

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF KENTUCKY UTILITIES) CASE NO. 2007-00565
COMPANY TO FILE DEPRECIATION STUDY)

APPLICATION OF KENTUCKY UTILITIES) CASE NO. 2008-00251
COMPANY FOR AN ADJUSTMENT)
OF ELECTRIC BASE RATES)

O R D E R

On December 15, 2008, Geoffrey M. Young filed an application for rehearing of the Commission's December 5, 2008 Order denying his request to intervene ("Order Denying Intervention"). Mr. Young alleges in his application for rehearing that his interest in a "clean environment"¹ constitutes a "special interest," as that term is used in the Commission's intervention regulation,² in Kentucky Utilities Company's ("KU") rate design sufficient to justify his intervention. He further contests many of the findings of fact set forth in the Order Denying Intervention, alleging that they are not supported by the record and are erroneous.

On rehearing, Mr. Young objects specifically to what he characterizes as the Commission's "implication that [his] interests in [his] future health and medical expenses are not actual or legitimate interests."³ The Commission finds no merit in this objection.

¹ Petition for Rehearing at 2.

² 807 KAR 5:001, Section 3(8)(b).

³ Petition for Rehearing at 3.

Our decisions on intervention have consistently followed legal precedents in ruling that Mr. Young's interests in his health and medical expenses are not "special interests" within our regulatory jurisdiction. As the Commission explained in its Order denying Mr. Young's petition for full intervention, the Commission's jurisdiction is limited to the rates and service of Kentucky's jurisdictional utilities.⁴

Mr. Young also argues that, "the Commission's failure to issue an Order between 8/13/08 and 12/05/08 – a period of almost four months – itself constitutes highly arbitrary and abusive behavior." However, as the Commission explained in its October 16, 2008 letter to Mr. Young, the delay in ruling on his request to intervene was not due to any "arbitrary" or "abusive" behavior, but was due to the temporary absence of a quorum to render a decision on his intervention, due to the recusal of two of the three Commissioners in accordance with ethical requirements.

The delay in ruling upon Mr. Young's petition was required by application of KRS 278.080 and KRS Chapter 11A. KRS 278.080 provides:

A majority of the commissioners shall constitute a quorum for the transaction of any business, for the performance of any duty, or for the exercise of any power of the commission. No vacancy in the commission shall impair the right of the remaining commissioners to exercise all of the powers of the commission. Any investigation, inquiry, or hearing that the commission has power to undertake or hold may be undertaken or held, and the evidence therein taken, by any one (1) or more commissioners or a hearing examiner designated for that purpose by the commission, and every finding, opinion or order made by the commissioner or commissioners or hearing examiner so designated shall, when approved or confirmed by the commission, become the finding, opinion or order thereof.

⁴ Commission's December 5, 2008 Order at 2.

At all times relevant to this matter, the Commission has been comprised of Chairman David L. Armstrong, Vice Chairman James W. Gardner, and Commissioner John W. Clay. Chairman Armstrong was appointed on June 1, 2008 and Vice Chairman Gardner was appointed on June 16, 2008. Commissioner Clay has been a member of the Commission since 2006. Each of the Commissioners is a "public servant" of the Commonwealth of Kentucky, as that term is defined in KRS 11A.010(9)(h) and KRS 11A.010(7). By virtue of KRS 11A.030, all public servants have an obligation to determine "whether to abstain from action on an official decision because of a possible conflict of interest"

Upon their appointments, Chairman Armstrong and Vice Chairman Gardner sought specific guidance from the Executive Branch Ethics Commission ("EBEC") regarding whether or not their prior legal representation of various clients while in private practice presented a conflict of interest which necessitated their abstention from matters before the Commission. With regard to Chairman Armstrong's request for an ethics advisory opinion, the EBEC stated:

The Commission believes that in order to avoid any real or perceived conflicts of interest, you should abstain for a reasonable period of time from any matters involving a former client of yours or your law firm. While the Commission believes that six (6) months is a reasonable period of time, you may want to evaluate these decisions on a case-by-case basis in accordance with the guidance laid out in KRS 11A.030 . . . and the requirements set forth in KRS 11A.020(3)

Based upon this guidance, Chairman Armstrong abstained from Case No. 2008-00251 for a period of six months, from the date of his appointment through November 30, 2008. Since December 1, 2008, Chairman Armstrong has been able to

participate in this case and, shortly thereafter, on December 5, 2008, the Order denying Mr. Young's request for full intervenor status was issued under the signatures of Chairman Armstrong and Commissioner Clay, with Vice Chairman Gardner abstaining.

