

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF EAST KENTUCKY POWER)	
COOPERATIVE, INC. FOR APPROVAL TO)	
AMEND ITS ENVIRONMENTAL COMPLIANCE)	CASE NO.
PLAN AND RECOVER COSTS PURSUANT TO)	2018-00270
ITS ENVIRONMENTAL SURCHARGE, AND FOR)	
THE ISSUANCE OF A CERTIFICATE OF PUBLIC)	
CONVENIENCE AND NECESSITY)	

ORDER

On October 3, 2018, East Kentucky Power Cooperative, Inc. (EKPC), filed an application requesting approval of certain amendments to its Environmental Compliance Plan (Compliance Plan); authority to recover the costs associated with the changes contained in the Compliance Plan through EKPC's existing environmental surcharge; and issuance of a Certificate of Public Convenience and Necessity (CPCN) to construct environmental pollution control facilities associated with the Compliance Plan. EKPC states that the proposed environmental facilities are required in order to comply with the U.S. Environmental Protection Agency's (EPA) Disposal of Coal Combustion Residuals from Electric Utilities Rule (CCR Rule); the EPA's Effluent Limitation Guidelines and Standards for the Steam Electric Power Generating Point Source Category (ELG Rule); and the Kentucky Division of Water's (KDOW) Kentucky Pollutant Discharge Elimination System (KPDES).¹

¹ Application at 1-2 and 9-10.

The Commission issued an Order on October 16, 2018, establishing a procedural schedule for the processing of this case. The procedural schedule provided for, among other things, a deadline for intervention requests, two rounds of discovery upon EKPC's application, an opportunity for any intervenor to file testimony, discovery upon any intervenor testimony, and an opportunity for EKPC to file rebuttal testimony. The only intervenor in this matter is the Attorney General of the Commonwealth of Kentucky, by and through the Office of Rate Intervention (Attorney General). EKPC filed responses to two rounds of data requests propounded by Commission Staff and the Attorney General. The Attorney General did not file testimony and, hence, no discovery was conducted on any intervenor nor was there any rebuttal testimony filed by EKPC. On February 12, 2019, EKPC filed a motion requesting that the matter be submitted for a decision based upon the existing record, waiving its right to a hearing, and informing that the Attorney General did not object to the request. The Commission finds that there are no material issues of fact to warrant a hearing and, accordingly, this matter is now submitted for a decision based upon the existing record.

BACKGROUND

EKPC is an electric utility that generates, transmits, and sells wholesale electricity to its 16 member distribution cooperatives.² Those distribution cooperatives, in turn, distribute and sell electricity at retail to approximately 530,000 customers in 87 counties in Kentucky.³ EKPC owns and operates a total of approximately 2,965 megawatts (MW) of net summer generating capability and 3,267 MW of net winter generating capability.⁴

² Application at 3.

³ *Id.*

EKPC's generation portfolio consists of coal-fired units, natural gas-fired units, landfill gas-to-energy facilities, a community solar facility, and power purchase agreements.⁵ EKPC's two coal-fired base load assets are the Hugh L. Spurlock Station in Mason County, Kentucky (Spurlock Station) and the John S. Cooper Station in Pulaski County, Kentucky (Cooper Station).

Spurlock Station - The Spurlock Station has four generation units totaling 1,346 MW.⁶ Spurlock Units 1 and 2 are each equipped with low nitrogen oxide burners, selective catalytic reduction (SCR) technology, electrostatic precipitators (ESP),⁷ wet flue gas desulfurization (FGD) scrubbers, and wet ESPs.⁸ Spurlock Units 3 and 4 utilize Circulating Fluidized Bed combustion technology, which is an environmental control technology, and are both equipped with selective non-catalytic reduction technology, dry FGD scrubbers, and baghouses.⁹ In Case No. 2017-00376,¹⁰ EKPC received approval to convert Spurlock Station's bottom ash handling system, construct a new wastewater treatment plant and fly ash storage silo, close and repurpose the on-site coal ash pond, and expand the existing landfill.¹¹

⁴ *Id.*

⁵ *Id.*

⁶ Application at 4.

