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February 26, 2010

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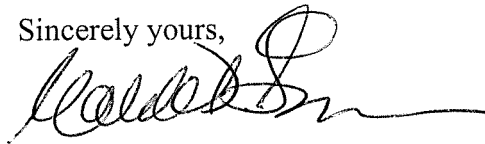
Mr. Jeffrey Derouen
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
P. O. Box 615
Frankfort, Kentucky 40602-0615

Re: East Kentucky Power Cooperative, Inc.
PSC Case No. 2009-00476

Dear Mr. Derouen:

Enclosed please find an original and five (5) copies of East Kentucky Power Cooperative, Inc.'s Response to Motion of Patterson, Rausch, Berry, Hannon and "Concerned Citizens" for Full Intervention to be filed in the above-referenced matter. Please file this document of record and return a file-stamped copy to me in the enclosed self-addressed, stamped envelope.

Sincerely yours,



Mark David Goss

Enclosures

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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IN THE MATTER OF:

APPLICATION OF EAST KENTUCKY)
POWER COOPERATIVE, INC. FOR)
APPROVAL OF THE ISSUANCE OF)
\$900,000,000 OF SECURED PRIVATE) CASE NO. 2009-00476
PLACEMENT DEBT AND UP TO)
\$21,435,000 OF UNSECURED DEBT)

**RESPONSE OF EAST KENTUCKY POWER COOPERATIVE, INC.
TO MOTION OF PATTERSON, RAUSCH, BERRY, HANNON AND
“CONCERNED CITIZENS” FOR FULL INTERVENTION**

East Kentucky Power Cooperative, Inc. (“EKPC”), objects to the Motion of John A. Patterson, M.D., Fr. John Rausch, Wendell Berry, Mike Hannon (the “Individuals”), Sierra Club, Kentucky Environmental Foundation, and Kentuckians for the Commonwealth (the “Environmental Groups”) (also sometimes referred to collectively as the “Concerned Citizens”) for Full Intervention in this case.

As a result of its objection, EKPC respectfully requests that the Kentucky Public Service Commission (the “Commission”) enter an Order denying the Concerned Citizens’ motion.

In support of its objection and request for an Order denying the motion, EKPC states the following:

I. NATURE OF EKPC'S APPLICATION FOR APPROVAL OF FINANCING PURSUANT TO KRS 278.300.

EKPC filed its Application for Approval of the issuance of both secured and unsecured debt on December 4, 2009, pursuant to KRS 278.300 and 807 KAR 5:001, Sections 6, 8 and 11.¹

Subsequently, the Commission entered an Order on January 13, 2010, setting forth a procedural schedule in which discovery to EKPC was to conclude on March 1, 2010. In addition, that Order extended the adjudication deadline of 60 days (KRS 278.300(2)) stating that the Commission's investigation could not be completed within that timeframe.²

The underlying Application by EKPC seeks approval for the issuance of \$900,000,000 of secured private placement debt and up to \$21,435,000 of unsecured debt to finance the construction of Smith Unit No. 1 ("Smith 1 CFB"), a 278-megawatt coal-fired circulating fluidized bed unit.³

This \$900,000,000 of secured debt will be separated into multiple private placements of \$150,000,000 to \$300,000,000 each between 2010 and 2014. The tenor of each private placement will range from 5 years to 35 years depending upon certain market factors at the time of issuance. Upon approval of this financing application by the Commission, EKPC plans to

¹ The Commission sent a letter to EKPC dated December 16, 2009, providing notice that there were certain filing deficiencies in the original Application. By letter from EKPC counsel to the Commission dated December 30, 2009, the additional information required was filed. By subsequent letter dated January 6, 2010, the Commission acknowledged that the deficiencies were adequately cured and EKPC's Application was deemed filed on December 30, 2009.

² Gallatin Steel Company was granted Full Intervention by Order of the Commission dated January 5, 2010.

