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PUBLIC SERVICE
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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF:

ELECTRONIC APPLICATION OF DUKE ENERGY)
KENTUCKY, INC. FOR A DECLARATORY ORDER) CASE NO. 2025-00142
REGARDING RECOVERY OF COSTS TO)
TO CONVERT CUSTOMERS TO ALTERNATE)
SOURCE OF FUEL)

REPLY TO DUKE ENERGY
KENTUCKY'S RESPONSE TO
REQUEST FOR INTERVENTION BY
TOM MASON

Comes now, Tom Mason (“Mason”), by counsel, in accordance with 807 KAR 5:001, Section 5, and other applicable law, and for its Reply in Support of his Motion to Intervene, respectfully states as follows:

Under 807 KAR 5:001, Section 4(11)(b), Mason shall be granted leave to intervene if the Commission finds that he has made a timely motion for intervention and (i) he has a special interest in the case not otherwise adequately represented, or (ii) his 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. As stated in *Potts v. Pub. Serv. Comm'n*, 643 S.W.3d 83, 91 (Ky. Ct. App. 2021), “[t]he language contained in 807 KAR 5:001 Section 4(11)(b) is plain and unambiguous. Therefore, it is not open to interpretation or substitution and should be ‘construed literally where there is no reason why it should not be so interpreted.’” Contrary to Duke’s position that intervention is within the sole discretion of the Commission, “[w]hen either prong of 807 KAR 5:001 Section 4(11)(b) is established, the Commission ‘shall’ grant the person leave to intervene. *Id.* at 94.

In its Response, Duke argues that intervention by parties other than the Attorney General of the Commonwealth of Kentucky is permissive and requires the person to have an interest in the

rate or services of a utility. It is worth noting that when a case involves rate adjustment, the Attorney General is generally the party with standing to intervene. However, this case does not involve rate adjustment, and Mason absolutely has an interest in the services of Duke. Moreover, the inclusion of intervention under 807 KAR 5:001 Section 4(11)(b) indicates a legislative intent to permit property owners and consumers, such as Mason, to intervene in non-rate based cases when they are impacted.

Here, Mason has a special interest that is not otherwise adequately represented in this action. Alternatively, Mason will present issues and develop facts that will assist the Commission in considering the manner without unduly complicating or disrupting the proceedings. As a result, Mason should be permitted to intervene in this matter.

A. Mason has a special interest that is not otherwise adequately represented.

The term “special interest” has a long legal history and has been applied to property owners and even adjoining property owners, lien holders, and easement holders to protect their use and enjoyment of their property. *Id.* at 93. Duke’s Response argues that Mason’s Motion to Intervene contains “nothing more than general statements regarding Scott’s¹ property might be one of the property’s impacted.” Additionally, Duke claims that the motion to intervene presupposes that Duke will abandon the lines, whereas it has actually proposed several options. In reality, Duke’s Application requests only one declaratory order. “Duke Energy Kentucky requests the Commission enter a declaratory order confirming that Duke Energy Kentucky can recover the costs of converting these customers to an alternate fuel source as costs of removal of the existing services.” Verified Application, p.3. If granted, Mason will be left without the statutorily required reasonable service from Duke while Duke only provides nominal and insufficient consideration for the conversion to

¹ Presumably, this reference to “Scott’s” property is in reference to the property of Morning Scott, LLC, which also filed a motion to intervene in this case to which Duke filed a nearly identical Response. For the purposes of this Reply, those references to Scott and its property in Duke’s Response will be treated as if they referenced Mason.

alternative fuel sources. Consequently, Mason would be left without utility service to his property. This is not a mere recitation of the quantity of utility service used by Mason nor a general statement regarding rate modification as Duke contends. Rather, the inability to have utility service available to his property is a special interest of Mason as it directly impacts his use and enjoyment of his property in the immediate future.²

Furthermore, Mason's interests are not otherwise adequately represented in this matter. 807 KAR 5:001 Section 4(11)(b) does not define what "adequately represented" means in relation to the right to intervene. Kentucky Courts have interpreted the phrase "adequately represented" in the context of CR 24.01, applying a standard that a party is not adequately represented when the other parties do not have reason to represent or protect the rights of the moving party. *Carter v. Smith*, 170 S.W.3d 402, 410 (Ky. App. 2004). Here, Duke certainly does not have any reason to represent or protect the rights of Mason. Duke is a publicly traded company that has a duty to maximize its value for shareholders. Moreover, Duke has requested a declaratory order seeking to remove the existing services in exchange for nominal payment to Mason, which is in direct opposition of Mason's rights. The only possibly remaining party is Morning Scott, LLC ("Scott"). As of the date of this Reply, to Mason's knowledge, there has been no determination by the Commission as to whether Scott has been permitted to intervene in this matter. Even if Scott were permitted to intervene, Mason's interests would still not be adequately represented. Scott, much like Mason, seeks to intervene to ensure utility service is available to its own property. Scott has no incentive to advocate for utility services reaching Mason's property as each property is unique with different costs and boundaries to conversion. By Duke's own admission, there may not be a single resolution for all of the customers

² Duke attempts to support its position with reference to two cases: (1) *In the Matter of the Adjustment of Rates or Kentucky-American Water Company*, Order, Case No. 2000-00120, p. 2 (Ky. P.S.C. May 30, 2000) and (2) *Electronic Application of Flemming-Mason Energy Cooperative, Inc. for Pass-Through of Duke Energy Kentucky, Inc. Wholesale Rate Adjustment*, Order, Case No. 2021-00109, p. 4 (Ky. P.S.C. Apr. 15, 2021). However, both cases are rate-adjustment cases applying different standards for intervention. They are not applicable to this case.

as Duke may ultimately negotiate with each of them individually. Additionally, Duke's Application references two properties that may have access to other existing pipelines. If the Mason or Scott property is identified to be one of those two properties, they may be handled in a completely different manner by Duke. Because each property presents unique challenges and could result in different outcomes, no party has any incentive to represent or protect Mason's interests, other than himself.

B. Mason is likely to present issues or develop facts that assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings.

In addition to having a special interest that is not otherwise adequately represented, Mason will also provide the Commission with facts and issues not otherwise presented that will assist the Commission in considering the matter. Duke contends that Mason will not present any such facts because Mason's only issue is the cost of conversion to alternative fuel, of which Duke will negotiate with him. However, Duke fails to mention that this "negotiation" will be capped at \$25,000.00 per customer. Verified Application, p. 3. Duke argues the terms of negotiation with the customers are not the issue in this case. However, Duke stated in its Application that this case is about whether it should abandon the existing pipeline and "negotiate" with customers or construct new pipelines to serve the affected properties, which would be a more expensive solution. Clearly, this case is about costs. In order for the Commission to make a well-informed determination, they should be informed of all the costs involved. These costs include those Mason would be required to pay out of pocket if the Commission were to recommend the abandonment of the existing pipeline and capped "negotiation" between Duke and Mason to convert to alternative fuels.

Duke also attempts to argue that Mason's intervention will unduly delay the Application as it has been filed for over six months. However, the Commission provided a deadline for motions for intervention in this case in its December 16, 2025 order, which deadline Mason has timely met. Additionally, a final outcome has not yet been made by the Commission in this matter. Hearing the

facts and issues produced by Mason would not cause any undue delay but permit the Commission to hear vital information to make an efficient and informed decision.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that foregoing electronic filing was transmitted to the Commission on January 15, 2026, and that it has been served upon the following counsel of record by electronic means in compliance with 805 KAR 5:001(4)(8):

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