

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

In the Matter of:

ELECTRONIC APPLICATION OF EAST)	
KENTUCKY POWER COOPERATIVE, INC. FOR A)	
GENERAL ADJUSTMENT OF RATES, APPROVAL)	CASE NO. 2025-00208
OF DEPRECIATION STUDY, AMORTIZATION OF)	
CERTAIN REGULATORY ASSETS, AND OTHER)	
GENERAL RELIEF)	

**REPLY OF JOINT MOVANTS FOR JOINT INTERVENTION APPALACHIAN
CITIZENS' LAW CENTER, KENTUCKIANS FOR THE COMMONWEALTH,
KENTUCKY SOLAR ENERGY SOCIETY, AND MOUNTAIN ASSOCIATION TO
EAST KENTUCKY POWER COMPANY, INC.'S, RESPONSE TO MOTION FOR
INTERVENTION**

Come now Appalachian Citizens' Law Center, Kentuckians for the Commonwealth, Kentucky Solar Energy Society, and Mountain Association (collectively "Joint Movants"), by and through counsel, pursuant to 807 KAR 5:001 Section 5(3), and provide this Reply to East Kentucky Power Company, Inc. (EKPC's) Response to their Motion to Intervene.

Introduction

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 5:001, 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

807 KAR 5:001, Section 4(11)(b) provides that the Commission shall grant a person leave to intervene if the Commission finds that they have made a timely motion for intervention and have a special interest in the case that is not otherwise adequately represented **or** that their 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.

Joint Movants amply demonstrated in their motion to intervene (and through their productive and non-disruptive participation in numerous previous utility cases) that they meet both alternate prongs for intervention.

Joint Movants have demonstrated a special interest in the case that is not otherwise adequately represented

EKPC's Response claims that "only alleged special interest is advocating for energy affordability on behalf of low-income residents."² This is patently untrue, and inaccurate. Without reiterating the interests of the Joint Movants in full,³ among those listed are:

- ongoing and legacy impacts of the coal industry and the economic impacts of its decline;
- energy and water affordability on behalf of low-income residents in the region;
- "consideration of cost-effective energy efficiency resources" as well as "a discussion of smart grid investments..."⁴

¹ 807 KAR 5:001 Section 4(11)(a)(1).

² Response to Request for Intervention by Appalachian Citizens' Law Center, Kentuckians for the Commonwealth, Kentucky Solar Energy Society, and Mountain Association at PDF 3 (Aug. 29, 2025) ("EKPC Response").

³ 807 KAR 5:001 Section 5(3) requires that "[t]he reply shall be confined to points raised in the responses to which they are addressed, and shall not reiterate an argument already presented."

⁴ Case No. 2025-00208, Application at 19-20 (Aug. 01, 2025).

- reducing energy costs and consumption, increasing energy security, and building resilience in the face of climate change;
- the effects of rate-making on communities, low-income individuals, and small businesses in Eastern Kentucky

Certainly *among* the interests listed is the representation of low-income members as clients. However, the special interests of Joint Intervenor go far beyond low-income affordability. They include the core of the communities throughout Eastern Kentucky such as legacy impacts of the coal industry, economic opportunity, local democracy, and supporting the sustainable use of natural resources. These are all deeply affected by the rates charged by EKPC to its member-owner distribution cooperatives, and the member-owners of those cooperatives. Even the most casual reading of the motion reflects the gross inaccuracy of the EKPC mischaracterization of the interests of Joint Movants.

Even if representation of low-income end-use ratepayers *were* the only special interest asserted by Joint Movants, this interest should be given full weight, as affordability and rate impacts on the most vulnerable of ratepayers have long been recognized by this Commission as legitimate concerns. EKPC's member-cooperative service territories are among the lowest-income areas in Kentucky, and indeed the nation.⁵

EKPC claims that the interests of low-income end-use member-owners is "adequately represented by the Attorney General of the Commonwealth of Kentucky, through the Office of Rate Intervention."⁶ However, the Attorney General's mandate

⁵ EKPC member-owner territories include the two counties with the lowest median income in the state, which are both in the top 10 counties across all US States. U.S. Census Bureau, U.S. Department of Commerce. "Income in the Past 12 Months (in 2023 Inflation-Adjusted Dollars)." American Community Survey, ACS 5-Year Estimates Subject Tables, Table S1901, [https://data.census.gov/table/ACSST5Y2023.S1901?g=010XX00US\\$0500000](https://data.census.gov/table/ACSST5Y2023.S1901?g=010XX00US$0500000). Accessed on 3 Sep 2025.

