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February 23, 2018

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FEB 23 2018

PUBLIC SERVICE
COMMISSION

VIA HAND DELIVERY

Gwen R. Pinson, Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, KY 40602

Re: IN THE MATTER OF: THE APPLICATION OF SOUTH KENTUCKY RURAL
ELECTRIC COOPERATIVE CORPORATION FOR APPROVAL OF MASTER
POWER PURCHASE AND SALE AGREEMENT AND TRANSACTIONS
THEREUNDER - Case No. 2018-00050

Ms. Pinson:

Please find enclosed and accept for filing on behalf of South Kentucky Rural Electric Cooperative Corporation an original and ten (10) copies of its Response and Objection to the Motion to Intervene filed in the above-styled matter by Nucor Steel Gallatin. Please return a file-stamped copy of this filing to me.

I appreciate your assistance with this matter, and please do not hesitate to contact me with any questions or concerns.

Respectfully submitted,



Mark David Goss

Enclosures

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PUBLIC SERVICE
COMMISSION

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF SOUTH KENTUCKY RURAL)
ELECTRIC COOPERATIVE CORPORATION FOR) Case No. 2018-00050
APPROVAL OF MASTER POWER PURCHASE AND)
SALE AGREEMENT AND TRANSACTIONS THEREUNDER)

**RESPONSE AND OBJECTION TO
NUCOR STEEL GALLATIN'S MOTION TO INTERVENE**

Comes South Kentucky Rural Electric Cooperative Corporation ("South Kentucky"), by counsel, and for its Response and Objection to the Motion to Intervene filed herein by Nucor Steel Gallatin ("Nucor"), respectfully states as follows:

South Kentucky's Application seeks the Commission's approval of a power purchase agreement and related transactions the cooperative has pursued with an "Alternate Source" under Amendment No. 3 to the Wholesale Power Contract between South Kentucky and East Kentucky Power Cooperative, Inc. ("EKPC"). Nucor is a customer of Owen Electric Cooperative, Inc. ("Owen"), harboring speculative and unsupported concern that it may pay higher rates in the future if South Kentucky is permitted to proceed pursuant to Amendment No. 3. Nucor does not meet the statutory or regulatory requirements for intervention in a Commission proceeding, and its Motion should be summarily denied.

The only person who has a statutory right to intervene in a Commission case is the Kentucky 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 Statute and regulation establish the grounds a movant is required to demonstrate in order to be granted intervention; consistent with KRS 278.040(2), “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.”² Additionally, under 807 KAR 5:001, Section 4(11)(a), a proposed intervenor must demonstrate either (1) a special interest in the proceeding which is 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. Nucor fails these tests.

The Commission has regularly denied intervention when a movant’s proffered interest is “too remote to justify intervention”³ or the movant is “a customer with a generalized interest in the ability to pay its electric bill....”⁴ Of course, when a proposed intervenor is not even a customer of the applicant utility (and thus takes no service from and pays no rates to the applicant utility), overwhelming Commission precedent has almost invariably concluded that an interest sufficient to justify intervention does not exist.⁵ Whether or not a customer, it is clear that “...hold[ing] a

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 See, e.g., PSC Case No. 2017-00179, *Electronic Application of Kentucky Power Company for (1) a General Adjustment of its Rates for Electric Service; (2) an Order Approving its 2017 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* (Ky. PSC August 3, 2017), Order at 5 (denying intervention of customer Riverside Generating Company, LLC).

⁴ PSC Case No. 2017-00179 (Ky. PSC August 3, 2017), Order at 4 (denying intervention of customer Progress Metal Reclamation Company); see also PSC Case No. 2009-00198, *In the Matter of Application of Louisville Gas and Electric Company for a Certificate of Public Convenience and Necessity and Approval of Its 2009 Compliance Plan for Recovery by Environmental Surcharge* (Ky. PSC Aug. 28, 2009).

⁵ See, e.g., PSC Case No. 2016-00162, *Application of Columbia Gas of Kentucky, Inc. for an Adjustment of Rates* (Ky. PSC July 21, 2016), Order at 2 (“In analyzing the pending motion to intervene, we find that Direct Energy does not

particular position on issues pending in ... [a] case does not create the requisite ‘special interest’ to justify full intervention under 807 KAR 5:001, Section 3(8)(b).”⁶

Nucor has no interest whatsoever in the rates or service of South Kentucky, and certainly embraces no special interest that will be inadequately represented in this case. Essentially, Nucor opines that South Kentucky’s election under Amendment No. 3 may result in a change to the rates charged by EKPC, which may result in a change to the rates charged by Owen, which may result in a change to the rates paid by Nucor. This speculative and remote so-called “interest” is certainly not in the rates or service of South Kentucky, as required by law, nor is it exceptional or special—indeed, if the intervention of Nucor in this proceeding is appropriate, ultimate consumers of electricity from throughout EKPC’s sixteen (16) Owner-Members’ service territories would appear similarly entitled to propound requests for information, file motions and briefs, and participate in the hearing of this matter. The bounds to intervention prescribed by relevant statute, Commission regulation, and Commission precedent appropriately exclude parties with such indirect interests from full-participant status.⁷

