

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF COLUMBIA	)	CASE NO.
GAS OF KENTUCKY, INC. FOR APPROVAL OF	)	2022-00049
THE GREEN PATH RIDER PILOT PROGRAM	)	

ORDER

On July 19, 2023, XOOM Energy Kentucky, LLC (XOOM) filed a motion requesting to intervene in this proceeding. As a basis for its motion, XOOM stated that it is an affiliate of NRG Energy, Inc. (NRG), which includes other natural gas and electricity retail suppliers that collectively serve over six million electricity and natural gas customers across 24 states.<sup>1</sup> XOOM argued that it and NRG bring a broad spectrum of experience to this proceeding that is not otherwise adequately represented by any other party or prospective party in this above-captioned case, and XOOM's participation will not unduly complicate or disrupt the proceeding.<sup>2</sup> XOOM stated that the Green Path Rider, as proposed by Columbia Gas Kentucky, Inc. (Columbia Kentucky) to Columbia Kentucky's service offerings, may significantly impact the competitive market, and XOOM has a special interest in these proceedings.<sup>3</sup> In response to the timeliness of the motion, XOOM

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<sup>1</sup> XOOM's Motion to Intervene (filed on July 19, 2023) at 1.

<sup>2</sup> XOOM's Motion to Intervene at 2.

<sup>3</sup> XOOM's Motion to Intervene at 3.

did not anticipate the Commission entering a procedural order with a one-day deadline for intervention requests. XOOM alleged they worked diligently to obtain local counsel.<sup>4</sup>

On July 25, 2023, Columbia Kentucky filed a response and requested the Commission deny XOOM's request for intervention.<sup>5</sup> As grounds for the denial, Columbia Kentucky argued that the motion was not timely and cited to the six-week delay in filing the request.<sup>6</sup>

### 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>7</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)(b) requires a motion for intervention to be filed in a timely fashion. 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.

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<sup>4</sup> XOOM's Motion to Intervene at 3–4.

<sup>5</sup> Columbia Kentucky's Response to XOOM's Motion Intervene (filed on July 25, 2023).

<sup>6</sup> Columbia Kentucky's Response to XOOM's Motion to Intervene at 2–3.

<sup>7</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 sufficient advised, the Commission finds that XOOM did not file a timely request for intervention and did not show good cause for being untimely. XOOM did not file a request for intervention for over 42 days after the deadline for intervention requests had passed. Columbia Kentucky filed its notice of intent to file an application in February 2022.<sup>8</sup> Columbia Kentucky filed the application in December 2022.<sup>9</sup> XOOM also recognized that it knew the application had been found deficient and had followed the procedural history. XOOM is an intervenor in Columbia Kentucky's Choice Program case, Case No. 2021-00386, and has had counsel throughout that proceeding, and by citing to a response in that case, makes it clear that XOOM was privy to this application.<sup>10</sup> Although the Commission does recognize the one-day intervention deadline is not ideal, XOOM did not provide good cause for the subsequent lengthy delay of almost six weeks in the request for intervention, and as such, the Commission does not have to make any further findings.

XOOM will have an opportunity to participate in this proceeding even though they are not granted intervenor status. XOOM can review all public documents filed in this case and monitor the proceedings via the Commission's website [View Case Filings for:](#)

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<sup>8</sup> Columbia Kentucky's Notice of Intent to File Application for Approval of the Green Path Rider Pilot Program (filed Feb. 16, 2022).

<sup>9</sup> Columbia Kentucky's Application for Approval of the Green Path Rider Pilot Program (filed Dec. 29, 2022).

<sup>10</sup> Although XOOM cites to Case No. 2022-00386, the correct cite is Case No. 2021-00386, *Electronic Tariff Filing of Columbia Gas of Kentucky, Inc. to Extend Its Small Volume Gas Transportation Service* (Ky PSC Sept. 30, 2021).

[2022-00049 \(ky.gov\)](#). In addition, XOOM may file comments as frequently as they choose, and those comments will be entered into the record of this case.

IT IS THEREFORE ORDERED that XOOM's motion to intervene is denied.

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PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ENTERED  
AUG 01 2023 rcs  
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