

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF:

ELECTRONIC APPLICATION OF DUKE ENERGY)	
KENTUCKY, INC. FOR A DECLARATORY ORDER)	CASE NO. 2025-00142
REGARDING RECOVERY OF COSTS TO)	
TO CONVERT CUSTOMERS TO ALTERNATE)	
SOURCE OF FUEL)	

REPLY

Comes now, Morning Scott, LLC (“Scott”), by counsel, in accordance with 807 KAR 5:001, Section 5, and other applicable law, and for its Reply in Support of its Motion to Intervene, respectfully states as follows:

807 KAR 5:001, Section 4(11)(b) provides two alternative bases for intervention before the Public Service Commission (the “Commission”). *Biddle v. Pub. Serv. Comm'n of Kentucky*, 643 S.W.3d 83, 85 (Ky. Ct. App. 2021). Intervention should be granted where the person “has a special interest in the case that is not otherwise adequately represented” or that the person’s “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.” The Commission is required to consider both routes for intervention, though the movant need only meet one criteria. *Id* at 92. While the Commission has discretion in allowing intervention “[w]hen either prong of 807 KAR 5:001 Section 4(11)(b) is established, the Commission “shall” grant the person leave to intervene. *Id* at 94.

In this case, Scott has a special interest that is not otherwise adequately represented, or in the alternative, will present issues and facts that will assist the Commission. It is worth noting that when the Commission is reviewing a case involving rate adjustment, the Attorney General is

generally the party with standing to represent and protect the interests of the consumer, however, the inclusion of permissive intervention under 4(11)(b) clearly indicates the legislative intent to give voice to persons like Scott who are being impact by non-rate based cases.

I. Scott has a special interest that is not otherwise adequately represented.

“The term “special interest” while not defined in 807 KAR 5:001 Section 1 has a long legal history and such term has been applied to protect the rights of adjoining property owners to the use and enjoyment of their property.” *Id* at 93. In this case, Duke is seeking review and recommendation from the Commission with regard to existing gas lines from which Scott is a utility customer. Duke has argued that Scott’s Motion to Intervene presupposes that Duke will abandon the property, whereas Duke characterizes the issue as one of multiple choices. Duke states that it “has presented three options to the Commission”, however, after careful review of Duke’s Application and Response, Scott has only been able to determine two outcomes. Indeed, Duke’s Application seeks only one declaration: “Duke Energy Kentucky requests the Commission enter a declaratory order confirming that Duke Energy Kentucky can recover the costs of converting these customers to an alternate fuel source as costs of removal of the existing services.” Verified Application, p. 3. One scenario requires such a declaration, Duke abandoning its obligation to provide service. Either Duke will be granted leave to abandon these transmission lines and in effect abandon their statutory duty to provide reasonable service to Scott, with nominal and insufficient consideration for transfer to alternative fuel sources, or, Duke will be required to improve upon and extend the current gas lines in order to continue the service to customers like Scott. In other words, the ultimate decision that will be reached will determine whether or not Scott will have utility service on their property.

This is a special interest because it directly impacts Scott's use and enjoyment of their property. Furthermore, this is not a general complaint that affects all utility customers, but is narrow in scope to only those few properties from which abandonment of the established gas lines would impact, a number which is believed to be only 25 properties. *See Verified Application*. Additionally, this is not a "mere recitation of the quality of service consumed by the movant or a general statement regarding the impact of possible modification of rates," but rather goes directly to whether in the foreseeable future, Scott will be able to enjoy the use of their property as they have become accustomed to.¹

Having shown that Scott is in the unique position which gives them a special interest, the question turns next to whether they are being otherwise adequately represented. They are not. While Section 4(11)(b) does not precisely define what it means to be "adequately represented", caselaw interpreting the similar phrasing as used in CR 24.01, has made clear that a party cannot be adequately represented where the other party seeks a divergent result or where the other party has no reason to protect or advocate for rights of the party seeking intervention. *See generally Carter v. Smith*, 170 S.W.3d 402, 410 (Ky. App. 2004). While Duke pretends to merely be seeking guidance from the Commission, it is clear from the Response and in other filings that Duke strongly favors a recommendation that would allow Duke to abandon the service and provide some minimal monetary payout to the customers. Duke's Response goes out of its way to express that Duke "understands the frustration of Scott" and that Duke "shares the customers concerns". *See Duke's Response* at 4. Duke seems to believe that because they share and understand Scott's

¹ Duke cites two Public Service Commission cases to support their argument: [1] *In the Matter of the Adjustment of Rates for Kentucky American Water Company*, Case No. 2000-00120, (Ky. P.S.C. May 30, 2000) and [2] *Electronic Application of Flemming-Mason Energy Cooperative, Inc. for Pass-Through of Duke Energy Kentucky, Inc. Wholesale Rate Adjustment*, Case 2021-0019 (Ky. P.S.C. Apr. 15, 2021). Both are rate adjustment cases which have different and inapplicable standards for permissive intervention, as such they are not determinative in this action.

concerns, Scott is adequately represented in this matter. This is not the case. First, Duke, like any subsidiary of a publicly-traded company, is duty bound to maximize value for its shareholders. Duke has no incentive to advocate on behalf of Scott to maintain service. Second, it is clear that Duke and Scott would prefer different results from the Commission. As such, Duke cannot adequately represent Scott.

