

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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| JOINT APPLICATION OF LOUISVILLE GAS & |) | |
| ELECTRIC COMPANY AND KENTUCKY |) | |
| UTILITIES COMPANY FOR CERTIFICATES OF |) | |
| PUBLIC CONVENIENCE AND NECESSITY FOR |) | CASE NO. |
| THE CONSTRUCTION OF A COMBINED |) | 2014-00002 |
| CYCLE COMBUSTION TURBINE AT THE |) | |
| GREEN RIVER GENERATING STATION AND A |) | |
| SOLAR PHOTOVOLTAIC FACILITY AT THE |) | |
| E.W. BROWN GENERATING STATION |) | |

ORDER

On February 14, 2014, Bluegrass Generation Company, L.L.C. (“Bluegrass”) filed a motion requesting that it be granted full intervenor status in the instant matter. Bluegrass states that it operates a 495-MW electric generating station, consisting of three simple-cycle natural gas-fired combustion-turbine peaking units. Bluegrass informs that its generating facility is located near La Grange, Kentucky; that it is a customer of Louisville Gas and Electric Company (“LG&E”); that its facilities are interconnected with LG&E; and that its energy output is sold to a variety of parties, including LG&E and Kentucky Utilities Company (“KU”) (collectively “Joint Applicants”). As an LG&E customer, Bluegrass argues that it has a special interest in this proceeding that is not otherwise represented by any other party. Bluegrass asserts that it has an interest in the rates and service of LG&E and that it is uniquely positioned to assist the Joint Applicants’ energy needs at the lowest possible cost through a purchase power agreement for Bluegrass’s energy output coupled with an option to purchase the facility.

Citing to its experience with electric generation facilities and its experience with the Joint Applicants' operations, as well as its familiarity with the needs of the Joint Applicants, Bluegrass contends that it can develop issues and facts that will assist the Commission in considering this matter. Bluegrass maintains that it is the only entity that can provide information about the issues associated with the benefits of an agreement with Bluegrass and about how such an agreement could benefit the Joint Applicants' ratepayers through lower rates. Bluegrass notes that the Joint Applicants had previously attempted to acquire its generating assets and, in fact, received approval from the Commission for such acquisition in Case No. 2011-00375.¹ Due to the Federal Energy Regulatory Commission's finding that the transaction would have an adverse impact on horizontal competition in the relevant geographic market, Bluegrass states that the Joint Applicants did not go through with the acquisition. Bluegrass asserts that its generating assets continue to be the least-cost option to satisfy the Joint Applicants' capacity needs and that a purchase power agreement with an asset purchase option would not implicate any issues concerning horizontal competition in the Joint Applicants' balancing authority area.

On February 21, 2014, Joint Applicants filed a response objecting to Bluegrass's motion for intervention. Joint Applicants contend that Bluegrass is one of the bidders which responded to the Joint Applicants' Request for Proposals ("RFP"), which bid was ultimately determined by the Joint Applicants not to be the least-cost alternative to meet

¹ Case No. 2011-00375, Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for a Certificate of Public Convenience and Necessity and Site Compatibility Certificate for the Construction of a Combined Cycle Combustion Turbine at the Cane Run Generating Station and the Purchase of Existing Simple Cycle Combustion Turbine Facilities from Bluegrass Generation Company, LLC in LaGrange, Kentucky (Ky. PSC May 3, 2012).

its customers' future energy needs. Joint Applicants rely upon the Kentucky Court of Appeals decision in *EnviroPower, LLC v. Public Service Commission of Kentucky*, No. 2005-CA-001792-MR, 2007 WL 289328 (Ky. App., Feb. 2, 2007) for the proposition that an unsuccessful bidder to an RFP, like Bluegrass, should not be allowed intervention in a subsequent certificate case resulting from the RFP. Joint Applicants assert that the Commission has consistently applied the *EnviroPower* standard and has done so recently in Case No. 2012-00578,² wherein the Commission denied the petition to intervene by an unsuccessful bidder to a RFP that had been issued by Kentucky Power Company. Joint Applicants argue that allowing Bluegrass to intervene would unduly complicate the proceedings and render the competitive bidding process engendered by the RFP meaningless if Bluegrass were to be given an opportunity to scrutinize the Joint Applicants' decision-making process.

