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PUBLIC SERVICE  
COMMISSION

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In The Matter Of:

The Application Of Kentucky Power Company For:	)	
(1) The Approval Of The Terms And Conditions Of The	)	
Renewable Energy Purchase Agreement For Biomass	)	
Energy Resources Between The Company And	)	Case No. 2013-00144
ecoPower Generation-Hazard LLC; (2) Authorization	)	
To Enter Into The Agreement; (3) The Grant Of Certain	)	
Declaratory Relief; And (4) The Grant Of All Other	)	
Required Approvals and Relief	)	

**Kentucky Power Company’s Response in Opposition to the  
Attorney General’s Motion to Hold Case in Abeyance**

For its Response in Opposition to the Attorney General’s “Motion to Hold Case in Abeyance” (“Motion”) filed on June 5, 2013 Kentucky Power states.

A. The REPA Requires Orders in Both the Current Case and the Mitchell Transfer Case by September 11, 2013.

The Attorney General’s Motion is without merit, and if granted would be tantamount to a denial of the Company’s application by rendering it moot.

Section 6.1 of the ecoPower Renewable Energy Purchase Agreement (“REPA”) imposes a number of conditions precedent to the Company’s obligations under the REPA. Most pertinent to the Attorney General’s Motion is the requirement that the Commission issue the “Commission Approval Order” in this proceeding (the one the Attorney General seeks to abate) by October 15, 2013. REPA at 27. “Commission Approval Order” is defined in the REPA as:

a final, non-appealable order from the Commission, among other things, (i) approving the terms and conditions of this REPA without modification, (ii) declaring that concurrent recovery of costs associated with this REPA through Kentucky retail rates via a monthly rider or monthly surcharge to Purchaser’s base rates is appropriate (iii) approving and authorizing Purchaser to enter into this REPA ....

REPA at 6-7. Thus, if there is no final and non-appealable order granting the relief requested in this proceeding by October 15, 2013, Kentucky Power Company has a time-limited right to terminate the REPA under Section 6.1(A) with notice on or before November 15, 2013.

For the Commission's Order granting the requested relief in this case to become final and nonappealable by October 15, 2013, and hence possibly qualify as a Commission Approval Order, it must be entered by the Commission at least 34 days prior to October 15, 2013, or no later than September 11, 2013, to permit the time for appeals to lapse.<sup>1</sup> The Attorney General's Motion seeking to hold this proceeding in abeyance creates the risk, if not the certainty, that any Commission Order granting the requested relief will not become final and appealable by October 15, 2013, and thus not be capable of qualifying under the REPA as a "Commission Approval Order."

The Attorney General's Motion asks the Commission to delay the prosecution of this case pending the Commission's "resolution" of the Mitchell Transfer Case (Case No. 2012-00578.) But prior to any resolution of the Mitchell Transfer Case at least the following must occur:

- The July 10, 2013 hearing;
- Post-Hearing briefs; and
- The Commission's consideration of the record and briefs and preparation and issuance of an Order.

Past experience, and the Commission's extremely heavy work load, counsels it may be unrealistic to expect a decision in the Mitchell Transfer Case prior to mid-August.

If the Commission were to grant the Attorney General's Motion, it is unlikely this case could proceed prior to mid-August at the earliest. Yet, under the Commission's April 26, 2013

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<sup>1</sup> KRS 278.410(1).

Order, there are 51 days<sup>2</sup> remaining in the procedural schedule between today and the last scheduled event (the filing of the Company's rebuttal testimony on August 2). The yet-to-be scheduled hearing and post-hearing briefing would further extend the time required for the Commission to issue its Order granting the requested relief. If, as described above, an order in the Mitchell Transfer Case is not issued until the second full week of August, the 51 day (at a minimum) procedural schedule remaining in this case would mean that this case would not be ready for hearing until the first week of October, 2013. In short, granting the Attorney General's Motion would be tantamount to denying the Company's application.

