independence within the Energy and Environment Cabinet) who acted as a "technical representative" in prior IRP cases, including two prior LG&E/KU joint IRP cases — Case Nos. 1999-00430 and 2002-00367.²

The only person who has an absolute right to intervene before the Commission is the Attorney General ("AG"), who is expressly authorized to do so by KRS 367.150(8).

² Case Nos. 1999-00430 and 2002-00367, The Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company.

The AG petitioned for full intervenor status in this case, noting in his motion that KRS 367.150(8) “grants him the right and obligation to appear before regulatory bodies of the Commonwealth of Kentucky to represent consumers’ interests.”³ The AG’s petition was granted by the Commission’s Order dated May 22, 2008.

All other persons may request permissive intervention, which will be granted by the Commission only upon a determination that the criteria set forth in 807 KAR 5:001, Section 3(8), have been satisfied. 807 KAR 5:001, Section 3(8), provides that a person may petition the Commission for full intervenor status in any formal proceeding, and that the petition shall be granted if the Commission determines that the person has a special interest in the proceeding which is not otherwise adequately represented in the case, or is likely to present issues or develop facts that will assist the Commission in fully considering the matter, and that the intervention will not unduly complicate or disrupt the proceedings.

In a recent, unreported case,⁴ EnviroPower, LLC v. Public Service Commission of Kentucky, 2007 WL 289328 (Ky. App. 2007), the Court of Appeals found that “the PSC retains the power in its discretion to grant or deny a motion for intervention,” and that, pursuant to the authorizing statute, KRS 278.040(2), 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.”⁵

³ AG’s Motion to Intervene at 1.

⁴ A portable document format (“.pdf”) version of the Court of Appeals’ decision in the EnviroPower case is available on the Kentucky Court of Justice Internet Website: http://apps.kycourts.net/Supreme/SC_Opinions.shtm (select “Court of Appeals Decisions (1996+)”; then enter “EnviroPower” in search box; then follow “2005-CA-001792” hyperlink).

⁵ 2007 WL 289328 at 3.

Bluegrass's Petition for Intervention

In their objections to the petition filed by Bluegrass, LG&E/KU argue that Bluegrass does not have a special interest in the proceeding that is not otherwise represented, and that Bluegrass is unlikely to present issues or develop facts that will assist the Commission in its review of the application without unduly complicating or disrupting the proceeding. LG&E/KU also note that Bluegrass's petition was not filed by an attorney admitted to practice law in Kentucky, pursuant to Kentucky Supreme Court Rule 3.030(2).

The Commission agrees with LG&E/KU's arguments regarding the petition for intervention filed by Bluegrass. The interest that Bluegrass asserts as "an operator of generation facilities within the LG&E control area" involves the manner in which the LG&E/KU transmission system is operated. However, the operation of the companies' transmission system is governed by their open access transmission tariffs ("OATT"). The OATT is a matter directly under the jurisdiction of the Federal Energy Regulatory Commission ("FERC").⁶ Furthermore, the manner in which LG&E/KU operate their transmission systems is not within the scope of issues that the Commission considers in an IRP filing. Therefore, the Commission finds that Bluegrass is not likely to present

⁶ At page 4 of their Response, LG&E/KU note that in a prior case regarding their withdrawal as a member of the Midwest Independent System Operator, Inc. ("MISO"), Case No. 2003-00266, Investigation Into the Membership of Louisville Gas and Electric Company and Kentucky Utilities Company in the Midwest Independent System Operator, Inc., an electric generating company sought full intervention on grounds that the company's interconnection to Kentucky's electric grid gave it a special interest in the proceedings. The Commission denied the generator's petition for intervention, citing FERC's jurisdiction over such issues. See Case No. 2003-00266, Commission's Order entered October 2, 2003 at 2 ("Since issues relating to the wholesale transmission of electric energy over facilities owned by an investor-owned utility and the rates for that transmission have always been under FERC's jurisdiction, they are not within the scope of this investigation.").

issues or develop facts that would assist the Commission in fully considering the issues in this case without unduly complicating or disrupting the proceeding, and, therefore, the Commission will deny Bluegrass's petition for full intervenor status.

