

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY

In the Matter of:

Electronic Application of Pennyryle Regional)
Energy Agency for a Declaratory Order) Case No. 2023-00195
Regarding the Jurisdiction of the Public)
Service Commission)

**PREA’S RESPONSE TO THE MOTION TO INTERVENE
BY ATMOS ENERGY CORPORATION**

The Pennyryle Regional Energy Agency (“PREA”), by counsel, respectfully submits the following response and objection to the Motion for Intervention by Atmos Energy Corporation (“Atmos Energy”). In Response to the aforementioned Motion, PREA states as follows:

I. Introduction

As described in its Application for Declaratory Order, PREA is an interlocal agency created by the Cities of Guthrie and Trenton, Kentucky, pursuant to the Interlocal Cooperation Act, KRS 65.210 to 65.300. In order to address limited natural gas supply in the region, PREA plans to construct an intrastate natural-gas pipeline, composed of a 16-inch line that will run for 53 miles along the I-24 corridor north of the Tennessee state line. On Sept. 21, 2022, Governor Andy Beshear presented PREA with \$30 million in funding to assist with this “critical natural gas pipeline to support rapid business growth.”¹

¹ See “Gov. Beshear Supports Business Growth in Southern Pennyryle Region by Presenting \$30 Million To Construct Natural Gas Pipeline,” available at <https://www.kentucky.gov/Pages/Activity-stream.aspx?n=GovernorBeshear&prId=1510>.

On June 19, 2023, PREA filed the underlying Application for Declaratory Order, seeking confirmation from the Commission that PREA’s operations will not fall within the definition of a “utility” under KRS 278.010(3). On July 5, 2023, Atmos Energy filed a Motion for Intervention.

The sole issue in this case is simple. PREA seeks confirmation from the Commission that PREA does not fall within the definition of a “utility” under KRS 278.010(3) because it is an interlocal agency created by two Cities and because interlocal agencies like PREA may exercise and enjoy “any power or powers, privileges or authority” that the underlying municipalities likewise exercise, pursuant to KRS 65.240. In its Motion for Intervention, Atmos Energy ignores the simple issue raised by PREA and attempts to distract the Commission with information that is not relevant to the underlying issue. Moreover, Atmos Energy has failed to comply with the Commission’s regulations related to declaratory-order actions. Because Atmos Energy has not articulated a special interest related to whether PREA falls within the definition of “utility” under KRS 278.010 and because Atmos Energy attempts to unduly complicate and disrupt the proceedings by failing to comply with Commission regulations and distracting from the underlying issue, Atmos Energy’s Motion should be denied.

II. Atmos Energy has failed to comply with the Commission’s regulations.

Section 19 of 807 KAR 5:001 governs Applications for Declaratory Order. Subsection (4) states that a response “to an application for declaratory order shall be filed with the commission within twenty-one (21) days after the date on which the application was filed,” unless the Commission orders otherwise. In addition, Subsection (6) of Section 19 requires that any response containing an allegation of fact be supported by an affidavit or verified.

PREA filed its application on June 19, 2023. The 21-day window by which Atmos Energy should have provided a verified, written response was July 10, 2023. Atmos Energy did

not file a verified response by that date. In addition, even if Atmos Energy’s Motion could be construed as a response compliant with the regulation, it is completely devoid of any argument pertaining to whether PREA falls within the definition of “utility” under KRS 278.010.

By failing to comply with the Commission’s regulations, Atmos Energy’s intervention would unduly complicate and disrupt these proceedings.

III. Atmos Energy has failed to articulate a special interest with respect to this case.

One of the grounds a potential intervenor may establish prior to justifying intervention is demonstrating that it has a special interest *in the case*. 807 KAR 5:001, Section 4(11)(b).

In its Motion, Atmos Energy suggests that it has a special interest because it “is uniquely situated to have information” on “the need for new facilities and whether there is a wasteful duplication of existing facilities.” *See* Motion at 4. As discussed above, however, the issue raised by PREA is simply a question of legal interpretation—whether PREA is a “utility” as defined by KRS 278.010(3). The underlying issue does not implicate considerations of “need” or “wasteful duplication of facilities” that impact questions of certificates of public convenience and necessity (“CPCN”) under KRS 278.020. Simply put, any assertion by Atmos Energy that it has a special interest because it provides service in the area has no relation to the underlying issue raised by PREA.

