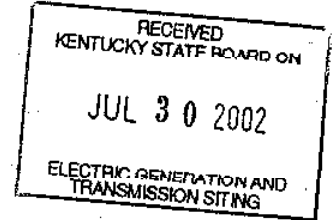


BEFORE THE KENTUCKY STATE BOARD
ON ELECTRIC GENERATION AND TRANSMISSION SITING
211 SOWER BOULEVARD
FRANKFORT, KENTUCKY 40601

In the Matter of:

THE APPLICATION OF KENTUCKY)
MOUNTAIN POWER, LLC /)
ENVIROPOWER, LLC FOR A)
MERCHANT POWER PLANT)
CONSTRUCTION CERTIFICATE IN)
KNOTT COUNTY, KENTUCKY)
NEAR TALCUM)

CASE NO.
2002-00149



RESPONSE OF APPLICANT FOR INTERVENTION
PAULINE STACY TO ENVIROPOWER LLC'S
OPPOSITION TO INTERVENTION AND SUGGESTION OF MOOTNESS

* * *

Comes Pauline Stacy, applicant for intervention, by counsel and in response to the July 26, 2002 letter from EnviroPower on behalf of Kentucky Mountain Power LLC (KMP) objecting to the intervention of Ms. Stacy, states as follows:

1. Ms. Stacy has met the requirements of 807 KAR 5:110E and is entitled to intervention status.

Consistent with the remedial purpose of Senate Bill 257 (2002), intervention status in formal proceedings under the Act is accorded to any individual who shows "[t]hat he has a special interest in the proceeding;" or "that his participation in the proceeding will assist the Board in reaching its decision." 807 KAR 5:110 Section 4.

By letter dated July 10, 2002, Ms. Pauline Stacy of P.O. Box 386, Bulan, Kentucky, 41722, and a resident living on Route 1087 in the vicinity of the

Starfire Mining Complex and the proposed power plant, timely wrote expressing several concerns regarding the proposed siting of the Kentucky Mountain Power plant. Among the concerns raised in her *pro se* letter are dust and mud, noise, and diesel emissions, and traffic safety associated with the use of KY 1087 for construction and site access to the proposed power plant site, and concerns regarding the routing of transmission lines.

As a resident and landowner residing in the vicinity of the proposed site along KY 1087, which is one route on which traffic to and from the proposed site may traverse, Ms. Stacy has a "special interest" distinct from that of the general public. Additionally, her perspective as a long-time resident of the area concerning the impacts of the plant on the surrounding community, will assist the Board in rendering its decision.

For either or both of these reasons, consistent with the intent of the General Assembly to enfranchise communities in siting decisions, the motion for intervention should be granted.

2. The suggestion of mootness and attempt to limit Ms. Stacy's intervention is misplaced.

EnviroPower seeks to either prevent Ms. Stacy from participating as an intervenor or to pigeonhole her involvement by precluding her from raising issues other than those relating to site access. In so doing, EnviroPower mistakenly asserts that Ms. Stacy's motion is moot since Kentucky Mountain Power will not be using a road near Ms. Stacy's residence.

Initially, EnviroPower mistakenly assumes that an intervenor is limited to those matters asserted in a letter requesting intervention. There is no requirement in the applicable regulation that requires an applicant for intervention to assert or waive objections or concerns regarding a proposed merchant plant siting. Nor is there indication that intervention, once granted, can be constrained to particular issues based on the breadth of topics raised in demonstrating that special interest in a motion to intervene. Instead, once a party has asserted a special interest or demonstrated that the participation will assist the board, that party-intervenor has the right to participate fully and to seek data, present testimony and brief any issues of law or fact relating to the application.