II. In the Alternative, Scott will present and develop issues and facts that will assist the Commission.

While it is only necessary for Scott to show that it has a special interest not adequately represented, intervention by Scott will also provide the Commission with practical facts and issues that Duke will otherwise not present. Duke's Response suggests that Scott's concern relates only to the negotiation that they plan to undertake with customers if they are allowed to abandon their service. Duke fails to mention in its Response that such negotiated amount would be capped at a \$25,000.00, per customer.² Duke proposes that this number will cover all costs for any customer who would be forced to switch to an alternative fuel source. However, Scott filed its Motion because Duke has obviously provided data or facts which do not reflect the actual cost. Scott on the other hand, has already undertaken to have numerous quotes and inspections done on the cost of transferring to an alternative fuel source. Said quotes make clear that Duke's proposed amount will be woefully insufficient.

Duke has stated that this case is about determining whether Duke should abandon and negotiate with customers or "construct new natural gas main extension, which is more expensive and time-consuming process." In other words, Duke admits this is a case about costs, therefore,

² See Verified Application at page 3 ("Duke Energy Kentucky determined that a fair amount to compensate these customers for the costs of conversion to an alternate fuel is \$25,000.")

for the Commission to make the most apt determination they should be informed of all potential costs involved, specifically those an individual customer would face if the Commission was to recommend the abandonment and negotiation outcome. No final outcome has yet been made by the Commission and to hear these facts from Scott would not cause any undue delay but would serve as foundational evidence for the Commission to make a holistic decision.

III. Scott's delay in filing intervention was excusable.

807 KAR 5:001 does not set forth a specific timeline for when an motion to intervene must be filed. On April 21, 2025, Scott received a letter from Duke informing Scott that Duke was collaborating with TC Energy for an upgrade to their natural gas infrastructure and that there could be some impact on customers (the "April Letter" attached hereto as Exh. 1). The April Letter gave no indication that Scott would be impacted nor was it mentioned that abandonment of service was the result Duke sought. On October 20, 2025, Duke sent Scott a second vague letter stating they were seeking guidance from the Commission and would provide further updates (the "October Letter" attached hereto as Exh. 2). The October Letter again failed to give any information about the proposed abandonment or put Scott on notice of the potential impact to their use and enjoyment of their property. It only became clear through telephone calls made to Duke that Duke was planning to disconnect and abandon the service lines providing Scott with utility. As soon as was practical, Scott filed its Motion to Intervene after ensuring that it had grounds to do so.

CONCLUSION

Scott has a special interest in this case which is not otherwise adequately represented by the parties involved. Furthermore, Scott will provide additional facts and present issues which

Duke has neglected to present. Scott respectfully submits that its Motion to Intervene should be granted.

Respectfully submitted,

/s/ Mickey T. Webster

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CERTIFICATE OF SERVICE

This is to certify that foregoing electronic filing was transmitted to the Commission on December 16, 2025, and that it has been served upon the following counsel of record by electronic means in compliance with 805 KAR 5:001(4)(8):

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Exhibit 1



139 E. Fourth St
Cincinnati, OH 45202

April 21, 2025

Morning Scott LLC C/O Peter Snow
2895 Baynum Hill Rd
California, KY 41007

Subject: TC Energy Infrastructure Project

Dear Morning Scott LLC,

Duke Energy Kentucky is collaborating with TC Energy on their proposed Northern Kentucky Gate Enhancement Project. TC Energy is the interstate natural gas supplier to Duke Energy Kentucky. This project is proposing to replace and upgrade their natural gas infrastructure in Bracken, Pendleton, and Campbell Counties in 2028 pending approval from the Federal Energy Regulatory Commission.

Duke Energy Kentucky is currently working on a solution for our customers impacted by TC Energy's Northern Kentucky Gate Enhancement Project. We are seeking guidance from the Kentucky Public Service Commission for next steps and will be reaching out to you. We anticipate having more information later this summer.

If you have any questions about this project, please email DukeNGMajorProjects@Duke-Energy.com

Duke Energy has been safely providing natural gas services to our customers in Northern Kentucky for over 185 years and we are committed to doing so for decades to come. We greatly appreciate your patience as we continue to work to understand more about this project.

Sincerely,

Duke Energy Kentucky

Exhibit 2



139 E. Fourth St.
Cincinnati, Ohio 45202

October 20, 2025

As part of our ongoing commitment to being good neighbors in the communities where we live, work, and provide service, Duke Energy Kentucky is actively evaluating the best ways to serve and support our valued customers who may be impacted by the proposed NKY Gate Enhancement Project.

Our team is dedicated to collaborating with affected customers to find viable solutions. Should you have any questions, please feel free to reach out to Duke Energy Kentucky's 3rd party Sr. Right of Way Agent, Jessica Cramer at 937-902-3042 or via email at jessica.cramer@percheronllc.com.

Duke Energy is currently seeking guidance from the Kentucky Public Service Commission and will be in touch with additional information once we have more details. We anticipate receiving their feedback and being able to provide further updates in the near future.

Thank you for your understanding and patience as we work through this process together.