

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JOINT APPLICATION OF KENTUCKY)	
UTILITIES COMPANY AND LOUISVILLE)	
GAS AND ELECTRIC COMPANY FOR)	CASE NO. 2016-00274
APPROVAL OF AN OPTIONAL SOLAR)	
SHARE PROGRAM RIDER)	

**JOINT RESPONSE OF KENTUCKY UTILITIES COMPANY
AND LOUISVILLE GAS AND ELECTRIC COMPANY
TO MOTION FOR REHEARING OF GERALD M. KAREM**

Louisville Gas and Electric Company (“LG&E”) and Kentucky Utilities Company (“KU”) (collectively “Companies”) respectfully respond to and request that the Commission deny the Motion for Rehearing of Gerald M. Karem in this proceeding, both with respect to the Commission’s order denying Mr. Karem intervention in this proceeding and regarding the Commission’s final order approving the Companies’ application. Mr. Karem’s motion gives the Commission no reason to reverse itself and grant Mr. Karem’s untimely intervention request. Also, because Mr. Karem is not a party to this proceeding, the Commission cannot grant him rehearing of the Commission’s final order approving the Companies’ application. And even if Mr. Karem had standing to seek rehearing, his motion gives no indication that he can present new evidence on rehearing that might cause the Commission to alter its final order. The Commission should therefore deny Mr. Karem’s Motion for Rehearing in its entirety.

I. The Commission’s Order Denying Mr. Karem Intervention Was Correct in Every Respect, and the Motion for Rehearing Provides No Reason for the Commission to Reverse Itself.

The Commission’s order denying Mr. Karem intervention was correct for four separate reasons: (1) the request was untimely, coming 76 days after the Commission’s prescribed intervention deadline and without any cause given for the delay; (2) the Companies provided

sufficient notice beyond that required by the Commission; (3) Mr. Karem failed to show he had a special interest in this proceeding; and (4) Mr. Karem failed to identify any relevant issues or develop relevant facts that would have assisted the Commission without unduly complicating or disrupting the proceeding. Because Mr. Karem did not satisfy any of the requirements for intervention under 807 KAR 5:001 Section 4(11)(b), the Commission correctly denied Mr. Karem's request to intervene.

The Commission's order denying Mr. Karem intervention states, "Mr. Karem fails to state any reason, much less good cause, to explain the several months of delay between learning of the pending case and his filing a request to intervene."¹ The Commission could not be more correct. Pursuant to the Commission's Order dated August 12, 2016, requests for intervention were to be filed no later than August 19, 2016.² Therefore, Mr. Karem's November 3, 2016 intervention request was untimely: the request came 76 days after the Commission's prescribed intervention deadline; 72 days after Mr. Karem attended a meeting with the Companies' personnel regarding the subject matter of this proceeding; no less than 70 days after the *Louisville Courier-Journal*, the *Lexington Herald-Leader*, the *Shelbyville Sentinel News*, and 92 other newspapers of record across the Commonwealth printed the notice of this proceeding required by the Commission;³ after Mr. Karem and his wife had filed three sets of comments in the record of this proceeding (on October 13, 17, and 25); and when all of the events on the Commission's procedural schedule had occurred.

The Commission's scheduling order setting the August 19 intervention deadline stated also that any untimely motion must show a basis for intervention and good cause for being

¹ Order denying Karem intervention at 3.

² Case No. 2016-00274, Order at 4 (Aug. 12, 2016).

³ See Notarized Affidavits for Louisville Gas and Electric Company and Kentucky Utilities Company attesting to the publication of notice in this proceeding filed Sept. 19, 2016.

untimely. Mr. Karem's intervention request does not state any cause, good or otherwise, for the late request. Mr. Karem has been on notice of this proceeding and actively engaging with the Companies and the Commission about it since August 23, when Mr. Karem attended the public meeting the Companies held with those in the area of the planned solar site.⁴ Therefore, Mr. Karem could not claim he was justified in filing such an untimely request because he was not aware of the proceeding, and he has not stated any other cause for his delay. Because, as the Commission's order noted, Mr. Karem has stated no cause, good or otherwise, for his untimely request, the Commission should affirm its order denying him intervention.

