

**Frost
Brown Todd** LLC
ATTORNEYS

KENTUCKY · OHIO · INDIANA · TENNESSEE · WEST VIRGINIA

Mark David Goss
(859) 244-3232
MGOSS@FBTLAW.COM

May 14, 2009

RECEIVED

MAY 21 2009

PUBLIC SERVICE
COMMISSION

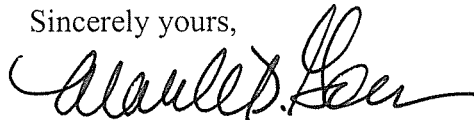
Mr. Jeffrey Derouen
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
P.O. Box 615
Frankfort, KY 40602-0615

Re: East Kentucky Power Cooperative, Inc.
2009 Integrated Resource Plan
PSC Case No. 2009-00106

Dear Mr. Derouen:

Enclosed please find the original and ten (10) copies of East Kentucky Power Cooperative, Inc.'s Response to Motions to Intervene Filed by the Kentucky Attorney General and Public Interest Groups to be filed in the above-referenced matter. By copy of this letter, all parties listed on the Certificate of Service have been served. Please file this document of record and return a file stamped copy of the above to me in the enclosed self-addressed, stamped envelope.

Sincerely yours,



Mark David Goss

Enclosures

cc: Parties of Record

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

MAY 21 2009

PUBLIC SERVICE
COMMISSION

In the Matter of:

2009 INTEGRATED RESOURCE PLAN OF) CASE NO.
EAST KENTUCKY POWER COOPERATIVE, INC.) 2009-00106

**EAST KENTUCKY POWER COOPERATIVE, INC.'S RESPONSE
TO MOTIONS TO INTERVENE FILED BY THE KENTUCKY
ATTORNEY GENERAL AND PUBLIC INTEREST GROUPS**

Comes now East Kentucky Power Cooperative, Inc. ("EKPC"), by and through counsel, for its Response to the separate Motions of the Kentucky Attorney General ("AG") and the Sierra Club, Kentucky Environmental Foundation, and Kentuckians for the Commonwealth ("Public Interest Groups"), for an Order of the Commission allowing intervention in EKPC's Integrated Resource Plan ("IRP") filing, and states as follows:

PROCEDURES FOR REVIEW OF INTEGRATED RESOURCE PLANS

The Kentucky Administrative Regulations provide a mechanism for review and discovery of IRPs filed by jurisdictional electric utilities. 807 KAR 5:058, Section 11. This section provides authority to the Commission for the development of a procedural schedule allowing for submission of written interrogatories to the utility by Commission Staff and any intervenors. There is also an opportunity for the submission of written comments by Commission Staff and intervenors. Based upon its review of a utility's plan and the discovery and comments generated, the Commission Staff is to issue a final report summarizing its review and offering suggestions and recommendations to the utility for subsequent IRP filings.

**REQUESTS FOR FULL INTERVENTION ARE TO BE GRANTED ONLY
FOR PERSONS HAVING A SPECIAL INTEREST IN THE PROCEEDING,
OR HAVING THE ABILITY TO PROVIDE EXTRAORDINARY
ASSISTANCE TO THE COMMISSION.**

The criteria under which a person's request for full intervention is to be considered are set forth in 807 KAR 5:001, Section 3(8). That regulation provides, in pertinent part:

“. . . If the Commission determines that a person has a special interest in the proceeding which is not otherwise adequately represented or that full intervention by [the] party is likely to present issues or to develop facts that assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings, such person shall be granted full intervention.”

The Commission retains the absolute discretion to grant or deny a motion for full intervention after applying the two-prong test set forth in the regulation: special interest in the proceeding, or, ability to present issues or develop facts which provide extraordinary assistance to the Commission.

AG'S MOTION TO INTERVENE

The only person having the unfettered right to intervene before the Commission is the AG. His intervention authority is set forth in KRS 367.150(8)(a) and (b), which provide him the right to appear as a party whenever he deems necessary to be heard on behalf of consumers' interests.

Indeed, the AG asked for and was granted full intervention in EKPC's last IRP case.¹ This case should be no different.

EKPC does not object to the AG's Motion to Intervene and agrees that the Commission should enter an appropriate Order allowing the AG full intervention in this case.

¹ In the Matter of: The 2006 Integrated Resource Plan of East Kentucky Power Cooperative, Inc., Case No. 2006-00471.

PUBLIC INTEREST GROUPS' MOTION TO INTERVENE

The Sierra Club, Kentucky Environmental Foundation, and Kentuckians for the Commonwealth, collectively, also seek full intervention in this case. As authority for such intervention the Public Interest Groups cite KRS 278.310. EKPC is unsure how this statute, which provides that the Commission is not bound by the technical rules of legal evidence, has any applicability to a motion for full intervention.

