

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF LOUISVILLE GAS	)	
AND ELECTRIC COMPANY FOR AN	)	CASE NO.
ADJUSTMENT OF ITS ELECTRIC AND GAS	)	2018-00295
RATES	)	

ORDER

The matter is before the Commission upon separate motions filed by Metropolitan Housing Coalition (MHC) and Association of Community Ministries, Inc. (ACM), requesting intervention in the instant proceeding. MHC states that it is a non-profit, non-partisan membership organization comprised of over 300 individual and organizational members, including representatives of low-income households, private and non-profit housing developers, service providers, financial institutions, labor unions, faith-based groups, and neighborhood groups. MHC informs that it is dedicated to advocating for fair, safe, and affordable housing in the Metro Louisville area. MHC avers that it has a special interest in this matter because utility costs are a significant component of affordable housing. MHC states that it “brings a perspective on the impact of rate adjustments for electric and gas service and the particular and disproportionate impacts that such rate increases have on access to affordable housing for fixed- and low-income individuals and families.”<sup>1</sup> In particular, MHC states that it is particularly concerned with both the structure and the amount of the proposed rate increases, arguing that the customer charge

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<sup>1</sup> Motion of Metropolitan Housing Coalition for Full Intervention at 3.

increase will have the most impact on the poor and elderly customers. MHC contends that its interest is not adequately represented by any other party to this proceeding because no current party represents the specific perspective and interest of those needing and those providing affordable housing. MHC further contends that its intervention will assist the Commission in determining whether the amount and structure of the requested rate increase are fair, just, and reasonable.

ACM states that it is a non-profit umbrella organization comprised of 15 independent community ministries that provide utility assistance and other social services to low-income individuals throughout Metro Louisville. ACM contends that it has a special interest in this proceeding because it is an organization dedicated to helping Louisville Gas and Electric Company (LG&E) customers maintain utility service. ACM informs that it provides emergency assistance to LG&E ratepayers who have received disconnection notices by making payments to LG&E sufficient to maintain service for 30 days and also by helping to reconnect customers who have been disconnected. ACM also implements the Community Winterhelp program in Louisville by distributing LG&E ratepayer contributions to assist low-income customers during the winter months. ACM contends that its interest cannot be adequately represented by any other party to this proceeding, including the Attorney General of the Commonwealth of Kentucky, by and through the Office of Rate Intervention (Attorney General). ACM states that as a direct service provider that helps customers maintain or regain service, its interest will be directly affected by the amount and design of residential rate increases proposed in this matter. Lastly, ACM avers that it will assist the Commission by providing information on the

interests of low-income residential ratepayers who face both the risk and reality of service disconnection.

Having reviewed MHC's and ACM's motions and being otherwise sufficiently advised, the Commission finds that the only person that has a statutory right to intervene is the Attorney General, pursuant to KRS 367.150(8)(b). Intervention by all others is permissive and is within the sound discretion of the Commission. In the unreported case of *EnviroPower, LLC v. Public Service Commission of Kentucky*, No. 2005-CA-001792-MR, 2007 WL 289328 (Ky. App. Feb. 2, 2007), the Court of Appeals ruled that this Commission retains power in its discretion to grant or deny a motion for intervention but that discretion is not unlimited. The Court then enumerated the statutory and regulatory limits on the Commission's discretion in ruling on motions for intervention. The statutory limitation, KRS 278.040(2), requires that the person seeking intervention have an interest in the rates or service of a utility as those are the only two subjects under the jurisdiction of the Commission. The regulatory limitation of 807 KAR 5:001, Section 4(11), requires that a person demonstrate a special interest in the proceeding, which is not otherwise adequately represented or that intervention is likely to present issues or develop facts that assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings.

Applying those standards to the requests for intervention, the Commission finds that MHC and ACM have failed to establish that they have an interest in the instant proceeding that is not otherwise adequately represented. Both MHC and ACM contend that it represents the interests of low-income customers served by LG&E and that such interest cannot be represented by any other party to this proceeding, including the

Attorney General, who was granted intervention in this matter by Order issued on October 15, 2018. MHC further argues that its interest in representing an organization that provides affordable housing cannot also be adequately represented by any other party. The Commission finds that the MHC's additional interest in providing affordable housing is intimately intertwined with its interest in serving the needs of low-income individuals and, thus, the primary interest of MHC is representing the interest of low-income customers.

