

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF KENTUCKY)	
POWER COMPANY FOR (1) A GENERAL)	
ADJUSTMENT OF ITS RATES FOR ELECTRIC)	CASE NO.
SERVICE; (2) AN ORDER APPROVING ITS 2017)	2017-00179
ENVIRONMENTAL COMPLIANCE PLAN; (3) AN)	
ORDER APPROVING ITS TARIFFS AND RIDERS;)	
(4) AN ORDER APPROVING ACCOUNTING)	
PRACTICES TO ESTABLISH REGULATORY)	
ASSETS AND LIABILITIES; AND (5) AN ORDER)	
GRANTING ALL OTHER REQUIRED APPROVALS)	
AND RELIEF)	

ORDER

This matter arises upon the motion filed by Progress Metal Reclamation Company d/b/a Mansbach Metal Company (“Progress”) on July 14, 2017, requesting to intervene in this proceeding. Progress is a metal recycling company that has been in business since 1918. Progress avers that it is the only operation of its kind in the Kentucky Power Company (“Kentucky Power”) service area.

As a basis for its motion to intervene, Progress states that it has a special interest in the demand charges, which will be increased under Kentucky Power’s proposed rate adjustment, and in either modifying the existing economic development rider, Tariff E.D.R., or developing a new load retention rider. Progress explains that it has a unique load profile with a low load factor of 5.4 to 10.2 percent and that, despite managing its load to off-peak periods, the minimum demand component of its bills is

extremely high. Progress estimates that the proposed increase in demand charges will add an additional \$359,000 per year to Progress's electric bill.

Progress further explains that it is experiencing financial hardship due to the low market value of steel and scrap metal, and a loss of sales to Progress's primary steel producing customer. When combined with the equipment- and capital-intensive nature of its business, Progress has reduced its operations from two daily shifts to one shift operating a few days each week. Progress asserts that it has expanded sales to other markets, but that it needs to reduce its costs further to continue to operate. To that end, Progress seeks to intervene to explore a modification of the existing economic development tariff or the development of a new load-retention rider.

A hearing was held on July 24, 2017, to assist the Commission in reaching a decision on pending motions to intervene. At the July 24, 2017 hearing, the Commission received testimony in support of Progress's request to intervene from Matthew Hart, a vice president and facilities manager for Progress, and John Wolfram, a consultant. Mr. Hart testified concerning Progress's financial condition, the impact of increased demand charges, and the need for revised or new economic development riders. Mr. Wolfram explained that economic development rates are incentive rates for the following purposes: 1) to attract new customers to locate in a utility's service area; 2) to encourage existing customers to expand their businesses, and thus their consumption of electricity; or 3) to retain existing customers experiencing financial hardship. Mr. Wolfram testified that Kentucky Power's existing Tariff E.D.R. addresses attracting new customers and encouraging existing customers to expand, but fails to address retaining existing customers facing financial hardship. Mr. Wolfram provided a

general description of rate design of a load-retention rate rider and asserted that such a rider is consistent with ratemaking practices. Mr. Wolfram proposed that Kentucky Power develop a load-retention rate rider that would not have an adverse impact on other customers because its costs would be borne by Kentucky Power shareholders, rather than other customer classes.

Counsel for Progress asserted that Progress is an outlier due to its load factor and financial position, and therefore has a special interest that is not adequately represented by any other party to this proceeding.

Based on the motion to intervene and hearing testimony, and being otherwise sufficiently advised, the Commission finds that the only person who has a statutory right to intervene in a Commission case is the Attorney General, pursuant to KRS 367.150(8)(b). Intervention by all others is permissive and is within the sound discretion of the Commission.¹ The Court of Appeals has held that the Commission's discretion to grant or deny a motion for intervention is not unlimited, and has enumerated the limits on the Commission's discretion, with one arising under statute, the other under regulation.² The statutory limitation, KRS 278.040(2), requires that "the person seeking intervention must have an interest in the 'rates' or 'service' of a utility, since those are the only two subjects under the jurisdiction of the PSC."³

The regulatory limitation is set forth in 807 KAR 5:001, Section 4(11)(a), which requires a person to demonstrate either (1) a special interest in the proceeding which is

¹ *Inter-County Rural Electric Cooperative Corporation v. Public Service Commission of Kentucky*, 407 S.W.2d 127, 130 (Ky. 1966).

² *EnviroPower, LLC v. Public Service Commission of Kentucky*, No. 2005-CA-001792-MR, 2007 WL 289328 (Ky. App. Feb. 2, 2007).

³ *Id.* at 3.

not otherwise adequately represented in the case, or (2) that intervention is likely to present issues or develop facts that will assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings.

In analyzing the pending motion to intervene, we find that Progress is a customer of Kentucky Power, but has not demonstrated that it is likely to assist the Commission in rendering its decision on the issues pending before us in this case. The major issue raised by Progress is its need for Kentucky Power to establish a special rate that would reduce Progress's electric bill so that it can continue in business. Such a special rate was not included as part of Kentucky Power's application. The only interest that Progress has demonstrated in the rates and service of Kentucky Power is as a customer with a generalized interest in the ability to pay its electric bill due to a reduced level of business activity, which has resulted in reduced revenue. That interest is too remote to justify intervention here. Therefore, Progress lacks the necessary special interest in the rates and service of Kentucky Power at issue in this case sufficient to justify intervention.

The Commission acknowledges the concerns expressed by Progress regarding its financial hardship. For that reason, the Commission strongly encourages Kentucky Power to supplement its existing economic development efforts by working with Progress to develop economic development options similar to those recently adopted in Case No. 2017-00099⁴ to revitalize the coal extraction and processing industry in Kentucky Power's service territory. In Case No. 2017-00099, the Commission approved

⁴ Case No. 2017-00099, *Application of Kentucky Power Company (1) for Authority to Amend Temporary Tariff C.S.-I.R.P. and Tariff E.D.R.; (2) to Establish Temporarily Tariff C.S.-Coal; (3) for Leave to Deviate from the Notice Requirements of 807 KAR 5:011, Section 8; (4) for Related Accounting Relief; and (5) for All Other Required Approvals and Relief* (Ky. PSC Mar. 23, 2017).

temporary changes to certain tariffs that Kentucky Power requested to address the decline in coal production and employment based on Kentucky Power's stated desire to provide economic incentives to assist an ailing industry.⁵ In testimony filed in support of its application in this case, Kentucky Power states that the economic downturn in its service area is "primarily driven by a decrease in coal and steel production in the region."⁶ Kentucky Power further states that it has worked hard to attract, retain, and expand existing businesses.⁷ Based on Kentucky Power's stated commitment to economic development, its recognition of the importance of retaining existing business, and its desire to assist ailing industries, the Commission encourages Kentucky Power to work with Progress and similarly situated entities, and to identify economic development options similar to those created for the coal industry.

Progress will have ample opportunity to participate in this proceeding even though it is not granted intervenor status. It can review all public documents filed in this case and monitor the proceedings via the Commission's website at the following web address: https://psc.ky.gov/PSC_WebNet/ViewCaseFilings.aspx?Case=179. In addition, Progress may file comments as frequently as it chooses, and those comments will be entered into the record of this case. Finally, if a formal evidentiary hearing is held, Progress will be provided an opportunity at the beginning to present any information that it wishes for the Commission's consideration in this matter.

⁵ *Id.* at 9.

⁶ Application, Direct Testimony of Brad N. Hall, at 4.

⁷ *Id.* at 6.

IT IS HEREBY ORDERED that Progress's motion to intervene is denied.

By the Commission



ATTEST:

A handwritten signature in blue ink, appearing to read "John Hyman".

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