

# Goss ■ Samford PLLC



December 20, 2012

Mr. Jeff Derouen  
Executive Director  
Kentucky Public Service Commission  
211 Sower Boulevard  
Frankfort, KY 40601

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DEC 20 2012

PUBLIC SERVICE  
COMMISSION

Re: PSC Case No. 2012-00149  
In the Matter of: 2012 Integrated Resource Plan of East Kentucky Power  
Cooperative, Inc.

Dear Mr. Derouen:

Please find enclosed for filing with the Commission in the above-referenced case, an original and ten redacted copies of the Response of East Kentucky Power Cooperative, Inc. ("EKPC") to Revised Second Motion of Sonia McElroy and Sierra Club to Compel East Kentucky Power Cooperative to Respond to Intervenors Initial Requests for Information and for Continuance of Case Schedule. One copy of the designated confidential portions of the responses is enclosed in a sealed envelope.

Sincerely yours,

Mark David Goss

Cc: Parties of Record

**COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION**

**In the Matter of:**

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

**PETITION FOR CONFIDENTIAL  
TREATMENT OF INFORMATION**

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**PUBLIC SERVICE  
COMMISSION**

Comes now the petitioner, East Kentucky Power Cooperative, Inc. (“EKPC”) and, as grounds for this Petition for Confidential Treatment of Information (the “Petition”), states as follows:

1. This Petition is filed in conjunction with the filing of responses to Requests 19, 21 and 28a of the Revised Second Motion of Sonia McElroy and Sierra Club to Compel EKPC to Respond to certain information, and relates to confidential information contained in that filing that is entitled to protection pursuant to 807 KAR 5:001 Section 7 and KRS §61.878 (1)(c) 1, and related sections.

2. Disclosure of confidential information contained in the response to Request 28a relating to the estimated capital costs of future environmental projects to potential bidders in future EKPC requests for proposals could facilitate manipulation of bids, resulting in less competitive proposals and potentially higher future generation costs for EKPC. Such a situation would create an unfair commercial advantage to competitors of EKPC for the reasons stated and could artificially increase power costs to EKPC's member systems. Likewise, the disclosure of emissions testing in the responses to

Requests 19 and 21, contained on CD, would place EKPC at an unfair competitive advantage with other power generators in the state and region who could use these data to assess EKPC's position with regard to compliance with future regulations and use this assessment to bid more competitively than EKPC in power markets.

3. Along with this Petition, EKPC has enclosed one copy of confidential sections these responses, with the confidential information identified by highlighting or other designation, and 10 copies with the confidential information redacted. The identified confidential information is not known outside of EKPC and is distributed within EKPC only to persons with a need to use it for business purposes. It is entitled to confidential treatment pursuant to 807 KAR 5:001 Section 7 and KRS §61.878(1)(c) 1, for the reasons stated hereinabove, as information which would permit an unfair commercial advantage to competitors of EKPC if disclosed. The subject information is also entitled to protection pursuant to KRS §61.878(1)(c) 2 c, as records generally recognized as confidential or proprietary which are confidentially disclosed to an agency in conjunction with the regulation of a commercial enterprise.

WHEREFORE, EKPC respectfully requests the Public Service Commission to grant confidential treatment to the identified information and deny public disclosure of said information.

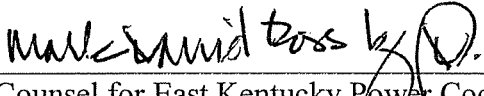
Respectfully submitted,



Mark David Goss  
Goss Samford, PLLC  
2365 Harrodsburg Road  
Suite B130  
Lexington, KY 40504  
*Counsel for East Kentucky Power Cooperative, Inc.*

**CERTIFICATE OF SERVICE**

This is to certify that an original and 10 copies of the foregoing Petition for Confidential Treatment of Information in the above-styled case were hand delivered to the office of the Public Service Commission, 211 Sower Boulevard, Frankfort, KY 40601 this 19th day of October, 2012. Further, this is to certify that copies of the foregoing Petition for Confidential Treatment of Information in the above-styled case were transmitted by first-class U.S. mail to: Hon. Michael L. Kurtz, Boehm, Kurtz and Lowry, 36 East Seventh Street, Suite 1510, Cincinnati, Ohio 45202; Joe Childers, Joe F. Childers & Associates, 300 Lexington Building, 201 West Short Street, Lexington, Kentucky 40507 and Ms. Kristin Henry Sierra Club, 85 Second Street, 2<sup>nd</sup> Floor, San Francisco, CA 94105 pursuant to 807 KAR 5:001, Section 7(2)(c).

  
\_\_\_\_\_  
Counsel for East Kentucky Power Cooperative, Inc.

**COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION**

**In the Matter of:**

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

**RESPONSE OF EAST KENTUCKY POWER COOPERATIVE, INC. TO  
REVISED SECOND MOTION OF SONIA MCELROY AND SIERRA CLUB TO  
COMPEL EAST KENTUCKY POWER COOPERATIVE TO RESPOND TO  
INTERVENORS INITIAL REQUESTS FOR INFORMATION AND FOR  
CONTINUANCE OF CASE SCHEDULE**

Comes East Kentucky Power Cooperative, Inc. (“EKPC”), by counsel, and tenders its response to the Revised Second Motion of Sonia McElroy and Sierra Club to Compel East Kentucky Power Cooperative to Respond to Intervenors Initial Requests for Information and for Continuance of Case Schedule (“Motion”). In support of this response, EKPC states as follows:

1. On December 4, 2012, the Commission entered an Order granting the Motion and, on December 14, 2014, granted EKPC an enlargement of time to respond to the Motion.
2. EKPC’s responses to requests outlined in Part II of the Motion are provided below.

