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PUBLIC SERVICE  
COMMISSION

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF KENTUCKY POWER )  
 COMPANY FOR APPROVAL OF ITS 2011 )  
 ENVIRONMENTAL COMPLIANCE PLAN, )  
 FOR APPROVAL OF ITS AMENDED )  
 ENVIRONMENTAL COST RECOVERY ) CASE NO. 2011-00401  
 SURCHARGE TARIFF, AND FOR THE )  
 GRANT OF A CERTIFICATE OF PUBLIC )  
 CONVENIENCE AND NECESSITY FOR THE )  
 CONSTRUCTION AND ACQUISITION OF )  
 RELATED FACILITIES )

**KENTUCKY POWER COMPANY’S RESPONSE TO THE ATTORNEY GENERAL’S  
 “MOTION TO ALTER OR AMEND COMMISSION’S TWO (2) ORDERS DATED  
 MARCH 1, 2012,” AND KENTUCKY POWER COMPANY’S MOTION TO AMEND  
 MARCH 1, 2012 SCHEDULING ORDERS**

Kentucky Power Company for its Response to the Attorney General’s Motion To Alter or Amend and for Kentucky Power’s Motion to Amend The March 1, 2012 Scheduling Orders states:

1. The December 28, 2011 Procedural Schedule ordered by the Commission established the following time frames for Intervenor testimony, discovery by Kentucky Power, and the preparation and filing of rebuttal testimony by Kentucky Power:

<u>Event</u>	<u>Date</u>	<u>Intervening Period</u>
Kentucky Power’s Responses to Intervenor Supplemental Data Requests	February 20, 2012	--
Intervenor Testimony	March 2, 2012	11 Days
Kentucky Power Data Requests to Intervenors	March 16, 2012	14 Days
Intervenor Responses To Data Requests	March 29, 2012	13 Days
Kentucky Power Rebuttal Testimony	April 10, 2012	12 Days

The time frames for Kentucky Power to review the testimony of the three Intervenors, to prepare any data requests, to analyze the responses, and prepare rebuttal testimony were extremely tight and significantly taxed the Company's ability to present its case and address the expected voluminous testimony of the Intervenors.

2. The March 1, 2012 Order granting Sierra Club an extension of time to file its testimony further compressed the time for Kentucky Power to address the testimony and claims of the Sierra Club:

<u>Event</u>	<u>Date</u>	<u>Intervening Period</u>	<u>Change In Days From December 28, 2012 Procedural Schedule</u>
Kentucky Power's Responses to Intervenor Supplemental Data Requests	February 20, 2012	--	--
Sierra Club Testimony	March 12, 2012	21 Days	+10 Days
Kentucky Power Data Requests to Sierra Club	March 22, 2012	10 Days	-4 Days
Sierra Club Responses To Kentucky Power Data Requests	March 30, 2012	8 Days	-5 Days
Kentucky Power Rebuttal Testimony	April 10, 2012	11 Days	-1 Days

3. Kentucky Power expects the Sierra Club to file extensive testimony that will require substantial time to review, to analyze, to prepare and review discovery concerning, and to prepare rebuttal testimony in response. In the 2010 Louisville Gas & Electric Company and Kentucky Utilities Company cases, for example, the Sierra Club filed the testimony of three witnesses totaling more than 90 pages.

4. The March 1, 2012 Schedule with respect to the Sierra Club is inadequate. By reducing the time available under the original scheduling order, the revised procedural schedule adversely affects Kentucky Power's ability to review and address the Sierra Club's claims and testimony. Applying the revised procedural schedule to all three of the Intervenors, as the Attorney General seeks in his motion,<sup>1</sup> will unquestionably prevent Kentucky Power from investigating and responding to the Intervenors' claims with competent evidence. It is not possible for the Company to review the expected testimony of the three Intervenor witnesses, to undertake discovery with respect to such testimony, and prepare rebuttal testimony within the period provided under the March 1, 2012 schedule. Certainly, the Intervenors were not required to do so.<sup>2</sup> Any application of the revised schedule to all three Intervenors will deny Kentucky Power due process. *See Mayfield Gas Co. v. Public Service Comm'n*, 259 S.W.2d 8, 10-11 (Ky. 1953) (defining a formal hearing within the requirements of due process "to include: (1) the right to seasonably know the charges; (2) the right to meet such charges by competent evidence; and (3) the right to be heard by counsel upon the probative force of the evidence adduced by both sides, and upon the law applicable thereto.")