³ The Commission granted EKPC a Certificate of Public Convenience and Necessity ("CPCN") for Smith 1 CFB in Case No. 2005-00053, by Order of August 29, 2006. The Commission later reaffirmed the CPCN for Smith 1 CFB in Case No. 2006-00564, by Order of May 11, 2007.

issue its first private placement, in the amount of \$175,000,000, in order to reimburse its general funds and to pay ongoing commitments related to the Smith 1 CFB project.⁴

The so-called “financing statute” is straightforward and unambiguous in setting forth the criteria by which applications such as EKPC’s are to be judged:⁵

After investigation of the purposes and uses for the requested financing proceeds, the Commission must find that the requested indebtedness:

1. is for some lawful object within the utility’s corporate purposes; and,
2. is necessary or appropriate for or consistent with the proper performance of service by the utility, and it will not impair the utility’s ability to perform that service; and,
3. is reasonably necessary and appropriate for such purpose.

In crafting these criteria for approval so narrowly the Kentucky Legislature intended that the Commission grant a utility’s request for financing as long as it is for a lawful purpose related to the service which the utility normally provides to the public, and it is reasonable. The inquiries, requests, claims, assertions or evidence of third parties objecting to such a request which do not relate to these decisional criteria are irrelevant, spurious and legally inappropriate for consideration by the Commission.

⁴ To date, Smith 1 CFB project expenditures have been funded from EKPC’s general funds, some of which have been borrowed on a short-term basis through EKPC’s unsecured revolving credit facility. This credit facility expires in September, 2010 and EKPC expects to replace it with a similar facility. This expiration is only about six months away, and EKPC must wait until the Commission rules upon this Application before it can formally negotiate the final financing package with private lenders. Because it will likely take anywhere from 90-180 days to complete this process, time is of the essence for the Commission to decide this case.

⁵ KRS 278.300(3).

II. THE CONCERNED CITIZENS' JUSTIFICATIONS FOR FULL INTERVENTION IN THIS CASE ARE INSUFFICIENT AND BEYOND THE SCOPE OF KRS 278.300(3).

A summary of the Concerned Citizens' justifications for Full Intervention in this case are instructive to the Commission's review of the Motion:

- EKPC should not be permitted to borrow funds to construct additional generating capacity when there is a "glut" of generating capacity on the market.⁶
- EKPC should not obtain financing approval because it does not have its final environmental permits.⁷
- EKPC's Smith 1 CFB adds another air polluting plant to the company's "power generation mix" and the Concerned Citizens are among those individuals who will be exposed to this pollution.⁸
- EKPC may have to install additional "environmental controls" on Smith 1 CFB at some unknown date in the distant future which might affect the cost.⁹
- Because the current design configuration of Smith 1 CFB does not include a Selective Catalytic Converter (SCR), the Concerned Citizens wish to convince the Commission that EKPC is not employing Best Available Control Technology (BART).¹⁰
- The Concerned Citizens believe that EKPC's use of a "wet cooling system" on Smith 1 CFB is contrary to current environmental law and wish to convince the Commission that a "dry cooling system" is more appropriate.¹¹

⁶ Concerned Citizens' Motion for Full Intervention, page 2.

⁷ Id., page 2.

⁸ Id., page 5.

⁹ Id., page 7.

¹⁰ Id., pages 7-8. Indeed, the Concerned Citizens say that they have already had an "expert" to prepare an analysis on this issue and intend to present it to the Commission as evidence.

¹¹ Id., page 8.

- The Concerned Citizens believe that EKPC’s plan for disposal of Smith 1 CFB’s Coal Combustion Waste is “clearly illegal”.¹²
- The Concerned Citizens believe that EKPC’s environmental permitting timeline is “not realistic” and because the Environmental Groups “. . . are engaged in all these permitting processes, [they] can offer the Commission additional information.”¹³
- The Concerned Citizens are closely involved in the U.S.D.A., R.U.S. “moratorium” issue, and the Sierra Club has actually sued the U.S.D.A., R.U.S. on the matter of granting “lien accommodations”, and they “. . . have information and knowledge to share with the Commission on this issue.”¹⁴
- The Concerned Citizens claim they have particular expertise in predicting that the U.S. EPA will ultimately object to the Smith 1 CFB air permit just as it did to the Cash Creek air permit and they would like to explore this issue with the Commission.¹⁵
- The Concerned Citizens wish to offer the expertise of Tom Sanzillo on all sorts of issues ranging from the rising costs of pollution control technology,¹⁶ to a discussion of who would “own” EKPC’s power plants in the event of a financial default of the company.¹⁷
- The Concerned Citizens “have legally protected interests in their property and their health which can be adversely impacted” by EKPC’s construction of Smith 1 CFB.¹⁸

While these so-called justifications for Full Intervention might make for interesting intellectual and philosophical discussion, they are wholly irrelevant to whether EKPC’s request for financing meets the criteria for approval under KRS 278.300(3).

