

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN ELECTRONIC EXAMINATION OF THE)	
APPLICATION OF THE FUEL ADJUSTMENT)	CASE NO.
CLAUSE OF KENTUCKY POWER COMPANY)	2022-00036
FROM MAY 1, 2021 THROUGH OCTOBER 31,)	
2021.)	

ORDER

On April 26, 2022, Kentucky Industrial Utility Customers, Inc. (KIUC) filed a motion requesting to intervene in this proceeding. On April 28, 2022, KIUC filed another motion, requesting leave to file an out-of-time request to intervene. In accordance with the procedural schedule established on March 31, 2022, the intervention deadline was April 22, 2022, and anyone who submitted a motion to intervene after April 22, 2022, had to show good cause for the untimely filing.

KIUC argued that it filed the untimely motion based upon Kentucky Power Company's (Kentucky Power) April 26, 2022 filing to temporarily reduce Kentucky Power's Fuel Adjustment Clause (FAC) rates.¹ KIUC further argued that, given the significant increase in fuel costs experienced in recent months, stakeholders should be permitted to closely examine Kentucky Power's FAC approach. KIUC noted that it filed a motion to intervene on April 26, 2022, after KIUC became aware of Kentucky Power's filing.

¹ Case No. 2022-00125, *Electronic Application of Kentucky Power Company to Defer a Portion of Fuel Adjustment Clause Charges for Later Collection Without Establishing a Regulatory Asset* (filed Apr. 26, 2022), Notice of Filing of Temporary Revisions to Tariff F.A.C.

As a basis for its motion to intervene, KIUC stated that it has a special interest in this matter, acting on behalf of Catlettsburg Refining LLC—a member of KIUC and a customer of Kentucky Power—who will be affected by Kentucky Power FAC rates. KIUC argued that this special interest cannot be adequately represented by any existing party. KIUC stated that the Attorney General of the Commonwealth of Kentucky, by and through the Office of Rate Intervention (Attorney General), is statutorily charged with representing the interests of “consumers” pursuant to KRS 367.150(8), and that duty relates primarily to residential customers. KIUC further stated that its interest is exclusively related to large industrial customers, who take service on different rate schedules than residential customers.

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.²

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.”³

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

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

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

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.

By Order dated March 31, 2022, the Commission set an intervention deadline of April 22, 2022, but found that parties may intervene after that date “upon a showing of good cause.”⁴

DISCUSSION AND FINDINGS

Based upon the motion for leave to file out-of-time request to intervene, the Commission finds that KIUC has shown good cause for the untimely motion because KIUC’s request to intervene is based upon Kentucky Power’s April 26, 2022 filing to reduce the FAC and KIUC filed a request to intervene shortly after Kentucky Power’s filing.

Based on a review of the pleadings at issue and being otherwise sufficient advised, the Commission further finds that KIUC demonstrated that it has a special interest in the proceeding over which the Commission has jurisdiction that is not otherwise adequately represented and that it 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.

KIUC has a special interest in this case as they represent large industrial customers, including Catlettsburg Refining LLC, in Kentucky Power’s service territory and will have their electric costs directly impacted by the Commission’s review of Kentucky Power’s FAC rates. In addition, Commission Staff plans to issue at least another round

⁴ Order (Ky. PSC Mar. 31, 2022) at 3.

of requests for information, and KIUC could provide additional questions for discovery purposes and could assist in the development of the case record. KIUC stated that it will accept and abide by the Commission's June 1, 2022 deadline for requests for a hearing or a decision on the record.

The Commission, on its own motion, finds that a procedural schedule should be established for the orderly processing of this case. A procedural schedule is set forth in the Appendix to this Order. The Commission directs KIUC to the Commission's July 22, 2021 Order in Case No. 2020-00085⁵ regarding filings with the Commission.

IT IS HEREBY ORDERED that:

1. KIUC's motion for leave to file an out-of-time request to intervene is granted.
2. KIUC's motion to intervene is granted.
3. KIUC is 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.
4. KIUC 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.
5. The procedural schedule set forth in the Appendix to this Order shall be followed.
6. Pursuant to 807 KAR 5:001, Section 8(9), within seven days of entry of this Order, KIUC shall file a written statement with the Commission that:

⁵ 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).

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.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

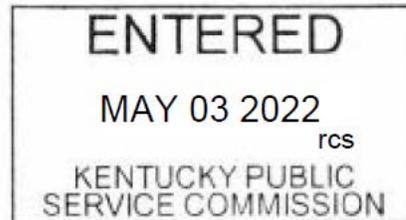
PUBLIC SERVICE COMMISSION



Chairman

Vice Chairman

Commissioner



ATTEST:



Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2022-00036 DATED MAY 03 2022

All supplemental requests for information to Kentucky Power
shall be filed no later than 05/09/2022

Kentucky Power shall file responses to supplemental requests
for information no later than 05/18/2022

Intervenor testimony, if any, in verified prepared
form shall be filed no later than 05/20/2022

All requests for information to Intervenors shall
be filed no later than 05/06/2022

Intervenors shall file responses to requests for
information no later than 05/18/2022

Kentucky Power shall file, in verified form, its rebuttal
testimony no later than 05/30/2022

Last day for Parties to request a Public Hearing or submit a
request for the matter be decided based upon the written record 06/01/2022

*Amy J Elliott
Kentucky Power Company
1645 Winchester Avenue
Ashland, KY 41101

*Honorable Mark R Overstreet
Attorney at Law
Stites & Harbison
421 West Main Street
P. O. Box 634
Frankfort, KENTUCKY 40602-0634

*Jody M Kyler Cohn
Boehm, Kurtz & Lowry
36 East Seventh Street
Suite 1510
Cincinnati, OHIO 45202

*Honorable Kurt J Boehm
Attorney at Law
Boehm, Kurtz & Lowry
36 East Seventh Street
Suite 1510
Cincinnati, OHIO 45202

*Kentucky Power Company
1645 Winchester Avenue
Ashland, KY 41101

*Kenneth J Gish, Jr.
Stites & Harbison
250 West Main Street, Suite 2300
Lexington, KENTUCKY 40507

*Katie M Glass
Stites & Harbison
421 West Main Street
P. O. Box 634
Frankfort, KENTUCKY 40602-0634

*Honorable Michael L Kurtz
Attorney at Law
Boehm, Kurtz & Lowry
36 East Seventh Street
Suite 1510
Cincinnati, OHIO 45202