

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JOINT APPLICATION OF PNG COMPANIES)	
LLC, DRAKE MERGER SUB INC., AND)	CASE NO: 2017-00125
DELTA NATURAL GAS COMPANY INC.)	
FOR APPROVAL OF AN ACQUISITION OF)	
OWNERSHIP AND CONTROL OF DELTA)	
NATURAL GAS COMPANY, INC.)	

REPLY TO APPLICANTS' MEMORANDUMS IN OPPOSITION TO THE MOTION TO INTERVENE OF THE KENTUCKY LABORERS DISTRICT COUNCIL

I. Introduction

Delta, PNG, and Drake Merger Sub Inc. (Delta, PNG, Drake, or collectively “Applicants”) have opposed the Kentucky Laborers District Council’s (Union or KLDC) motion to intervene on the grounds that KLDC does not have a special interest in the matter and that its involvement will not assist the Commission. PNG and Drake’s memo in opposition also included its speculation that the Union seeks to advance some unexplained “commercial interest” as a grounds for opposing intervention. For the purposes of this reply, the Union will address the Applicants’ separate motions collectively, as they stated similar objections.

II. The Union Has a Special Interest in this Proceeding Not Otherwise Represented.

The Applicants cite the PSC’s order denying intervenor status to Bluegrass FLOW (“FLOW”) in the matter of Kentucky-American Water Company’s application for approval of transfer of ownership of Jacobson Park as precedent for denial of

KLDC's motion.¹ Reliance on that case is misplaced as FLOW's interest there and the Union's interest in this matter are distinguishable; FLOW's stated interest was "public interest."² Here, the Union has specifically stated that its interest is in workforce development and safety issues in a specific industry.³ Certainly, safe workplaces in the energy sector impact public safety, but the Union's interest is in how the merger will affect workplace safety in the industry in Kentucky for its own sake.⁴ The Union has not asserted that its interest is the same as the public interest, as FLOW did in the case cited by Applicants.

Further, FLOW merely "articulate[d] or espouse[d] a position on an issue before the commission."⁵ The Union in its motion did neither; it stated its experience in the industry and the level of workforce representation in Kentucky and offered that its experience could serve as a credible way to help evaluate this merger.

FLOW also failed to identify the persons or groups that comprise its membership.⁶ The Union has identified its members as members of five local unions

¹ In the Matter of the Petition of Kentucky-American Water Company for Approval of the Transfer of Control and Ownership of Jacobson Park, Order Denying FLOW's Motion to Intervene (2005-00214)

² In the Matter of the Petition of Kentucky-American Water Company for Approval of the Transfer of Control and Ownership of Jacobson Park, Order Denying FLOW's Motion to Intervene (2005-00214), p. 1.

³ Motion to Intervene of the Kentucky Laborers District Council, p. 4-5.

⁴ Motion to Intervene of the Kentucky Laborers District Council, p. 4-5.

⁵ In the Matter of the Petition of Kentucky-American Water Company for Approval of the Transfer of Control and Ownership of Jacobson Park, Order Denying FLOW's Motion to Intervene (2005-00214), p. 2.

⁶ In the Matter of the Petition of Kentucky-American Water Company for Approval of the Transfer of Control and Ownership of Jacobson Park, Order Denying FLOW's Motion to Intervene (2005-00214), p. 2.

who reside and work in Kentucky, a significant percentage of which are in the pipeline industry.⁷

Finally, the Commission found that FLOW's interest was indistinguishable from that of the Attorney General and the local government that had intervened in that case.⁸ Here, the Attorney General has intervened as well but only on behalf of consumers. While the Union applauds the intervention and is confident in the Attorney General's office to represent the interest of Kentucky consumers, the Union offers a special knowledge of pipeline workforce issues not available to the Attorney General as a consumer advocate. Additionally, and again, the Union's interest here is on behalf of workers specifically and not the broader category of "consumers," some of whom may have different interests which must all be balanced by the Attorney General.

Applicants make much of the PSC's denial of the Building Trades motion to intervene in matter of the Application of Kentucky Utilities Company for Certificates of Public Convenience and Necessity and Approval of its 2011 Compliance Plan for Recovery by Environmental Surcharge.⁹ The Union understands this temptation, as the Building Trades Council and the Union are both labor organizations. However, that is where the similarity ends for the purposes of the Union's motion to

⁷ Motion to Intervene of the Kentucky Laborers District Council @ ¶ 3.

