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July 12, 2011

RECEIVED

JUL 12 2011

PUBLIC SERVICE
COMMISSION

VIA HAND DELIVERY

Jeff DeRouen
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, KY 40601

RE: Application of Kentucky Utilities Company for Certificates of Public Convenience and Necessity and Approval of its 2011 Compliance Plan for Recovery by Environmental Surcharge
Case No. 2011-00161

Dear Mr. DeRouen:

Enclosed please find and accept for filing the original and ten copies of the Response of Kentucky Utilities Company to the Motion to Intervene of Central Kentucky Building & Construction Trades Council in the above-referenced matter.

Should you have any questions please do not hesitate to contact me at your convenience.

Sincerely,

Molly M. Stephens
Paralegal

Enclosures

cc: Parties of Record

3966948.1

COMMONWEALTH OF KENTUCKY **RECEIVED**
BEFORE THE PUBLIC SERVICE COMMISSION JUL 12 2011

In the Matter of:

PUBLIC SERVICE
COMMISSION

APPLICATION OF KENTUCKY UTILITIES)
COMPANY FOR CERTIFICATES OF)
PUBLIC CONVENIENCE AND NECESSITY) **CASE NO. 2011-00161**
AND APPROVAL OF ITS 2011 COMPLIANCE)
PLAN FOR RECOVERY BY)
ENVIRONMENTAL SURCHARGE)

**RESPONSE OF KENTUCKY UTILITIES COMPANY TO THE MOTION TO
INTERVENE OF CENTRAL KENTUCKY BUILDING &
CONSTRUCTION TRADES COUNCIL**

Kentucky Utilities Company (“KU”) respectfully requests that the Commission deny the Motion to Intervene of the Central Kentucky Building & Construction Trades Council (“Council”). The Council’s motion to intervene should be denied because: (1) the motion does not state a special interest in the proceeding that is not already represented by the Attorney General; (2) the motion fails to identify any issues or development of facts that will assist the Commission in the resolution of this matter; and (3) the Council’s intervention could unduly complicate and disrupt the proceeding. Because the Council has failed to satisfy any of the requirements for intervention under 807 KAR 5:001 § 3(8), KU respectfully requests that the Commission deny the Council’s motion to intervene in this proceeding.

I. The Commission Should Deny the Council’s Motion to Intervene Because the Council Does Not Have a Special Interest in this Proceeding.

The Commission will grant requests for permissive intervention “only upon a determination that the criteria set forth in 807 KAR 5:001, Section 3(8), have been satisfied.”¹ Under the regulation, permissive intervention will only be granted if the person “has a special

¹ *In the Matter of: The 2008 Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company*, Case No. 2008-00148 Order (July 18, 2008).

interest in the proceeding which is not otherwise adequately represented” or that granting full 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.”² The Council’s motion does not clearly articulate whether it seeks intervention because it has a special interest in the proceeding which is not otherwise adequately represented, or whether it seeks intervention to present issues or to develop facts that would assist the Commission in fully considering the matter.

The Council’s motion fails to state a special interest in this proceeding. The motion states that the Council “represents more than 20 Construction Trades Unions and more than 3,000 men and women of these Local Unions, many of whom are rate payers to Kentucky Utilities.”³ The motion further states that the Council’s “interest in this procedure is to support the proposed rate increase and the desire to see that Kentucky Employers and Kentucky Workers are utilized in the process of developing the projects which are to be constructed...”⁴ The Council’s assertions in its motion do not constitute a special interest warranting intervention in this proceeding.

First, while the Council represents numerous trade and local unions, it is unclear what interest the unions have in this action that is allegedly within the scope of an ECR proceeding, other than attempting to advocate that Kentucky workers are utilized in the construction of the planned projects. This interest is not within the scope of an ECR proceeding, as set forth in KRS 278.183, or within the Commission’s jurisdiction as set forth in KRS 278.040. In pertinent part, the statute states that the Commission shall conduct a hearing to:

² 807 KAR 5:001 § 3(8)(b).

³ Council Motion.

⁴ *Id.*

- (a) Consider and approve the plan and rate surcharge if the commission finds the plan and rate surcharge reasonable and cost-effective for compliance with the applicable environmental requirements set forth in subsection (1) of this section;
- (b) Establish a reasonable return on compliance-related capital expenditures; and
- (c) Approve the application of the surcharge.⁵

The Commission's review of KU's planned projects is focused upon whether the projects are reasonable and cost-effective. Not within the Commission's scope of review under KRS 278.183 or subject to the Commission's jurisdiction under KRS 278.040 is the interest the Council has conveyed in utilizing Kentucky workers and employers in developing and constructing the projects because the Commission will review KU's plan and rate surcharge to determine if it is reasonable and cost-effective. Because the Council's stated interest is not within the scope of an ECR proceeding, or subject to the Commission's jurisdiction, it cannot constitute a special interest for purposes of intervention.

The Council's second stated interest in this proceeding is that many of its members are customers of KU. This is an insufficient interest to warrant intervention. The Commission has repeatedly held that a ratepayer's general interest as a customer is not a special interest warranting intervention.⁶ Instead, the Attorney General has a statutory right, pursuant to KRS 367.150(8)(b), to represent customers' interests in ECR proceedings such as this one. The Attorney General moved to intervene in this proceeding on May 25, 2011. The Commission

⁵ KRS 278.183(2).

