

Geoffrey M. Young
454 Kimberly Place
Lexington, KY 40503
phone: 859-278-4966
email: energetic@windstream.net

December 19, 2008

PUBLIC SERVICE COMMISSION

Stephanie Stumbo, Executive Director
Kentucky Public Service Commission
P.O. Box 615, 211 Sower Boulevard
Frankfort, Kentucky 40602-0615

RECEIVED

DEC 23 2008

PUBLIC SERVICE
COMMISSION

Re: Case No. 2008-00409

General Adjustment of Electric Rates of East Kentucky Power Cooperative, Inc.

Dear Ms. Stumbo:

Please find attached for filing with the Commission an original and ten copies of an Application for Rehearing related to the above-referenced proceeding.

Sincerely,



Geoffrey M. Young

Enclosures

cc: Parties listed on the Certificate of Service

**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

In the Matter of:

GENERAL ADJUSTMENT OF ELECTRIC)	
RATES OF EAST KENTUCKY POWER)	CASE NO.
COOPERATIVE, INC.)	2008-00409

**APPLICATION FOR REHEARING RE THE
PETITION FOR FULL INTERVENTION
OF GEOFFREY M. YOUNG**

The above-captioned proceeding is an application for a general adjustment of electric rates of East Kentucky Power Cooperative, Inc. (“EKPC”). On November 14, 2008, I mailed an petition for full intervention to the Commission and it was received and stamped in on November 17. On November 19, 2008, EKPC filed an unsolicited document setting forth its response and objections. On December 16, 2008, the Commission issued an Order that denied my petition to intervene. This document is an application for a rehearing of the Commission’s determination and an answer to EKPC’s objections. Courtesy requires that I address each of the Commission’s and EKPC’s arguments in a thorough manner.

The Commission noted “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.” (Order at 3) There is one reason for that. For the past several months, the Commission has engaged in a series of unlawful and discriminatory

actions that have ultimately violated this environmentalist's right, as a citizen of the Commonwealth of Kentucky, to be free from the damaging effects of a powerful government agency's arbitrary and capricious decisions. (Kentucky Constitution, Section 2; Plaintiff's 12/16/08 Amended Complaint and Memorandum in Case No. 08-CI-1812 before the Franklin Circuit Court) The Commission's observation is reminiscent of the boy who kills his parents and then says to the judge, "Have mercy on me, Your Honor, because I'm only a poor orphan boy!"

The Commission wrote: "The first requirement for being granted intervention arises under KRS 278.040(2), which limits the Commission's jurisdiction to the rates and service of utilities." (Order at 2) Although I am not an attorney, I believe that the first clause of this statement is false on its face. The relevant part of the statute reads as follows:

(2) 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...

This section clearly prohibits government agencies other than the PSC from attempting to regulate the rates and service of jurisdictional utilities. That is what the word "exclusive" means in this context. Because this particular statute is an enabling statute for the Commission rather than a limiting one, it is not at all clear that it limits the Commission's authority in any way. Perhaps one might be justified in concluding that by specifying "rates and service" in this statute, the legislature was thereby prohibiting the Commission from regulating anything beyond or other than the jurisdictional utilities' rates and services. Such an interpretation, however, is not at all self-evident and might be overly restrictive of the Commission's authority. If the restrictive interpretation is valid, it would limit the types of proceedings the Commission may lawfully initiate and conduct. To my knowledge, the

Commission has never initiated a case the subject matter of which exceeded the limitation that may be inferred from the restrictive interpretation of KRS 278.040(2) that the Commission has apparently adopted. It was undeniably lawful for the Commission to initiate the EKPC rate case, No. 2008-00409.

What is much more pertinent to the topic under debate here is the fact that the statute says nothing whatsoever about parties that submit petitions for full intervention in Commission cases. KRS 278.040(2) is completely silent on that issue. What the Commission has been trying to argue in a series of recent cases, however, is that KRS 278.040(2) not only limits the authority of the Commission but also limits the types of special interests that may be granted permissive intervention in Commission cases. The Commission has been trying to construct, in effect, a third prong to add to the two prongs of the regulation that actually governs permissive intervention in Commission cases, 807 KAR 5:001, Section 3(8). The Commission has been arguing that a petition for full intervention must first meet the requirement the Commission has inferred from its interpretation of KRS 278.040(2), and only then may be examined to see whether it meets one of the two prongs set forth in 807 KAR 5:001, Section 3(8). (Order at 2 plus the first sentence of page 3) A government agency is bound by the regulations it promulgates. [Hagan v. Farris, 807 S.W.2d 488, 490 (Ky. 1991)] An agency may not arbitrarily add to or subtract from them. (Kentucky Constitution, Section 2) To summarize, the Commission's assertion to the effect that KRS 278.040(2) has anything to do with the question of permissive intervention is unfounded and erroneous. (Order at 2)

In the alternative, if in fact it is necessary for a petitioner to demonstrate that he has a special interest in the utility's rates and service, I have done so in my petition. (Petition.

