

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC TARIFF FILING OF KENTUCKY)	
POWER COMPANY FOR APPROVAL OF A)	CASE NO.
SPECIAL CONTRACT WITH EBON)	2022-00387
INTERNATIONAL, 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, Inc. (KRC), Inc. (collectively, Joint Movants), filed December 2, 2022, for full intervention in this case involving review of a special contract between Kentucky Power Company (Kentucky Power) and Ebon International, LLC (Ebon), which owns a cryptocurrency mining facility. As a basis for its motion, Joint Movants stated that they have a special interest in this matter that cannot be adequately represented by any existing party, and that they will speak with one voice with coordinated participants.

MA asserted that it represents the interests of Kentucky Power customers to reduce energy costs and consumption, increase energy security, and address climate change. KFTC asserted that it represents the interests of low-income Kentucky Power customers regarding energy efficiency, demand side management, and a healthy energy system, and the consequences for communities of the transition to clean energy. ACLC asserted that it represents the interests of Kentucky Power customers to address environmental, health, and economic impacts of resource extraction in Eastern Kentucky

and Central Appalachia, energy and water affordability on behalf of low-income residents in the region. Sierra Club asserted that it represents the interests of Kentucky Power customers regarding demand response, energy storage, energy efficiency, and renewable energy, which reduce electric system costs for customers and utilities, while reducing reliance on uneconomical fossil-based generation and creating new, sustainable jobs. KRC asserted that it represents the interests of low-income Kentucky Power customers regarding environmental and energy-related matters.

Joint Movants argued that they intend to develop the record by providing witness testimony on issues regarding cryptocurrency risk and risk mitigation measures, whether the special contract should be under an Economic Development Rate (EDR) tariff, and whether Ebon is eligible to take service under an EDR tariff.

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 November 23, 2022, which was granted by Order issued December 13, 2022. Intervention by all others is permissive and is within the sole discretion of the Commission.¹

The regulatory standard for permissive intervention, set forth in 807 KAR 5:001E, 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

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

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.

DISCUSSION AND FINDINGS

Based on a review of the pleadings at issue and being otherwise sufficient advised, the Commission finds that Joint Movants have demonstrated that they are likely to present issues or develop facts that will assist the Commission in considering this matter without unduly complicating the proceedings, for the following reasons. Joint Movants explained that they will present issues and develop facts related to the issue of risk mitigation volatility of cryptocurrency,² noting that the special contract does not include security deposit or credit support provisions to protect Kentucky Power and its customers if Ebon defaults prior to the end of the ten-year special contract term. Joint Movants will also present issues and develop facts regarding the accuracy of certain assumptions in Kentucky Power's incremental cost analysis and whether the cost of Kentucky Power's resulting load increase will be fully covered under the special contract.³ Joint Movants' motion indicated that they intend to provide witness testimony on these issues.

The legal standard to grant permissive intervention requires a party to satisfy at least one of the two prongs. Because it is sufficient to find that Joint Movants' request to intervene should be granted based upon their ability to present issues and develop facts to assist the Commission, the Commission will not address the special interest prong.

² Boehm, Kurtz & Lowry Letter at 2.

³ Boehm, Kurtz & Lowry Letter at 3.

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 Commission's July 22, 2021 Order in Case No. 2020-00085⁴ regarding filings with the Commission.

In light of Joint Movants' statement that they will speak as one party, the Commission finds that each of the Joint Movants should file a separate copy of all documents that evidence their individual agreement regarding their joint participation in this matter, whether the agreement is executed by email in a written agreement.

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 November 23, 2022 Order and as amended by subsequent Orders.
5. Pursuant to 807 KAR 5:001, Section 8(9), within seven days of service of this Order, Joint Movants shall file a written statement with the Commission that:

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).

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.

6. Each of the Joint Movants shall file a separate copy with the Commission of their individual agreement regarding their joint participation in this matter within ten days of entering into the agreement.

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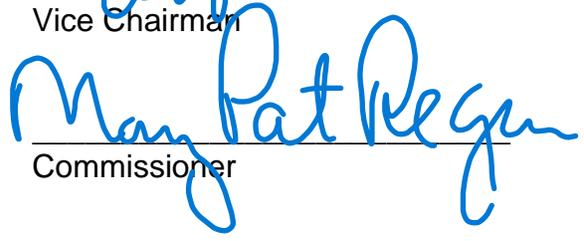
PUBLIC SERVICE COMMISSION



Chairman



Vice Chairman



Commissioner

ENTERED
MAR 30 2023
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KENTUCKY PUBLIC
SERVICE COMMISSION

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