

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

TARIFF FILING OF EAST KENTUCKY POWER	)	
COOPERATIVE, INC. AND ITS MEMBER	)	
DISTRIBUTION COOPERATIVES FOR	)	
APPROVAL OF PROPOSED CHANGES TO THEIR	)	
QUALIFIED COGENERATION AND SMALL	)	CASE NO. 2017-00212
POWER PRODUCTION FACILITIES TARIFFS	)	
AND THE IMPLEMENTATION OF SEPARATE	)	
TARIFFS FOR POWER PURCHASES FROM	)	
SOLAR GENERATION QUALIFYING FACILITIES	)	

ORDER

The matter is before the Commission upon separate motions to intervene filed by Great Blue Heron Solar LLC (“Great Blue Heron”) and Bluebird Solar LLC (“Bluebird”). In support of its motion, Great Blue Heron states that it is the developer of the Great Blue Solar Project, a 20-megawatt (“MW”) solar generation facility to be located within East Kentucky Power Cooperative, Inc.’s (“EKPC”) territory in Harrison County, Kentucky. The Great Blue Solar Project is proposed to be interconnected at either EKPC’s 138-kilovolt (“kV”) Renaker-Jacksonville transmission line or at EKPC’s Jacksonville Substation near Broadwell, Harrison County, Kentucky. Great Blue Heron asserts that the Great Blue Solar Project was self-certified with the Federal Energy Regulatory Commission (“FERC”) as a qualifying facility (“QF”) on March 8, 2017, and that it has a legally enforceable obligation under 18 C.F.R. Section 292.304, when it wrote to EKPC on the same day expressing its commitment to sell the full output of the solar project to EKPC. Citing its legally enforceable obligation status, Great Blue Heron

states that it has a special interest in EKPC's proposed Cogeneration and Small Power Production Power Purchase Rate Schedule From Solar Generation tariff. As a potential seller of solar power QF to EKPC, Great Blue Heron maintains that it has a significant interest in the existing and proposed rates and terms for EKPC's purchase of power from solar generation. Great Blue Heron further states that it will be able to present issues and develop facts that will assist the Commission in fully considering this matter without unduly complicating or disrupting the proceedings. Specifically, Great Blue Heron states that, among other things, its "participation will bring forward facts about the probable effect on the Great Blue Solar Project of the proposed tariff terms, negotiation of power-purchase agreements under PURPA, and the development of successful projects in other jurisdictions."<sup>1</sup>

According to the Bluebird Solar motion, Bluebird Solar is the developer of the Bluebird Solar Project, an 80-MW solar generation facility to be located within EKPC's service territory in Harrison County, Kentucky. The Bluebird Solar Project is proposed to be interconnected at either EKPC's 138-kV Renaker-Jacksonville transmission line or at EKPC's Jacksonville Substation near Broadwell, Harrison County, Kentucky. Bluebird Solar asserts that the Bluebird Solar Project was self-certified on November 2, 2016, and that it has a legally enforceable obligation under 18 C.F.R. Section 292.304 when it emailed EKPC on December 5, 2016, expressing its desire to sell all of the capacity and energy generated by the Bluebird Solar Project to EKPC. Like Great Blue Heron, Bluebird Solar maintains that it has a special unrepresented interest in the existing and proposed rates and terms for EKPC's purchase of power from solar generation, citing its legally enforceable obligation associated with the Bluebird Solar

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<sup>1</sup> Motion for Intervention of Great Blue Heron Solar LLC at 6.

Project. Similar to Great Blue Heron, Bluebird Solar also claims that it will be able to present issues and develop facts that will assist the Commission in fully considering this matter without unduly complicating or disrupting the proceedings.

On July 28, 2017, EKPC filed a response objecting to both Great Blue Heron's and Bluebird Solar's (jointly, "Movants") request to intervene. EKPC contends that Movants' claimed special interest in the tariffed rates and terms as proposed in the subject tariff due to the purported existence of a legally enforceable obligation for EKPC to purchase power from Movants is flawed. EKPC argues that Movants have failed to provide any legal support or justification that a legally enforceable obligation exists with respect to the Great Blue Solar Project and the Bluebird Solar Project. EKPC also contends that Movants' primary interest in seeking intervention in this proceeding is to increase their leverage over EKPC in contract negotiations and, thus, their intervention would only serve to unduly complicate and disrupt the proceedings.