The Commission also finds that Bluegrass's petition for intervention was not properly filed, because counsel for Bluegrass have not demonstrated compliance with SCR 3.030(2) in order to be admitted to practice law in Kentucky.

Geoffrey Young's Petition for Intervention

Regarding Mr. Young's status as a utility customer of KU, the Commission finds that the AG, pursuant to KRS 367.150(8), will duly represent the interests of all KU and LG&E customers in this matter. Therefore, Mr. Young's petition for full intervenor status on those grounds is denied.

With regard to Mr. Young's desire to advocate environmental issues in this proceeding, the Commission does not have jurisdiction to give consideration to those matters. As a creature of statute, the Commission's jurisdiction is defined by the Legislature.⁷ To that purpose, KRS 278.040(2) states:

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, but with that exception nothing in this chapter is intended to limit or restrict the police jurisdiction, contract rights or powers of cities or political subdivisions.

Notably absent from the Commission's jurisdiction are environmental concerns, which are the responsibility of other agencies within Kentucky state government, including the Division for Air Quality within the Energy and Environment Cabinet, which issues air quality permits to coal-burning electric generating facilities in Kentucky. To

⁷ See Boone County Water v. Public Service Commission, 949 S.W.2d 588, 591 (Ky. 1997).

the extent that Mr. Young seeks to address issues in this proceeding that deal with the impact of air emissions on human health and the environment, this is not the proper venue for those issues to be considered. Therefore, his participation as an intervenor on those grounds is also denied.

Mr. Young also asserts that:

[I]f the Commission requires that a special interest be economic in nature, the quality of air we breathe is likely to affect the amount of money my wife and I will be forced to spend in future years to treat health problems that we may suffer because of KU/LG&E's existing and planned power plants.⁸

However, to the extent that LG&E/KU's plans for future electricity generation resources may have an economic impact upon Mr. Young, individually, the Commission finds that economic interest is well within the scope of issues that are represented, as a matter of law, by the AG.⁹

As a function of the Commission's jurisdiction, *vis a vis* KRS 278.040, the Commission's examination of issues such as demand-side management, non-coal electric generation, and energy efficiency coincides with issues within the scope of the AG's representation of Kentucky consumers under KRS 367.150. Mr. Young states that, as a result of a prior Order of the Commission in an unrelated case, he did not consider asking the AG if he could work with the AG's Office of Rate Intervention regarding these energy policy matters.¹⁰ However, that choice by Mr. Young does not compel the Commission to grant his petition for full intervenor status in this matter.

⁸ Young Petition for Intervention at 3.

⁹ See KRS 367.150(8)(a).

¹⁰ Young Petition for Intervention at 6.

The Commission finds that the AG has participated in numerous prior IRP cases¹¹ and has offered helpful comments concerning the energy policy issues Mr. Young seeks to advocate in this matter. In East Kentucky Power Cooperative, Inc.'s ("EKPC") 2006 IRP case, the AG wrote extensive comments, which were summarized as follows:

First, EKPC needs to improve its process of identifying and screening supply side options. This IRP indicates that EKPC considered only three baseload and two peaking alternatives. EKPC needs to provide more details on supply side resource assessment and resource optimization. Second, EKPC needs to treat DSM options in a methodically consistent manner as it treats supply side resources. All options, supply-side and demand-side, should be part of the optimization process. Third, EKPC needs to conduct sensitivity and risk analyses that are wider in scope so as to evaluate resource plan sensitivity to DSM, environmental and other regulations, allowance and construction cost changes. It needs to show how the results of these sensitivities are factored into the choice of its final resource plan.¹²

In EKPC's 2003 IRP case, the AG's comments included a discussion of renewable energy sources and the need for EKPC to factor in the cost of mitigating carbon dioxide emissions in future considerations of its generation resources:

The AG further notes that the only renewable option with significant potential for East Kentucky is hydropower because it is the only renewable option available that could supply enough power to replace the fossil-fuel additions reflected in the IRP. The AG suggests that when East Kentucky considers hydro options, it should factor in the absence of carbon dioxide emissions. Finally, the AG notes that, while it is unlikely that wind generators will initially be

¹¹ See, e.g., Case No. 2006-00471, 2006 Integrated Resource Plan of East Kentucky Power Cooperative, Inc.; Case No. 2003-00051, 2003 Integrated Resource Plan of East Kentucky Power Cooperative; Case No. 2002-00428, 2002 Integrated Resource Plan of Big Rivers Electric Corporation.