The Commission takes administrative notice of an article that appeared in BereaOnline.com on October 16, 2018 (October 16 Article). In that article, Attorney General Andy Beshear states that the Attorney General's office represents "Kentucky families in electricity . . . cases before the [Commission], while fighting to support vital programs that assist low-income families."<sup>2</sup> The October 16 Article further states that "[the Attorney General's] office works with several partners and nonprofits to provide alternative rate designs to help assure the elderly and low-income families are protected from unduly harmful rate designs."<sup>3</sup> The October 16 Article also mentions the Attorney General obtaining an agreement with utilities, presumably LG&E and Kentucky Utilities Company, to provide shareholder contributions totaling \$1.5 million annually to help low-income residential customers defer utility costs as well as the efforts the Attorney General has made to stop utility rate increases, which could force families to choose between basic needs over higher energy costs.

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<sup>2</sup> <http://www.bereaonline.com/2018/10/beshear-our-fight-against-utility-hikes-results-in-1-2-billion-savings/>. A copy of the October 16 Article is also attached as an Appendix to this Order.

<sup>3</sup> *Id.*

In light of the statements made in the October 16 Article, the Commission finds that the interests of low-income customers are already adequately represented by the Attorney General, who is a party to this proceeding and is performing his statutory duties pursuant to KRS 367.150(8). The Commission further finds that the Attorney General in prior rate cases has actively and effectively represented the interests of low-income customers. Accordingly, we find that MHC and ACM have failed to establish that they have a special interest in this matter that is not otherwise adequately represented.

With respect to the question of whether MHC and ACM's intervention is likely to present issues or develop facts that assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings, both MHC and ACM state that each will present evidence regarding whether the proposed rate design, revenue allocation, and revenue increase are reasonable as well as the impact of the proposed rate increase on LG&E's low- and fixed-income residential customers. The Commission finds that such evidence would not assist us in fully considering the matter without unduly complicating the proceedings. We note that KRS 278.030(3) allows a utility to employ suitable and reasonable classifications of its rates and that such classifications may take into account "the nature of the use, the quality used, the time when used, the purpose for which used, and any other reasonable consideration."<sup>4</sup> While the statute allows for customer classes to be based on usage, the statute does not permit the establishment of a customer classification based on income level. LG&E does not have any rate classifications based on income, and the Commission is not authorized to create a separate class for low-income residential customers apart from the general residential

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<sup>4</sup> KRS 278.030(3).

customer class. Any impact resulting from LG&E's proposed rate increase will affect the residential class as a whole and those residential customers, including low-income customers, are already adequately represented by the Attorney General. Accordingly, we find that MHC and ACM's motion should be denied.

MHC and ACM will have ample opportunity to participate in this even though they are not granted intervenor status. MHC and ACM can review all public documents filed in this case and monitor the proceedings via the Commission's website. The Commission encourages MHC and ACM to work with the Attorney General to the extent that either wish to provide input or provide a witness or witnesses that the Attorney General might sponsor or call upon to testify at any hearing in this matter. For example, although Community Action Kentucky, Inc. (CAK), was denied intervention in Case No. 2017-00179,<sup>5</sup> involving the rate application of Kentucky Power Company, the Attorney General submitted the testimony of Roger McCann on behalf of CAK. In addition, MHC and ACM may file comments as frequently as they choose, and those comments will be entered into the record of this case. Finally, if a formal evidentiary hearing is held, MHC and ACM will be provided an opportunity to present any information that it wishes for the Commission's consideration in this matter.

IT IS HEREBY ORDERED that the motions to intervene filed by MHC and ACM are denied.

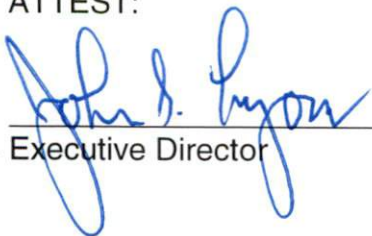
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<sup>5</sup> Case No. 2017-00179, *Electronic Application of Kentucky Power Company for (1) A General Adjustment of Its Rates for Electric Service; (2) An Order Approving Its 2017 Environmental Compliance Plan; (3) An order Approving Its Tariffs and Riders; (4) An Order Approving Accounting Practices to Establish a Regulatory Asset or Liability Related to the Big Sandy 1 Operation Rider; and (5) An Order Granting All Other Approvals and Relief* (Direct Testimony of Roger McCann, filed Oct. 3, 2017).

By the Commission

ENTERED  
NOV 09 2018  
KENTUCKY PUBLIC  
SERVICE COMMISSION

ATTEST:

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Executive Director

Case No. 2018-00295

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