⁷ Spurlock Unit 1 has a cold-side ESP, whereas Spurlock Unit 2 has a hot-side ESP.

⁸ Application at 5.

⁹ Application at 5–6.

¹⁰ Case No. 2017-000376, *Application of East Kentucky Power Cooperative, Inc. for Approval to Amend Its Environmental Compliance Plan to Recover Costs Pursuant to Its Environmental Surcharge, Settlement of Certain Asset Retirement Obligations and Issuance of a Certificate of Public Convenience and Necessity and Other Relief* (Ky. PSC May 18, 2018).

¹¹ Application at 5.

Cooper Station - The Cooper Station has two generation units with a combined generating capacity of 341 MW.¹² The Cooper Station uses a dry ash handling system and both units of the Cooper Station share a common FGD system with a pulse jet fabric filter.¹³ Cooper Unit 2 also has an SCR system.¹⁴ Accordingly, EKPC states that Cooper Station is well positioned to remain in compliance with existing environmental mandates.¹⁵

Applicable Environmental Standards – The EPA has promulgated the ELG Rule under the Clean Water Act (CWA), Mercury and Air Toxics Standards (MATS) under the Clean Air Act (CAA), and the CCR Rule under the Resource Conservation and Recovery Act.¹⁶ MATS requires mercury control systems and monitoring effective April 15, 2015.¹⁷ The ELG Rule became effective on January 4, 2016, and establishes revised effluent limitations and standards for various wastewater streams from several processes and byproducts at coal-fired steam electric generating plants.¹⁸ EKPC states that the ELG Rule establishes the best-available-technology-economically-achievable requirements for existing facilities.¹⁹ The CCR Rule became effective on October 19, 2015, and according to EKPC, its principal objectives are to: (1) impose structural integrity requirements to mitigate against catastrophic failures of CCR landfills and impoundments;

¹² Application at 6.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Direct Testimony of Jerry B. Purvis (Purvis Testimony) at 4, 7 and Application at 7.

¹⁷ Direct Testimony of Craig Johnson (Johnson Testimony), Attachment CJ-1.

¹⁸ Application at 9.

¹⁹ *Id.*

(2) protect groundwater through monitoring, location restrictions, and liner design criteria for landfills and impoundments; (3) impose operating protocols for CCR landfills and impoundments; (4) require record keeping, notification, and online posting obligations; (5) impose obligations for inactive CCR impoundments; (6) require administration of state programs to implement the CCR Rule; (7) set forth closure requirements for CCR landfills and impoundments; and (8) establish guidelines for beneficial reuse of CCR materials.²⁰ The CCR Rule applies to owners and operators, such as EKPC, of new and existing landfills and surface impoundments in which CCR materials are disposed of.²¹ EKPC states that the goal of the CCR Rule is to close ash ponds and landfills that pose a threat to public health and welfare.²²

In addition to the CCR Rule, the ELG Rule, and MATS, EKPC asserts that the KDOW's KPDES permitting process incorporates the ELG Rule and CWA 316(b) water quality-based effluent limitations.²³ EKPC states that the KDOW becomes the lead enforcement agency for the ELG Rule once the KPDES permit is issued.²⁴ EKPC further asserts that the same control equipment used to meet the ELG Rule requirements will also ensure compliance with its KPDES permit.²⁵ The Cooper and Spurlock Station's

²⁰ Application at 8–9.

²¹ *Id.* at 8.

²² Purvis Testimony at 9.

²³ *Id.* at 6 and EKPC's response to the Attorney General's First Request for Information (Attorney General's First Request), Item 6.

²⁴ Purvis Testimony at 6. *Also see* EKPC's response to the Attorney General's First Request, Item 6(a). EKPC received the final KPDES water permit, on October 23, 2018, which became effective on January 1, 2019.

²⁵ EKPC's response to the Attorney General's First Request, Item 7.