¹² See Attorney General's March 21, 2007 Comments filed in Case No. 2006-00471, 2006 Integrated Resource Plan of East Kentucky Power Cooperative, Inc.

cost effective for East Kentucky, it should do what it can to gain experience with the rapidly emerging wind technology.¹³

In 2002, the AG filed comments on Big Rivers Electric Corporation's IRP, including recommendations regarding such issues as demand-side management, net metering, and small-scale renewable energy alternatives:

The AG provided several comments on Big Rivers' DSM efforts. His comments were generally favorable, although he disagrees with Big Rivers' plan to review the results of the LG&E and KU net metering programs before proceeding with its own program. The AG encourages Big Rivers to move forward with a net metering program rather than wait until the LG&E and KU pilot programs are complete. The AG cited LG&E's and KU's not informing customers about their net metering programs as the reason why few customers are likely to participate. The AG expects current benefits for Big Rivers' distribution cooperatives if they participate in net metering. He suggested a pilot program with a limit on the number of participants in order to minimize possible liability for Big Rivers until it becomes comfortable with net metering. The AG believes a net metering program would encourage the development of small-scale renewable energy projects and provide good will and publicity for Big Rivers at little cost.¹⁴

The Commission finds that the AG, as the statutorily authorized representative of Kentucky's utility consumers, has a continuing interest in articulating and advocating support for renewable energy and energy conservation issues – the same issues that Mr. Young seeks to advocate in this proceeding. The Commission further finds that the AG has consistently exercised his statutory duty to investigate these energy policy issues and to advocate their consideration by the Commission in its examination of the IRPs filed by Kentucky's jurisdictional electric utilities over the past several years. As

¹³ Staff Report on Case No. 2003-00051, The 2003 Integrated Resource Plan Report of East Kentucky Power Cooperative, at 15.

¹⁴ Staff Report on Case No. 2002-00428, The 2002 Integrated Resource Plan Report of Big Rivers Electric Corporation, at 10-11.

the AG has intervened in this case, the Commission finds that the issues that Mr. Young seeks to promote as a full intervenor in this matter are already well represented, and, as such, Mr. Young has not adequately demonstrated that he will present issues or develop facts that would assist the Commission in fully considering the issues in this case without unduly complicating or disrupting the proceeding. Therefore, the Commission will deny his petition for full intervenor status on those grounds.

CDH/Cunningham/Bennett Petition for Intervention

With regard to the CDH/Cunningham/Bennett petition, as noted above, the AG is already a party to this proceeding and is representing the interests of Kentucky consumers relating to the IRP filing. Therefore, the Commission finds that the interests of CDH Preserve, LLC and the Cunninghams, as customers of KU, and Ms. Bennett, as a customer of LG&E, are adequately represented by the AG in this matter and will deny their petition for intervention on those grounds.

LG&E/KU point out in their response to the CDH/Cunningham/Bennett petition that CDH Preserve, LLC and Mr. and Mrs. Cunningham were parties to three prior cases before the Commission regarding an application filed by LG&E/KU for a Certificate of Public Convenience and Necessity (“CPCN”) to construct a transmission line in Jefferson, Bullitt, Meade, and Hardin counties, Kentucky.¹⁵ The Cunninghams own property in Hardin County over which the transmission line was sited. They are

¹⁵ Case No. 2005-00142, Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for the Construction of Transmission Facilities in Jefferson, Bullitt, Meade, and Hardin Counties, Kentucky; and Case Nos. 2005-00467 and 2008-00472 (consolidated), Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for the Construction of Transmission Facilities in Jefferson, Bullitt, Meade, and Hardin Counties, Kentucky.

also principals in CDH Preserve, LLC, which was formed by the Cunninghams during the process of opposing the CPCN application:

