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COMMISSION

May 22, 2012

HAND DELIVERED

Mr. Jeff Derouen
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
P.O. Box 615
Frankfort, Kentucky 40602-0615

Re: PSC Case No. 2012-00169
The Application of East Kentucky Power Cooperative, Inc.
to Transfer Functional Control of Certain Transmission Facilities
to PJM Interconnection, L.L.C.

Dear Mr. Derouen:

Please find enclosed for filing with the Commission in the above referenced case, an original and ten copies of East Kentucky Power Cooperative, Inc.'s ("EKPC") Response and Objections to the Petition for Full Intervention filed by Louisville Gas and Electric Company and Kentucky Utilities Company.

Also enclosed are an original and ten copies of EKPC's Notice of Entry of Counsel.

If you have any questions, please contact me at (859) 745-9377.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Roger R. Cowden', is written over a faint, larger version of the signature.

Roger R. Cowden
Corporate Counsel

Cc: Parties of Record

Enclosure

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF:

**THE APPLICATION OF EAST KENTUCKY)
POWER COOPERATIVE, INC. TO)
TRANSFER FUNCTIONAL CONTROL OF)
CERTAIN TRANSMISSION FACILITIES)
TO PJM INTERCONNECTION, L.L.C.)** **CASE NO. 2012-00169**

**RESPONSE AND OBJECTIONS OF EAST KENTUCKY POWER COOPERATIVE,
INC. TO THE PETITION FOR FULL INTERVENTION FILED BY LOUISVILLE GAS
AND ELECTRIC COMPANY AND KENTUCKY UTILITIES COMPANY**

East Kentucky Power Cooperative, Inc. (“EKPC”), by counsel, hereby responds and objects to the Petition for Full Intervention (“Petition”) filed by Louisville Gas and Electric Company (“LGE”) and Kentucky Utilities Company (“KU”) (jointly, the “Companies”) in this case on May 10, 2012. The grounds for EKPC’s objections are as follows:

1. The Companies’ Petition is comprised of nine numerical paragraphs. The first two paragraphs simply identify LGE and KU. The third paragraph provides a historical statement that LGE acquired KU in 1997. The fourth paragraph states that the Companies joined the Midwest Independent Transmission System Operator, Inc. (“MISO”) in 2002. Numerical paragraph five of the Petition declares that the Companies withdrew from MISO in 2006. The seventh paragraph identifies the counsel of record for the Companies. The eighth paragraph expresses the Companies’ conclusion that they intend to fulfill a constructive role in the Commission’s decision making process in this matter. The ninth paragraph states that the Companies will be able to assist the Commission in fully considering the issues of this case

because of their past experience with Regional Transmission Organization (“RTO”) membership, because of their current dealings with RTO-member utilities on their system’s borders, and because of their representation by experienced counsel before the Commission. Finally, numerical paragraph six of the Companies’ Petition declares that because EKPC and KU share numerous interconnection points between their transmission systems, the Commission’s decision in this proceeding will have an impact on the Companies’ said transmission system.

The Companies’ grounds for intervention, thus, can be summarized as follows: (1) The Companies’ role as an intervening party in this case is justified because they have unique knowledge of the issues presented by this case to assist the Commission in fully considering this matter because of their experience with RTO membership, because of their business dealings with other RTO members on their system’s borders, and because of their experienced counsel. No further facts are offered by the Companies in support of those declarations. However, EKPC will pause and express its affirmation and agreement that Companies are represented by able and experienced counsel. Unfortunately, that alone does not provide justification for its *client* to intervene in this proceeding in accordance with the requirements of Kentucky law, as set forth below; (2) The second reason offered by the Companies in support of its Petition is the bare assertion that EKPC and KU share numerous interconnection points and this proceeding will have operational impacts on the Companies’ transmission system. Again, no facts are offered to support that conclusion.

In short, the Companies do not offer any support, factual or legal, for their contention that their presence in this case is justified and satisfies the legal requirements for intervention.

2. The legal requirements for justifying full intervention in a proceeding before the Kentucky Public Service Commission are clearly defined by Kentucky regulations. 807 KAR 5:001, Section 3(8)(b) provides in pertinent part:

“...If the commission determines that a person has a special interest in the proceeding which is not otherwise adequately represented or that full intervention by [the] party is likely to present issues or to develop facts that assist the commission in fully considering the matter without unduly complicating or disrupting the proceedings, such person shall be granted full intervention.”

