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\*\* NOT A MEMBER OF THE D.C. BAR  
\*\*\* NOT PRACTICING LAW IN THE U.S.

June 2, 2005

RECEIVED  
JUN 02 2005  
PUBLIC SERVICE  
COMMISSION

Beth A. O'Donnell, Executive Director  
Kentucky Public Service Commission  
211 Sower Boulevard  
Frankfort, Kentucky 40602

Re: Case No. 2004-00423

Filed by Fax, Original via Courier

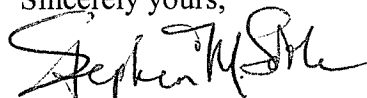
Dear Ms. O'Donnell:

Please find enclosed the original and ten (10) copies of Enviropower, LLC's corrected Petition for Correction Intermission Order of May 18, 2005 and Demand for Publication.

Inadvertently, we failed to attach the proper document as Attachment B. Attachment C should have consisted of two (2) pages, the Commission's Order of March 30, 2005 in this case and a copy of the website for just that day. We apologize for the inconvenience but wish, *sua sponte*, to correct the record.

By copy of this letter, all parties listed on the attached Certificate of Service have been served, please place these documents on file.

Sincerely yours,



Stephen M. Soble  
O'Connor & Hannan, LLP

Enclosures

cc: Mr. Charlie Lile  
Mr. Bill Bosta  
Mr. Richard Raff  
Ms. Elizabeth Blackford  
Mr. Michael Kurtz  
Mr. Frederic Cowan

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

In the Matter of:

APPLICATION OF EAST KENTUCKY POWER )  
COOPERATIVE, INC. FOR A CERTIFICATE )  
OF PUBLIC CONVENIENCE AND NECESSITY, )  
AND SITE COMPATABILITY CERTIFICATE )  
FOR THE CONSTRUCTION OF A 278 MW )  
(NOMINAL) CIRCULATING FLUIDIZED BED )  
COAL FIRED UNIT IN MASON COUNTY, )  
KENTUCKY )

JUN 02 2005

PUBLIC SERVICE  
COMMISSION

CASE NO. 2004-00423

**PETITION FOR CORRECTION IN COMMISSION ORDER  
OF MAY 18, 2005 AND DEMAND FOR PUBLICATION**

On May 18, 2005, the Commission issued an Order concerning the March 30, 2005 Petition of EnviroPower LLC to protect certain confidential information contained in sworn Direct Testimony and accompanying exhibits of Frank L. Rotondi, President and CEO of EnviroPower.

**Issue #1: The May 18 Order is in error, with regard to a material issue. EnviroPower, hereby petitions the Commission to correct this material error. The March 30, 2005 filing of EnviroPower was filed with the Commission on March 31, 2005.**

1. On May 13, 2005 EnviroPower filed with the Commission, a "Request for Correction in Commission Order of May 11, 2005". In that filing, EnviroPower noted that while the date of the sworn Direct Testimony filed by EnviroPower with the Commission was March 30, 2005, it was logged in as filed by the Commission on March 31, 2005. In the Commission Order of May 18, 2005 the Commission ruled "that the petition (seeking confidential treatment for the March 30, 2005 filing, which included the Direct Testimony filed by EnviroPower) was actually filed on March 31, 2005.

EnviroPower respectfully requests a correction of this error.

2. To prove that the filing was made on March 31, EnviroPower submits the following:

A. On April 7, 2005, the "Table of Contents for Submission by EnviroPower on March 30, 2005," appeared on the Commission's website, dated-stamped as "original" on March 31, 2005, copy attached. (see Attachment "A").

B. On March 30, 2005 at 4:24 PM, counsel for EnviroPower sent via e-mail a courtesy copy of the documents in question, noting that the documents had been filed with the commission via Federal Express Courier, for delivery on March 31, 2005 (see Attachment "B").

3. This matter of correcting the filing date is significant and material, because the Commission, on March 30, 2005 issued an Order setting the Hearing date in this case for April 20, 2005, an action which on the facts submitted necessarily occurred before the Commission had even received the EnviroPower filing. The Commission may not maintain as a matter of fact that the Commission had received or had read the EnviroPower March 30 filing prior to ordering the hearing date in this case. (see Attachment "C").

