

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 Mercer County Fiscal Court (Mercer Fiscal Court), filed January 20, 2023, for full intervention. As bases for its motion, Mercer Fiscal Court stated that it has a special interest in these proceedings not otherwise adequately represented and that it will present issues or develop facts that will assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings.

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. The Commission granted

the Attorney General's motion to intervene on November 30, 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 5:001E, 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 Mercer Fiscal Court has not demonstrated that it has a special interest in the proceeding over which the Commission has jurisdiction that is not otherwise adequately represented, but Mercer Fiscal Court 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.

It its motion, Mercer Fiscal Court identified that its special interest in this proceeding was "exclusively related to its unique customer characteristics as an economic opportunity, one which a solar facility cannot compete with its return on investment within the Commonwealth."² Louisville Gas & Electric Company and Kentucky Utilities Company (LG&E/KU) propose to construct a 120 MWac solar photovoltaic (PV)

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

² Mercer Fiscal Court's motion to intervene (filed Jan. 20, 2023) at 3, paragraph 5.

facility in Mercer County, Kentucky.³ Based on the representations set forth in Mercer Fiscal Court's motion, Mercer Fiscal Court opposes the construction of a solar facility within Mercer County, at least at the scale LG&E/KU proposes in its application.

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."⁴ Mercer Fiscal Court stated that it is a ratepayer of LG&E/KU but appeared to place much of its focus advocating for an alternative use of the land that LG&E/KU has proposed to construct one of its planned solar facilities on. Mercer Fiscal Court did not articulate in its motion a special interest in this proceeding related to LG&E/KU's rates or service. Thus, Mercer Fiscal Court did not establish a special interest as to rates and service justifying intervention.⁵

However, an issue in this proceeding is the proposed construction of a 120 MWac PV facility in Mercer County. Mercer Fiscal Court stated in its motion that it has rejected two attempts at amending a local ordinance that would allow the construction of such a large-scale solar facility,⁶ and Mercer Fiscal Court is likely to possess knowledge of that history and its local ordinances affecting the siting of LG&E/KU's proposed solar facility and that will likely be helpful to the Commission in deciding this case. Mercer Fiscal Court

³ Application at 1 and 11.

⁴ *EnviroPower, LLC v. Public Service Comm'n*, No. 2005-CA-001792-MR, 2007 WL 289328 (Ky. App. Feb. 2, 2007).

⁵ See Case No. 2020-00343, *Electronic Application of New Cingular Wireless PCS, LLC D/B/A AT&T Mobility for Issuance of a Certificate of Public Convenience and Necessity to Construct a Wireless Communications Facility in the Commonwealth of Kentucky in the County of Bath* (Ky. PSC Sep. 9, 2021).

⁶ Mercer Fiscal Court's motion to intervene (filed Jan. 20, 2023) at 4, paragraph 9.

also has a narrow concern regarding an issue that others involved in the case are unlikely to raise. Further, unlike businesses or other private entities with interests in issues other than rates and services, which the Commission has often found are likely to unduly complicate a proceeding, Mercer Fiscal Court is a subdivision of state government, elected by citizens in the county, that generally represents the public interest of the county residents, so the risk of undue complication is more limited. Thus, the Commission finds that Mercer Fiscal Court is likely to present issues or develop facts that will assist the Commission in considering this matter without unduly complicating the proceedings.

Based on the above, the Commission finds that Mercer Fiscal Court should be granted full rights of a party in this proceeding. The Commission directs Mercer Fiscal Court to the Commission's July 22, 2021 Order in Case No. 2020-00085⁷ regarding filings with the Commission.

IT IS HEREBY ORDERED that:

1. Mercer Fiscal Court's motion to intervene is granted.
2. Mercer Fiscal Court 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.
3. Mercer Fiscal Court 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.

⁷ 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).

4. Mercer Fiscal Court 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 the date of service of this Order, Mercer Fiscal Court 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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Vice Chairman


Commissioner



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