CCR landfills are special waste landfills permitted by the Kentucky Division of Waste Management. Lastly, EKPC maintains that it is also subject to the authority of the Ohio River Valley Water Sanitation Commission (ORSANCO), which was established to control and abate pollution in the Ohio River basin.²⁶ EKPC states that ORANSCO plans to protect human health by implementing additional limitations on the level of certain bacteria and chemical constituents.²⁷

PROPOSED AMENDMENTS TO COMPLIANCE PLAN

EKPC seeks authority to amend its Compliance Plan to modify one existing project (Amended Project 12) and include ten new projects (Projects 17–26). Of the total 11 proposed projects, all are completed and in service or were expected to be completed by the end of 2018,²⁸ with the exception of Project 26 and Amended Project 12. Project 26, for which EKPC is requesting a CPCN, involves a modification and expansion of the Coal Pile Runoff (CPR) pond at the Spurlock Station at an estimated capital cost of \$11.2 million.²⁹ Amended Project 12 involves, among other things, the construction of the Spurlock Station CCR landfill Phases 3 and 4, which will be completed in 2019.³⁰

Amended Project 12 and Projects 17–25 are associated with the Cooper Station CCR landfill, Cooper Station ash mixers, Spurlock Station CCR landfill, Spurlock Station

²⁶ Purvis Testimony at 29. ORSANCO is an interstate commission representing the states of Indiana, West Virginia, Ohio, New York, Illinois, Kentucky, Pennsylvania, Virginia, and Tennessee and the federal government to protect the drainage area basin of the Ohio River and to improve the water quality of the Ohio River and its tributaries.

²⁷ Purvis Testimony at 29–30.

²⁸ EKPC's response to Commission Staff's First Request for Information (Staff's First Request), Item 7.

²⁹ Application at 13.

³⁰ EKPC's response to Staff's First Request, Item 3(b).

MATS compliance, Spurlock Station site drainage, Spurlock Station's anhydrous ammonia tank, Spurlock Station's dry sorbent injection (DSI), and ash transfer at Spurlock Station.³¹ EKPC avers that the projects are necessary in order to maintain compliance with federal or state environmental regulations impacting coal-fired generation facilities and, with the exception of Project 26 for which it requests a CPCN, were completed in the ordinary course of business.³² EKPC further requests authority to recover the costs associated with the Amended Compliance Plan through its existing environmental surcharge.³³

In developing its compliance strategy, EKPC states that it took into account whether the measures, consistent with EKPC's strategic plan, will maximize returns on capital investments while also mitigating exposure to stranded costs in order to limit the impact on system reliability and exposure to future regulatory changes.³⁴ EKPC states that it also focused on protecting its existing investment in the Spurlock Station because the station provides significant economic value to EKPC and its members.³⁵

EKPC's amendment to its Compliance Plan consists of the following projects:

1. Amended Project 12 – Spurlock Station CCR landfill, Phases 2–4, haul road extension, and settlement of Asset Retirement Obligations (ARO) associated with the landfill final closure.³⁶ EKPC contends that Amended Project 12 is necessary to comply

³¹ Johnson Testimony at 6.

³² *Id.* and EKPC's response to Staff's First Request, Item 7.

³³ Application at 1.

³⁴ Direct Testimony of Don Mosier (Mosier Testimony) at 4.

³⁵ *Id.* at 16 and Application at 5.

³⁶ Johnson Testimony, Attachment CJ-1.

with its KPDES permit, the CCR Rule, and the ELG Rule.³⁷ Phase 2 was completed in November 2014. Phase 3 is substantially complete, has received CCR since the first quarter of 2018, and is estimated to be complete in the spring of 2019. Phase 4 construction was delayed due to weather, but it is expected to begin receiving CCR in the summer of 2019.³⁸ The haul road extension was completed in the fall of 2017. ARO-related landfill closure costs were incurred in 2017.³⁹ EKPC is proposing to amortize the ARO settlement costs over 24 months and will not earn a return on the unamortized balance.⁴⁰ The estimated cost of Amended Project 12 is \$19.4 million, with \$332,500 in yearly incremental operations and maintenance (O&M) costs.⁴¹

2. Project 17 – Cooper Station CCR landfill Phases 1A and 1B, Transmission, Distribution, and Communication lines relocation, and ARO settlement associated with the landfill final closure.⁴² EKPC contends that Project 17 is necessary to comply with its Special Waste permit and the CCR Rule.⁴³ Phase 1A was completed in May 2014 and Phase 1B was completed in December 2014. The line relocations were completed in 2016. ARO-related landfill closure costs were incurred in 2015.⁴⁴ EKPC is proposing to

³⁷ Application at 16.

