

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

KENTUCKY UTILITIES COMPANY’S
MOTION FOR LEAVE TO FILE SUR-REPLY AND SUR-REPLY TO
EAST KENTUCKY POWER COOPERATIVE, INC.

Kentucky Utilities Company (“KU” or the “Company”) respectfully moves the Commission for leave to file the following sur-reply to the Reply in Support of Motion for Leave to Intervene of East Kentucky Power Cooperative, Inc. (“EKPC”). As grounds for its motion, KU states that EKPC has misconstrued KU’s objection to EKPC’s intervention in this proceeding to the point that additional clarification will assist the Commission in ruling on EKPC’s intervention request.

First, contrary to EKPC’s assertion, there is nothing inconsistent about KU’s opposition to EKPC’s seeking to intervene in this base-rate proceeding and KU’s intervention in the proceeding to join PJM Interconnection, L.L.C. (“PJM”). The Commission has repeatedly approved utilities’ interventions in change-of-control proceedings, beginning with EKPC’s requests to intervene in two change-of-control proceedings under KRS 278.020 concerning KU and Louisville Gas and Electric Company (“LG&E”).¹ The Commission later granted LG&E and KU intervention in EKPC’s application to transfer functional control of its transmission

¹ *In the Matter of Application of PowerGen, plc to Acquire Louisville Gas and Electric Company and Kentucky Utilities Company*, Case No. 2000-00095, Order (Apr. 18, 2000) (granting EKPC full intervention); *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*, Case No. 2001-00104, Order (June 8, 2001) (granting EKPC full intervention)

assets to PJM under KRS 278.218.² Indeed, the Commission explicitly invoked its prior change-of-control precedents in granting LG&E and KU intervention in that proceeding precisely because EKPC was proposing to transfer functional control of its transmission assets to PJM, which could impact the “operations, rates, and service of LG&E and KU”:

[T]he 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. The Commission previously found these transmission interconnections to be sufficient to allow East Kentucky to intervene in prior cases involving transfers of control of LGE and KU, and we will now follow these precedents to allow LGE and KU to intervene here.³

Therefore, the Commission has on at least a few occasions accepted the proposition that who controls a utility’s assets could have impacts on other utilities’ operations sufficient to justify granting other utilities intervention in change-of-control proceedings. But to state the obvious, the present proceeding is not a change of control proceeding, but rather a base-rate proceeding; what is at issue in this proceeding is not who will control KU’s transmission and other utility assets, but rather what are the appropriate retail rates for KU to charge its customers for the retail electrical service subject to this Commission’s jurisdiction. As KU noted in its objection and EKPC has not contested, EKPC is not asserting an interest in this proceeding as a retail ratepayer, yet retail rates are precisely the subject matter of this proceeding. So there is no inconsistency in LG&E’s and KU’s past intervention in EKPC’s proceeding seeking to transfer functional control of its transmission assets to another party and KU’s objection to EKPC’s seeking to intervene in KU’s base-rate case. Indeed, to assert that the Commission’s past orders

² *In the Matter of: Application of East Kentucky Power Cooperative, Inc. to Transfer Functional Control of Certain Transmission Facilities to PJM Interconnection, LLC*, Case No. 2012-00169, Order (June 13, 2012) (granting LG&E and KU intervention).

³ *Id.* at 3-4.

granting EKPC and LG&E and KU intervention in each other's change-of-control proceedings somehow justifies granting EKPC intervention in this base-rate case is a non sequitur at best.

Second, the certificates of public convenience and necessity ("CPCNs") KU is seeking in this proceeding involve KU's metering and distribution system, not its transmission system, and particularly not its transmission system used for the federally regulated transmission service KU provides to EKPC. The CPCNs at issue in this proceeding will affect service to KU's retail customers; again, EKPC has not asserted any interest as a retail customer in seeking intervention in this proceeding. So there is no merit to EKPC's assertion that KU has somehow opened the door to EKPC's intervention in this proceeding because KU has included two non-transmission-related CPCN requests in its application in this proceeding.

Third, KU is not seeking approval for its Transmission System Improvement Plan for 2017-2021 in this proceeding; rather, because KU's rate application is based on a forecasted test year, KU's planned transmission investments, so far as they affect retail service, affect KU's proposed retail rates.⁴ Neither the Transmission System Improvement Plan nor any other transmission investment is the subject of a CPCN request in this proceeding. So again, because EKPC has not asserted any interest in KU's retail rates in this proceeding, it can have no interest in the component of transmission investment KU proposes to include for cost recovery through its retail rates.

Fourth, insofar as EKPC's claimed interest is in how KU's planned transmission investments might affect the transmission rates or service provided under KU's Open Access

⁴ EKPC misstates the magnitude of the Transmission System Improvement Plan as it concerns KU: "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." EKPC Reply at 5. In fact, the investment EKPC cites is for both LG&E and KU, not KU alone. *See* Testimony of Paul W. Thompson at 26-27 ("The Companies will spend \$177 million in capital between the end of the last base rate case test period and the end of the forecast test period (July 1, 2016 – June 30, 2018), on transmission system integrity, reliability, and resiliency programs. This spending is part of a total of \$511 million in transmission capital investments over the five-year period starting in 2017.").