⁶ EKPC Response at 3.

under KRS 367.150(8) does not allow him to advocate for any subset of consumers. To rely on the Attorney General's general obligation under that statute to claim that all individual subsets of customers are adequately represented by the Attorney General and thus have no possible special interests in the case would be to preclude the intervention of every other party who moves to intervene before the Commission, including industrial, municipal, federal, commercial, and all other intervenors.

The Nucor Steel Gallatin motion for intervention reflects this reality. It moved to intervene as “the largest end-use electric customer located in the Owen Electric Cooperative (‘Owen’) service territory. Owen is, in turn, provided with generation and transmission (‘G&T’) service by East Kentucky Power Cooperative, Inc. (‘EKPC’ or ‘Company’).”⁷ Nucor noted further that:

Nucor’s interest cannot be adequately represented by any existing party. While the Kentucky Attorney General’s Office of Rate Intervention is statutorily charged with representing the interests of “consumers” pursuant to KRS 367.150(8), that duty relates primarily to residential customers. In contrast, Nucor is a large industrial customer who takes service on a different rate schedule than residential customers.⁸

That motion was unopposed by EKPC. Within a week, and prior to being granted intervention, (and belying the supposed primary purpose of the Attorney General to represent primarily residential customers), the Office of the Attorney General and counsel for Nucor jointly filed a motion to amend the procedural schedule, albeit under the auspices of “[t]he Attorney General of the Commonwealth of Kentucky, through his

⁷ Motion to Intervene of Nucor Steel Gallatin at 3 (Aug. 08, 2025).

⁸ *Id.* at 6.

Office of Rate Intervention (“OAG”), and the Kentucky Industrial Utility Customers (“KIUC”)....”⁹ The motion of Nucor Steel Gallatin was subsequently granted.¹⁰

The interests of residential ratepayers, while sometimes aligned with those of major industrial customers, are sometimes at odds, as costs of services are allocated to different customer classes. The alignment of the OAG with industrial customers reflects that the office cannot be expected to advocate for residential customers whose interests may be contrary to those of the major industrials.

EKPC further claims that:

The Joint Movants’ Motion presupposes that EKPC’s rate case is a case where the rates in question are charged directly to a consumer – as is the case in investor owned, vertically integrated utility rate cases. However, fundamentally, that is not the nature of this proceeding.

However this assertion itself presupposes that the rates it charges do not affect ultimate ratepayers, when quite the opposite is true (as evidenced by Nucor’s motion, among others). This implicit assertion is clearly belied by the sixteen simultaneous applications filed by EKPC’s member-owners “for Pass-Through of East Kentucky Power Cooperative, Inc.’s Wholesale Rate Adjustment” filed the same day as EKPC’s application in this case.¹¹ The rates charged by EKPC have a direct impact on the low-income and small commercial ratepayer member-owners that Joint Movants demonstrated a special interest in representing, and it is disingenuous to suggest otherwise. Furthermore, Joint Movants note that the assertion of impacts on a single end-use member-owner of an EKPC distribution cooperative was apparently not a ground for objecting to the motion of Nucor Steel Gallatin.

⁹ Joint Response of Attorney General and KIUC to EKPC’s Motion for Extension of Time to File Responses to Commission Staff’s Initial Data Requests; Alternative Motion to Modify the Procedural Schedule (Aug. 15, 2025).

¹⁰ Order (Aug. 19, 2025).

¹¹ Case Nos. 2025-00209 through 2025-00224.

