

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF LOUISVILLE GAS)
AND ELECTRIC COMPANY TO FILE) CASE NO. 2007-00564
DEPRECIATION STUDY)

APPLICATION OF LOUISVILLE GAS)
AND ELECTRIC COMPANY) CASE NO. 2008-00252
FOR AN ADJUSTMENT OF ITS)
ELECTRIC AND GAS BASE RATES)

O R D E R

On August 13, 2008, Geoffrey M. Young filed a petition to intervene in this proceeding. Mr. Young states that he is not a customer of Louisville Gas and Electric Company ("LG&E"), but that he has "a personal interest in the quality of the air" he breathes, and that the quality of the air "is likely to affect the amount of money [he] will be forced to spend in future years to treat health problems that [he] may suffer because of LG&E's existing and planned power plants."¹ Mr. Young also states that he is an environmentalist; that he is interested in reducing pollution that harms other people and the environment; and that Kentucky's coal-fired power plants have massive environmental impacts which contribute to "some of the worst air pollution in the Midwest," resulting in high rates of respiratory disease and global warming.

Mr. Young further states that as an environmentalist and having a desire to promote energy efficiency, he has a special interest in the structure of LG&E's rates

¹ Young Petition at 1.

since rate structures impact: (1) the consumption of energy; (2) “the environmental impacts caused by the generation of that electricity”; and (3) the success of demand-side management (“DSM”) programs. Finally, Mr. Young’s petition briefly recites his prior experience with energy efficiency programs, claims that, absent his participation, “it is likely that the interests of environmentalists and proponents of dramatically enhanced energy efficiency in Kentucky will not be adequately represented,” and pledges that he will participate in a constructive manner and will not be disruptive.

On August 19, 2008, LG&E filed a response in opposition to Mr. Young’s petition to intervene. Mr. Young then filed a reply on August 25, 2008, and LG&E filed a sur-reply on August 28, 2008. In addition, on October 8, 2008, Mr. Young filed a petition for rehearing of an October 2, 2008 letter that was addressed to him from the Commission’s Executive Director. Mr. Young states in that petition that he believes the Executive Director’s letter constitutes a denial of his petition to intervene.

Based on the petition and being otherwise advised, the Commission finds that the only person entitled to intervene as a matter of right is the Attorney General (“AG”), pursuant to KRS 367.150(8)(b). Intervention by all others is permissive and is within the sound discretion of the Commission.² As stated by Kentucky’s highest court 66 years ago in People’s Gas Co. of Kentucky v. City of Barbourville, 291 Ky. 805, 165 S.W.2d

² Inter-County Rural Electric Cooperative Corporation v. Public Service Comm’n of Kentucky, 407 S.W.2d 127, 130 (Ky. 1966).

567, 572 (Ky. 1942), the Commission's "jurisdiction is exclusively confined 'to the regulation of rates and service.'"³

Next, in exercising its discretion to determine permissive intervention, the Commission follows its regulation, 807 KAR 5:001, Section 3(8). That regulation requires a person seeking intervention to file a request in writing which "shall specify his interest in the proceeding."⁴ That regulation further provides that:

If the Commission determines that a person has a special interest in the proceeding which is not otherwise adequately represented or that full intervention by party is likely to present issues or to develop facts that assist the commission in fully considering the matter without unduly complicating or disrupting the proceedings, such person shall be granted full intervention.⁵

It is under these statutory and regulatory criteria that the Commission reviews a petition to intervene. We note at the outset of this review that Mr. Young has never previously been granted intervention in a Commission proceeding, although he has previously testified on behalf of others.

Mr. Young's petition acknowledges that he is not a customer of LG&E, but is a customer of its affiliate, Kentucky Utilities Company ("KU"). Noting that these two

³ See also Benzinger v. Union Light, Heat & Power Co., 293 Ky. 747, 170 S.W.2d 38 (Ky. 1943) ("[I]t was expressly stated that the intention [of KRS 278.040(2)] was to confer jurisdiction only over the matter of rates and service.")

