

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

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 16, 2008, CDH Preserve LLC, Dennis and Cathy Cunningham, and their attorney, Elizabeth R. Bennett, filed a joint petition for full intervenor status in this case. On July 18, 2008, the Commission issued an Order denying their petitions for intervenor status as well as denying a petition for full intervenor status filed by Bluegrass Generation Company.

On August 5, 2008, Geoffrey Young filed a petition for rehearing of the Commission's July 18, 2008 Order, pursuant to KRS 278.400. And on August 11, 2008, CDH Preserve, LLC; Dennis Cunningham; and Cathy Cunningham also filed a petition for rehearing of the Commission's July 18, 2008 Order ("CDH/Cunningham petition"). The CDH/Cunningham petition states that the Cunninghams' attorney, Elizabeth Bennett, is no longer requesting intervenor status for herself and that she will limit her participation in this matter to that of counsel for the Cunninghams and CDH

Preserve, LLC. Bluegrass Generation Company did not file a petition for rehearing. On August 18, 2008, LG&E/KU filed responses objecting to both petitions for rehearing. For the following reasons, the Commission denies the petitions for rehearing filed by the CDH/Cunningham petitioners and by Mr. Young.

KRS 278.400 provides that if the Commission grants a petitioner's application for rehearing, any party "may offer additional evidence that could not with reasonable diligence have been offered on the former hearing." Here, neither the CDH/Cunningham petitioners nor Mr. Young has offered any additional evidence not offered previously which might persuade the Commission to change, modify, or vacate its July 18, 2008 Order.

#### CDH/CUNNINGHAM PETITION

The CDH/Cunningham petitioners note in their petition for rehearing that CDH Preserve, LLC was formed in May 2004, prior to the receipt of notice of the 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.<sup>1</sup> The Commission does not dispute CDH/Cunningham petitioners' assertion with regard to the organization date of CDH Preserve, LLC. So, to the extent that the July 18, 2008 Order is inconsistent with those facts, the Commission acknowledges its error. However, as this factual error was not material to the Commission's decision, the

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<sup>1</sup> See 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 (filed May 12, 2005); and (consolidated) Case Nos. 2005-00467 and 2005-00472, 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 (filed December 22, 2005).

Commission will not change, modify, or vacate the July 18, 2008 Order on those grounds.

As grounds for their petition for rehearing, the CDH/Cunningham petitioners state that they are seeking to intervene in this matter in order to “provide the Commission staff with a response” to the portion of the LG&E/KU application at Volume III, page 8, entitled “Aggressive Green Scenario.” CDH/Cunningham petitioners state that LG&E/KU are attempting to present environmental issues as “unreasonable,” and that they should be allowed to present another point of view. This same argument was advanced in their original petition for intervention, which was denied by the Commission’s July 18, 2008 Order. The CDH/Cunningham petitioners do not claim the existence of any new or additional evidence to support their petition which would warrant granting a rehearing, nor do they present any argument which, upon reconsideration, compels the Commission to change, modify, or vacate its July 18, 2008 Order.

The CDH/Cunningham petitioners attempt to distinguish between IRP cases, which they argue are “toothless proceeding[s],” and cases before the Commission which “result in an order or other action by the Commission,” such as a case involving an application for a CPCN. They argue that, as a “toothless proceeding,” their participation in the case as full intervenors could not comprise either a direct or collateral attack on the transmission line CPCN granted by the Commission in Case Nos. 2005-00467 and 2005-00472. However, the Commission notes that, pursuant to 807 KAR 5:001, Section 3(8)(b), the regulations governing the grant or denial of full intervenor status in a particular case are the same regardless of the type of proceeding

before the Commission. The CDH/Cunningham petitioners have not demonstrated to the Commission that they have a “special interest” in the proceeding which is not otherwise represented by the other parties to the case. Regardless of the final product of this case—here a staff report, as opposed to a final Order of the full Commission—the CDH/Cunningham petitioners are not entitled to full intervenor status absent a showing of special interest.