Finally, EKPC shifts tactics and instead claims that rather than improperly *only* claiming to represent end-use member-owners, Joint Movant ACLC does not claim to be a member-owner. However, being an end-use ratepayer is neither necessary nor sufficient for intervention. ACLC has demonstrated an adequate special interest (and expertise, as discussed below), through its work on environmental, health, and economic impacts of resource extraction in Eastern Kentucky and Central Appalachia. This includes work in EKPC's owner-member's territory. ACLC has moved for joint intervention, and its participation is reflected in one voice through which the Joint Movants speak.

The participation of Joint Movants is likely to present issues or to develop facts that assist the Commission in fully considering the matter

Alternatively, Joint Movants have demonstrated that they are likely to present issues or to develop facts that will assist the Commission in fully considering the matter. Again, without fully reiterating the expertise of Joint Movants, a partial list fully shows their ability in this regard by:

- Participating as stakeholders in national and state energy and water affordability discussions and workgroups, by conducting research on utility affordability;
- Involvement with issues affecting low-income residential ratepayers for over thirty years;
- Demonstration of significant experience in educating the public and supporting both public comments and expert testimony in rate cases;
- Gaining a deep understanding of the needs of residential customers across the state for energy efficiency, demand side management, and a healthy energy system, and the consequences for communities of the transition to clean energy; "including its consideration of cost-effective energy efficiency resources" as well as "a discussion of smart grid investments...."¹²

¹² Application at 19-20 (Aug. 01, 2025).

- Submitting expert testimony of organization members on the matters at issue and related matters several times; and
- Focusing programs and research on assisting small commercial ratepayers in Eastern Kentucky, who are often not represented in PSC cases, with cost saving measures

Instead of disputing the expertise of the Joint Movants, EKPC claims “[t]he Joint Movants do not allege any expertise or experience with ratemaking nor does the request allege whether they will file expert testimony,” a claim which is clearly simply again divorced from truth or reality. To the extent that EKPC argues that ratemaking has nothing to do with its ratepayers, and has no effects on low-income and small commercial ratepayers, this is a deeply troubling position for a utility to take.

EKPC further asserts that “the Joint Movants failed to move to intervene in any of EKPC’s previous rate cases and did not move to intervene in in any of EKPC’s OwnerMembers’ pass-through cases.” Such prior participation is beside the point, and has no bearing on whether the criteria for intervention have been met in this case.

EKPC instead again shifts positions and claims that “[t]he Joint Movants argue that they have participated in other cases before the Commission but offer no insight into how they may assist in this case,” while ignoring Joint Movants’ expertise in affordability, demand-side management, and energy efficiency and how these may minimize the impacts of rate increases on low-income and small commercial ratepayers. The Joint Movants’ motion specifically mentions expertise, advocacy, and *programs offered* by the Joint Movants in these areas. That EKPC claims these issues are not “the drivers in this rate case,” is again beside the point – which is whether the Joint Movants have demonstrated they are likely to present issues or to develop facts that assist the Commission in fully considering the matter.

Joint Movants participation will not unduly complicate or disrupt the proceedings

The last requirement for intervention is demonstration that intervention would not unduly complicate or disrupt the proceedings. Joint Movants only note EKPC makes no claim that intervention would unduly complicate or disrupt the proceeding, other than an obligatory comment.


Joint Movants' motion was timely and complete

Finally, Joint Movants' motion was made timely, as it was filed within the bounds of the existing procedural schedule set by the Commission.¹³ EKPC makes no claim in its response otherwise. Instead, EKPC makes the somewhat absurd contention that the motion was procedurally deficient for including the "business address" of each organization, rather than the "mailing" address. Nevermind that counsel for the Joint Movants signed the motion with the mailing address (and email address, and phone number) for *counsel* for the movants, as their legal representative. EKPC is making a rather confusing claim here that a street address where a non-profit organization is registered is somehow not a mailing address. As to email address, again, counsel provided emails for counsel in the signature line of the motion. This is the email where all correspondence and legal service relating to this case can be sent. If that was not sufficiently clear from the motion, counsel apologizes.

[Signatures on following page]

¹³ *Order* (August 14, 2025).

Respectfully Submitted,



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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 the electronic filing was submitted to the Commission on September 03, 2025; that the documents in this electronic filing are a true representation 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.



Byron L. Gary