

**COMMONWEALTH OF KENTUCKY**  
**BEFORE THE PUBLIC SERVICE COMMISSION**

**In the Matter of:**

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

**KENTUCKY UTILITIES COMPANY'S  
OBJECTION TO MOTION FOR LEAVE TO INTERVENE OF  
EAST KENTUCKY POWER COOPERATIVE, INC.**

Kentucky Utilities Company (“KU” or the “Company”) respectfully requests that the Commission deny the motion of East Kentucky Power Cooperative, Inc. (“EKPC”) for intervention. EKPC’s motion should be denied for two principal reasons: (1) the motion does not state or demonstrate a special interest in the proceeding because all of EKPC’s stated interests are not within the Commission’s jurisdiction; and (2) the motion fails to show that EKPC will identify any relevant issues or develop relevant facts that will assist the Commission in the resolution of this matter without unduly complicating and disrupting the proceeding. Indeed, EKPC’s attempt to intervene in this retail rate proceeding is, to counsel’s knowledge and research, entirely unprecedented, and the Commission’s granting intervention to EKPC in this proceeding would set a troubling precedent for jurisdictional electric utilities’ ability to interfere in the retail rate proceedings of other jurisdictional electric utilities that have statutory rights to provide retail electric service inside their respective certified service territories. Therefore, because EKPC has satisfied none of the requirements for intervention under 807 KAR 5:001 § 4(11)(b), and because granting EKPC intervention in this proceeding would set a dangerous precedent contrary to policy established by the General Assembly, KU respectfully requests that the Commission deny EKPC’s motion for intervention.

**EKPC Has Not Stated an Interest in this Proceeding that Is Jurisdictional to this Commission or Relevant to this Proceeding**

The Commission may grant EKPC intervention only if it meets the requirements of 807 KAR 5:001 § 4(11)(b). EKPC does not satisfy the first basis for permissive intervention, which requires a movant to demonstrate a special interest in the proceeding that is not already represented by another party to the action.<sup>1</sup>

Stated succinctly, EKPC's claimed special interest in this proceeding is that it buys considerable amounts of transmission service from KU, and it desires to intervene in this proceeding to review KU's planned transmission investments to ensure their adequacy to continue providing transmission service necessary to serve the retail customers of EKPC's distribution cooperative members.<sup>2</sup> Indeed, as EKPC puts it, "EKPC seeks to intervene in this matter based on its unique and substantial interest in the transmission service and rates of KU."<sup>3</sup> EKPC further states, "EKPC is uniquely positioned and qualified to ensure that the transmission investments made across the KU/LG&E system are accomplished in a nondiscriminatory manner that improves reliability and performance not only for KU/LG&E's retail customers, but also for the cooperative retail customers who depend on KU/LG&E transmission."<sup>4</sup> The problem with this claimed interest is that it is neither jurisdictional to this Commission nor relevant to this proceeding.

Turning first to the jurisdictional shortcoming of EKPC's asserted interest, EKPC ignores entirely in its motion what it is well-established law, namely that the transmission rates it pays KU and the transmission service KU provides it are within the sole jurisdiction of the Federal

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<sup>1</sup> 807 KAR 5:001 § 4(11)(b).

<sup>2</sup> EKPC Motion at 2-4.

<sup>3</sup> *Id.* at 3.

<sup>4</sup> *Id.*

Energy Regulatory Commission (“FERC”), not this Commission.<sup>5</sup> In an order denying intervention to a merchant generator in KU’s and Louisville Gas and Electric Company’s (“LG&E”) 2008 Integrated Resource Plan (“IRP”) proceeding, this Commission stated, “The interest that Bluegrass asserts as ‘an operator of generation facilities within the LG&E control area’ involves the manner in which the LG&E/KU transmission system is operated. However, the operation of the companies’ transmission system is governed by their open access transmission tariffs (“OATT”). The OATT is a matter directly under the jurisdiction of [FERC].”<sup>6</sup> Similarly, in denying intervention to another merchant generator in a Commission-initiated proceeding concerning LG&E and KU, the Commission stated:

[T]he interest expressed by Thoroughbred is in the use of the LG&E and KU transmission facilities for the wholesale transmission of electric energy and in the wholesale rates for such use. The terms and conditions for the wholesale transmission of electric energy on LG&E’s and KU’s facilities, and the wholesale rates for such use, are not under this Commission’s jurisdiction. Rather, the use of transmission facilities for those wholesale power transfers and the rates for such transfers are within the exclusive jurisdiction of [FERC].<sup>7</sup>

EKPC has acknowledged FERC’s exclusive jurisdiction over these matters; indeed, EKPC has cited to this Commission the very orders quoted above.<sup>8</sup> Moreover, it is noteworthy that EKPC’s motion did not cite which of KU’s retail tariffs gave rise to the nearly \$7 million of transmission charges EKPC says it paid LG&E and KU in 2015. The omission in the EKPC motion is caused by the fact that EKPC paid those charges under LG&E and KU’s FERC-jurisdictional OATT,

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<sup>5</sup> See generally the Federal Power Act, 16 U.S.C. 824 *et seq.*

<sup>6</sup> *In the Matter of: The 2008 Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company*, Case No. 2008-00148, Order at 4 (July 18, 2008).

