

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF KENTUCKY	)	
POWER COMPANY FOR A CERTIFICATE OF	)	
PUBLIC CONVENIENCE AND NECESSITY TO	)	
CONSTRUCT A 138 KV TRANSMISSION LINE	)	CASE NO.
AND ASSOCIATED FACILITIES IN BREATHITT,	)	2021-00346
FLOYD AND KNOTT COUNTIES, KENTUCKY	)	
(GARRETT AREA IMPROVEMENTS 138 KV	)	
TRANSMISSION PROJECT)	)	

ORDER

On November 12, 2021, Chalmer Allen filed a motion requesting to intervene in this proceeding. As a basis for its motion, Mr. Allen stated that the electric transmission line proposed by Kentucky Power Company (Kentucky Power) could potentially cross his property. Further, Mr. Allen stated that he is concerned about the negative effects of electromagnetic radiation. Mr. Allen indicated he wishes for Kentucky Power to move the location of the line farther from his property or purchase his property.

On November 19, 2021, Kentucky Power filed a response to Mr. Allen’s motion and stated that the two tracts of land owned by Mr. Allen are located outside of the proposed right-of-way. Further Kentucky Power asserted that Mr. Allen is not an “interested person” as that term is used in KRS 278.020(9)<sup>1</sup> and that Mr. Allen has not alleged a special interest in these proceedings. Kentucky Power maintains that a special

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<sup>1</sup> KRS 278.020(9) in relevant part states, “In a proceeding on an application filed pursuant to this section, any interested person, including a person over whose property the proposed transmission line will cross, may request intervention, and the commission shall, if requested, conduct a public hearing in the county in which the transmission line is proposed to be constructed, or if the transmission line is proposed to be in more than one county, in one of the counties.”

interest must be related to the issues to be determined by the Commission, and that here those issues are the need for the proposed facilities and the absence of wasteful duplication.

### LEGAL STANDARD

The only person who has a statutory right to intervene in a Commission case is the Attorney General of the Commonwealth of Kentucky (Attorney General), pursuant to KRS 367.150(8)(b). Intervention by all others is permissive and is within the sole discretion of the Commission.<sup>2</sup>

The statutory standard for permissive intervention, KRS 278.040(2), requires that “the person seeking intervention must have an interest in the ‘rates’ or ‘service’ of a utility, since those are the only two subjects under the jurisdiction of the PSC.”<sup>3</sup>

The regulatory standard for permissive intervention, set forth in 807 KAR 5:001, Section 4, is twofold. Commission regulation 807 KAR 5:001, Section 4(11) requires a person to set forth in the motion to intervene either (1) a special interest in the proceeding that is not otherwise adequately represented in the case, or (2) that 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.

In proceedings involving an application for a Certificate of Public Convenience and Necessity (CPCN) to construct an electric transmission line, the Commission also

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<sup>2</sup> *Inter-County Rural Electric Cooperative Corporation v. Public Service Commission of Kentucky*, 407 S.W.2d 127, 130 (Ky. 1966).

<sup>3</sup> *EnviroPower, LLC v. Public Service Commission of Kentucky*, No. 2005-CA-001792-MR, 2007 WL 289328 at 3 (Ky. App. Feb. 2, 2007).

considers KRS 278.020(9), which includes a person over whose property a proposed transmission line will cross as an “interested person” who may request intervention.

### DISCUSSION AND FINDINGS

Based on a review of the pleadings at issue and being otherwise sufficient advised, the Commission finds that Mr. Allen failed to demonstrate that he has a special interest in the proceeding over which the Commission has jurisdiction that is not otherwise adequately represented or that Mr. Allen is likely to present issues or develop facts that will assist the Commission in considering this matter without unduly complicating the proceedings, for the reasons discussed below.

The proposed route of the transmission line does not cross Mr. Allen’s property. Therefore, he is not an interested person pursuant to KRS 278.020(9). Mr. Allen could intervene in these proceedings pursuant to 807 KAR 5:001, Section 4(11)(a) if he could demonstrate some special interest or if he presented evidence that he would present issues or develop facts that would assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings. The interests Mr. Allen proffered in his motion do not rise to the level of a special interest. Mr. Allen’s interest is rooted in the fact that the proposed transmission line is near his property. The proposed line does not cross his property; it is simply in the vicinity. Mr. Allen’s interest in this proceeding is the same as any other landowner in the area; it is not a special interest. Mr. Allen’s motion also does not document that he would present relevant issues or develop facts to assist the Commission in fully considering the matter before it.

Because Mr. Allen’s motion is being denied, the Commission will treat his motion and the concerns he raises as a written public comment. The Commission will review

and consider Mr. Allen's concerns in reaching its substantive decision. Mr. Allen will have an opportunity to participate in this proceeding even though he is not granted intervenor status. Mr. Allen can review all public documents filed in this case and monitor the proceedings via the Commission's website <https://psc.ky.gov/Case/ViewCaseFilings/2021-00346>. In addition, Mr. Allen may file additional comments as frequently as he chooses and those comments will be entered into the record of this case.

IT IS THEREFORE ORDERED that the motion to intervene filed by Mr. Allen is denied.

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By the Commission

ENTERED  
DEC 07 2021  
rcs  
KENTUCKY PUBLIC  
SERVICE COMMISSION

ATTEST:

  
Executive Director

Case No. 2021-00346

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