

COMMONWEALTH OF KENTUCKY
BEFORE THE 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

O R D E R

This matter is before the Commission on the application for rehearing filed by the Cumberland Chapter of the Sierra Club ("Sierra Club").

This investigation was commenced on January 5, 2007 in order "to gain an assurance that [East Kentucky Power Cooperative, Inc.'s ("EKPC")] certificated generation for the Spurlock No. 4 unit and the Smith Circulating Fluidized Bed ("CFB") unit and attendant Combustion Turbines ("CTs") are still needed" in light of the decision by Warren Rural Electric Cooperative Corporation to terminate a power supply agreement with EKPC. We further stated that "the scope of this proceeding will be limited to EKPC's continued need for the certificated generation" and that "the Commission has previously found the certificated projects to be the most reasonable and lowest-cost options for provisioning EKPC's distribution cooperatives with the power they require both now and in the future."

The initial focus of our investigation remains the focus of our investigation, and in an Order entered on March 22, 2007, Sierra Club's motion for intervention was denied. Sierra Club has now filed an application for rehearing of the March 22, 2007 Order. Because the issues raised by the Sierra Club will unduly complicate the proceedings

and distract from the issues at hand, the application for rehearing will be denied on the basis set forth herein.

The Sierra Club raises seven grounds for rehearing. The Commission will review each argument in turn.

1. The Pertinent Regulation Requires That Only One Criterion Be Satisfied For Intervention To Be Granted, Not Both.

Sierra Club correctly construes 807 KAR 5:001, Section 3(8) as affording two alternative bases for seeking status as a full intervenor in a Commission proceeding. In the March 22, 2007 Order, we found that Sierra Club had not satisfied either element of the regulation, however. As set forth below, Sierra Club failed to demonstrate a special interest in this proceeding that is not otherwise adequately represented. Likewise, the Sierra Club has not demonstrated that, if permitted to intervene fully, it would likely present issues or develop facts that will assist the Commission in fully considering the matter. To the contrary, Sierra Club's participation in this proceeding would be likely to unduly complicate and disrupt the proceeding. Although the Sierra Club's construction of the intervention regulation is not unreasonable, that in and of itself is not sufficient grounds to be granted full intervention.

2. Sierra Club Members And Their Legitimate Personal And Public Interests Will Be Directly Affected By The Commission's Final Order In This Proceeding.

The next argument for reconsideration raised by the Sierra Club arises from its disagreement with EKPC's most recent integrated resource planning case and general

rate cases.¹ Sierra Club argues that if it is allowed to fully intervene, it will “present evidence and analyses indicating approximately how many dollars [Sierra Club members who are customers of EKPC], and EKPC’s other ultimate customers as well, would save over the next 15 to 20 years if EKPC were to change its expansion strategy to one that does not require the construction of Smith CFB Unit 1.” Again, this argument seeks to enlarge the scope of this investigation beyond that contemplated by the January 5, 2007 Order. Sierra Club’s disagreement with EKPC’s integrated resource planning and rates are not within the scope of this proceeding, and introducing those issues herein would serve to unduly complicate and disrupt the proceeding.

3. The Environmental Fallout From EKPC’s Current Power Plant Construction Strategy Will Have Direct Economic Impacts On The Utility’s Ultimate Consumers And Therefore Should Be Within The Scope Of This Proceeding.

Sierra Club’s next argument is premised upon the mistaken position that KRS Chapter 278 “does not contain a section that explicitly sets forth the mandate, role and purpose of the Public Service Commission.” To the contrary, as a creature of statute, the Commission’s jurisdiction is defined and constrained by the legislature. See Boone County Water v. Public Service Commission, 949 S.W.2d 588, 591 (Ky. 1997).

To that purpose, KRS 278.040(2) states:

The jurisdiction of the commission shall extend to all utilities in this state. The commission shall have exclusive jurisdiction over the regulation of rates and service of utilities, but with that exception nothing in this chapter is intended to limit or restrict the police jurisdiction, contract rights or powers of cities or political subdivisions.

¹ See Case No. 2006-00471, The 2006 Integrated Resource Plan of East Kentucky Power Cooperative, Inc.; Case No. 2006-00472, General Adjustment of Electric Rates of East Kentucky Power Cooperative, Inc.

Notably, “environmental fallout” is not within the scope of the Commission’s jurisdiction as set forth by statute, and the Sierra Club’s attempts to infer that the Commission’s jurisdiction is something greater than that expressed by statute cannot be accepted. There are agencies of state government that routinely address issues of environmental concern, and nothing in this Order will prevent the Sierra Club from seeking redress in those forums as appropriate under Kentucky law. Injecting these issues into the current proceeding would only serve to unduly complicate and disrupt the proceeding.