¹² Id., page 8.

¹³ Id., pages 8-9.

¹⁴ Id., pages 9-10.

¹⁵ Id., page 10.

¹⁶ Id., page 12.

¹⁷ Id., page 14.

¹⁸ Id., page 18.

III. THE CONCERNED CITIZENS HAVE FAILED TO ESTABLISH THEIR ENTITLEMENT TO FULL INTERVENTION IN THIS CASE.

An individual or organization seeking Full Intervention in a Commission proceeding must establish either: (a) a special interest in the proceeding which is not otherwise adequately represented; or, (b) that full intervention is likely to present issues or develop facts that will assist the Commission without unduly complicating or disrupting the proceedings.¹⁹

The Concerned Citizens have no “special interest” in this proceeding, nor will they be able to meaningfully “assist” the Commission in any aspect of this case. Indeed, considering the justifications cited by the Concerned Citizens in their Motion dealing almost exclusively with air quality and other environmental issues (which are irrelevant to a 278.300 case), a persuasive argument can be made that their participation in this proceeding would actually result in “unduly complicating or disrupting the proceedings.”

Because of their complete failure to address any of the criteria contained in the financing statute, the Commission should deny the Concerned Citizens’ Motion for Full Intervention.

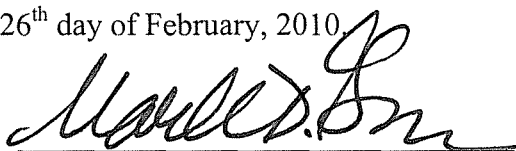
In the event, however, that the Commission believes that full intervention is somehow appropriate, EKPC requests that the Commission refuse to extend the procedural schedule to accommodate such a late intervention. The Concerned Citizens have neither moved the Commission that the current Procedural Schedule be extended, nor have they offered any explanation or made a showing of good cause why the Procedural Schedule should be extended.²⁰

¹⁹ 807 KAR 5:001, Section 3(8).

²⁰ See, Commission’s Order dated January 13, 2010, numerical paragraph 6, which clearly provides that any motion for extensions of time with respect to the Procedural Schedule shall be made in writing and will be granted only upon a showing of good cause.

WHEREFORE, East Kentucky Power Cooperative, Inc. respectfully requests that the Commission DENY the Concerned Citizens' Motion for Full Intervention for failure to meet the applicable criteria in either the intervention regulation (807 KAR 5:001, Section 3(8), or the financing statute (KRS 278.300(3)). In the event, however, that the Commission approves the requested interventions, it should do so by an Order which specifically declines to extend the current Procedural Schedule since time is of the essence in ruling on the case, the deadline for discovery to EKPC has almost passed, and the Concerned Citizens have failed to either request an extension in writing or make an adequate showing excusing their tardy request for intervention.

Respectfully submitted, this 26th day of February, 2010.



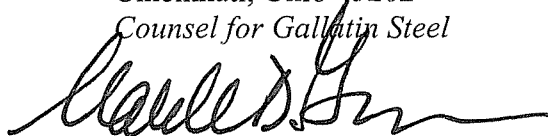
Mark David Goss
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250 West Main Street
Suite 2800
Lexington, KY 40507-1749
Counsel for East Kentucky Power Cooperative, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served by U.S. Mail, postage prepaid, on February 26, 2010 to the following:

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

Hon. Michael L. Kurtz
Boehm, Kurtz & Lowry
36 East 7th Street, Suite 1510
Cincinnati, Ohio 45202
Counsel for Gallatin Steel



Counsel for East Kentucky Power Cooperative, Inc.