

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

ORDER

In accordance with the procedural schedule established for this proceeding, East Kentucky Power Cooperative, Inc. ("EKPC") filed responses on July 17, 2012 to the Initial Request for Information submitted by Sonia McElroy and the Sierra Club (collectively "Sierra Club") on June 8, 2012. Sierra Club subsequently filed a motion to compel EKPC ("Motion") to fully respond to 13 items of the discovery request it submitted on June 8, 2012.¹ Sierra Club contends that EKPC failed to substantively respond to its discovery requests, and that such failure has, in turn, negatively impacted Sierra Club's ability to fully assess EKPC's determination of a least cost resource plan. Sierra Club further requests in its Motion that the current deadline for the filing of supplemental data requests be continued until 10 days after EKPC is required to produce complete responses to the discovery items at issue.

On August 10, 2012, EKPC filed a response to the Motion in which it provided additional information in response to seven items in Sierra Club's Initial Request for Information.² As to the other discovery items at issue, EKPC states that it either has no

¹ Those discovery requests were Items 3, 4, 6, 17, 19, 21, 24, 25, 26, 27, 35, 44 and 45(a)-(c) of Sierra Club's Initial Request for Information to EKPC.

² In its response to the Motion, EKPC provided additional information in response to Sierra Club's Initial Request for Information, Items 3, 4, 6, 26, 27, 35, and 45(a)-(c).

additional information to provide (Items 17, 24, and 25); that such information could be obtained through publicly available sources (Items 19 and 21); or that its original response was detailed and fully responsive to the question asked (Item 44).

Sierra Club filed a reply to EKPC's response to the Motion on August 14, 2012 in which it contends that the Commission should compel EKPC to file additional responses to Items 17, 19, 21, 24, 25, and 44 of its June 8, 2012 Initial Request for Information. On August 21, 2012, in response to Sierra Club's Supplemental Requests for Information, which was submitted on August 3, 2012, EKPC filed information which satisfies Item 44 of Sierra Club's June 8, 2012 request. We will address the remaining five items discussed in Sierra Club's reply in the following paragraphs.

Item 17

Sierra Club claims that EKPC's response did not address the specific requests contained in the three parts of Item 17 of its Initial Request for Information. The primary issue relates to part (a) of the request, which called for EKPC to "[s]tate whether any of the cases assume the retirement of any of EKPC's existing coal-fired generating units." In its response, EKPC stated that it "has no plans to retire any of its coal-fired generating units" and it also referred to the narrative in Section 1.4 on page six of its Integrated Resource Plan ("IRP").

While the wording of EKPC's response may have been less direct than Sierra Club would prefer, the reader could reasonably infer that the response conveys the message that none of the cases in question assume the retirement of any of EKPC's coal-fired units. If the meaning of the response is unclear, Sierra Club will have an opportunity to seek clarification in its next request for information. As the sort of

“vagueness” in EKPC’s response does not, in our view, call for compelling a further response, we will deny the Motion to compel as it applies to Item 17 of the June 8, 2012 Initial Request for Information.

Items 19 and 21

In these requests, Sierra Club asked for information concerning EKPC’s emissions testing, past, present, and future (Item 19) and the emissions rates for various pollutants at each of EKPC’s coal-fired generating units (Item 21). To both requests, EKPC declined to respond based on its conclusion that the information was “not relevant for purposes of the IRP.” In its response to the Motion, EKPC referenced the extent to which the data could be obtained from the U.S. Environmental Protection Agency (“EPA”) or the Kentucky Division of Air Quality (“KYDAQ”).

Given the ever-changing state of environmental compliance rules and regulations at present, the Commission finds, contrary to EKPC’s statements, that the emissions data is relevant to EKPC’s IRP. We also find that, rather than search for information via the various governmental environmental agencies, a party should be able to expect that information developed and/or maintained by a utility jurisdictional to this Commission will be provided when the party makes a legitimate request for such information. Accordingly, EKPC shall 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.

Item 24

In this item of its initial request, Sierra Club seeks information regarding environmental controls which EKPC has committed to install at its Cooper 1 generating unit. In its response, EKPC explains that, subsequent to submitting its Best Available

Retrofit Technology (“BART”) plan to KYDAQ, a plan which called for installing wet flue gas desulfurization (“FGD”) technology and a wet electrostatic precipitator (“ESP”) on Cooper Units 1 and 2, it revised its plan to show that dry FGD and fabric filter particulate controls are equivalent to wet FGD and ESP controls. EKPC also states that it recently completed the installation of a dry FGD, Selective Catalytic Reduction (“SCR”), and fabric filter system on Cooper Unit 2 and, based on a recent proposal by EPA to adopt the position that compliance with the Cross State Air Pollution Rule (“CSAPR”)/Clean Air Interstate Rule (“CAIR”) will equal compliance with BART and while awaiting KYDAQ’s decision on its revised BART plan, is continuing to evaluate potential compliance options for Cooper Unit 1.