<sup>7</sup> *In the Matter of: Investigation into the Membership of Louisville Gas and Electric Company and Kentucky Utilities Company in the Midwest Independent Transmission System Operator, Inc.*, Case No. 2003-00266, Order at 1-2 (Oct. 2, 2003).

<sup>8</sup> *In the Matter of: The Application of East Kentucky Power Cooperative, Inc. to Transfer Functional Control of Certain Transmission Facilities to PJM Interconnection, L.L.C.*, Case No. 2012-00169, East Kentucky Power Cooperative, Inc.’s Response and Objections to the Petition for Full Intervention filed by Louisville Gas and Electric Company and Kentucky Utilities Company at 6-7 (May 22, 2012).

not any Commission-jurisdictional retail tariff provision. In addition, notably absent from EKPC's motion is any disclosure of the existing FERC-approved OATT process that allows transmission customers like EKPC to request information regarding KU's OATT rates. This fulsome process is outlined in detail in Attachment O of KU's OATT on file with FERC.<sup>9</sup> So EKPC's claimed special interest in this proceeding based on the transmission service it takes from KU is unavailing as non-jurisdictional to this Commission.

But 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. The Kentucky Supreme Court has been clear on this issue for more than thirty years:

Clearly, the legislature has provided two effective vehicles to enforce its orders, including those that deal with adequacy of service. It is equally clear that the General Assembly omitted a specific provision allowing the Commission to enforce its service cases by a reduction in a rate case.

...

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.

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[A]bsent legislation to the contrary, the question of rates should be kept separate from the question of service.<sup>10</sup>

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<sup>9</sup> Attachment O is at PDF page 795 of the OATT, available at: [http://www.oatioasis.com/LGEE/LGEEdocs/LGE\\_and\\_KU\\_Joint\\_Pro\\_Forma\\_OATT\\_Operational\\_8172015.pdf](http://www.oatioasis.com/LGEE/LGEEdocs/LGE_and_KU_Joint_Pro_Forma_OATT_Operational_8172015.pdf).

<sup>10</sup> *South Central Bell Tel. Co. v. Util. Reg. Comm'n*, 637 S.W.2d 649, 653-54 (Ky. 1982).

Therefore, even if EKPC could raise Commission-jurisdictional concerns about KU's transmission service—which it cannot—those concerns would by force of law be irrelevant to this retail rate proceeding, making any issues EKPC raised concerning such service or the adequacy of KU's transmission facilities necessarily unduly complicating and disruptive.

In addition to EKPC's lack of an asserted interest in this proceeding that is either jurisdictional to this Commission or relevant, the Commission should not grant EKPC intervention on the ground that it possesses a special interest not otherwise adequately represented in this proceeding precisely because all of KU's retail customers have an interest in KU's transmission system being adequate to serve them. Notably, EKPC has not asserted any interest in this proceeding as a retail customer of KU; it has not even asserted an interest in the adequacy of service to KU's retail customers, but rather argues a concern about adequacy of service to the customers of EKPC's members cooperatives and the performance of EKPC's electrical system, matters that certainly are not relevant to this proceeding: "EKPC—and only EKPC—has the familiarity with both the relevant interconnected transmission systems and the interest necessary to sufficiently ensure KU/LG&E's proposed investments are appropriately identified, designed, sequenced, and funded so as not to disregard or negatively impact EKPC's system performance."<sup>11</sup>

KU's retail customers are well represented in this proceeding by numerous other interveners with experienced counsel and the resources to address such issues, including the Attorney General, the Kentucky Industrial Utilities Customers, Inc., Wal-Mart, The Kroger Co., and others. So even if the adequacy of KU's wholesale transmission service were relevant to this proceeding—which it is not—the parties already granted intervention in this proceeding are more than adequate to address the issue. Therefore, because EKPC has asserted no jurisdictional or

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<sup>11</sup> EKPC Motion at 4.

relevant interest in this proceeding, much less a special interest not already represented by other parties, the Commission should refuse to grant EKPC intervention in this proceeding.

**EKPC Has Not Demonstrated that It Will Present Issues  
or Develop Facts that Will Assist the Commission**

For the same reasons given above, EKPC has not shown it will present issues or develop facts that will assist the Commission in this proceeding without unduly complicating or disrupting the proceeding. EKPC asserts that it could assist the Commission in this proceeding because “EKPC’s substantial and ongoing operational relationship with KU/LG&E, its extensive knowledge of KU/LG&E’s existing transmission facilities, and its obvious interest in a safe and reliable electric transmission grid allow EKPC to present issues and develop facts in this proceeding that may assist the Commission in fully considering the matters presented.”<sup>12</sup> But as shown above, EKPC’s own motion refutes this assertion. As the Kentucky Supreme Court’s longstanding opinion quoted above shows, only KU’s retail rates are at issue in this proceeding, not EKPC’s operational relationship with KU, and not EKPC’s interest in a safe and reliable transmission grid or wholesale transmission service.

