

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF KENTUCKY)	
UTILITIES COMPANY FOR AN ADJUSTMENT OF)	Case No. 2016-00370
ITS ELECTRIC RATES AND FOR CERTIFICATES)	
OF PUBLIC CONVENIENCE AND NECESSITY)	

REPLY IN SUPPORT OF MOTION FOR LEAVE TO INTERVENE

Comes now East Kentucky Power Cooperative, Inc. (“EKPC”), by counsel, and for its Reply to the Objection filed by Kentucky Utilities Company (“KU”) to EKPC’s Motion for Leave to Intervene in the above-styled proceeding, respectfully states as follows:

1. KU objects to EKPC’s intervention in this matter based on a misinterpretation of EKPC’s stated interests herein and an inflated fear of the “troubling” and “dangerous” precedent it believes would result. Because KU’s positions are unfounded and contrary to applicable law, regulation and precedent, EKPC requests that its Motion be granted over KU’s Objection.

2. KU first argues that EKPC did not state an interest in this proceeding that is jurisdictional to the Kentucky Public Service Commission (“Commission”), and that instead its interests are governed exclusively by the Federal Energy Regulatory Commission (“FERC”).¹ At the outset, it must be noted that KU’s position in this respect completely conflicts with its position in Case No. 2012-00169,² wherein it sought³ (and was granted⁴) intervention in EKPC’s

¹ See KU’s Objection, pp. 2-3.

² *In the Matter of the Application of East Kentucky Power Cooperative, Inc. to Transfer Functional Control of Certain Transmission Facilities to PJM Interconnection, LLC* (filed May 3, 2012).

³ *Id.*, Petition for Full Intervention of Louisville Gas and Electric Company (“LG&E”) and KU (filed May 10, 2012) and KU/LG&E’s Reply in further support of Petition for Full Intervention (filed May 29, 2012).

proceeding to join PJM Interconnection, LLC. In that case, KU claimed an interest in proposed changes to EKPC's transmission system and sought intervention to determine the impacts, if any, of such changes to the transmission service provided by EKPC to KU and its customers.⁵ KU also openly acknowledged and underscored the fact that the Commission has, on numerous occasions, rejected similar arguments contending that FERC has exclusive jurisdiction over all transmission matters.⁶ While KU's position has now conveniently changed course, the fact remains that both EKPC and KU have successfully intervened in each other's cases when their heavily-interconnected transmission interests are at issue.⁷

3. Additionally, KU's jurisdictional objection (whether by chance or design) confounds the impetus of EKPC's requested intervention as one based primarily on FERC-governed transmission rates. KU's Objection contains repeated references to its open access transmission tariffs ("OATT"), and it even inexplicably suggests that EKPC failed to disclose an existing federal process "that allows transmission customers like EKPC to request information regarding

⁴ *Id.*, Order Granting LG&E/KU Full Intervention (entered June 13, 2012).

⁵ *Id.*, LG&E/KU's Reply in further support of Petition for Full Intervention, at p. 1 ("And there can be no reasonable doubt about the impact the Companies' and EKPC's operations have on each other, which in turn can affect the rates and service they provide to retail customers in Kentucky.") (filed May 29, 2012).

⁶ *Id.*, at p. 7 ("Second, EKPC argues that FERC has exclusive jurisdiction over transmission matters. [Internal citation omitted.] As also described at length above, the Commission rejected that argument when the Companies advanced it to oppose EKPC's intervention in the PowerGen acquisition proceeding, and accepted the transmission interconnectedness of the Companies and EKPC as a sufficient reason to grant EKPC intervention in the E.ON AG acquisition proceeding.") (referring to Case No. 2000-00095, *In the Matter of Application of PowerGen, plc to Acquire Louisville Gas and Electric Company and Kentucky Utilities Company*, (Ky.P.S.C. Apr. 18, 2000); Case No. 2001-00104, *In the matter of Joint Application of E.ON AG, PowerGen plc., LG&E Energy Corp., Louisville Gas and Electric Company, and Kentucky Utilities Company for Approval of an Acquisition* (Ky.P.S.C. Jun. 8, 2001)). Commission precedent clearly supports EKPC's intervention in this case.

