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PUBLIC SERVICE
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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

Application of Kentucky Industrial Utility Customers, Inc.)	
for a Declaratory Order Finding That the Commission Has)	Case No.
Jurisdiction to Regulate Kentucky Power's Participation in)	2013-00090
the AEP Power Coordination Agreement Case)	

ATTORNEY GENERAL'S
MOTION TO INTERVENE AND MOTION IN SUPPORT OF KENTUCKY
INDUSTRIAL UTILITY COMPANY'S APPLICATION FOR DECLARATORY ORDER

Comes now the Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention, and pursuant to KRS 367.150(8), which grants him the right and obligation to appear before regulatory bodies of the Commonwealth of Kentucky to represent consumers' interests, hereby moves the Public Service Commission to grant him full intervenor status in this action pursuant to 807 KAR 5:001(8).

In addition, the Attorney General files this motion in support of the Application by the Kentucky Industrial Utility Customers, Inc., ("KIUC") for a Declaratory Order ("Application"), the Attorney General states as follows:

- (1) KRS 278.020(5) provides to the Kentucky Public Service Commission ("Commission") jurisdiction over a regulated utilities transfer of functional control or the right to control the planning and operations of its generation resources to any party.

- (2) As detailed in KIUC's Application, the proposed participation of Kentucky Power Company ("KPCo") in a Power Coordination Agreement ("PCA") with other subsidiaries of American Electric Power ("AEP") and with AEP Service Corporation, Inc., ("AEPSC") could reasonably result in the transfer of functional control or the right to control the planning and operations of KPCo's generation resources to AEPSC as the "Agent" and/or to AEP subsidiary companies acting in concert as an "Operating Committee."¹
- (3) In addition to the Commission's own precedent of exercising its jurisdiction over transfers of functional control,² other state courts have clearly affirmed state jurisdiction over the amount of energy a regulated utility must have and over how those generation resources will be used. *See Pike Co. Light & Power Co.-Elec. Div. v. Pennsylvania Public Utility Comm'n*, 465 A.2d 735 (Pa. 1983); *State ex rel. Utilities Comm'n v. Carolina Power & Light Co.*, 614 S.E.2d 281 (N.C. 2005); and *Jenkins v. Entergy Corp.*, 187 S.W.3d 785 (Tex. App. 2006), *cert. denied* 128 S.Ct. 1225 (2008).
- (4) In *Jenkins, supra*, the Texas Court of Appeals specifically considered whether the Texas Public Utility Commission possessed the jurisdiction to review a system agreement among affiliated electric utilities, which involved the delegation of control to an operating committee. In holding that the Texas Commission did have jurisdiction that was not preempted by federal law, the Court took specific note that the delegation of authority to an operating

¹ See KIUC Application at p. 2 n. 4, referencing the PCA at Section 5.2.2.

² See *In Re East Kentucky Power Coop/PJM*, Case No. 2012-00169 and *In Re Duke Energy Kentucky/MISO*, Case No. 2010-00203.

committee resulted in a discretionary decision and not the type of federally mandated transaction, which would otherwise fall under the exclusive and presumptive authority of the Federal Energy Regulatory Commission ("FERC"). *Jenkins*, 187 S.W.3d at 805.

- (5) The interests of retail ratepayers in the Commonwealth of Kentucky may be substantially impacted by KPCo's proposal to transfer functional control or the right to control its generation resources to AEPSC and/or an operating committee made up of affiliated non-jurisdictional utilities controlled by a common corporate parent.³

Therefore, the Attorney General requests full intervention in this matter, supports the application by KIUC, and requests that the Commission, pursuant to KRS 278.020(5) and/or any other applicable authority, issue a Declaratory Order affirming its jurisdiction over KPCo's participation in the proposed PCA.

Respectfully submitted,

JACK CONWAY
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³ In *Jenkins v. Entergy Corp.*, 187 S.W.3d at 792, the underlying claim initiated by retail, residential ratepayers alleged that Entergy and its subsidiary companies conspired together to pass along to ratepayers excessive purchases of higher-priced power from one another, rather than purchasing less expensive power on the wholesale market. While the Attorney General makes no claim herein that AEP, KPCo and its other subsidiaries are acting in any way other than the best interests of ratepayers, it is the Attorney General's express charge to advocate on behalf of those ratepayers and ensure that those best interests are protected.

Certificate of Service and Filing

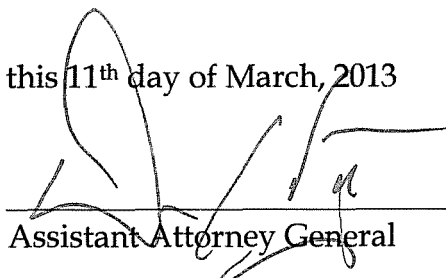
Counsel certifies that an original and ten photocopies of the foregoing were served and filed by hand delivery to Jeff Derouen, Executive Director, Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601; counsel further states that true and accurate copies of the foregoing were mailed via First Class U.S. Mail, postage pre-paid, to:

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this 11th day of March, 2013



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