³⁸ EKPC's response to Staff's First Request, Item 3(b).

³⁹ Direct Testimony of Isaac S. Scott (Scott Testimony) at 9.

⁴⁰ *Id.*

⁴¹ Application at 16 and Scott Testimony at 3.

⁴² Johnson Testimony, Attachment CJ-1.

⁴³ Application at 16.

⁴⁴ Scott Testimony at 9.

amortize the ARO settlement costs over 24 months and will not earn a return on the unamortized balance.⁴⁵ The cost of Project 17 is \$6.2 million, with \$20,000 in yearly incremental O&M costs.⁴⁶

3. Project 18 – Cooper Station CCR landfill Sediment Pond. The Sediment Pond was expanded and lined in May 2013 to accommodate increased runoff from the expanded Cooper Station CCR landfill.⁴⁷ EKPC contends that Project 18 is necessary to comply with its Special Waste permit and KPDES permit.⁴⁸ The cost of Project 18 is \$2.2 million, with \$5,000 in yearly incremental O&M costs.⁴⁹ EKPC also expects to incur periodic pond cleaning expenses of approximately \$1.25 million every 15 years.⁵⁰

4. Project 19 – Cooper Station Ash Mixer Unloaders. The Ash Mixer Unloaders were replaced in 2013 to replace failing equipment and accommodate higher calcium ash.⁵¹ EKPC contends that Project 17 is necessary to comply with its Special Waste permit, KPDES permit, and the Kentucky Division for Air Quality’s fugitive emission standards.⁵² The cost of Project 19 is \$0.2 million, with \$5,000 in yearly incremental O&M

⁴⁵ *Id.*

⁴⁶ Application at 16 and Scott Testimony at 3.

⁴⁷ Johnson Testimony, Attachment CJ-1.

⁴⁸ Application at 16 and Johnson Testimony, Attachment CJ-1.

⁴⁹ Application at 16 and Scott Testimony at 3.

⁵⁰ Scott Testimony at 3.

⁵¹ Johnson Testimony, Attachment CJ-1.

⁵² Application at 17.

costs.⁵³ EKPC also expects to incur periodic O&M expenses of \$30,000 every six to eight years.⁵⁴

5. Project 20 – Cooper Station Ditch and Sediment Trap. Project 20 was completed in 2017.⁵⁵ EKPC contends that Project 20 is necessary to comply with its Special Waste permit and KPDES permit.⁵⁶ The cost of Project 20 is \$1.2 million, with \$12,000 in yearly incremental O&M costs.⁵⁷

6. Project 21 – Spurlock Station Drainage Improvement. EKPC states that Project 21, completed in 2015, is necessary to ensure that various site drainage areas would not be considered CCR impoundments under the CCR Rule.⁵⁸ EKPC contends that Project 21 is necessary to comply with its KPDES permit and the CCR Rule.⁵⁹ The cost of Project 21 is \$13.1 million, with \$153,000 in yearly incremental O&M costs.⁶⁰

7. Project 22 – Spurlock Station MATS Compliance - Units 1 & 2. EKPC achieved MATS compliance at Spurlock Station Units 1 and 2 through installing a fuel additive system and FGD additive system to prevent captured mercury from being re-emitted.⁶¹ Project 22 was completed in March 2015, ahead of the MATS compliance

⁵³ Application at 17 and Scott Testimony at 3.

⁵⁴ Scott Testimony at 3.

⁵⁵ Johnson Testimony, Attachment CJ-1.

⁵⁶ Application at 17 and Johnson Testimony, Attachment CJ-1.

