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March 29, 2017

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HAND DELIVERED

Dr. Talina R. Mathews
Executive Director
Public Service Commission
211 Sower Boulevard
P.O. Box 615
Frankfort, KY 40602-0615

RECEIVED

MAR 29 2017

PUBLIC SERVICE
COMMISSION

RE: Case No. 2017-00129

Dear Dr. Mathews:

Enclosed please find and accept for filing the original and ten copies of the motion of Kentucky Power Company for leave to intervene and response to application of East Kentucky Power Cooperative, Inc.

Very truly yours,


Mark R. Overstreet

MRO

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

MAR 29 2017

PUBLIC SERVICE
COMMISSION

In The Matter Of:

The Application Of East Kentucky Power)	
Cooperative, Inc. For A Declaratory Order)	
Confirming The Effect Of Kentucky Law And)	Case No. 2017-00129
Commission Precedent On Retail Electric)	
Customers' Participation In Wholesale)	
Electric Markets)	

MOTION OF KENTUCKY POWER COMPANY FOR LEAVE TO INTERVENE AND RESPONSE TO APPLICATION OF EAST KENTUCKY POWER COOPERATIVE, INC.

Kentucky Power Company provides pursuant to 807 KAR 5:001, Section 19(4) this response to the application for a declaratory order filed by East Kentucky Power Cooperative, Inc. To the extent required or otherwise appropriate, the Company further moves the Public Service Commission of Kentucky pursuant to 807 KAR 5:001, Section 4(11) for leave to intervene in this proceeding.

NATURE OF KENTUCKY POWER'S INTEREST

1. Kentucky Power is a corporation organized in 1919 under the laws of the Commonwealth of Kentucky. The Company's mailing address is 855 Central Avenue, Suite 200, Ashland, KY 41101. Its electronic mail address is kentucky_regulatory_services@aep.com.

2. Kentucky Power is a utility as that term is defined at KRS 278.010(3)(a). Kentucky Power is engaged in the generation, purchase, transmission, distribution, and sale of electric energy.

3. Kentucky Power is a retail electric supplier in the Commonwealth of Kentucky as the term is defined at KRS 278.010(4). Kentucky Power has the exclusive right to provide retail

electric service to customers in its certified territory in all or part of following 20 counties in eastern Kentucky: Boyd, Breathitt, Carter, Clay, Elliott, Floyd, Greenup, Johnson, Knott, Lawrence, Leslie, Letcher, Lewis, Magoffin, Martin, Morgan, Owsley, Perry, Pike and Rowan.

4. Kentucky Power is a member of PJM Interconnection, LLC.

5. Kentucky Power currently participates in the PJM Capacity Market as a Fixed Resource Requirement (“FRR”) entity. As such, Kentucky Power is required to submit to PJM a FRR capacity plan that identifies specific resources that provide Kentucky Power with capacity to meet its reliability obligations. The FRR plan is submitted annually. With its most recent notification, Kentucky Power currently is obligated to participate in the PJM Capacity Market as a FRR entity through the 2020/2021 PJM planning year.

6. By order dated May 19, 2004 in Case No. 2002-00475¹ the Commission authorized, subject to certain conditions that subsequently were satisfied, the transfer by Kentucky Power of functional control of its transmission assets to PJM. Kentucky Power became a member of PJM in connection with the transfer of functional control.

7. The order approving the transfer of functional control of Kentucky Power’s transmission assets to, and hence its membership in, PJM was based in a part on the representations contained in the April 19, 2004 “Agreed “Stipulation” among Kentucky Power, PJM, Kentucky Industrial Utility Customers, Inc., and the Attorney General of the Commonwealth of Kentucky. The Agreed Stipulation provided in pertinent part:

Any PJM-offered demand side response or load interruptions programs will be

¹ Order, *In the Matter of: Application Of Kentucky Power D/B/A American Electric Power For Approval, To The Extent Necessary, To Transfer Functional Control Of Transmission Facilities Located In Kentucky To PJM Interconnection, L.L.C. Pursuant To KRS 278.218*, Case No. 2002-00475 (May 19, 2004) (“Transfer Order.”)

made available to Kentucky Power for its retail customers at Kentucky Power's election. No such program will be made available directly to a retail customer of Kentucky Power. Kentucky Power may, at its election, offer demand side response programs to its retail customers. Any such program would be subject to the applicable rules of the Commission and Kentucky law.²

