

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

O R D E R

On June 2, 2005, EnviroPower, LLC (“EnviroPower”) filed a written request for the Commission to take judicial notice of two articles that were recently published in an electric power trade magazine. The request states that the contents of the articles will assist the Commission in understanding why EnviroPower should be allowed to intervene in this proceeding.

On June 8, 2005, East Kentucky Power Cooperative, Inc. (“East Kentucky Power”) filed a response in opposition to EnviroPower’s request to take judicial notice. East Kentucky Power states that EnviroPower is not a party to this case and, thus, has no right to submit information into the record. Further, East Kentucky Power claims that the Commission can only take judicial notice of matters of common knowledge and facts that are beyond reasonable dispute. As to the articles proffered by EnviroPower, East Kentucky Power claims they contain opinions, not facts, and those opinions are unrelated to either the parties, or the specific facts at issue, in this case.

Based on the motion and being otherwise sufficiently advised, the Commission finds that by Order dated February 3, 2005 and April 18, 2005, EnviroPower's requests to intervene were denied and EnviroPower has filed an action for review of those Orders in the Kentucky Court of Justice. Thus, the Commission no longer has jurisdiction over its Orders denying intervention to EnviroPower. Since EnviroPower's actions have removed the issue of its intervention from the Commission's jurisdiction to the Court of Justice, magazine articles that support EnviroPower's intervention are not relevant to any issue now before the Commission.

In addition, the Commission finds that EnviroPower's request for judicial notice is, in essence, a formal request to offer proof in this case. However, since EnviroPower is not a party to this case, it has no right to formally request to file proof. Pursuant to our February 3, 2005 Order, which denied EnviroPower's first request to intervene, the Commission stated that EnviroPower should be afforded an opportunity to submit information and comment. In the event that EnviroPower seeks to submit information or comment on issues pending before the Commission in this case, such information and comment will be accepted as public comment. However, EnviroPower has no right to request to offer proof at the Commission on an issue that is pending before the Court of Justice.

IT IS THEREFORE ORDERED that EnviroPower's request for the Commission to take judicial notice is denied.

Done at Frankfort, Kentucky, this 10th day of June, 2005.

By the Commission

ATTEST:



Executive Director

Case No. 2004-00423