

COMMONWEALTH OF KENTUCKY
BEFORE THE STATE BOARD ON ELECTRIC
GENERATION AND TRANSMISSION SITING

In the Matter of:

The Application of the Illinois)	
Municipal Electric Agency and the)	
Indiana Municipal Power Agency)	Case No. 2005-00152
For a Merchant Electric Generating)	
Plant Certificate to Construct)	

Response of IMEA and IMPA to Motion
of IBEW, Local 2100 and Greater Louisville Building and Construction
Trades Council for full Intervention

The Illinois Municipal Electric Agency (IMEA) and the Indiana Municipal Power Agency (IMPA), by counsel, object to the attempt of the IBEW and the Greater Louisville Building and Construction Trades Council for full intervention.

807 KAR 5:110§4 states: Intervention and Parties. (1) A person who wishes to become a party to the proceeding before the board may, by written motion **filed no later than thirty (30) days after the application has been submitted**, request leave to intervene. (2) A motion to intervene shall be granted if the movant has shown: (a) That he has a special interest in the proceeding; or (2) that his participation in the proceeding will assist the board in reaching its decision and would not unduly interrupt the proceeding. This regulation does not create an absolute right to intervene. Intervention is discretionary with the Board, if three mandatory standards are met.

The application of IMEA and IMPA was filed on May 11, 2005. The next day, the Public Service Commission in Case No. 2004-00507, "Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for a Certificate of Convenience and Necessity for the Expansion of the Trimble County Generating Station", suggested to the Movants that this proceeding was a more appropriate venue for the issues it was attempting to raise in Case 2004-00507. Having been aware of this proceeding, Movants have no justification for their belated attempt to intervene.

The Joint Application of the IMEA and IMPA was deemed to be administratively complete on May 31, 2005. A procedural order establishing the last date for intervention was issued on June 15, 2005. According to the June 15, 2005 order, and in conformity with 807 KAR 5:110§4, the last day to intervene was June 30, 2005. Not only did Movants miss that deadline by two full weeks (in spite of the Commission pointing them in the direction of this case more than six weeks in advance), but Movants have offered no justification—nor could they—for their failure to follow the clear language of the statute.

Having failed to intervene by that date, the Motion is untimely. The board's regulations and procedures are mandatory and cannot be waived. "... [A] regulation is valid unless it exceeds statutory authority or in some way is repugnant to the statutory scheme. . ." Revenue Cabinet v. Joy Technologies, Inc., Ky. App., 838 S.W.2d 406, 409 (1992). The matter of modifying or waiving validly enacted time requirements for administrative agencies has been directly addressed by the Courts: "An Administrative agency cannot by its rules and

regulations, amend, alter, enlarge, or limit the terms of a legislative enactment." Curtis v. Belden Electronic Wire and Cable, Inc., Ky. App., 760 S.W.2d 97, 99 (1988). The Court goes on to say that the agency cannot enlarge a time period even with agreement of the parties: "An administrative agency cannot enlarge statutorily prescribed time frames by an informal agreement with the parties before it." Id., p. 99. The Movants cite no legal authority for the board to waive or modify the regulation. Consequently, the Motion must be denied as untimely.

Movants suggest that their prior intervention in matters involving LG&E warrant intervention in this case. However, as the Commission said in Case No. 2003-00360, "Petition of Doe Valley Utilities, Inc." Order of October 17, 2003: "The fact that Mr. Dooley has been a party in a previous case does not in itself demonstrate that he has a special interest that justifies his individual participation as an intervenor. Therefore, Mr. Dooley's request to intervene should be denied."

The intervention regulation, in addition to a timely motion, requires that the Movant prove a special interest in the matter, that it can provide assistance to the board in reaching its decision, and that the intervention will not unduly interrupt the proceedings. The Movants have not met these criteria.

The Motion refers on page 1 to the expertise of the IBEW "arising from actual involvement in all operational aspects of the utility, and can make a valuable contribution to the understanding, clarification and development of issues that fall within the Board's regulatory authority." On page 2, the Motion says that the Trades Council "is the repository of collective skill, trade and

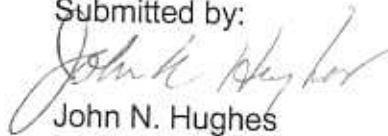
technical knowledge that is utilized for major construction projects." Yet, the Motion says that the Movants will concentrate on the issue of insuring that the economic benefits of the construction project are enjoyed by LG&E ratepayers, and their local communities, by the utilization of a workforce drawn exclusively from the Kentuckiana area."

There is no evidentiary connection between the Movants' claim of expertise in the construction trades and operational aspects of a utility and the issue they assert an interest in developing, namely the economic benefits of the project. The Movants have not provided any support for their expertise in economic development or any other issue before the Board in this proceeding.

The Motion is not only untimely, it fails to meet the special interest and assistance to the board criteria of the regulation.

For these reasons, the Motion should be denied.

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