Further, it is apparent that the concerns of Ms. Stacy are not moot. There exists a controversy regarding several matters that Ms. Stacy will seek to present evidence and/or legal argument concerning, including:

a. The lack of site assessment or other required information concerning the siting of 25.5 miles of new right-of-way construction and associated land disturbance to support the transmission lines, and the question of whether the application should be deemed incomplete pending submittal of information meeting the requirements of the application and site assessment for all associated facilities, including interconnection facilities such as the switching station and new transmission lines.

b. The impact of the construction and operation traffic on the safety, air quality and quality of life of residents using that road. The application for siting approval indicated that an existing coal haul road would be used during Phase I

for construction and site access. There are in fact *two* coal haul roads; one of which exists onto Kentucky 1087 near Ms. Stacy's residence; the other exiting across Kentucky 1087 to Route 80. According to Mr. Brown's July 26 letter, KMP intends to use the latter road as the access point. While this representation resolves one aspect of the traffic concerns, Ms. Stacy's letter was not limited to voicing concerns regarding the impact of the additional traffic on her home, but also regarding the addition of construction and operation-related traffic onto Kentucky 1087 and its effect on her use of the road. Regardless of which access route is used, additional heavy truck traffic associated with construction and facility operation will occur which raises public safety and other concerns within the ambit of the siting review. Ms. Stacy is entitled to seek information regarding the routing of traffic, the manner in which the approach and access to the site will be managed, and other aspects of traffic that are not adequately presented in the application. The suggestion that there exists no ongoing controversy regarding traffic impacts simply because of EnviroPower's representation of the intent of the ambiguous application text regarding the access road is incorrect.

Alternatively, even if the Board concurred with EnviroPower that Ms. Stacy's intervention could be constricted to those matters that were stated in her letter, absent a binding and enforceable commitment concerning site access and routing that would eliminate adverse effects on her safety while using KY 1087 and on her property from the use of the haul road on Kentucky 1087, the controversy would not be mooted.

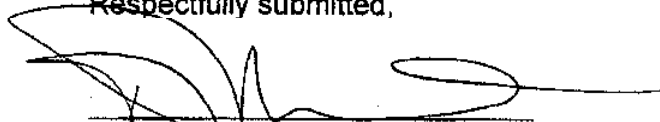
For these reasons, Applicant for Intervention Pauline Stacy respectfully requests:

(1) that she be accorded the status of Intervenor:

(2) that she be permitted an enlargement of time and modification to the Procedural Schedule entered in this case in order to allow filing of the attached and tendered FIRST DATA REQUEST TO KENTUCKY MOUNTAIN POWER, LLC.

(3) that the objection of EnviroPower and request to limit her intervention to the highway/project access issue be overruled,
and for any other relief to which she may appear entitled.

Respectfully submitted,



Thomas J. FitzGerald
P.O. Box 1070
Frankfort, KY 40602
(502) 875-2428

Date: July 30, 2002

Certificate of Service

I hereby certify that a true and correct copy of the forgoing was served this 30th day of July, 2002 by first-class mail to:

Mike Haydon
Office of the Governor
The Capitol, 700 Capitol Ave. Suite 100
Frankfort, Kentucky 40601
Hon. Denny Ray Noble, Judge/Executive
Perry County Courthouse
P.O. Box 210
Hazard, Kentucky 41701

Hon. Donnie Newsome, Judge/Executive
Knott County Courthouse
P.O. Box 505
Hindman, Kentucky 41822

Hon. Paul H. Thompson, Judge/Executive
Floyd County Courthouse Annex
149 S. Central Avenue
Prestonsburg, KY 41653

Hon. Robert Cornett, Judge/Executive
Breathitt County Courthouse
1137 Main Street
Jackson, Kentucky 41399

J. R. White, Commissioner
Economic Development Cabinet
2300 Capital Plaza Tower
Frankfort, Kentucky 40601

Hank List, Deputy Secretary
Natural Resources & Env. Prot. Cabinet
5th Floor, Capital Plaza Tower
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117 Lincoln Street
Hazard, Kentucky 41701

and that the original was lodged by mail and by fax, this 30th day of July, 2002,
with the offices of the Board, 211 Sower Boulevard, Frankfort, Kentucky 40601.



Thomas J. FitzGerald