⁴ 807 KAR 5:001, Section 3(8)(b). See also the unreported decision in EnviroPower, LLC v. Public Service Commission of Kentucky, 2007 WL 289328 (Ky. App. 2007), wherein the Court of Appeals held that "the PSC retains the power in its discretion to grant or deny a motion for intervention," and 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."

⁵ Id.

utilities are jointly owned and that they jointly develop DSM programs, Mr. Young claims that "it would not make sense to establish one rate structure for KU that encourages energy efficiency and a different rate structure for LG&E that penalizes the utility if customers save energy."⁶ Thus, Mr. Young's interest in LG&E's rate structure does not arise from his status as an LG&E ratepayer, since he is not one. Rather, his interest arises from his status as a KU ratepayer who wants to protect LG&E's rate structure from being inconsistent with KU's.

The Commission finds that Mr. Young's interest as a KU ratepayer who wants to protect LG&E's rate structure is simply too remote to justify granting his request to intervene in this LG&E rate proceeding. Mr. Young has no actual legal interest in LG&E's rates or service, and he has not shown that any issue to be resolved in this case will have a financial, legal, or any other impact on him.

It is also clear from the statements in Mr. Young's petition and response that his asserted interest in LG&E's rate structure arises not from his status as a KU ratepayer, but as a self-appointed representative of the interests of environmentalists. This finding is based on Mr. Young's statements such as:

(1) The energy consumption patterns that will result from the [rate structures] established in this proceeding are likely to affect the total amount of electricity consumed and the environmental impacts caused by the generation of that electricity.⁷

(2) If the Commission were to deny this petition, it is likely that the interests of environmentalists and proponents of

⁶ Young Petition at 3.

⁷ Id.

dramatically enhanced energy efficiency in Kentucky will not be adequately represented.⁸

(3) [M]any aspects of energy utility operations, including their rate structures, . . . have clear and direct implications for the environment.⁹

(4) The interests of environmentalists are not identical to those of the AG.¹⁰

(5) Environmentalists pretty much share the AG's interest in consumer protection, but we are also interested in protecting the trees, animals, microorganisms, watersheds, airsheds, and ecosystems of the Commonwealth.¹¹

(6) If the Commission were to allow environmentalists to participate fully in proceedings where an impact on the environment is likely, there is no danger that the floodgates will thereby be opened to various special interests of other types.¹²

The description of Mr. Young's education as set forth in his petition does not include any formal legal training. As a non-attorney, he cannot intervene on behalf of environmentalists in an administrative proceeding such as this.¹³

To the extent that Mr. Young's petition is considered as a request for intervention solely on his own behalf as an environmentalist, his interest is for the purpose of

⁸ Id. at 4.

⁹ Young Reply at 5.

¹⁰ Id. at 6.

¹¹ Id.

¹² Id.

¹³ Kentucky State Bar Association v. Henry Vogt Machine Co., 416 S.W.2d 727 (Ky. 1967) and Frazer v. Citizens Fidelity Bank & Trust Co., 393 S.W.2d 778 (Ky. 1964), cited in May v. Coleman, 945 S.W.2d 426, 428 (Ky. 1997).

“reducing pollution that can harm other people and the natural environment.”¹⁴ The Commission understands and appreciates Mr. Young’s interest as an environmentalist in seeking to reduce pollution, but the Commission has no jurisdiction over the quality of the air he breathes, the “significant health problem” associated with mercury pollution from coal-fired power plants, or “the carbon dioxide released [which] contributes to global warming.”¹⁵ As discussed above, the Commission’s jurisdiction is limited to the “rates” and “service” of utilities.

Further, a number of Mr. Young’s statements indicate that he lacks an understanding of fundamental rate-making principles. His Reply states that:

[I]f the utilities help their customers dramatically improve the efficiency with which they use energy, environmentalists will support the establishment of revenue and net income levels sufficient to maintain the utilities’ financial health.

* * *

If the Companies reject a cooperative approach to Kentucky’s environmentalists, they and the Commission should be aware that there are other ways to improve a state’s energy efficiency that do not depend on the participation of regulated utility companies and are not developed with their financial interests in mind.

