

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC JOINT APPLICATION OF	)	
KENTUCKY UTILITIES COMPANY AND	)	
LOUISVILLE GAS AND ELECTRIC COMPANY	)	
FOR CERTIFICATES OF PUBLIC	)	CASE NO.
CONVENIENCE AND NECESSITY AND SITE	)	2022-00402
COMPATIBILITY CERTIFICATES AND	)	
APPROVAL OF A DEMAND SIDE MANAGEMENT	)	
PLAN	)	

ORDER

This matter arises upon the motion of the Kentucky Coal Association, Inc. (KCA), filed January 20, 2023, for full intervention. As bases for its motion, KCA stated that it has a special interest in this proceeding that is not adequately represented by any other parties and that it is likely to present issues or develop facts that will assist the Commission in considering this matter without unduly complicating or disrupting the proceedings. KCA identified several members that receive service from Louisville Gas & Electric Company and Kentucky Utilities Company (LG&E/KU). KCA's members include Muhlenberg County Coal Resources, Inc. (and its various affiliates doing business in Kentucky), Alliance Coal, LLC, Associated Engineers, Inc., Boyd Company, Caudill Seed Company, Liberty Mining Consultants, Inc., Jennmar USA, Joy Global Underground Mining, LLC, Mine and Mill Supply Company, LLC, Minova USA, Penn Virginia Resource Partners, LP, and Traditional Bank. LG&E/KU has not filed a response opposing KCA's motion to intervene.

## 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 in this case on November 21, 2022, which the Commission granted on November 30, 2022. Intervention by all others is permissive and is within the sole discretion of the Commission.<sup>1</sup>

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.

## DISCUSSION AND FINDINGS

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

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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).

In cases initiated under the Commission’s jurisdiction pursuant to KRS 278.040, “there is the statutory limitation under KRS 278.040(2) 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.”<sup>2</sup> While KCA identified several members that are LG&E/KU ratepayers, KCA did not state with specificity each member’s special interest that was not adequately represented. Further, the Attorney General has intervened and will represent “consumers,”<sup>3</sup> and various groups have already been permitted to intervene to represent the interests of various customer groups. For example, Kentucky Industrial Utility Customers (KIUC) has already been granted intervention and intends to represent the interests of LG&E/KU’s industrial customers, which is the rate class under which most of KCA’s members likely receive service. In fact, one of KCA’s stated members is also a member of KIUC.<sup>4</sup> Thus, KCA did not establish a special interest as to rates and service that is not adequately protected and that justifies intervention.

However, KCA and its members represent a narrower subset of customers than KIUC because KCA’s members are coal mines or part of the coal industry whereas KIUC represents a broader group of industrial customers. For that reason, KCA and its members are likely to have or be able to develop information that other intervenors are not regarding the future coal market and expected regulations on coal mining and use

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<sup>2</sup> *EnviroPower, LLC v. Public Service Comm’n*, No. 2005-CA-001792-MR, 2007 WL 289328 (Ky. App. Feb. 2, 2007).

<sup>3</sup> See KRS 367.150(8)(b).

<sup>4</sup> See KCA’s Motion to Intervene (filed Jan. 20, 2023) at 2, footnote 2; KIUC’s Motion to Intervene (filed Dec. 21, 2022) at 2 (both identifying Alliance Coal, LLC as a member).

that could affect the economics of proposals in this matter given LG&E/KU's plan to retire current coal-fired plants.<sup>5</sup> Further, while KCA's motivation for participating in this case appears, at least in part, to be related to financial interests distinct from rates and service, some of KCA's members are customers of LG&E/KU, and KCA likely will provide helpful information to the Commission by providing a differing viewpoint on the issues discussed above. KCA has also stated that if granted intervention it would file testimony, conduct discovery, and participate at any hearings.<sup>6</sup> Thus, the Commission finds that KCA satisfies the second prong of 807 KAR 5:001E, Section 4(11) because it likely will present issues or develop facts that will assist the Commission in fully considering this matter without unduly complicating or disrupting these proceedings.

Based on the above, the Commission finds that KCA should be granted full rights of a party in this proceeding. The Commission directs KCA to the Commission's July 22, 2021 Order in Case No. 2020-00085<sup>7</sup> regarding filings with the Commission.

IT IS HEREBY ORDERED that:

1. KCA's motion to intervene is granted.
2. KCA 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.

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<sup>5</sup> See Application, Direct Testimony of Lonnie E. Bellar at 2–4 (generally discussing coal plan retirements).

<sup>6</sup> KCA's Motion to Intervene (filed Jan. 20, 2023) at 3.

<sup>7</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).

3. KCA 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. KCA shall adhere to the procedural schedule set forth in the Commission's January 6, 2023 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, KCA 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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PUBLIC SERVICE COMMISSION

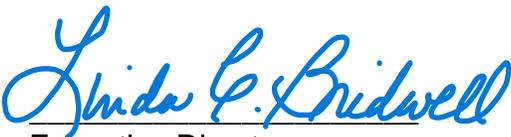
  
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