The affected property is a 150 acre private nature preserve, with deed recorded in said name of CDH Preserve, LLC, a real estate holding company registered with the state of Kentucky and Indiana for the purpose of land preservation, specifically farm ground, and which company is engaged in the protection of land as habitat for wildlife, and for future generations, and which company is owned by Dennis and Cathy Cunningham, Movants.¹⁶

The Commission granted LG&E/KU's application for the CPCN in May 2006, after which the Cunninghams; CDH Preserve, LLC; and others appealed the Order to Franklin Circuit Court. That case is currently pending a motion for discretionary review before the Kentucky Supreme Court. As LG&E/KU point out, the Cunninghams and others have also challenged the transmission line in a separate case which is currently before the U.S. District Court for the Western District of Kentucky.¹⁷

Elizabeth R. Bennett is an attorney employed with W. H. Graddy & Associates – counsel for the petitioners. According to the CDH/Cunningham/Bennett petition, Ms. Bennett has also been involved in litigation opposing an air quality permit for the joint applicants' new generating unit at their Trimble County Generating Station, which, the CDH/Cunningham/Bennett petition observes, was a basis for the need for the transmission line sited over the Cunninghams' property.¹⁸

¹⁶ Cunningham, CDH Preserve, LLC, Harrison and Hardin Motion to Intervene and Request For Public Hearing, Case Nos. 2005-00467 and 2005-00472.

¹⁷ LG&E/KU Response to Motions of Geoffrey M. Young, Dennis Cunningham, Cathy Cunningham, CDH Preserve LLC and Elizabeth R. Bennett for Full Intervention, at 2, fn. 2 (Harrison, et al. v. United States Department of the Army, et al., Civil Action No. 3:08cv-105-H).

¹⁸ CDH/Cunningham/Bennett Petition at 3.

The CDH/Cunningham/Bennett petitioners argue that if LG&E/KU were able to meet their anticipated growth in demand through demand-side management and electric generation other than coal-burning facilities, the transmission facilities that were approved by the Commission in Case Nos. 2005-00467 and 2005-00472 would not be needed.¹⁹ LG&E/KU allege in their response that this argument is merely a collateral attack on the CPCN.²⁰ The Commission agrees with LG&E/KU that such grounds are not proper for intervention pursuant to 807 KAR 5:001, Section 3(8)(b), and, therefore, the Commission denies the CDH/Cunningham/Bennett petition on those grounds.

Finally, to the extent that the CDH/Cunningham/Bennett petitioners seek to advocate environmental issues in this matter, the Commission denies their petition on those grounds. As explained with regard to Mr. Young's petition above, the Commission's jurisdiction does not extend to environmental issues.²¹ Therefore, the Commission finds that the CDH/Cunningham/Bennett petitioners will not present issues or develop facts that would assist the Commission in fully considering the issues in this case without unduly complicating or disrupting the proceeding and will, therefore, deny their petition for full intervention.

The Commission's findings herein do not limit any of the petitioners from filing appropriate public comments for the Commission to consider in this matter.

¹⁹ Id. at 5.

²⁰ LG&E/KU Response to CDH/Cunningham/Bennett and Young Petitions at 2.

²¹ See KRS 278.040(2).

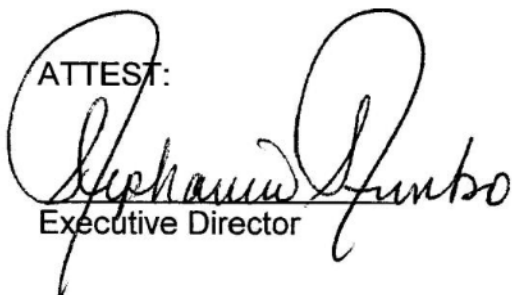
IT IS HEREBY ORDERED that the petitions of Geoffrey M. Young; Bluegrass; CDH Preserve, LLC; Dennis Cunningham; Cathy Cunningham; and Elizabeth R. Bennett for full intervenor status are denied.

Done at Frankfort, Kentucky, this 18th day of July, 2008.

By the Commission

Chairman Armstrong abstains.

ATTEST:


Executive Director