

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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In the Matter of:

PUBLIC SERVICE
COMMISSION

THE FILING OF A SPECIAL CONTRACT BY
NATURAL ENERGY UTILITY CORPORATION

) CASE NO.
) 2018-00164

**NATURAL ENERGY UTILITY CORPORATION RESPONSE
TO COLUMBIA GAS MOTION FOR INTERVENTION**

Natural Energy Utility Corporation, (NEUC) by counsel, objects to the intervention of Columbia Gas of Kentucky (Columbia). The only person with a statutory right to intervene in a proceeding before the Commission is the Attorney General. Intervention by all others is permissive and is within the sole discretion of the Commission. *Inter-County Rural Electric Cooperative Corporation v. Public Service Commission of Kentucky*, 407 S.W.2d 127. 130 (Ky. 1996). In exercising its discretion to determine intervention, there are both statutory and regulatory limitations on the Commission. 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." *EnviroPower, LLC v. Public Service Comm'n*, No. 2005-CA-001792-MR. 2007 WL 289328 (Ky. App. Feb. 2, 2007).

807 KAR 5:001 Section 4(11) provides that a motion to intervene, "shall state his or her interest in the case and how an 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." The regulation further provides that:

The commission shall grant a person leave to intervene if the commission finds that he or she has made a timely motion for intervention and that he or she has a special interest in the case that is not otherwise adequately represented or that his or her intervention is likely to present issues or to develop facts that assist the commission in fully considering the matter without unduly complicating or disrupting the proceedings.

The regulatory limitation set forth in 807 KAR 5:001, Section 4(11)(a), requires a person to 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. Columbia has not stated any issues or facts that will assist the Commission's review of the special contract and as explained below, its intervention will delay and complicate this matter.

The Court of Appeals has held that the Commission's discretion to grant or deny a motion for intervention is not unlimited and enumerated the limits on the Commission's discretion: one arising under statute, the other under regulation. 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." *EnviroPower, LLC v. Public Service Commission of Kentucky*, p.3 No. 2005-CA-001792-MR. 2007 WL 289328 (Ky. App. Feb. 2, 2007).

Columbia's motion does not state any rate or service of NEUC that affects Columbia or that Columbia has an interest in. Columbia is not a customer of NEUC. The single issue identified in the motion is avoidance of wasteful duplication of facilities. The facilities to serve the customer are currently in place on property previously served by NEUC and are NEUC facilities. The only "construction" is relocating the current

service point to a new location on the property to conform to the new customer's request.

The exclusive interest of Columbia is as a direct competitor of NEUC. The Commission has denied intervention to requesting competitors who have no interest in either rates or services. In *Enviorpower, supra*, p. 4, East Kentucky Power Cooperative filed an application for a Certificate of Public Convenience and Necessity and EnviroPower - a competitor - sought intervention. The Commission found that EnviroPower's pecuniary interest . . . does not rise to the level of a special interest in this proceeding sufficient to grant intervention." In that case, the Kentucky Court of Appeals upheld the Commission's denial of the motion to intervene in case involving a request for a certificate of convenience and necessity (CPCN), which by its nature involves the issue of wasteful duplication of facilities – the issue Columbia has cited as the sole basis for its intervention. The Court of Appeals noted that a Commission decision to deny intervention is reviewed only for an abuse of discretion and found that it did not abuse that discretion in denying intervention to a person seeking intervention that did not "have an interest in the 'rates' or 'service' of a utility' seeking a CPCN, but that instead was merely a competitor.

The PSC has denied intervention in other proceedings. Critical to these denials have been factors such as the potential interveners being "unlikely to present issues or develop facts that will assist the Commission in considering the matter" or that the party requesting intervention is not a customer of the applicant, does not receive services from the applicant and/or does not pay any rates charged by the applicant.