receive natural gas service from Columbia and is not a customer of Columbia. Rather, Direct Energy is a competitive supplier of retail natural gas service. Thus, Direct Energy lacks the necessary interest in the natural gas rates or natural gas service of Columbia sufficient to justify intervention.”); PSC Case No. 2004-00442, *Application of Clark Energy Cooperative, Inc. for Routine Revision of Existing CATV Pole Attachments* (Ky. PSC March 29, 2005), Order at 2 (“In its motion for intervention, KCTA has not alleged any special interest in this proceeding. It is not a customer of the utility. It will not be directly affected by the proposed adjustment in rates. While one of its more than 100 members may be affected by the proposed rate adjustment, that indirect effect is insufficient to satisfy the requirements for full intervention.”); PSC Case No. 96-015, *Application of Columbia Gas of Kentucky, Inc. for an Order Issuing a Certificate of Public Convenience and Necessity to the Extent Such a Certificate is Required to Construct a Pipeline to Service Cooper Tire, Inc. in Mount Sterling, Kentucky* (Ky. PSC February 27, 1996), Order at 1 (“Western argues that any decision in this case favorable to the applicant ... could have a material adverse impact on local distribution companies operating throughout the state including Western. ... Western has no facilities and provides no service in the area which is the subject of this dispute. Western’s interest is therefore too remote to justify full intervention.”).

⁶ PSC Case No. 2007-00337, *In the Matter of: Joint Application of Louisville Gas and Electric Company, Association of Community Ministries, Inc., People Organized and Working for Energy Reform, and Kentucky Association for Community Action, Inc. for the Establishment of a Home Energy Assistance Program* (Ky. PSC Sept. 14, 2007).

⁷ Of course, ample opportunity for Nucor to participate in this case is generally afforded despite denial of intervenor status, particularly through the public comment process.

Moreover, the interest relied upon by Nucor in support of its desired intervention will undoubtedly be adequately represented in the course of this proceeding. South Kentucky expects many of its sister cooperatives, as well as EKPC and the Attorney General, to appear and engage as part of this case, and any potential impact *vis a vis* “cost shifting” as a result of South Kentucky’s Amendment No. 3 election will absolutely be examined. In fact, Owen has filed its own Motion to Intervene and is certainly best prepared to play a constructive role in the Commission’s decision-making process herein. It is further worth noting that the rates Nucor pays for service from Owen, and even the rates EKPC charges to serve Owen and the other Owner-Members, will not change at the conclusion of this proceeding; indeed, Nucor will have multiple opportunities in the future, both within and outside of Commission proceedings, to advocate and negotiate the rates it pays Owen.⁸

Finally, intervention by Nucor in this case should be denied because it is not likely to present issues or develop facts that will assist the Commission in fully considering the matter. Nucor’s proffered “interest” in this case begins and ends with the rates it pays Owen for service, and it has completely failed to demonstrate that its intervention will result in any relevant or meaningful contribution to the Commission’s consideration of whether South Kentucky’s proposed course of action is for a lawful object within the corporate purposes of South Kentucky, is necessary or appropriate for or consistent with the proper performance by South Kentucky of its service to the public and will not impair its ability to perform that service, and is reasonably

⁸ Importantly, Nucor takes service from Owen under a three-party Special Contract previously approved by and on file with the Commission. Nucor is billed for this service according to prescribed rates contained therein for energy and demand, and pays Owen a prescribed Distribution Charge which is fixed over the life of the contract. If the rates paid by Nucor under the contract are to change, it will be the result of negotiation by the parties or the procedures set forth in statute or regulation and, inevitably, the Commission will consider and take substantive action to approve those rates. Nucor’s interest in the rates it pays Owen is simply far too remote to be an appropriate ground for intervention in this South Kentucky case under KRS 278.300.

necessary and appropriate for such purpose.⁹ Even if Nucor did have some special knowledge or expertise in wholesale power purchases or their impacts on cooperative systems, its participation herein would unduly complicate or disrupt the proceedings, since its likely strategy would be to steer these South Kentucky proceedings towards Nucor's individualized interest in the rates it pays Owen.

Based on the foregoing, Nucor's Motion to Intervene in this matter should be overruled by the Commission. Nucor has not demonstrated any special interest in the rates or service of South Kentucky, and whatever speculative and remote interest it may hold in the outcome of this proceeding is not only shared by numerous others but also more appropriately raised in a proceeding involving the rates and service of the cooperative with which it has actually contracted for service. Further, undue complication and disruption is likely if Nucor and/or similarly-situated customers are granted full-intervenor status in this case. For these reasons, Nucor has failed to satisfy the statutory or regulatory requirements for intervention.

WHEREFORE, South Kentucky respectfully requests that the Commission issue an Order denying Nucor's Motion to Intervene.

⁹ See KRS 278.300.

Dated this 23rd day of February, 2018.

Respectfully submitted,



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CERTIFICATE OF SERVICE

Pursuant to 807 KAR 5:001 Section 6, the undersigned certifies that, consistent with 807 KAR 5:001 Section 4(8)(d)(3), a copy of this document has been electronically served upon the following:

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This 23rd day of February, 2018.



Counsel for South Kentucky RECC