

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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COMMISSION

In the Matter of:

A REVIEW PURSUANT TO 807 K.A.R. 5:058)
OF THE 2009 INTEGRATED RESOURCE PLAN) CASE NO. 2009-106
FOR EAST KENTUCKY POWER)
COOPERATIVE, INC.)

SIERRA CLUB, KENTUCKY ENVIRONMENTAL FOUNDATION AND
KENTUCKIANS FOR THE COMMONWEALTH REPLY IN SUPPORT OF ITS
MOTION FOR FULL INTERVENTION

On May 4, 2009, the Sierra Club, Kentucky Environmental Foundation, and Kentuckians for the Commonwealth (collectively “Public Interest Groups”) respectfully requested that they be granted full intervention in this case. On May 14, 2009, East Kentucky Power Cooperative (“EKPC”) responded in opposition. The Public Interest Groups now offer this reply.

EKPC starts off its opposition by stating that it is unsure how the Public Interest Groups’ citation to KRS 278.310, which according to EKPC provides that the Commission is not bound by the technical rules of evidence, has any applicability to a motion for full intervention. See East Kentucky Power Cooperative, Inc.’s Response to Motions To Intervene Filed by the Kentucky Attorney General and Public Interest Groups (“EKPC Resp.”) at 3. KRS 278.310 provides for two things, one of which is that “[a]ll hearings and investigations before the commission or any commissioner shall be governed by rules adopted by the commission[.]” One of these rules adopted by the commission pursuant to KRS 278.310 is 807 K.A.R. 5:001 § 3(8), which governs requests for intervention.

EKPC goes on to incorrectly identify the Public Interest Group's reason for seeking full intervention. See EKPC Resp. at 4. The Public Interest Group's reason for seeking full intervention is to ensure that EKPC has an Integrated Resource Plan (IRP) that results in rates and services which are in the public interest as defined by the Public Interest Groups.

EKPC continues by incorrectly stating that the Commission does not have jurisdiction to give **consideration** to environmental issues. See EKPC Resp. at 4. It is true that the Commission does not have jurisdiction to **grant or deny** environmental permits. It is equally true that the Commission does give consideration to environmental issues and that EKPC has already acknowledged this in this proceeding. For example, in response to EKPC 2006 Integrated Resource Plan ("IRP") the Commission staff recommended that EKPC consider demand side management as an environmental compliance option in addition to a resource option. See EKPC's 2009 IRP at 5-6. Furthermore, EKPC has added "\$40 per ton for carbon emissions" in its evaluation of carbon emitting resources in anticipation of future environmental regulation of greenhouse gas. See Id. Thus, EKPC's argument in its opposition contradict the Commission and EKPC's position with regard to IRPs. In addition, for the Commission to ignore environmental considerations, as EKPC claims it must, would be arbitrary and capricious because environmental considerations are an important aspect of EKPC's meeting its resource needs. See generally Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43, (1983)("An agency rule would normally be arbitrary and capricious if: the agency has . . . entirely failed to consider an important aspect of the problem").

It is also worth noting that Kentuckians for the Commonwealth is not an environmental group, *per se*. It is a social justice organization. EKPC does not argue that the Commission cannot ensure that EKPC offers rates and services that are just.

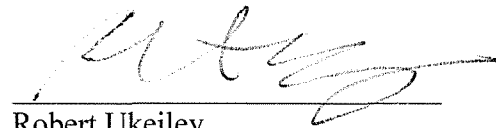
Finally, EKPC seems to argue that the Attorney General's intervention in this case should preclude the Public Interest Group's intervention because the Attorney General will adequately represent the Public Interest Group's interest. See EKPC Resp. at 5. EKPC does not respond at all to any of the qualifications, such as nation-wide experience, or resources, such as *pro bono* experts, that the Public Interest Group explained they have in their motion.

In any event, the Attorney General has the unenviable task of representing all consumers and all of their diverse interests, even if some of the interests are diametrically opposed to each other. Thus, the Attorney General may not be able to represent the Public Interest Groups' interest, or at least not as forcefully, because of the Attorney General's obligation to represent all consumers. EKCP also fails to offer any rationale for the Commission to allow Gallatin Steel to intervene in EKPC's 2006 IRP case but to exclude the Public Interest Groups, who have EKPC distribution cooperative customers among their members, from this IRP proceeding.

The Commission cannot interpret its regulations to provide that the mere fact that the Attorney General can intervene in this case means that the Public Interest Groups' interest are adequately represented, for that is the situation in every case. Such an interpretation would render the intervention provision for parties other than the Attorney General superfluous, which would run contrary to the rules of statutory and regulatory interpretation. See generally Bennett v. Spear, 520 U.S. 154, 173 (1997)

Therefore, for the reasons explained above and in the Public Interest Groups' motion to intervene, the Commission should grant the Public Interest Groups' full intervention.

Respectfully submitted,



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Dated: May 18, 2009

CERTIFICATE OF SERVICE

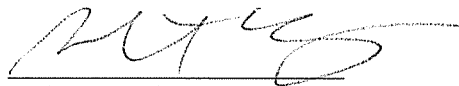
I certify that I mailed a copy of this Reply in Support of Motion for full intervention by first class mail on May 18, 2009 on the following:

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A handwritten signature in black ink, appearing to read 'R. Ukeiley', written over a horizontal line.

Robert Ukeiley