Although it acknowledges that Bluegrass is an LG&E customer, the Joint Applicants contend that any interest that Bluegrass has in this matter is already represented by the Attorney General ("AG"), who is an intervenor in this matter. Joint Applicants further acknowledge that a purchase of the Bluegrass assets was part of a least-reasonable cost solution in Case No. 2011-00375, but noted that circumstances have changed due primarily to FERC's refusal to approve the sale as presented. Joint Applicants take issue with Bluegrass's contention that a purchase power contract with a future asset purchase option would be approved by FERC, noting that FERC approval

² Case No. 2012-00578, Application of Kentucky Power Company for (1) a Certificate of Public Convenience and Necessity Authorizing the Transfer to the Company of an Undivided Fifty Percent Interest in the Mitchell Generating Station and Associated Assets; (2) Approval of the Assumption by Kentucky Power of Certain Liabilities in Connection with the Transfer of the Mitchell Generating Station; (3) Declaratory Rulings; (4) Deferral of Costs Incurred in Connection with the Company's Efforts to Meet Federal Clean Air Act and Related Requirements; and (5) All Other Required Approvals and Relief (Ky. PSC July 5, 2013).

is anything but certain. Joint Applicants also argue that recent developments on potential greenhouse gas emission regulation must be factored into any least-cost analysis, which would have an impact on the Bluegrass proposal. Lastly, the Joint Applicants point out that a Bluegrass purchase power agreement with a future option for asset purchase was evaluated as part of the RFP process and determined not be the least-cost alternative.

On February 26, 2014, Bluegrass filed a reply in support of its motion to intervene. Bluegrass argues that the *EnviroPower* ruling does not disqualify it as an intervenor on the basis of its status as a bidder. Bluegrass asserts that if it can meet the other criteria for intervention, its bidder status is irrelevant. Bluegrass contends that it has a special interest in the subject of least-cost option for the Joint Applicants, and if allowed to intervene, it would develop facts that would assist the Commission in considering the Joint Applicants' proposal. Bluegrass states that it has subject matter expertise in reviewing and evaluating financial models and underlying data. Bluegrass further points out that most information related to its proposal is confidential, and the Commission and the parties to this matter would not have access to such information if Bluegrass were not to be an intervenor in these proceedings.

In analyzing Bluegrass's motion to intervene, the Commission finds that the only person that has a statutory right to intervene is the AG pursuant to KRS 367.150(8)(b). Intervention by all others is permissive and within the sound discretion of the Commission. The issue of intervention was definitively addressed in the *EnviroPower* case in which 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 appellate 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 or entity seeking intervention have an interest in the rates and 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 the movant 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.

Having reviewed the pleadings and being otherwise sufficiently advised, the Commission finds that the overriding motive for Bluegrass's request to intervene is to have the Commission specifically consider Bluegrass's bid, which was submitted in response to the Joint Applicants' RFP and which was ultimately determined by the Joint Applicants to not be the least-cost alternative. Having found that Bluegrass's ultimate interest in this matter is that of an unsuccessful bidder to the Joint Applicants' RFP, we find that the *EnviroPower* case is dispositive of the issue of Bluegrass's intervention request. There, EnviroPower was an unsuccessful bidder in an RFP for power that had been issued by East Kentucky Power Cooperative, Inc. ("EKPC"). EnviroPower subsequently requested to intervene in EKPC's application for authority to construct a new generating facility which EKPC had proposed to construct in lieu of accepting the bid that EnviroPower had submitted in response to the RFP. The Commission denied EnviroPower's intervention and the Court of Appeals affirmed the denial of intervention, holding that as a mere bidder in response to an RFP, EnviroPower had no vested

interest that would entitle it to intervene in the Commission's proceedings. Here, as an unsuccessful bidder, Bluegrass has no vested or special interest in any issue before the Commission in this proceeding, and it is not likely to present issues or develop facts that would assist the Commission without unduly complicating or disrupting the proceedings.

