

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF DELTA NATURAL GAS)	
COMPANY, INC. FOR AN ORDER DECLARING)	
THAT IT IS AUTHORIZED TO CONSTRUCT,)	CASE NO.
OWN AND OPERATE A COMPRESSED)	2013-00365
NATURAL GAS STATION IN BEREA,)	
KENTUCKY)	

ORDER

On January 8, 2014, Interstate Gas Supply, Inc. ("IGS") and Clean Energy Fuels Corp, Inc. ("Clean Energy") (hereinafter collectively "Movants") filed a joint motion requesting that each be granted full intervenor status in the instant proceeding. In support of their motion, the Movants state that:

IGS is America's largest independent retail provider of retail gas (headquartered in Dublin, Ohio) and IGS Energy CNG Services (a division of IGS) is a complete solutions provider to the natural gas vehicle industry. IGS currently provides CNG to the public through a partnership with the City of Dublin, Ohio at the city's fueling facility; likewise, IGS owns and operates CNG fueling stations in West Virginia and is currently developing a number of other stations throughout the region. IGS is also a supplier in the Columbia Gas of Kentucky Choice Program and supplies tens of thousands of natural gas customers at the residential and small commercial customer level through the Choice Program in the Kentucky Columbia Gas territory. . . .

Movants also state that:

Clean Energy is the largest provider of natural gas fuel for transportation in North America, fueling over 30,000 vehicles each day at approximately 400 plus fueling stations throughout the United States and Canada. With a broad customer base [sic] in a variety of markets, including trucking, airport shuttles, taxis, refuse, and public transit,

they build and operate CNG and liquefied natural gas (“LNG”) fueling stations; manufacture CNG and LNG equipment and technologies for themselves and other companies; and develop renewable natural gas (“RNG”) production facilities Clean Energy is headquartered in California . . . is publicly traded on the NASDAQ and is the private industry leader in CNG technology.

Movants claim to have a direct interest in the development of a sustainable CNG market and that Delta’s application to construct and operate a CNG fueling station for public use, and to include it within its base rates, will directly impact the development of the CNG market in Kentucky and surrounding areas. Movants state that because they have experience in the CNG field and offer products and services for both public and private, fast-fill CNG fueling stations, they are likely to present issues or to develop facts that assist the Commission in fully considering the matter and will provide significant expertise to this proceeding that is not offered by other parties.

Movants maintain that they will accept the procedural schedule as it stands and that their intervention will not unduly complicate or disrupt the proceedings. They further assert that the Kentucky Attorney General’s Office (“AG”) has “indicated that they have no objection to the expertise of Movant in regard to CNG infrastructure and building, owning and operating fueling stations.” Neither Delta nor the AG has filed a response to Movants’ motion to intervene.¹

Delta’s Application states:

Delta proposes to construct, own and operate a compressed natural gas station (the “CNG Station”) at its existing facilities on Glades Road in Berea, Kentucky. Specifically, Delta proposes to construct compressors, tanks, dispensing pumps and card readers for credit cards, along with such other construction as may be necessary for the operation of

¹ Pursuant to 807 KAR 5:001, Section 5(2), a party to a case shall file a response to a motion no later than seven (7) days from the date of filing of a motion.

the CNG Station. Delta estimates that the cost of construction will be approximately \$1,300,000 To reduce Delta's operating costs, Delta proposes to use the CNG Station to fuel some of Delta's company-owned motor vehicles. Delta anticipates that the station will be available also for the sale of natural gas as a motor fuel to the public.

Delta proposes to make sales of natural gas as a motor vehicle fuel to the public from the CNG Station as an unregulated activity of Delta. Delta proposes to transport natural gas to the CNG Station pursuant to its Interruptible Service tariff and it's [*sic*] Transportation of Gas for Others-On System Utilization tariff, which should be amended to provide for flexible rates pursuant to KRS 278.508(2) . . . with a waiver of minimum volume requirements. As amended, the tariffs will provide Delta a fair opportunity to compete with other motor fuels

Delta proposes that all the revenues and expenses (including gas costs) associated with the operation of the CNG Station be recorded and reported as regulated revenues and expenses even though it proposes that the sales of natural gas as motor vehicle fuel to the public will be treated as unregulated activity . . . [and] in future rate cases, Delta will propose to include the cost of construction in rate base, expenses in cost of service and revenues in the estimated revenue requirement.

In analyzing the instant petition to intervene, the Commission finds that the only person who has a statutory right to intervene is the AG, pursuant to KRS 367.150(8)(b). Intervention by all others is permissive and is within the sound discretion of the Commission.² In the 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

² *Inter-County Rural Electric Cooperative Corporation v. Public Service Commission of Kentucky*, 407 S.W.2d 127, 130 (Ky. 1996).

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 4(11), 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.