8. The Commission's May 19, 2004 order approving the transfer of functional control of Kentucky Power's transmission assets to PJM found:

[a]nother major concern expressed in the July 17, 2003 Order [initially denying Kentucky Power's request to transfer functional control of its transmission assets to PJM] was that approving the transfer of control of Kentucky Power's transmission assets to PJM could erode this Commission's existing authority to protect Kentucky Power's retail customers. The Commission notes that Paragraph 4 of the Stipulation [quoted above] is consistent with existing state authority and preserves our right, pursuant to KRS 278.285, to review any demand-side management programs that may be offered by PJM to Kentucky Power.³

9. The May 19, 2004 Order expressly directed: "[n]o such [demand-side management] program will be offered directly by PJM to Kentucky retail customers."⁴

10. Kentucky Power relied on the Commission's May 19, 2004 order and the representations made by PJM in the Agreed Stipulation.

KENTUCKY POWER'S DEMAND-SIDE MANAGEMENT PROGRAMS

11. Kentucky law defines demand-side management to mean "any conservation, load management, or other utility conservation activity intended to influence the level or pattern of customer usage or demand, including home energy assistance programs." KRS 278.010(17). As such, Kentucky law is broad enough to include energy efficiency measures within the definition of demand-side management.

² *Id.* at Appendix A.

³ Transfer Order at 9.

⁴ *Id.*

12. Kentucky Power offers its retail customers multiple tariffed demand-side management programs. In addition, Kentucky Power offers qualifying retail customers the option of receiving interruptible service through Tariff C.S. – I.R.P., consistent with P.J.M.’s Limited Demand Response, Emergency – Capacity Only Program. The tariff provides for the service to be provided pursuant to a special contract to be filed with the Commission. In return, eligible customers taking service under Tariff C.S. – I.R.P. receive a \$3.68 kw/month credit for “interruptible load that qualifies under PJM rules as capacity for purposes of the Company’s FRR obligation.”

THE RISK OF PARTICIPATION OF KENTUCKY POWER RETAIL ELECTRIC CUSTOMERS
IN THE PJM CAPACITY MARKET

13. Kentucky Power is informed by PJM that none of Kentucky Power’s retail customers in the past have bid energy efficiency resource products originating in Kentucky Power’s certified territory into the PJM Capacity Market. PJM further indicated it is unable to determine at this time whether any of Kentucky Power’s retail customers have bid, or plan to bid, energy efficiency resource products originating in Kentucky Power’s certified territory into the ongoing PJM Capacity Market auctions.

14. The risk nevertheless remains that Kentucky Power customers may seek to participate in the PJM Capacity Market in the currently pending or future auctions. Moreover, Kentucky Power is limited in its ability to monitor and take action with respect to such participation. Unlike East Kentucky Power, whose PJM Locational Delivery Area is limited to Kentucky, Kentucky Power is part of the multi-state AEP-East Locational Delivery Area. As such, Kentucky Power cannot independently determine whether energy efficiency resources bid into the PJM Capacity Market originate in Kentucky or some other jurisdiction.

15. Without Commission approval and without a special contract with Kentucky Power, the direct and indirect participation by Kentucky Power's retail customers in the PJM Capacity Market, and PJM's acquiescence to such participation, would be contrary to Kentucky law, including the provisions of Kentucky Certified Territory Act, KRS 278.016 *et seq.*, the terms of the April 19, 2004 Agreed Stipulation among Kentucky Power, PJM, Kentucky Industrial Utility Customers, Inc., and the Attorney General of the Commonwealth of Kentucky in Case No. 2002-00475, and the Transfer Order.

16. The direct and indirect participation by certain of Kentucky Power's retail customers in the PJM Capacity Market in contravention of Kentucky law would unreasonably prejudice Kentucky Power and its other retail customers by clearing supply in the PJM Capacity Market that should not, consistent with Kentucky law, have been offered. Doing so sends improper price signals to regulated companies, such as Kentucky Power, and may artificially lower the clearing price in PJM Capacity Market. The direct and indirect participation by Kentucky Power retail customers in the PJM Capacity Market through the offering of demand-side resources, including energy efficiency resources, could adversely impact other customers of Kentucky Power by eliminating the ability of Kentucky Power to use those resources to meet its FRR obligations in PJM.

