

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

ORDER

The Sierra Club (“Sierra Club”)<sup>1</sup> has petitioned for full intervention in this matter. East Kentucky Power Cooperative, Inc. (“EKPC”) has submitted a response in opposition to this motion. At issue is whether the Sierra Club satisfies the requirements for full intervention as set forth in 807 KAR 5:001, Section 3(8). Finding in the negative, we deny the petition.<sup>2</sup>

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<sup>1</sup> The Cumberland Chapter of the Sierra Club has brought this motion. As the records of the Office of Secretary of State do not list this chapter as a separate corporate entity, the Commission will refer to the private corporation that is registered as a foreign corporation with the Kentucky Secretary of State. See Online Business Database, Kentucky Secretary of State, [http://apps.sos.ky.gov/business/obdb/\(sjzjh b55puqjpsm2uwccavrnrn\)/showentity.aspx?id=0308595&ct=09&cs=99999](http://apps.sos.ky.gov/business/obdb/(sjzjh b55puqjpsm2uwccavrnrn)/showentity.aspx?id=0308595&ct=09&cs=99999) (last visited March 21, 2007).

<sup>2</sup> In rendering this Order, we have not considered the Sierra Club’s “Application for Rehearing,” which the Sierra Club filed with the Commission on March 19, 2007. During a hearing in this proceeding on March 6, 2007, Chairman Goss announced that the Commission had denied the Sierra Club’s Petition to Intervene and that an Order setting forth this decision would be subsequently entered. Transcript of Hearing at 7-8. As KRS 278.370 provides that Orders of the Commission “shall be in writing and entered on the records of the [C]ommission,” Chairman Goss’s announcement does not constitute an order from which an application for rehearing can be made or an action for review brought. See, e.g., Union Light, Heat & Power Co. v. Pub. Serv. Comm’n, 271 S.W.2d 361, 365 (“the commission, like a court, acts and speaks only through its written orders”).

Pursuant to KRS 278.400, Sierra Club has 20 days from service of this Order to apply for rehearing. To make such application, it should affirm or otherwise renew its “Application for Rehearing.” It may also supplement its application to address any issues presented in this Order.

The Sierra Club is a grassroots environmental organization, incorporated in the state of California, with 700,000 members nationwide and chapters in all 50 states.<sup>3</sup> One of its stated missions is “to practice and promote the responsible use of the earth’s ecosystems and resources.”<sup>4</sup>

The Sierra Club advances two arguments in support of its petition for intervention. First, it states that it has a special interest in this proceeding that is not otherwise adequately represented based upon the environmental effects of EKPC’s proposed generation units. It asserts that the environment effects of these plants are “massive” and that EKPC’s two proposed coal-fired units will contribute to air pollution in the Midwest, increase mercury pollution, contribute to global warming, and produce significant health problems. Sierra Club members are among those who will be directly affect by these environmental effects.<sup>5</sup> It also suggests that its members, as ratepayers of EKPC member cooperatives, will be affected financially by this proceeding.

Second, it argues that it is likely to present issues or develop facts that will assist the Commission in fully considering the continued need for the certificated units. It asserts that EKPC “may be overlooking promising strategies to meet projected future energy needs at a lower cost and in a more environmentally sound manner than building new baseload power plants.”<sup>6</sup> If granted leave to intervene, it further asserts, it

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<sup>3</sup> Online Business Database, supra note 1; Sierra Club’s Petition to Intervene at 1-2.

<sup>4</sup> Sierra Club’s Petition to Intervene at 1-2.

<sup>5</sup> Id. at 2.

<sup>6</sup> Id.

would present evidence that would assist the Commission in determining whether “alternate strategies could enable EKPC and its member cooperatives to provide energy services that will be needed by their end-use customers at a lower cost than building certain of the proposed power plants.”<sup>7</sup>

Administrative Regulation 807 KAR 5:001, Section 3(8), which governs intervention in Commission proceedings, provides:

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 the party is likely to present issues or to develop facts that will assist the commission in fully considering the matter without unduly complicating or disrupting the proceedings, such person shall be granted full intervention.

It is not enough that an entity seeking intervention articulate or espouse a position on an issue. It must be directly affected by the subject matter of the proceeding.<sup>8</sup>

Sierra Club has failed to demonstrate that it has a special interest in this proceeding. The environmental consequences of the proposed generation plants, regardless of their significance to the health of Sierra Club members, are not within the scope of this proceeding. We had previously found that the generation plants in question were the most reasonable and low cost options for meeting EKPC’s expected power requirements. The stated purpose of this proceeding is the continued need for the proposed generation units in light of Warren County Rural Electric Cooperative’s decision to “terminate its agreements with EKPC for future power supply and return to a

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<sup>7</sup> Id.

<sup>8</sup> See, e.g., Case No. 2005-00214, The Petition of Kentucky-American Water Company for Approval of Transfer of Control and Ownership of Jacobson Park (Ky.P.S.C. Dec. 16, 2005) at 2; Case No. 1997-00209, Application of Meade County Rural Electric Cooperative Corporation for a Decrease in Existing Rates (Ky. PSC Sept. 19, 1997) at 3.

power supply arrangement with the Tennessee Valley Authority.”<sup>9</sup> Simply put, the only question before us is whether recent revisions to EKPC’s expected power requirements obviate the need for the planned generation plants.<sup>10</sup>

As to any financial interest that Sierra Club members may have as ratepayers of EKPC member cooperatives, we note that the Attorney General, who has intervened in this matter, represents all of the persons and interests that are likely to be affected by the proposed generation plants. The AG has the statutory duty “to represent and appear on behalf of consumers’ interests.”<sup>11</sup> This duty extends to all customers of EKPC and its member cooperatives and all members of the public. Denial of the Sierra Club’s petition will not leave its members unrepresented in this proceeding.

Similarly, the Sierra Club’s asserted expertise in “alternative energy strategies” is of little assistance in this proceeding when the focus of this proceeding centers upon the magnitude of EKPC’s current expected power requirements in light of Warren County Rural Electric Cooperative Corporation’s decision to remain with its currently power supplier. Nothing in the Sierra Club’s petition or reply indicates that it intends to present any evidence on this subject or that it has any special expertise or knowledge in on this issue.

IT IS THEREFORE ORDERED that the Sierra Club’s Petition to Intervene is denied.

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<sup>9</sup> Order of January 5, 2007 at 1.

<sup>10</sup> To the extent that the scope of our investigation is expanded to consider revisions to the type of generation facilities that EKPC needs, the Sierra Club may have a greater interest in this proceeding or possess such expertise that may assist us in our investigation. See Transcript of Hearing at 8. In such event, the Sierra Club may renew its motion for full intervention.

<sup>11</sup> KRS 367.150(8)(a).

Done at Frankfort, Kentucky, this 22<sup>nd</sup> day of March, 2007.

By the Commission

ATTEST:

  
Executive Director