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

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PETITION FOR CONFIDENTIAL TREATMENT OF INFORMATION

Comes now the Petitioner, EnviroPower, LLC ("EnviroPower") and, pursuant to 807 KAR 5:001 Section 7 and KRS §61.870, requests confidential treatment of the attachments to the direct testimony of Mr. Frank L. Rotondi, President and CEO of EnviroPower and such other confidential data as redacted in the testimony relating to East Kentucky Power Cooperative Inc.'s ("EKPC") Request for Proposals No. 2004-01 (the "RFP") and designated information in related schedules, which are hereby filed as directed by Appendix B to the order of the Kentucky Public Service Commission (the "Commission") in this case dated February 3, 2005. As grounds for this petition, EnviroPower states as follows:

1. 807 KAR 5:001 Section 7 authorizes confidential treatment of information submitted to the Commission based on grounds provided in KRS §61.870 et seq. EnviroPower asserts that the information identified in the abovementioned document, and the information contained in Exhibits to the Prepared Testimony of Frank L. Rotondi, in this case are records generally recognized as proprietary or confidential and/or trade secrets which, if made public, would permit an unfair commercial advantage to competitors of EnviroPower, as more fully

explained herein below. As such, this information should be granted confidential treatment pursuant to 801 KAR 5:001 Section 7 and KRS §61.878 (1)(c)(1).

2. Most respondents to the RFP requested confidential treatment of the details of their proposals, as well as their identity as a bidder. EnviroPower has committed to seek confidential treatment for information concerning these proposals, including its own proposal in recognition that failure to do so would have a chilling effect on future bids and would possibly affect the competitiveness of the proposals of those choosing to respond. Disclosure of the proposals would adversely impact EnviroPower in future RFPs, which are likely to involve many of the same bidders. A reduction in the number of responses, or the submission of less competitive proposals, due to disclosure concerns, would increase EnviroPower's power costs, creating an unfair competitive disadvantage for EnviroPower in the market for surplus bulk power. Further, the disclosure of details of the current proposals to utilities, power marketers and project developers which would be potential bidders in future EnviroPower RFPs could lead to manipulation of those future proposals, resulting in higher costs for future capacity and related competitive disadvantages for EnviroPower.

Finally, disclosure of the proposals, or summary details of the proposals, could provide useful pricing information to other utilities, power marketers and other entities which compete with EnviroPower in the bulk power market, which could put EnviroPower at an unfair disadvantage in efforts to market surplus power.

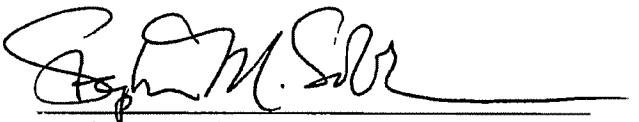
3. EnviroPower has protected the confidentiality of the subject proposals, which contain information known only by EnviroPower and each bidder, and has restricted access to this information to only EnviroPower employees with a need to use it for the purposes of this case. EnviroPower maintains a strong corporate policy regarding confidentiality and has consistently asserted confidentiality before other regulatory agencies and adjudicatory tribunals. One

unredacted copy of each document which comprises the Rotondi Testimony and Exhibits along with 12 redacted copies of each document are included with the filing of this Petition, pursuant to 807 KAR 5:001 Section 7.

4. The subject information is entitled to confidential treatment pursuant to 807 KAR 5:001 Section 7 and KRS §61.878(1)(c)(1) as information generally recognized as confidential and proprietary which would permit an unfair commercial advantage to competitors of EnviroPower in the surplus power market if disclosed, as discussed hereinabove. The information is also entitled to confidential treatment pursuant to KRS §61.878(1)(c)2(c) as confidential information maintained in conjunction with the regulation of a commercial enterprise and disclosed to an agency on a confidential basis.

WHEREFORE, EnviroPower respectfully requests the Commission to grant confidential treatment to the subject information and deny public disclosure of said information.

Respectfully submitted,



Stephen M. Soble
O'Connor & Hannan, LLP

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SUBMISSION OF DIRECT TESTIMONY

EnviroPower, LLC ("EnviroPower") pursuant to instructions of staff counsel, as approved by all of the parties to this proceeding in a telephonic conference call of March 21, 2005, hereby submits to the Public Service Commission of the Commonwealth of Kentucky (the "Commission") the direct testimony of Mr. Frank L. Rotondi, President and CEO of EnviroPower, along with supporting attachments.