⁶ *In the Matter of: Application of Kentucky Utilities Company to File Depreciation Study* (Case No. 2007-00565) and *In the Matter of Application of Kentucky Utilities Company for an Adjustment of Electric Base Rates* (Case No. 2008-00251) Order, December 5, 2008. *In the Matter of: Application of Kentucky Utilities Company to Amortize, by Means of Temporary Decreases in Rates, Net Fuel Cost Savings Recovered in Coal Contract Litigation* (Case No. 93-113) Order, December 7, 1993; *In the Matter of: Application of Water Service Corporation of Kentucky for an Adjustment of Rates* (Case No. 2008-563) Order, May 6, 2009; *In the Matter of: An Examination by the Kentucky Public Service Commission of the Environmental Surcharge Mechanism of Louisville Gas and Electric Company for the Two-Year Billing Period Ending April 30, 2003* (Case No. 2003-00236) Order, October 8, 2003.

granted the motion to intervene on June 3, 2011. The Attorney General has significant experience in representing ratepayers' interests in ECR proceedings, including prior KU cases.⁷ Thus, the fact that many of the Council's members are ratepayers of KU does not confer a special interest upon the Council in this proceeding. As such, KU respectfully requests the Commission deny the motion to intervene.

II. The Commission Should Deny the Council's Motion to Intervene Because the Council Has Not Demonstrated that It Will Present Issues or Develop Facts that Would Assist the Commission.

The Council's motion to intervene fails to demonstrate that it will present issues or develop facts that would assist the Commission in fully considering this matter without unduly complicating or disrupting the proceeding.⁸ As discussed, the Council seeks to utilize the proceeding to advocate for the use of Kentucky workers and employers in constructing the proposed projects. The Commission has held that when stated interests are beyond the scope of its jurisdiction, the proposed intervenor will not present issues or develop facts that would assist the Commission.⁹ Similarly, when a proposed intervenor's stated interests are beyond the scope of the proceeding, the proposed intervenor will likewise not present issues or develop facts that would assist the Commission.

The Council's motion does not delineate any specific knowledge or expertise in the principles relevant to ECR proceedings such as this one. The Commission has previously rejected motions to intervene in ECR proceedings where the proposed intervenor fails to provide

⁷ *In the Matter of: The Application of Kentucky Utilities Company for a Certificate of Public Convenience and Necessity to Construct a Selective Catalytic Reduction System and Approval of Its 2006 Compliance Plan for Recovery by Environmental Surcharge* (Case No. 2006-00206); *In the Matter of: The Application of Kentucky Utilities Company for a Certificate of Public Convenience and Necessity to Construct Flue Gas Desulfurization Systems and Approval of its 2004 Compliance Plan for Recovery by Environmental Surcharge* (Case No. 2004-00426).

⁸ 807 KAR 5:001 § 3(8)(b).

⁹ *In the Matter of: The 2008 Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company* (Case No. 2008-148) Order, July 18, 2008 at 2.

any “background, knowledge, experience, or training” on the issues of: “(1) the need for, and absence of wasteful duplication, from emission control equipment and facilities; and (2) cost recovery by surcharge of utility expenses and facilities.”¹⁰ Because the Council’s motion to intervene fails to evince any background, knowledge, experience, or training in either of these topics, KU respectfully requests that the Council’s motion be denied.

III. The Council’s Intervention Could Unduly Complicate or Disrupt this Proceeding.

Even if the Council could demonstrate that it could present issues or develop facts that would assist the Commission in this proceeding, the Council’s intervention could unduly complicate and disrupt this proceeding in contravention of 807 KAR 5:001 § 3(8). The Council is not represented by an attorney in its motion. Its self-representation as an intervenor could result in undue complication and disruption of these proceedings.

The proper means for the Council to participate in this proceeding is through filing public comments. Moreover, the Council may also provide oral comments at the public hearing in this matter or further written comments in the record in this case. These mechanisms ensure that the Council is given an opportunity to present its comments without unduly complicating the pending action. For these reasons, KU respectfully requests that the Commission deny the Council’s motion to intervene as its involvement would unduly complicate and disrupt this proceeding.

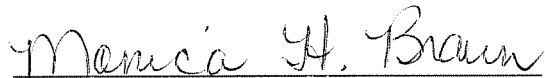
¹⁰ *In the Matter of: The Application of Kentucky Utilities Company for a Certificate of Public Convenience and Necessity and Approval of its 2009 Environmental Compliance Plan for Recovery by Environmental Surcharge* (Case No. 2009-00197) and *In the Matter of: The Application of Louisville Gas and Electric Company for a Certificate of Public Convenience and Necessity and Approval of its 2009 Environmental Compliance Plan for Recovery by Environmental Surcharge* (Case No. 2009-00197) Order, October 30, 2009.

IV. Conclusion

KU respectfully requests that the Commission deny the Council's Motion to Intervene because it fails to satisfy the regulatory standards for intervention.

Dated: July 12, 2011

Respectfully submitted,



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Counsel for Kentucky Utilities Company

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Response was served via U.S. mail, first-class, postage prepaid, this 12th day of July 2011 upon the following persons:

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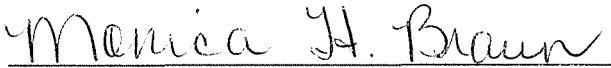
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