⁵⁷ Application at 17 and Scott Testimony at 3.

⁵⁸ Johnson Testimony, Attachment CJ-1.

⁵⁹ Application at 17 and Johnson Testimony, Attachment CJ-1.

⁶⁰ Application at 17 and Scott Testimony at 3.

⁶¹ Johnson Testimony, Attachment CJ-1.

deadline of April 15, 2015.⁶² EKPC contends that Project 22 is necessary to comply with MATS and the Division of Air Quality's regulations for the control of potentially hazardous matter or toxic substances.⁶³ The cost of Project 22 is \$2.8 million, with \$2.0 million in yearly incremental O&M costs including an estimated \$1.96 million in annual additive expenses.⁶⁴

8. Project 23 – Spurlock Station Anhydrous Ammonia Secondary Containment. Project 23 was completed in 2017 to reduce the impact of accidental releases of anhydrous ammonia from on-site holding tanks.⁶⁵ EKPC contends that Project 23 is necessary to comply with its KPDES permit and the CAA.⁶⁶ The cost of Project 23 is \$1.0 million, with \$5,000 in yearly incremental O&M costs.⁶⁷

9. Project 24 – Spurlock Station Vacuum Truck Ash Transfer Station. Project 24 is a transfer station for wet and dry ash collection from vacuum trucks that will allow EKPC to dispose of ash collected throughout Spurlock Station in the CCR landfill with appropriate moisture content and was completed in December 2018.⁶⁸ EKPC contends

⁶² *Id.*

⁶³ Application at 18 and Johnson Testimony, Attachment CJ-1.

⁶⁴ Application at 18 and Scott Testimony at 3.

⁶⁵ Johnson Testimony, Attachment CJ-1.

⁶⁶ Application at 18 and Johnson Testimony, Attachment CJ-1.

⁶⁷ Application at 18 and Scott Testimony at 3.

⁶⁸ Johnson Testimony, Attachment CJ-1 and EKPC's response to Staff's First Request, Item 3(b).

that Project 24 is necessary to comply with the CCR Rule and the CAA.⁶⁹ The cost of Project 24 is \$2.7 million, with \$85,000 in yearly incremental O&M costs.⁷⁰

10. Project 25 – Spurlock Station Dry Sorbent Injection System for Units 1 & 2. Project 25, completed in 2017, is the permanent installation of a DSI system to inject hydrated lime for corrosion prevention and pollution control.⁷¹ EKPC contends that Project 25 is necessary to comply with the CAA.⁷² The cost of Project 25 is \$3.9 million, with \$650,000 in yearly incremental O&M costs including hydrated lime costs of approximately \$600,000.⁷³

11. Project 26 – Spurlock Station CPR Pond, Pumps, and Drainage. EKPC requests the issuance of a CPCN for Project 26, to modify and expand the CPR pond at the Spurlock Station to comply with the ELG Rule and its revised KPDES permit.⁷⁴ EKPC states the current CPR pond does not have sufficient capacity to accommodate storm water overflows and remain in compliance with the KPDES permit.⁷⁵ EKPC states that the quantified risk of non-compliance for each water quality standard is up to \$1,604,520 per pollutant, which excludes clean-up costs and qualitative risk.⁷⁶ Project 26 is expected

⁶⁹ Application at 18 and Johnson Testimony, Attachment CJ-1.

⁷⁰ Application at 18 and Scott Testimony at 3.

⁷¹ Johnson Testimony, Attachment CJ-1.

⁷² Application at 18.

⁷³ *Id* and Scott Testimony at 3.

⁷⁴ Application at 15 and Purvis Testimony at 25.

⁷⁵ Application at 12.