Mr. Karem's Motion for Rehearing provides no reason for the Commission to reverse its denial of intervention. Indeed, he acknowledges the obvious when he states, "Movant realizes that he did not file a timely motion to intervene according to the Commission's procedural schedule."⁵ Mr. Karem attempts to excuse his untimeliness by asserting that the Companies' published notice "made no mention of any proposed land acquisition, facility construction, or new transmission lines," and therefore would not have raised the interest of anyone "not particularly interested in solar generation."⁶

This claim of inadequate notice is plainly specious. The Companies were under no obligation to include in their published notice the location or configuration of the proposed Solar Share Facilities; Mr. Karem fails to cite to any authority supporting such an obligation because none exists. More importantly, Mr. Karem was undeniably on notice of the proposed location and configuration of the Solar Share Facilities. Mr. Karem attended the public meeting the Companies held on August 23 at which the proposed location and configuration of the Solar

⁴ Companies' Response to Commission Staff's Second Request for Information No. 10 at attachment page 9 (public meeting sign-in sheet showing "Jerry Karem" as attending).

⁵ Karem Motion for Rehearing at 1.

⁶ *Id.*

Share Facilities was presented and discussed. Mr. Karem clearly understood those proposals, as demonstrated by the three sets of public comments he and his wife filed with the Commission on October 13, 17, and 25, all of which explicitly address the Karems' concerns about the proposed location and configuration of the Solar Share Facilities. Therefore, Mr. Karem has again presented no plausible cause, good or otherwise, for the extraordinary tardiness of his request for intervention, and given the Commission no reason to reverse its order.

The Companies respectfully recommend that the Commission not reverse itself on this issue as such a reversal would set a deleterious precedent for the efficient administration of future cases. If persons who desire intervention can simply wait until the end of a procedural schedule to seek intervention—particularly in the absence of good cause—the Commission's intervention deadlines will be rendered meaningless. Indeed, Mr. Karem's motion explicitly invites the Commission to determine that, when issues are "highly important," it should grant a hearing to a non-party whom the Commission has denied intervention "regardless of whether he complied with the Commission's procedural schedule."⁷ Accepting this invitation would undermine the entire concept of a procedural schedule, namely to provide for the orderly and efficient administration of Commission proceedings. The Commission should therefore refuse to create a precedent that would harm the efficient administration of future cases, and should deny Mr. Karem's Motion for Rehearing in its entirety, and particularly with respect to the Commission's denial of intervention.

II. As a Non-Party to this Proceeding, Mr. Karem Lacks Standing to Request Rehearing of the Commission's Final Order.

Because Mr. Karem is not a party to this proceeding, the Commission cannot grant him rehearing of the Commission's final order. The statute governing rehearing before the

⁷ Karem Motion for Rehearing at 2.

Commission, KRS 278.400, states, “After a determination has been made by the commission in any hearing, any *party* to the proceedings may, within twenty (20) days after the service of the order, apply for a hearing with respect to any of the matters determined.”⁸ To state the obvious, Mr. Karem is not a party to this proceeding; the Commission has denied him that status. The Commission has repeatedly held that non-parties have no right to request rehearing of the Commission’s final orders.⁹ Therefore, Mr. Karem has no right to request rehearing in this proceeding.

In the interest of counsel’s duty of candor to the tribunal, the Companies are aware of one case in which the Commission permitted a party denied intervention to seek rehearing of a final rate case order, but that case is distinguishable on two important grounds: (1) the party initially denied intervention but then granted intervention was not on notice of any change to its rates until two weeks prior to its seeking intervention; and (2) the utility at issue did not object to the rehearing, a point the Commission highlighted in its order granting rehearing.¹⁰ In this case, as the Commission noted in its order denying intervention, Mr. Karem was on notice of this proceeding and of the proposed location and configuration of the Solar Share Facilities no later than August 23, and he and his wife have filed three sets of public comments expressing their

⁸ Emphasis added.

