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PUBLIC SERVICE
COMMISSION

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In The Matter Of:

APPLICATION OF KENTUCKY POWER COMPANY FOR (1) A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AUTHORIZING THE TRANSFER TO THE COMPANY OF AN UNDIVIDED FIFTY PERCENT INTEREST IN THE MITCHELL GENERATING STATION AND ASSOCIATED ASSETS; (2) APPROVAL OF THE ASSUMPTION BY KENTUCKY POWER COMPANY OF CERTAIN LIABILITIES IN CONNECTION WITH THE TRANSFER OF THE MITCHELL GENERATING STATION; (3) DECLARATORY RULINGS; (4) DEFERRAL OF COSTS INCURRED IN CONNECTION WITH THE COMPANY'S EFFORTS TO MEET FEDERAL CLEAN AIR ACT AND RELATED REQUIREMENTS; AND (5) ALL OTHER REQUIRED APPROVALS AND RELIEF

CASE NO. 2012-00578

**Kentucky Power Company's Response In Opposition To
Lawrence County's Motion To Intervene**

Kentucky Power Company has tremendous respect for Lawrence County, Kentucky, its elected officials, and residents. The Company recognizes the many contributions made to the Company by the residents of Lawrence County over the years. Kentucky Power also is proud of the contributions made by the Company to the economy of Lawrence County and surrounding areas. Nevertheless, Kentucky Power opposes Lawrence County's ("County") Motion to Intervene ("Motion") filed on June 7, 2013 because it fails to fulfill the requirements of 807 KAR 5:001, Section 4(11)(a):

A. The County's Motion is Untimely.¹

The Commission's regulations allow that "a person who wishes to become a party to a proceeding before the commission may, by timely motion, request that leave to intervene be granted." 807 KAR 5:001, Section 4(11)(a) (emphasis added). The County filed its Motion with the Commission on June 7, 2013, five and one half months after Kentucky Power filed its application in this case. Three separate parties (the Attorney General, the Kentucky Industrial Utilities Customers, Inc. ("KIUC"), and the Sierra Club) filed timely motions for and were granted intervention in this case. The parties have engaged in multiple rounds of discovery, the Intervenor has filed direct testimony, and Kentucky Power has filed rebuttal testimony. Kentucky Power has reached a settlement in principle with two of the Intervenor – KIUC and the Sierra Club. In fact, the motion was not filed until after the first two dates (May 22, 2013 and May 29, 2013) scheduled for the evidentiary hearing on the Company's application.

The County identifies no reason why it waited more than five and one-half months after the date the application was filed to seek intervention, never mind why it waited until after the first two scheduled hearing dates. Because the case involves the disposition of a generating asset located in the county, and has been the subject of numerous media reports the County had every reason to be aware that the case was filed. To the extent the County represents any interests not otherwise represented in this case, and it does not as explained below, those interests have existed from the date Kentucky Power filed its application on December 19, 2013. The County's Motion is untimely and, therefore, must be denied.

¹ As set out in the Company's accompanying Motion for Deviation, counsel for Kentucky Power has yet to receive the County's motion to intervene even though the certificate of service shows it was mailed the Company's Frankfort and Lexington attorneys on June 5, 2013. Kentucky Power did not learn of the motion until the afternoon of June 14, 2013 when the "electronic docket" for this case was reviewed in an effort to locate another document.

B. The County has not Identified an Interest not Otherwise Adequately Represented in this Case.

Even those persons making timely applications must demonstrate that he or she has “a special interest in the proceeding not otherwise adequately represented.” 807 KAR 5:001, Section 4(11)(a). In its Motion, the County claims that it represents interests not adequately represented by any other party, but never identifies how the other parties to this case fail to adequately represent its interests in the rates or service of Kentucky Power. To the extent the County contends that the Mitchell Transfer is not the least cost alternative, both the Sierra Club and Kentucky Industrial Utility Customers, Inc. (“KIUC”) have forcefully advocated that position. To the extent the County opposes the settlement agreement among the Sierra Club, KIUC, and the Company, that position is advocated by the Attorney General. Indeed, to the extent the County is purporting to represent the interests of its citizens and itself as customers of Kentucky Power, those interests are already represented by the Attorney General. KRS 367.150(8).²

The County identifies the potential socio-economic impact on Lawrence County of retiring Big Sandy Unit 2. But it nowhere identifies any authority making such considerations relevant to proceedings pursuant to KRS 278.020. Moreover, to the extent such considerations are relevant, the Attorney General as the consumers’ representative is well-placed to represent the interests the County belatedly seeks to advance. This is not to suggest that Kentucky Power is unaware of, or indifferent to, the possible socio-economic effect of the retirement of Big Sandy Unit 2. Indeed, it has taken concrete steps both as a part of the settlement agreement and

² KRS 367.150(8)(a) vests the Attorney General with the duty “[t]o appear before any ... rate-making or regulatory body or agency, *to represent and be heard on behalf of consumers’ interests.*” Subsection (b) of the same statute likewise imposes a duty on the Attorney General “[t]o be made a real party interest to any action *on behalf of consumer interests* involving a quasijudicial or rate-making proceeding of any state ... commission ... whenever deemed necessary or advisable in the consumers’ interest by the Attorney General.”

outside of the agreement through its economic development efforts, to enhance economic development in its service territory. But like the Commission itself, the Company is bound by the requirements of KRS 278.020 and the need to do what is best in the long-term interests of all of its 173,000 customers.