EKPC has not asserted any interest in this proceeding as a retail customer of KU, so any claim that EKPC will help the Commission consider whether KU’s proposed transmission investments are prudent and should be included in retail rates is without merit. Moreover, as shown above, there are well-experienced and well-resourced parties the Commission has already granted intervention in this proceeding—parties who are or are tasked with representing KU’s actual customers—who are more than capable of challenging the prudence of investments proposed for rate recovery. Therefore, it simply is not plausible that EKPC would aid the Commission in considering what are fair, just, and reasonable retail rates in this proceeding when

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<sup>12</sup> EKPC Motion at 4.

EKPC has expressed no interest in those rates, but rather has asserted only non-jurisdictional and irrelevant interests. The Commission should thus deny EKPC’s motion to intervene on grounds it could aid the Commission in this proceeding without undue complication or disruption.

**Permitting EKPC to Intervene in this Proceeding Would Be Unprecedented, and Would Create a Dangerous Precedent for Electric Utilities to Begin Interfering in Other Electric Utilities’ Retail Rate Cases**

Perhaps most importantly, the Commission should deny EKPC intervention in this proceeding because it would set a dangerous precedent. To the best of counsel’s knowledge and research, no jurisdictional utility has sought to intervene in the retail rate case of another jurisdictional utility with its own certified service territory, and counsel has not found any instance where the Commission has granted such an intervention. Certainly jurisdictional electric utilities find themselves in Commission proceedings together for a number of valid reasons, such as territorial disputes,<sup>13</sup> changes of control of entire utilities or of utility facilities,<sup>14</sup> sales or acquisitions of utility facilities from each other,<sup>15</sup> and other non-rate proceedings where utilities might have operational effects on each other.<sup>16</sup> But permitting jurisdictional electric utilities to interfere in each other’s retail rate proceedings—particularly where the utility seeking to intervene has shown or asserted no interest, special or otherwise, in the retail rates at issue—would violate the concept of certified service territories, namely that each retail electric supplier

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<sup>13</sup> See, e.g., *In the Matter of: Inter-County Rural Electric Cooperative Corporation v. Kentucky Utilities Company*, Case No. 1994-00326, Order (Mar. 14, 1996).

<sup>14</sup> See, e.g., *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).

<sup>15</sup> See, e.g., *In the Matter of: Application of East Kentucky Power Cooperative, Inc. for Approval of the Acquisition of Existing Combustion Turbine Facilities from 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*, Case No. 2015-00267, Order (Aug. 14, 2015) (granting LG&E and KU intervention).

<sup>16</sup> See, e.g., *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).

has the exclusive right to furnish retail electric service to customers inside its territory without competition from other utilities.<sup>17</sup> Moreover, to the extent retail electric suppliers do indeed compete for retail customers by seeking to make their own rates and tariff offerings attractive to new or potentially relocating customers, to allow such utilities to intervene in each other's rate cases would effectively give them the potential ability to harm their competitors with little or no consequence to themselves, all while disserving the interests of the customers of the utility whose rates are at issue.<sup>18</sup> The Commission has repeatedly denied intervention to entities seeking to intervene in utilities' rate cases where the putative interveners are effectively competitors of the utility.<sup>19</sup> Therefore, the Commission should refuse to break new ground in this case by setting the potentially dangerous precedent that electric utilities may intervene in each other's retail rate cases.

**WHEREFORE**, Kentucky Utilities Company respectfully requests that the Commission deny the motion to intervene of East Kentucky Power Cooperative, Inc.

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<sup>17</sup> KRS 278.018(1).

<sup>18</sup> The Commission has at least implicitly recognized rate and service competition between retail electric service providers in the past. *See, e.g., In the Matter of: Inter-County Rural Electric Cooperative Corporation v. Kentucky Utilities Company*, Case No. 1994-00326, Order at 9 (Mar. 14, 1996) (recognizing rate differences between neighboring utilities as relevant to consideration of which utility should serve customer in territorial boundary dispute).

<sup>19</sup> *See, e.g., In the Matter of: Application of Columbia Gas of Kentucky, Inc. for an Adjustment in Rates*, Case No. 2016-00162, Order (July 21, 2016) (denying intervention to Direct Energy Business Marketing, LLC); *In the Matter of: Application of Columbia Gas of Kentucky, Inc. for an Adjustment in Rates*, Case No. 2016-00162, Order (July 21, 2016) (denying intervention to Stand Energy Corp.).



Dated: December 28, 2016

Respectfully submitted,

A handwritten signature in blue ink, reading "Kendrick R. Riggs", is written over a horizontal line.

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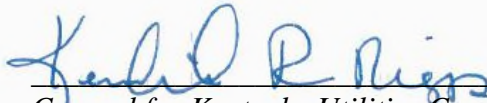
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**CERTIFICATE OF COMPLIANCE**

This is to certify that Kentucky Utilities Company's December 28, 2016 electronic filing of the Objection 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 December 28, 2016; 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 Objection will be mailed to the Commission on December 28, 2016. This further certifies that a true and accurate copy of the foregoing was served, via U.S. Mail and electronic mail, on December 28, 2016, upon the following.

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