The testimony of Mr. Rotondi addresses the following points:

1. The Request for Proposals No. 2004-01 (the "RFP") issued by East Kentucky Power Cooperative ("EKPC") was inherently flawed and should be declared void *ab initio*.

2. The conduct of the RFP evaluation process by EKP/EnerVision was riddled with the appearance of improprieties and misconduct sufficient to render the entire RFP and its process null and void.

3. The EKPC/EnerVision methodology of evaluating the EnviroPower Proposal submitted in response to the RFP (the "EP Proposal") constituted egregious, substantial error which changed the outcome of the EKPC/EnerVision ranking of the lowest bids, which resulted in EnviroPower being improperly recharacterized as the unsuccessful bidder.

4. The EKPC/EnerVision process demonstrated so many examples of error and improper mathematical methodology that it is within reason to conclude that the selection of the EKPC self-build option at Spurlock No. 4 was predetermined and preordained.

5. It is mathematically and practically impossible for EKPC/EnerVision to have made a finding that the EKPC self-billed option at Spurlock No. 4 was the low-cost bidder.

6. Given the irregularities and errors identified in the sworn testimony of Mr. Rotondi, there is a basis for the Commission to take further action in order to protect the best interests of the ratepayers of the Commonwealth of Kentucky.

WHEREFORE, EnviroPower respectfully requests the Commission to grant one of the following three remedies:

1. The Commission is requested to appoint an independent consulting engineering firm of stature and experience in power plant construction to evaluate the EKPC self-build proposal and the EP Proposal. This evaluation may include advising the Commission on the standards of routine and customary conduct of the issued RFP and the conduct of the bid evaluation process as well.

2. The Commission is requested to stay the entire proceeding and to refer EKPC and EnviroPower to an appropriate court which can oversee an *in camera* review of the bid data so that the two bidders may present their arguments on equal footing, and with a level playing field.

3. The Commission is requested to dismiss the pending petition for a Certificate of Convenience and Necessity because consideration of the merits is not ripe, until such time as the Commission can be assured that the results of the RFP and the conduct of the evaluation process have been certified as valid by a court or other body of appropriate jurisdiction.

Respectfully submitted,

Stephen M. Soble
O'Connor & Hannan, LLP

REDACTED VERSION

COMMONWEALTH OF KENTUCKY

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PREPARED TESTIMONY OF FRANK L. ROTONDI
ON BEHALF OF ENVIROPOWER, LLC

Q: Please state your name and address.

A: My name is Frank L. Rotondi and my business address is EnviroPower, LLC, 5090 Richmond Avenue, #545, Houston, Texas 77056.

Q: By whom are you employed and in what capacity?

A: I am President and CEO of EnviroPower, LLC.

Q: For how long have you served in that capacity?

A: Since November, 2001.

Q: Did EnviroPower provide a proposal in response to East Kentucky Power Cooperative's ("EKPC") RFP No. 2004-01 - Baseload Requirements (the "RFP")?

A: Yes. EnviroPower's proposal to EKPC ("the EP Proposal") is part of the record in this case. For the ease of the Commission, I attach a copy of the EP Proposal, as submitted to EKPC. The EP Proposal also included numerous other documents, which are listed on page 4 of the EP Proposal.

Q: Did EnviroPower submit any other documentation to EKPC which you believe the Commission would find relevant to the instant investigation?

A: Yes. The EP Proposal includes a draft Letter of Intent for power purchase, which is also attached.

Q: Do you wish to attach any other supporting documents?

A: Yes. I have prepared two Excel spreadsheets which illustrate the bid evaluation process, which I will discuss in my testimony. I also refer to a letter from the Kentucky Division of Air Quality ("DAQ") addressed to EKPC, which we obtained pursuant to the Kentucky Open Records Act, which I also attach.

Q: Is any part of the EP Proposal or other attached documentation properly classified as confidential business information or trade secret information?

A: Yes, EnviroPower claims confidential business and trade secret protection over the totality of the EP Proposal, our draft Letter of Intent, the two spreadsheets which I prepared and over certain of the answers contained in my testimony. We do not claim any confidentiality over the letter from the DAQ.

Q: What steps has EnviroPower taken to preserve confidentiality?

A: I have instructed counsel to submit a redacted version of each of these documents for the public record. EnviroPower maintains a stringent confidentiality program, designed in part by outside counsel, to protect our confidential business and trade secret information. We have strongly asserted our rights to confidentiality in several forums.