⁹ See, e.g., *In the Matter of: Application of Bullitt County Sanitation District as Receiver for the Assets of Bullitt Utilities, Inc. for a Certificate of Convenience and Necessity and Surcharge for Same*, Case No. 2014-00255, Order at 8 (Apr. 4, 2016) (“The plain language of the statute limits the right to apply for a rehearing to ‘any party.’ Because Bullitt Utilities was not a party to the proceeding when the Commission entered its December 15, 2015 Order, it could not apply in its own right for a rehearing of the Order dismissing the surcharge application.”); *In the Matter of: Application of East Kentucky Power Cooperative, Inc. for General Adjustment of Electric Rates*, Case No. 2010-00167, Order at 1 (Dec. 22, 2015) (“Grayson was not a party to this rate case, and it had no right to request a rehearing pursuant to KRS 278.400 or to bring an action for review pursuant to KRS 278.410.”); *In the Matter of: the Application of Purchase Public Service Corporation d/b/a Cardinal Group for a Rate Adjustment Pursuant to the Alternative Rate Filing Procedure for Small Utilities*, Case No. 95-081, Order at 3 (Nov. 27, 1995) (“Rehearing was granted by the Commission on the mistaken belief that Mr. Long represented the intervenors, both of whom were real parties in interest, when in fact he did not. As no real party in interest requested rehearing in this case within the time allowed by statute, rehearing should never have been granted.”).

¹⁰ *In the Matter of: Application of Big Sandy Water District for an Adjustment in Rates Pursuant to the Alternative Rate Filing Procedure for Small Utilities*, Case No. 2012-00152, Order (Sept. 17, 2012).

views; there is simply no plausible argument that Mr. Karem could not have sought intervention in a more timely manner. And unlike the proceeding at issue in the order cited above, the Companies do indeed emphatically object to granting rehearing to a non-party in this proceeding, which would be contrary to statute and do harm to the concept of having a procedural schedule in any proceeding, as noted above. Therefore, the Companies respectfully ask the Commission to deny Mr. Karem's Motion for Rehearing regarding the Commission's final order in this proceeding.

III. Even If Mr. Karem Had a Right to Request Rehearing, the Commission Should Deny His Request as Failing to Provide any Evidence or Arguments Not Already Addressed in this Proceeding.

Putting aside solely for the sake of argument that Mr. Karem, as a non-party, has no right to request rehearing of the Commission's final order, the Commission should deny Mr. Karem's motion for failing to present—or even proposing to present—any evidence or arguments not already addressed in this proceeding. KRS 278.400 states in relevant part concerning rehearing, “Upon the rehearing any party may offer additional evidence that could not with reasonable diligence have been offered on the former hearing.” Interpreting KRS 278.400, the Commission has stated, “The statute is intended to provide closure to Commission proceedings by limiting rehearing to new evidence not readily discoverable at the time of the original hearings.”¹¹ The Commission has also interpreted the statute as “providing an opportunity for the Commission to address any errors or omissions in our Orders.”¹² But the Commission has also stated, “Moreover, final orders of the Commission remain undisturbed absent extraordinary circumstances or the appearance of new evidence that was not available during the pendency of

¹¹ *In the Matter of: Application of Kentucky-American Water Company for a Certificate of Public Convenience and Necessity Authorizing Construction of the Northern Division Connection*, Case No. 2012-00096, Order at 4 (Jan. 23, 2014).

¹² *Id.* at 5.

the case.”¹³ Thus, in the absence of new evidence or argument, the Commission should deny a motion for rehearing.¹⁴

But Mr. Karem’s Motion for Rehearing provides no new evidence or argument, or even a suggestion that such might be offered if rehearing were granted. Instead, much of the motion consists of unfounded accusations about the Companies’ motives,¹⁵ slippery-slope theorizing about what might happen if the Companies were to seek approval for more than twice the solar capacity actually at issue,¹⁶ and needless literary references.¹⁷ Indeed, removing all of the distractions from the motion leaves a remainder of three legal issues, *not evidentiary claims*, all of which the Commission has already addressed in its final order: (1) whether the proposed Solar Share Facilities required a certificate of public convenience and necessity (the Commission determined they do not);¹⁸ whether the Commission has jurisdiction over the siting of the Solar Share Facilities (the Commission determined it does not);¹⁹ and whether the Solar Share Facilities are collectively an extension of facilities in the ordinary course of business (the Commission determined they are).²⁰ Mr. Karem plainly disagrees with how the Commission

¹³ *In the Matter of: Dan Gibson v. Cellular Phone of Kentucky, Inc. d/b/a/ Ramcell*, Case No. 95-430, Order at 2 (Oct. 2, 1195).

