

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF KENTUCKY)	
POWER COMPANY FOR APPROVAL OF)	CASE NO.
AFFILIATE AGREEMENTS RELATED TO THE)	2021-00421
MITCHELL GENERATING STATION)	

ORDER

This matter arises upon the motion of the Kentucky Industrial Utility Customers, Inc. (KIUC), filed November 16, 2021, for full intervention.

As a basis for its motion, KIUC, an association of large industrial electric and gas customers, stated that it had a special interest in this proceeding because one of its members, Catlettsburg Refining LLC, is served by Kentucky Power Company (Kentucky Power). KIUC explained that its special interest arose from the significant impact a decision in this proceeding could have upon large industrial customers' costs for electric service and that this matter is directly related to other proceedings in which KIUC is participating as a party. KIUC asserted that its special interest, which is related to large industrial customers, cannot be adequately represented by any other party, such as the Attorney General of the Commonwealth of Kentucky, by and through the Office of Rate Intervention (Attorney General), who primarily represents the interests of residential customers.

KIUC asserted that it is likely to present issues or develop facts that will assist the Commission in fully considering this matter. KIUC pointed to its long history of active participation as a party in Commission matters, explaining that, at a minimum, it would

conduct discovery and actively participate at an evidentiary hearing. KIUC maintained that its intervention would not unduly complicate or disrupt the proceedings.

LEGAL STANDARD

The only person who has a statutory right to intervene in a Commission case is the Attorney General, pursuant to KRS 367.150(8)(b). Intervention by all others is permissive and is within the sole discretion of the Commission.¹

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.”²

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.

DISCUSSION AND FINDINGS

Based on a review of the pleadings at issue and being otherwise sufficient advised, the Commission finds that KIUC demonstrated that KIUC has a special interest in the proceeding over which the Commission has jurisdiction that is not otherwise adequately represented because KIUC is representing the interests of a customer class not otherwise

¹ *Inter-County Rural Electric Cooperative Corporation v. Public Service Commission of Kentucky*, 407 S.W.2d 127, 130 (Ky. 1966).

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

represented in this matter and because this matter is directly related to other proceedings to which KIUC is a party.

KIUC also demonstrated that is likely to present issues or develop facts that will assist the Commission in considering this matter without unduly complication the proceedings for the following reasons. KIUC avowed that it will be an active participant and will present issues or develop facts through discovery and cross-examination at an evidentiary hearing. As noted above, the issues and facts that KIUC will present and develop are connected to its participation in other proceedings directly related to this matter.

Based on the above, the Commission finds that KIUC should be granted full rights of a party in this proceeding. The Commission directs KIUC to the Commission's July 22, 2021 Order in Case No. 2020-00085³ regarding filings with the Commission.

IT IS HEREBY ORDERED that:

1. The motion of KIUC to intervene is granted.
2. KIUC shall be entitled to the full rights of a party and shall be served with the Commission's Orders and with filed testimony, exhibits, pleadings, correspondence, and all other documents submitted by parties after the date of this Order.
3. KIUC shall comply with all provisions of the Commission's regulations, 807 KAR 5:001, Section 8, related to the service and electronic filing of documents.
4. Pursuant to 807 KAR 5:001, Section 8(9), within seven days of entry of this Order, KIUC shall file a written statement with the Commission that:

³ Case No. 2020-00085, *Electronic Emergency Docket Related to the Novel Coronavirus COVID-19* (Ky. PSC July 22, 2021), Order (in which the Commission ordered that for case filings made on and after March 16, 2020, filers are NOT required to file the original physical copies of the filings required by 807 KAR 5:001, Section 8).

a. Certifies that it, or its agent, possesses the facilities to receive electronic transmissions; and

b. Sets forth the electronic mail address to which all electronic notices and messages related to this proceeding should be served.

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By the Commission

ENTERED
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KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:


Executive Director

Case No. 2021-00421

*Christen M Blend
American Electric Power Service Corporation
1 Riverside Plaza, 29th Floor
Post Office Box 16631
Columbus, OHIO 43216

*Honorable Mark R Overstreet
Attorney at Law
Stites & Harbison
421 West Main Street
P. O. Box 634
Frankfort, KENTUCKY 40602-0634

*Hector Garcia
Kentucky Power Company
1645 Winchester Avenue
Ashland, KY 41101

*Tanner Wolfram
American Electric Power Service Corporation
1 Riverside Plaza, 29th Floor
Post Office Box 16631
Columbus, OHIO 43216

*Jody M Kyler Cohn
Boehm, Kurtz & Lowry
36 East Seventh Street
Suite 1510
Cincinnati, OHIO 45202

*Honorable Kurt J Boehm
Attorney at Law
Boehm, Kurtz & Lowry
36 East Seventh Street
Suite 1510
Cincinnati, OHIO 45202

*Kentucky Power Company
1645 Winchester Avenue
Ashland, KY 41101

*Katie M Glass
Stites & Harbison
421 West Main Street
P. O. Box 634
Frankfort, KENTUCKY 40602-0634

*Honorable Michael L Kurtz
Attorney at Law
Boehm, Kurtz & Lowry
36 East Seventh Street
Suite 1510
Cincinnati, OHIO 45202