



April 13, 2005

FACSIMILE AND MAIL

Ms. Elizabeth O'Donnell
Executive Director
Public Service Commission
211 Sower Boulevard
Frankfort, KY 40602

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APR 15 2005

PUBLIC SERVICE
COMMISSION

Re: PSC Case No. 2004-00423

Dear Ms. O'Donnell:

Please find enclosed for filing with the Commission in the above-referenced case an original and ten (10) copies of the Objections of East Kentucky Power Cooperative, Inc., to the Petition to Intervene of EnviroPower, L.L.C.

Very truly yours,

A handwritten signature in cursive script, appearing to read 'Charles A. Lile'.

Charles A. Lile
Senior Corporate Counsel

Enclosures

Cc: Elizabeth E. Blackford, Esq.
Michael L. Kurtz, Esq.
Stephen M. Soble, Esq.- Overnight
Frederic J. Cowan, Esq.
Richard Raff, Esq.

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APR 15 2005
PUBLIC SERVICE
COMMISSION

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) CASE NO. 2004-
SITE COMPATIBILITY CERTIFICATE,) 00423
FOR THE CONSTRUCTION OF A 278 MW)
(NOMINAL) CIRCULATING FLUIDIZED)
BED COAL FIRED UNIT IN MASON)
COUNTY, KENTUCKY)

**OBJECTIONS OF EAST KENTUCKY POWER COOPERATIVE, INC.,
TO THE PETITION TO INTERVENE OF ENVIROPOWER, L.L.C.**

East Kentucky Power Cooperative, Inc., ("EKPC") hereby submits to the Kentucky Public Service Commission (the "Commission") its objections to the Petition to Intervene of EnviroPower, L.L.C. ("EnviroPower") in this case dated April 11, 2005, and urges the Commission to deny said Petition to avoid unjustified delays in the procedural schedule and undue disruption and complication of the proceedings in this case. The grounds for EKPC's objections are as follows:

- 1. EnviroPower lacks a sufficient special interest to intervene in this case.-

807 KAR 5:001 Section 3 (8) requires that a full intervenor in a case before the Commission have a special interest in the case which is not otherwise adequately represented, or be able to demonstrate that the person's intervention is likely to assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings. The Commission, in its order dated February 3, 2005 in this case, denied

intervention to EnviroPower. EnviroPower was allowed to be added to the service list in the case, to monitor the Commission's investigation of its allegations, but the Commission did not grant it partial intervenor status. EnviroPower asserts that its interests relate to EKPC's Request for Proposals 2004-01 (the "RFP"). EnviroPower is not an EKPC customer, and the Commission correctly determined in its February 3, 2005 order denying EnviroPower's original intervention petition, that its financial interests in challenging the rejection of its RFP proposal do not coincide with those of ratepayers. EnviroPower has made no demonstration of any more substantial special interest in this case and would not meet the standard in 807 KAR 5:001 Section 3 (8) for full intervention.

2. Intervention by EnviroPower will unduly disrupt and complicate this case-

The fact that EnviroPower's motive for intervention in this case is the self-interest of a rejected bidder, as opposed to any desire to assist the Commission in properly evaluating this case, becomes more apparent with every submission by EnviroPower. The Commission's initial denial of intervention to EnviroPower implicitly recognized that EnviroPower's participation would not sufficiently assist the Commission in considering this case without unduly complicating or disrupting the proceedings, and EnviroPower's actions since that time demonstrate the correctness of that judgment. The Commission established its investigation of EKPC's RFP procedures in this case to address EnviroPower's allegations, has requested and received substantial information from EKPC concerning the evaluation of the RFP proposals, and has allowed EnviroPower to file any information and comments to support its allegations. EnviroPower has been given the opportunity to submit any information that it possesses that in any way supports

its outrageous allegations of intentional manipulation of EKPC's RFP process, but has submitted no proof of those charges. The current petition simply continues EnviroPower's tactics of making baseless allegations of EKPC manipulation of the RFP evaluation, distorting EKPC statements to misrepresent facts, jumping to unjustified conclusions, and attempting to reconstruct the RFP evaluation process, to its own benefit. EKPC's unwillingness to perpetuate this endless exchange by responding more specifically to this newest set of allegations in these Objections should not be deemed an affirmation of them by EKPC, just as it should not be presumed that EKPC agrees with any prior statements by EnviroPower.

EnviroPower's sole apparent objective is to disrupt and complicate this case, to delay any final decision of the Commission beyond the point where the Spurlock 4 project is no longer a viable power supply option for EKPC's identified needs. EKPC believes that it has adequately demonstrated that its RFP evaluation process involved sufficient safeguards to successfully prevent potential manipulation, and contends that the Commission's investigation of that evaluation is the appropriate mechanism for resolving any issues in that regard. Any further involvement of EnviroPower in this case will cause disruption, but will provide no additional benefit to the Commission's consideration of the matters involved in this case that has not been, or could not have been, provided already in the course of that investigation. EKPC urges the Commission to deny EnviroPower's petition, complete the investigation and proceed to the hearing in the case.

3. Intervention in this case by EnviroPower threatens EKPC confidential information-

The participation of a rejected bidder in the case as a full intervenor would involve the potential for access to EKPC confidential information. Such access to EKPC confidential information by EnviroPower would constitute a serious commercial disadvantage to EKPC, and would provide EnviroPower an unreasonable advantage over other bidders in future EKPC RFPs. EKPC's rights under KRS §61.870 and 807 KAR 5:001 Section 7 to protect such confidential information would be jeopardized by such intervention by EnviroPower.

WHEREFORE, EKPC respectfully objects to the Petition to Intervene of EnviroPower and urges the Commission to deny such intervention as unjustified, to protect the integrity of the proceedings in this case and to protect the rights of EKPC to its confidential information.

Respectfully submitted,

DALE W. HENLEY



CHARLES A. LILE

ATTORNEYS FOR EAST
KENTUCKY
POWER COOPERATIVE, INC.
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CERTIFICATE OF SERVICE

This is to certify that an original and ten copies of the foregoing Objections of East Kentucky Power Cooperative, Inc., to the Petition to Intervene of EnviroPower, L.L.C., in the above-referenced case, were transmitted by facsimile and mailed to Elizabeth O'Donnell, Executive Director, Kentucky Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601; copies were sent by overnight delivery to Stephen M. Soble, O'Connor & Hannan, Suite 500, 1666 K Street, Washington, D.C. 20008-2803; and copies were mailed to parties on the Service List on April 13, 2005.



CHARLES A. LILE