

RECEIVED

MAY 12 2005

PUBLIC SERVICE  
COMMISSION

May 11, 2005

FACSIMILE AND MAIL

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

Re: PSC Case No. 2005-00053

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 Response of East Kentucky Power Cooperative, Inc., to the Petition for Reconsideration of the Petition to Intervene of EnviroPower, L.L.C.

Very truly yours,



Charles A. Lile  
Senior Corporate Counsel

Enclosures

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

RECEIVED

MAY 12 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 SITE COMPATIBILITY )**  
**CERTIFICATE, FOR THE CONSTRUCTION OF ) CASE NO. 2005-**  
**A 278 MW (NOMINAL) CIRCULATING ) 00053**  
**FLUIDIZED BED COAL FIRED UNIT AND FIVE )**  
**90 MW (NOMINAL) COMBUSTION TURBINES )**  
**IN CLARK COUNTY, KENTUCKY )**

**RESPONSE OF EAST KENTUCKY POWER COOPERATIVE, INC.,**  
**TO THE PETITION FOR RECONSIDERATION OF 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 Response to the Petition for Reconsideration of the Petition to Intervene of EnviroPower, L.L.C. ("EnviroPower") 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. EKPC reiterates and incorporates by reference its Objections to the Petition to Intervene of EnviroPower, which was filed in this case on April 6, 2005.
2. None of the information filed by EnviroPower as a part of this newest Petition identifies any interest of EnviroPower, beyond the speculative, contingent, potential

business opportunity which might come its way if it successfully disrupts the proceedings in this case and prevents the approval of necessary certificates for EKPC's proposed generation projects at the J.K. Smith Station. EnviroPower has no "right" to force its project on anyone, yet it attempts to create a "right" to intervene in this case based on nothing more than the hypothetical loss of an expectancy of potential future business. EnviroPower's absurd contention that its mere desire to develop its project, or the issuance of a certificate for that project, translates into some sort of protected right to interfere in this case, is yet another illustration of its willingness to distort facts and the law in trying to justify its desperate attempt to intervene. As a recent Kentucky Supreme Court decision makes clear, the mere unilateral expectation of a benefit is not equivalent to a property interest that is entitled to due process protection. Romero v. Administrative Office of the Court, 52 K.L.S. 4, p. 26, \_\_\_ S.W.3d \_\_\_\_\_. This case in no way deals with EnviroPower's ability to proceed with its own project, and to sell its output to any entity that is willing to contract for it. However, EnviroPower's construction certificate for its proposed power project was not granted on the basis of any commitment by EKPC to purchase power from that project, it gained no legal rights to sell its power through its participation in EKPC's Request for Proposals (the "RFP"), and EKPC has entered no agreement with EnviroPower to purchase power. The rights and interests of EKPC, its member systems, and their member consumers in securing economical and reliable new power supply are at stake in this case, not the pecuniary interests of EnviroPower.

Likewise, EnviroPower's attempt to create an interest by characterizing itself as the self-appointed defender of the integrity of the Commission's proceedings is wholly disingenuous, given EnviroPower's obvious motivation to promote the selection of its


own project. Now, Mr. Rotondi appears to claim that its interest is that Kentucky's Energy Policy will be subverted if EnviroPower is not allowed to intervene in this case. EnviroPower has gone to extreme, if unconvincing, lengths to concoct "public policy" interests in this case, since it knows that its "pecuniary" interest is an insufficient basis for intervention in the case, as it was in PSC Case No. 2004-00423. Even so, it remains clear that EnviroPower's pecuniary interest is its only interest in this case, and that it still fails to justify intervention.

3. The RFP which was conducted by EKPC in regard to this case is the same RFP that was conducted for PSC Case No. 2004-00423, and EnviroPower's allegations in regard to that RFP remain under investigation by the Commission. EnviroPower was allowed to submit in that case any information that it chose to provide to the Commission in order to explain its complaints about the RFP. The Commission correctly determined, in its order dated April 18, 2005, that conducting another investigation of EnviroPower's allegations would be inefficient and duplicative. EnviroPower has caused significant delay in Case No. 2004-00423 with its outrageous and unsubstantiated allegations, and is now attempting to similarly prolong this case. It is clear that undue disruption and complication of the proceedings is EnviroPower's objective, and that would be the result of its intervention in this case. The Commission's denial of intervention to EnviroPower should not be reconsidered.

WHEREFORE, EKPC respectfully urges the Commission to deny the Petition for Reconsideration of EnviroPower, to continue to deny the requested intervention as unjustified and to protect the integrity of the proceedings in this case and the rights of EKPC, its member systems and their member consumers.

Respectfully submitted,

  
DALE W. HENLEY

  
CHARLES A. LILE

ATTORNEYS FOR EAST  
KENTUCKY  
POWER COOPERATIVE, INC.  
P. O. BOX 707  
WINCHESTER, KY 40392-0707  
(859) 744-4812

**CERTIFICATE OF SERVICE**

This is to certify that an original and ten copies of the foregoing Response of East Kentucky Power Cooperative, Inc., to the Petition for Reconsideration of the Petition to Intervene of EnviroPower, L.L.C., in the above-referenced case, were mailed, and a copy was transmitted by facsimile, to Elizabeth O'Donnell, Executive Director, Kentucky Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601, and copies were served by electronic mail and sent by U.S. first class mail to Stephen M. Soble, O'Connor & Hannan, Suite 500, 1666 K Street, Washington, D.C. 20008-2803; Frederic J. Cowan, Lynch Cox, Gilman and Mahan, P.S.C., 400 West Market Street, Suite 2200, Louisville, Kentucky 40202; and to Parties of Record, on May 11, 2005.

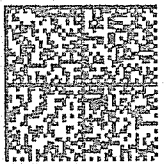


\_\_\_\_\_  
CHARLES A. LILE



**EAST KENTUCKY POWER COOPERATIVE**

4775 Lexington Road 40391  
P.O. Box 707,  
Winchester, Kentucky  
40392-0707



UNITED STATES POSTAGE  
FIRST CLASS PERMIT NO. 1000 WINCHESTER, KY  
\$02.44  
02 1A MAY 11 2005  
0004310562  
MAILED FROM ZIP CODE 40391

**First Class Mail**

**RECEIVED**

MAY 12 2005

PUBLIC SERVICE  
COMMISSION

ELIZABETH O'DONNELL  
EXECUTIVE DIRECTOR  
KENTUCKY PUBLIC SERVICE COMMISSION  
211 SOWER BOULEVARD  
FRANKFORT KY 40602