⁸ In the Matter of the Petition of Kentucky-American Water Company for Approval of the Transfer of Control and Ownership of Jacobson Park, Order Denying FLOW's Motion to Intervene (2005-00214), p.2)

⁹ Application of Kentucky Utilities Company for Certificates of Public Convenience and Necessity and Approval of its 2011 Compliance Plan for Recovery by Environmental Surcharge (2011-00161)

intervene. The Union's position is more analogous to the Sierra Club's and Natural Resources Defense Council's motion to intervene in that case, which was granted.¹⁰ The Union has asserted that its members live and work in Kentucky, and in the regions impacted by this merger (i.e. areas currently served by Delta).¹¹ In this way, it is more like the Sierra Club and NRDC, who were granted intervenor status as representatives of their members whose interest was sufficient to satisfy the statutory limitation for intervention.

The PSC granted the Sierra Club and NRDC standing on behalf of their members because it was "persuaded that the NRDC and Sierra Club, acting on behalf of their Kentucky members, do possess sufficient expertise on issues that are within the scope of these environmental compliance proceedings..." The Union likewise possesses "expertise on issues that are within the scope" of these proceedings.¹²

III. The Union's Intervention Will Assist the Commission

Applicants cite *EnviroPower, LLC v. Kentucky Public Service Commission* for the proposition that the Union does not have a special interest in this matter.¹³ However, again, this matter is distinguishable from *EnviroPower*. In that case *EnviroPower* was merely a rejected bidder.¹⁴ This is very different from an

¹⁰ Application of Kentucky Utilities Company for Certificates of Public Convenience and Necessity and Approval of its 2011 Compliance Plan for Recovery by Environmental Surcharge, Order Granting the Sierra Club's and National Resources Defense Council's Motion to Intervene (2011-00161).

¹¹ Motion to Intervene of the Kentucky Laborers District Council @ ¶ 5.

¹² Application of Kentucky Utilities Company for Certificates of Public Convenience and Necessity and Approval of its 2011 Compliance Plan for Recovery by Environmental Surcharge, Order Granting the Sierra Club's and National Resources Defense Council's Motion to Intervene (2011-00161), p. 8.

¹³ Objection and Response of Delta Natural Gas Company, Inc. To Motion to Intervene of Kentucky Laborers District Council, p. 2.

¹⁴ *EnviroPower, LLC v. Kentucky Public Service Commission*, 2007 App. Unpub. LEXIS 121 (Ky. App. 2007)

organization representing 3600 workers state-wide, one third of which are in the energy industry.¹⁵

The Applicants state that the Union has not “identif[ied] any issues or development of facts that will assist the Commission in fully considering this proceeding.”¹⁶ In order to do that it must be an intervenor, able to submit and review data requests. It has offered its vast organizational and representational experience on such matters. Such experience is not “cumulative” as Applicants state, but unique to the Union.¹⁷ The Union may not represent Delta’s workers, but it represents a significant number of energy workers, and workplace issues at such a significant employer affect the industry in the region.

IV. Conclusion

Applicants acknowledge a Union’s general ability to intervene according to PSC precedent where there is a direct employment relationship. PSC has also granted intervention where an organization represents a member with a special interest. The Union’s members have a special interest, because workforce development and safety norms affect the industry. The Union’s motion to intervene should be granted.

¹⁵ Motion to Intervene of the Kentucky Laborers District Council @ ¶ 3.

¹⁶ PNG Companies LLC and Drake Merer Sub Inc.’s Response to the Motion to Intervene of the Kentucky Laborers District Council, p. 1.

¹⁷ Objection and Response of Delta Natural Gas Company, Inc. To Motion to Intervene of Kentucky Laborers District Council, p. 4.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

In accordance with 807 KAR 5:001, Section 8(7), this is to certify that the Motion to Intervene electronic filing is a true and accurate copy of the documents being filed in paper medium; that the electronic filing has been transmitted to the Commission on April 13, 2017; that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding; that an original and six copies of the filing are being delivered to the Commission within two business days.

/s/ David Suetholz
David O'Brien Suetholz

CERTIFICATE OF SERVICE

A copy of the foregoing REPLY TO APPLICANTS' MEMORANDUMS IN OPPOSITION TO THE MOTION TO INTERVENE OF THE KENTUCKY LABORERS DISTRICT COUNCIL has been served by electronic mail and United States mail on the following persons this the 13th day of April, 2017:

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