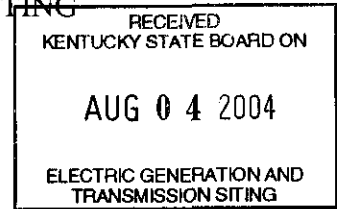


COMMONWEALTH OF KENTUCKY
BEFORE THE KENTUCKY STATE BOARD
ON ELECTRIC GENERATION AND TRANSMISSION SITING
211 SOWER BOULEVARD
FRANKFORT, KENTUCKY 40601



In the Matter of:

THE APPLICATION OF ESTILL COUNTY)
ENERGY PARTNERS, LLC. FOR A)
CERTIFICATE TO CONSTRUCT A COAL) CASE NO. 2002-00172
COMBUSTION/ELECTRIC GENERATING)
FACILITY)

**DIRECT TESTIMONY OF INTERVENOR
WILL HERRICK**

1 **Please state your name, address, and your occupation.**

2 My name is Will Herrick, and I reside and own property at 4859 Flat Mary
3 Road, Campton, Kentucky 41301. I am a computer systems specialist.

4 **Is that in Wolfe County?**

5 No, the actual property is located in Lee County.

6 **You have filed for intervenor status in this case. What concerns**
7 **prompted your intervention motion?**

8 I have two levels of concern with the proposed facility. The first are my
9 concerns as an individual property owner whose water supply is from a
10 lake on my property. To the extent that there are additional air pollutants
11 emitted into the atmosphere from the proposed facility, as an individual
12 whose property is typically downwind of the source, my use and
13 enjoyment of the property may be affected. Increased levels of mercury or
14 other emissions may result in increased treatment costs or the necessity of
1 a replacement water supply. The second is the question of what the larger

2 economic impact of any lowering of the quality of the air in the region
3 from the emissions from combustion of waste coal.

4 **Do you know specifically how much additional contribution of**
5 **pollutants will come from the proposed plant?**

6 No. In my Data Requests 29 and 30, I asked the applicant to provide
7 any reports or studies concerning the amount and volume of emissions
8 from the operation of the facility, and the concentration of contaminants
9 in the ash.

10 **And the applicant's response?**

11 The applicant refused to provide the information on the ground that the
12 requested information is "outside the applicable criteria for consideration
13 of ECEP's application, relates to permits that are to be obtained from
14 other agencies and is beyond the scope of this proceeding.

15 **Why do you believe that information is relevant?**

16 While I understand that the assessment of the effects of the facility on the
17 environment is to be reviewed by the Environmental and Public
18 Protection Cabinet, the air emissions and waste toxicity issues are directly
19 relevant to this case as well, since they represent potential economic
20 disbenefits that should be analyzed. Just as a project will result in job
21 creation through construction and operation, and potentially in supply of
22 raw materials, that project may result in negative impacts elsewhere in the
23 economy. If, for example, the project is a major air pollution source that
24 consumes some or all of the available "increment" of air quality, or

1 significantly reduces the availability of water in a segment of the
2 Kentucky River, other economic investment in manufacturing or other
3 sectors may be curtailed. Similarly, if the ash contains significant levels of
4 contaminants, there may be a long-term economic liability to the
5 community or downriver water users from off-site migration of
6 contaminants, reflected in additional treatment costs or alternative water
7 supplies, or possible adverse impacts on fisheries.

8 **Do you know what the economic impact will be?**

9 No, that is why I asked for information on the emissions and waste
10 characteristics. It is the applicants' responsibility to describe the extent of
11 the "footprint" of the facility, for good and bad, on the economy and
12 absent that disclosure it is impossible for the Board to make a finding
13 concerning the economic impact "on the affected region" and state.

14 **Do you have other concerns regarding whether the information that**
15 **has been provided by the applicant meets the requirements of the**
16 **siting law?**

17 Yes. One concern relates to the setback from the property line across the
18 river. I understand that the applicant believes it is within the special
19 setback created for facilities to be located on the site of a former coal
20 coal processing facility and utilizing on-site waste coal. I have two
21 concerns with the eligibility of the facility for that exemption – first,
22 according to the applicants' answer to my Data Request, Kentucky
23 Processing still holds mining permits for the site, so that the site appears to

1 be "current" in terms of the ability to use the site for coal processing and
2 not a "former" facility. The statutory special setback is limited to where
3 the facility will use on-site waste coal as a fuel source. It is unclear what
4 the applicant will do if the waste coal left from the Southeast / DLX /
5 Kentucky Processing operations is partially or completely unavailable,
6 since there appears to be some controversy over who owns the property.
7 Finally, there appears to be no constraint that would prevent the company
8 from substantially increasing the percentage of off-site coal (with
9 attendant increases in truck traffic) or eliminating use of waste coal
10 entirely.