All of these same factors warrant denial of Columbia's Motion. See *In the Matter of Application of New Cingular Wireless PCS, LLC d/b/a AT&T Mobility for Issuance of a Certificate of Public Convenience and Necessity to construct a Wireless Communications Facility in the Commonwealth of Kentucky in the County of Graves* (Case No. 2017-00368), (November 30, 2017); *In the Matter of: Tariff Filing of East Kentucky Power Cooperative, Inc. and its Member Distribution Cooperatives for Approval of Proposed Changes to their Qualified Cogeneration and Small Power Production Facilities Tariffs and the Implementation of Separate Tariffs for Power Purchases from Solar Generation Qualifying Facilities* (Case No. 2017-00212), (September 22, 2017); *In the Matter of Electronic Application of Kentucky Power Company* (Case No. 2017-00179), (August 16, 2017); and *In the Matter of the Joint Application of PNG Companies LLC ... for Approval of an Acquisition of Ownership* (Case No. 2017-00125), (April 20, 2017).

Not only has Columbia failed to state any interest in NEUC's rates or service, it has failed to identify any issues that it can develop that will assist the Commission in its review of the special contract. Columbia's motion is based on the erroneous assumption that NEUC will be constructing facilities. It will not. As explained in the letter accompanying the special contract, the facilities are in place previously used to serve a former NEUC customer. All NEUC facilities necessary to serve the customer are in place on the property. Only modifications to relocate the point of service are required.

Because this is a special contract in which the customer has requested service from NEUC, the information associated with the service is highly confidential. As explained in the petition for confidentiality submitted with the special contract, the terms, conditions and

service conditions are proprietary and would disclose not only NEUC's financial and operational parameters for this type of service and would also disclose sensitive financial information about the customer.

NEUC will be required to provide highly confidential information regarding the operating costs and characteristics of its generating assets in response to data requests. The Kentucky Open Records Act excludes from public disclosure records confidentially disclosed to an agency or required to be disclosed to it, generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records. NEUC has sought confidential treatment under 807 KAR 5:001, Section 13 of information relating to operating costs and characteristics on the basis that the disclosure of this information would give its competitors – namely Columbia - an unfair advantage to the detriment of NEUC and its customers. If Columbia is allowed intervention, it cannot be granted access to the special contract terms or other confidential information. It is this type of competitor the regulations and statutes exclude from disclosure of confidential information. NEUC cannot provide confidential information to Columbia under any circumstances without suffering the exact competitive harm that KRS 61.878(1)(c)(1) seeks to prevent. This issue alone will unnecessarily complicate and disrupt the proceeding due to the nature of the confidential information that is part of the record.

Additionally, the customer has requested facilities be in place for testing by mid-August with full operation by September 1, 2018. Columbia's intervention may delay the ability of NEUC to meet the contract terms and will potentially delay the customer's start-up time. This facility is located in an economically depressed area of the state. It is believed

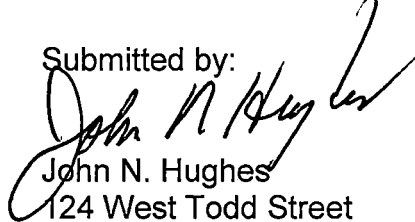
the customer will employ 10 to 12 laborers and three administrative positions.

Columbia has objected to the intervention of competitors in its cases. For example, in Case No. 2016-00162, Order of July 21, 2016, p. 3, the Commission said:

“In analyzing the pending motion to intervene, we find that Stand Energy does not receive natural gas service from Columbia and is not a customer of Columbia. Rather, Stand Energy is a competitive supplier of retail natural gas service. Thus, Stand Energy lacks the necessary interest in the natural gas rates or natural gas service of Columbia sufficient to justify intervention.” The same applies to this case. Columbia should not be able to do to NEUC what it prevented its competitor from doing to it.

For these reasons, the motion to intervene should be denied.

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I certify that a copy of this response was emailed to counsel for Columbia Gas of Kentucky on the 20th day of June, 2018.

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