With regard to the ethics advisory opinion requested by Vice Chairman Gardner, the EBEC stated:

Due to your ongoing and future relationship with the law firm, you are required to abstain from participating in any matters in which another member of your law firm or a current client of the law firm is involved.

Based upon this guidance, Vice Chairman Gardner is abstaining from Case No. 2008-00251 so long as the firm that he is associated with continues to represent the Lexington-Fayette Urban County Government (which is a party to Case No. 2008-00251) in matters which are not before the Commission. Vice Chairman Gardner was not required to abstain from this case until the Lexington-Fayette Urban County Government was granted intervention.

In a unique circumstance, the combined effect of these advisory opinions was to temporarily place the Commission in a position where it lacked a quorum to rule upon Mr. Young's petition for full intervention. While the effect was to delay a ruling on Mr. Young's petition, to do otherwise would have required the Commissioners to disregard their respective ethical obligations under KRS Chapter 11A. The public interest in favor of upholding ethical obligations of public servants far exceeds any harm to Mr. Young as a result of the delay in ruling on this motion to intervene.⁵

⁵ Mr. Young does not have a right to intervene in a Commission proceeding. While the General Assembly has granted a statutory right of intervention to the Attorney General, KRS 367.150(8), all other parties are granted intervention within the discretion of the Commission under the criteria set forth in 807 KAR 5:011, Section 3(8).

The Commission has not acted arbitrarily. To the contrary, Chairman Armstrong and Vice Chairman Gardner have made every effort to ensure that their statutory obligations under KRS Chapter 278 are performed in full compliance with their ethical obligations under KRS Chapter 11A. The Commission has also made every effort to keep Mr. Young informed of the reasons for the delay in ruling on his intervention, through letters from the Commission's Executive Director and General Counsel and during the informal conference which he was allowed to attend.

In support of his argument that the Commission has been arbitrary in granting intervenor status to other parties in this case, Mr. Young outlines a hypothetical dialogue between the Commission and the Kentucky Industrial Utility Customers, Inc. ("KIUC")⁶ regarding KIUC's petition for full intervenor status in this case. In this imagined dialogue, the Commission does not grant KIUC's petition for intervenor status, but, rather, denies it, because, as Mr. Young writes:

KIUC's petition makes it clear that its real interest is to promote the economic prosperity of certain industrial corporations. By statute, that type of issue is handled by the Kentucky Cabinet for Economic Development, and it would be unlawful for the Commission to become involved in it. KIUC therefore has no actual legal interest in this case. To the extent that KIUC does have an interest in KU's rates, we find that the AG comprehensively represents all consumers' economic interests and KIUC cannot have any pertinent information to add. KIUC's petition is therefore denied.⁷

Mr. Young's hypothetical conversation is flawed, however, by the fact that the special interest that KIUC cites in its request for full intervenor status is that it represents

⁶ Application for Rehearing at 10-11.

⁷ Id. at 11.

several large industrial companies who are customers of KU, whose electricity costs represent a significant cost of doing business, and whose rates may be significantly impacted by the Commission's decision regarding KU's proposed rate increase.⁸

Clearly, the industrial customers which KIUC represents have a "special interest" in KU's rate case, because the impact of the rate increase on those entities is quite different than the impact to the average KU retail customer. Therefore, the Commission's decision to grant intervenor status to KIUC was appropriate and clearly distinguishable from the denial of intervenor status to Mr. Young and, therefore, was not arbitrary.

Based on the application for rehearing and being otherwise sufficiently advised, the Commission finds that the findings of fact set forth in the Order Denying Intervention were based on the statements set forth in Mr. Young's petition to intervene and his reply to KU's objections to his petition. Based on Mr. Young's statements in those pleadings, the Commission finds no error in any of its findings in the Order Denying Intervention. Therefore, the Commission will deny Mr. Young's application for rehearing of the decision to deny his request to intervene.

