

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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COMMISSION

In the Matter of:

The 2012 Integrated Resource Plan of
East Kentucky Power Cooperative, Inc.

)
) CASE NO. 2012-00149
)

REPLY IN SUPPORT OF THE MOTION OF SONIA MCELROY AND SIERRA CLUB
TO COMPEL EAST KENTUCKY POWER COOPERATIVE TO RESPOND TO
INTERVENORS INITIAL REQUESTS FOR INFORMATION

In their Motion to Compel, Intervenor Sonia McElroy and Sierra Club (collectively, “Intervenors”) explained how East Kentucky Power Cooperative’s (“EKPC” or “Company”) responses to Intervenor’s initial requests for information were wholly inadequate. EKPC entirely or partially failed to respond to thirteen of Intervenor’s requests, and withheld the responses to eight other requests on the grounds that such responses are purportedly entitled to confidentiality protection. Perhaps realizing some of its errors, EKPC responded to Intervenor’s Motion by producing some of the requested information and documents. The Company, however, has still failed to respond to a number of Intervenor’s initial requests and made no effort in its response brief to justify such failure. As such, the Commission should compel EKPC to respond to Intervenor’s initial requests for information numbers 17, 19, 21, 24, 25, and 44. In addition, the Commission should provide Staff and Intervenor an opportunity to submit additional information requests regarding EKPC’s responses within ten days of when the Company fully responds to Intervenor’s initial requests.

I. Six of Intervenor's Initial Requests Remain Unanswered

More than two months after Intervenor's submitted their initial requests for information, EKPC has still failed to fully respond to six of Intervenor's initial requests. And in its response brief the Company did not even attempt to justify such failure by raising valid objections or explaining how its previous responses were purportedly adequate. As such, the Commission should compel responses to the following requests.

A. Request 17

Three portions of Request 17 remain unanswered. First, EKPC has not clarified whether any of the "five lowest cost" resource optimization plans identified in Table 8.5(a) on page 162 of the IRP included the retirement of any of EKPC's coal-fired generating units. Second, if retirements were included, EKPC did not identify which units and when they would be retired. Or, if retirements were not included, EKPC did not explain why not. Third, for the only pollution control installation included in those resource plans – a dry scrubber on Cooper Unit 1 – EKPC failed to identify the capital cost.

In its response brief, EKPC did not even attempt to explain how its initial statement that it "has no plans to retire any of its coal-fired generating units" was purportedly responsive to Request 17. Nor did the company offer any other explanation for failing to fully respond to Request 17. Instead, EKPC stated simply that it "has no additional information to provide." (EKPC Resp. Br. at 1). Given that EKPC provided no responsive information to begin with, and that EKPC has not and could not demonstrate that the requested information is somehow irrelevant or otherwise not subject to disclosure, the Commission should compel EKPC to fully respond to Request 17.

B. Requests 19 and 21

With regards to Requests 19 and 21, EKPC reiterates its unsupported claim that emission rates and emissions testing for the Company's coal units is somehow not relevant to the IRP proceeding. (EKPC Resp. Br. at 4). In its response, however, EKPC offered no explanation for how emissions testing and data that is discussed in its IRP and that is being done "to determine the best way to achieve compliance with" the U.S. EPA's Mercury and Air Toxics Standards, (IRP at p. 172), is somehow irrelevant to the IRP. The reality, of course, is that such testing and data is relevant and, therefore, EKPC should produce it. (Intervenors Mot. at 10).

EKPC also contends that the emissions testing data sought in Request 19 is "available through the EPA Information Collection Request" ("ICR"). (EKPC Resp. Br. at 4). But the EPA's ICR stopped collecting emissions testing data in January 2011, <https://utilitymactier.rti.org/>, while the EKPC testing at issue "is ongoing and is being conducted as part of an extensive engineering effort." (IRP at 172). Reference to an ICR that closed more than a year-and-a-half ago plainly does not qualify as a response to requests for the results of ongoing emissions testing, identification of additional testing EKPC plans to undertake, and the schedule by which EKPC plans to complete such testing. And while some of the information sought in Requests 19 and 21 may be available if Intervenors submitted a public records request to U.S. EPA and/or the Kentucky Division of Air Quality, it is plainly much more easily accessible to and producible by EKPC. As such, the Commission should compel EKPC to fully respond to Requests 19 and 21.

C. Request 24

Request 24, which seeks information about pollution controls that EKPC "has committed" to install at Cooper Unit 1 (IRP at 176), remains unanswered. In its response brief,

EKPC offers no explanation for how the Company's apparent hope that it will be allowed to avoid satisfying the commitment to install controls justifies EKPC's refusal to provide information about those controls. Instead, EKPC simply notes that it "has no additional information to provide." (EKPC Resp. Br. at 2). But it strains credulity for EKPC to suggest that it has no information about the costs, heat rate penalty, or comparative economics of pollution controls the Company "has committed" to installing. Given that EKPC has not and could not demonstrate that the requested information is somehow irrelevant or otherwise not subject to disclosure, the Commission should compel EKPC to fully respond to Request 24.

