

COMMONWEALTH OF KENTUCKY

BEFORE THE KENTUCKY STATE BOARD ON
ELECTRIC GENERATION AND TRANSMISSION SITING

In the Matter of:

THE APPLICATION OF THOROUGHBRED)	
GENERATING COMPANY, LLC FOR A MERCHANT)	CASE NO.
POWER PLANT CONSTRUCTION CERTIFICATE)	2002-00150
IN MUHLENBERG, COUNTY, KY)	

**RESPONSE OF THOROUGHBRED TO THE
MOTION OF GARY WATROUS FOR FULL INTERVENTION**

Applicant, Thoroughbred Generating Company, LLC (“Thoroughbred”), through counsel, respectfully submits its Response to the Motion of Gary Watrous (“Watrous”) for Full Intervention. For the reasons set forth below, the Board should deny Watrous’ Motion for Full Intervention.

1. 807 KAR 5:110 Section 4(2) sets forth the standard to determine whether a Motion for Intervention should be granted. Under the standard, intervention is proper only where the movant has shown:

- (a) That he has a special interest in the proceeding; or
- (b) That his participation in the proceeding will assist the board in reaching its decision and would not unduly interrupt the proceeding.

2. In this case, Watrous has neither a special interest in this proceeding nor will his participation assist the Board in its consideration of Thoroughbred’s Application.

3. Watrous merely cites his interests in “protecting the quality of life in his community,” visits to “Mammoth Cave,” and concerns regarding “adverse effects on the local airshed” and “additional particulate ... or hazardous air pollutants” as sufficient to

illustrate his “specialized” interest in this proceeding. Watrous’ Motion at ¶¶ 2-4. Watrous’ interests, however, reflect no particularized or specialized interest beyond that possessed by any other person living in Kentucky. As such, Kentucky and Supreme Court case law hold that such interests are generalized and are wholly insufficient to qualify as a “special interest.” *See Housing Authority of Louisville v. Service Employees Intern. Union, Local 557, Ky.*, 885 S.W.2d 692, 695 (1994) (holding that to satisfy special interest requirement necessary to confer standing, interest in the subject matter of the controversy “must be more than remote or speculative”); *see also Lexington Retail Beverage Dealer Assoc. v. Department of Alcohol Beverage Control Board, Ky.*, 303 S.W.2d 268 (1957) (finding that generalized allegations of “public wrong” are insufficient to establish special interest sufficient to confer standing); *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-561 (1992) (standing requires injury that is concrete and particularized and actual or imminent, not conjectural or hypothetical). For this reason, Watrous has failed to demonstrate that he has a “specialized interest” sufficient to permit his intervention pursuant to 807 KAR 5:110 Section 4(2)(a).

4. More importantly, it is clear that Watrous’ intervention would not assist the Board in reaching its decision, as the concerns raised by Watrous relating to air quality impacts are irrelevant to this proceeding and may not be considered by the Board. *See* 807 KAR 5:110 (stating that intervention in Siting Board proceeding may be granted where intervenor’s “participation in the proceeding will assist the Board in reaching its decision”); *see also* KRS 278.710 (setting forth considerations to be evaluated by Siting Board). *Public Serv. Comm’n v. Attorney General, Ky. App.*, 860 S.W. 2d 296, 298 (1993) (holding administrative agencies are creatures of statute and their jurisdiction is limited by the express terms of their enabling statutes which in this case does not give the

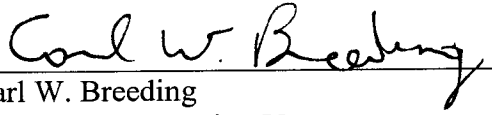
Board jurisdiction over the issues raised by Watrous). Thus, in this case the Board does not even have jurisdiction to consider the air issues raised by Watrous. *See* KRS 224.10 – 100 (placing air quality regulation and permitting squarely within the jurisdiction of NREPC). The concerns raised by Watrous relate to the final determination of the Kentucky Division for Air Quality to issue the air permit to Thoroughbred and are relevant, if at all, in that proceeding.

5. Watrous also relies on his status as a ratepayer and electric customer and the impact of any additional load from the proposed facility on the reliability or performance of Kentucky’s transmission grid as providing a basis for his intervention. Watrous’ Motion ¶ 5. However, both Big Rivers Electric Corporation (“BREC”) and Louisville Gas & Electric Company, Kentucky Utilities Company and Western Kentucky Energy Corporation (collectively, “LG&E”) have Moved to Intervene in this proceeding. BREC’s Intervention, which Thoroughbred did not oppose, was granted on August 19, 2003. LG&E’s Motion, which was also unopposed by Thoroughbred, was granted on September 11, 2003.

6. As such, BREC and LG&E are the appropriate parties to consider the issues raised by Watrous relating to any impact on the transmission grid and impact on rates. For example, data requests already propounded by BREC and responded to by Thoroughbred address transmission grid impacts and interconnection issues. Thoroughbred’s project will not adversely impact the transmission grid or rates for individual customers. Watrous’ participation will not assist the Board and will unduly interrupt the proceeding.

For the reasons set forth above, Watrous' Motion for Full Intervention should be denied.

Respectfully submitted,

A handwritten signature in cursive script that reads "Carl W. Breeding". The signature is written in black ink and is positioned above a horizontal line.

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CERTIFICATE OF SERVICE

It is hereby certified that a copy of the Response Of Thoroughbred To The Motion Of Gary Watrous For Full Intervention was sent by United States First Class Mail, sufficient postage prepaid, to the following this the 12th day of September, 2003.

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