

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 an untimely filed motion to intervene in this proceeding filed by Community Action Kentucky, Inc., ("CAK") on July 31, 2017. CAK, in partnership with the Department of Community Based Services, administers the federally funded Low Income Home Energy Assistance Program ("LIHEAP") in Kentucky through CAK's network of community action agencies. CAK member agencies provide energy assistance and related services to low-income residents in Kentucky Power Company's ("Kentucky Power") service territory.

As a basis for its motion to intervene, CAK states that it is the primary advocate for low-income customers in Kentucky Power's service area and therefore has a special interest in this proceeding. CAK asserts that it brings a perspective that is not represented by other parties to this proceeding. CAK further asserts that the Attorney General of the Commonwealth of Kentucky ("Attorney General"), who has a statutory

duty to represent consumer interests before the Commission, cannot adequately represent the interests of low-income ratepayers because the Attorney General must represent the interests of all residential ratepayers generally.

By Order entered June 19, 2017 ("June 19, 2017 Order"), the Commission established a date of July 14, 2017, for timely filing of requests to intervene. As set forth in the June 19, 2017 Order, any motion to intervene filed after July 14, 2017, was required to show a basis for intervention and good cause for being untimely. The June 19, 2017 Order further provided that, pursuant to Commission regulations, any person requesting intervention must demonstrate a special interest in the proceeding that is not adequately represented in the case, or 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. The Commission found that a recitation of the quantity of electricity consumed by a movant or a general statement regarding a potential impact of possible modification of rates would not be deemed sufficient to establish a special interest.

By Order entered July 12, 2017, the Commission scheduled a formal hearing on July 24, 2017, to assist the Commission in rendering a decision on all pending motions to intervene. The Commission directed that representatives of each movant be prepared to offer testimony in support of their intervention, describing in specific detail that movant's special interest that is not otherwise adequately represented, or the issues and facts the movant would present that would assist the Commission in fully considering the matter. On July 24, 2017, the Commission heard testimony from eight movants with pending motions to intervene.

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, 807 KAR 5:001, Section 4(11)(a), requires a person to demonstrate either a special interest in the proceeding that is not otherwise adequately represented in the case, or 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 CAK did not show good cause for untimely filing their motion, nor did it demonstrate a special interest in the proceeding that is not otherwise adequately represented or 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. Therefore, the Commission finds that CAK's request to intervene should be denied.

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.

In its motion to intervene, CAK does not provide good cause, or any cause, to demonstrate why it did not timely file its request. CAK filed its untimely motion six weeks after the Commission established the deadline for filing a timely request to intervene, almost three weeks after the Commission scheduling a hearing on all pending motions to intervene, two weeks after the deadline for filing a request to intervene, and one week after the hearing on pending motions to intervene. CAK states that it had knowledge of the July 14, 2017 date for timely intervention, and of the July 17, 2017 Order. CAK states that it “diligently communicated” with its members and with the Attorney General prior to filing its motion to intervene. However, CAK took no steps to notify the Commission or to appear at the July 24, 2017 hearing on pending motions to intervene.

Instead, CAK requests favorable consideration to file out of time due to “application irregularities” arising from certain filing deficiencies.⁴ The Commission notes that Kentucky Power filed its notice of intent to file a general adjustment of its rates on April 26, 2017, with the intention of filing its application for a general rate adjustment no later than May 26, 2017. On May 22, 2017, Kentucky Power requested a filing deviation to obtain additional time to review the application to minimize the risk of any errors, with the proviso that the application would be filed on or before June 28, 2017. The application tendered on June 28, 2017 was rejected for filing and, by Order entered July 17, 2017, the filing deficiencies were deemed cured and the application deemed filed as of July 20, 2017. Any “application irregularities” in this matter do not excuse CAK’s failure to provide good cause for its untimely motion.

⁴ Motion (July 31, 2017) at 3.

The Commission further finds that CAK failed to demonstrate that it has a special interest not otherwise adequately represented or that it was likely to present issues or develop facts without unduly disrupting the proceedings. Despite the Commission's express language that pending motions to intervene must state with specificity the special interest, or issues and facts the movant would present to assist the Commission, CAK set forth only a generalized recitation that it had a special interest in this proceeding as an advocate for low-income ratepayers in Kentucky Power's service territory. The only interest that CAK has in the rates and service of Kentucky Power is a generalized interest regarding low-income residential customers of Kentucky Power, which is too remote to justify granting intervention. Given the distressed economic situation throughout Kentucky Power's service territory, the Attorney General can and will adequately represent the interests of low-income residential customers in the context of representing the interests of residential customers in general.

Last, the Commission finds that CAK failed to demonstrate that it was likely to present issues or develop facts without unduly disrupting the proceedings, or that it was likely to present issues to develop facts that assist the Commission in fully considering the matter.

CAK 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. The Commission strongly encourages CAK to contact the Attorney General to the extent that CAK wishes to provide input or provide a witness or witnesses that the Attorney General might sponsor. In addition, CAK 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, CAK will be provided an opportunity to present any information that it wishes for the Commission's consideration in this matter.

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

By the Commission

ENTERED
AUG 16 2017
KENTUCKY PUBLIC
SERVICE COMMISSION

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