

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC JOINT APPLICATION OF)	
AMERICAN ELECTRIC POWER COMPANY, INC.,)	
KENTUCKY POWER COMPANY AND LIBERTY)	CASE NO.
UTILITIES CO. FOR APPROVAL OF THE)	2021-00481
TRANSFER OF OWNERSHIP AND CONTROL OF)	
KENTUCKY POWER COMPANY)	

ORDER

This matter arises upon the motion of the LS Power Development, LLC (LS Power), filed January 11, 2022, for full intervention. On January 13, 2022, Kentucky Power Company (Kentucky Power) filed a response in objection to the motion. LS Power filed a reply to Kentucky Power's response on January 18, 2022. This matter now stands submitted for a decision on LS Power's motion to intervene.

The parties granted intervention in this proceeding to date is the Attorney General of the Commonwealth of Kentucky, by and through the Office of Rate Intervention (Attorney General), Kentucky Industrial Utility Customers, Inc. (KIUC), Sierra Club, and Walmart, Inc. (Walmart).

LEGAL STANDARD

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 sole discretion of the Commission.¹

¹ *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.”²

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. A finding of either prong of the standard is enough to warrant intervention.

LS POWER’S AND KENTUCKY POWER’S ARGUMENTS

LS Power Motion to Intervene

LS Power explained that it developed, constructed, managed, or acquired more than 45,000 MW of renewable energy generation, including utility-scale solar, wind, hydro, natural gas-fired, and battery energy storage. LS Power further explained that, through an affiliate, LS Power invests in renewables and energy storage.

In its motion, LS Power argued that it met both prongs for intervention. LS Power first argued that it has a special interest not otherwise adequately represented. LS Power maintained that its special interest is twofold: (1) an LS Power affiliate, Riverside Generating Company, L.L.C. (Riverside), is as an industrial customer of Kentucky Power and electric generator in Kentucky Power’s service territory that participates as a capacity resource in PJM Interconnection, LLC’s (PJM) market; and (2) LS Power’s development

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

of renewable and energy storage in Kentucky with interconnection needs. LS Power argued that it had a special interest in the impact of the proposed transaction regarding Kentucky Power's current cost structure and supply mix, and in the cost competitiveness, procurement, and reliability of Kentucky Power's future supply mix. LS Power also argued that Liberty Utilities Co. (Liberty), the company that is requesting approval to acquire Kentucky Power, planned evaluation of Kentucky Power's future participation in PJM impacts LS Power because Riverside earns nearly all of its revenues from PJM energy, capacity, and ancillary service markets. Finally, LS Power argued that its active development of solar resources in Kentucky would be impacted by Kentucky Power's future plans regarding its supply mix, competitiveness of supply procurement, and evaluation of future participation in PJM.

LS Power also maintained that it will present issues or develop facts that will assist the Commission in considering this matter without unduly complicating or delaying the proceeding. Specifically, LS Power argued that its experience in the PJM market and status as a customer and generator in Kentucky Power's service territory will enable LS Power to present issues or develop facts that will assist Commission in reaching a decision.

Kentucky Power's Response in Objection

Kentucky Power argued that LS Power cannot satisfy the two pronged standard for intervention. Kentucky Power argued that LS Power does not have a special interest in Kentucky Power's rates and service because LS Power is not a customer of Kentucky Power. Kentucky Power further argued that LS Power offered only a generalized interest in Kentucky Power rates and service via its affiliate, Riverside, and that Commission precedent holds that a generalized interest is not a sufficient basis to create a special

interest. Finally, Kentucky Power argued LS Power could not establish that its interest is not adequately represented because KIUC represents the special interests of industrial customers, such as Riverside, and thus LS Power's interest that is tied to Riverside's status as an industrial customer is adequately represented by KIUC.

Kentucky Power also asserted that LS Power could not present issues or develop facts that would assist the Commission. Kentucky Power argued that LS Power's experience as an renewable energy electric generator and developer of renewable energy is irrelevant to the matters to be considered in this proceeding, and thus cannot present issues or develop facts to assist the Commission because this case does not involve an application for a solar project, rate adjustment, or tariff modification. Kentucky Power also argued that LS Power is a direct competitor in the PJM wholesale market, which would impact Kentucky Power's ability to share confidential information, and thus would complicate the proceedings.

LS Power's Reply

LS Power argued that the fact that it was not a customer of Kentucky Power did not preclude LS Power from having an interest in Kentucky Power's rates and service, arguing that KIUC and Sierra Club are not customers of Kentucky Power.³ LS Power reiterated that it had a special interest arising from LS Power's renewable energy activities, which would be impacted by Liberty's plans regarding a future generation resource mix.

LS Power maintained that, as a long-standing PJM market participant, LS Power can draw upon its experience to present issues and develop facts relevant to the matters

³ The Commission notes that, pursuant to long-standing precedent, KIUC and Sierra Club identified the member's interest that they represent in their respective motions to intervention and stated that their respective members are customers of Kentucky Power.

to be decided, especially those related to PJM. Responding to Kentucky Power's concern that, as a competitor, LS Power's access to confidential material would complicate the proceeding, LS Power stated it would not seek to review confidential information and would enter into a confidentiality agreement specifically carving out the information from disclosure to LS Power.

DISCUSSION AND FINDINGS

Based on a review of the pleadings at issue and being otherwise sufficient advised, the Commission finds that LS Power demonstrated that LS Power is likely to present issues or develop facts that will assist the Commission in considering this matter without undue complication the proceedings. Based on the pleadings, LS Power can present issues and develop facts regarding participation in PJM. This is especially important given that, if the Commission approves Liberty's acquisition of Kentucky Power, there will be significant issues surrounding Kentucky Power's current participation in PJM as an affiliate of American Electric Power Company and the impact of unwinding that relationship. Regarding Kentucky Power's concerns about LS Power's access to confidential information, the Commission notes that LS Power voluntarily offered to enter into an agreement with Kentucky Power to preclude LS Power from accessing or reviewing confidential information. Further, the Commission has experience with similar circumstances in which one party is precluded from reviewing another party's confidential information to prevent disclosure of information that could result in competitive harm. Finally, 807 KAR 5:001, Section 13 includes provisions for dealing with limitations, including manner and extent, for a party's access to confidential material.

Because the Commission determined that LS Power is likely to present issues or develop facts that will assist the Commission in considering this matter without undue

complication the proceedings, it need not determine whether LS Power has a special interest not otherwise adequately represented.

Based on the above, the Commission finds that LS Power should be granted full rights of a party in this proceeding. The Commission directs LS Power to the Commission's July 22, 2021 Order in Case No. 2020-00085⁴ regarding filings with the Commission.

IT IS HEREBY ORDERED that:

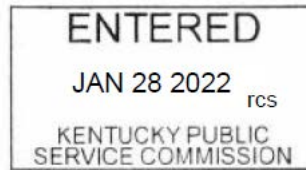
1. The motion of LS Power to intervene is granted.
2. LS Power shall be entitled to the full rights of a party and shall be served with the Commission's Orders and with filed testimony, exhibits, pleadings, correspondence, and all other documents submitted by parties after the date of this Order, with the exception of confidential materials that are subject to a protective agreement between LS Power and the parties.
3. LS Power 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. LS Power shall adhere to the procedural schedule set forth in the Commission's January 6, 2022 Order and as amended by subsequent Orders.
5. Pursuant to 807 KAR 5:001, Section 8(9), within seven days of entry of this Order, LS Power shall file a written statement with the Commission that:
 - a. Certifies that it, or its agent, possesses the facilities to receive electronic transmissions; and

⁴ 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).

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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By the Commission



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