Q: Do you intend that any of the confidential information which you submit here to be shared with EKPC?

A: No. The EP Proposal and the draft Letter of Intent were submitted to EKPC as part of the bid process. EnviroPower does not waive, directly or indirectly, by direction or by inadvertence, any of our confidential, proprietary, trade secret information.

Q: How can the Commission be certain that the EP Proposal and draft Letter of Intent submitted with your testimony are identical to the documents which EnviroPower submitted to EKPC during the bid process?

A: I would urge the Commission to request of EKPC a complete copy of the EP Proposal and draft Letter of Intent, so that the documents may be compared from both sources.

Q: What was your responsibility regarding the preparation and prosecution of the EP Proposal to EKPC?

A: I led the team responsible for all aspects of the preparation, submission and negotiation of the EP Proposal. This responsibility included assimilation and presentation of all technical, financial, commercial and legal aspects of the presentation, including development of all pricing, data, and terms and conditions. My responsibility also included taking the lead on communications with EKPC, after the submission.

Q: Was the EP Proposal submitted in a timely fashion and in full compliance with the terms of the RFP?

A: Yes.

Q: What is the purpose of your testimony in this case?

A: I am here to assist the Kentucky Public Service Commission in the discharge of its obligations on behalf of the ratepayers of Kentucky. The evaluation of the bids resulted in the award of two self-build projects to EKPC, which is the subject of serious controversy. Subsequently, EKPC applied to the Commission for a Certificate of Convenience and Necessity, which is the subject of this case and another filed earlier this year. I believe that the Commission can only act with facts and evidence. I wish to assist the Commission by discussing facts and providing evidence concerning the following main points:

1. The RFP and the bid process conducted by EKPC and sanctioned by EnerVision was improperly designed and conducted, rendering the bid results certified by EKPC/EnerVision void from the beginning. Simply, the irregularities and inherent unfairness of the bid process breached the basic standards, routine and customary in this industry, for presenting and evaluating a self-build proposal with other proposals. As a result, this bid process was not transparent and was riddled with the opportunity for self-dealing, manipulation and substantial error.
2. The EKPC/EnerVision evaluation of the EP Proposal, as explained in the responses to the Commission's data requests, was substantially in error and directly caused the award of the bid to a party which was not

the lowest bidder. The substantial errors of the evaluation methodology improperly over-inflated the EP Proposal by at least 20% to 25%.

3. The EP Proposal is the least costly and most reliable bid. The EKPC/EnerVision evaluation methods disguise fundamental realities about the power plant construction process. The disguise includes mathematical and accounting deficiencies in the EKPC/EnerVision evaluation calculations which cannot, logically, be allowed to form the basis for inflated utility rates for the ratepayers of the Commonwealth.
4. There are readily available steps for the Commission to take to substantiate the improprieties in the bid process, as well as to validate the bids, the mathematics, the accounting and the other technical defects to which I have referred.

Q: Why are you giving direct testimony, under oath in order to present your comments to the Commission?

A: Based on my personal knowledge of the bid evaluation process and my experience with the appropriate methodologies for evaluating power plant construction bids, it is evident to me that there are significant, irreconcilable factual discrepancies in the testimony, analysis and the data submitted by EKPC. The only fair way for EnviroPower to submit its information to the Commission is by means of this sworn, direct testimony. EnviroPower and I remain prepared to assist the Commission in other ways, consistent with due process and a full, honest evaluation of the data. Furthermore, I understand that our legal counsel received express permission from the parties to the instant case and from staff counsel to the Commission for me to file this direct testimony.

Q: The first issues you wish to address are the irregularities and inherent unfairness of the bid process, is that correct?

A: Yes.

THE INHERENT UNFAIRNESS OF THE BID PROCESS AND EVALUATION PROCEDURES RENDERS THE ENTIRE RFP VOID

Q: Is it inherently unfair or irregular for a company such as EKPC to be the customer or "client" seeking to purchase power and, simultaneously, to bid on the power generation solution to provide that power?

A: No. Actually, this situation occurs with some frequency in the marketplace.

Q: What is the standard in the industry for fairly treating a client's self-build solution along with other third party bidders?