However, this aside, the Public Interest Groups cannot demonstrate that they have a special interest in the proceeding which is not otherwise adequately represented or that full intervention is likely to present issues or to develop facts that will assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings.

In its motion, the Public Interest Groups describe the highest current priority of each of the three constituent organizations.

For the Sierra Club, its priority is to reduce “. . . the need for fossil-fueled power plants through the development of affordable renewable energy and demand-side management.”²

For the Kentucky Environmental Foundation (“KEF”), its priority has historically been “. . . to ensure the safe disposal of the Army’s stockpile of outdated chemical weapons which are stored in Richmond, Kentucky . . . [and] . . . to ensure that Kentucky has clean energy and that Kentuckians’ exposure to toxic chemicals is minimized.”³

² Public Interest Group’s Motion for Full Intervention, pages 2-3.

³ Public Interest Group’s Motion for Full Intervention, page 3.

The priority of Kentuckians for the Commonwealth (“KFTC”) includes “. . . restoring voting rights, promoting sustainable economic development policies, reducing environmental destruction, and advancing sustainable energy policies and practices.”⁴

The Public Interest Group’s ultimate reason for seeking full intervention is best summarized on page 4 of its motion:

“Collectively, the Public Interest Groups have a long history of working on the whole life cycle of energy production and of educating the public and governmental decision-makers regarding that life cycle. For coal, the entire life cycle presents negative health and environmental impacts.”

While the Public Interest Group’s stated goals of educating the public regarding environmental and social justice issues are laudable, that is simply not an adequate justification under 807 KAR 5:001(8) to allow it full intervention in this case.

The Commission has long held that the “special interest” a person seeking full intervention must have is one relating only to the “rates” or “service” of a utility.⁵ Moreover, the Commission simply does not have the jurisdiction to give consideration to environmental issues. Indeed, KRS 278.040(2), which describes in specific and narrow terms the jurisdiction of the Commission, limits that jurisdiction to the “. . . regulation of rates and service of utilities.”

Specifically absent from this grant of jurisdiction are environmental issues which are the responsibility of other agencies of state government such as the Division of Air Quality and the Division of Water within the Energy and Environment Cabinet. This Commission simply does not have an adequate grant of jurisdiction from the General Assembly to consider any issues that deal with the impact of air emissions on human health or the environment.

⁴ Public Interest Group’s Motion for Full Intervention, page 3.

⁵ See, In the Matter of: The 2008 Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company, Case No. 2008-00148.

The Public Interest Group asserts that it is uniquely qualified to address issues such as demand-side management, energy efficiency and non-fossil fuel electric generation. However, the Commission has consistently held that these issues are adequately and effectively addressed by the AG, who is the statutorily authorized representative of Kentucky's utility consumers.⁶

CONCLUSION

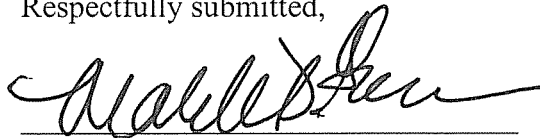
The Public Interest Group has not adequately established that it has a special interest in the proceeding as to a rate or service issue that is not otherwise being adequately represented; nor has it shown that it is likely to present issues or develop facts that will otherwise assist the Commission without unduly complicating or disrupting the proceedings.

The environmental issues which it seeks to address are not within the jurisdiction of the Commission to consider. Moreover, the energy policy issues which it advances are more than adequately addressed by the AG who is the statutorily authorized consumer representative for such matters.

As a result, EKPC objects to the Public Interest Group's Motion for Full Intervention and requests that the Commission enter an Order overruling the motion.

This 14th day of May, 2009.

Respectfully submitted,



Mark David Goss
Frost Brown Todd LLC
250 West Main Street, Suite 2800
Lexington, KY 40507-1749
(859) 231-0000 – Telephone
(859) 231-0011 – Facsimile
Counsel for East Kentucky Power Cooperative, Inc.

⁶ See, In the Matter of: The 2008 Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company, Case No. 2008-00148.

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served by U.S. Mail, postage prepaid, on May 14th, 2009 to the following:

Hon. Robert Ukeiley
Law Office of Robert Ukeiley
435R Chestnut Street, Suite 1
Berea, Kentucky 40403

Hon. Dennis G. Howard, II
Hon. Lawrence W. Cook
Assistant Attorneys General
Utility and Rate Intervention Division
1024 Capital Center Drive, Suite 200
Frankfort, Kentucky 40601-8204



Counsel for East Kentucky Power Cooperative, Inc.