11/14/08 at 1-3) The Commission has not challenged the factual or logical validity of any aspect of my reasoning. In other words, even if the Commission is allowed by the Courts to get away with its highly questionable reinterpretation KRS 278.040(2) in order to add a novel restriction to 807 KAR 5:001, Section 3(8), none of that would serve to disqualify my petition for full intervention in the EKPC rate case because I have fully complied with the Commission's artificial new restriction anyway. (Id.)

The Commission cited People's Gas Co. of Kentucky v. City of Barbourville, 291 Ky. 805, 165 S.W.2d 567, 572 (Ky. 1942) and Benzinger v. Union Light, Heat & Power Co., 293 Ky. 747, 170 S.W.2d 38 (Ky. 1943), in which the courts held that the Commission's jurisdiction is exclusively confined to the regulation of a utility's rates and service. (Order at 2) In my opinion as a non-attorney, the import of these two cases poses no problem for my petition to intervene, because in my petition of 11/14/08 I stated clearly that I have a special interest in EKPC's rate structure. I also clearly described the connection between the utility's rate structure, as reflected in its tariffs, and my interest in a clean environment. (Petition at 1-3) In view of these facts, both court cases would actually seem to provide support for my petition for full intervention.

After noting that I am not a customer of EKPC, the Commission concluded: "Consequently, Mr. Young has no actual legal interest in the rates or service of EKPC." (Order at 3) This appears to be the core of the Commission's argument. On the previous page, however, the Commission noted accurately that "Mr. Young states that, as an environmentalist, he has a special interest in the structure of EKPC's rates because the structure will encourage or discourage the implementation of energy efficiency programs and measures." (Order at 2) By making these two statements in the same document, the

Commission is implying, without saying so explicitly, that my acknowledged special interest in the structure of EKPC's rates is not an "actual legal" interest. However, the Commission has not provided any explanation, argument, or rationale for its conclusion that my interest in EKPC's rate structure is not an actual legal interest. The governing regulation, 807 KAR 5:001, Section 3(8), is silent on whether a party submitting a petition for full intervention must be a customer of the utility. In other words, the governing regulation renders irrelevant the evidence the Commission cited – that I am not a customer of EKPC – and provides no support for the Commission's finding that I have "no actual legal interest in the rates or service of EKPC." If a government agency issues findings and Orders that are wholly unsupported by the evidence, it acts in an arbitrary manner and risks having its Order vacated or set aside by the courts. In Foster v. Goodpaster, 161 S.W.2d 626, 627 (Ky. 1942), the Court adopted the rule established by the U.S. Supreme Court in Silberschein v. United States, 45 S.Ct. 69, 71 (1924), that the "right to resort to the courts exists in any event if 'the [administrative] decision is wholly unsupported by the evidence'..."

The Commission has not attempted to challenge the validity of any aspect of the logical argument set forth in my Petition at 1-3. In its Order, the Commission left the following points completely unchallenged: a) the Commission determines a utility's rate structure when it approves a tariff; b) the rate structures establish the economic incentives that will be faced by EKPC, its member electric cooperatives, and their retail customers; c) I am an environmentalist and a person specifically concerned with promoting improved energy efficiency, and I possess some knowledge and relevant work experience related to the topic of utility rate structures; d) the structures of the tariffs that will be established at the conclusion of this case will influence both the energy consumption patterns of end-use

customers and the willingness of EKPC, its member electric cooperatives, and their retail customers to participate actively in demand-side management (DSM) programs; and e) the energy consumption patterns that will result from the set of tariffs and economic incentives 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. Having failed or declined to challenge any of the logical building blocks of my argument, the Commission nevertheless concluded, in the absence of evidence or sound logic, that I have “no actual legal interest in the rates or service of EKPC.” (Order at 3) It should be noted that “a decision wholly unsupported by the evidence is arbitrary and capricious.” (*Kentucky Administrative Law*, Ch. 11, “The Final Order, Record and Judicial Review of Administrative Decisions,” Mark R. Overstreet and Judith A. Villines, 1999, at 11-24)