⁷ *Id.*; see also n. 4, *supra.*; see also Case No. 2015-00267, *In the Matter of the Application of East Kentucky Power Cooperative, Inc. for Approval of the Acquisition of Existing Combustion Turbine Facilities form Bluegrass Generation Company, LLC at the Bluegrass Generating Station in LaGrange, Oldham County, Kentucky and for Approval of the Assumption of Certain Evidences of Indebtedness*, Order granting KU/LG&E Intervention (Ky.P.S.C. Aug. 14, 2015).

KU's OATT rates."⁸ This argument is an inconsequential red-herring, of course, because EKPC does not seek intervention in this matter to scrutinize or question the rates it pays for transmission. Indeed, this Commission has no role in the establishment or adjustment of such rates, and EKPC recognizes that this is not the forum to challenge any aspect of KU's OATT. Importantly, however, the rates and spending at issue in this proceeding (as well as KU's request for multiple Certificates of Public Convenience and Necessity ("CPCNs")) are inextricably intertwined with the transmission service provided by KU to EKPC, its Owner-Members, and their ultimate consumers. EKPC has a unique interest in ensuring that KU's transmission investment and service are both adequate and nondiscriminatory, and such matters are decidedly jurisdictional to this Commission.

4. KU next contends in its Objection that, "even if EKPC could claim a Commission-jurisdictional interest in KU's transmission service, such service-related concerns are necessarily irrelevant to this retail rate proceeding and cannot justify EKPC's intervention."⁹ In support of this argument, KU cites *South Central Bell Tel. Co. v. Util. Reg. Comm'n*¹⁰ for the proposition that the service a utility provides is irrelevant in the context of a rate adjustment proceeding. The *South Central Bell Tel. Co.* case is clearly distinguishable and demonstrates, once again, that KU is relying upon a false premise to support its Objection. In *South Central Bell Tel. Co.*, the utility was being punished for the provision of inadequate service through the imposition of confiscatory rates. The Court appropriately recognized that such action *by the Commission* was inconsistent with KRS Chapter 278. That is not at all what is going on in the context of EKPC's request to intervene in the case *sub judice*. Unlike in *South Central Bell Tel. Co.*, this is not a

⁸ See KU's Objection, p. 4.

⁹ *Id.*

¹⁰ 637 S.W.2d 649 (Ky. 1982).

pure rate proceeding. KU has sought to obtain Certificates of Public Convenience and Necessity, which are clearly beyond the scope of a traditional rate case, and much of its rate increase is the result of projected investments in its transmission system that is heavily-interconnected with EKPC. For the reasons set forth above, Kentucky law and precedent support EKPC's ability to intervene in this unique circumstance. Moreover, *South Central Bell Tel. Co.* only limits the Commission's ability to punish a utility for poor service by imposing confiscatory rates. EKPC's intervention has nothing to do with imposing confiscatory rates upon KU. To the contrary, EKPC seeks to assure that KU's investment in its transmission system is adequate and non-discriminatory so as to assure that the EKPC customers served by KU's transmission system¹¹ are not disadvantaged by KU's transmission investment decisions. Thus, should EKPC be granted status as an intervenor, a substantial portion of its inquiry will consist of an examination of KU's anticipated expenses and proposed investments in electric transmission and distribution infrastructure, topics in which EKPC has valuable input to contribute and which are squarely presented in KU's Application. The *South Central Bell Tel. Co.* case relied upon by KU has no applicability to this case whatsoever.

