

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF KENTUCKY)	CASE NO.
UTILITIES COMPANY FOR AN ADJUSTMENT OF)	2018-00294
ITS ELECTRIC RATES)	

ORDER

The matter is before the Commission upon a motion filed by Community Action Council for Lexington-Fayette, Bourbon, Harrison, and Nicholas counties, Inc. (CAC), requesting intervention in the instant proceeding. In support of its motion, CAC states that it is a non-profit community action agency that provides energy assistance and related services to many low-income residents in the Kentucky Utilities Company (KU) service territory. CAC also states that it is a “partner” in several KU programs that assist low-income customers, including the WinterCare Energy Fund, Home Energy Assistance (HEA) Program, and WeCare. CAC points out that it was an intervening party in several KU matters, including the last four KU rate cases, and that it has a special interest in this matter that is not otherwise adequately represented by any other party to this proceeding, including the Attorney General of the Commonwealth of Kentucky, by and through the Office of Rate Intervention (Attorney General). CAC contends that the Attorney General cannot adequately represent the subset of residential customers that are low-income because the Attorney General’s mandate is to represent the interests of consumers generally, not a subset of consumers. In order to assist the Commission in fully considering this rate request, CAC states that it will present facts and data relating to

county poverty rates, Low Income Home Energy Assistance Program, HEA, and the adverse effects of the proposed rate increase to KU's low-income residential customers.

Having reviewed CAC's motion and being otherwise sufficiently advised, the Commission finds that the only person that has a statutory right to intervene 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. In the unreported case of *EnviroPower, LLC v. Public Service Commission of Kentucky*, No. 2005-CA-001792-MR, 2007 WL 289328 (Ky. App. Feb. 2, 2007), the Court of Appeals ruled that this Commission retains power in its discretion to grant or deny a motion for intervention but that discretion is not unlimited. The Court then enumerated the statutory and regulatory limits on the Commission's discretion in ruling on motions for intervention. The statutory limitation, KRS 278.040(2), requires that the person seeking intervention have an interest in the rates or service of a utility as those are the only two subjects under the jurisdiction of the Commission. The regulatory limitation of 807 KAR 5:001, Section 4(11), requires that a person demonstrate a special interest in the proceeding, which is not otherwise adequately represented or that intervention is likely to present issues or develop facts that assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings.

Applying those standards to CAC's request for intervention, the Commission finds that CAC has failed to establish that it has an interest in the instant proceeding that is not otherwise adequately represented. CAC contends that it represents the interests of low-income customers served by KU and that such interest cannot be represented by any other party to this proceeding, including the Attorney General, who was granted

intervention in this matter by Order issued on October 15, 2018. The Commission takes administrative notice of an article that appeared in BereaOnline.com on October 16, 2018, (October 16 Article). In that article, Attorney General Andy Beshear states that the Attorney General's office represents "Kentucky families in electricity . . . cases before the [Commission], while fighting to support vital programs that assist low-income families."¹ The article further states that "[the Attorney General's] office works with several partners and nonprofits to provide alternative rate designs to help assure the elderly and low-income families are protected from unduly harmful rate designs."² The article also mentions the Attorney General obtaining an agreement with utilities, presumably KU and Louisville Gas and Electric Company, to provide shareholder contributions totaling \$1.5 million annually to help low-income residential customers defer utility costs as well as the efforts the Attorney General has made to stop utility rate increases, which could force families to choose between basic needs over higher energy costs.

In light of the statements made in the October 16 Article, the Commission finds that the interests of low-income customers are already adequately represented by the Attorney General, who is a party to this proceeding and is performing his statutory duties pursuant to KRS 367.150(8). The Commission further finds that the Attorney General in prior rate cases has actively and effectively represented the interests of low-income customers. Accordingly, we find that CAC has failed to establish that it has a special interest in this matter that is not otherwise adequately represented.

¹ <http://www.bereaonline.com/2018/10/beshear-our-fight-against-utility-hikes-results-in-1-2-billion-savings/>. A copy of the article is also attached as an Appendix to this Order.