Transmission Tariff (“OATT”), those issues are jurisdictional to the Federal Energy Regulatory Commission (“FERC”), not this Commission.⁵ Of course, EKPC now asserts that its intervention motion did not rely at all on the transmission charges it pays KU, and accuses KU of raising an “inconsequential red-herring” argument: “EKPC does not seek intervention in this matter to scrutinize or question the rates it pays for transmission.”⁶ But EKPC’s intervention motion unequivocally states, “EKPC seeks to intervene in this matter based on its unique and substantial interest in the transmission service and rates of KU.”⁷ In the very next sentence, EKPC went on to state that its transmission system is heavily interconnected with KU and “EKPC paid KU/LG&E \$6,778,604 for transmission service in calendar year 2015; in light of these facts, EKPC has a distinct reason and duty to scrutinize the investments KU/LG&E propose to make in their electric transmission infrastructure.”⁸ Thus, EKPC, not KU, highlighted KU’s FERC-jurisdictional OATT transmission rates and service as supporting its motion for intervention. KU’s direct refutation of one of the main claims EKPC offered for its position therefore was not “an inconsequential red-herring.” In its Reply, EKPC “recognizes that this is not the forum to challenge any aspect of KU’s OATT.”⁹ But that concession leaves EKPC no ground for intervention in this proceeding: KU’s OATT is precisely the FERC-jurisdictional tariff that governs the rates and terms under which KU and LG&E provide non-discriminatory transmission service to entities like EKPC. FERC, not this Commission, is the forum for EKPC’s challenge to KU’s OATT.

⁵ LG&E and KU are treated as a single entity under the LG&E-KU OATT.

⁶ EKPC Reply at 3.

⁷ EKPC Motion at 3.

⁸ *Id.*

⁹ EKPC Reply at 3.

EKPC then attempts to avoid these clear jurisdictional lines with another argument:

[T]he 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.¹⁰

Stated plainly, this Commission has neither jurisdiction nor authority to direct KU to provide “adequate” or “nondiscriminatory” transmission service to anyone other than KU’s retail customers; EKPC cites to no authority for its assertion because none exists. To the extent KU has an obligation to provide such transmission service to EKPC or its member cooperatives, FERC, not this Commission, has jurisdiction and authority to enforce that obligation. In Kentucky’s long-standing statutory system of certified service territories, each retail electric provider’s service obligations is to its own customers, not that of other providers.¹¹ Though EKPC is not a retail electric provider, it claims to represent the interests of its distribution member cooperatives who are retail providers and their retail customers. KU has neither the obligation nor the right to serve those customers, and they correspondingly have no cognizable interest in the retail rates of KU, which again are the subject matter of this proceeding. Therefore, EKPC has no cognizable interest, direct or derivative, in this proceeding and cannot be granted intervention.

Turning next to EKPC’s mistaken claim that the Kentucky Supreme Court’s seminal decision in *South Central Bell Tel. Co. v. Util. Reg. Comm’n* is not applicable to EKPC’s motion to intervene in this proceeding, the text of the court’s opinion speaks for itself:

¹⁰ *Id.*

¹¹ EKPC is not a retail electric provider.

The rate making process is to provide for the utility a reasonable profit on its operations so that its owners may achieve a return on their investment. Such matters are purely those of a financial nature.

[T]he quality of service is not germane to the normal, time-tested factors that go into the determination of a proper rate for the services rendered by a utility.

...

[A]bsent legislation to the contrary, the question of rates should be kept separate from the question of service.¹²

The Kentucky Supreme Court's words are clear and unequivocal: questions of service adequacy, including transmission service adequacy (insofar as they are jurisdictional to this Commission), are not relevant to rate proceedings; the General Assembly has provided for separate proceedings to consider service adequacy. Therefore, this retail base-rate case is not the forum to address EKPC's transmission service adequacy issues, both for jurisdictional reasons and for the reasons given by the Kentucky Supreme Court.

Finally, EKPC asserts, "[I]t may be somewhat unusual for a jurisdictional utility to seek intervention in another jurisdictional utility's rate adjustment case"¹³ But it is not just unusual; it is totally unprecedented.¹⁴ There are good reasons why it is unprecedented, as KU described in its objection.¹⁵ Those reasons are not "silly" or invocations of "magical force field[s],"¹⁶ but rather are serious matters of public policy based in Kentucky's long-standing construct of having certified service territories for retail electric suppliers. As noted in KU's objection, the Commission has acknowledged that there are legitimate operational reasons for jurisdictional electric utilities occasionally to intervene in other utilities' change of control

¹² *South Central Bell Tel. Co. v. Util. Reg. Comm'n*, 637 S.W.2d 649, 653-54 (Ky. 1982).

¹³ EKPC Reply at 6-7.

¹⁴ KU Objection at 7-8.

¹⁵ *Id.*

¹⁶ EKPC Reply at 7.

proceedings.¹⁷ Because intervention by a utility is not appropriate in another utility's rate case, KU respectfully asks the Commission to deny EKPC's request to intervene in this proceeding.

WHEREFORE, Kentucky Utilities Company respectfully requests that the Commission grant KU leave to file the foregoing sur-reply and, following consideration of the respective pleadings, deny the motion to intervene of East Kentucky Power Cooperative, Inc.

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Respectfully submitted,

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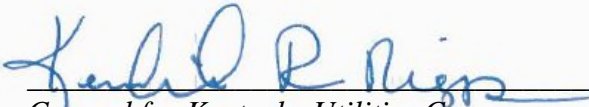
Counsel for Kentucky Utilities Company

¹⁷ See KU Objection at 7.

CERTIFICATE OF COMPLIANCE

This is to certify that Kentucky Utilities Company's January 6, 2017 electronic filing of the Sur-reply 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 6, 2017; that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding; and that an original and six copies, in paper medium of this Sur-reply will be mailed to the Commission on January 6, 2017. This further certifies that a true and accurate copy of the foregoing was served, via U.S. Mail and electronic mail, on January 6, 2017, upon the following.

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