

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC TARIFF FILING OF KENTUCKY	)	
POWER COMPANY FOR APPROVAL OF A	)	
SPECIAL CONTRACT UNDER ITS ECONOMIC	)	CASE NO.
DEVELOPMENT RIDER AND DEMAND	)	2022-00424
RESPONSE SERVICE TARIFFS WITH CYBER	)	
INNOVATION GROUP, LLC	)	

ORDER

This matter arises upon the joint motion of Mountain Association (MA), Kentuckians for The Commonwealth (KFTC), Appalachian Citizens' Law Center (ACLC), Sierra Club, and Kentucky Resources Council (KRC) (collectively, Joint Movants) filed on December 22, 2022, for full intervention.

As bases for their motion, Joint Movants stated that individually and collectively the organizations have a special interest in this proceeding that is not adequately represented by the existing parties to this proceeding. Further, Joint Movants argued that they will present issues and develop facts that will assist the Commission in fully considering the matter without unduly complicating or disrupting the proceeding. Joint Movants asserted that they will jointly offer discovery and actively participate in this proceeding, and that they will speak with one voice with coordinated participation. In support of their statement that they will present issues and develop facts to assist the Commission, Joint Movants stated the following with respect to each organization:

- MA stated that it is a non-profit organization that works with the people of Eastern Kentucky and Central Appalachia and has worked with Kentucky Power

Company's (Kentucky Power) customers for 14 years providing financing to access investments in energy efficiency and renewable energy as well as assisted energy contractors with technical trainings and equipment.

- ACLC stated that it is a Kentucky Power customer and ratepayer. As an organization, ACLC asserted that it is focused on addressing environmental, health, and economic impacts of resource extraction in Eastern Kentucky. The organization further stated that it emphasizes utility affordability and working toward a just, economic transition away from coal. ACLC cited a case in which it intervened to represent a different entity in another matter involving Kentucky Power.<sup>1</sup>

- KFTC stated that it is a customer of Kentucky Power. Further, KFTC argued that it is involved with issues affecting low-income residential ratepayers and has previously supported expert testimony in other rate cases. While KFTC did not specifically identify any individual member of its organization that was a Kentucky Power ratepayer, KFTC stated that it had over 593 members in Kentucky Power's service territory.

- Sierra Club stated that more than 5,800 Kentuckians belong to Sierra Club's Kentucky Chapter, including Kentucky Power ratepayers. Further, Sierra Club argued that it has years of experience working on energy and electric generation issues throughout the United States, and it has advocated for cost-effective investments in demand response, energy storage, energy efficiency, and renewable energy, while

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<sup>1</sup> See Case No. 2009-00459, *Application of Kentucky Power Company for a General Adjustment of Electric Rates* (Ky. PSC Feb. 5, 2010) (where ACLC represented Pike County Senior Citizens' Program, Inc.).

reducing reliance on fossil-based generation. Sierra Club did not identify any specific member that is currently within Kentucky Power's service territory.

- KRC stated that it has provided technical and legal assistance to low-income individuals, organizations, and communities in Kentucky. While KRC did not identify a specific Kentucky Power ratepayer, KRC argued that it has representational capacity because it represents members within Kentucky Power's service area.

#### 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, by and through the Office of Rate Intervention (Attorney General), pursuant to KRS 367.150(8)(b). The Attorney General filed a motion to intervene on December 19, 2022, which the Commission granted on December 22, 2022. Intervention by all others is permissive and is within the sole discretion of the Commission.<sup>2</sup> The only other party that has timely requested intervention in this case is Kentucky Industrial Utility Customers (KIUC).

The regulatory standard for permissive intervention, set forth in 807 KAR 5:001E, Section 4, is twofold. Commission regulation 807 KAR 5:001E, 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.

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

## DISCUSSION AND FINDINGS

Based on a review of the pleadings at issue and being otherwise sufficiently advised, the Commission finds that Joint Movants are likely to present issues or develop facts that will assist the Commission in considering this matter without unduly complicating the proceedings, for the reasons discussed below.

The Joint Movants have asserted that they will speak with one voice and participate in this proceeding to develop a fuller and more robust case record. All of the organizations included in the Joint Motion have previously participated in prior Commission cases. Additionally, the Commission included a letter on KRC'S letterhead and joined by MA, ACLC, and Sierra Club as an Appendix to its Opening Order in this case.<sup>3</sup> That letter identified issues in the special contract at issue that the Commission seeks to explore in this case. Accordingly, the Commission finds that the Joint Movants' motion should be granted under the second prong of 807 KAR 5:001E, Section 4(11)(b) because Joint Movants are likely to present issues or develop facts that will assist the Commission in considering this matter without unduly complicating the proceedings.

Due to the fact that Joint Movants have established sufficient facts to be granted intervenor status by satisfying at least one of the two prongs required for admission by 807 KAR 5:001E, Section 4(11), the Commission makes no finding as to whether or not Joint Movants have a special interest under the other prong of 807 KAR 5:001E, Section 4(11) because that issue is moot.

Based on the above, the Commission finds that Joint Movants should be granted full rights of a party in this proceeding. The Commission directs Joint Movants to the

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<sup>3</sup> Opening Order (Ky. PSC Dec. 15, 2022), Appendix B.

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. Joint Movants' motion to intervene is granted.
2. Joint Movants are 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. Joint Movants shall comply with all provisions of the Commission's regulations, 807 KAR 5:001E, Section 8, related to the service and electronic filing of documents.
4. Joint Movants shall adhere to the procedural schedule set forth in the Commission's December 15, 2022 Order and as amended by subsequent Orders.
5. Pursuant to 807 KAR 5:001E, Section 8(9), within seven days of service of this Order, Joint Movants 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 shall 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).

PUBLIC SERVICE COMMISSION

  
Chairman

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Vice Chairman

  
Commissioner

ENTERED

JAN 12 2023

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KENTUCKY PUBLIC  
SERVICE COMMISSION

ATTEST:

  
Executive Director

Case No. 2022-00424

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