² *Id.*

With respect to the question of whether CAC's intervention is likely to present issues or develop facts that assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings, CAC states that it will present evidence regarding county poverty rates and the impact of the proposed rate increase on KU's low-income residential customers. The Commission finds that such evidence would not assist us in fully considering the matter without unduly complicating the proceedings. We note that KRS 278.030(3) allows a utility to employ suitable and reasonable classifications of its rates and that such classifications may take into account "the nature of the use, the quality used, the time when used, the purpose for which used, and any other reasonable consideration."³ While the statute allows for customer classes to be based on usage, the statute does not permit the establishment of a customer classification based on income level. KU does not have any rate classifications based on income, and the Commission is not authorized to create a separate class for low-income residential customers apart from the general residential customer class. Any impact resulting from KU's proposed rate increase will affect the residential class as a whole and those residential customers, including low-income customers, are already adequately represented by the Attorney General. Accordingly, we find that CAC's motion should be denied.

CAC will have ample opportunity to participate in this 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 encourages CAC to work with the Attorney General to the extent that CAC wishes to provide input or provide a

³ KRS 278.030(3).

witness or witnesses that the Attorney General might sponsor or call upon to testify at any hearing in this matter. For example, although Community Action Kentucky, Inc. (CAK), was denied intervention in Case No. 2017-00179,⁴ involving the rate application of Kentucky Power Company, the Attorney General submitted the testimony of Roger McCann on behalf of CAK. In addition, CAC 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, CAC 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 CAC's motion to intervene is denied.


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⁴ 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 a Regulatory Asset or Liability Related to the Big Sandy 1 Operation Rider; and (5) An Order Granting All Other Approvals and Relief* (Direct Testimony of Roger McCann, filed Oct. 3, 2017).

By the Commission

ENTERED
NOV 09 2018
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:

For 
Executive Director

Case No. 2018-00294

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2018-00294 DATED **NOV 09 2018**

THREE PAGES TO FOLLOW

NEWS, STATE NEWS

BESHEAR: OUR FIGHT AGAINST UTILITY HIKES RESULTS IN \$1.2 BILLION SAVINGS

OCTOBER 16, 2018 | ADMIN | LEAVE A COMMENT

*Andy Beshear*

Over the last three years, my office has protected Kentucky families by opposing dozens of utility bill hikes, and we have helped save Kentucky businesses and families nearly \$1.2 billion.

Whether it is fighting against unreasonable profits or opposing unnecessary projects, I know your bills seem to grow every month. I have made it my mission to reduce the growing monthly burden on Kentuckians.

As attorney general, I represent Kentucky families in electricity, water, sewer and natural gas cases before the state agency that regulates utilities, while fighting to support vital programs that assist low-income families.

My office works with several partners and nonprofits to provide alternative rate designs to help assure the elderly and low-income families are protected from unduly harmful rate designs. One example is an agreement by utilities to provide shareholder contributions totaling nearly \$1.5 million a year to help low-income residential customers defer utility costs.

We have worked especially hard the last three years because families are already struggling to pay their bills, and Kentucky has twice the amount of workers making minimum wage and the third slowest wage growth in the country.

We understand that our fight to stop a utility rate increase may make the difference for families in choosing between basic needs like food and medicine over energy costs.

Our recent victory against an unnecessary proposal to replace thousands of functional meters propelled savings for Kentuckians over the one-billion-dollar mark.

We also took on a water company and were able to cut a rate hike in half.

In two recent rate cases against a natural-gas-only distributor, my office saved Kentuckians millions of dollars. In the first case, we fought off a \$3.3 million annual increase, and kept the average monthly residential impact to a nickel. In our most recent case, which started as a \$10.4 million increase, we were able to secure an overall reduction for families of nearly \$1.4 million.

And in a case against an eastern Kentucky electric power company, we fought against a 16-percent increase, and customers ended up with a 4-percent decrease.

It's your voice and our fight before the state agency that regulates utility companies - the Kentucky Public Service Commission - that makes a difference. Your involvement at public comment meetings and your letters and phone calls to the Public Service Commission do make a difference.

Currently, my office is fighting against an unprecedented number of investor-owned utility rate cases before the Public Service Commission. The proposed total impact of these cases would mean a nearly \$200 million annual rate increase for our families.

We cannot allow one utility, much less four or five, to unnecessarily raise rates that would harm Kentuckians in ways we have never seen before. To have your voice heard, you can contact the Public Service Commission at 502-564-3940.

When a utility proposal is harmful to Kentuckians, our position will never waiver, and as with every mission of ours, we will continue to fight for the people of Kentucky against those who try to put profits over what's best for our people.

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Beshear Opposes Federal Cuts to Low Income Utility Program, CDBG Grants

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