

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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PUBLIC SERVICE
COMMISSION

In the Matter of:

THE APPLICATION OF KENTUCKY)
UTILITIES COMPLANY FOR)
CERTIFICATE OF PUBLIC NECESSITY)
AND APPROVAL OF ITS 2009)
COMPLIANCE PLAN FOR RECOVERY)
BY ENVIRONMENTAL SURCHARGE)

CASE NO. 2009-00197

And

THE APPLICATION OF LOUISVILLE GAS)
AND ELECTRIC COMPANY FOR)
CERTIFICATE OF PUBLIC)
CONVENIENCE AND NECESSITY AND)
APPROVAL OF ITS 2009 COMPLIANCE)
PLAN FOR RECOVERY BY)
ENVIRONMENTAL SURCHARGE)

CASE NO. 2009-00198

KENTUCKY WATERWAYS ALLIANCE'S
MOTION FOR LEAVE TO INTERVENE

Pursuant to KRS 278.310 and 807 KAR 5:001 Section 3(8), KENTUCKY WATERWAYS ALLIANCE (hereinafter KWA), by and through the undersigned counsel, respectfully MOVES the Commission to be granted Full Intervener status in the above-captioned proceedings, as follows:

1. The matter of intervention in any formal proceeding before the Commission is set forth in 807 KAR 5:001, Section 3(8)(b), which reads as follows:

(8) Intervention and parties. In any formal proceeding, any person who wishes to become a party to a proceeding before the

commission may by timely motion request that he be granted leave to intervene. Such motion shall include his name and address and the name and address of any party he represents and in what capacity he is employed by such party.

(b) If a person granted leave to intervene desires to be served with filed testimony, exhibits, pleadings, correspondence and all other documents submitted by parties, and to be certified as a party for the purposes of receiving service of any petition for rehearing or petition for judicial review, he shall submit in writing to the secretary a request for full intervention, which shall specify his interest in the proceeding. If the commission determines that a person has a special interest in the proceeding which is not otherwise adequately represented or that full intervention by party 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, such person shall be granted full intervention.

2. KWA has a special interest in this proceeding not otherwise adequately represented. In addition, full intervention by KWA is likely to present issues and help develop facts that will assist the Commission fully consider the matters set forth in the pending applications. KWA's participation will not unduly complicate nor disrupt the proceedings. Specifically, KWA is a statewide organization whose mission includes protection of the water quality in the waters of the Commonwealth, including the Ohio River and the Kentucky River. In that capacity, KWA has obtained the professional services of experts to assess the recently proposed draft KPDES discharge permit for the Trimble County facilities (TC1, in operation, and TC2, scheduled to be commissioned in 2010) that are or will discharge wastewater into the Ohio River. These are the same Trimble County facilities described in the above referenced applications. KWA and Sierra Club retained Mr. Mark Quarles, Globally Green Consulting, who provided written comments in opposition to the proposed KPDES permit. KWA has attached these

comments to the Exhibits introduced at the December 1, 2009 public hearing in the above matters. At the December 1, 2009 public hearing, KWA and others who submitted comments were not actually giving testimony, were not sworn in and were not cross-examined. The “Exhibits” KWA and others tendered were not actually admitted into evidence, and do not require any response from the utilities. As such, this relevant information and potentially probative evidence can be ignored. In fact, at the close of the public hearing, when the Commission asked counsel for the utilities if they wished the opportunity to respond to these Exhibits, the utility counsel responded quite candidly that since these Exhibits were not actually in evidence, the utilities were under no duty to respond. This position handicaps the Commission, by preventing a fully developed presentation of the evidence both for and against the applications.

3. KWA seeks to intervene as a full intervener to introduce such documentary evidence and testimony from witnesses, including Mr. Mark Quarles, and to allow cross examination by the utilities and the PSC so as to fully develop the evidence on both sides of the issues.