¹⁴ *See, e.g.*, Case No. 2012-00096, Order at 6 (Jan. 23, 2014) (“In summary, the Commission finds that Kentucky-American has not met the burden set forth in KRS 278.400 to require a rehearing in this matter. It has failed to present any new evidence or argument to disturb our earlier findings. In the absence of any discernible error in the Order of April 25, 2013, Kentucky-American’s Petition for Rehearing should be denied.”).

¹⁵ *See, e.g.*, Karem Motion for Rehearing at 5 (“This proposal has virtually nothing to do with generating power. Rather, it is strictly a public relations exercise, amounting to a 35 acre billboard touting the Applicants’ supposed interest in renewable energy sources.”).

¹⁶ *Id.* at 3 (“There is also the interesting question of how Section 276 should now be applied to Applicants’ project and how it would apply should Applicant decide to expand past the presently proposed 4 megawatt capacity.”).

¹⁷ *Id.* at 5-6 (“Joseph Heller’s famous novel “Catch 22” and the wildly successful movie based upon it were hilarious because they were fiction.”).

¹⁸ Final Order at 14 (“The proposed four-MW Solar Share Facilities are properly classified as an ordinary extension of existing systems in the usual course of business, and pursuant to KRS 278.020(1), a CPCN shall not be required for its construction.”).

¹⁹ *Id.* at 13 (“Since this proposed electric generating facility will in aggregate be less than ten MW, the Companies are exempt under KRS 278.216(1) from the requirement to file a site assessment report and to obtain a site compatibility certificate from the Commission.”).

²⁰ *Id.* at 14 (“We note that our finding that the proposal for Solar Share Facilities falls within the ordinary-course-of-business exemption to the CPCN requirement based on the particular facts of this matter.”).

decided those issues, which is his prerogative. But merely disagreeing with a Commission order is not sufficient to receive rehearing of it; rather, a credible showing of some modicum of new evidence that “could not with reasonable diligence have been offered” earlier in the proceeding, or some new argument not already addressed by the Commission, is required. Mr. Karem’s motion neither offers such evidence or argument, nor even hints at what it might be. For that reason, even if Mr. Karem had standing to request rehearing, which he lacks as a non-party to this proceeding, the Commission would still have to deny his request for rehearing.

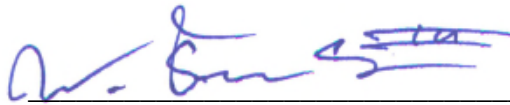
IV. Conclusion

The Commission correctly found that Mr. Karem failed to meet the requirements for permissive intervention. His Motion for Rehearing gives no plausible reason for the Commission to reverse itself and grant him intervention now that the proceeding is over. Because Mr. Karem is not a party to this proceeding, the Commission cannot grant him rehearing of the Commission’s order approving the Companies’ application. Even if Mr. Karem were a party, denial of his Motion for Rehearing would be appropriate because Mr. Karem has neither offered or even stated he would offer new evidence on rehearing that “could not with reasonable diligence have been offered” earlier in the proceeding, nor has he offered any new arguments the Commission’s final order does not already address. Therefore, the Commission should deny Mr. Karem’s Motion for Rehearing in its entirety.

WHEREFORE, Louisville Gas and Electric Company and Kentucky Utilities Company respectfully request that the Commission deny Mr. Karem’s Motion for Rehearing in its entirety.

Dated: November 29, 2016

Respectfully submitted,



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CERTIFICATE OF SERVICE

This is to certify that Kentucky Utilities Company and Louisville Gas and Electric Company's November 29, 2016 electronic filing of the Joint Response is a true and accurate copy of the same document being filed in paper medium; that the electronic filing has been transmitted to the Commission on November 29, 2016; that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding; and that an original and six copies, in paper medium, of the Joint Response are being mailed by first class U.S. Mail, postage prepaid, to the Commission November 29, 2016.



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