5. Moreover, KU's Objection fails to acknowledge that it initiated an inquiry into its assets and operations when it designed and commenced this case seeking CPCNs for multiple infrastructure projects and Commission review of extensive planned transmission investment. The old adage of the legal profession that the petitioner is the master of his petition is especially true in this proceeding. Had KU presented its transmission investment strategies in a proceeding separate from a rate case, EKPC likely could have adequately protected its interests by seeking intervention only in the proceeding that did not involve a request for a retail rate adjustment. By

¹¹ Attached hereto and incorporated herein as Exhibit A is a detailed list of the EKPC delivery points served by KU. As shown, over 66,000 customers of EKPC's Owner-Members rely directly on KU transmission.

purposefully packaging a number of discreet regulatory requests within a single application, KU has itself invited the diversity of intervention requests which it now opposes. The relevant scope of inquiry – as established by KU itself – is sufficiently broad to allow an examination of KU’s \$500,000,000+ plans to improve its transmission system’s reliability, integrity, and service.¹²

6. KU next asserts in its Objection that EKPC’s intervention should be denied “because all of KU’s retail customers have an interest in KU’s transmission system being adequate to serve them,” and because “the parties already granted intervention in this proceeding are more than adequate to address the issue.” Again, KU overly generalizes the facts of the case for the obvious purpose of minimizing the basis for EKPC’s requested relief. EKPC seeks intervention herein because no other party can or will adequately represent the interests of the EKPC customers served by KU transmission, and, as the Commission has previously found, only EKPC “is heavily interconnected with KU due to the contiguous nature of their respective service territories and joint use of transmission facilities.”¹³ While other intervenors, such as governmental agencies, community associations, retailers, and others may provide their own special insights with respect to the service they receive from and the rates they pay to KU, none have the exceptional transmission interests, experiences or knowledge of EKPC in this matter. EKPC is simply unaware of any other intervenor that has specifically sought intervention for the express purposes set forth by EKPC. For this reason, EKPC is uniquely positioned and qualified to ensure that the transmission investments made across the KU system are accomplished in a nondiscriminatory manner that improves reliability and performance not only for KU’s retail customers, but also for the cooperative retail customers who depend on KU transmission.

¹² See Application, Tab 14, Testimony of Paul W. Thompson, at pp. 21-22; see also *id.*, at Exhibit PWT-2 (describing KU/LG&E’s Transmission System Improvement Plan for the period 2017-2021).

¹³ Administrative Case No. 387, *In the Matter of A Review of the Adequacy of Kentucky’s Generation Capacity and Transmission System* (Ky. P.S.C. Dec. 20, 2001) (Order at pp. 24, 58).

7. Notably, KU's position that EKPC has no unique interest or contribution in this matter is again in direct contravention to its position when it sought intervention in EKPC's proceeding to join PJM. In that case, KU stated, *inter alia*:

[T]he Companies [(KU/LG&E)] are uniquely positioned to represent their customers' interests in this proceeding for the simple reason that they are in possession of information about their system and their customers that no other party has. Although EKPC possesses some of the same system-related information the Companies have—precisely because their systems are so intertwined—EKPC does not have all of the data the Companies have, and they do not have the interest in representing the Companies' interest in its electrical system and the possible impacts on its customers that the Companies have. That is understandable; EKPC is before the Commission to do what it believes is best for its electrical system and customers. The Companies merely ask to be able to do the same.¹⁴

8. Put simply, EKPC seeks intervention herein because the matters addressed may “impact the operations, rates, and service of” EKPC, which is precisely the reasoning embraced by the Commission when it granted KU/LG&E intervention in Case No. 2012-00169.¹⁵ In light of this precedent, there is no “danger” in allowing EKPC's limited intervention in this case; instead, EKPC's intervention will merely allow for a more complete record and a better informed Commission. Moreover, EKPC has a wealth of relevant information and experience to offer the Commission to assist in its consideration of KU's Application for CPCNs and a rate adjustment, and there is absolutely no reason to believe that EKPC's participation in this case will present any undue complication or disruption. While it may be somewhat unusual for a jurisdictional

¹⁴ See Case No. 2012-00169, LG&E/KU's Reply in further support of Petition for Full Intervention, at p. 5 (filed May 29, 2012).