4. In addition, where the US EPA is very close to announcing new requirements for coal combustion residue (CCR), KWA seeks to intervene as a party to be permitted to provide supplemental testimony to the PSC about the impacts of the proposed new requirements on these pending applications.

5. No other party to this proceeding represents the public interest. The PSC will benefit from hearing different parties, and will be able to make a more informed decision in this matter.

6. KU and LG&E operate a number of power plants in Kentucky that emit various pollutants into the air and water. See the above reference to the KPDES permit at TC1 and TC2. In addition, KU and LG&E operate other plants that cause significant air pollution including the E.W. Brown Station in Mercer County, which has three old coal-burning power plants with a combined capacity of 697 megawatts (MW), and the Cane Run facility, both of which are included in these applications for additional wet and dry coal combustion residue facilities, and both of which pose threats to water quality. The age of these plants and the plans for de-commissioning were questions asked by the PSC Staff in Question No. 1 of the Staff Second Data Request to KU dated September 11, 2009, and again at the first public hearing in this matter on November 3, 2009. However, the utilities gave vague and evasive responses.

7. Last year, the Brookings Institute released the *Blueprint for American Prosperity*, subtitled *Shrinking the Carbon Footprint of Metropolitan America*, which ranked the per capita carbon emission for the 100 metropolitan areas within the United States of America. Lexington, Kentucky had the nation's highest per capita carbon emissions, with each resident responsible for emitting 3.455 metric tons per year. Following Indianapolis, the Cincinnati/Northern Kentucky area was third in the nation, with 3.281 metric tons per year. Following Toledo, the Louisville/S. Indiana area was fifth in the nation, with 3.233 metric tons per year.

8. Within the past year, the United States Environmental Protection Agency has disapproved the air quality permit sought by LG&E for the TC2 facility, most recently by order of Administrator Lisa Jackson on August 12, 2009, and earlier, on June 5, 2009 by letter of objection from US EPA Region IV to the Director of the Kentucky Division of Air

Quality. These disapprovals provide the PSC with a basis to re-examine the scheduled start-up and operation of the TC2 facility. If that facility is not permitted or if it is not needed by June 2010, the imposition of these surcharges is likewise able to be delayed.

9. There is a growing body of evidence that the PSC should examine as part of this application for certificates of public convenience and necessity and the application for an environmental surcharge. See FERC Press June 18, 2009 Release:

New FERC study assesses state-by-state potential for demand response

The Federal Energy Regulatory Commission (FERC) today released a national assessment of demand response that estimates the potential for demand response, both nationally and for each state, through 2019.

The assessment, *A National Assessment of Demand Response Potential*, finds the potential for peak electricity demand reductions across the country is between 38 gigawatts (GW) and 188 GW, up to 20 percent of national peak demand, depending on how extensively demand response is applied. This can reduce the need to operate hundreds of power plants during peak times.

The study also makes recommendations for overcoming barriers to more use of demand response. By reducing electricity consumption at peak times like hot summer afternoons, when the most expensive generators are called into service, demand response can lower the cost of producing electricity. The assessment will be sent to Capitol Hill Friday to fulfill FERC's first Energy Independent and Security Act of 2007 reporting requirement on demand response. Congress also directed FERC to develop a National Action Plan on Demand Response, which is due to Congress in June 2010.

"This study takes a flexible, real-world approach to gathering information on the potential for demand response," FERC Chairman Jon Wellinghoff said. "It also makes available to the public an easy-to-use spreadsheet model, complete with data inputs and assumptions, so that states, utilities and other interested parties can make updates or modifications based on their own data and policy priorities."

To estimate the potential for demand response under several types of programs, the assessment follows four scenarios in five- and 10-year horizons: Business as Usual, Expanded Business as Usual, Achievable

Participation, and Full Participation. In comparing the Full Participation scenario with the Business as Usual scenario, the report estimates that demand response programs could reduce the projected 2019 peak load by as much as 150 GW. The results under the four scenarios illustrate how the demand response potential increases under various assumptions, such as the number of customers participating and the use of "smart" electric appliances with "dynamic" electric rates that change with system conditions.