The Commission has consistently held that the “special interest” a person seeking intervention under 807 KAR 5:001, Section 3(8), must have is one relating only to the rates or service of a utility. See *In the Matter of: The 2008 Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company*, Case No. 2008-00148, Order dated July 18, 2008 at page 3; See also, the unpublished opinion of *EnviroPower, LLC v. Public Service Commission of Kentucky*, 2007 WL289328 (Ky. App. 2007) at page 3. The enabling statute, KRS 278.040(2) provides the ultimate governance: “...The commission shall have exclusive jurisdiction over the regulation of rates and service of utilities...”

3. The Companies declare that they will be able to “assist” the Commission in “fully considering” this matter because of their experiences in being inside and outside an RTO. EKPC is very confident that the Commission and the parties before the Commission in this matter are very capable of fully presenting, and evaluating, the facts and issues in accordance with their legal duties. The Companies’ presence in this matter, on the other hand, would unduly complicate and disrupt these proceedings because the Companies’ RTO experiences would have little, if any, probative value to a proceeding involving a different company, EKPC, which is applying to a different RTO, PJM, ten years following the Companies’ initial membership in its RTO, and six years following their departure from that RTO.

Further, it should be noted that the Companies, as founding members of that RTO,¹ and during the period of approximately four years they were members, MISO and its associated markets were in the early developmental stage. The experience of the Companies to that environment can hardly compare to participation in a fully developed and established RTO like PJM in the year 2012.

In addition, in the six years since leaving MISO, the Companies have filed several Applications at the Commission requesting the approval of an Independent Transmission Operator (ITO) to coordinate, control and/or monitor their transmission systems and have changed ITOs twice during those six years.² Therefore, the Companies' experience with RTOs appears to be quite limited and the Companies' experience with the more limited operational scope of ITOs since leaving MISO would appear to be less stable than what would be experienced in a RTO. Thus, it is difficult to claim that the Companies' experience within a RTO will be of assistance or benefit in this proceeding.

Of particular relevance in considering the Companies' Petition herein is the fact that the Companies have not intervened in other RTO membership cases before the Commission. Nor have any other regulated electric companies doing business in this Commonwealth intervened. In Case No. 2002-00327, EKPC requested permission to transfer control of certain transmission

¹ See *In the Matter of: Investigation into the Membership of Louisville Gas and Electric Company and Kentucky Utilities Company in the Midwest Independent Transmission System Operator, Inc.*, Case No. 2003-00266, Order of May 31, 2006, at page 1.

² See *In the Matter of: Application of Kentucky Utilities Company and Louisville Gas and Electric Company to Transfer Control of Certain Transmission Functions*, Case No. 2012-00031, Order of May 11, 2012, at pp. 2-5.

facilities to MISO. There were no intervenors. In that case, the Commission granted EKPC's motion to withdraw its application. In Case No. 2002-00475, Kentucky Power Company requested permission to transfer control of certain transmission facilities to PJM. The Commission denied Kentucky Power's application, then granted rehearing and accepted a settlement authorizing the transfer of control. In that case, the Attorney General, Kentucky Industrial Utility Customers ("KIUC"), and PJM intervened in the proceedings. In Case No. 2003-00266, the Commission initiated an investigation into the existing membership in MISO by KU and LGE. The Commission, by majority opinion, granted KU and LGE's request to withdraw from MISO. The intervenors in the case were the Attorney General, KIUC, and MISO. In Case No. 2005-00471, KU and LGE requested permission to retain TVA as its reliability coordinator and the Southwest Power Pool as its independent transmission organization. The Commission granted conditional approval of the application in light of a stipulation. The intervenors were the Attorney General and KIUC. MISO was denied intervention. In Case No. 2010-00043, Big Rivers Electric Cooperative requested permission to transfer functional control of its transmission system to MISO. The Commission granted conditional approval of the application in light of stipulation. The intervenors were the Attorney General, KIUC, and MISO. Finally, in Case No. 2010-00203, Duke Energy Kentucky requested permission to transfer functional control of its transmission system from MISO to PJM. The Commission granted conditional approval. The only intervenors were MISO and PJM.

As is apparent from the foregoing, the Companies, despite promoting their business dealings with other RTO-member utilities on their system's borders in justifying intervention, have not intervened in other similar proceedings involving those same RTO-member utilities. Thus, it is now difficult to all of the sudden conclude that their presence in this case is necessary so that the Commission can "fully consider" the issues. Rather, their presence will unduly complicate or disrupt the proceedings. EKPC has equally significant experience dealing with RTO-member utilities on their system's borders such as Duke Energy Kentucky and Kentucky Power Company and those experiences can be shared with the Commission.