Sierra Club contends that EKPC’s “apparent hope that it will be allowed to avoid satisfying the commitment to install controls justifies EKPC’S refusal to provide information about those controls.” It argues that EKPC must have information about the costs, heat rate penalty, and comparative economics of pollution controls that EKPC has committed to installing and that it should be compelled to provide such information.

It is unclear from EKPC’s response whether the options for Cooper Unit 1 are solely between wet FGD and ESP controls or dry technology controls similar to the ones recently installed at Cooper Unit 2 or if the recent EPA proposal (and the even more recent court decision vacating CSAPR) might create other potential options. It is clear, however, that at the time of its response, a final decision had not been reached on the controls to be installed at Cooper Unit 1.³ However, given the development of its initial

³ While any electric generating utility may hope to avoid installing environmental controls that are not necessary in order to comply with the controlling regulations, contrary to Sierra Club’s reply, it is equally clear that nothing in EKPC’s response indicates that it hopes “that it will be allowed to avoid satisfying the commitment to install controls” at Cooper Unit 1.

BART plan and its later revision to that plan, EKPC should have information on both the wet and dry technologies it has considered for Cooper Unit 1 that would be responsive to Sierra Club's request. Therefore, while recognizing that EKPC has not "committed" to any specific controls for Cooper Unit 1, we will require that it submit information on both wet and dry control systems in response to Item 24 of Sierra Club's June 8, 2012 Initial Request for Information.

Item 25

In this item of its initial request, Sierra Club seeks information on "any pollution controls that EKPC anticipates needing to install on each of its coal-fired generating units . . ." as a result of existing or proposed environmental regulations identified on pages 170-186 of its IRP. In its response, EKPC described its internal processes for monitoring new EPA rules and regulatory actions. It stated that it was in the process of engaging an engineering firm to conduct a formal analysis of new and proposed regulations and potential options and scenarios for its system. Finally, EKPC stated that this formal analysis should be completed sometime in 2013.

In requesting that EKPC be compelled to respond to this request, Sierra Club states that, "[i]t strains credulity for EKPC to suggest that it has not evaluated the need to install pollution controls at any of its coal units in the past few years, especially given that the Company committed to installing pollution controls at Cooper Units 1 and 2."

In its reading of EKPC's response, the Commission finds no statement or any suggestion that EKPC has not evaluated the need to install pollution controls in the past few years. What was stated is that EKPC is in the process of having a formal analysis conducted of existing and proposed environmental regulations and possible compliance

options and that it will be sometime in 2013 before this analysis is completed. If EKPC has yet to determine what controls, if any, it anticipates needing to install on its coal-fired generating units, the capital costs, operating costs, and assessment of the need for and/or the economics of installing such controls is not yet available. Accordingly, we find no basis to compel a further response to this item of Sierra Club's June 8, 2012 Initial Request for Information.

FINDINGS AND ORDERS

Having reviewed the Motion and EKPC's response thereto and being otherwise sufficiently advised, the Commission finds that EKPC should be compelled to provide further responses to Items 19, 21, and 24 of Sierra Club's June 8, 2012 Initial Request for Information to EKPC, but that it should not be compelled to provide further responses to Items 17 and 25 of that request.

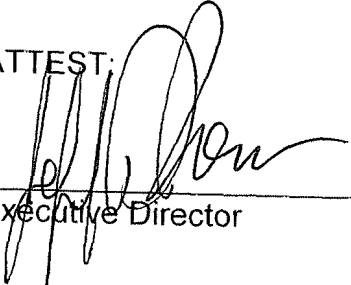
IT IS THEREFORE ORDERED that:

1. The motion of the Sierra Club to compel EKPC to provide further responses to its June 8, 2012 Initial Request for Information is granted in part, in that EKPC shall provide further information, as described herein, in response to Items 19, 21, and 24 within 14 days from the date of this Order.
2. The remainder of the motion of the Sierra Club to compel EKPC to provide further responses to Items 17 and 25 of its June 8, 2012 Initial Request for Information is denied.
3. An order will be issued at a later date amending the procedural schedule for this proceeding.

By the Commission

ENTERED ⁽¹²⁾
SEP 07 2012
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:



Executive Director

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