The assessment also provides, for the first time, estimates of demand response potential for each of the 50 states and the District of Columbia. It estimates the demand response potential for residential and other types of electric customers in each state and analyzes the effect of using technologies, such as programmable thermostats, to assist consumers achieve the estimated potential.

This study projected that at full participation Kentucky could accomplish a 17.5 % total potential peak load reduction from demand response by 2019. The study and spreadsheet model are available on the FERC website at www.ferc.gov R-09-23. The full study is located at www.ferc.gov/industries/electric/indus-act/demand-response/dr-potential.asp

This evidence and the public comments from Ms. Meleah Geertsma, Environmental Law and Policy Center at the December 1, 2009 public hearing showing decline in the sales of electrical power in Kentucky go to the issue of public need to commission the TC2 facility in 2010 as scheduled, and may allow the utilities to avoid the need for any new liquid CCW facility at Trimble County.

10. KWA incorporates by reference the Exhibit #30 attached to the written comments submitted by Graddy for Sierra Club, KWA, Valley Watch and Save the Valley on December 1, 2009, with particular reference to the evidence of groundwater and surface water pollution from liquid coal combustion waste facilities, as the utilities propose at Trimble and Brown. KWA has a unique and particularized and long-standing interest in abating existing water pollution sources, restoring impaired water bodies and preventing

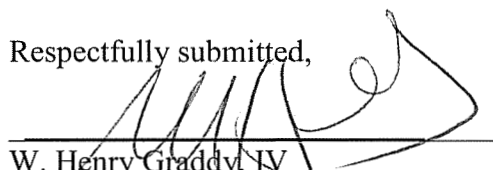
the creation of new or increased sources of water pollution throughout the Commonwealth of Kentucky, including the Ohio River. As such, KWA brings to the Commission both the general public interest in preventing water pollution and the particularized special interest of an established organization with special expertise in the area of water pollution. The Commission needs the full participation of KWA to help the Commission decide whether to include expanded liquid coal combustion waste facilities in the utilities' "2009 Environmental Compliance Plan."

11. KWA further incorporates by reference all of the written comments submitted by the Sierra Club, KWA, Valley Watch and Save the Valley, with all supporting Exhibits at the December 1, 2009 public hearing in this matter as further support for this request for full intervention, in order to explain more fully the significance of these materials.

12. KWA intends to play a constructive role in the Commission's decision-making process and KWA participation will not prejudice any party.

WHEREFORE, Kentucky Waterways Alliance respectfully MOVES to be granted Full Intervener status in the above-captioned proceedings based upon a finding that Kentucky Waterways Alliance has a special interest not adequately represented by other parties, and where Kentucky Waterways Alliance is able to help the Commission's decision-making process without prejudice to any party.

Respectfully submitted,



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CERTIFICATE OF SERVICE

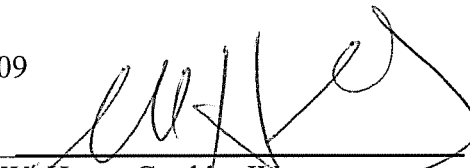
I hereby certify that the foregoing Motion and twenty copies of the foregoing Motion to Intervene have been delivered to the office of Jeff DeRouen, Executive Director of the Kentucky Public Service Commission, 211 Sower Boulevard, Frankfort, KY 40601, and that copies were mailed to the following parties:

Hon. Kendrick Riggs: Via email to Kendrick.riggs@skofirm.com
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Honorable Dennis G. Howard II
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Honorable Michael L. Kurtz
Boehm, Kurtz & Lowry
36 East Seventh Street, Suite 1510
Cincinnati, OH 45202

This the 1 day of December, 2009


W. Henry Graddy, IV