¹⁵ See n. 4, *supra*, at p. 3 (“Based on the evidence of record and being otherwise sufficiently advised, the Commission finds that the transmission systems of East Kentucky, LGE, and KU have multiple interconnections and each system is used to serve the other's retail customers. These facts form a sufficient basis to justify an inquiry in this case into the impacts, if any, of East Kentucky's proposed membership in PJM on the operations, rates, and service of LGE and KU.”).

utility to seek intervention in another jurisdictional utility's rate adjustment case,¹⁶ it was KU's decision to include the significant transmission upgrade plan and requests for CPCNs in its rate case filing. Since it unilaterally chose to package these matters together and bring them before the Commission in one proceeding, KU should not now complain that EKPC's intervention in the case is somehow unprecedented, unwarranted, or otherwise improper. In fact, if KU's logic on this issue prevailed, a utility would be able to prevent any other affected utility from having constructive input on major issues affecting both utilities simply by burying the issues of common interest within the context of a rate case application. Such a notion is silly. There is no magical force field surrounding a rate application that somehow prevents any interested party from exercising its due process rights on matters and concerns that are presented by the petitioning utility. Certainly, KU has not offered any statute or regulation supporting its novel argument. For these reasons, EKPC's requested relief is merited and KU's Objection should be overruled.

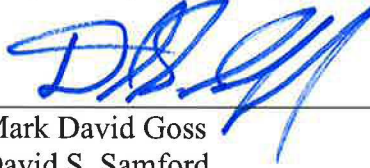
9. Because the matters herein adjudicated are clearly within the jurisdiction of the Commission and are very significant to EKPC, its sixteen (16) Owner-Members and their 530,000 end-use customers, EKPC seeks intervention to ensure its unique interests are adequately and fully represented.

WHEREFORE, EKPC respectfully requests that it be allowed to intervene in this proceeding over the Objection of KU.

¹⁶ Again, KU's former position regarding such matters is telling. *See* Case No. 2012-00169, LG&E/KU's Reply in further support of Petition for Full Intervention, at pp. 6-7 (filed May 29, 2012) ("...EKPC notes that the Companies have not sought to intervene in other utilities' previous RTO-related proceedings. [Internal citation omitted.] Although that is true, it is irrelevant; there is no statute, regulation, or Commission precedent to support the assertion that not seeking to intervene in some proceedings precludes a party from seeking intervention in another proceeding. But there is also a simple explanation for why the Companies are seeking full intervention in this proceeding but did not in similar proceedings for other utilities: EKPC and the Companies are vastly more interconnected and mutually impacting than are the Companies and any other utility, as described at length above.").

This 3rd day of January, 2017.

Respectfully submitted,



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CERTIFICATE OF SERVICE

In accordance with 807 KAR 5:001, Section 8, the undersigned certifies that this document is a true and accurate copy of the same document being filed in paper medium; that the electronic filing has been transmitted to the Commission on January 3, 2017; that there are currently no parties in this proceeding that the Commission has excused from participation by electronic means; that the original and six (6) copies of the document transmitted electronically will be filed with the Commission in paper medium within two business days from the date of the electronic filing; and that this document was served via electronic mail on this 3rd day of January, 2017, upon the following:

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EKPC Delivery Point Name	Number of Customers Served
Alex Creek	571
Arkland	1
Bedford	1598
Bledsoe	1009
Bridgeport	2185
Bridgeport #2	1476
Bush	1821
Campground	2783
Campbellsburg	2185
Campbellsville	1640
Carpenter	3471
Cave Run	327
Cemetery Road	918
Chad	1553
Cumberland Falls	1902
East Campbellsville	1850
EKPC Office	1
Emanuel	2372
Gallatin Steel	1
Girdler	1465
Green River Plaza	1158
Hinkle	1332
Hinkston	574
Jericho	1654
Jonesville	1622
Lebanon	2734
Mile Lane	2914
Millers Creek	1378
Milton	1377
Mt. Victory	491
Ninevah	1512
North Corbin	1492
North Madison	1128
Oven Fork	891
Oxford	780
Rice	2691
Rockhold	1626
Sharkey	1686
Shelby City	3038
South Elkhorn	2020
Southville	1958
Southpoint	623
Taylorsville	1781
Treehaven	319
Van Meter	681
TOTAL	66589

