

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF KENTUCKY UTILITIES)	
COMPANY FOR CERTIFICATES OF PUBLIC)	CASE NO.
CONVENIENCE AND NECESSITY AND)	2011-00161
APPROVAL OF ITS 2011 COMPLIANCE PLAN)	
FOR RECOVERY BY ENVIRONMENTAL)	
SURCHARGE)	

O R D E R

The Central Kentucky Building & Construction Trades Council ("the Council") has submitted a letter dated June 29, 2011, which the Commission will treat as a motion, requesting intervention in the above-referenced matter. The letter states that the Council represents more than 20 construction trade unions and more than 3,000 men and women of these local unions, many of whom are ratepayers to Kentucky Utilities Company ("KU"). The letter states that their interest in the matter is to support the proposed rate increase and their desire to see that Kentucky employers and workers are utilized in the process of developing the projects if and when the Commission issues approvals concerning the requested rate increases.

The letter is signed by Robert Akin on behalf of the Council. The letterhead identifies Mr. Akin as President of the Council. On information and belief, Mr. Akin is not an attorney licensed to practice law in Kentucky.¹

¹ A search under the "Lawyer Locator" function of the Kentucky Bar Association's website returned no results for the name "Robert Akin."

On July 12, 2011, KU filed its response to the Council's motion, arguing that the motion does not state a special interest in the proceeding that is not already represented by the Attorney General, that the motion fails to identify any issues or facts that the Council will develop that will assist the Commission in the resolution of this matter, and that the Council's intervention could unduly complicate and disrupt the proceeding. The response requested that the Commission deny the Council's motion to intervene in this proceeding, arguing that the Council has failed to satisfy any of the requirements for intervention under 807 KAR 5:001, Section 3(8).

KU's response states that, while the Council represents numerous trade and local unions, it is unclear what interest those unions have in this proceeding other than attempting to advocate that Kentucky workers should be utilized in the construction of the planned projects. KU argues that this interest is not within the scope of an environmental cost-recovery proceeding as set forth in KRS 278.183, or within the Commission's jurisdiction as set out in KRS 278.040. KU maintains that the Council's stated interest cannot constitute a special interest for purposes of intervention because such interest is neither within the scope of an environmental cost-recovery proceeding nor subject to the Commission's jurisdiction.

Next, KU argues that the Council's second stated interest in the proceeding that many of its members are customers of KU is an insufficient interest to warrant intervention. The company states that the Commission has repeatedly held that a ratepayer's general interest as a customer is not a special interest warranting intervention. It argues that the Attorney General was granted intervention on June 3, 2011 and that the Attorney General has significant experience in representing the

ratepayers' interest in environmental cost-recovery proceedings, including prior KU cases. The fact that many of the Council's members are ratepayers of KU does not confer a special interest on the Council in this proceeding.

Further, KU maintains that the Council's motion has failed to set forth any specific knowledge or expertise in the principles relevant to environmental cost-recovery proceedings, such that it will present issues or develop facts that would assist the Commission in fully considering this matter. It states that the Commission has previously rejected motions to intervene in environmental cost-recovery proceedings where the proposed intervenor has failed to provide any background, knowledge, experience, or training on the issues of the need for and the absence of wasteful duplication from emission control equipment and facilities, and cost-recovery by surcharge of utility expenses and facilities.

Finally, KU argues that, even if the Council could demonstrate that it could present issues or develop facts that would assist the Commission, the Council's intervention could unduly complicate and disrupt the proceeding, as the Council is not represented by an attorney in its motion.

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. It is under these statutory and regulatory criteria that the Commission reviews a motion to intervene.

While the Commission recognizes the Council's desire to see that Kentucky employers and workers are utilized in the process of developing whatever projects may be constructed, the Commission is obligated to follow the requirements of KRS 278.040(2) and 807 KAR 5:001, Section 3(8). The decision of whether a utility utilizes Kentucky employers and workers is not within the scope of the Commission's jurisdiction.

Having reviewed the Council's motion, the Commission finds that the Council has offered no evidence that it has a special interest in the rates and service of KU which is not otherwise adequately represented by the Attorney General, nor has it shown 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. Therefore, the Commission finds that the Council's motion filed June 30, 2011 should be denied.

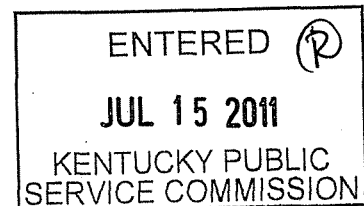
The Council and its members will have ample opportunity to participate in this proceeding even though they are not granted intervenor status. The Council and its members can review all documents filed in this case and monitor the proceedings via the Commission's website at the following web address:

<http://psc.ky.gov/Home/Library?type=Cases&folder=2011%20cases/2011-00161>.

The Council and its members may also file comments as frequently as they choose, and those comments will be entered into the record of this case. Finally, the Council and its members 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 the Council's motion for intervention is denied.

By the Commission



ATTEST:


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