

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

DR. JOHN PATTERSON, FR. JOHN RAUSCH,	)	
WENDELL BERRY, SIERRA CLUB, KENTUCKY	)	
ENVIRONMENTAL FOUNDATION AND	)	
KENTUCKIANS FOR THE COMMONWEALTH	)	
	)	
COMPLAINANTS	)	
	)	
V.	)	CASE NO.
	)	2009-00426
	)	
EAST KENTUCKY POWER COOPERATIVE,	)	
INC.	)	
	)	
DEFENDANT	)	

O R D E R

On October 28, 2009, three retail consumers on the East Kentucky Power Cooperative, Inc. ("East Kentucky") system, John Patterson, John Rausch, and Wendell Berry (collectively, "Retail Customers"), along with three environmental organizations, Sierra Club, Kentucky Environmental Foundation, and Kentuckians for the Commonwealth (collectively, "Environmental Groups"), filed a formal complaint against East Kentucky. The complaint set forth a number of claims related to East Kentucky's existing authorization to construct a 278 MW circulating fluidized bed coal-fired generating facility ("Smith 1") in Clark County, Kentucky, including allegations that Smith 1 was not needed and was not East Kentucky's least-cost option for meeting its customers' future power requirements. By Order dated December 22, 2009, the

Commission accepted that portion of the complaint as filed by the Retail Customers, but not by the Environmental Groups due to lack of standing, challenging Smith 1 as not needed and not least-cost, and directed East Kentucky to file an answer to the complaint.

East Kentucky filed an answer to the complaint and included a request therein that the complaint be dismissed. The Retail Customers filed a response in opposition to the request to dismiss, and East Kentucky filed a reply. The Retail Customers have also filed an amended complaint which seeks to: (1) include as named complainants the three Environmental Groups who were previously dismissed by the Commission's December 22, 2009 Order for lack of standing; and (2) include a claim that was previously stricken by the Commission's December 22, 2009 Order that East Kentucky's authorization to construct Smith 1 has expired in accordance with KRS 278.020(1) due to construction having not commenced within one year of the issuance of the Certificate of Public Convenience and Necessity .

The Retail Customers, the Environmental Groups, and one additional named individual jointly filed a motion requesting full intervention in East Kentucky's pending application for approval to issue evidences of indebtedness to finance the construction of Smith 1.<sup>1</sup> In that motion, they also question East Kentucky's need for Smith 1, the estimated cost for Smith 1, and East Kentucky's ability to obtain reasonable terms and rates on its financing. Similar issues of East Kentucky's need for Smith 1 and whether or not Smith 1 is the lowest-cost alternative for meeting future power requirements had

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<sup>1</sup> Case No. 2009-00476, Application of East Kentucky Power Cooperative, Inc. for Approval of the Issuance of \$900,000,000 of Secured Private Placement Debt and Up to \$21,435,000 of Unsecured Debt.

already been raised in the financing case by Gallatin Steel Company, the largest consumer of electric power on the East Kentucky system.<sup>2</sup>

In recognition that issues have been raised in both this complaint case and the financing case relating to the need for Smith 1 and the financing for its construction, the Commission has decided to open, on its own motion, an investigation of all relevant issues relating to Smith 1 that are within our jurisdiction. An Order initiating that investigation will be issued today, and the Retail Customers will be made parties to that case.<sup>3</sup> As discussed more fully in that Order, in the interest of administrative economy and to avoid duplication of efforts, this complaint case will be closed and the claims that were accepted in this case by our December 22, 2009 Order will be included with all other issues to be investigated in Case No. 2010-00238. The procedural schedule as established in that investigation provides an opportunity for discovery and the filing of testimony by the Retail Customers. Based on the decision to terminate this case and review the issues pending herein in Case No. 2010-00238, we will deny as moot East Kentucky's pending motion to dismiss the complaint, as well as the Retail Customers' pending motion to file an amended complaint.

IT IS THEREFORE ORDERED that:

1. The claims against East Kentucky accepted by the Order dated December 22, 2009 in this case shall be transferred to and considered in the investigation to be conducted in Case No. 2010-00238.

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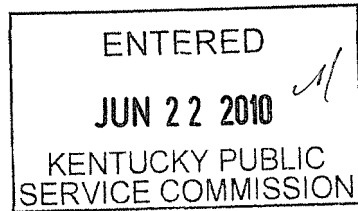
<sup>2</sup> In response to East Kentucky's motion to withdraw that financing case, an Order will be issued today granting that motion and closing Case No. 2009-00476.

<sup>3</sup> Case No. 2010-00238, An Investigation of East Kentucky Power Cooperative, Inc.'s Need for the Smith 1 Generating Facility.

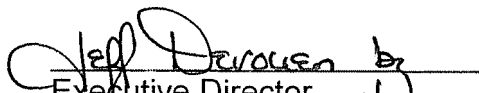
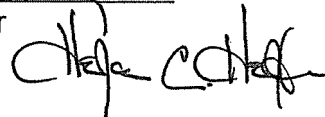
2. The pending motions to dismiss and to file an amended complaint are denied as moot.

3. This case is closed and removed from the Commission's docket.

By the Commission



ATTEST:

  
Executive Director  


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