

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF DUKE ENERGY)	
KENTUCKY, INC. FOR (1) AN ADJUSTMENT OF)	
ELECTRIC RATES; (2) APPROVAL OF NEW)	CASE NO.
TARIFFS; (3) APPROVAL OF ACCOUNTING)	2022-00372
PRACTICES TO ESTABLISH REGULATORY)	
ASSETS AND LIABILITIES; AND (4) ALL OTHER)	
REQUIRED APPROVALS AND RELIEF)	

ORDER

This matter arises upon the motion of the Kentucky Broadband and Cable Association (KBCA), filed January 3, 2023, for full intervention. As a basis for its motion, KBCA stated that it seeks intervention in this proceeding because its members rely on access to utility poles, including those belonging to Duke Energy Kentucky, Inc. (Duke Kentucky) to deploy broadband service across Kentucky. KBCA stated that its members employ nearly 4,000 people in Kentucky, and hundreds of thousands of families and businesses depend on KBCA's members for internet and communications services. KBCA pointed to its participation in Case No. 2022-00105¹ to support that it has a special interest in these proceedings and that it can assist the Commission in developing a robust and complete record on which to evaluate Duke Kentucky's application.

¹ Case No. 2022-00105, *Electronic Investigation of the Proposed Attachment Tariffs of Investor Owned Electric Utilities* (Ky. PSC Dec. 28, 2022).

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, by and through the Office of Rate Intervention (Attorney General), pursuant to KRS 367.150(8)(b). Intervention by all others is permissive and within the Commission's sole discretion.²

The regulatory standard for permissive intervention, set forth in 807 KAR 5:001E, Section 4, is twofold. Commission regulation 807 KAR 5:001E, 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 sufficiently advised, the Commission finds that KBCA has demonstrated that it has a special interest in the proceeding over which the Commission has jurisdiction that is not otherwise adequately represented or that KBCA is likely to present issues or develop facts that will assist the Commission in considering this matter without unduly complication the proceedings, for the reasons discussed below.

The Commission finds that KBCA has a special interest not otherwise represented in this proceeding. According to KBCA's motion, the association represents several

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

entities³ who provide broadband service to over a million customers in the Commonwealth of Kentucky.⁴ There is no other intervenor with a particular interest in pole attachments and its tariffs. KBCA alleges that relying on existing infrastructure such as utility poles is vital to its members' ability to provide high speed broadband access to their customers.⁵

The Commission finds that the KBCA can assist in the development of facts and present issues without unduly complicating the proceeding. KBCA has participated in a recent Commission case involving the issue of pole attachments.⁶ The organization has specialized knowledge in broadband networks and can assist in providing testimony and a unique perspective to this case.

Based on the above, the Commission finds that KBCA is granted full rights of a party in this proceeding. The Commission directs KBCA to the Commission's July 22, 2021 Order in Case No. 2020-00085⁷ regarding filings with the Commission.

IT IS HEREBY ORDERED that:

1. KBCA's motion to intervene is granted.

³ The KBCA's members are Access Cable, Armstrong, C&W Cable, Charter Communications, Comcast, Inter Mountain Cable, Lycom Communications, Mediacom, Suddenlink, and TVS Cable. Kentucky Broadband & Cable Association, Our Members, available at <https://www.kybroadband.org/members>.

⁴ KBCA's Motion to Intervene (filed on Jan. 3, 2023) at 1.

⁵ KBCA's Motion to Intervene at 2.

⁶ Case No. 2022-00105, *Electronic Investigation of the Proposed Pole Attachment Tariffs of Investor Owned Electric Utilities* (Ky. PSC Dec. 28, 2022).

⁷ 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).

2. KBCA is 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. KBCA shall comply with all provisions of the Commission's regulations, 807 KAR 5:001E, Section 8, related to the service and electronic filing of documents.

4. KBCA shall adhere to the procedural schedule set forth in the Commission's December 19, 2022 Order and as amended by subsequent Orders.

5. Pursuant to 807 KAR 5:001E, Section 8(9), within seven days of service of this Order, KBCA shall file a written statement with the Commission that:

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 shall be served.

PUBLIC SERVICE COMMISSION


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Vice Chairman


Commissioner



ATTEST:


Executive Director

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