On August 2, 2017, Movants filed a joint reply in support of their motion to intervene. Movants assert that EKPC's objections are not relevant, as they are directed to arguing the merits of EKPC's position in support of its application at the FERC to terminate certain QF purchase requirements. Movants also assert that EKPC fails to mention the standards for intervention or acknowledge that the issues raised in Movants' motions are relevant to the Commission's consideration of the proposed tariff changes.

Having reviewed the pleadings and being otherwise sufficiently advised, the Commission finds that the only person who has a statutory right to intervene in a Commission case is the Attorney General of the Commonwealth of Kentucky ("AG"),

pursuant to KRS 367.150(8)(b). The AG did file a motion to intervene to represent consumers' interests in this case, and the Commission granted the AG's motion by Order dated June 14, 2017. Intervention by all others is permissive and is within the sound discretion of the Commission.<sup>2</sup> The Kentucky Court of Appeals has held that the Commission's discretion to grant or deny a motion for intervention is not unlimited, and has enumerated the limits on the Commission's discretion, with one arising under statute, the other under regulation.<sup>3</sup> The statutory limitation, KRS 278.040(2), requires that "the person seeking intervention must have an interest in the 'rates' or 'service' of a utility, since those are the only two subjects under the jurisdiction of the PSC."<sup>4</sup>

The regulatory limitation is set forth in 807 KAR 5:001, Section 4(11)(a), which requires a person to demonstrate either (1) a special interest in the proceeding which is not otherwise adequately represented in the case, or (2) that intervention is likely to present issues or develop facts that will assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings.

In reviewing the pending motions to intervene, we find that neither Great Blue Heron nor Bluebird Solar receives service from EKPC, pays any rates to EKPC, or is a customer of EKPC. Therefore, Movants lack the necessary special interest in the rates and service of EKPC sufficient to justify intervention. Movants' expressed interests in the rates and terms of EKPC's proposed tariff are predicated on their respective claims that they have created legally enforceable obligations to sell power to EKPC. However,

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<sup>2</sup> *Inter-County Rural Electric Cooperative Corporation v. Public Service Commission of Kentucky*, 407 S.W.2d 127, 130 (Ky. 1966).

<sup>3</sup> *EnviroPower, LLC v. Public Service Commission of Kentucky*, No. 2005-CA-001792-MR, 2007 WL 289328 (Ky. App. Feb. 2, 2007).

<sup>4</sup> *Id.* at 3.

Movants have provided no support, under either Kentucky law or Commission precedent, to demonstrate that their respective solar QF projects have created legally enforceable obligations based on offers to negotiate contracts to sell their output to EKPC.

Lastly, the Commission finds that Movants intervention in this matter would unduly complicate and disrupt the proceedings. However, each of the Movants may individually initiate a proceeding before the Commission, either by filing a complaint or a petition for a declaratory order, for a determination of whether its proposed QF solar project qualifies as a legally enforceable obligation under 807 KAR 5:054, Section 7(4)(b). In such a proceeding, each Movant would have the opportunity to demonstrate that it is eligible to form a legally enforceable obligation, the extent of the commitment it has made to sell the output of its QF project to EKPC, and that EKPC has unjustifiably refused to enter into a purchase contract with the QF. Due to the fact-specific nature of such a demonstration, the issue of whether either of the Movants has a legally enforceable obligation is well beyond the scope of issues before the Commission in this investigation, which is limited to EKPC's proposed cogeneration tariff.

Movants will have an opportunity to participate in this proceeding even though they are not granted intervenor status. Movants 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/PSC\\_WebNet/ViewCaseFilings.aspx?case=2017-00212](http://psc.ky.gov/PSC_WebNet/ViewCaseFilings.aspx?case=2017-00212). In addition, Movants may file comments as frequently as they choose, and those comments will be entered into the record of this case.

IT IS THEREFORE ORDERED that the motions to intervene filed by Great Blue Heron and Bluebird Solar are denied.

By the Commission



ATTEST:

  
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