⁷⁶ EKPC's response to Staff's First Request, Item 6.

to be complete by February 2021.⁷⁷ EKPC received the final KPDES permit on October 23, 2018.⁷⁸ The costs of Project 26 is \$11.2 million, with \$74,000 in yearly incremental O&M costs.⁷⁹ EKPC evaluated six compliance alternatives to Project 26 and rejected those alternatives based on inadequate compliance capabilities, operational constraints, or excessive costs.⁸⁰ EKPC asserts that Project 26 is the least-cost compliance option.⁸¹ EKPC retained Burns and McDonnell Engineering Company, Inc. to perform a scoping study to develop Project 26.⁸²

EKPC states that the anticipated cost of all projects included in the proposed Compliance Plan amendment is \$64.0 million and that the associated annual estimated incremental O&M expenses to be \$3.3 million.⁸³ EKPC will finance the proposed projects through funds available to it from normal operations or its unsecured Credit Facility; once a project is completed, any short-term debt associated with the project has or will be refinanced using long-term debt available under EKPC's Trust Indenture.⁸⁴

EKPC estimated that, for the average residential customer using 1,150 kilowatt-hours per month, the monthly bill impact of the proposed amended Compliance Plan will

⁷⁷ Application at 14.

⁷⁸ EKPC's response to Staff's First Request, Item 6(a).

⁷⁹ Application at 13 and 24.

⁸⁰ EKPC's response to the Attorney General's First Request, Item 2(a), Attachment Spurlock Station Storm Water Summary.

⁸¹ Application at 15.

⁸² Application at 13.

⁸³ Direct Testimony of Thomas Stachnik at 9.

⁸⁴ Application at 15 and 36.

be \$0.64 for the 12 months ending March 31, 2020; \$0.66 for the 12 months ending March 31, 2021; and \$0.57 for the 12 months ending March 31, 2022.⁸⁵

EKPC requested to use a weighted average debt cost of 4.015 percent and a 1.50 TIER factor to arrive at an overall rate of return of 6.023 percent.⁸⁶ However, since EKPC filed its application, a six-month review of its environmental surcharge mechanism was completed that authorized an overall rate of return of 6.032 percent, using a weighted average cost of debt of 4.021 percent and TIER factor of 1.50.⁸⁷ Accordingly, the Commission finds that EKPC should use a rate of return of 6.032 percent for the projects included in its proposed Compliance Plan.

EKPC proposed revisions to its monthly reporting formats to reflect the inclusion of the proposed projects.⁸⁸ Having reviewed the record and being otherwise sufficiently advised, the Commission finds that the revisions are reasonable and should be approved.

DISCUSSION

CPCN - The Commission's standard of review of a request for a CPCN is well settled. No utility may construct or acquire any facility to be used in providing utility service to the public until it has obtained a CPCN from this Commission.⁸⁹ To obtain a

⁸⁵ Scott Testimony at 13.

⁸⁶ Application at 27.

⁸⁷ Case No. 2018-00306, *An Electronic Examination by the Public Service Commission of the Environmental Surcharge Mechanism of East Kentucky Power Cooperative, Inc. for the Six-Month Expense Period Ending May 31, 2018, and the Pass-Through Mechanism of Its Sixteen Member Distribution Cooperatives* (Ky. PSC Jan. 29, 2019) Final Order at 3.

⁸⁸ Scott Testimony at 11.

⁸⁹ KRS 278.020(1). Although the statute exempts certain types of projects from the requirement to obtain a CPCN, these exemptions are not applicable here.

CPCN, the utility must demonstrate a need for such facilities and an absence of wasteful duplication.⁹⁰

Need requires:

[A] showing of a substantial inadequacy of existing service, involving a consumer market sufficiently large to make it economically feasible for the new system or facility to be constructed or operated.

[T]he inadequacy must be due either to a substantial deficiency of service facilities, beyond what could be supplied by normal improvements in the ordinary course of business; or to indifference, poor management or disregard of the rights of consumers, persisting over such a period of time as to establish an inability or unwillingness to render adequate service.⁹¹

Wasteful duplication is defined as an excess of capacity over need and an excessive investment in relation to productivity or efficiency, and an unnecessary multiplicity of physical properties.⁹² To demonstrate that a proposed facility does not result in wasteful duplication, we have held that the applicant must demonstrate that a thorough review of all reasonable alternatives has been performed.⁹³ Selection of a

⁹⁰ *Kentucky Utilities Co. v. Pub. Serv. Comm'n*, 252 S.W.2d 885 (Ky. 1952).

