

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF EAST KENTUCKY POWER)	
COOPERATIVE, INC. FOR A CERTIFICATE OF)	
PUBLIC CONVENIENCE AND NECESSITY, AND)	
A SITE COMPATIBILITY CERTIFICATE, FOR)	CASE NO. 2004-00423
THE CONSTRUCTION OF A 278 MW (NOMINAL))	
CIRCULATING FLUIDIZED BED COAL-FIRED)	
UNIT IN MASON COUNTY, KENTUCKY)	

O R D E R

On April 11, 2005, EnviroPower, LLC (“EnviroPower”) filed a second petition for full intervention. It alleges that on February 3, 2005, the Commission granted EnviroPower partial intervention, giving it greater rights than a limited intervenor under 807 KAR 5:001, Section 3(8)(a), but less rights than a full intervenor under 807 KAR 5:001, Section 3(8)(b). EnviroPower claims that, since that time, new facts and circumstances have been presented to demonstrate that its interests are fully aligned with those of the ratepayers and, as a consequence, it should now be granted full intervention.

Based on EnviroPower’s second petition for intervention, and being otherwise sufficiently advised, the Commission finds that EnviroPower’s first petition for intervention alleged that it had submitted a bid to sell power to East Kentucky Power Cooperative, Inc. (“East Kentucky Power”), but its bid was not selected because the procedures utilized by East Kentucky Power for receiving and evaluating power supply

bids were not objective and were designed to favor East Kentucky Power's self-construct bid. On February 3, 2005, the Commission denied EnviroPower's first request for intervention based on findings that: (1) EnviroPower is not a customer of East Kentucky Power, but is an unsuccessful bidder in a competitive power solicitation; and (2) EnviroPower clearly has a pecuniary interest to challenge any bid evaluation process that results in the rejection of its bid and that interest does not coincide with the interests of ratepayers. However, the Commission did find that an investigation should be conducted of East Kentucky Power's bidding procedures and evaluation process.

Despite finding that EnviroPower's interest was not sufficient to justify intervention, the Commission did authorize its name to be added to the service list so that it could monitor the investigation and submit further information and comment. However, EnviroPower was not granted partial intervention as it now claims. Its rights were limited to monitoring the proceedings and filing comments. Thus, EnviroPower's status is much less than that of a limited intervenor who, under 807 KAR 5:001, Section 3(8)(a), "shall be entitled to the full rights of a party at any hearing in which he appears...."

As part of the bid solicitation and evaluation investigation, the Commission required supplemental testimony to be filed by East Kentucky Power and the independent consultant that it had hired to evaluate all power supply bids. East Kentucky Power was also directed to respond to a data request relating to the bidding procedures and evaluation process. Subsequent to the receipt of the supplemental testimony and data responses, EnviroPower filed comments in the form of prepared

testimony,¹ and East Kentucky Power then filed its second supplemental testimony in response thereto.

The comments filed by EnviroPower, as well as the claims set forth in its second petition to intervene, contain multiple challenges to the objectivity of East Kentucky Power in developing its power supply bidding procedures and bid evaluation process. However, it is clear from those comments that EnviroPower had no role in either the development of East Kentucky Power's bidding procedures or the evaluation of the bids received. Only East Kentucky Power and its consultant were involved in those activities. Thus, EnviroPower's perspective on these issues is as an unsuccessful bidder.

The Commission further finds that the grounds upon which it previously denied EnviroPower's first request to intervene are as valid today as they were on February 3, 2005. EnviroPower is still not a customer of East Kentucky Power, and, as an unsuccessful bidder, it still has a pecuniary interest to challenge any bid evaluation process that results in the rejection of its bid. Since initiating our investigation of East Kentucky Power's bidding procedures and evaluation process, we have amassed a substantial body of evidence, including copies of the complete bids submitted by EnviroPower, East Kentucky Power, and the other nine bidders, as well as additional financial analyses of the EnviroPower and East Kentucky Power bids. The record also includes the comments filed by EnviroPower. Based upon this record, the Commission is unable to find that granting full intervention to EnviroPower is likely to present issues

¹ Although EnviroPower chose to file its comments in the form of prepared testimony, the Commission's February 3, 2005 Order did not grant EnviroPower the status of a party and it was authorized only to file information and comments.

or develop facts that would assist us in fully considering the matter of East Kentucky Power's bid solicitation and evaluation. EnviroPower's pecuniary interest in challenging the rejection of its power supply bid is not aligned with the interests of ratepayers and does not rise to the level of a special interest in this proceeding sufficient to grant intervention. The Commission has already granted full intervention to the Attorney General's Office, on behalf of all ratepayers, and to Gallatin Steel, on behalf of East Kentucky Power's largest consumer of electricity.

IT IS THEREFORE ORDERED that EnviroPower's April 11, 2005 second petition for full intervention is denied.

Done at Frankfort, Kentucky, this 18th day of April, 2005.

By the Commission

ATTEST:

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke at the end, positioned above a solid horizontal line.

Executive Director