The Commission went on to state as follows:

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 pollution from coal-fired power plants, or the carbon dioxide released into the atmosphere. As discussed above, the Commission’s jurisdiction is limited to the “rates” and “service” of utilities. (Order at 3-4)

I have never asked the Commission to regulate Kentucky’s air quality, order utilities to reduce the amount of pollution their power plants emit, or perform any of the tasks that the Kentucky General Assembly has statutorily assigned to the Kentucky Division for Air Quality – either in my Petition of 11/14/08 or in any other document I have filed with the Commission during the past 15 years. No agency of state government other than the Public Service Commission has any jurisdiction over EKPC’s tariffs and rate structures [KRS 278.040(2)], and my petition for full intervention clearly and explicitly stated and explained

my interest in these tariffs and rate structures. (Petition at 1-3)

The logical fallacy in the Commission's argument is obvious. In granting the Commission exclusive authority to regulate the rates and service of utilities, the legislature did not thereby forbid the Commission, either explicitly or implicitly, from considering certain factors that are relevant to the accomplishment of its statutory mandate. If the proper regulation of the rates and service of jurisdictional energy utilities requires the Commission to consider the ways in which the utility's rate structure will affect the economic incentives for improving energy efficiency in its service territory, there is no provision of existing Kentucky law that would prohibit it from doing so. In fact, existing Federal law could be taken to imply that rates cannot be considered fair, just and reasonable if the rate structures establish economic incentives that reward the utility company when customers waste more energy and penalize the utility when customers use energy more efficiently. [16 USC Chapter 46, Subchapter II, Section 2621(d)(8)]

Moreover, there are several provisions of Kentucky statutes and regulations that require the Commission to consider factors that have implications for the environment. (Case No. 2008-00148, Young, Application for Rehearing of Denial of Petition to Intervene, 8/05/08, at 2-3) It is undeniable that the Commission currently has sole jurisdiction over many aspects of energy utility operations, including their rate structures, that have clear and direct implications for the amount of pollution that will be emitted into the environment. To attempt to argue otherwise, as the Commission did in the passage cited above, is to resort to arguments that would be considered invalid or illogical by a reasonable person.

The Commission concluded its Denial Order by claiming that I "seek to raise" issues in this proceeding "relating to the quality of the air and the level of pollution emitted by

EKPC's coal-fired plants." That claim is unfounded and false on its face. As I stated in my petition, the only issues I seek to raise in this proceeding relate to EKPC's rates, rate structures, and service. (Petition at 1-3) The Commission has taken pieces of my logical argument out of context in an effort to construct a straw man that it can then knock down. The Commission is using this invalid straw-man argument to provide support for its desired conclusion that my full intervention "would unduly complicate and disrupt this proceeding." (Order at 4)

I believe there are no additional arguments the Commission made in its Order of 12/16/08 other than the ones I have refuted above.

It seems to me that in the end, all of the Commission's elaborately-crafted, poorly-founded, and illogical arguments boil down to two simple things: a desire to discriminate unlawfully and arbitrarily against environmentalists and a desire to discriminate unlawfully and arbitrarily against individuals who are not represented by an attorney. Neither of these factors is mentioned in the regulation that governs the question of who should be granted full intervention, 807 KAR 5:001 Section 3(8). Because they lack grounding in law or regulation, both of the Commission's desires or *de facto* policies are inappropriate and unworthy of any public agency of the Commonwealth of Kentucky. (Kentucky Constitution, Section 2)

The arguments EKPC raised in its unsolicited 11/19/08 statement of response and objections are almost identical to the PSC's arguments that I have refuted above. The only way EKPC was able to conclude that I lack "any direct interest in the rates and service of EKPC, from which any special interest in this case could arise" (EKPC Objections at 2) was by completely and willfully ignoring the logical argument I made. (Petition at 1-3)

EKPC's argument that "There is no special interest of EKPC ratepayers which will not be adequately represented in this case by the Attorney General" (Objections at 2) was completely unsupported. It is also false because my interests as an environmentalist are not the same as the statutory mandate of the AG, which is consumer protection. (KRS 367.110 to 367.360, the Consumer Protection Act) There are hundreds of legitimate special interest groups in our society. In general, their interests are not the same as the interest the legislature has assigned to the AG. 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. The trees that cover most of the Appalachian Mountains are not "consumers" in any meaningful sense of the term. The two interests – consumer protection and environmental protection – overlap to some extent but are simply not the same. EKPC's argument that environmentalists' perspectives must be excluded from these proceedings because consumer protection interests are comprehensively represented by the AG is illogical and fundamentally unsound.

