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April 14, 2005

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

Re: 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 Rebuttal of EnviroPower, LLC to the Objections of East Kentucky Power Cooperative, Inc. filed on April 13, 2005.

By copy of this letter, all parties listed on the attached Certificate of Service has been served.

Sincerely yours,

Stephen M. Soble
O'Connor & Hannan, LLP

Enclosure

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 14th of April, 2005.

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133052

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

CASE NO. 2004-00423

REBUTTAL TO THE OBJECTIONS OF EAST KENTUCKY POWER COOPERATIVE, INC. TO THE PETITION TO INTERVENE OF ENVIROPOWER, LLC

EnviroPower, LLC ("EnviroPower") hereby submits to the Kentucky Public Service Commission (the "Commission") its Rebuttal to the Objections of East Kentucky Power Cooperative, Inc. ("EKPC") in this case, which were filed on April 13, 2005 ("EKPC April 13 Objections") and urges the Commission to grant the Petition To Intervene of EnviroPower without further delay.

1. EnviroPower has assisted the Commission in discharging its statutory obligations.

In the Commission's Order of February 3, 2005 requiring a full investigation of the bidding procedures in this case ("Order"), the Commission recognized its statutory obligations and stated:

> East Kentucky Power is requesting the Commission to approve the expenditure of close to $500 million to construct a new generating unit. However, before such approval can be granted, the Commission must be confident that East Kentucky Power has conducted a proper evaluation of all power supply bids and selected the most reasonable bid. Consequently, we intend to conduct a thorough investigation of

> East Kentucky Power's bidding procedures and evaluation process. We are aware of East Kentucky Power's prior request for expedited treatment in this case, but, absent a full investigation of its bidding procedures, no decision can be made on the merits of this case.

According to the Commission, prior to the issuance of the Certificates applied for by EKPC, a full and thorough investigation must be conducted and completed. Since the issuance of the Order, the Commission staff has issued only one set of questions identified as "Data Request No. 3." EnviroPower has submitted in this case sworn direct testimony and supporting documents which go to the heart of the issues identified by the Commission in its Order. To date, EnviroPower, but no Party to the proceeding, has mobilized the resources or demonstrated the access to either (1) direct knowledge of the actual EKPC Request for Proposal and evaluation process or, (2) sufficient industry experience to assist the Commission in understanding the routine and customary standards for issuance and evaluation of a Request for Proposal under the circumstances controlled by EKPC.

To date, no Party to the proceeding has been willing to address the questions of integrity, self-dealing and manipulation which, at a minimum, have a direct bearing on the costs and the rights of the ratepayers. No Party other than EnviroPower has presented testimony to protect the ratepayer's interests. Thus, EnviroPower's sworn direct testimony is a necessary and the best available source of evidence to shed light on the issues which the Commission has identified as crucial.

Any reasonable person reading the record to date must conclude that there are complex matters of fact and law to be determined by the Commission. Without access to the data, explanation, and experience of EnviroPower in its dealings with EKPC on this matter, the Commission would be handicapped in attempting to discharge its duty. EnviroPower, as a citizen of Kentucky, has the best available information to provide to the Commission on a wide

range of points, as evidenced by its filings in this case. EnviroPower, as a Kentucky authorized power generator, has a special interest in discharging its duties pursuant to the Order in order to preserve the integrity and fairness of the electric power generation marketplace in the Commonwealth of Kentucky.

2. EKPC's Desire for Expedited Treatment Overrides the Ratepayers' Right To A Full and Fair Investigation Into the Activities of EKPC.

The EKPC April 13 Objections poses a stark question to the Commission. Does EKPC's desire for expedited treatment in this matter override the Commission's statutory duties and obligations to the ratepayers, as articulated, in part, in the Order to conduct a full and fair investigation? In effect, EKPC claims that its pecuniary interest in securing expedited issuance of the Certificates for which it has applied does override the need for any thorough, full, fair investigation, and that the Commission is safe in following this course of action because EKPC has merely waived its broad brush of denial to the weight of evidence submitted by EnviroPower.

