COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF KENTUCKY UTILITIES COMPANY FOR AN ADJUSTMENT OF ITS ELECTRIC RATES AND FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY	))))	CASE NO. 2016-00370

ORDER

This matter is before the Commission upon the motion of the East Kentucky Power Cooperative, Inc. ("EKPC") requesting intervention in this proceeding. In support of its motion, EKPC states that it is a rural electric cooperative corporation organized under KRS Chapter 279. EKPC also states that it owns 55 distribution substations that are connected to the transmission systems of Kentucky Utilities Company ("KU") and KU's sister company, Louisville Gas and Electric Company ("LG&E") (jointly "KU/LG&E". EKPC points out that it shares with KU/ LG&E 54 free-flowing tie lines that interconnect the utilities' systems and, as a result, EKPC depends upon KU/LG&E to provide safe and reliable transmission service. EKPC asserts that KU/LG&E are proposing approximately $247.9 million in capital spending on electric transmission projects to address certain transmission assets that are nearing the end of their useful lives. EKPC also asserts that KU/LG&E are currently implementing a Transmission System Improvement Plan with a goal of improving reliability and system integrity, and that such plan includes transmission system improvements and maintenance with a projected expenditure of over a half-billion dollars during the 2017–2021 period.

EKPC asserts that it has a special interest in the transmission service and rates of KU, noting the interconnectedness of EKPC's system with that of KU, and that EKPC paid KU/LG&E $6,778,604 for transmission service in 2015. EKPC states that it is uniquely positioned and qualified to ensure that the transmission investments made across the KU/LG&E system are accomplished in a nondiscriminatory manner that improves reliability and performance not only for the KU/LG&E retail customers, but also for the cooperative retail customers who depend on KU/LG&E transmission. EKPC maintains that its interests in this proceeding are not otherwise adequately represented by an existing party. Last, EKPC avers that its intervention would assist the Commission in fully considering the matters presented and would present relevant issues and develop meaningful facts given its extensive knowledge of KU/LG&E's existing transmission facilities and EKPC's ongoing operational relationship with KU/LG&E.

On December 29, 2016, KU filed a response objecting to EKPC's request to intervene. KU contends that EKPC's motion fails to demonstrate a special interest in this proceeding because all of EKPC's stated interests are outside of the Commission's jurisdiction, and the motion fails to show that EKPC will identify any relevant issues or develop relevant facts that will assist the Commission in the resolution of this matter without unduly complicating and disrupting the proceeding. KU also argues that EKPC's request to intervene in this rate matter is unprecedented, and its intervention would established a troubling precedent for jurisdictional electric utilities' ability to interfere in the retail rate proceedings of other jurisdictional electric utilities that have statutory rights to provide retail electric service inside their respective certified service territories.

KU contends that EKPC's expressed interests in the transmission rates it pays KU and the transmission service KU provides EKPC are within the sole jurisdiction of the Federal Energy Regulatory Commission ("FERC"). KU points out that the nearly $7 million in transmission charges that EKPC paid to KU/LG&E in 2015 were incurred under the LG&E and KU Open Access Transmission Tariff, which is approved and on file at FERC. KU further contends that EKPC cannot rely upon service-related concerns as an interest to justify intervention, because such concerns are necessarily irrelevant to retail rate proceedings. In support of its position, KU relies on the Kentucky Supreme Court's pronouncement in *South Central Bell Tel. Co. v. Util. Reg. Comm'n* ("*South Central Bell*") that "absent legislation to the contrary, the question of rates should be kept separate from the question of service."[1]

On January 3, 2017, EKPC filed a reply in support of its motion to intervene. EKPC avers that KU's position in opposition of EKPC's intervention is directly contrary to the position that KU took in obtaining intervention in Case No. 2012-00169,[2] which involved EKPC's request to fully integrate into PJM Interconnection, L.L.C. ("PJM"). EKPC argues that it does not seek intervention in this matter to scrutinize or question the rates it pays KU for transmission services. Rather, EKPC states that it is requesting intervention because it has a unique interest in ensuring that KU's transmission investment and service are both adequate and nondiscriminatory and that such issues

[1] *South Central Bell*, 637 S.W.2d 648, 654 (Ky. 1982).

[2] Case No. 2012-00169, *Application of East Kentucky Power Cooperative, Inc. to Transfer Functional Control of Certain Transmission Facilities to PJM Interconnection, LLC* (Order granting LG&E and KU intervention June 13, 2012).

are within the Commission's jurisdiction. EKPC next argues that KU's reliance on *South Central Bell* is misplaced, as that case is distinguishable from this proceeding. EKPC notes that the *South Central Bell* opinion involved a utility's being punished for the provision of inadequate service through the imposition of confiscatory rates, and that such action by the Commission was inconsistent with KRS Chapter 278. EKPC points out that the instant matter does not involve a pure rate proceeding, but also contains requests by KU for Certificates of Public Convenience and Necessity ("CPCN") and that much of KU's rate increase is the result of projected investments in its transmission system that is heavily interconnected with EKPC's.

