

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

2012 INTEGRATED RESOURCE PLAN OF) CASE NO.
EAST KENTUCKY POWER COOPERATIVE,) 2012-00149
INC.)

ORDER

On October 31, 2012, Sonia McElroy and Sierra Club (collectively "Sierra Club") filed a revised motion to compel and for a continuance of the current procedural schedule. Sierra Club requests that East Kentucky Power Cooperative, Inc. ("EKPC") be compelled to fully respond to Sierra Club's Initial Requests for Information, Item Nos. 19(b), 19(c), 21, and 28(a). Sierra Club contends that EKPC's failure to fully disclose relevant information has hindered Sierra Club's ability to fully evaluate EKPC's analysis of a least-cost resource plan, and that it will not be able to adequately comment on the reasonableness of the assumptions, projections, and analyses that went into EKPC's integrated resource plan. As such, Sierra Club also requests that the current deadline for the filing of intervenor comments be continued until one month after EKPC provides a full response to the subject discovery requests.

Sierra Club points out that the Commission's September 7, 2012 Order compelled EKPC to fully respond to Item Nos. 19(b), 19(c), and 21 of Sierra Club's Initial Requests for Information and that, despite being compelled to do so, EKPC has yet to comply. With respect to Item Nos. 19(b) and (c), which sought information concerning emissions testing that EKPC has conducted, or intends to conduct, to

determine the best way to achieve compliance with the Mercury and Air Toxics Standards (“MATS”), and Item No. 21, which sought information regarding emission rate and annual emissions from EKPC’s coal-fired generating units, Sierra Club contends that EKPC has failed to produce responsive information, instead claiming that the Commission’s September 7, 2012 Order compelled only disclosure of information already publicly available with various governmental agencies.

With respect to Item No. 28(a), which requested the annual environmental capital expenditures for each year from 2012 through 2016 for each of EKPC’s coal units, Sierra Club asserts that EKPC has refused to provide the relevant information on the unfounded basis that the information sought to be disclosed is protected by the attorney-client privilege and the attorney-work-product doctrine.

Having reviewed the motion, the evidentiary record, and being otherwise sufficiently advised, the Commission finds that Sierra Club has established good cause to compel EKPC to fully respond to the discovery items at issue. With respect to Item Nos. 19(b), 19(c), and 21, we note that our September 7, 2012 Order directed EKPC to “provide **all** of the information required of it in order to comply with Items 19 and 21 of Sierra Club’s June 8, 2012 Initial Request for Information.”¹ Therefore, in addition to the information provided on September 21, 2012 concerning the Information Collection Request reports available from the U.S. Environmental Protection Agency or the Kentucky Division of Air Quality, EKPC is required to disclose information on any emissions testing it has conducted, or intends to conduct, relating to MATS compliance. EKPC is also required to disclose information regarding the emissions rates for various pollutants at each of its coal-fired generating units.

¹ September 7, 2012 Order, p. 3 (emphasis added).

The Commission finds that EKPC has provided no sufficient justification for refusing to disclose the information sought in Item No. 28(a). We note that on October 19, 2012, EKPC filed confidential information responsive to the other subparts of Item No. 28 (i.e., the annual non-environmental capital expenditures, as well as the operating and maintenance expenditures for the Dale, Cooper, and Spurlock generating stations from 2012 through 2016). EKPC declined to provide information concerning the environmental capital expenditures, asserting that such information was protected by the attorney-client privilege and the attorney-work-product doctrine. EKPC, however, has provided no justification for asserting those privileges. Sierra Club, therefore, is entitled to discovery of such information.

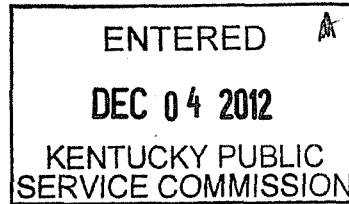
In light of this ongoing discovery dispute, the Commission further finds that the current procedural schedule should be modified to allow Sierra Club a reasonable time to file its comments.

IT IS THEREFORE ORDERED that:

1. Sierra Club's motion to compel is granted.
2. EKPC shall provide further information, as described herein, in response to Item Nos. 19(b), 19(c), and 28 no later than December 10, 2012.
3. The current procedural schedule for this proceeding, as established by the September 17, 2012 order, shall be amended as follows:
 - a. Any party desiring to file written comments on EKPC's integrated resource plan or request an informal conference shall do so no later than January 4, 2013.

b. EKPC shall file any written responses to the comments filed by any party no later than January 18, 2013.

By the Commission



ATTEST:

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Executive Director

Case No. 2012-00149

Joe Childers
Joe F. Childers & Associates
300 Lexington Building
201 West Short Street
Lexington, KENTUCKY 40507

Mark David Goss
Goss Samford, PLLC
2365 Harrodsburg Road, Suite B130
Lexington, KENTUCKY 40504

Kristin Henry
Staff Attorney
Sierra Club
85 Second Street
San Francisco, CALIFORNIA 94105

Honorable Michael L Kurtz
Attorney at Law
Boehm, Kurtz & Lowry
36 East Seventh Street
Suite 1510
Cincinnati, OHIO 45202