A: The standard is widely recognized, both in the USA and worldwide, that the entire process must be devoid of both the appearance and the fact of any self dealing, fraud, manipulation, bias or change in the evaluation criteria after the fact. The process must be conducted in such a manner that all bidders, including the client's self-build proposal, are subjected to the same guidelines, requirements and process. Each party must have equal and identical access to relevant information, data, requirements, and evaluation criteria. The concept is summed up by the notion of a level playing field.

Q: Are there other standards, which EKPC's RFP and bid process must be found to have met in order for the bid process to be judged routine, fair, and proper?

A: Yes. The routine and customary bid standard also requires that the bid evaluation process be conducted in a manner which gives no predetermined advantage, directly or indirectly, to any bidding party. There can be no hidden agendas, no bias, and no skewing of the evaluation process. The evaluation criteria must be established in advance, clearly stated, and consistently applied.

Q: Are there other requirements?

A: Yes. The evaluation process must be open to all qualified bidders who remain in consideration at each stage of the evaluation process. The bid proposals must be opened in front of the qualified bidders. The bids submitted by each party must both be held in confidence from the other bidders and the integrity of that process must be demonstrated by processes and procedures to safeguard confidentiality.

Q: What do you mean that the integrity of the process must be demonstrated by processes and procedures?

A: Since EKPC drafted the bid document, established the evaluation criteria, conducted the evaluation process and made the final decision to award the bid to itself, on two separate occasions, the burden is heavily on EKPC to have established from the beginning, a process which was transparent and fair. Clear, verifiable procedures must be in place to assure the bidders that bid proposals and other information **could not, and would**

not, be shared with any other bidder, especially with representatives of their own self-build project.

Q: Why is this so important?

A: Not only is this standard procedure routine and customary in the industry, but it is also consistent with the American tradition of establishing a level playing field. If the EKPC or client self-build project had access to any of the other bidder's information, it would be easy to manipulate the estimated costs or the estimated pricing in order to steer the successful bid to themselves. EKPC, the client, could use the process to unfairly obtain confidential, proprietary information. So, in the industry, it is expected that a client's RFP will establish clear and detailed procedures to avoid even the appearance of manipulation and self-dealing.

Q: What provisions of the RFP address the avoidance of even the appearance of manipulation and self-dealing?

A: Basically none.

Q: What would you have expected to have seen in the RFP?

A: The RFP should have established procedures for the confidential submission of the bids. The bids should have been opened in a transparent fashion, at an event to which all of the qualified bidders were invited to attend. The bid evaluation team should have been structured with personnel to insure that no manipulation or self-dealing would take place. For example, EKPC should have disclosed the members of their evaluation team and disclosed the members of their self-build team. The RFP should have established a so-called "Chinese Wall" between the two EKPC teams and required written certification that they were independent. To the greatest extent possible, the bid evaluation process must be transparent and fair, in fact and in appearance. Besides the formal bid opening process, is it often the case that a non-confidential summary of each bid, prepared as part of the submission by each bidder would be disclosed to the other parties. The RFP should also detail the evaluation process and the weight which would be given to key variables in the evaluation process. The RFP was silent on virtually all of this.

Q: Are there other routine and customary steps which an RFP would typically contain in order to address the need for a process and procedure to avoid the appearance of manipulation and self-dealing?

A: Yes. A routine and customary RFP would have identified an independent firm to conduct the bid evaluation process so that the client's role would be minimal. In addition, a typical RFP would establish rules regarding communication between bidders, including the client's self-build option, and the evaluation team. It is well-known in the industry that the opportunity for manipulation, deception, self-dealing and fraud are so readily available to a client bidder, that in many cases the client bidder will actually be housed in a different city from the client evaluation team and, invariably, will have no greater access to people, documents or data than any other bidder during the entire process.. Typically, the RFP would state that breach of these procedures would result in automatic disqualification. The scope of permitted questions to be raised by a bidder during the evaluation process might be defined. And, the scope of the questions to be addressed by the evaluation team might be discussed. Overall, the process and the evaluation must create a completely level playing field for all of the competitive bidders. That did not happen here—none of it.

Q: Why are these detailed standards routine and customary?

A: Bidders on electric power plants spend a great deal of time and money to prepare a bid and to participate in the evaluation process. If the process is phony, and simply a way for the client to get free information to enable the client to revise their own self-build proposal, the process is fraudulent and void for self-dealing. If the client has an ulterior motive for selecting itself or for excluding another qualified bidder, the process is fraudulent from the beginning. If the evaluation allows the selection of anyone on the basis of anything other than a fair, honest, verifiable bid, which will deliver the lowest possible cost electricity, the process is fraudulent from the beginning. Self-dealing may easily occur when parties informally meet over the water cooler or at lunch, or at a social event. When people from the evaluation team have relationships with the people on the bid team which are permitted to continue during the bid evaluation process, the process appears to be inherently biased, unfair and improper.