5. Kentucky Power's agreement not to object to the Sierra Club motion for an extension was premised upon, *inter alia*, all other deadlines being extended a like amount.<sup>3</sup> Kentucky Power insisted on this condition because of the prejudice it will suffer in preparing its case if the already short time periods were reduced further. In addition, as set out in footnote 1 to the Sierra Club's motion for an extension, and as Kentucky Power made clear in its February

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<sup>1</sup> By e-mail message received at 4:52 EST on Thursday, March 1, 2012, the Sierra Club indicated it "support[ed] the Attorney General's motion to amend the Commission's two orders dated March 1, 2012."

<sup>2</sup> Under the March 1, 2012 revised schedule Kentucky Power will have 29 days between receipt of the Sierra Club's testimony and the date Kentucky Power's rebuttal testimony is due. Sierra Club, by contrast, will have had nearly three and one-half months to study Kentucky Power's testimony before filing its testimony.

<sup>3</sup> Kentucky Power also indicated it did not waive the statutory deadline established by KRS 278.183.

29, 2012 Response, the Company rejects the factual basis for any claim that an extension was required because Kentucky Power failed to live up to its discovery obligations. As the Attorney General notes at page 2 of his motion, “the Sierra Club acknowledged that Petitioner Kentucky Power has provided all the information the Sierra Club needs to file its testimony.”

The Company objects, for the reasons set forth above, to any extension that does not maintain the time periods set out in the December 28, 2011 Order.

6. By Kentucky Power’s calculations, the following schedule would maintain the time periods in the December 28, 2012 Order, while providing for Intervenor testimony to be filed on March 12, 2012:

<u>Event</u>	<u>Date</u>	<u>Intervening Period</u>
Intervenor Testimony	March 12, 2012	
Kentucky Power Data Requests to Intervenors	March 26, 2012	14 Days
Intervenor Responses To Kentucky Power Data Requests	April 8, 2012	13 Days
Kentucky Power Rebuttal Testimony	April 20, 2012	12 Days

Any hearing based this schedule should be set so as to allow the parties sufficient time to prepare for the hearing and to address settlement. The Company believes the parties should be afforded at least ten days between the filing of Kentucky Power’s rebuttal testimony and the hearing, and respectfully requests the hearing be rescheduled for April 30, 2012.

Wherefore, Kentucky Power Company respectfully requests:

(a) That the Attorney General's Motion to extend the period for the Intervenors to file their testimony be denied, except to the extent the remaining schedule is adjusted to maintain the time periods set forth in the Commission's December 28, 2011 Scheduling Order;

(b) That the Commission's March 1, 2012 Order granting the Sierra Club an extension to file its testimony be amended to implement the time periods set forth in the Commission's December 28, 2012 Scheduling Order (in which event Kentucky Power has no objection to the other Intervenors being granted the same extension as granted the Sierra Club);

(c) That any hearing in this matter be set for a date at least ten days following the filing by Kentucky Power of its rebuttal testimony; and

(d) Such further relief as may be appropriate

Respectfully submitted,

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COUNSEL FOR KENTUCKY POWER  
COMPANY

**CERTIFICATE OF SERVICE**

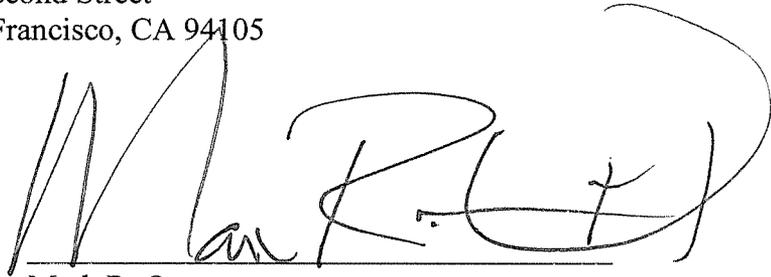
I hereby certify that a copy of the foregoing was served by e-mail and United States mail, upon the following parties of record, this 2<sup>nd</sup> day of March, 2012.

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Kristin Henry  
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A handwritten signature in black ink, appearing to read 'Mark R. Overstreet', is written over a horizontal line. The signature is stylized and cursive.

Mark R. Overstreet