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March 21, 2017

Jeff Derouen, Executive Director
Kentucky Public Service Commission
P.O. Box 615
211 Sower Boulevard
Frankfort, Kentucky 40601

Re: Case No. 2014-00002

Dear Mr. Derouen:

Please find enclosed the original Khanjee Infrastructure Development, LLC's Reply to Louisville Gas and electric Company's and Kentucky Utilities Company's Response to Khanjee Infrastructure Development, LLC's Motion to Intervent. in the above-referenced docket.

By this letter we are requesting that this Reply be entered into the record and served to the appropriate parties. Please place this document of file.

Very Truly Yours



Akhtar Ali Khan
Khanjee Infrastructure Development,
LLC

COMMONWEALTH OF KENTUCKY

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BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY

MAR 24 2014

PUBLIC SERVICE
COMMISSION

In the Matter of:

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

**KHANJEE INFRASTRUCTURE DEVELOPMENT, LLC'S REPLY TO LOUISVILLE GAS AND
 ELECTRIC COMPANY'S AND KENTUCKY UTILITIES COMPANY'S RESPONSE TO
 KHANJEE INFRASTRUCTURE DEVELOPMENT, LLC'S MOTION TO INTERVENE**

Comes Khanjee Infrastructure Development, LLC ("Khanjee") for its reply to the response to Khanjee's Motion to Intervene (the "Response") filed by Louisville Gas and Electric Company (LG&E and Kentucky Utilities Company are "Applicants"), states as follows

The Kentucky Public Service Commission ("Commission") explained in a recent Big Rivers case how it analyzes motions to intervene:

In analyzing the instant petition to intervene, the Commission finds that the only person that has a statutory right to intervene is the AG, pursuant to KRS 367.150(8)(b). Intervention by all others is permissive and is within the sound discretion of the Commission. In the recent unreported case of *EnviroPower, LLC v. Public Service Commission of Kentucky*, No. 2005-CA-001792-MR, 2007 WL 289328 (Ky. App. Feb. 2, 2007), 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 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 seeking intervention have an interest in the rates or 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 4(1)(b) requires that a person 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.¹

¹ Order dated April 17, 2013, in the *Matter of Application of Big Rivers Electric Corporation for an Adjustment of Rates*, PSC Case No. 2012-00535 (footnotes omitted); see also Order dated October 2, 2012, in *In the Matter of Application of Louisville Gas and Electric Company for an Adjustment of its Electric and Gas Rates, a Certificate of Public Convenience and Necessity, Approval a/ Ownership a/ Gas Service lines and Risers, and a Gas line Surcharge*, PSC Case No. 2012-00222.

Khanjee satisfies these criteria because it has a special contribution in this proceeding which is not otherwise adequately represented, and Khanjee intervention is likely to present issues and develop facts that will assist the Commission in fully considering the matter without unduly complicating or disrupting the proceeding. For these reasons, the Commission should exercise its "sound discretion" to permit intervention by Khanjee.

- I. Khanjee has the unique and special skills and abilities needed by the Kentucky Public Service Commission required to choose "the least reasonable cost solution to meet the need from the dozens of proposals made", particularly in terms of analyzing greenfield construction.

The Applicants argue that Khanjee has no special interest in this proceeding that is not otherwise adequately represented. Khanjee is a long-term, experienced, successful member of the Independent Power Producer ("IPP") Community, dating back to its role in structuring the Hub Power Project, which the World Bank recognized as a landmark of infrastructure finance achievement.

"The 1292 MW, \$1.6 billion Hub Power Project was hailed as a landmark in the field of infrastructure finance at the time of financial close in 1995. It set an important precedent for the viability of private finance for a major infrastructure project in a developing country...The complex suite of documentation developed together with experience gained by Pakistan officials and institutions during its six years of project development led to the adoption of a Private Power Policy in 1994. Under this policy, 19 independent private power projects (IPPs) reached financial close in record time for an additional 3400 MW...It was described as "the best energy policy in the whole world" by the US Secretary of Energy following a trip to Karachi in September 1994. That same year, the Hub Power

Project was named project finance “Deal of the Year” by Euromoney Institutional Investor.”²

Khanjee also notes that The Regulatory Assistance Project, an independent, global, non-profit team of experts (all of RAP’s principals and senior associates are former regulators) which focused on the long-term economic and environmental sustainability of the power and natural gas sectors by providing technical and policy assistance to policymakers and regulators on a broad range of energy and environmental issues, has commented extensively on the importance of regulators in monitoring investments in new power supply resources:

“Several commissions have required regulated utilities to conduct open competitive bidding when new power supply resources are needed. The utility is often allowed to bid in the process, but if a non-utility provider offers an equivalent product at a lower cost, the utility is obligated to buy the lower-cost power...Other states have gone further, as described in Section 4.4.1, by requiring utilities to divest their power plants and requiring that all power for consumers be provided by other suppliers.”³

“Regulation is an exercise of the police power of the state, over an industry that is ‘affected with the public interest.’ Its need arises primarily from the monopoly characteristics of the industry, and its general objective is to ensure the provision of safe, adequate, and reliable service at prices (or revenues) that are sufficient, but no more than sufficient, to compensate the regulated firm for the costs (including returns on investment) that it incurs to fulfill its obligation to serve.”⁴

We also note that the Commission has allowed Sierra Club to intervene in proceedings before it because of the expertise Sierra Club offers on subjects under

² The International Bank for Reconstruction and Development/The World Bank, Energy and Mining Sector Board Discussion Paper, Paper No. 14, May 2005, *Lessons from the Independent Private Power Experience in Pakistan*.