On January 6, 2017, KU filed a motion requesting leave to file a sur-reply to address the arguments raised in EKPC's reply memorandum. In support of its motion, KU states that EKPC has misconstrued KU's objection to EKPC's intervention and that additional clarification is needed to assist the Commission in ruling on EKPC's intervention request. KU's sur-reply contends that there is nothing inconsistent about KU's opposition to EKPC's seeking intervention in this base-rate proceeding and KU's previous intervention in EKPC's proceeding to join PJM. KU noted that the Commission has previously allowed utilities to intervene in change-of-control proceedings, such as Case No. 2012-00169, on the premise that who controls a utility's assets could have impacts on other utilities' operations. KU contends that the instant proceedings involve a base-rate application, and the issues to be addressed concern the appropriate retail rates for KU to charge its customers for the retail electric service subject to the Commission's jurisdiction. In contrast, KU maintains that EKPC is not asserting an interest in this proceeding as a retail customer of KU. With respect to the CPCN requests, KU notes that those projects involve its metering and distribution system, which would impact service to KU's retail customers, not its transmission system, and particularly not its transmission system used for the federally regulated transmission service KU provides to EKPC. Concerning the 2017–2021 Transmission System Improvement Plan, KU argues that it is not seeking approval of this plan. Rather, KU states that because its rate application is based on a forecasted test year, its planned transmission investments affect KU's proposed retail rates.

Pursuant to our Order of January 17, 2017, a hearing was held on January 23, 2017, for the purpose of receiving oral arguments from EKPC in support of its request for intervention and from KU regarding its objections to EKPC's request. On January 25, 2017, EKPC and KU each tendered Proposed Findings of Fact and Conclusions of Law on the issue of EKPC's request for intervention.[3]

Having reviewed the pleadings and being otherwise sufficiently advised, the Commission finds that the unreported Court of Appeals decision in *EnviroPower, LLC v. Public Service Commission of Kentucky,* No. 2005-CA-001792-MR, 2007 WL 289328 (Ky. App. Feb. 2, 2007), as cited in EKPC's motion to intervene, is controlling precedent. In that case, the Court of Appeals first stated that only the Kentucky Attorney General has a statutory right to intervene and that intervention by all others is permissive. The Court of Appeals then stated:

> The PSC's exercise of discretion in determining permissive intervention is, of course, not unlimited. First, there is the statutory limitation under KRS 278.040(2) that the person seeking intervention must have an interest in the "rates" or

[3] EKPC and KU e-mailed their respective findings and conclusions of law to Commission counsel and all parties of record, and by Memorandum dated January 27, 2017, Commission counsel filed the documents into the record of this case.

> "service" of a utility, since those are the only two subjects under the jurisdiction of the PSC.
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> EnviroPower, slip opinion at 3.

Here, EKPC has failed to establish that it has an interest in either the rates or the service of KU that falls within the Commission's jurisdiction. We find that any stated relevant interest that EKPC has in KU's transmission system stems from EKPC's relationship with KU as a wholesale transmission user. We further find that, pursuant to 16 U.S.C. § 824, all aspects of wholesale transmission service, i.e., both the rates and the quality of service, are under the exclusive jurisdiction of the FERC. While the Commission has on limited occasions allowed a person who was not a retail customer to intervene in a transfer or change-of-control case filed under KRS 278.020(6) and (7), or KRS 278.218, the statutory requirement that those transactions be "consistent with the public interest" allows the Commission broader discretion in determining intervention to fully investigate the potential impacts of those types of transactions.

A review of KU's application reveals that all of KU's proposals pertain to its retail operations, such as an increase in the rates it charges to its retail customers and the implementation of an advanced metering system and distribution automation system that would affect its retail operations and the provision of service to its retail customers. Significantly, the Commission's jurisdiction is limited to the retail rates and service of KU, and EKPC has failed to establish any interest in the retail rates and service of KU to justify intervention in this matter under the statutory criteria as set forth in KRS 278.040(2) and the EnviroPower case. Because EKPC's expressed interest in this matter falls under the exclusive jurisdiction of the FERC, we further find that EKPC's intervention would interject issues that would be beyond the Commission's authority and would, therefore, unduly complicate and disrupt the proceedings. Accordingly, we find that EKPC's motion to intervene should be denied. Notwithstanding our denial of EKPC's request to intervene, we recognize the interconnected nature of EKPC's transmission system with that of KU's and we encourage both utilities to open a dialogue and engage in informal discussions to resolve any transmission-related issues.

Last, we note that EKPC filed its First Request for Information to KU on January 10, 2017. In light of our denial of EKPC's intervention request, the Commission finds that EKPC's First Request for Information to KU should be stricken from the record of this matter.

IT IS HEREBY ORDERED that:

1. The motion of EKPC to intervene is denied.

2. KU's motion for leave to file its sur-reply is granted.

3. EKPC's First Request for Information to Kentucky Utilities Company submitted on January 10, 2017, is stricken from the record of this matter.

By the Commission

ENTERED
FEB 01 2017
KENTUCKY PUBLIC
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