17. The direct and indirect participation by Kentucky Power retail customers in the PJM Capacity Market in contravention of Kentucky law undermines the Company's Commission-approved rate structure by providing financial and other benefits to the participating Kentucky Power retail customers not reflected in the Company's rates and tariffs, and by interfering with Kentucky Power's ability to furnish, in accordance with KRS 278.030, adequate, efficient, and reasonable service at fair, just, and reasonable rates.

KENTUCKY POWER'S PROPOSED RESOLUTION

18. Kentucky Power requests the Commission enter an order declaring that:

(a) Retail electric customers within Kentucky Power's certified territory are barred from participating either directly or indirectly, including participating through third-parties, in PJM's Capacity Market and other wholesale markets except through a Commission-approved special contract with Kentucky Power or under the terms of a Commission-approved Kentucky Power tariff; and

(b) Energy efficiency and other demand-side resource providers in Kentucky Power's certified territory may participate in PJM's Capacity Market and other wholesale markets only through a Commission-approved special contract with Kentucky Power or under the terms of a Commission-approved Kentucky Power tariff.

BASES FOR INTERVENTION

19. Kentucky Power's participation in this case is likely to present issues and develop facts that will assist the Commission in fully considering the matter. For example, unlike East Kentucky Power, which has a PJM Locational Delivery Area limited to the territory of the Commonwealth, Kentucky Power is part of the multi-state AEP-East Locational Delivery Area. As a result, Kentucky Power cannot independently confirm whether energy efficiency resources bid into the PJM Capacity Market from the AEP-East Locational Delivery Area originated in Ohio, where state law generally permits such action, or Kentucky, where state law prohibits retail customer participation in the wholesale market. Kentucky Power, unlike East Kentucky Power, can address the requirements necessary for upholding Kentucky law in connection with utilities that are part of a multi-state Locational Delivery Area.

20. In light of the April 19, 2004 Agreed Stipulation among Kentucky Power, PJM, Kentucky Industrial Utility Customers, Inc., and the Attorney General of the Commonwealth of Kentucky in Case No. 2002-00475, and the express limitation imposed by the Transfer Order on PJM's direct offer of PJM demand-side management programs to Kentucky Power's retail customers, as well as its status as part of a multi-state PJM Locational Delivery Area, Kentucky Power has a special interest in this proceeding not otherwise adequately represented. The rights and rules to be determined in this case may have a direct adverse effect on Kentucky Power's rights and obligation to provide reasonable and adequate service.

21. The issues raised by East Kentucky Power's Application are intertwined with the express limitation imposed by the Transfer Order on PJM's direct offer of PJM demand-side management programs to Kentucky Power's retail customers, as illustrated by East Kentucky Power's reference to Kentucky Power's membership in PJM in paragraphs 25, 26, 27, 28, 32, 34, 41, 43, 50, 51, 52, 66, 67, 74, and additional incorporating paragraphs.

22. Kentucky Power's intervention will not unduly complicate or disrupt the proceedings.

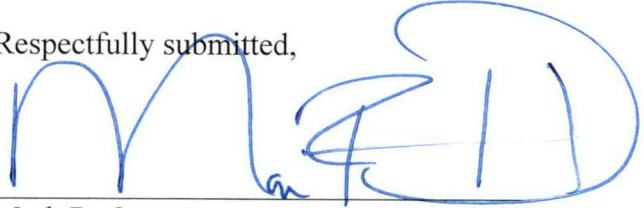
23. Kentucky Power's motion is timely. East Kentucky Power's application for declaratory order was filed on March 10, 2017. The 21-day period for filing responses in accordance with 807 KAR 5:001, Section 19(4) has not expired.

Wherefore, Kentucky Power Company respectfully requests that an order be entered:

1. Filing this response;
2. Granting Kentucky Power leave to intervene in this proceeding;

3. Making the declarations identified in paragraph 18 above; and
4. Granting Kentucky Power all other required approvals and relief.

Respectfully submitted,



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COUNSEL FOR: KENTUCKY POWER
COMPANY

CERTIFICATE OF SERVICE

I hereby certify that a true and copy of the foregoing was served by U.S. mail upon:

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Richard A. Drom
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1717 Pennsylvania Avenue, N.W.
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on this the 29th day of March, 2017.

A handwritten signature in blue ink, appearing to read 'M. R. Overstreet', written over a horizontal line.

Mark R. Overstreet