The Commission should deny the County's Motion.

C. The County's Proposed Intervention is not Likely To Present Issues or Develop Facts That Will Aid The Commission.

A timely motion to intervene, which the County's is not, may also be granted where the entity seeking intervention is "likely to present issues or develop facts that assist the commission in fully considering the matter...." 807 KAR 5:001, Section 4(11)(b). Although the County suggests that it is "uniquely situated to provide useful information," left unstated is how it will accomplish this task even assuming the information it seeks to provide is relevant. Certainly, the time for intervenor discovery and testimony is long past. At best, the County will be limited to attempting to present issues or develop facts through cross-examination. Such a course is not only unlikely to succeed, but will unnecessarily delay the hearing.

D. The County's Intervention will Unduly Complicate and Disrupt the Proceeding.

The County states that its intervention will not cause a delay, but is silent about whether its proposed intervention will complicate or disrupt the proceedings. As discussed above, the parties to this case have, over the past five and a half months, engaged in extensive discovery, filed witness testimony, and participated in settlement negotiations. The County was a party to none of those activities and would be forced to start anew. Adding a new party to the case, one whose interests are already adequately represented, at this late hour would only serve to complicate the proceeding by seeking to introduce issues not cognizable under KRS 278.020.

E. Conclusion.

The County has not satisfied the standards for intervention. The County's Motion is untimely, its interests are already adequately represented in this case, it is unlikely to present issues or develop facts that will assist commission, and the County's involvement at this late hour would only complicate the matter. Accordingly, the County's Motion must be denied.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Mark R. Overstreet', written over a horizontal line.

Mark R. Overstreet
R. Benjamin Crittenden
STITES & HARBISON PLLC
421 West Main Street
P. O. Box 634
Frankfort, Kentucky 40602-0634
Telephone: (502) 223-3477

Kenneth J. Gish, Jr.
STITES & HARBISON PLLC
250 West Main Street, Suite 2300
Lexington, Kentucky 40507
Telephone: (859) 226-2300

COUNSEL FOR KENTUCKY POWER
COMPANY

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by first class mail, postage prepaid, upon the following parties of record, this 17th day of June, 2013.

Michael L. Kurtz
Jody Kyler Cohn
Boehm, Kurtz & Lowry
Suite 1510
36 East Seventh Street
Cincinnati, OH 45202

Joe F. Childers
Joe F. Childers & Associates
300 The Lexington Building
201 West Short Street
Lexington, KY 40507

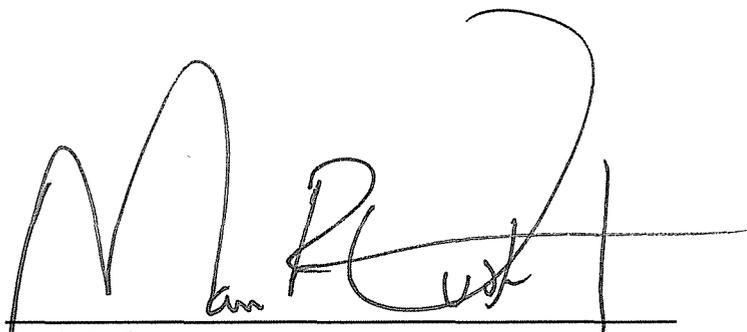
Jennifer Black Hans
Dennis G. Howard II
Lawrence W. Cook
Assistant Attorney General
Office for Rate Intervention
P.O. Box 2000
Frankfort, KY 40602-2000

Robb Kapla
Sierra Club
85 Second Street
San Francisco, CA 94105

Hon. Michael T. Hogan
Lawrence County Attorney
122 South Main Cross Street
Louisa, KY 41230

Shannon Fisk
Earthjustice
1617 JFK Boulevard, Suite 1675
Philadelphia, PA 19103

Michael T. Hogan
Lawrence County Attorney
122 South Main Cross Street
Louisa, Kentucky 41230

A handwritten signature in black ink, appearing to read 'Mark R. Overstreet', is written over a horizontal line. The signature is stylized and cursive.

Mark R. Overstreet