Under Kentucky law, a utility has an unqualified right to “demand, collect and receive fair, just and reasonable rates”¹⁶ As Kentucky’s highest court has stated, “Rates are non-confiscatory, just and reasonable so long as they enable the utility to operate successfully, to maintain its financial integrity, to attract capital and to compensate its

¹⁴ Young Petition at 1.

¹⁵ Id. at 2.

¹⁶ KRS 278.030(1).

investors for the risks assumed.”¹⁷ Thus, a utility’s right to fair, just, and reasonable rates cannot be conditioned, as Mr. Young suggests, upon the degree of the utility’s cooperation with environmentalists.

In summary, the Commission finds that, as a KU ratepayer, Mr. Young has no actual legal interest in LG&E’s rate structure or any other issue to be resolved in LG&E’s rate case. To the extent of Mr. Young’s interest as an environmentalist in LG&E’s rate structure, the issues he seeks to raise relating to the quality of the air and the level of pollution emitted by LG&E’s coal-fired plants are beyond the scope of the Commission’s jurisdiction. To allow Mr. Young to intervene and to raise issues that are beyond the scope of the Commission’s jurisdiction would unduly complicate and disrupt this proceeding. Further, based on Mr. Young’s statements that a utility’s revenues and financial health be tied to its degree of cooperation with environmentalists, the Commission finds that, even if he had an interest in LG&E’s rates, his intervention is not likely to present issues or to develop facts that assist us in fully considering LG&E’s rate case without unduly complicating or disrupting the proceeding.

The Commission further finds that Mr. Young’s petition for rehearing is premature. The October 2, 2008 letter to him from the Commission’s Executive Director does not constitute a ruling on his petition 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

¹⁷ Commonwealth ex rel. Stephens v. South Central Bell Tele. Co., 545 S.W.2d 927, 930 (Ky. 1976).

attend and present public comment at the regional public hearings that will be scheduled in the near future. Finally, Mr. Young may attend and present comment at the public hearing to be held at our offices in Frankfort, Kentucky.

IT IS THEREFORE ORDERED that:

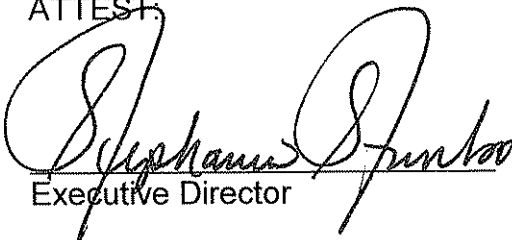
1. Mr. Young's petition to intervene is denied.
2. Mr. Young's petition for rehearing is denied as premature.

Done at Frankfort, Kentucky, this 10th day of October, 2008.

By the Commission

Chairman Armstrong abstains.

ATTEST:


Executive Director

Case No. 2007-00564
Case No. 2008-00252

Lonnie E. Bellar
Louisville Gas & Electric Company
220 West Main Street
PO Box 32010
Louisville, KY 40202

Honorable David C. Brown
Stites & Harbison, PLLC
1800 Providian Center
400 West Market Street
Louisville, KY 40202

Joe F. Childers
Getty & Childers
1900 Lexington Financial Center
250 West Main Street
Lexington, KY 40507

Honorable Dennis G. Howard II
Assistant Attorney General
Office of the Attorney General
Utility & Rate Intervention Division
1024 Capital Center Drive
Suite 200
Frankfort, KY 40601-8204

Honorable Lisa Kilkelly
Legal Aid Society
416 West Muhammad Ali Blvd
Suite 300
Louisville, KY 40202

Honorable Michael L. Kurtz
Boehm, Kurtz & Lowry
36 East Seventh Street
Suite 1510
Cincinnati, OH 45202

Lawrence W. Cook
Assistant Attorney General
Office of the Attorney General
Utility & Rate Intervention Division
1024 Capital Center Drive
Suite 200
Frankfort, KY 40601-8204

Honorable W. Duncan Crosby III
Stoll Keenon Ogden, PLLC
2000 PNC Plaza
500 W. Jefferson Street
Louisville, KY 40202-2828

Honorable Allyson K. Sturgeon
E.ON U.S. Services, Inc.
220 West Main Street
Louisville, KY 40202