Q: Do you know who was on the EKPC bid evaluation team and who was on the EKPC self-build project team, and what, if any, relationships or communication occurred between them?

A: No. And that is a fundamental concern.

Q: Did you have other concerns about the process?

A: Normally the outside evaluation firm, here EnerVision, would take the lead or even solely conduct the evaluation to avoid the appearance of impropriety. The members of the EKPC self-build team would be identified and disclosed. The RFP rules would require automatic elimination of any bidder, the self-build option included, in the event of any communication or shared information, even over an informal lunch or coffee, to assure fairness and the level playing field. None of these protections were present in this RFP or bid process.

Q: Do clients always submit a client bid, in the same way as EKPC submitted the bid for the self-build plant at Spurlock #4?

A: No. Some clients may not submit any bid. Or, clients will normally submit a bid in one of two ways. First, a client bid may be submitted as a legitimate bid, with the intent of winning the award. In such a case, the fact that a legitimate self-build bid will be submitted will be fully disclosed in the RFP, along with the detailed rules and procedures to insure confidentiality, fair play and compliance with the norms, which I discussed above. This fact was not disclosed in the EKPC RFP.

Q: What is the second way in which a Client may typically submit a bid?

A: Second, a Client may announce in the bid that they will be submitting a "nominal" bid or a "baseline" bid, which means that it will really be used as a benchmark for establishing the evaluation parameters in the event that it becomes difficult to compare one third party bid to another. The preparation of the "baseline " bid will give the client the opportunity to evaluate the marketplace conditions and costs in a simulated, dry run fashion. The baseline bid will become important when the field of bidders is narrowed to the finalists. At this point in the process, the finalists may be asked to recast their bids to conform to the format of the "baseline" bid. This will facilitate the evaluation process. In this second case, the Client bid is not a bid to be evaluated for purposes of winning the award, but only as a means of helping to streamline the evaluation process.

Q: Which type of bid did EKPC submit when it submitted it self-build project bid for Spurlock #4?

A: Neither of the two routine and customary types mentioned.

Q: I am confused. Then, how did EKPC submit its bid for the self-build model?

A: It was a secret. This makes the process unfair, inappropriate and void.

Q: Those are strong characterizations. Would you please explain what you mean?

A: Yes. The RFP does not plainly state that the EKPC self-build option will be a competitive bid, submitted with the intent of winning the award. In fact, since the RPF contains no information regarding the steps, procedures and assurances to avoid self-dealing and manipulation of the process, the RFP lulls the other bidders into thinking that the self-build option is just a benchmarking option. However, the RFP also does not contain any clear benchmarking criteria. For example, the RFP states that: "EKPC reserves the right, without qualification, . . . to waive any formality, technicality, requirement or irregularity in the proposals received." (page 6 of the RFP) .

Q: Is that waiver provision a routine and customary provision in an RFP when the client's self-build option is intended to be a serious contender to win the bid?

A: No. This waiver provision is highly unusual in the context of a competitive self-build bid submission. Customarily one would expect to see some language indicating that the waiver of any material requirement for one party would be disclosed immediately to all other parties and that the remaining bidders would then have the option of proceeding with the evaluation on the basis of the original requirement, or on the basis of the waived or modified requirement. To leave this type of language out, opens the door to self-dealing and manipulation.

Q: Would you explain why the EKPC RFP leaves the door open to self-dealing and manipulation?

A: Yes. For example, EKPC in the evaluation process might determine that it will give extraordinary weight to one factor, such as the location of the power plant at the existing Spurlock site. Under the rules of the EKPC RFP, there is no obligation to disclose this revised requirement to any of the other bidders. In this hypothetical situation, the EKPC self-build option would be the only bid which would have assured access to the Spurlock site, since EKPC owns that site. Hence, by simply manipulating, during the evaluation process, one simple requirement and the weight or importance attached to that requirement (namely the site selection), EKPC could secretly skew the results in order to favor the EKPC self-build option.

Q: Why is it so important for the other bidders, like EnviroPower, to know from the face of the RFP that EKPC intended to submit a self-build option designed to win the award, rather than just serve as an evaluation benchmarking device?

