

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for Certificates of Public Convenience and Necessity)	Case No. 2014-
Green River Generating Station and a Solar Photovoltaic Facility at the)	00002
for the Construction of a Combined Cycle Combustion Turbine at the)	
E.W. Brown Generating Station)	

REPLY OF BLUEGRASS GENERATION COMPANY, L.L.C.

Bluegrass Generation Company (Bluegrass), by counsel, submits this reply to the Applicants' Response filed on February 21, 2014. As an initial point of clarification and simplification, Bluegrass understands the procedure followed by the Applicants to maintain the confidentiality of its status as a bidder in response to the RFP process in this matter. In an attempt to simplify the filing of and review of documents related to the participation of Bluegrass in this case, Bluegrass expressly waives any public disclosure of the confidentiality of its submission of a bid to the Applicants. Bluegrass explicitly does not waive any right of confidentiality of the terms of the bid, of any matters related to the bid, or any disclosure of documents, discussions or preliminary information provided to or received from the Applicants as part of the RFP process.

The Applicants have objected to the intervention of Bluegrass primarily on the basis of the decision in *EnviroPower, LLC v. Public Service Commission of Kentucky*, No. 2005-CA-001792-MR, 2007 WL 289328 (Ky. App. Feb. 2, 2007). Asserting that Bluegrass is in the same unsuccessful bidder status as was *EnviroPower*, the Applicants conclude Bluegrass must be denied intervention. That case does not as

Applicants seem to assert disqualify Bluegrass simply on the basis of its status as a bidder. If Bluegrass can meet the other criteria for intervention, its bidder status is irrelevant.

In a recent decision in the case of "Application Of Delta Natural Gas Company, Inc. For An Order Declaring That It Is Authorized To Construct, Own And Operate A Compressed Natural Gas Station In Berea, Kentucky", Case No. 2013-00365, dated February 24, 2014, the Commission allowed intervention of a non-customer, potential competitor of Delta. The Order states:

In the unreported case of EnviroPower, LLC v. Public Service Commission of Kentucky, No. 2005-CA-001792-MR, 2007 WL 289328 (Ky. App. Feb. 2, 2007) the Court of Appeals ruled that this Commission retains power in its discretion to grant or deny a motion for intervention, but that discretion is not unlimited. The Court then enumerated the statutory and regulatory limits on the Commission's discretion in ruling on motions for intervention. The statutory limitation, KRS 278.040(2), requires that the person seeking intervention have an interest in the rates or service of a utility, as those are the only two subjects under the jurisdiction of the Commission. The regulatory limitation of 807 KAR 5:001, Section 4(11), **requires that a person demonstrate a special interest in the proceeding which is not otherwise adequately represented or that intervention is likely to present issues or develop facts that assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings.** [emphasis added].

In granting the intervention, the Commission found: "The Movants have demonstrated that they have some expertise in operating CNG fueling stations in a competitive environment", Delta, *supra*, p.5.

While the order does not state it directly, it is implicit in the ruling that the movants have a special interest in the case that cannot otherwise be represented by the

Attorney General, i.e. its expertise in the subject matter of the case. The same can be said of Bluegrass in this case. It has a special interest in the subject of the least cost option for the Applicants and participation as an intervener will develop facts that assist the Commission in considering the application. An example of Bluegrass' subject matter expertise and its ability to assist the Commission involves the review of the financial models and underlying data. Most information related to Bluegrass as the least cost opportunity for the Applicants is confidential. If Bluegrass is not a party, the Commission will not have access to that information and will not be able to compare the financial and operational cost associated with the Bluegrass option to that provided by the Applicants.

Not only will the Commission be deprived of essential information, the other interveners will also lack the ability to review that information and examine the details of the Applicants' proposal. The result is a limited analysis of information available from the Applicants for the critical determination of the least cost option.

As the Applicants asserted previously in "Joint Application Of Louisville Gas And Electric Company And Kentucky Utilities Company For A Certificate Of Public Convenience And Necessity And Site Compatibility Certificate For The Construction Of A Combined Cycle Combustion Turbine At The Cane Run Generating Station And The Purchase Of Existing Simple Cycle Combustion Turbine Facilities From Bluegrass Generation Company, LLC In Lagrange, Kentucky", Case No. 2011-00375 , Bluegrass was the least cost option and this Commission adopted that finding and authorized Applicants to enter into an agreement with Bluegrass. Such facts clearly present something far different than a disaffected bidder in *EnviroPower, supra*. In this instance,

Bluegrass certainly demonstrates that it has a special interest in the proceeding that is not otherwise represented. In addition, Bluegrass is well positioned to provide the Commission with information related to its prior contractual arrangements with the Applicants that are critical to the Commission in evaluating the Applicants' pending proposal.

In Case No. 2011-00375, "Joint Application Of Louisville Gas And Electric Company And Kentucky Utilities Company For A Certificate Of Public Convenience And Necessity And Site Compatibility Certificate For The Construction Of A Combined Cycle Combustion Turbine At The Cane Run Generating Station And The Purchase Of Existing Simple Cycle Combustion Turbine Facilities From Bluegrass Generation Company, Llc In Lagrange, Kentucky" December 14, 2011, p.8, the Commission granted intervention to the Sierra Club stating:

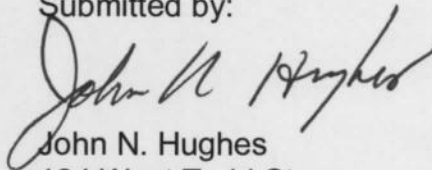
The Commission is, however, persuaded that the NRDC and Sierra Club, acting on behalf of their Kentucky members, do possess expertise on issues that are within the scope of this proceeding, such as whether generation supply options proposed by KU and LG&E are reasonable and cost-effective in light of a full range of available alternatives.

Given Bluegrass' unique status of previously having been deemed by the Commission to be the low cost option for the Applicants coupled with its knowledge of the facts pertaining to that transaction, it clearly meets the standard for intervention. The regulation gives the Commission broad discretion to determine the existence of a "special interest" and to determine if a movant's interests are adequately represented by another party. Only one criterion needs to be met to warrant intervention. With no other party having the same relationship with the Applicants or the same ability to

present evidence relevant to the issues in the application, Bluegrass should be recognized as a critical party to the full examination of the proposal presented by the Applicants.

For these reasons, Bluegrass requests that it be granted intervention in this matter.

Submitted by:

A handwritten signature in black ink, appearing to read "John N. Hughes". The signature is written in a cursive style with a large initial "J".

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