4. Events Have Caused The Focus Of This Proceeding To
Shift From The Continued Need For The Seven Proposed
Generation Units To The Relative Costs Of
Various Possible Expansion Plans.

Sierra Club next argues that our investigation has turned from the question of whether EKPC’s certificated generation is still needed to what portion of EKPC’s certificated generation is still needed.² As a subpart of this evolving question, Sierra Club contends that the actual issue is whether the certificate for the Smith CFB Unit should be surrendered in place of the certificates for three combustion turbines – both being roughly equivalent in terms of generation capacity, according to Sierra Club. While Sierra Club has repeatedly made known its preference for non-coal sources of generation, this argument is couched by Sierra Club in terms of costs to ratepayers. Under the first prong of the intervention regulation, Sierra Club’s argument must fail. The interests of ratepayers are represented, as a matter of law, by the Attorney

² This novel argument arises out of the testimony of James C. Lamb, EKPC’s Senior Vice President of Power Supply, who concedes that EKPC should be required to surrender the certificates for three of the five certificated combustion turbines. See Testimony of James C. Lamb, filed Feb. 23, 2007, p. 14.

General. See KRS 367.150(8)(a). The Sierra Club's interest in costs to ratepayers is too remote to stand out as an interest not otherwise adequately represented in this proceeding.

5. Denial Of The Sierra Club's Petition To Intervene Has Left Certain Legitimate Individual And Public Interests Unrepresented.

Sierra Club next calls into question the competency and willingness of the Attorney General to adequately represent the interests of Kentucky consumers and particularly those of EKPC. This alone is the issue to which the Attorney General responds, noting, "The Attorney General weighs all costs and forms his conclusion which may or may not entail greater short-term efforts." The Attorney General also points out that he has filed comments in EKPC's integrated resource plan case and has been critical of EKPC where it has fallen short. Given the Attorney General's statutory mandate to represent the interests of consumers, we find no basis to believe that legitimate individual and public interests are unrepresented.

6. The Commission's Current De Facto Policy Regarding The Granting Of Full Intervention Appears To Be Inconsistent.

Sierra Club next objects to our January 5, 2007 Order to the extent that it made the Attorney General and Gallatin Steel parties to the case ab initio. Sierra Club contends that there is an inconsistency in making a party to a case at its outset and then requiring third parties to justify their right to intervene. As already stated, the Attorney General has a statutory duty to represent the interests of consumers under KRS 367.150(8)(a). His joinder to a proceeding in its inception is not unreasonable.

Neither is the decision to make Gallatin Steel a party to this proceeding. As a preliminary matter, Gallatin Steel was a party to both of the underlying Commission

proceedings wherein the certificates at issue were granted.³ Moreover, Gallatin Steel, as a large industrial customer of EKPC, has interests that overlap with EKPC's residential and commercial customers as well as interests that are unique to a large industrial customer. Thus, Gallatin Steel is well-positioned to present issues and develop facts that will assist the Commission in fully considering the matter at hand. We find no inconsistency in the exercise of our discretion to allow full intervention in this matter.

7. The Sierra Club's Asserted Expertise In Energy-Efficient Technologies, DSM Programs, Renewable Energy Technologies, And Alternative Energy Strategies Is Directly Relevant To The Actual Central Issue The Commission Will Consider In This Proceeding.

Sierra Club's final argument is contingent upon the Commission accepting its argument that the issue before us is the cost of additional generation and not the need for additional generation. As set forth above, the Commission does not accept this premise. While Sierra Club may be able to offer information about energy efficiency, DSM programs, and renewable and alternative energy strategies, they are simply outside the scope of this proceeding. Accordingly, their introduction here would cause undue complication and disruption of this proceeding.

³ See Case No. 2004-00423, Application of East Kentucky Power Cooperative, Inc. for a Certificate of Public Convenience and Necessity, and a Site Compatibility Certificate, for the Construction of a 278 Mw (Nominal) Circulating Fluidized Bed Coal Fired Unit in Mason County, Kentucky, Order entered Dec. 21, 2004; Case No. 2005-00053, Application of East Kentucky Power Cooperative, Inc. for a Certificate of Public Convenience and Necessity, and a Site Compatibility Certificate, for the Construction of a 278 Mw (Nominal) Circulating Fluidized Bed Coal Fired Unit and Five 90 Mw (Nominal) Combustion Turbines In Clark County, Kentucky, Order entered March 16, 2005. Sierra Club did not ask for intervention in either of the underlying cases.

WHEREFORE, on the basis of the foregoing, we find that Sierra Club has not satisfied either element of the test for gaining status as a full intervenor, as set forth in 807 KAR 5:001, Section 3(8).

IT IS HEREBY ORDERED that Sierra Club's application for rehearing is hereby denied.

Done at Frankfort, Kentucky, this 19th day of April, 2007.

By the Commission

ATTEST.



Executive Director