A: It is absolutely important. Why would a bidder risk the time and money of preparing a bid and prosecuting the bid, if there was a pre-disposition to award the RFP to the self-build? EnviroPower would have never risked the time, effort and money to prepare and prosecute our bid, without relying on the good faith of the system. EnviroPower expected adequate, routine and customary procedures to avoid the appearance and the fact of self-dealing and manipulation. In retrospect, I believe that the EKPC RFP did lull bidders into validating a process, where it may have been pre-ordained that the self-build option would win. This is improper from the beginning, and should void the entire RFP.

Q: Is it possible that the failure of EKPC to articulate routine and customary rules to avoid self-dealing and the failure of EKPC to disclose its real intent in submitting a self-build option, were just immaterial in that they were honest errors and omissions?

A: It is not likely. EKPC has access to industry guidelines on proper RFP practices. The issuance of an RFP to build 550 MW of power is a serious matter. EnviroPower relied on the reasonable expectation that this RFP was a level playing field. We were lulled into thinking that the self-build option was intended to be a benchmarking method. We certainly expected that the lowest cost option bid would be the winner. This is why I have characterized the EKPC RFP and evaluation process as improper, deceptive and this is why the EKPC RFP warrants being declared void.

Q: When did you or members of your bid team first become suspicious or concerned about the intent of EKPC and the propriety of the bid evaluation process?

A: Around the time that we submitted the bid. These concerns grew as the evaluation and selection process progressed.

Q: What event or events gave rise to the suspicion or concerns?

A: The RFP was silent about the bid opening procedures. We asked when and where we could attend the bid opening. EKPC informed us that the bids would be opened in secret.

Q: What was the reaction of EnviroPower to this decision by EKPC?

A: We informed EKPC that this was highly irregular and had the appearance of impropriety.

Q: Did EKPC understand your concerns and that you characterized their process as irregular and improper?

A: Yes. Without a doubt.

Q: Why are you so certain? Perhaps there was a misunderstanding?

A: We informed EKPC that the private opening of competitive bids, when a self-build option was involved, "Doesn't even happen in Afghanistan". That was precisely the phrase we used. We then demanded that our request for an open and transparent bid opening process be elevated to the CEO of EKPC for a decision.

Q: Then what happened?

A: We were informed that the decision of the CEO of EKPC was to reaffirm that the opening of the bids would be held in secret. We were told not to worry. We were also told that in order to insure fairness, a member of the EKPC board of directors would be present at the bid opening.

Q: Do you know who was present at the bid opening?

A: No. It was in fact a secret process, closed to EnviroPower.

Q: Subsequent to the submission of the EnviroPower bid, what process were you personally engaged in pursuant to the bid evaluations?

A: I was personally involved in an extensive bid evaluation process with EKPC, which lasted several months.

Q: What did the process entail?

A: I was involved in telephone calls and emails with the EKPC staff in order to clarify questions and points raised by EKPC.

Q: Did the requests for clarification begin immediately after the bid submission?

A: No. There was very little communication with EKPC for about the first six weeks after the bid submission. Then EKPC began in earnest to request detailed and extensive clarification by telephone and email.

Q: Was the timing of this procedure routine and customary?

A: No. The RFP stated that bids would be opened on May 10 and that the evaluation period would be completed by July 10. That is only a period of about eight weeks. We experienced several delays in the process and the process was not concluded on the schedule stated in the RFP.

Q: Did you have an opportunity to raise questions about the process of the bid evaluation or the purpose of some of the requests for clarification which you received from EKPC?

A: Yes. Our questions, like other questions from other bidders, were submitted either in writing or orally. EKPC would then post the question and a written answer on their website, so that all of the bidders had access to the questions and answers raised by any of the bidders.

Q: During that process, were there questions posed by bidders other than EnviroPower?

A: Yes. Several bidders in addition to EnviroPower posed questions.

Q: Do you recall any questions posed by the EKPC team in charge of the self-build power plant known as Spurlock #4?

A: No.

Q: Did the evaluation process in which you were involved include any communication besides direct telephone calls and emails?

A: Yes. There were conference calls in which EKPC ran the conference call, and a representative of EnerVision listened, but did not ask questions or comment on any of the discussion. There were also at least two face to face interviews, which I attended. There were other communications, including face to face meetings, also with other members of the EnviroPower team, including Mr. Randy Bird, Ms. Debbie Dawson and others.