³ *The Regulatory Assistance Project*, 50 State Street, Suite 3, Montpelier, VT 05602, www.raponline.org, Electricity Regulation in the US: A Guide, March 2011, Section 20.2.4, p 62 and Section 10.2.5, p 63.

⁴ *The Regulatory Assistance Project*, 50 State Street, Suite 3, Montpelier, VT 05602, www.raponline.org, Electricity Regulation in the US: A Guide, March 2011, pp. 5 and 6.

consideration by the Commission, even though Sierra Club would not typically qualify for intervention under the Commission's regulations.⁵

2. Khanjee is the only requested intervener which has proposed a new construction option of a “like kind” to that recommended by the Applicant..

The regulatory limitation of 807 KAR 5 :00 1, Section 4(11)(b) requires that a person 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.

Khanjee satisfies these criteria because it is a person who has proposed to provide reliable capacity and energy to Applicants which it believes will provide a least cost power supply resulting in the opportunity for least cost customer rates for Applicants’ customers which is a charge of the Commission. There has been no demonstration of fact that the Green River facility, as evaluated by the biased analysts of Applicants, proposed to be built by Applicant is

⁵ See Order dated July 11, 2011, *In the Matter of The 2011 Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company*, PSC Case No. 2011-00140 (“The Commission is, however, 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 this IRP case, such as energy efficiency, demand-side management, and resource planning. The NRDC and Sierra Club have intervened in similar proceedings in other states. The Sierra Club was previously granted intervention in an IRP proceeding involving East Kentucky Power Cooperative, Inc., and the Petitioners are represented by experienced counsel. Therefore, the Commission finds that intervention by the Petitioners is likely to present issues or develop facts that will assist the staff in its review of the KU and LG&E IRP without complicating or disrupting the review”) (footnote omitted); Order dated December 14, 2011, in *In the Matter of Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for a Certificate of Public Convenience and Necessity and Site Compatibility Certificate for the Construction of a Combined Cycle Combustion Turbine at the Cane Run Generating Station and the Purchase of Existing Simple Cycle Combustion Turbine Facilities from Bluegrass Generation Company, LLC in La Grange, Kentucky*, PSC Case No. 2011-00375 (“The Commission is, however, persuaded that the NRDC and Sierra Club, acting on behalf of their Kentucky members, do possess expertise on issues that are within the scope of this proceeding, such as whether generation supply options proposed by KU and LG&E are reasonable and cost-effective in light of a full range of available alternatives. The Commission notes that the NRDC and Sierra Club have intervened in similar proceedings in other states and that Petitioners are represented by experienced counsel. Therefore, the Commission finds that intervention by Petitioners is likely to present issues or develop facts that will assist in the review of KU's and LG&E's CPCN request without unduly complicating or disrupting the review”).

the most reliable and least cost facility. Khanjee notes however that it is the only entity requesting intervention that has offered its own self-build and which has the expertise to explain its terms and to assist the Commission in its important, but technically challenging, work. We note that Applicant seems to have made an error by limiting its review of its new construction proposal versus the “best bid” price received which was not a new construction option. We believe that the Applicant needs to perform its analysis and reach its conclusion of superiority by comparing its proposed new construction and demonstrate superiority to any new construction proposals it has received.

3. Khanjee believes that the Applicant has reached conclusions about the terms of its bid that are both erroneous and without Khanjee’s ability to provide feedback, explanation or corrections.

Khanjee has reviewed the Applicants submitted materials related to its review of its requested Bids for power and has uncovered apparent mistakes. We expect that we will go through our bid and the proposed Applicant project in some detail at the appropriate time, but we must note that our bid was extensive and complex and that the Applicant never undertook the extensive follow up that in our experience is required for an accurate assessment, whatever our Bid terms. Examples of definite misinterpretation include:

News media indicates that the Applicants price was \$1000/KW. The Khanjee proposed plant price was substantially less than that. The Khanjee fixed cost bid was priced to be competitive with the current extremely low wholesale market in the initial years and then incline

over the years to recover the required present value of the costs and return on investment. These facts are known only by Khanjee and can be demonstrated to the Commission only by Khanjee. Khanjee firmly believes that its proposal was less costly than that of the Applicant, but must be an intervenor to demonstrate such. Thus the Khanjee proposal has been misinterpreted and misread.

