

January 10, 2007

FACSIMILE AND MAILED

Ms. Elizabeth O'Donnell  
Executive Director  
Public Service Commission  
211 Sower Boulevard  
Frankfort, KY 40602

RECEIVED  
JAN 11 2007  
PUBLIC SERVICE  
COMMISSION

Re: PSC Case No. 2006-00455

Dear Ms. O'Donnell:

Please find enclosed for filing with the Commission in the above-referenced case an original and ten (10) copies of the Response and Objections of East Kentucky Power Cooperative, Inc., to the Petition to Intervene of Enviropower, Inc.

Very truly yours,



Charles A. Lile  
Senior Corporate Counsel

Enclosures

Cc: Lawrence W. Cook, Esq.  
Michael L. Kurtz, Esq.  
Stephen M. Soble, Esq.  
Troy Reynolds, Esq.

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JAN 11 2007

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

PUBLIC SERVICE  
COMMISSION

In the Matter of:

AN INVESTIGATION OF THE FINANCIAL )  
CONDITION OF EAST KENTUCKY POWER ) CASE NO.  
COOPERATIVE, INC. ) 2006-00455

RESPONSE AND OBJECTIONS OF EAST KENTUCKY  
POWER COOPERATIVE, INC., TO ENVIROPOWER, INC.,  
PETITION TO INTERVENE

East Kentucky Power Cooperative, Inc. (“EKPC”), hereby responds and objects to the Petition to Intervene filed by Enviropower, Inc. (“Enviropower”) in this case on January 5, 2007. The grounds for EKPC’s objections are as follows:

1. Enviropower cites no statutory right to intervene in this case, and has no such right to intervene. Enviropower lacks any special interest in the proceedings which would justify the Public Service Commission (the “Commission”), granting discretionary intervention, since Enviropower’s intervention in this case would not present issues or develop facts that would assist the Commission in fully considering the matters involved in this case. Enviropower is not a ratepayer of EKPC, it has no contractual agreements with EKPC to sell or buy electric energy or transmission services, it is not a utility regulated by the Commission and it has no other interests in the rates or service of EKPC under the jurisdiction of the Commission. The Commission has determined on three prior occasions that Enviropower lacked interests in the rates and service of EKPC which would justify a grant of discretionary intervention in other EKPC cases, (Commission Order, PSC Case No. 2004-00423, dated February 3, 2005; Commission Order, PSC Case No. 2004-00423, dated April 18,

2005; Commission Order, PSC Case No. 2005-00053, dated May 26, 2005), and these determinations have been upheld by Kentucky courts on six occasions, so far (Franklin Circuit Court Order, Civil Action 05-CI-000553, dated May 6, 2005; Kentucky Court of Appeals Order, Case No. 2005-CA-000964-I, dated May 31, 2005; Kentucky Supreme Court Order, Case No. 2005-SC-437-I, dated June 7, 2005; Franklin Circuit Court Order, Civil Action 05-CI-000553, dated July 27, 2005; Franklin Circuit Court Order, Civil Action 05-CI-000675, dated November 21, 2005; Franklin Circuit Court Amended Order, Civil Action 05-CI-001449, dated August 23, 2006). Enviropower's abject lack of any interest in the rates or service of EKPC is res judicata, and not subject to further adjudication. Yeoman v. Commonwealth Health Policy Board, 983 S.W.2d 459 (Ky. 1998). Furthermore, Enviropower was afforded every opportunity in PSC Case No. 2004-00423 to present any evidence in its possession to support its allegations concerning EKPC plans and operations, and none of its allegations were substantiated (See, Commission Order, PSC Case No. 2004-00423, dated September 13, 2005).

2. Enviropower's suggestion that it has a pecuniary interest in this case, based on the speculation that it may one day desire to use EKPC's transmission system to serve its private business purposes, is yet another attempt to turn a mere expectancy into an interest, and an effort to improperly inject its own objectives into this case. Enviropower's clear motive for intervention in this case, as in the prior Commission cases, is the pursuit of its own self-interest as a disgruntled bidder in EKPC's 2004 Request for Proposals for generating capacity. Enviropower is an independent power producer, and has been attempting to gain business advantages for its proposed merchant generating facility by attempting to interfere in EKPC generation certificate

proceedings before the Commission for nearly two years. Enviropower's arguments for intervention in this case are illegitimate, its profit objectives are inconsistent with the interests of EKPC ratepayers, and the protection of Enviropower's business is not within the jurisdiction of the Commission. Enviropower's long history of making unfounded allegations of impropriety against EKPC, the Commission and the legitimate parties to those prior cases, clearly shows that Enviropower's involvement in this case would not assist the Commission, but would result only in undue complication and disruption of the proceedings.

3. The interests of ratepayers in the rates and service of EKPC are already adequately represented by the intervention of the Attorney General and Gallatin Steel Company in this case.

WHEREFORE, EKPC formally objects to the Petition to Intervene of Enviropower, and urges the Commission to deny said Petition, for the reasons stated hereinabove.

Respectfully submitted,

  
DALE W. HENLEY

  
CHARLES A. LILE  
ATTORNEYS FOR EAST KENTUCKY  
POWER COOPERATIVE, INC.  
P. O. BOX 707  
WINCHESTER, KY 40392-0707  
(859) 744-4812

**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing Response and Objections of East Kentucky Power Cooperative, Inc., to Enviropower, Inc., Petition to Intervene in the above-referenced case, was transmitted by facsimile, and an original and ten copies were mailed, to Elizabeth O'Donnell, Executive Director, Kentucky Public Service Commission, 211 Sower Boulevard, Post Office Box 615, Frankfort, Kentucky 40601, and copies were mailed to parties on the Service List in this case, and to Stephen Soble, Esq., and to Troy Reynolds, Esq., on this 10<sup>th</sup> day of January, 2007.



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CHARLES A. LILE