

February 16, 2007

BY FACSIMILE AND MAIL

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

RECEIVED  
FEB 19 2007  
PUBLIC SERVICE  
COMMISSION

Re: PSC Case No. 2006-00564

Dear Ms. O'Donnell:

Please find enclosed for filing with the Commission in the above-referenced case an original and ten copies of the Response and Objections of East Kentucky Power Cooperative, Inc., to the Cumberland Chapter of the Sierra Club Petition to Intervene.

Very truly yours,



Charles A. Lile  
Senior Corporate Counsel

Enclosures

Cc: Elizabeth E. Blackford, Esq.  
Michael L. Kurtz, Esq.  
Oscar H. Geraldts, Jr., Esq.

**COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION**

**RECEIVED**  
FEB 19 2007  
PUBLIC SERVICE  
COMMISSION

**In the Matter of:**

**AN INVESTIGATION INTO EAST KENTUCKY )  
POWER COOPERATIVE, INC.'S CONTINUED ) CASE NO.  
NEED FOR CERTIFICATED GENERATION ) 2006-00564**

**RESPONSE AND OBJECTIONS OF EAST KENTUCKY  
POWER COOPERATIVE, INC., TO CUMBERLAND CHAPTER  
OF SIERRA CLUB PETITION TO INTERVENE**

East Kentucky Power Cooperative, Inc. ("EKPC"), hereby responds and objects to the Petition to Intervene filed by the Cumberland Chapter of the Sierra Club ("Sierra Club") in this case on February 12, 2007. The grounds for EKPC's objections are as follows:

1. The Sierra Club, in its Petition to Intervene (the "Petition"), cites no statutory right to intervene in a Public Service Commission ("Commission") case, and has no right of intervention in this proceeding. Lacking such a right to intervene, the Sierra Club seeks discretionary intervention pursuant to 807 KAR 5:001 Section 3 (8), which requires that a person seeking full intervention in a Commission case specify that it has "a special interest in the proceeding which is not otherwise adequately represented", or demonstrate that its intervention "is likely to present issues or to develop facts that assist the commission in fully considering the matter without unduly complicating or disrupting the proceedings." The Sierra Club's Petition fails to state facts which would justify the granting of such discretionary intervention in this case.

2. The Commission's jurisdiction is strictly limited by KRS §278.040 (2) to issues of the rates and service of regulated utilities. City of Olive Hill v. Public Service

Commission, 203 S.W.2d 68, (Ky. App. 1947); Boone County Water and Sewer Dist. v. Public Service Commission, 949 S.W.2d 588 (Ky. 1977); South Central Bell Telephone Co. v. Utility Regulatory Commission, 637 S.W.2d 649 (Ky. 1982). In the context of an investigation of a certificate of public convenience and necessity, issued pursuant to KRS §278.020, the Commission's authority is to determine that the subject facilities are required to supply utility service, and that their construction would not amount to a wasteful duplication of facilities. Kentucky Utilities Co. v. Public Service Commission, 252 S.W.2d 885 (Ky. 1952) Such an investigation does not involve the determination of environmental issues.

3. The Sierra Club in no way represents the rates or service interests of the member systems of EKPC, or their member consumers, and is attempting to improperly inject into this case its own interests in environmental issues which are beyond the Commission's jurisdiction and scope of review. In its Petition, the Sierra Club identifies its "special interest" in this case as its concern about the environmental effects of the operation of the coal-fired generating units that are the subject of this investigation (Petition, Section 3, p.2), and references its "newly-approved national energy strategy" of reducing the use of "environmentally damaging fuels such as coal." (Id., Section 2, p.2) The environmental impacts of new electric generating facilities in Kentucky are fully considered in permitting processes that are conducted pursuant to the jurisdiction of governmental agencies other than the Public Service Commission. The Sierra Club's attempt to influence the Commission's decision in this investigation through the improper introduction of environmental issues into the proceeding, is not a

proper matter for consideration in this case, and the Sierra Club offers no proper purpose for its intervention request.

4. The Sierra Club lacks any special interest relevant to this proceeding, and its inappropriate attempt to pursue its environmental agenda through intervention would in no way assist the Commission in fully considering the proper matters in this investigation. Such intervention would, instead, burden the case with arguments and information which would not be material to the determination of EKPC's continued need for the subject generating facilities, and would unduly complicate and disrupt the proceedings. The Sierra Club's Petition should be denied, pursuant to the criteria of 807 KAR 5:001 Section 3 (8).

5. The interests of ratepayers in the rates and service of EKPC are already adequately represented in this case by the intervention of the Attorney General and Gallatin Steel Company.

WHEREFORE, EKPC formally objects to the Petition to Intervene of the Sierra Club, and urges the Commission to deny said Petition, for the reasons stated hereinabove.

Respectfully submitted,



CHARLES A. LILE  
ATTORNEY 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 a copy of the foregoing Response and Objections of East Kentucky Power Cooperative, Inc., to Cumberland Chapter of Sierra Club Petition to Intervene in the above-referenced case, was transmitted by facsimile, and an original and ten copies were mailed, to Elizabeth O'Donnell, Executive Director, Kentucky Public Service Commission, 211 Sower Boulevard, Post Office Box 615, Frankfort, Kentucky 40601, and copies were mailed to Oscar H. Gerald, Jr., Esq., 259 West Short Street, Lexington, Kentucky, 40507-1237, and to parties on the Service List in this case, on this 16<sup>th</sup> day of February, 2007.



---

CHARLES A. LILE