



August 13, 2002

Stephanie Bell
Kentucky State Board on Electrical
Generation and Transmission Siting
211 Sower Boulevard
P.O. Box 615
Frankfort, Kentucky 40602

Re: Case No. 2002-00149

Dear Ms. Bell:

Enclosed is Kentucky Mountain Power, LLC's ("KMP") Post Hearing Brief in the matter of KMP's application for a certificate to construct a power plant in Knott County Kentucky. If you have any questions concerning this matter, please don't hesitate to contact me at either (859) 422-5562 or (859) 492-2323.

Sincerely,

A handwritten signature in blue ink that reads "Peter C. Brown".

Peter C. Brown
Director of Contract Administration
EnviroPower, LLC

cc: Randy Bird
Robin Morecroft
Tom Fitzgerald

295-KMP-Siting-Post-Hearing-Brief-Filing-Letter

COMMONWEALTH OF KENTUCKY
BEFORE THE KENTUCKY STATE BOARD ON
ELECTRIC GENERATION AND TRANSMISSION SITING

In the Matter of:

THE APPLICATION OF KENTUCKY)	
MOUNTAIN POWER, LLC /)	
ENVIROPOWER, LLC FOR A)	CASE NO. 2002-00149
MERCHANT POWER PLANT)	
CONSTRUCTION CERTIFICATE IN)	
KNOTT COUNTY, KENTUCKY)	
NEAR TALCUM)	

KENTUCKY MOUNTAIN POWER, LLC'S POST HEARING BRIEF

COMES NOW Kentucky Mountain Power, LLC ("KMP") and submits this Post Hearing Brief for consideration of the Kentucky State Board on Electric Generation and Transmission Siting.

BRIEF

Access Road

KMP is willing to agree to the Board's Consultant in the Consultant's August 12, 2002 Summary of Permit Conditions Letter. Further, KMP is willing to request the mining company adjacent to the plant site to turn away any "KMP related traffic" if they attempt to use any roads (other than the Road) associated with the mine. KMP cannot agree to closing down access of the road on its leasehold after completion of the construction of the Access Road since KMP's lessor has the right to continue to use this road for access and the property this road travels across will be owned by the Commonwealth of Kentucky at the time the Access Road is completed, and KMP is not empowered to close any roads on public property.

Reservoir

KMP has indicated in its Application of its intention to use the Lick Branch Impoundment as its reservoir for holding the raw water necessary for the operation of the power plant. The Dam Break Analysis provided to the Board indicates no danger to any residences or businesses if the reservoir should fail. The reservoir is currently permitted and any modification/alteration to the reservoir would have to be approved and regulated by the appropriate governmental agencies. KMP's use of the reservoir will provide it the opportunity to monitor and control the level of water therein. While KMP would object to any restriction placed on its use of the reservoir on the basis that such restriction would be outside the power granted to the Board by Senate Bill 257, no such restriction is necessary as KMP's use of the reservoir is consistent with the policies promoted by Senate Bill 257.

Transmission Line

The transmission lines that will interconnect KMP to the AEP grid will be owned and operated by AEP, and the Kentucky Public Service Commission will regulate their operation. As such, the lines do not fall under the definition of a "nonregulated electric transmission line" and KMP is not obligated to file for a certificate from the Board for their construction. To the extent the Board interprets said lines to be an "appurtenance" of the power plant, no issue has been raised that said lines "run afoul" of the criteria considered by the Board to be appropriate when siting a power plant. While the Intervenor objects to the placement of the lines, she indicates that they do not immediately impact her and that she is acting on behalf of and for the protection of the public. To the extent the Intervenor has standing to act on behalf of the public, she has

not brought forth any evidence that the siting of the lines is inappropriate in regards to the applicable legislation and her claims in this regard should not be given any weight.

Facility Site Access and Security

The Board's Consultant has made various recommendations/statements with regard to facility site access and security. These recommendations are outside the scope of the factors the Board may consider in granting or denying KMP's Application, as set forth in Section 6 of Senate Bill 257 and the Consultant has provided no evidence of how any of its recommendations may positively or negatively affect any of these factors. Regardless of its position with regard to the ability of the Board to impose restrictions with regard to facility site access and security, KMP intends to use standard industry practice in regulating the same.

