

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF KENTUCKY POWER)	
COMPANY FOR APPROVAL OF ITS 2011)	
ENVIRONMENTAL COMPLIANCE PLAN, FOR)	
APPROVAL OF ITS AMENDED)	
ENVIRONMENTAL COST RECOVERY)	CASE NO.
SURCHARGE TARIFF, AND FOR THE GRANT)	2011-00401
OF A CERTIFICATE OF PUBLIC)	
CONVENIENCE AND NECESSITY FOR THE)	
CONSTRUCTION AND ACQUISITION OF)	
RELATED FACILITIES)	

O R D E R

On January 5, 2012, Riverside Generating Company, L.L.C. ("Riverside") filed a motion to intervene in the above-referenced case. Riverside states that it operates a natural gas-fired 836 MW electric generating facility in Zelda, Kentucky, which is connected to the American Electric Power ("AEP") Baker substation. As an operator of electric generating facilities in the proximity of Kentucky Power Company's ("Kentucky Power") service area, Riverside contends that it has a special interest in the proceeding which is not otherwise represented by any other party.

Riverside also argues that its intervention would allow it to present issues and develop facts that will assist the Commission in its review of Kentucky Power's application. Riverside notes that "[t]he facilities that Riverside has available for inclusion in Kentucky Power's Compliance Plan have not been referenced in the application submitted by Kentucky Power and have not been presented as a viable alternative to the proposal by Kentucky Power." Riverside further notes that inclusion of its natural

gas-fired facilities in Kentucky Power's proposed environmental compliance plan "may help avoid unnecessarily high rate adjustments" given the relatively lower cost of natural gas as compared to coal in terms of fuel and environmental compliance.

Based on the motion to intervene, and being otherwise sufficiently advised, the Commission finds that the only person that has a statutory right to intervene is the Attorney General, pursuant to KRS 367.150(8)(b). Intervention by all others is permissive and is within the sound discretion of the Commission. In the recent unreported case of *EnviroPower, LLC v. Public Service Commission of Kentucky*, No. 2005-CA-001792-MR, 2007 WL 289328 (Ky. App. Feb. 2, 2007), the Court of Appeals ruled that this Commission retains power in its discretion to grant or deny a motion for intervention but that discretion is not unlimited. The Court then enumerated the statutory and regulatory limits on the Commission's discretion in ruling on motions for intervention. The statutory limitation, KRS 278.040(2), requires that the person seeking intervention have an interest in the rates or service of a utility as those are the only two subjects under the jurisdiction of the Commission. The regulatory limitation of 807 KAR 5:001, Section 3(8) requires that a person demonstrate a special interest in the proceeding which is not otherwise adequately represented or that intervention is likely to present issues or develop facts that assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings.

Having reviewed Riverside's motion and being otherwise sufficiently advised, the Commission finds that Riverside has offered no evidence that it has a special interest in the proceeding. Other than an ambiguous statement that it has facilities that provide electricity to AEP "and which are available to continue to provide that power to Kentucky

Power,” the Commission notes that Riverside has not established in its petition that it is a retail customer of Kentucky Power. The Commission’s jurisdiction is limited to regulating the retail rates and service of Kentucky Power. Only retail customers of Kentucky Power pay its rates and receive its service. Thus, only retail customers of Kentucky Power have an interest in its rates or its service.

The Commission further finds that Riverside has failed to show that it is likely to present issues or develop facts that would assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings. To the extent that Riverside seeks to “offer the sale of its facilities” pursuant to a contract for long-term generation capacity to Kentucky Power to be included as part of Kentucky Power’s environmental compliance plan, Riverside is acting in the capacity of a wholesale supplier or competitor to Kentucky Power. Consequently, Riverside is similarly situated as was EnviroPower, LLC in the above-referenced Court of Appeals decision. As the Court held in that case, the interest of a competitor seeking to supply power to a utility is not sufficient to support intervention at the Commission. Accordingly, we find that Riverside’s motion filed January 5, 2012 should be denied.

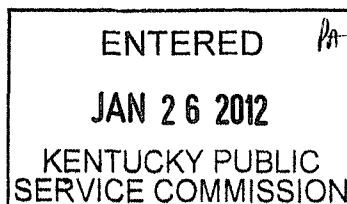
Riverside will have ample opportunity to participate in this proceeding even though it is not granted intervenor status. Riverside can review all documents filed in this case and monitor the proceedings via the Commission’s website at the following web address:

<http://psc.ky.gov/Home/Library?type=Cases&folder=2011 cases/2011-00401>.

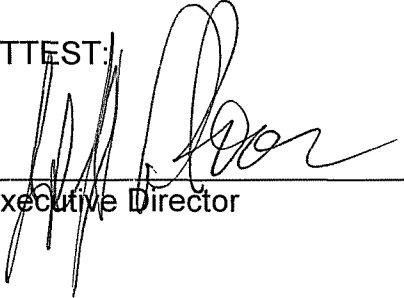
Riverside may also file comments as frequently as it chooses, and those comments will be entered into the record of this case. Finally, it may also attend and present public comment at the public hearing to be held at our offices in Frankfort, Kentucky. The date for that hearing will be scheduled in the near future.

IT IS THEREFORE ORDERED that Riverside's motion for intervention is denied.

By the Commission



ATTEST:



Executive Director

Case No. 2011-00401

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