⁹¹ *Id.* at 890.

⁹² *Id.*

⁹³ Case No. 2005-00142, *Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for a Certificate of Public Convenience and Necessity for the Construction of Transmission Facilities in Jefferson, Bullitt, Meade, and Hardin Counties, Kentucky* (Ky. PSC Sept. 8, 2005).

proposal that ultimately costs more than an alternative does not necessarily result in wasteful duplication.⁹⁴ All relevant factors must be balanced.⁹⁵

EKPC contends that Project 26 satisfies the criteria for issuing a CPCN under KRS 278.020(1) because the project is needed to allow EKPC to comply with the ELG Rule and KPDES permit requirements and will not result in wasteful duplication.

Having reviewed the record and being otherwise sufficiently advised, the Commission finds that EKPC has sufficiently demonstrated that there is a need for Project 26. The Commission further finds that the proposed alternative reflects the most reasonable least-cost alternative to comply with the KPDES permit requirements and the ELG Rule. Accordingly, the Commission finds that EKPC should be authorized a CPCN for the construction of Project 26 contained in the proposed amendments to its Compliance Plan.

KRS 278.183 - KRS 278.183(1) provides, in relevant part, as follows:

a utility shall be entitled to the current recovery of its costs of complying with the Federal Clean Air Act as amended and those federal, state, or local environmental requirements which apply to coal combustion wastes and by-products from facilities utilized for production of energy from coal in accordance with the utility's compliance plan

Having reviewed the record and being otherwise sufficiently advised, the Commission finds that EKPC should be allowed to recover the costs associated with the 11 projects contained in its amended Compliance Plan via its existing environmental

⁹⁴ See *Kentucky Utilities Co. v. Pub. Serv. Comm'n*, 390 S.W.2d 168, 175 (Ky. 1965). See also Case No. 2005-00089, *Application of East Kentucky Power Cooperative, Inc. for a Certificate of Public Convenience and Necessity for the Construction of a 138 kV Electric Transmission Line in Rowan County, Kentucky* (Ky. PSC Aug. 19, 2005), final Order.

⁹⁵ Case No. 2005-00089, *East Kentucky Power Cooperative, Inc.* (Ky. PSC Aug. 19, 2005), final Order at 6.

surcharge mechanism. Here, EKPC proposes a plan that would allow it to be in compliance with federal and state environmental requirements applicable to coal-combustion wastes, byproducts, and effluents from facilities utilized for production of energy from coal.

IT IS HEREBY ORDERED that:

1. EKPC is granted a CPCN to construct Project 26 to comply primarily with the ELG Rule and KPDES permit requirements.
2. EKPC's request to amend its Compliance Plan as reflected in its application for purposes of recovering the costs of the proposed projects through its environmental surcharge is granted.
3. EKPC's request to approve the partial settlement of the Spurlock and Cooper Station CCR landfill AROs and associated regulatory assets as set forth in its application is granted.
4. EKPC's request to revise its monthly environmental surcharge reporting formats to reflect the inclusion of the proposed projects as set forth in its application is granted.
5. This case is closed and removed from the Commission's docket.

By the Commission

ENTERED
APR 01 2019
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:


Executive Director

Case No. 2018-00270

*David S Samford
Goss Samford, PLLC
2365 Harrodsburg Road, Suite B325
Lexington, KENTUCKY 40504

*Rebecca W Goodman
Assistant Attorney General
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204

*M. Evan Buckley
Goss Samford, PLLC
2365 Harrodsburg Road, Suite B325
Lexington, KENTUCKY 40504

*Justin M. McNeil
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204

*Kent Chandler
Assistant Attorney General
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204

*Larry Cook
Assistant Attorney General
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204

*Patrick Woods
East Kentucky Power Cooperative, Inc.
P. O. Box 707
Winchester, KY 40392-0707

*East Kentucky Power Cooperative, Inc.
4775 Lexington Road
P. O. Box 707
Winchester, KY 40392-0707