

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC TARIFF FILING OF EAST	)	
KENTUCKY POWER COOPERATIVE, INC. TO	)	CASE NO.
ESTABLISH ITS EARNINGS MECHANISM	)	2021-00429
TARIFF	)	

ORDER

This matter arises upon the motion of the Nucor Steel Gallatin (Nucor), filed December 2, 2020<sup>1</sup>, for full intervention. As a basis for its motion, Nucor states that, as a large industrial customer, Nucor has a special interest in the impact a decision in this proceeding will have on rates. Nucor further argues that it can present issues and develop facts to assist the Commission because Nucor was a signatory party to a settlement approved as modified by the Commission in a previous proceeding<sup>1</sup> that proposed the earning mechanism at issue in this proceeding.

LEGAL STANDARD

The only person who has a statutory right to intervene in a Commission case is the Attorney General of the Commonwealth of Kentucky (Attorney General), pursuant to KRS 367.150(8)(b). Intervention by all others is permissive and is within the sole discretion of the Commission.<sup>2</sup>

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<sup>1</sup> Case No. 2021-00190, *Electronic Application of East Kentucky Power Cooperative, Inc. for a General Adjustment of Rates, Approval of Depreciation Study, Amortization of Certain Regulatory Assets, and Other General Relief* (Ky. PSC Sept. 30, 2021).

<sup>2</sup> *Inter-County Rural Electric Cooperative Corporation v. Public Service Commission of Kentucky*, 407 S.W.2d 127, 130 (Ky. 1966).

The statutory standard for permissive intervention, 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.”<sup>3</sup>

The regulatory standard for permissive intervention, set forth in 807 KAR 5:001, Section 4, is twofold. Commission regulation 807 KAR 5:001, Section 4(11) requires a person to set forth in the motion to intervene either (1) a special interest in the proceeding that 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.

#### DISCUSSION AND FINDINGS

Based on a review of the pleadings at issue and being otherwise sufficient advised, the Commission finds that Nucor demonstrated that Nucor has a special interest in the proceeding over which the Commission has jurisdiction that is not otherwise adequately represented or that Nucor is likely to present issues or develop facts that will assist the Commission in considering this matter without unduly complication the proceedings, for the reasons discussed below.

Based upon the motion, the Commission finds that Nucor’s motion to intervene should be granted. This is because Nucor, as a party in a previous proceeding, participated in developing the proposed earnings mechanism, and thus will present issues and develop facts that will assist the Commission in reaching a decision in this matter without delaying or unduly complicating the proceeding. Further, Nucor demonstrated

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<sup>3</sup> *EnviroPower, LLC v. Public Service Commission of Kentucky*, No. 2005-CA-001792-MR, 2007 WL 289328 at 3 (Ky. App. Feb. 2, 2007).

that it has a special interest that will not be otherwise adequately represented. The only other intervenor is the Attorney General, who represents the interest of all consumers, with a particular focus on residential customers. As a large industrial customer, Nucor will represent interests not otherwise adequately represented.

Based on the above, the Commission finds that Nucor should be granted full rights of a party in this proceeding. The Commission directs Nucor to the Commission's July 22, 2021 Order in Case No. 2020-00085<sup>4</sup> regarding filings with the Commission.

IT IS HEREBY ORDERED that:

1. The motion of Nucor to intervene is granted.
2. Nucor shall be entitled to the full rights of a party and shall be served with the Commission's Orders and with filed testimony, exhibits, pleadings, correspondence, and all other documents submitted by parties after the date of this Order.
3. Nucor shall comply with all provisions of the Commission's regulations, 807 KAR 5:001, Section 8, related to the service and electronic filing of documents.
4. Pursuant to 807 KAR 5:001, Section 8(9), within seven days of entry of this Order, Nucor shall file a written statement with the Commission that:
  - a. Certifies that it, or its agent, possesses the facilities to receive electronic transmissions; and
  - b. Sets forth the electronic mail address to which all electronic notices and messages related to this proceeding should be served.

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<sup>4</sup> Case No. 2020-00085, *Electronic Emergency Docket Related to the Novel Coronavirus COVID-19* (Ky. PSC July 22, 2021), Order (in which the Commission ordered that for case filings made on and after March 16, 2020, filers are NOT required to file the original physical copies of the filings required by 807 KAR 5:001, Section 8).

By the Commission

ENTERED  
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KENTUCKY PUBLIC  
SERVICE COMMISSION

ATTEST:

  
Executive Director

Case No. 2021-00429

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