

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JOINT APPLICATION OF LOUISVILLE GAS & )  
ELECTRIC COMPANY AND KENTUCKY )  
UTILITIES COMPANY FOR CERTIFICATES OF )  
PUBLIC CONVENIENCE AND NECESSITY FOR ) CASE NO.  
THE CONSTRUCTION OF A COMBINED ) 2014-00002  
CYCLE COMBUSTION TURBINE AT THE )  
GREEN RIVER GENERATING STATION AND A )  
SOLAR PHOTOVOLTAIC FACILITY AT THE )  
E.W. BROWN GENERATING STATION )

O R D E R

On February 20, 2014, Khanjee Infrastructure Development, LLC ("Khanjee") filed a motion requesting that it be granted full intervenor status in the instant matter. Khanjee states that it is an independent power producer and that it submitted proposals in response to the Request for Proposals ("RFP") issued by Louisville Gas and Electric Company ("LG&E") and Kentucky Utilities Company ("KU"). Although the specific details of its proposal are not described in its motion, Khanjee informs that it did propose a 746-MW combined-cycle combustion turbine. Khanjee asserts that its purpose for seeking intervention is to assist the Commission in evaluating the available alternatives to LG&E's and KU's (collectively "Joint Applicants") proposals and to ensure that such proposals have been adequately and thoroughly studied and considered. Khanjee further asserts that its special interest cannot be represented by any other party to this case.

On February 27, 2014, Joint Applicants filed a response, objecting to Khanjee's motion for intervention. Joint Applicants contend that Khanjee is not a customer of the

Joint Applicants and, therefore, has no interest in the rates and service of the Joint Applicants. The Joint Applicants characterize Khanjee as being one of the bidders who responded to the Joint Applicants' RFP and state that Khanjee's bid was ultimately determined by the Joint Applicants to not be the least-cost alternative to meet their customers' future energy needs. Joint Applicants rely upon the Kentucky Court of Appeals decision in *EnviroPower, LLC v. Public Service Commission of Kentucky*, No. 2005-CA-001792-MR, 2007 WL 289328 (Ky. App., Feb. 2, 2007) for the proposition that an unsuccessful bidder to an RFP, like Khanjee, should not be allowed intervention in a subsequent certificate case resulting from the RFP. Joint Applicants assert that the Commission has consistently applied the *EnviroPower* standard and has done so recently in Case No. 2012-00578<sup>1</sup> wherein the Commission denied the petition to intervene by an unsuccessful bidder to a RFP that had been issued by Kentucky Power Company. Joint Applicants argue that allowing Khanjee to intervene would unduly complicate the proceedings and render the competitive bidding process engendered by the RFP meaningless if Khanjee were to be given an opportunity to scrutinize the Joint Applicants' decision-making process.

On March 24, 2014, Khanjee filed a reply in support of its motion to intervene. Khanjee argues that it has unique and specialized skills and expertise, particularly in the area of analyzing greenfield projects, and that it could assist the Commission with evaluating the least-cost solution to satisfy the Joint Applicants' needs. Khanjee

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<sup>1</sup> Case No. 2012-00578, Application of Kentucky Power Company for (1) a Certificate of Public Convenience and Necessity Authorizing the Transfer to the Company of an Undivided Fifty Percent Interest in the Mitchell Generating Station and Associated Assets; (2) Approval of the Assumption by Kentucky Power of Certain Liabilities in Connection with the Transfer of the Mitchell Generating Station; (3) Declaratory Rulings; (4) Deferral of Costs Incurred in Connection with the Company's Efforts to Meet Federal Clean Air Act and Related Requirements; and (5) All Other Required Approvals and Relief (Ky. PSC Jul. 5, 2013).

contends that it has a special interest in this proceeding because it has submitted a proposal in response to the Joint Applicants' RFP which, it believes, would provide reliable capacity and energy at the lowest cost. Khanjee maintains that the Joint Applicants erred in "limiting its review of its new construction proposal versus the 'best bid' price received which was not a new construction option."<sup>2</sup> Khanjee further contends that the Joint Applicants erred in their analysis and review of the proposal that Khanjee submitted. Lastly, Khanjee argues that its status as a bidder should not disqualify its intervention in this matter because it has a special interest in this proceeding that is not otherwise adequately represented and that it would present issues or develop facts that assist the Commission in fully considering this case without unduly complicating or disrupting the proceedings.

In analyzing Khanjee's motion to intervene, the Commission finds that the only person that has a statutory right to intervene is the Attorney General ("AG") pursuant to KRS 367.150(8)(b). Intervention by all others is permissive and within the sound discretion of the Commission. The issue of intervention was definitively addressed in the *EnviroPower* case in which 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 appellate 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 or entity seeking intervention have an interest in the rates and 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

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<sup>2</sup> Khanjee Reply, p. 5.

4(11), requires that the movant 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.

Having reviewed the pleadings and being otherwise sufficiently advised, the Commission finds that the overriding motive for Khanjee's request to intervene is to have the Commission specifically consider Khanjee's proposal, which was submitted in response to the Joint Applicants' RFP and which was ultimately determined by the Joint Applicants to not be the least-cost alternative. Having found that Khanjee's ultimate interest in this matter is that of an unsuccessful bidder to the Joint Applicants' RFP, we find that the *EnviroPower* case is dispositive of the issue of Khanjee's intervention request. There, EnviroPower was an unsuccessful bidder in an RFP for power that had been issued by East Kentucky Power Cooperative, Inc. ("EKPC"). EnviroPower subsequently requested to intervene in EKPC's application for authority to construct a new generating facility which EKPC had proposed to construct in lieu of accepting the bid that EnviroPower had submitted in response to the RFP. The Commission denied EnviroPower's intervention, and the Court of Appeals affirmed the denial of intervention, holding that as a mere bidder in response to an RFP, EnviroPower had no vested interest that would entitle it to intervene in the Commission's proceedings. Here, as a mere bidder, Khanjee has no vested or special interest in any issue before the Commission in this proceeding, and it is not likely to present issues or develop facts that would assist the Commission without unduly complicating or disrupting the proceedings. Allowing Khanjee to intervene would undermine the integrity of the competitive nature of

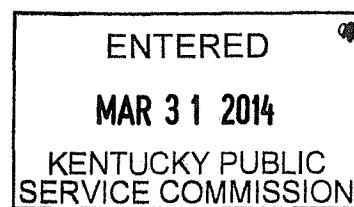
the RFP process by permitting Khanjee access to potentially confidential information submitted by other bidders to the Joint Applicants' RFP and frustrate the finality of the RFP process.

Khanjee will have ample opportunity to participate in this proceeding even though it is not granted intervenor status. It can review all public documents filed in this case and monitor the proceedings via the Commission's website at the following web address: [http://psc.ky.gov/efs/efs\\_search.aspx?case=2014-00002](http://psc.ky.gov/efs/efs_search.aspx?case=2014-00002).

Khanjee may file comments as frequently as it chooses, and those comments will be entered into the record of this case. Finally, the Commission will provide Khanjee an opportunity to present any information that it wishes for the Commission to consider in this matter at the beginning of the formal evidentiary hearing to be held on July 8, 2014, at 10:00 a.m. Eastern Daylight Time, in Hearing Room 1 of the Commission's offices.

IT IS THEREFORE ORDERED that Khanjee's motion to intervene is denied.

By the Commission



ATTEST:

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Executive Director

Case No. 2014-00002

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