The Commission commonly denies intervention when potential parties attempt to raise issues outside the scope of a proceeding. For example, the Commission denied intervention to the Sierra Club in a case involving East Kentucky Power Cooperative after determining, “While Sierra Club may be able to offer information about energy efficiency, DSM programs, and renewable and alternative energy strategies, they are simply outside the scope of this

proceeding.”² The same principle applies to Atmos Energy. Although Atmos Energy may have a special interest and unique information with respect to certain issues related to its operations, those interests and information are outside of the scope of this proceeding. Accordingly, the Commission should deny intervention to Atmos Energy as it did for the Sierra Club in the East Kentucky Power case.

As another example, the Commission denied intervention to an individual in a case involving whether BellSouth Telecommunications complied with Commission regulations.³ In doing so, the Commission noted that “the essential facts are not in dispute, and that the sole remaining issues are entirely legal in nature.”⁴ The Commission noted that the underlying interest in that proceeding was “adequately represented by the Commission itself.”⁵ The same is true in PREA’s case. Atmos Energy has not disputed any of the essential facts set forth in PREA’s Application. The sole remaining issue is a matter of legal interpretation. And any interest is adequately represented by the Commission itself. Accordingly, the Commission should reject Atmos Energy’s arguments on this point.

IV. Atmos Energy has failed to identify any issue or fact that will assist the Commission without unduly complicating or disrupting the proceeding.

The second prong a potential intervenor may establish prior to justify intervention is demonstrating that the party will present facts or issues that will assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings. 807 KAR 5:001, Section 4(11)(b). Atmos Energy has failed to identify any issue or fact that it could

² See *E. Kentucky Power Coop., Inc.*, Case No. 2006-00564 (Ky. PSC Apr. 19, 2007); see also *Kentucky Power Co.*, Case No. 2012-00578 (Ky. PSC July 5, 2013)(denying intervention to a potential party because its interest in the issues involved in the case was “tangential at best”).

³ See *BellSouth Telecommunications, Inc.*, Case No. 1996-00045 (Ky. PSC May 31, 1996).

⁴ *Id.*

⁵ *Id.*

present to assist the Commission in confirming that PREA’s planned operations will not subject itself to the general jurisdiction of the Commission as a “utility” under KRS 278.020.⁶

Moreover, in attempting to provide any argument in support of intervention on this element, Atmos Energy relies on issues that are completely irrelevant to this proceeding. First, Atmos Energy suggests that the Commission has “an interest in making decisions on applications such as this”⁷ by quoting KRS 278.016, which pertains to certified territory of *electric utilities*—not natural gas providers. Second, Atmos Energy’s suggestion that the Commission will need to consider issues such as “wasteful duplication” ignores the underlying issue of this case, which relates to statutory interpretation of KRS 278.010. Issues such as “willful duplication” arise in cases involving CPCNs—not in cases involving the definition of “utility” under KRS 278.010.⁸

Atmos Energy’s misleading arguments involving certified territory for *electric utilities* and the standard of review for CPCNs demonstrate that its participation in this case will undoubtedly complicate and disrupt the proceedings. Accordingly, its Motion for Intervention should be denied.

V. Conclusion

Atmos Energy’s Motion for Intervention ignores the underlying issue presented in this case, which relates to the definition of a “utility” under KRS 278.010. In doing so, Atmos Energy has failed to establish a special interest in the scope of this matter and has demonstrated that its participation in this matter will unduly complicate and disrupt the proceedings by distracting the Commission with issues that are not relevant to the underlying action. Moreover,

⁶ As stated in its Application, PREA acknowledges that the Commission will regulate safety aspects of PREA’s operations.

⁷ See Motion at 4-5.

⁸ This equally applies to Atmos Energy’s reliance on KRS 278.020 related to acquisition of control of a utility, as presented in footnote 4 of its Motion.

Atmos Energy has failed to comply with the deadline set forth in Section 19 of 807 KAR 5:001 for providing a substantive response to PREA's Application. Accordingly, the Commission should deny Atmos Energy's Motion to Intervene in this matter.

Respectfully Submitted,

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