

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

In the Matter of:

ELECTRONIC TARIFF FILING OF)	
KENTUCKY POWER COMPANY FOR)	CASE NO. 2022-00387
APPROVAL OF A SPECIAL)	
CONTRACT WITH EBON)	
INTERNATIONAL, LLC)	

**JOINT MOTION OF MOUNTAIN ASSOCIATION, KENTUCKIANS FOR THE
COMMONWEALTH, APPALACHIAN CITIZENS' LAW CENTER, SIERRA CLUB,
AND KENTUCKY RESOURCES COUNCIL, INC. FOR FULL INTERVENTION AS
JOINT INTERVENORS**

Pursuant to 807 KAR 5:001E, Section 4(11), KRS 278.310, and KRS 278.040(2), Mountain Association (“MA”), Kentuckians For The Commonwealth (“KFTC”), Appalachian Citizens’ Law Center (“ACLC”), Sierra Club, and Kentucky Resources Council, Inc. (“KRC”) (collectively “Movants”) respectfully request to be granted full intervenor status in the above-captioned proceeding(s) as Joint Intervenors, and state in support thereof as follows:

1. Intervention in formal proceedings before the Kentucky Public Service Commission (“Commission”) is within the sound discretion of the Commission and is governed by 807 KAR 5:001E, Section 4(11), which provides in relevant part that:

A person who wishes to become a party to a case before the Commission may, by timely motion, request leave to intervene. [] The motion shall include the movant’s full name, mailing address, and electronic mail address and shall state his or her interest in the case and how 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.¹

2. 807 KAR 5:001E Section 4(11)(b) 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

¹ 807 KAR 5:001E § 4(11)(a)(1).

intervention and has a special interest in the case that is not otherwise adequately represented or whose 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.

3. This motion for intervention is timely filed, since under the *Order* entered on November 23, 2022 by the Commission in this case establishing the procedural schedule, a motion for intervention is deemed timely if filed not later than December 2, 2022.² Movants, if granted Joint Intervenor status, agree to accept and abide by the procedural schedule, including but not limited to the filing of any comments, data requests, and response to any data requests, so that there will be no prejudice to Kentucky Power Company (“KPCO”) or other parties from the grant of full Joint Intervenor status to Movants at this time.

4. Movants’ interests in the *Electronic Tariff Filing of Kentucky Power Company for Approval of a Special Contract with Ebon International, LLC* (“KPCO-Ebon Contract”) are different than those of the existing parties, and their joint participation 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.”³

5. As evidenced by the comments previously submitted by Movants on November 17, 2022, which are attached to the Order opening this case, if granted Joint Intervenor status, the Movants’ intervention is likely to present issues or develop facts that will assist the Commission in fully considering the matters at hand. Movants intend to conduct discovery and present

² Nov. 23, 2022, Order at Appendix A.

³ 807 KAR 5:001E § 4(11)(a)(1).

evidence building on issues raised in those November 17, 2022, comments on the proposed KPCO-Ebon Contract.⁴

6. In the November 23, 2022, *Order*, the Commission stated that its investigation will focus on “whether the proposed Special Contract is just and reasonable.”⁵ MA, ACLC, Sierra Club, and KRC, along with the Office of the Attorney General and Kentucky Industrial Utility Customers (“KIUC”), submitted comments on November 17, 2023 addressed to the reasonableness *vel non* of the KPCO-Ebon Contract. Among other issues, Movants plan to submit testimony and evidence as to why the KPCO-Ebon Contract acts as an Economic Development Rate (EDR) and should be evaluated pursuant to the standards applicable to EDR contracts, as identified by the Commission’s final *Order* in Administrative Case No. 327.⁶

7. Movants’ participation as Joint Intervenors will additionally aid the Commission in its investigation of issues regarding collateral and security in the KPCO-Ebon Contract, as highlighted by Movants’ November 17 joint comments.⁷ As mentioned below, Movants either are themselves customers of KPCO, or have members who are KPCO customers, and could be required to bear additional costs as a result of the KPCO-Ebon Contract, particularly in the event of a default or early termination of the contract. If granted joint intervention, Movants will present evidence regarding the importance of requiring additional protections for ratepayers, including both security and collateral, from the unique and significant risks posed by cryptocurrency mining facilities.

⁴ See Nov. 23, 2022, *Order* at Appendix B, Comments of Joint Commenters on the Kentucky Power Company’s Special Contract for Electric Service and Rider D.R.S. Addendums with Ebon International, LLC, Case No. TFS2022-00529 (Nov. 17, 2022). MA, ACLC, Sierra Club, and KRC were joined as commenters by Kentucky Conservation Committee and Apogee-Climate & Energy Transitions/Earth Tools.

⁵ Nov. 23, 2022 *Order* at 2.

⁶ Sept. 24, 1990 *Order* at 10, *In re: An Investigation into the Implementation of Economic Development Rates by Electric and Gas Utilities*, Admin. Case No. 327.