Allowing Bluegrass to intervene would undermine the integrity of the competitive nature of the RFP process by permitting Bluegrass access to potentially confidential information submitted by other bidders to the Joint Applicants' RFP and would frustrate the finality of the RFP process. To the extent that Bluegrass provided confidential information in support of the bid it submitted to the Joint Applicants, the Commission will have access to all of that information on a confidential basis, and we will review that information as part of our investigation in this case. To the extent that Bluegrass may have other confidential information that it did not provide to the Joint Applicants, that information could not have been a factor in the Joint Applicants' analysis of the bid submitted by Bluegrass. The Commission's role in this case is to review the Joint Applicants' analysis of the bids responsive to its RFP and the information upon which that analysis was conducted, not to receive new information from bidders for purposes of conducting a new analysis of those bids.

Lastly, we find that Bluegrass's interest as a retail customer of LG&E is the same interest as that of any other LG&E customer, and that such interest is otherwise adequately represented by the AG.

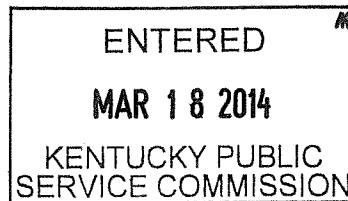
Bluegrass will have ample opportunity to participate in this proceeding, even though it is not granted intervenor status. It can review all public documents filed in this

case and monitor the proceedings via the Commission's website at the following web address: http://psc.ky.gov/efs/efs_search.aspx?case=2014-00002.

The Commission encourages Bluegrass to file comments as frequently as it chooses, and notes that those comments will be entered into the record of this case. Additionally, the Commission will provide Bluegrass an opportunity to present any information that it wishes for the Commission to consider in this matter at the beginning of the formal evidentiary hearing to be held on July 8, 2014, at 10:00 a.m. Eastern Daylight Time in Hearing Room 1 of the Commission's offices.

IT IS THEREFORE ORDERED that Bluegrass's motion to intervene is denied.

By the Commission



ATTEST:



Executive Director

Honorable Kurt J Boehm
Attorney at Law
Boehm, Kurtz & Lowry
36 East Seventh Street
Suite 1510
Cincinnati, OHIO 45202

Honorable Lindsey W Ingram, III
Attorney at Law
STOLL KEENON OGDEN PLLC
300 West Vine Street
Suite 2100
Lexington, KENTUCKY 40507-1801

Honorable Robert M Watt, III
Attorney At Law
STOLL KEENON OGDEN PLLC
300 West Vine Street
Suite 2100
Lexington, KENTUCKY 40507-1801

Joe F Childers
Joe F. Childers & Associates
300 Lexington Building
201 West Short Street
Lexington, KENTUCKY 40507

Honorable Michael L Kurtz
Attorney at Law
Boehm, Kurtz & Lowry
36 East Seventh Street
Suite 1510
Cincinnati, OHIO 45202

Jody Kyler Cohn
Boehm, Kurtz & Lowry
36 East Seventh Street
Suite 1510
Cincinnati, OHIO 45202

Rick E Lovekamp
Manager - Regulatory Affairs
LG&E and KU Energy LLC
220 West Main Street
Louisville, KENTUCKY 40202

Larry Cook
Assistant Attorney General
Office of the Attorney General Utility & Rate
1024 Capital Center Drive
Suite 200
Frankfort, KENTUCKY 40601-8204

Heather Napier
Office of the Attorney General Utility & Rate
1024 Capital Center Drive
Suite 200
Frankfort, KENTUCKY 40601-8204

Gregory T Dutton
Assistant Attorney General
Office of the Attorney General Utility & Rate
1024 Capital Center Drive
Suite 200
Frankfort, KENTUCKY 40601-8204

Honorable Kendrick R Riggs
Attorney at Law
Stoll Keenon Ogden, PLLC
2000 PNC Plaza
500 W Jefferson Street
Louisville, KENTUCKY 40202-2828

Angela M Goad
Assistant Attorney General
Office of the Attorney General Utility & Rate
1024 Capital Center Drive
Suite 200
Frankfort, KENTUCKY 40601-8204

Ed Staton
LG&E and KU Energy LLC
220 West Main Street
Louisville, KENTUCKY 40202

Honorable Dennis G Howard II
Assistant Attorney General
Office of the Attorney General Utility & Rate
1024 Capital Center Drive
Suite 200
Frankfort, KENTUCKY 40601-8204

Honorable Allyson K Sturgeon
Senior Corporate Attorney
LG&E and KU Energy LLC
220 West Main Street
Louisville, KENTUCKY 40202