The Attorney General's attempt to convert what clearly need to be parallel proceedings into sequential ones ignores the tight but necessary deadlines set forth in the REPA. The Attorney General may desire to not litigate the two cases simultaneously, but the facts necessitate otherwise.<sup>3</sup>

B. The Preliminary Results of the Company's 250 MW RFP have no Bearing on this Case.

The Attorney General also seeks support for its requested delay in the Commission's May 28, 2013 Order in Case No. 2012-00578. In that order, the Commission required that Kentucky Power file, no later than June 28, 2013, an analysis of the net present value revenue requirement of the bids received in response to the Company's March 28, 2013 Request for Proposals ("RFP").<sup>4</sup> While the Attorney General is correct in the Motion that responses to the RFP are due June 11, 2013, those proposals represent the starting point in exploring third party

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<sup>2</sup> If the Commission were to honor the Attorney General's unilateral effort discussed below to modify and extend the procedural schedule by "reserving" the right to file supplemental discovery requests, the time remaining before this case would be ready for hearing would be extended even further.

<sup>3</sup> Kentucky Power remains willing to enter into a Settlement Agreement with the Attorney General in conformity with the terms of the Memorandum of Understanding Regarding Stipulation and Settlement Agreement among the Company, Kentucky Industrial Utility Customers, Inc. and Sierra Club in Case No. 2012-00578. Doing so would allow the Attorney General to avoid the necessity of parallel proceedings.

<sup>4</sup> The Company's March 28, 2013 RFP sought up to 250 MW of long-term capacity and energy.

purchased power agreements, asset purchase or tolling agreement options and negotiations of terms and conditions for possible replacements for the capacity and energy from Big Sandy Unit 1. These proposals are not the final product. It is unclear from his motion why the Attorney General believes the filing of the preliminary results of a 250 MW RFP in a separate case necessitates the delay he requests. The filing of the RFP preliminary bid analysis, made in Case No. 2012-00578, has no bearing on this case or the REPA, and cannot be used to justify a delay that would be fatal to the REPA.

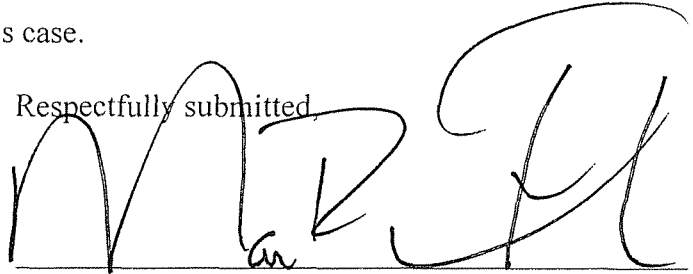
C. The Attorney General Cannot Unilaterally Modify The Commission's Procedural Schedule.

The Attorney General's Motion also unilaterally purports to reserve to the Attorney General alone the right to tender supplemental requests for information to the Company if and when the case is removed from abeyance, or otherwise re-opened by the Commission. Even if the Commission were to grant the Motion, which would be tantamount to denying the REPA without an evidentiary hearing, the Attorney General cannot unilaterally modify the procedural schedule by reserving the right to serve supplemental discovery. The Commission's April 26, 2013 order sets forth the procedural schedule for this matter and established June 5, 2013 as the deadline for the Attorney General to file supplemental requests for information. That date has come and passed, and the Attorney General did not file any supplemental requests for information. At a minimum, the Attorney General lacks the ability to modify the Commission's April 26, 2013 Order and to grant himself a de facto extension of time.

D. Conclusion.

For the reasons stated above, Kentucky Power Company respectfully requests that the Attorney General's Motion be denied and that the Attorney General not be permitted to file supplemental requests for information in this case.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Mark R. Overstreet', written over a horizontal line.

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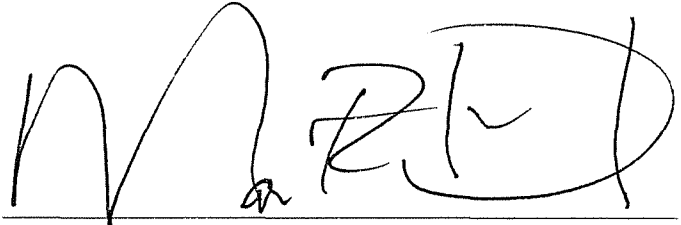
**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing was served by first class mail, postage prepaid, upon:

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on this the 12<sup>th</sup> day of June, 2013.

A handwritten signature in black ink, appearing to read 'M R Overstreet', written over a horizontal line.

Mark R. Overstreet