⁷ Comments of Joint Commenters at 10.

8. As mentioned in Movants' November 17, 2022, comments, KPCO is currently capacity short, and approval of the KPCO-Ebon Contract would increase KPCO's capacity needs by as much as 250 MW in the Ebon project's second phase.⁸ A full accounting of the potential costs and risks associated with the KPCO-Ebon Contract is imperative to ensure that existing customers are fully shielded from any adverse rate and financial impacts of adding this large additional capacity need and supporting infrastructure. As described below, many of Movants' members are customers in the KPCO territory and would be adversely affected by any such impacts.

9. Existing parties to the proceeding do not adequately represent the interests of Movants and their members. No current party represents the specific perspective and interests of Movants, as discussed below.

10. MA is a non-profit corporation in good standing incorporated in the Commonwealth of Kentucky, with its office at 433 Chestnut Street, Berea, Kentucky, 40403. MA works with people in eastern Kentucky and Central Appalachia to create economic opportunity, strengthen democracy, and support the sustainable use of natural resources. MA's energy programs work to strengthen the region's residents, small businesses, local governments, communities, and non-profits by helping to reduce energy costs and consumption, increase energy security, and build resilience in the face of climate change. MA has worked with KPCO customers over the last fourteen years providing financing to access investments in energy efficiency and renewable energy, resulting in reduced operating expenses. At the same time, MA has assisted energy contractors with technical trainings and equipment financing to grow their businesses. On December 4, 2020, Kentucky Energy and Environment Cabinet Secretary

⁸ *Id.* at 3.

Rebecca Goodman announced MA as the recipient of the 2020 Environmental Pacesetter Award, given in recognition of innovative efforts in protecting the environment and setting an example of environmental stewardship.⁹

11. It is clear that MA has a special interest in the case that is “not otherwise adequately represented” and alternatively that MA’s intervention as a Joint Intervenor “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.”¹⁰

12. ACLC is a non-profit corporation in good standing incorporated in the Commonwealth of Kentucky with its office at 317 Main Street, Whitesburg, Kentucky. ACLC is a KPCO customer. Since its incorporation in 2001, ACLC has focused on addressing the environmental, health, and economic impacts of resource extraction in Eastern Kentucky and Central Appalachia. ACLC's primary work includes both direct representation of individuals and groups, and policy and advocacy work aimed at moving the region toward a more just economic transition away from coal. In 2010, ACLC represented the Pike County Senior Citizens Program, Inc. as an intervenor in a KPCO rate case, Case No. 2009-00459. Currently, ACLC's work in support of a just transition includes numerous efforts to address utility unaffordability throughout Eastern Kentucky. ACLC advocates for energy and water affordability on behalf of low-income residents in the region by participating as stakeholders in national and state energy and water affordability discussions and workgroups, by conducting and publishing research on utility affordability, and by directly representing the Martin County Concerned Citizens before the PSC. In addition to ACLC's specific focus on utility affordability, ACLC focuses its advocacy on

⁹ KYDEP, “Gov. Andy Beshear and Secretary Rebecca Goodman Announce Annual Environmental Awards of Excellence,” *Naturally Connected* (Dec. 4, 2020), <https://kydep.wordpress.com/2020/12/04/gov-andy-beshear-and-secretary-rebecca-goodman-announce-annual-environmental-awards-of-excellence/>.

¹⁰ 807 KAR 5:001E § 4(11)(a)(1).

measures to ensure that the nation's transition away from coal takes into account the extraordinary burdens eastern Kentucky has faced and continues to face as a result of more than a century of dependence on coal. ACLC believes that responsible transition requires that new energy production and significant new energy uses must be scrutinized to ensure that, at a minimum, they are sustainable in the long term, will not burden our communities, and provide community benefits. Finally, ACLC's representation extends to numerous individuals who are customers of KPCO and are clients of ACLC.

13. It is clear that ACLC has a special interest in the case that is “not otherwise adequately represented” and alternatively that ACLC's intervention as a Joint Intervenor “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.”¹¹

14. KFTC is a non-profit corporation in good standing incorporated in the Commonwealth of Kentucky with its principal office located at 131 North Mill Street, London, Kentucky 40743, is a forty-one-year-old, multi-issue grassroots organization of Kentuckians inspired by a vision to work for a brighter future for all people, no matter our color, where we come from, or how much money we have. Together, KFTC members organize for a fair economy, a healthy environment, new safe energy, and an honest democracy. KFTC has twelve chapters across the state—including eastern Kentucky chapters in the Big Sandy region, Rowan County, and Kentucky River region, many of whose members are KPCO ratepayers—with 12,000 members in nearly all of Kentucky's 120 counties. KFTC also pays electric rates to KPCO at its Prestonsburg office, located at 152 North Lake Drive, Prestonsburg, KY 41653.