Mr. Young will have ample opportunity to participate in this proceeding even though he is not granted intervenor status. He may file comments as frequently as he chooses, and those comments will be entered into the record of this case. He may also attend and present public comment at the regional public hearings that are scheduled on January 5, 2009 in Louisville, Kentucky; January 6, 2009 in Madisonville, Kentucky; January 8, 2009 in Middlesboro, Kentucky; or on

⁸ See Petition to Intervene of KIUC at 1.

January 12, 2008 in Lexington, Kentucky. Finally, Mr. Young may attend and present comment at the public hearing to be held at our offices in Frankfort, Kentucky beginning on January 13, 2009, as set out in the attached press release issued by the Commission on December 15, 2008.

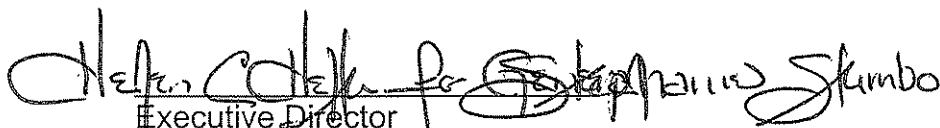
IT IS THEREFORE ORDERED that Mr. Young's petition for rehearing is denied.

Done at Frankfort, Kentucky, this 24th day of December, 2008.

By the Commission

Vice Chairman Gardner abstains.

ATTEST:


Executive Director

Case No. 2007-00565
Case No. 2008-00251

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NEWS RELEASE

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PSC Sets Public Meetings In LG&E, KU Rate Cases *Comments taken in Louisville, Madisonville, Middlesboro, Lexington*

FRANKFORT, Ky. (Dec. 15, 2008) – The Kentucky Public Service Commission (PSC) will hold a series of public meetings to receive comments on the requests for rate increases by Louisville Gas and Electric Co. (LG&E) and Kentucky Utilities Co. (KU).

"These meetings offer an opportunity for the ratepayers who would be affected by any increases to speak directly to the commissioners," PSC Chairman David Armstrong said. "We look forward to hearing those comments."

The meetings are scheduled for:

Louisville

Monday, Jan. 5, 2009, 5:30 p.m. EST

Kentucky Fair & Exposition Center

South Wing – Room B 101

NOTE: THERE WILL BE NO CHARGE TO PARK

Madisonville

Tuesday, Jan. 6, 2009, 5:30 p.m. CST

Madisonville Community College

Health Campus – Auditorium

750 North Laffoon St.

-more-

Middlesboro

Thursday, Jan. 8, 2009, 5:30 p.m. EST

Middlesboro Community Center
705 North Petersborough Ave.

Lexington

Monday, Jan. 12, 2009, 5:30 p.m. EST

Bryan Station High School – Auditorium
201 Eastin Road

The application and related documents are available on the PSC Web site, psc.ky.gov. The case numbers are 2008-00251 (KU) and 2008-00252 (LG&E).

KU and LG&E are seeking to increase revenue from electricity sales by about 2 percent. An average KU residential customer would see an increase of \$4.50 in his or her monthly bill, while the average monthly bill for an LG&E electric customer would increase by \$5.20. LG&E is also asking for an increase of nearly 6 percent in gas revenues, which would increase the average monthly residential bill by about \$11.

Persons wishing to comment on the proposed increases may do so at the meetings. Depending on the number of people wishing to speak, the length of oral comments may be limited.

Written comments also will be accepted at the meetings. Written comments also may be mailed to the PSC at P.O. Box 615, Frankfort, KY 40602, faxed to 502-564-9625 or e-mailed from the PSC Web site.

The evidentiary hearing in the case will be held at the PSC offices in Frankfort beginning Tuesday, Jan. 13. It will be open to the public, but there will be only limited opportunity for public comments. Written comments will be accepted through the conclusion of the hearing.

The PSC is an independent agency attached for administrative purposes to the Energy and Environment Cabinet. It regulates more than 1,500 gas, water, sewer, electric and telecommunication utilities operating in Kentucky and has approximately 100 employees.

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