

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF PENNYRILE	)	
REGIONAL ENERGY AGENCY FOR A	)	CASE NO.
DECLARATORY ORDER REGARDING THE	)	2023-00195
JURISDICTION OF THE PUBLIC SERVICE	)	
COMMISSION	)	

ORDER

On July 5, 2023, Atmos Energy Corporation (Atmos) filed a motion requesting to intervene in this proceeding. As a basis for its motion, Atmos stated that it has a special interest in this proceeding because it owns and operates natural gas distribution facilities in the counties in which Pennyrile Regional Energy Agency (Pennyrile Agency) proposes to furnish gas service. Pennyrile Agency has applied in this case for a declaratory order regarding the jurisdictional status under KRS 278.040 of its proposed operations and facilities.

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). Intervention by all others is permissive and within the sole discretion of the Commission.<sup>1</sup>

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<sup>1</sup> *Inter-County Rural Electric Cooperative Corporation v. Public Service Commission of Kentucky*, 407 S.W.2d 127, 130 (Ky. 1966).

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.

### BACKGROUND

Pennyrile Agency is an interlocal agency created by the cities of Guthrie and Trenton, Kentucky, pursuant to the Interlocal Cooperation Act, KRS 62.210. According to Pennyrile Agency's application, it was formed "to foster development in the region through the creation of a natural gas system."

Pennyrile Agency stated in its application that it plans to construct a 53-mile intrastate natural gas pipeline to provide gas service to unserved and underserved areas of Todd, Christian, Trigg, Caldwell, and Lyon counties, Kentucky. Pennyrile Agency stated that it expects the pipeline to be in service by the end of 2025 or early 2026.

Pennyrile Agency's application requests the Commission to declare that as an interlocal agency, it will not be a "utility" as defined in KRS 278.010 and that therefore the Commission will not have jurisdiction over its rates and services. Pennyrile Agency acknowledged the Commission's authority to regulate the safety of the proposed pipeline.

Atmos is a natural gas distribution utility that owns and operates a pipeline system that provides gas service to 37 counties in Kentucky, including the counties of Todd, Christian, Trigg, Caldwell, and Lyon County. Atmos is a utility subject to the plenary jurisdiction of the Commission under KRS 278.040.

## DISCUSSION AND FINDINGS

Atmos asserted in its application that it has a special interest in this proceeding because it owns and operates natural gas distribution facilities subject to the Commission's jurisdiction in the counties in which Pennyrile Agency is proposing to provide natural gas service. Atmos stated that the Pennyrile Agency's proposed operation of a gas distribution system could have a direct impact on its ability to operate and serve its customers in Pennyrile Agency's proposed service area. Atmos stated that its interest in the outcome of this case is specific to Atmos and potentially affects its future service. Atmos claimed that it can provide information about existing gas facilities and the need and demand for new facilities in the area. Finally, Atmos asserted that no other potential party has specific knowledge of the existing facilities, the customer base, and the potential impact of Pennyrile Agency's proposed provision of gas service.

On July 12, 2023, Pennyrile Agency filed a response to Atmos's motion to intervene. Pennyrile Agency argued that the motion should be denied for several reasons. First, Pennyrile Agency argued that Atmos's motion should be denied because Atmos failed to comply with 807 KAR 5:001, Section 19(4), which provides that unless the Commission orders otherwise, "responses, if applicable, to an application for declaratory order shall be filed with the commission within twenty-one (21) days after the date on which the application was filed with the commission." Pennyrile Agency noted that Atmos failed to file a response to its application within 21 days of its filing.

Pennyrile Agency next argued that Atmos failed to articulate a special interest in this case that would justify intervention. Pennyrile Agency asserted that the alleged special interest advanced by Atmos is not relevant to the legal issue of whether it's

planned operations will subject it to the Commission's general jurisdiction as a "utility." Pennyrile Agency noted that Atmos has not disputed any of the material facts set forth in its application for declaratory order.

Pennyrile Agency's last argument is that Atmos failed to identify any issue it could present or fact it could develop that will assist the Commission in fully considering this matter. Pennyrile Agency argued that the facts and issues cited by Atmos in its motion are irrelevant to the legal issue of whether it falls within the definition of "utility" in KRS 278.010(3).

Based on a review of the pleadings at issue and being otherwise sufficiently advised, the Commission finds that Atmos has failed to demonstrate that it has a special interest in the proceeding over which the Commission has jurisdiction that is not otherwise adequately represented or that Atmos is 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 Commission finds that the issue raised in Pennyrile Agency' application is a question of legal interpretation – is Pennyrile Agency a “utility” within the meaning of KRS 278.010(3)(b). Atmos in its motion to intervene did not offer any argument or information pertaining to this issue or contest the verified facts as presented by the applicant. The Commission finds that this case will not involve consideration of the need for Pennyrile Agency's proposed facility or the potential for wasteful duplication. Presentation of these factual issues would not assist the Commission in ruling on Pennyrile Agency's jurisdictional status. Granting Atmos party status and allowing it to serve data requests regarding these issues also could unduly disrupt the proceeding.

The Commission acknowledges that Atmos could be indirectly affected by the Commission's decision in this case. The Commission finds, however, that Atmos can adequately represent its interests, if any, by filing a substantive response to the declaratory order application and that full party status is unwarranted. Given the complicated legal issues involved, the Commission finds that it would be helpful to have a substantive response to the application, especially if such a response does not require intervention. The Commission finds that an Order should be entered granting Atmos two weeks from the date of service of the Order to file a response to Pennyrile Agency's application for a declaratory order. Atmos should present any additional information if it contends that additional action is necessary to ensure a complete record per 807 KAR 5:001, Section 19(8).

IT IS THEREFORE ORDERED that:

1. Atmos's motion to intervene is denied.
2. Atmos shall have two weeks from the date of service of this Order to file a response to Pennyrile Energy's application for declaratory order.

PUBLIC SERVICE COMMISSION

Kent Olson  
Chairman

by KAC  
w/permission } Angen Hadden  
Vice Chairman

Mary Pat Deegan  
Commissioner

ENTERED  
OCT 20 2023 bsb  
KENTUCKY PUBLIC  
SERVICE COMMISSION

ATTEST:

[Signature] For  
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