#### GEOFFREY YOUNG'S PETITION

At pages 3-4 of his petition for rehearing of the July 18, 2008 Order, Mr. Young asserts that he is:

seeking to address [issues that] are set out in the IRP regulation, and include (but are not limited to) the adequacy and cost-effectiveness of the utility's plans regarding DSM programs, cogeneration, renewable energy sources, actions to be undertaken during the fifteen years covered by the plan to meet the requirements of the Clean Air Act Amendments of 1990, and how these actions affect the utility's resource assessment.

*This argument is substantially the same as in his initial petition for full intervention, wherein Mr. Young stated:*

The subject of this proceeding, how KU/LG&E will meet its customers' projected needs for power and energy for the next 15 years, is directly relevant to the amount of air pollution the utility's generating facilities will emit into the air over Kentucky. If KU/LG&E is able to meet a greater fraction of these projected needs by means of demand-side and supply-side technologies that pollute less than coal-fired power plants, the environment will be safer for me and my wife.

Like the CDH/Cunningham petitioners, Mr. Young does not reference any new or additional evidence in support of his petition, upon which the Commission might alter, amend, or vacate the July 18, 2008 Order.

Mr. Young argues that “the Commission has been employing its hermetic defense against environmentalists and routinely allowing the special interests of large industrial and low-income customers to be represented via full intervention,” which he argues is “arbitrary, discriminatory and unjust.” The Commission disagrees. Mr. Young’s request for intervention was denied because he failed to show that as an environmentalist his interest in the rates and service of LGE/KU is substantially different from the interest of all other customers. Absent this showing, his interest does not rise to the level of a “special interest” necessary to grant intervention.

As pointed out in the Commission’s July 18, 2008 Order, the Court of Appeals has ruled that 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.”<sup>2</sup> Mr. Young’s arguments in support of his petition for full intervenor status do not fit within this jurisdictional limitation. Mr. Young argues that the Commission is required to review the *environmental impacts of a utility’s planned generation assets, because 807 KAR 5:058, Section 8(5)(f), requires the utility to include in its IRP filing a “description and discussion of . . . [a]ctions to be undertaken during the fifteen (15) years covered by the plan to meet the requirements of the Clean Air Act amendments of 1990, and how these actions affect the utility’s resource assessment . . . .”* However, as LG&E/KU note in their response, there is a distinction between assessing the economic impact of complying with the Clean Air Act on a utility’s resource assessment, which the regulation requires, and

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<sup>2</sup> EnviroPower, LLC v. Public Service Commission of Kentucky, 2007 WL 289328 (Ky. App. 2007).

examining the environmental impacts of pollution from a utility's generation resources on the environment, which the regulation does not require.

LGE/KU also presented additional arguments in their response, but the Commission has not based its decision upon them. Further, the Commission notes that, in its July 18, 2008 Order, it stated that "[t]he Commission's findings herein do not limit any of the petitioners from filing appropriate public comments for the Commission to consider in this matter." The Commission reiterates that the CDH/Cunningham petitioners and Mr. Young will have an opportunity to file public comments that will be considered by the Commission Staff in its final report on the LG&E/KU IRP.

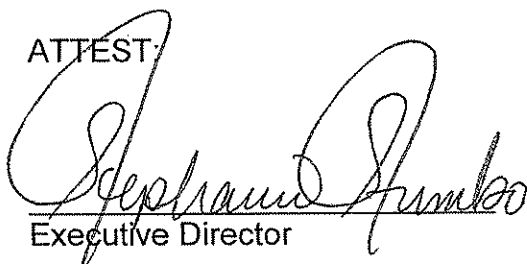
IT IS THEREFORE ORDERED that the petitions of Geoffrey M. Young; CDH Preserve, LLC; Dennis Cunningham; and Cathy Cunningham for rehearing of the Commission's July 18, 2008 Order are denied.

Done at Frankfort, Kentucky, this 25<sup>th</sup> day of August, 2008.

By the Commission

Chairman Armstrong abstains.

ATTEST:

  
Executive Director