Monitoring

Generally, KMP is not opposed to the monitoring program as suggested by the Board's Consultant in the Consultant's August 12, 2002 Clarification of Proposed Monitoring Requirements letter. Notwithstanding the foregoing, KMP does not agree with reporting concerning access control to the site as this is outside of the purview of the Board (see above objection). The reporting of any complaints received by the Board should be limited to those complaints relating to siting concerns under the jurisdiction of the Board. KMP is concerned that providing the Board any and every comment received concerning its power plant, even complimentary ones, could become overburdensome. KMP would suggest providing the Board the summary as suggested by the Consultant and providing such additional information if requested by the Board. KMP is not opposed to the reporting of Specific Mitigation Conditions as set forth in the

Consultant's letter (except for issues concerning Access Control) as such conditions are defined in the Consultant's August 12, 2002 Summary of Permit Conditions letter.

Silencers

The Board's Consultant recommends the use of silencers for the steam blow downs. The use of silencers for the steam blows, while common, is not industry standard. The silencers would only serve to reduce noise created during an approximate three-day period near the end of construction. The Consultant has also suggested conducting the steam blows only during certain hours as an alternative to installing silencers, which would increase the overall time period the steam blows were conducted. Due to the short duration of the inconvenience created by these steam blows, it is KMP's position that requiring the installation of silencers or restricting the times steam blows could be conducted to reduce this inconvenience is not worth the cost of installing these silencers, which will never be used again, or the cost of delaying the completion of the power plant, where such cost will ultimately be passed through to the ultimate consumer of the electricity produced by the power plant, the public. However, if the Board requires a mitigation of the additional noise created during the steam blows, KMP requests that it be provided the option of choosing between the two possibilities set forth in the Consultant's August 12, 2002 Summary of Permit Conditions letter. KMP has not completed its negotiations with all of its contractors and is not yet in a position to determine which method would be the most cost effective and practical to employ.

Waiver of Setback Requirements

KMP is not opposed to the options provided for the identification of the site definition as set forth in the Board's Consultant's August 12, 2002 Summary of Permit

Conditions letter. As requested by the Board, KMP has been attempting to ascertain whether the adjacent landowner, Appalachian Realty Company (“APR”) would be willing to waive any objection it has to the setback requirements but has been unsuccessful to date. KMP has just learned the identity of the person authorized by APR’s parent to make this decision and is in the process of contacting him. KMP would suggest providing options on KMP’s certificate as to the site definition with a requirement that one of the options must be chosen by KMP and compliance demonstrated to the Board within 15 days of the issuance of the certificate.

Use of Local Workers/Materials

The Board’s Consultant recommends implementing a program for KMP to hire workers locally and obtain materials for construction “to the maximum extent possible” (the “Program”). KMP has always maintained that it intends to look to the communities surrounding the power plant site for many of the services and workers it will need. KMP is opposed to the Board placing a restriction on its certificate to implement the Program when no negative impact exists for the program to cure, there is no evidence that the Program would cure a negative impact even if it did exist, there is no practical way to “police” the Program, there is no definition as to how far the Program should extend and there are no realistic penalties for non-compliance.

After reviewing the Consultant’s report, KMP is unsure what negative impact the construction of the power plant is supposed to create that the implementation of the Program would mitigate. The Consultant states that any potential negative impact on surrounding property values would be mitigated by the Program, however that no negative impacts are likely to occur. Further, the Consultant does not provide any evidence that implementation of the Program will mitigate any supposed negative

impact on surrounding property values. There is little benefit in requiring a program to cure a problem without knowing if the problem exists or if the program will solve it.