**Responses 19a-c and 21.**

Additional stack testing data and mercury data collected by the Spurlock Unit 3 sorbent trap system is provided on the attached CD, labeled as Exhibit 1. These data are East Kentucky Power Cooperative Confidential Information and are being produced under the Confidentiality Agreement between EKPC and

Sierra Club in the 2012 IRP Proceeding (PSC Case No. 2012-00149), dated August 16, 2012. If these data were disclosed to the public by the Commission, EKPC would be placed at an unfair competitive advantage with other power generators in the Commonwealth [and in PJM] who could use these data to assess EKPC's position with regard to compliance with future regulations and use this assessment to bid more competitively than EKPC in power markets.

EKPC is not producing stack test collected by United Conveyor Corporation (UCC) while testing dry sorbent injection technology on Dale Units 3 and 4 and Cooper Unit 1 because these data were collected as part of an engineering study performed to allow attorneys representing EKPC to understand the technical issues necessary to provide effective advice on compliance options for future Clean Air Act regulations including the Mercury and Air Toxics Standards. EKPC also is not producing mercury data collected by Shaw Environmental, Inc. (Shaw) for Spurlock Unit 1 while testing enhanced mercury oxidation technology because these data also were collected as part of an engineering study performed to allow attorneys representing EKPC to understand technical issues necessary to provide effective advice on compliance options for future Clean Air Act regulations including the Mercury and Air Toxics Standards. Where engineers are retained to perform technical consulting work which is not intended to be disclosed to third parties, and is performed to allow attorneys to understand technical issues so that attorneys may effectively provide legal advice to their clients, it is well established that this work and the data collected as part of this work is Attorney-Client Communications which are Privileged and Confidential and are protected from disclosure. *Collins v. Braden*, 2012 WL 5285717 (KY 2012), see also, *U.S. v. Adlman*, 68 F.3d 1495 (2d Cir. 1995) (“[u]nder certain circumstances, . . . the privilege for communication with attorneys can shield communications to others when the purpose of the communication is to assist the attorney in rendering advice to the client.” *Id.* at 1499.).

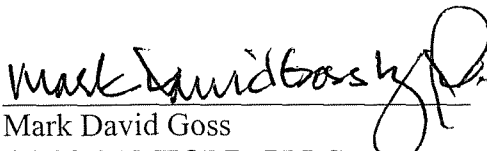
Finally, EKPC is not producing particulate matter data collected by Shaw because these data were collected through testing that deviated from various EPA reference method requirements and are not valid for assessing compliance.

3. EKPC's response to the requests outlined in Part III of the Motion is provided in Exhibit 2. Confidential protection of the information contained on CD has been requested in the form of a petition for confidential treatment.

WHEREFORE, EKPC has provided responses to reply to the Motion.

This 20<sup>th</sup> day of December, 2012.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Mark David Goss", is written over a horizontal line.

Mark David Goss  
GOSS SAMFORD, PLLC  
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Lexington, KY 40504  
(859) 368-7740  
[mdgoss@gosssamfordlaw.com](mailto:mdgoss@gosssamfordlaw.com)

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the above and foregoing response to the Revised Second Motion of Sonia McElroy and Sierra Club to Compel East Kentucky Power Cooperative to Respond to Intervenors Initial Requests for Information and for Continuance of Case Schedule was served upon the following persons by United States first class mail, postage prepaid, on the 20<sup>th</sup> day of December, 2012:

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

Sierra Club Cumberland Chapter  
P.O. Box 1268  
Lexington, KENTUCKY 40588

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

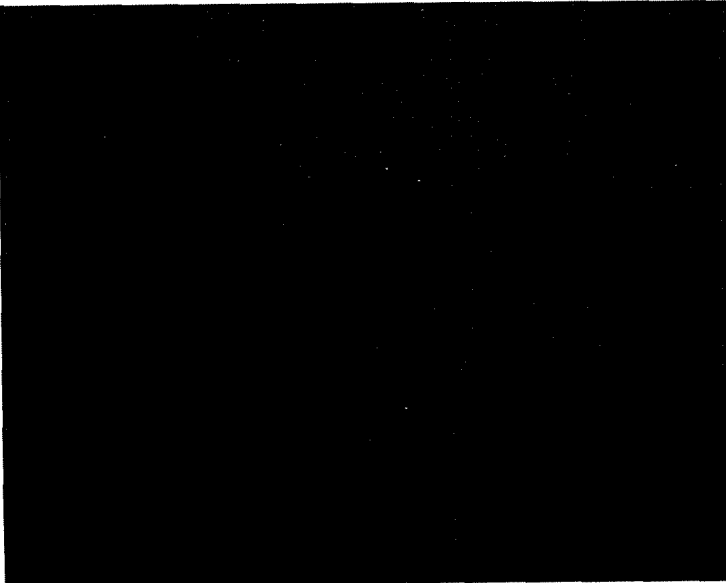
Kristin Henry  
Staff Attorney  
Sierra Club  
85 Second Street  
San Francisco, CALIFORNIA 94105



**Request 28.** Refer to p. 187 and Table 9-1 of the IRP. For each of the Cooper, Dale, or Spurlock coal-fired generating units, identify the following values used in the calculation of present value revenue requirements identified therein:

- a. The annual environmental capital expenditures for each year from 2012 through 2026.

**Response 28a.**

<b>Environmental Capital Expenditures</b>			
<b>Year</b>	<b>Dale</b>	<b>Cooper</b>	<b>Spurlock</b>
2012			
2013			
2014			
2015			
2016			
2017			
2018			
2019			
2020			
2021			
2022			
2023			
2024			
2025			
2026			