

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC PETITION OF KENERGY CORP.	)	CASE NO.
FOR A DECLARATORY ORDER	)	2023-00309

ORDER

This matter arises on Kenergy Corp.'s (Kenergy) application requesting a declaratory Order pursuant to 807 KAR 5:001, Section 19, requesting an interpretation of KRS 278.45 (sic) regarding an interpretation of its net metering interconnection tariff and the cost assignment for line upgrades that Kenergy alleged are required to serve certain metering customers. As an initial matter, the Commission notes that there is not a statute numbered KRS 278.45 and directs Kenergy to file notice stating with specificity the statute that it requests be interpreted within five days of service of this Order.

On October 13, 2023, Kentucky Solar Industries Association, Inc. (KYSEIA) filed a motion requesting to intervene in this proceeding, in which Kenergy Corp. (Kenergy) requested a declaratory Order pursuant to 807 KAR 5:001, Section 19. To date, neither Kenergy nor the Attorney General filed a response to KYSEIA's motion to intervene.

LEGAL STANDARD

Commission regulation 807 KAR 5:001, Section 19 sets forth the procedures for the Commission to render a determination regarding the jurisdiction of the Commission or the meaning and scope of a Commission Order, Commission administrative regulation, or provision of KRS Chapter 278. The procedure to file an application requesting a declaratory Order and the application contents are set forth in 807 KAR 5:001, Section

19(1)–(2). Further, 807 KAR 5:001, Section 19(4)–(5) provides that responses to the application for a declaratory Order shall be filed with the Commission within 21 days after the date on which the application was filed, unless the Commission orders otherwise, and a reply to a response must be filed within 14 days after service of the response. Each application, response, and reply containing an allegation of fact must be supported by affidavit and be verified pursuant to 807 KAR 5:001, Section 19(6). Additionally, 807 KAR 5:001, Section 19(7)–(8) provide that the Commission may dispose of an application for a declaratory Order based solely based on written submissions and the Commission may take any action necessary, including holding oral arguments and requiring the production of additional documents, and may extend the time for the filing of a reply or response in a declaratory Order proceeding.

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 sole discretion of the Commission.<sup>1</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.

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

### KYSEIA'S MOTION

As a basis for its motion, KYSEIA stated that it and its members have a special interest in this proceeding because KYSEIA members apply for and receive service under net metering tariffs and will be impacted by the cost assignment and potential denial of service if the Commission affirms Kenergy's proposed statutory interpretation. KYSEIA stated that its interest is different from the consumer interests represented by the Attorney General, who is an intervenor in this proceeding, and thus KYSEIA's special interest is not otherwise represented in this proceeding.

KYSEIA asserted that its subject matter expertise in net metering service and interconnect would enable Kenergy to present issues or develop facts that will assist the Commission in considering this matter without unduly complicating or disrupting the proceeding.

### DISCUSSION AND FINDINGS

Based on a review of the motion and the case record, and being otherwise sufficiently advised, the Commission finds that the issue raised in Kenergy's application is a question of legal interpretation regarding the conditions of service for net metering service and interconnection. The Commission is not persuaded that KYSEIA satisfied the legal standard for permissive intervention given that, in its motion, KYSEIA did not provide information regarding the legal interpretation of the issue presented. Further, because this proceeding addresses a legal interpretation of a statute and tariff provision, the Commission concludes that granting KYSEIA party status, with the potential for data requests, could unduly disrupt the proceeding. For these reason, the Commission finds that KYSEIA's motion to intervene should be denied.

The Commission acknowledges that KYSEIA could be indirectly affected by the Commission's decision in this case. The Commission finds that KYSEIA can adequately represent its interests, if any, by filing a substantive response to the declaratory order application and that full party status is unwarranted. Given the legal issues involved, the Commission concludes that it would be helpful to have a substantive response to the application consistent with the provisions of 807 KAR 5:001, Section 19. For that reason, the Commission finds, pursuant to 807 KAR 5:001, Section 19(8), that KYSEIA should file a response to Kenergy's application for a declaratory Order within 14 days of service of this Order if KYSEIA determines that a response is necessary to ensure a robust record.

The Commission further finds that the Attorney General<sup>2</sup> should also be afforded the opportunity to file a substantive response to Kenergy's declaratory Order. Thus, pursuant to 807 KAR 5:001, Section 19(8), the Commission finds that the Attorney General should file a response to Kenergy's application for a declaratory Order within 14 days of service of this Order if the Attorney General determines that a response is necessary to ensure a robust record.

IT IS THEREFORE ORDERED that:

1. KYSEIA's motion to intervene is denied.
2. KYSEIA may file a response to Kenergy's application for a declaratory Order within 14 days after the date of service of this Order.

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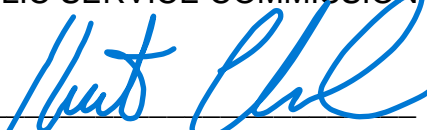
<sup>2</sup> The Commission reiterates that the Attorney General has the statutory right to intervene in all matters before the Commission, unlike persons who request permissive intervention.

3. The Attorney General may file a response to Kenergy's application for a declaratory Order within 14 days after the date after service of this Order.

4. Kenergy shall file written notice stating with specificity the statute that Kenergy requests be interpreted within five days after the date of service of this Order.

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PUBLIC SERVICE COMMISSION


  
Chairman

  
Vice Chairman

  
Commissioner

ENTERED  
OCT 30 2023  
KENTUCKY PUBLIC SERVICE COMMISSION <sup>rsc</sup>

ATTEST:

  
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