Assuming KMP implemented the Program, there is no practical way to “police” it. First, “to the maximum extent possible” is not defined. Presuming the local and non-local persons/vendors are equally qualified and equally priced, the local should be hired. However, the Consultant’s recommendation suggests that local workers and vendors should be hired even if they may be more expensive. How much more cost should KMP be required to bear before hiring a local is no longer “possible” or “practical”? If a contractor already has qualified workers on its payroll who are not local, must it cause those workers to sit idle and be forced to hire and train locals to do the work instead? What evidence do contractors and vendors have to provide KMP that each person who was involved in manufacturing, delivering, constructing, inspecting and operating the components of the power plant is local and what obligation does KMP have to verify such evidence?

Assuming it were possible to properly “police” the Program, how far should the implementation of the Program extend? Should the Program cover sourcing of materials used in construction, fabrication of materials, construction personnel, engineering personnel, operating personnel, and fuel delivery, or only some of the above? Will a non-local contractor/m manufacturer be required to hire local personnel to deliver the material? Finally, if a company is located within 50 miles of the facility (deemed “local” by Consultant), but uses labor/materials that are not “local”, does the company qualify as “local”?

Assuming KMP implements the Program, effective remedies for non-compliance may be problematic. While Senate Bill 257 is not clear, the Board’s power after the

issuance of a certificate to construct are probably limited to revocation of the certificate. If this is the case, there is no way to effectively restrict the hiring practices of KMP after construction is complete because the Board will have no penalty it can enforce on KMP for non-compliance. Further, revocation of KMP's certificate will damage those locals that were hired by KMP for the construction of the power plant. If the Consultant's position is correct that the Program is for the benefit of the surrounding landowners (to mitigate supposed negative impacts on their property values), what action can the Board take with regard to the Program that will increase the property values of the surrounding landowners? If the purpose of the Program is to benefit local workers/suppliers and KMP does not comply with the Program, which workers/suppliers should be compensated, if any, and how?

KMP, in its solicitation/negotiation for services/materials to be used in the construction and operation of the power plant, will use the same format as used by every governmental agency of the Commonwealth of Kentucky: the work will go to the lowest responsible (qualified) bidder. Typically, local workers and vendors are less expensive than their out-of-region counterparts due to travel/delivery costs. Further, locals are typically more reliable and knowledgeable of local practices and regulations. For these reasons, KMP is highly motivated to engage local workers and contractors where the same are cost effective and qualified to perform the work. KMP has objected to the Board's requirement of the implementation of a program to hire locally "to the maximum extent possible" not because it disagrees with the advantages both to itself and the region of following such a course of conduct, but rather it has serious concerns as to the effects of agreeing to an amorphous concept of "hiring locally" and imposing such an obligation on its contractors with no discernable interpretation of what it means,

how to ensure compliance both of itself and its contractors and what penalties it faces for noncompliance, whether such noncompliance is accidental or otherwise.

If the Board deems it to be consistent within the guidelines of Senate Bill 257 to impose the Program on KMP, then the Program should be adopted as a requirement for all certificates issued by the Board, and not a specific restriction on KMP's certificate. Since the Board's Consultant recommended the Program as a way to mitigate possible negative impacts the facility may have on adjacent property values and not in response to a specific negative impact the construction of the facility would create, then to the extent the Program has merit, it should have the same merit with regard to all facilities governed by the Board, including merchant power plants, transmission lines, utility interconnections, or utility power plants, and be imposed on construction of the same.

CERTIFICATION

Peter C. Brown, being attorney of record for Kentucky Mountain Power, LLC, certifies that the information set forth in the above Post Hearing Brief are true and accurate as stated.



Peter C. Brown
Attorney of Record
Kentucky Mountain Power, LLC
2810 Lexington Financial Center
Lexington, Kentucky 40507

COMMONWEALTH OF KENTUCKY

COUNTY OF FAYETTE

The foregoing instrument was subscribed, sworn, to and acknowledged before me this 13th day of ^{August}~~July~~, 2002, by **PETER C. BROWN** as **Attorney of Record** for **Kentucky Mountain Power, LLC**, a Kentucky limited liability company, for and on behalf of said company.



NOTARY PUBLIC

My Commission Expires: 5/7/04