There are hundreds of legitimate special interest groups in our society, but few of them focus on issues that are relevant to the rates and services of utility companies. I am a member of a group that tries to reduce racism in the Bluegrass area, for example, and it is hard for me to imagine how that cause could be relevant to any Commission proceeding. 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.

EKPC argued that ratepayer interests are the only interests that the Commission can

lawfully consider, and that the AG automatically represents all consumer interests.

(Objections at 2) Taken together, these two assertions constitute an airtight rationale for excluding any special interest group whatsoever from full intervention. The Commission could easily apply that argument to large industrial or low-income customers, and could routinely deny full intervention to KIUC or low-income advocacy groups because the interests of their clients as consumers are fully and comprehensively represented by the AG. The Commission could use this “logic” to claim that KIUC is actually interested not in EKPC’s rates but in economic development, and the Commission may not lawfully consider that issue because the legislature has assigned the topic exclusively to the Economic Development Cabinet. The argument could easily be used to ensure that in virtually every Commission proceeding, the only parties at the table would be the utility company, the AG, and the Commission itself. Such an outcome would be unreasonable and contrary to the public interest because it would excessively restrict the range of viewpoints, data requests, and information available to the Commission. By objecting to the intervention of this environmentalist and not to the intervention of representatives of industrial customers, EKPC is demanding, in effect, that the Commission discriminate against environmentalists in an arbitrary and unjust manner.

The statements EKPC made in its third argument (Objections at 2) were again based on nothing but a determination to completely and willfully ignore the logical argument I made that explains my interest in EKPC’s rate structures (Petition at 1-3).

EKPC’s conclusion that my “intervention in this case would in no way assist the Commission in fully considering the proper subject matter of this case” (Objections at 2) is wholly unsupported by evidence and is false. Its statement that my “self-representation as

an intervenor would be another strong indication of the likelihood of undue complication and disruption of these proceedings” (*Id.* at 3) is also wholly unsupported by evidence and false. At its root, EKPC’s objections are nothing more than a plea for the Commission to discriminate unlawfully against environmentalists and individuals who are not represented by an attorney. EKPC may have dressed up its plea for discrimination in legal-looking language, but its objections are fundamentally unsupported by evidence and wrong-headed. Their only effect would be to deprive the Commission unnecessarily of the valuable information, data requests, testimony, and new ideas that this environmentalist is offering to contribute to the EKPC rate case. To continue to exclude the perspectives, information, and testimony of well-informed and well-intentioned environmentalists such as myself would only harm the long-term best interests of EKPC, its member cooperatives, and their ultimate customers.

WHEREFORE, I respectfully request that the Commission grant a rehearing of its 12/16/08 Denial Order in the above-captioned proceeding.

Respectfully submitted on this 19th day of December, 2008, by

Geoffrey M. Young

Geoffrey M. Young
454 Kimberly Place
Lexington, KY 40503
Phone: 859-278-4966
E-mail: energetic@windstream.net

CERTIFICATE OF SERVICE

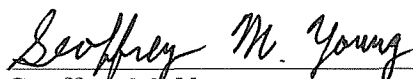
I hereby certify that an original and ten copies of the foregoing Application for Rehearing were mailed to the office of Stephanie Stumbo, Executive Director of the Kentucky Public Service Commission, P.O. Box 615, 211 Sower Boulevard, Frankfort, Kentucky, 40602-0615, and that copies were mailed to the following parties of record on this 19th day of December, 2008.

Charles A. Lile, Corporate Counsel
East Kentucky Power Cooperative, Inc.
4775 Lexington Road
P.O. Box 707
Winchester, KY 40392-0707

Dennis G. Howard II
Attorney General Office of Rate Intervention
1024 Capital Center Drive, Suite 200
Frankfort, KY 40601-8204

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

Signed,


Geoffrey M. Young

12/19/08

Date