The EKPC April 13 Objections are shameless. EKPC admits that it lacks any specific rebuttal of EnviroPower's evidence or arguments. EnviroPower submitted sworn direct testimony, which EKPC characterized as "no proof." It is EKPC, however, that has submitted no proof in this case. EnviroPower submitted highly credible, sworn evidence, which, at a Hearing during which both EKPC and EnviroPower may call witnesses, introduce evidence, cross-examine witnesses and otherwise serve the Commission as Parties, the Commission may consider what has been proven and by whom. EKPC says that it's evidence is "proof", but the evidence introduced by anyone else, if critical of EKPC, are only "baseless allegations".

EKPC implies that it is unwilling to address point-by-point the specific issues of impropriety laid out in the direct testimony of Frank L. Rotondi because to do so would delay the

EKPC timetable and somehow injure the pecuniary interest of EKPC. But, EKPC created its own timetable. EKPC issued its own Request for Proposal ("RFP"). EKPC chose on its own to delay from the published timetable of its own RFP. EKPC needed more than two months beyond its original timetable in order to substantiate the basis for awarding the RFP to themselves. There is no evidence from EKPC on why it needed this delay. EKPC took an unexplained two month delay, in its own self-interest. Now EKPC brazenly admonishes the Commission not to secure a full and thorough investigation, because to do so may entail more time! Why may EKPC delay when it is in EKPC's self interest, while demanding that ratepayers rush to judgment to meet a new EKPC timetable?

3. EnviroPower's Intervention Does Not Threaten EKPC's Confidential Information.

The regulations do not state that an intervenor who has met the test for intervention may be denied intervention simply because their intervention might lead the Commission to order a release of confidential information, as EKPC implies. The law is quite to the contrary. The Commission is fully empowered to release confidential information subject to an *in-camera* review or other appropriate safeguards to protect information which should be held confidential. The right to confidentiality before the Commission is not automatic, nor absolute.

The Commission regulations provide for executive session at the hearings in order to protect the confidential information, yet allow the Commission to have a full and unfettered airing of the facts, evidence and competing viewpoints in order to determine what is in the best interests of the ratepayers. There is no apparent competitive advantage which EnviroPower can glean from learning details of the Spurlock #4 self-build option, despite EKPC's reflexive protestations.. EKPC already has full access to all of the commercial information of

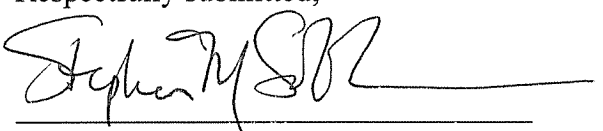
EnviroPower. Much of the EnviroPower confidential information has already been granted confidentiality pursuant Orders of the Commission. This ground for denial of EnviroPower's Petition for Intervention has no basis in law or fact.

4. EKPC's Objection Is Calculated To Disrupt and Delay the Proceedings.

The EKPC April 13 Objections are merely an effort to delay a decision by the Commission on the issue of EnviroPower's right to intervene, while trying to pressure the Commission into a Hearing on April 20 and a rush to judgment.. EKPC's apparent real motivation seems to be the vain hope that by preventing EnviroPower from becoming a Party, it will keep the evidence of it s self-dealing, fraud and manipulation from becoming public. In following this course, EKPC also seeks to deny EnviroPower and its counsel the opportunity to fully prepare for a hearing scheduled for April 20, 2005, to which EnviroPower has yet to be made a Party. Of course, EnviroPower does anticipate, that no matter what delay may be caused and no matter who may cause the delay, including a delay caused by EKPC itself EKPC will be vociferous and shrill in protesting the delays and in seeking to blame EnviroPower for it.

WHEREFORE, EnviroPower respectfully rebuts each of the objections of EKPC to EnviroPower's Power to Intervene and urges the Commission to grant EnviroPower the right to full intervention in this case, without further delay.

Respectfully submitted,



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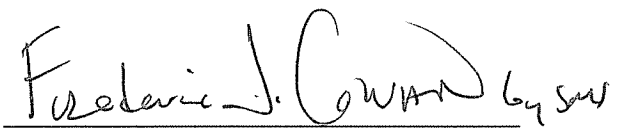

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CERTIFICATE OF SERVICE

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 14th day of April, 2005.

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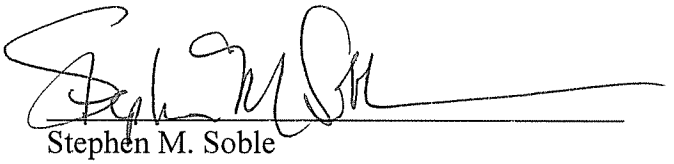

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