D. Request 25

Request 25, which seeks information and analysis of the need to install pollution controls at any of EKPC's coal-fired generating units, remains unanswered. In its response brief, EKPC rests on its initial inadequate answer, stating only that it "has no additional information to provide." (EKPC Resp. Br. at 2). But it strains credulity for EKPC to suggest that it has not evaluated the need to install pollution controls at any of its coal units in the past few years, especially given that the Company committed to installing pollution controls at Cooper Units 1 and 2. EKPC has not and could not explain how analyses of those controls, or any other consideration of the need to install controls, are not relevant or otherwise not subject to disclosure. As such, the Commission should compel EKPC to fully respond to Request 25.

E. Request 44

While EKPC provided a written response to Request 44 – which sought identification and production of any demand side management ("DSM") potential study performed by or for EKPC in the past five years – the Company has failed to produce the single study, carried out by the Electric Power Research Institute ("EPRI") that it identified. The fact that EKPC did not rely on

the EPRI study does not demonstrate a lack of relevance of that study to the IRP (Intervenors Mot. at 8), and EKPC has offered no argument to the contrary. As such, the Commission should compel EKPC to produce the EPRI DSM potential study.

II. Intervenors Reserve Their Rights With Regards to Other Requests for Information.

In its response, EKPC states that it is producing a CD with various workpapers, source documents, and modeling input and output files in response to Requests 3 and 4. (EKPC Resp. Br. at 3). Intervenors' counsel has not yet received such CD as of the time of the filing of this reply,¹ but would note that it is unclear from EKPC's response brief whether the Company has produced workpapers and modeling input and output files related to identification and optimization of the proposed resource plan (IRP at 157-164), or the modeling input and output files for the DSMore modeling undertaken by EKPC to evaluate demand side management. As such, Intervenors reserve their right to pursue further relief from the Commission if EKPC's responses to Requests 3 and 4 remain inadequate.

EKPC also did not clarify in its response brief what responsive information that is purportedly subject to confidentiality protection the Company will produce in the event that the parties agree to a protective order. (EKPC Resp. Br. at 4-5). As such, Intervenors reserve their right to pursue further relief from the Commission if EKPC is not forthcoming with producing responses to any of those requests after a protective order is signed.

¹ In their initial requests, Intervenors instructed EKPC to send any responses to Sierra Club's office in San Francisco, which is where one of Intervenors' counsel on this proceeding works. EKPC instead sent the responses to the Post Office box address for the Kentucky Sierra Club chapter, thereby necessitating a local Sierra Club member picking the responses up at the Post Office and shipping them to counsel. EKPC's counsel has not, as of the time of the filing of this brief, confirmed whether EKPC sent the CD that accompanied its response brief here to the San Francisco office as instructed in Intervenors' initial requests.

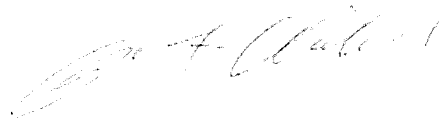
III. The Commission Should Allow an Opportunity for Additional Information Requests After EKPC Fully Responds to Intervenors' Initial Requests.

In its response brief, EKPC did not dispute that its inadequate responses to Intervenors' initial requests has hindered the ability of Intervenors and Staff to further investigate, through supplemental information requests, issues raised in EKPC's responses. (Intervenors Mot. at 11). In order to ensure that a transparent process occurs in this IRP proceeding, the Commission should allow Intervenors and Staff to submit additional requests for information regarding EKPC's responses to the initial requests within ten days after a full response to those requests is provided by the Company.

IV. Conclusion

For the foregoing reasons, Intervenors request that the Commission compel EKPC to fully respond to Intervenors' initial requests for information numbers 17, 19, 21, 24, 25, and 44 by a date certain, and to continue the case schedule so as to allow Intervenors and Staff to file additional requests for information within 10 days after the date of such production.

Respectfully submitted,



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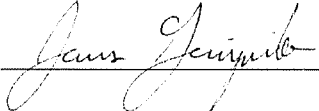
Dated: August 14, 2012

CERTIFICATE OF SERVICE

I certify that I had filed with the Kentucky Public Service Commission and served a copy of this **REPLY IN SUPPORT OF THE MOTION OF SONIA MCELROY AND SIERRA CLUB TO COMPEL EAST KENTUCKY POWER COOPERATIVE TO RESPOND TO INTERVENORS INITIAL REQUESTS FOR INFORMATION** via electronic mail and U.S. Mail on August 14, 2012 to the following:

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