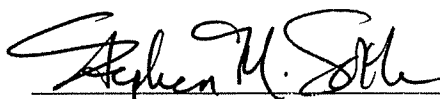
4. Thus, the facts prove that the Commission failed to carry out its own defined mandate to conduct a full and thorough investigation into the allegations of fraud, bid manipulation and self-dealing which go the heart of the issue in this case: namely whether the application for a Certificate of Public Convenience and Necessity by EKPC properly met the legal requirements concerning the cost and reasonableness of the plan of EKPC to build its own power plant. Thus, the actual date of the filing is material and must be accurately stated by the Commission, rather than deemed to have occurred.

**Issue #2: In the EnviroPower filing with the Commission dated May 13, EnviroPower asked the Commission to insure that entire Redacted Version of the March 30 submission be posted on the Commission's website. The Commission has not responded to May 13 request. EnviroPower regrets that it must now demand publication of this filing on the Commission website.**

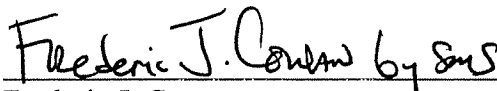
It should be noted that in this same case and in the administrative case 2005-00090, East Kentucky Power Cooperative, Inc. has made filings which have been 4 to 5 times larger in size than the documents submitted by EnviroPower. In addition, the EnviroPower' submission identified eight different documents, which were tabbed and indexed on the Table of Contents which could be scanned and posted individually, or collectively, in accordance with the administrative ease of the Commission staff. EnviroPower notes that its March 30, 2005 submission is included in the official record of the Commission for this case and is included in the Designation of Record in the case EnviroPower v. Public Service Commission, 05-CI-00553, pending in Franklin Circuit Court.

Wherefore, EnviroPower respectfully demands an Order or Instruction of the Commission to post only the Redacted Version of "The Submission by EnviroPower on March 30, 2005", in its entirety on the Commission website.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was served by mailing a true and correct copy, by regular U.S. mail (unless otherwise noted) to all parties on this ~~31st~~ day of ~~May~~, 2005.  
2<sup>nd</sup> JUNE


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36 East 7<sup>th</sup> Street, Suite 1510  
Cincinnati, Ohio 45202

  
\_\_\_\_\_  
Stephen M. Soble

# ATTACHMENT A

original

RECEIVED

MAR 9 1 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 SITE ) CASE NO. 2004-00423  
COMPATIBILITY CERTIFICATE, FOR THE )  
CONSTRUCTION OF A 278 MW (NOMINAL) )  
CIRCULATING FLUIDIZED BED COAL FIRED )  
UNIT ) IN MASON COUNTY, KENTUCKY )

TABLE OF CONTENTS FOR SUBMISSION  
BY ENVIROPOWER ON MARCH 30, 2005

- 1. Petition for Confidential Treatment of Information
- 2. Submission of Direct Testimony by EnviroPower, LLC
- 3. Prepared Testimony of Frank L. Rotondi on Behalf of EnviroPower, LLC
- 4. The EnviroPower Proposal To Supply Power To East Kentucky Power Cooperative ("EKPC") In Response To RFP No. 2004-01-Base Load Requirement ("EP Proposal")
- 5. Appendix To The EP Proposal – Draft Letter of Intent
- 6. Kentucky Division of Air Quality Notice of Deficiency on the PSD/Title V Application for Spurlock No. 4
- 7. EnviroPower Analysis of EKPC/EnerVision Economics Evaluating the EP Proposal
- 8. Certificate of Service

# ATTACHMENT B



## Stephen M. Soble

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**From:** Stephen M. Soble  
**Sent:** Wednesday, March 30, 2005 4:24 PM  
**To:** 'Raff, Richard G (PSC)'; Charles Lile; Blackford, Betsy (KYOAG); Michael Kurtz  
**Cc:** 'Fred Cowan'  
**Subject:** EnviroPower's Filing today with KPSC in Case No. 2004-00423

Dear Lady and Gentlemen:

EnviroPower has submitted today, via Federal Express courier, its comments in response to the filing made by EKPC which were responsive to the Commission's Data Request #3.