4. The final ground offered by the Companies to justify intervention is their contention that because EKPC and KU share numerous interconnection points between their transmission systems, this proceeding will have operational impacts on the Companies' own transmission system. As previously stated, the Companies do not offer any further support other than that bare conclusion. However, aside from that flaw, this Commission does not have jurisdiction to address the transmission issues, if any, noted by the Companies in their Petition.

Two recent cases before the Commission, both involving the Companies, are particularly instructive. *In the Matter of: The 2008 Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company*, Case No. 2008-00148, Bluegrass Generation Company ("Bluegrass"), an operator of a natural gas-fired peaking generation facility located in Oldham County, Kentucky, and which is interconnected with the transmission system of LGE, attempted to intervene in the Companies' IRP case. The Companies protested Bluegrass' intervention, arguing, *inter alia*, that transmission operations were governed exclusively by the

Federal Energy Regulatory Commission (“FERC”). The Commission agreed, stating, “The interest that Bluegrass asserts as ‘an operator of generation facilities within the LGE control area’ involves the manner in which the LG&E/KU transmission system is operated. However, the operation of the companies’ transmission system is governed by their open access transmission tariffs (“OATT”). The OATT is a matter directly under the jurisdiction of the Federal Energy Regulatory Commission...” (July 18, 2008, Order, at page 4). The Commission in that particular proceeding also cited a similar case involving the Companies. In *In the Matter of: Investigation Into the Membership of Louisville Gas and Electric Company and Kentucky Utilities Company in the Midwest Independent System Operator, Inc.*, Case No. 2003-00266, Thoroughbred Generating Company, LLC (“Thoroughbred”) petitioned the Commission for full intervention, claiming to have a special interest in the proceeding due to its interconnections to Kentucky’s electric transmission grid, its need for the grid to move power to other states, and its risk of paying multiple transmission rates. The Commission denied Thoroughbred’s petition for intervention, citing FERC’s jurisdiction over such issues: “Since issues relating to the wholesale transmission of electric energy over facilities owned by an investor-owned utility and the rates for that transmission have always been under FERC’s jurisdiction, they are not within the scope of this investigation.” (October, 2, 2003, Order, at page 2).

Consistent with its rulings in the foregoing cases, the Commission should likewise now deny the Companies’ intervention in this matter. While the Commission certainly has jurisdiction to approve or disapprove the construction of certain transmission facilities of EKPC and the Companies, and address issues attendant thereto, all issues related to wholesale transmission transactions, including sales and service, are addressed exclusively by FERC.

CONCLUSION

The Companies have not adequately established that they have a special interest in this proceeding that justifies their intervention. Clearly, they have not shown they can present issues or develop facts that will otherwise assist the Commission without unduly complicating or disrupting the proceedings. The Commission should deny the Companies' Petition for Intervention.

Dated at Winchester, Kentucky, this 22nd day of May 2012.

Respectfully Submitted,



ROGER R. COWDEN, Corp. Counsel
East Kentucky Power Cooperative, Inc.
4775 Lexington Road
P.O. Box 707
Winchester, KY 40392-0707
(859)745-4812 - phone
(859)744-6008 - fax

CERTIFICATE OF SERVICE

It is hereby certified that the foregoing Response and Objections of East Kentucky Power Cooperative, Inc. to the Petition for Full Intervention Filed by Louisville Gas and Electric Company and Kentucky Utilities Company was served by hand delivery this 21st of May 2012, to the following:

Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, KY 40601

It is hereby certified that a true and accurate copy of the foregoing was served by U. S. Mail, postage prepaid, on May 22nd, 2012 to the following:

Mark David Goss
Frost, Brown, Todd, LLC
250 West Main Street, Ste. 2800
Lexington, KY 40507


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Frankfort, KY 40601



Counsel for East Kentucky Power Cooperative, Inc.

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF:

THE APPLICATION OF EAST KENTUCKY)
POWER COOPERATIVE, INC. TO)
TRANSFER FUNCTIONAL CONTROL OF)
CERTAIN TRANSMISSION FACILITIES)
TO PJM INTERCONNECTION, L.L.C.) CASE NO. 2012-00169

NOTICE OF ENTRY OF COUNSEL

Comes now Roger R. Cowden, Corporate Counsel of East Kentucky Power Cooperative, Inc., 4775 Lexington Road, P.O. Box 707, Winchester, KY 40392-0707, and hereby notices the Commission and parties that the undersigned shall be added as counsel of record on behalf of East Kentucky Power Cooperative, Inc. in the captioned matter.

Respectfully submitted,



ROGER R. COWDEN, Corp. Counsel
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P.O. Box 707
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(859)745-4812 - phone
(859)744-6008 – fax

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