

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

In the Matter of:

**THE ELECTRONIC APPLICATION OF)
KENERGY CORP. FOR A CERTIFICATE)
OF PUBLIC CONVENIENCE AND NECESSITY)
FOR THE CONSTRUCTION OF A HIGH-SPEED)
FIBER NETWORK AND FOR APPROVAL OF THE)
LEASING OF THE NETWORK’S EXCESS CAPACITY)
TO AN AFFILIATE TO BE ENGAGED IN THE)
PROVISION OF BROADBAND SERVICE TO)
UNSERVED AND UNDERSERVED HOUSEHOLDS)
AND BUSINESSES OF THE COMMONWEALTH)**

**Case No.
2021-00365**

RESPONSE TO MOTION TO INTERVENE

Applicant, **KENERGY CORP.**, opposes the motion to intervene by the Kentucky Broadband and Cable Association (“KBCA”) on the following grounds:

KBCA contends that it has a special interest in this matter that is not being adequately represented because it claims the Attorney General represents the interests of the rate payers.

ARGUMENT

The only person with a statutory right to intervene in a proceeding before the Commission is the Attorney General. Intervention by all others is permissive and is within the sole discretion of the Commission.

The standard for intervention is twofold. Commission regulation 807 KAR 5:001 Section 4(11) provides that a motion to intervene, “shall state his or her interest in the case and how an 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.” The regulation further provides that:

The commission shall grant a person leave to intervene if the commission finds that he or she has made a timely motion for intervention and that he or she has a special interest in the case that is not otherwise adequately represented or that his or her intervention is likely to present issues or to develop facts that assist the commission in fully considering the matter without unduly complicating or disrupting the proceedings.

Further, it is well established that “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.”

The only interest KBCA alleges is one of a competitor seeking to ensure that KRS 278.5464 is interpreted appropriately. The KBCA filed public comment in Kenergy’s filing in 2020-0215. KCBA fails to show why intervention is necessary when it has the option of filing public comment in this action. Pecuniary competitive motives have been held to be insufficient grounds for intervention.

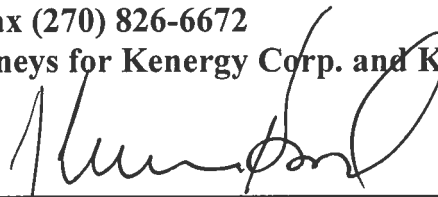
In Case No. 2004-00423, the Commission denied intervention in a CPCN case to a movant whose bid in a competitive power solicitation with the applicant was unsuccessful. In that case, the Commission found that the movant’s only interest was a pecuniary interest in challenging the rejection of its bid, and that those interests were not aligned with the interest of rate payers. In Case No. 2011-00124, the Commission denied intervention in a merger case because movant’s only interest was as a competitive supplier of retail electric and natural gas. In Case No. 2012-00136, the Commission denied

intervention in a pipeline replacement case to a movant whose only interest was as a competitive supplier of natural gas. Finally, in Case No. 2019-00176, the Commission denied SBA Tower VII, LLC's ("SBA") motion to intervene in a similar matter, finding that SBA's only interest was strictly commercial and lies in ensuring that no other facilities are built, which would allow SBA to remain the only tower in the area with no competition to drive down rents.

As such, Kenergy Corp. requests that the Motion by the Kentucky Broadband and Cable Association to intervene be denied.

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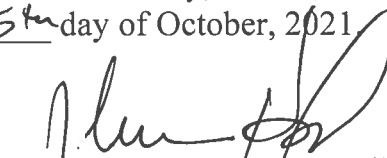
By



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CERTIFICATE OF SERVICE

I hereby certify that the foregoing was served by electronic filing to the Kentucky Public Service Commission, 211 Sower Blvd., Frankfort, KY 40602 with a copy served electronically to the Kentucky Attorney General, Office of Rate Intervention, 700 Capital Avenue, Suite 20, Frankfort, KY 40601-8204, and James W. Gardner and M. Todd Osterloh, Sturgill, Turner, Barker & Maloney, PLLC, 333 W. Vine St., Suite 1500, Lexington, KY 40507, on this 5th day of October, 2021.



Counsel for Kenergy Corp.