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JUN 8 2005

PUBLIC SERVICE
COMMISSION

June 7, 2005

FACSIMILE AND MAIL

Ms. Elizabeth O'Donnell
Executive Director
Public Service Commission
211 Sower Boulevard
Frankfort, KY 40602

Re: PSC Case No. 2004-00423

Dear Ms. O'Donnell:

Please find enclosed for filing with the Commission in the above-referenced case an original and ten (10) copies of the Objections of East Kentucky Power Cooperative, Inc. to the Request of EnviroPower for the Commission to Take Judicial Notice.

Very truly yours,

A handwritten signature in cursive script, appearing to read 'Charles A. Lile'.

Charles A. Lile
Senior Corporate Counsel

Enclosures

Cc: Elizabeth E. Blackford, Esq.
Michael L. Kurtz, Esq.
Stephen M. Soble, Esq.
Frederic J. Cowan, Esq.
Richard Raff, Esq.

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JUN 8 2005

PUBLIC SERVICE
COMMISSION

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF EAST KENTUCKY)
POWER COOPERATIVE, INC. FOR A)
CERTIFICATE OF PUBLIC)
CONVENIENCE AND NECESSITY, AND A) CASE NO. 2004-
SITE COMPATIBILITY CERTIFICATE,) 00423
FOR THE CONSTRUCTION OF A 278 MW)
(NOMINAL) CIRCULATING FLUIDIZED)
BED COAL FIRED UNIT IN MASON)
COUNTY, KENTUCKY)

OBJECTIONS OF EAST KENTUCKY POWER COOPERATIVE, INC.,
TO THE REQUEST OF ENVIROPOWER FOR THE
COMMISSION TO TAKE JUDICIAL NOTICE

East Kentucky Power Cooperative, Inc., ("EKPC") hereby submits to the Kentucky Public Service Commission (the "Commission") its objections to the request of EnviroPower, L.L.C. ("EnviroPower") that the Commission take judicial notice of two proffered magazine articles. The grounds for EKPC's objections are as follows:

1. EnviroPower is not a party to this case and has no right to submit information for the record.

The Commission has denied two requests by EnviroPower to intervene in this case, and those denials have been upheld by the Franklin Circuit Court in its order dated May 6, 2005 in Civil Action No. 05-CI-00553, and by the Court of Appeals in its order dated May 31, 2005 in Case No. 2005-CA-000964-I. EnviroPower will simply not recognize that its pecuniary interest in saving its stalled project does not give it a right to

interfere in this case. Its attempt to submit extraneous and irrelevant material, along with its own editorial spin and repeated smears of EKPC, is a part of a demonstrated pattern of abuse of the proceedings in order to attack and disrupt this case. This tactic of sustained harassment is apparently a part of the “guerilla war” approach to regulatory proceedings for merchant power developers that is advocated by an independent power strategist quoted in one of the subject articles. It all the more clearly demonstrates that EnviroPower is driven by an intensive self-interest in salvaging its undeveloped project, and has chosen to interfere in this case, to distort and misrepresent information, and to defame EKPC and the Commission, solely in order to further its prospects. The Commission should not permit this intrusion into the case by EnviroPower to continue.

2. The subject magazine articles contain no information for which the Commission could properly take judicial notice.

In Kentucky, the doctrine of judicial notice is limited to matters of common knowledge and matters properly known by a judge in a judicial capacity. Colley v. Colley, Ky., 460 S.W.2d 821 (1970). Kentucky courts may only take judicial notice of “facts beyond reasonable dispute.” Pattie A. Clay Infirmary Association v. First Presbyterian Church of Richmond, Ky., 551 S.W.2d 572 (1977). However, the articles offered by EnviroPower contain no such facts, but, rather, are merely the opinions of the authors and other quoted individuals. EnviroPower wants the Commission to validate these opinions, which are wholly unrelated to any parties or specific facts involved in this case, by taking judicial notice and reflecting these articles in the record as “common knowledge.” This is completely improper and unjustified. Granting judicial notice to such articles would effectively eliminate any standard for such requests, and would invite a

flood of submissions of questionable and manipulative extraneous material. The Commission must deny this overreaching request of EnviroPower.

WHEREFORE, EKPC respectfully objects to EnviroPower's request that the Commission take judicial notice of the subject magazine articles, and urges the Commission to deny such judicial notice and strike the subject request.

Respectfully submitted,

DALE W. HENLEY

A handwritten signature in cursive script that reads "Charles A. Lile".

CHARLES A. LILE

ATTORNEYS FOR EAST
KENTUCKY
POWER COOPERATIVE, INC.
P. O. BOX 707
WINCHESTER, KY 40392-0707
(859) 744-4812

CERTIFICATE OF SERVICE

This is to certify that an original and ten copies of the foregoing Objections of East Kentucky Power Cooperative, Inc., to the Request of EnviroPower for the Commission to Take Judicial Notice, in the above-referenced case, were transmitted by facsimile and mailed to Elizabeth O'Donnell, Executive Director, Kentucky Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601; and copies were mailed to Parties of Record, on June 7, 2005.



CHARLES A. LILE