



Attention: **Electric Generation Board**

Date: 9/17/03

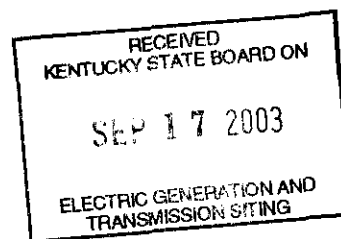
Company:

Number of Pages: 7

Fax Number: 1-502-564-3460

Voice Number:

From: **Tom FitzGerald**



Company: Kentucky Resources Council, Inc.

Fax Number: 1-502-456-0510

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Subject:

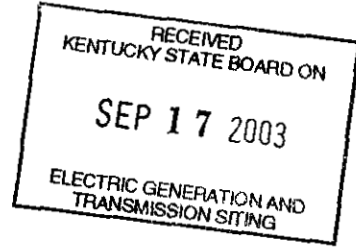
Comments:

For Docket Coordinator, State Electric Generation and Transmission Siting Board.

Thanks.

Kentucky Resources Council, Inc.

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September 17, 2003

Docket Coordinator
Kentucky State Siting Board on
Electric Generation and Transmission Siting
211 Sower Boulevard
P.O. Box 615
Frankfort, Kentucky 40602


Re: THE APPLICATION OF THOROUGHbred GENERATING COMPANY
LLC FOR A MERCHANT POWER PLANT CONSTRUCTION
CERTIFICATE IN MUHLENBERG COUNTY, KENTUCKY; CASE NO.
2002-00150

Dear Docket Coordinator:

Please find enclosed, for filing, a fax copy of the Reply of Applicant For Intervention Gary Watrous To The Objection of Thoroughbred To Intervention. The original and ten (10) copies of the reply have been sent by mail today for filing.

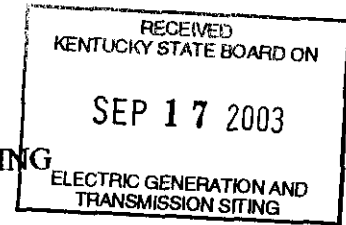
Thank you for your assistance in filing this. All parties of record have been served by mail.

Cordially,



Tom FitzGerald
Counsel for Movant

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



In the Matter of:

THE APPLICATION OF THOROUGHBRED)
 GENERATING COMPANY, LLC. FOR A)
 MERCHANT POWER PLANT) CASE NO. 2002-00150
 CONSTRUCTION CERTIFICATE IN)
 MUHLENBERG COUNTY, KENTUCKY)

REPLY OF APPLICANT FOR INTERVENTION GARY WATROUS TO
 OBJECTION OF THOROUGHBRED TO INTERVENTION

Comes Gary Watrous, (hereinafter "Watrous"), Movant for Intervention, by counsel, and files this reply to the Response filed by Thoroughbred Generating Company, LLC ("Thoroughbred") in opposition to the granting of full intervenor status to Mr. Watrous.

1. Thoroughbred opposes the grant of intervenor status to Mr. Watrous both because, according to Thoroughbred, Watrous' interests reflect "no particularized or specialized interest beyond that possessed by any other person living in Kentucky."

Thoroughbred is mistaken on the law and the facts. Initially, neither the statute under which Watrous seeks intervenor status nor the regulation *require* that the Movant demonstrate a "particularized or specialized interest", but rather, that, according to the statute, Watrous be an "interested person", and according to the regulation, that he have a "special interest in the proceeding." That such an interest might be shared by others does not disqualify the Movant, for the fact that a harm might affect numerous individuals does not mean that each person so harmed lacks requisite standing. As an intervenor, Watrous' burden is to demonstrate that he possesses a "special interest" -- a threshold he has readily satisfied both because of his aesthetic use and enjoyment of the Mammoth Cave region and the potential adverse effects of same from the proposed plant, and his

economic interests as an architect which might be adversely affected due to declining air quality in his community.

The cases cited by Thoroughbred are inapposite. The interests possessed and alleged by Watrous are neither remote nor speculative, for as the administrative record of the state air permitting decision reflects (and as the Board can take administrative notice), the possibility of adverse ecological and economic effects of the proposed plant on both the Mammoth Cave region and Jefferson County airshed were matters of very real and direct concern to local and federal agencies. Nothing in the cases cited suggests that an interest sufficient to confer intervenor status must be exclusive and cannot be shared by others similarly situated.

2. As to the second basis for the objection, Thoroughbred claims that Watrous' intervention would not assist the Board since the concerns raised by Watrous are not relevant to the proceeding. Watrous responds briefly in this manner. First, a closer reading of the Motion for Intervention reflects that Watrous alleged potential damage to economic interests in an affected downwind region (Louisville), and those economic interests are directly relevant to the Siting Board decision. KRS 278.710(1)(c).

Second, Thoroughbred confuses the requisite standing and intervention demonstration with the substantive participation of a party. The aesthetic, property and economic concerns identified by Watrous speak to his interest in participation in the proceeding and demonstrate his standing to participate based on an interest in *the outcome of the proceeding*. To the extent that the Movant has the requisite standing with respect to the proposed agency action (i.e. issuance of a construction certificate), whether his standing rests on aesthetic, environmental or property interests, his intervention should be allowed.

Obviously, as a party Watrous is limited to the question of the compliance of the applicant with the governing statutes, and can raise any and all issues within the ambit of the Siting Board's jurisdiction, and no more. Additionally, to the extent that Watrous or any party seeks to interject matters outside of the Board's statutory scope, the Board has the authority to limit the scope, but denial of intervention is not an appropriate tool to that end.

3. Thoroughbred next objects on the basis that Movant Watrous' interests as a ratepayer and customer of Louisville Gas and Electric Company in the reliability or performance of the transmission grid are more "appropriate[ly]" raised by LG&E and BREC and that Movant's participation will be unduly disruptive.

In brief response, the suggestion that Watrous' intervention will be unduly disruptive is specious, since the motion to intervene was *timely filed* and Watrous indicated that he would not file any information requests of any party at this time. Watrous fully intends that his participation in cross-examination of witnesses *not* be cumulative or redundant, but that those areas of relevant inquiry that might not be addressed by staff or other intervenors be covered by him. Watrous' interests as a commercial and residential ratepayer for an IOU are not synonymous with the IOU management, nor the management of BREC, and the participation of Mr. Watrous meets the threshold of 807 KAR 5:110 Section 4(2)(a) and (b). It is for the Board to determine whether the participation of Mr. Watrous would be helpful, nor for Thoroughbred to decide who is most "appropriate" to address particular issues relevant to the proceeding. No other party, including Intervenors BREC and LG&E, have lodged any objection.

WHEREFORE, for the reasons stated above and in the Motion for Intervention, Movant Gary Watrous requests that he be accorded the status of full Intervenor in this proceeding.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served upon the following individuals, by first-class mail, postage prepaid, and that a copy of the Reply was sent by telefax and that the original and ten (10) copies of this motion were filed by mail with the Public Service Commission, this 17th day of September, 2003:

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