Based on a review of the record and being otherwise sufficiently advised, the Commission finds that Delta's proposed construction of a CNG fueling station and its request to include in rates the capital costs and associated revenues and expenses present unique issues that we have not previously addressed. The Kentucky General Assembly has enacted a specific statute, KRS 278.508, which addresses the sale of natural gas to a retail fueling station or end-user for use as a motor vehicle fuel. While the provisions of KRS 278.508(2) require that the Commission continue to regulate the transportation, distribution, and delivery of natural gas to CNG stations for use as a motor vehicle fuel, the provisions of KRS 278.508(1) specifically preclude the Commission from regulating the rates, terms, and conditions of service for the sale of

fuel³

It appears from our preliminary review of KRS 278.508 that the intent of the statute is to create a competitive environment for the sale of natural gas that will be used as a motor vehicle fuel. The Movants have demonstrated that they have some expertise in operating CNG fueling stations in a competitive environment and they assert that they, and possibly the development of the CNG market in Kentucky, may be affected if Delta is authorized to construct and operate such a fueling station with the costs included in its regulated utility rates. The Commission agrees with Movants' assertion that Delta's application varies greatly from a general base rate proceeding because it involves a gas distribution utility seeking to construct a CNG fueling station to be offered for public use and include the cost of the facilities in its regulated base rates. Based on Movants' assertions, in combination with the specific provisions of KRS 278.508, we find that Movants should be granted intervention on a joint basis as one party to be heard on these issues. The Commission also finds that Movants should file prepared testimony and respond to information requests. Delta should be permitted to file rebuttal testimony and the November 4, 2013 procedural schedule should be amended.

Based on the foregoing, IT IS THEREFORE ORDERED that:

1. Movants are granted intervention on a joint basis as one party.

³ KRS 278.508(1) provides the following:

Notwithstanding any other provisions of this chapter, the rates, terms, and conditions of service for the sale of natural gas to a compressed natural gas fuel station, retailer, or to any end-user for use as a motor vehicle fuel, shall not be subject to regulation by the Kentucky Public Service Commission. Any utility provider of such a nonregulated service shall keep separate records and books of account adequate to allow the commission to allocate costs and revenues and to perform other acts that will assist the commission in enforcing this section.

2. Movants shall be entitled to the full rights of a party and shall be served with the Commission's Orders and with filed testimony, exhibits, pleadings, correspondence, and all other documents submitted by parties after the date of this Order.

3. Should Movants file documents of any kind with the Commission in the course of these proceedings, Movants shall also serve a copy of said documents on all other parties of record.

4. The amended procedural schedule set forth in the Appendix to this Order shall be followed in this proceeding.

5. a. All requests for information and responses thereto shall be appropriately bound, tabbed, and indexed and the original and ten copies shall be filed with the Commission, with copies to all parties of record. Any request for information from the Commission Staff shall be responded to as if set forth in a Commission Order. All responses shall include the name of the witness responsible for responding to the questions related to the information provided.

b. Each response shall be answered under oath or, for representatives of a public or private corporation or a partnership or association or a governmental agency, be accompanied by a signed certification of the preparer or the person supervising the preparation of the response on behalf of the entity that the response is true and accurate to the best of that person's knowledge, information, and belief formed after a reasonable inquiry.

c. Movants shall make timely amendment to any prior response if they obtain information which indicates that the response was incorrect when made or, though correct when made, is now incorrect in any material respect.

d. For any request to which Movants fail or refuse to furnish all or part of the requested information, they shall provide a written explanation of the specific grounds for their failure to completely and precisely respond.

6. Movants shall file an original and ten copies of their direct testimony with the Commission, with copies to all parties of record. Movants' testimony shall be appropriately bound, tabbed, and indexed. When applicable, the requested information shall be separately provided for IGS and Clean Energy.

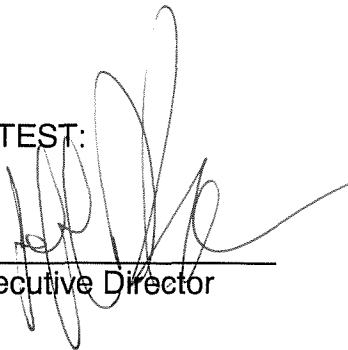
7. Any objections or motions relating to discovery or procedural dates shall be filed within four business days' notice or the filing party shall explain, in writing, why such notice was not possible.

8. Motions for extensions of time with respect to the schedule herein shall be made in writing and will be granted only upon a showing of good cause.

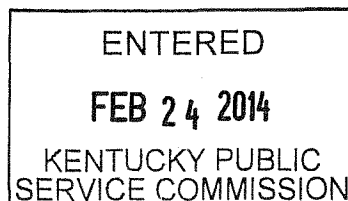
9. Nothing contained herein shall prevent the Commission from entering further Orders in this matter.

By the Commission

ATTEST:



Executive Director



APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2013-00365 DATED **FEB 24 2014**

Movants direct testimony in verified prepared form
shall be filed no later than03/07/14

Requests for information to Movants
shall be filed no later than03/21/14

Movants shall file responses to requests for
Information no later than04/11/14

Delta shall file rebuttal testimony, if any,
no later than04/25/14

Informal Conference to be held To Be Scheduled

Public Hearing to be held To Be Scheduled

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