¹¹ 807 KAR 5:001E § 4(11)(a)(1).

15. As an organization, KFTC has been involved with issues affecting low-income residential ratepayers for over thirty years and has significant experience in educating the public and supporting both public comments and expert testimony in rate cases and has gained a deep understanding of the needs of residential customers across the state, and specifically in Eastern Kentucky, for energy efficiency, demand side management, and a healthy energy system, and the consequences for communities of the transition to clean energy. As a member-based organization with deep roots in the region and over 593 members who take service in the KPCO service territory, KFTC is uniquely positioned to be a voice for the needs and interests of KPCO residential ratepayers who are also KFTC members.

16. It is clear that KFTC has a special interest in the case that is “not otherwise adequately represented” and alternatively that KFTC’s intervention as a Joint Intervenor “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.”¹²

17. Sierra Club is one of the oldest and largest conservation groups in the country. Sierra Club has approximately 3.5 million members and supporters across its sixty-four chapters, covering all fifty states, the District of Columbia, and Puerto Rico. More than 5,800 Kentuckians belong to Sierra Club’s Kentucky Chapter, including individuals who are ratepayers taking service from KPCO. Sierra Club seeks to act on behalf of its individual members, whose interests align with Sierra Club’s in this proceeding. The Kentucky Chapter’s address is Sierra Club, Kentucky Chapter, PO Box 1368, Lexington, KY 40588.

18. Sierra Club has many years of experience working on energy and electric generation issues throughout the United States, including in Kentucky. Sierra Club advocates for

¹² 807 KAR 5:001E § 4(11)(a)(1).

cost-effective investments in demand response, energy storage, energy efficiency, and renewable energy, which reduce electric system costs for customers and utilities, while reducing reliance on uneconomical fossil-based generation and creating new, sustainable jobs.

19. It is clear that Sierra Club has a special interest in the case that is “not otherwise adequately represented” and alternatively that Sierra Club’s intervention as a Joint Intervenor “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.”¹³

20. KRC is a non-profit membership corporation in good standing incorporated under the laws of the Commonwealth of Kentucky and dedicated to prudent use and conservation of the natural resources of the Commonwealth and providing since 1984 legal and technical assistance without charge to low-income individuals, organizations, and communities across the Commonwealth and in the KPCO service area on a range of environmental and energy-related matters. KRC members include numerous individuals who are ratepayers taking service from KPCO, and KRC has representational standing to represent their interests in assuring that any approval of an EDR Special Contract is fully in accord with the requirements for such a special contract and protects existing ratepayers from adverse effects.

21. KRC has a special interest in the case that is “not otherwise adequately represented,” and alternatively KRC’s intervention as a Joint Intervenor “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.”¹⁴

22. The participation of MA, KFTC, ACLC, Sierra Club, and KRC as Joint Intervenors will neither complicate or disrupt the proceedings, since the discovery, testimony,

¹³ 807 KAR 5:001E § 4(11)(a)(1).

¹⁴ 807 KAR 5:001E § 4(11)(a)(1).

and witnesses will be jointly offered by the five organizations, who have adopted internal procedures to assure timely decision-making and coordinated participation with one voice in this case. Movants include parties that have participated in past cases involving KPCO and other jurisdictional utilities and have neither complicated nor disrupted those proceedings.

23. Among these part cases is Case No. 2020-00174, in which the Commission agreed that KRC, MA, and KFTC’s participation was “likely to present issues and develop facts that will “assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings.”¹⁵

WHEREFORE, for the reasons stated above, Movants MA, KFTC, ACLC, Sierra Club, and KRC respectfully request to be accorded the status of full Joint Intervenors, and that each party to the case be directed to serve upon the undersigned counsel, all future pleadings and documents that are filed in this case.

Respectfully submitted,



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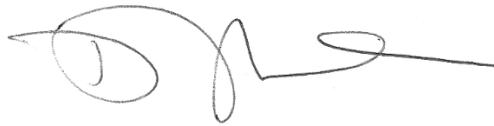
*Counsel for Joint Movants For Intervention As
Joint Intervenors Mountain Association,
Kentuckians for the Commonwealth,*

¹⁵ Aug. 4, 2020, Order at 5, Case No. 2020-00174.

*Appalachian Citizens Law Center, Sierra
Club, and Kentucky Resources Council, Inc.*

CERTIFICATE OF SERVICE

In accordance with the Commission's July 22, 2021 Order in Case No. 2020-00085, *Electronic Emergency Docket Related to the Novel Coronavirus COVID-19*, this is to certify that this electronic filing was tendered to the Commission on December 2, 2022; that the documents in this electronic filing are a true representations of the materials prepared for the filing; and that the Commission has not excused any party from electronic filing procedures for this case at this time.

A handwritten signature in black ink, appearing to read 'Tom FitzGerald', with a long horizontal line extending to the right.

Tom FitzGerald