11 **Do you have other concerns?**

12 Yes. I am concerned that the disclosure of persons with an ownership
13 interest in the facility and the environmental compliance history of those
14 persons deserves additional review. KRS 278.706 requires a "detailed
15 listing by [any person seeking to obtain a construction certificate] of all
16 violations by it, or any person with an ownership interest," of federal or
17 state environmental laws and regulations." To the best of my
18 understanding, the applicant Estill County Energy Partners is owned or
19 controlled by Calla Energy Partners LLC, which is in turn owned by
20 Jacquelyn Yates, who is believed to be related to a Charles or Chuck Yates
21 by marriage. She is also identified as sole officer and shareholder of Fox
22 Trot Corporation, owner of Fox Trot Properties, LLC, an entity for which
23 her husband Chuck / Charles Yates is identified as the CEO.

1 The statute is not limited to disclosure of direct ownership in the applicant,
2 but instead, in order to be meaningful, obligates the Board to consider all
3 owners of interest up the corporate chain. To the extent that Mr. or Mrs.
4 Yates (or other persons) have any ownership interest (through stock or
5 other equitable claim including inheritance and domestic claims) in any
6 entity that ultimately owns the applicant, directly or through an
7 intermediary entity, it would appear that the compliance history of those
8 persons or entities should be disclosed and evaluated.

9 **Does this complete your testimony?**

10 Yes.

AFFIDAVIT

Will Herrick
Will Herrick

Subscribed and sworn to before me, a notary public in the Commonwealth of
Kentucky, by Will Herrick, this 4th day of August, 2004.

Linda J. Bailey
Notary Public

My commission expires 7/31/06



CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the forgoing Direct Testimony of Will Herrick was served this 4th day of August, 2004 by first-class mail to:

Darrell D. Brock, Jr.
Commissioner/Assistant to Governor
Office of Local Government
1024 Capital Center Drive, Suite 340
Frankfort, KY 40601
darrelld.brockjr@ky.gov

Wayne F. Collier, Esq.
Kinkead & Stilz, PLLC
National City Plaza
301 East Main Street, Suite 800
Lexington, KY 40507-1520
wcollier@ksattorneys.com

Dell Jagers
Estill County Energy Partners, LLC
6000 Sulphur Well Road
Lexington, KY 40509
ecep-siting@earthlink.net

Gerard B. Mack
Project Manager
Estill County Energy Partners, LLC
121 Hermitage Road
Charlotte, NC 28207
gerardmack@earthlink.net

John M. St. Clair, Jr.
Board Member
Citizens Guaranty Bank
Post Office Box 630
Irvine, KY 40336
john@mycgb.com

Judge Wallace Taylor
Estill County Judge/Executive
Estill County Courthouse
130 Main Street, Room 101
Irvine, KY 40336
judgetaylor@irvineonline.net

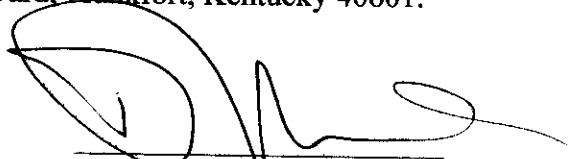
Honorable Lisa E. Underwood
Attorney
314 Holiday Road
Lexington, KY 40502
lisa@lunderwoodlaw.com

Honorable LaJuana S. Wilcher
Secretary
Environmental and Public Protection
KY Division of Energy
Fifth Floor, Capital Plaza Tower
Frankfort, KY 40601
lajuana.wilcher@ky.gov

J. R. Wilhite
Commissioner - Community Development
Economic Development Cabinet
2300 Capital Plaza Tower, 23rd Floor
500 Mero Street
Frankfort, KY 40601
jr.wilhite@ky.gov

Danny P. Woods
Brighton A & E
201 Brighton Park Boulevard
Frankfort, KY 40601
dwoods@brighton-ae.com

and that the original was lodged by and delivery this 4th day of August, 2004, with the offices of the Board, 211 Sower Boulevard, Frankfort, Kentucky 40601.



Thomas J. FitzGerald