Applicant requested bids for a 20 year period starting in 2015. However, in their application for the Green River facility, Applicant indicates that the analysis was made over the 30 year period of 2013 through 2042 as stated in Applicants testimony Exhibit DDS-1, page 17. It is standard practice that any evaluation of alternatives must be made over the same time period. Khanjee provided data for a 20 year period as requested in the RFP and could have provided data for the 2013-2042 period if it had been requested.

Had the Applicant request for power supply been initially made for the 2013 through 2042 time period, Khanjee would have provided a complete plan for the total time period.

It is evident that no other person can provide the issues or facts concerning Khanjee's bid or what they would have provided during the period over which Applicants evaluated their own after the fact self build option. For example, Khanjee would have been happy to provide market power from 2013 and continue to provide service from its proposed plant in 2017 or 2018 through 2042 which we assert was the least costly during the requested RFP period and would have been least costly during the 2013 to 2042 period. In fact Khanjee would have been willing to provide power beyond 2042 if requested.

4. Applicants seek to disqualify Khanjee simply on the base of its status as a bidder. If Khanjee can meet the other criteria for intervention, its bidder status is irrelevant.

In a recent decision in the case of the Commission allowed intervention of a non-customer, potential competitor of Delta. The Order states:

In the unreported case of EnviroPower, LLC v. Public Service Commission of Kentucky, No. 2005-CA-001792-MR, 2007 WL 289328 (Ky. App. Feb. 2, 2007) 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 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 seeking intervention have an interest in the rates or 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 4(11), **requires that a person 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.** [emphasis added]. In granting the intervention, the Commission found: "The Movants have demonstrated that they have some expertise in operating CNG fueling stations in a competitive environment"⁶

While the order does not state it directly, it is implicit in the ruling that the Movants have a special interest in the case that cannot otherwise be represented by the Attorney General, i.e. its expertise in the subject matter of the case. The same can be said of Khanjee in this case. It has a special interest in the subject of this case in being the least cost option for the Applicants and participation as an intervener will develop facts that assist the Commission in considering the application. If Khanjee is not a party, the Commission will not have access to that information

⁶ "Application Of Delta Natural Gas Company, Inc. For An Order Declaring That It Is Authorized To Construct, Own And Operate A Compressed Natural Gas Station In Berea, Kentucky", Case No. 2013-00 February 24,2014, *supra*, p.5.

and will not be able to compare the financial and operational cost associated with the Khanjee option for the study period to that of the Applicants. Citing precedent, the Commission granted intervention to the Sierra Club stating:

The Commission is, however, persuaded that the NRDC and Sierra Club, acting on behalf of their Kentucky members, do possess expertise on issues that are within the scope of this proceeding, such as whether generation supply options proposed by KU and LG&E are reasonable and cost-effective in light of a full range of available alternatives.⁷

It clearly meets the standard for intervention the regulation gives the Commission broad discretion to determine the existence of "special interest" and to determine if a movant's interests are adequately represented by another party. Only one criterion needs to be met to warrant intervention. With no other party having the same relationship with the Applicants or the same ability to present evidence relevant to the issues in the application, Khanjee should be recognized as a critical party to the full examination of the proposal presented by the Applicants.

In conclusion, Khanjee notes that the Commission must allow "intervention of any party which is able to present issues or develop facts that assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings;" and, that the universal principal of jurisprudence states that any consideration undertaken requires that such decision is free of substantial error, procedural error, or any misreading or misinterpreting of the record. Khanjee, prima facie, believes that evidence of substantial error; procedural error; and, misreading or misinterpreting of the record is present in the Applicant's filing. Khanjee further believes that it is uniquely capable to assist the Commission to ensure that such errors are rectified. We note: 1) that Applicant is requesting approval of construction of a new greenfield plant, and that LG&E's proposed new plant has not been correctly compared to other new-build

⁷ Certificate Of Public Convenience And Necessity And Site Compatibility Certificate For The Construction Of A Combined Cycle Combustion Turbine At The Cane Run Generating Station And the Purchase of an Existing Simple Cycle Combustion turbine Facilities From Bluegrass Generation Company, LLC In Lagrange, Kentucky December 14, 2011, p.8.


bids, but, surprisingly, has only been compared to bids from other supply sources (Substantial Error); 2) that a process to ensure a “level playing field” for all competing parties, including LG&E as a potential bidder, was not followed (Procedural Error); and, 3) that the Applicant’s understanding of the Khanjee bid is inaccurate (Misreading or Misinterpreting of the Record). Without Khanjee intervention, not only will the Commission be deprived of essential information, but the other interveners will also lack the ability to review that information and examine the Electricity Regulation in the US: A Guide, March 2011, Section 20.2.4, p 62 and Section 10.2.5 details of the Applicants' proposal. The result is a limited analysis of information available from the Applicants for the critical determination of the least cost option.

For these reasons, Khanjee requests that it be granted intervention in this matter.

Respectively submitted,

Khanjee Infrastructure Development, LLC

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