Our filing with the Commission is an Original (with original sworn signature and notarization per the Kentucky jurat) without redaction. We also filed 12 redacted copies with the Executive Director. The electronic attachments we submit below are the redacted versions of our submissions. We filed a petition for confidential treatment of certain information, in which, out of inadvertence, I omitted the law firm names, addresses and telephone numbers of Frederic Cowan our local counsel and of myself. If anyone would like me to correct this by a subsequent filing, please let me know.

Since we have several attachments to the testimony and a few other documents, I have prepared a table of contents to assist the reader.

Thank you very much for agreeing to allow us to submit electronically today, with a courier copy to Charlie Lile, which he will have tomorrow and first class mail filings to everyone else.

Best regards,  
Stephen M. Soble



050330-Table of contents.pdf (...)



050330-Petition For Confidential...



050330-Prepared Testimony of F...



050330-Submission Of Direct Te...



050330-The EP Proposal.pdf (18...



050330-Draft Letter of Intent...



050330-KY DAQ Notice of Defici...



050330-Analysis of EKPC EV Eva...



050330-Certificate of Service....

# ATTACHMENT C

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 )  
SITE COMPATIBILITY CERTIFICATE, FOR THE )  
CONSTRUCTION OF A 278 MW (NOMINAL) )  
CIRCULATING FLUIDIZED BED COAL FIRED UNIT )  
IN MASON COUNTY, KENTUCKY )

CASE NO.  
2004-00423

O R D E R

The Commission, on its own motion, HEREBY ORDERS that the hearing in this case shall be held on April 20, 2005 at 9:00 a.m., Eastern Daylight Time, in Hearing Room 1 of the Commission's offices at 211 Sower Boulevard, Frankfort, Kentucky.

Done at Frankfort, Kentucky, this 30<sup>th</sup> day of March, 2005.

By the Commission

ATTEST:

  
Executive Director

# KY Public Service Commission

P.O. Box 615, 211 Sower Boulevard, Frankfort, Kentucky 40602-0615, Phone (502) 564-3940

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## Index of Orders Issued during March, 2005

If you do not know the date of the order you would like to view, you can refer to the **Complete Docket Report** and view the Case by Case Number for the dates Commission Decisions were issued.

Orders issued after 4:00 p.m. Eastern Daylight Time may not be posted until the following working day. If you need additional information contact the Commission at (502) 564-3940.

### March 31, 2005

- [2004-00362 - Par-Tee LLC D/B/A Perry Park Resort - ARF](#)

### March 30, 2005

- [2004-00044 - NuVox Communications, Inc., NewSouth Communications Corp., BellSouth Telecommunications, Inc., KMC Telecom V, Inc., Xspedius Management Company Switched Services, LLC, Xspedius Management Company of Louisville, LLC, Xspedius Management Company of Lexington, LLC - Arbitration](#)
- [2004-00103 - Kentucky-American Water Company - General Rates](#)
- [2004-00320 - East Kentucky Power Cooperative, Inc. - Construct](#)
- [2004-00392 - Wheelwright Utility Commission - Investigation/Service](#)
- [2004-00423 - East Kentucky Power Cooperative, Inc. - Construct](#) ←
- [2004-00427 - BellSouth Telecommunications, Inc. - Interconnection](#)
- [2004-00501 - Kentucky Broadband Act - Interconnection Agreements](#)
- [2004-00516 - McCreary County Water District - Construct](#)
- [2005-00008 - D. Adams and C. Vaughn Vs. Garrard County Water Association, Inc. - Complaint](#)
- [2005-00073 - Sigma Gas Corporation - Transfer/Sale/Purchase/Merger](#)
- [Administrative Case No. 2005-00090 - Assessment of Kentucky's Electric Generation, Transmission, and Distribution Needs](#)
- [2005-00099 - N. Dennison Vs. Louisville Gas and Electric Company - Complaint](#)
- [2005-00111 - Elkhorn Water District - PWA](#)
- [2005-00114 - McKinney Water District - General Rates](#)
- [2005-00118 - J. and R. Wade, Jr. Vs. Kentucky Utilities Company - Complaint](#)

### March 29, 2005

- [2002-00040 - Butler County Water System, Inc. - Tariff](#)
- [2002-00041 - Simpson County Water District - Tariff](#)