Q: Who managed, controlled and set the strategy for the EKPC bid evaluation, from your perspective?

A: EKPC managed, controlled, and set the strategy for the bid evaluation, not EnerVision.

Q: What led you to that perception?

A: During the face to face meetings, EKPC sent a large number of people to conduct the session. EnerVision did not even attend in person. They attended by telephone and asked only logistical and administrative questions.

Q: Which individuals actually controlled the bid evaluation of the EP Proposal?

A: We do not know which individuals within EKPC controlled the bid evaluation process. There were several people who were active including Mr. Jim Shipp.

Q: Who is Mr. Shipp – do you know anything about his experience and credentials?

A: Mr. Shipp had been a principal member of the EKPC engineering, management and, I believe, construction team for the construction of Spurlock #3. Mr. Shipp was introduced to our team as the head of the engineering and construction group at EKPC.

Q: What role did Mr. Shipp play in the evaluation process?

A: He asked technical, engineering, construction, environmental and permitting questions about the EP Proposal. He used the questions and answers to compare the EP Proposal to the EKPC self-build option in our meetings. It was clear that he had familiarity with the EKPC self-build option. Eventually he was introduced to us as the head of engineering and construction effort for the EKPC self-build option.

Q: Did anyone else play a significant role in the process?

A: The other EKPC person actively involved in the process was Mr. David Eames. In addition, other EKPC personnel were involved, including, but not limited to, Frank Olivia, Ronald Brown, Gary Davidson and Randy Dials.

Q: Who, to your knowledge, was introduced to you as actively involved in the evaluation of the EP Proposal, representing EnerVision?

A: No one.

Q: Was EnerVision introduced as the outside, independent evaluator responsible for the evaluation process?

A: No.

Q: When EnerVision was introduced, what role was ascribed to them?

A: EnerVision was described as a consultant to EKPC. It was clear that EKPC was running the evaluation process themselves.

Q: Is it routine and customary for a client to take the lead on the evaluation process, when the self-build option is a contender for the RFP award, rather than just a benchmarking option as you described earlier?

A: No. In my experience, I have never seen a client take the lead. Anytime there is a serious self-build option to be considered, an independent, qualified bid evaluation firm would conduct the bid evaluation. That was not he case here. This fact is actually a significant reason why we believed during the evaluation process that the self-build option was intended only as a benchmarking device.

Q: Did you complain to EKPC about them taking the lead in the evaluation process?

A: Not at first. Not as long as we believed that the benchmarking role was the sole role for the self-build option.

Q: Were there other events in the evaluation process which added to your concern about the integrity of the process?

A: Yes. I had concerns as did others on the EnviroPower team.

Q: Would you please elaborate on those events and the concerns voiced within EnviroPower?

A: We were concerned based on the possible dual role played by Jim Shipp and others. On the one hand he was the lead, most vocal person

evaluating our bid on technical, construction, engineering and environmental issues. On the other hand, he was introduced to us as the person who was building Spurlock #3. After we had been short listed as one of the two finalists, I was informed that he would play a significant role on the technical team which advanced the self-build option.

Q: Did you lodge a formal complaint when you learned this?

A: No. We still believed that the self-build option was a benchmarking device. We were certain that we had the lowest price bid, for reasons I will detail below. In retrospect, we did not want to admit to ourselves that we were in a questionable process. Therefore, we rationalized the situation. We told ourselves, for example, that Mr. Shipp's involvement might be sloppy and unorthodox, but not by itself conclusive proof of manipulation, self-dealing or a dishonest process.

Q: Were there other incidents which gave rise to concern?

A: Yes. Some on our team became concerned when it appeared that EnerVision was not participating in the questioning regarding the bid evaluations. EKPC asked all of the questions and conducted all of the technical, financial and commercial discussions. EnerVision seemed to be mere window dressing. We discussed this extensively.

Q: Were there any other incidents?

A: Others on my team became suspicious when Mr. Eames asked us to modify our bid to supply half of the original RFP for baseload, that is to reduce our baseload bid from about [redacted] to about [redacted]. This was the first real indication we had that EKPC might actually be intending to award the first [redacted] to itself.

Q: Why did you reach that tentative conclusion?

A: EnviroPower is building an approximately 574 MW power plant at the Kentucky Mountain Power site. We were able to supply the full baseload power requirement of the original RFP. We had been told during the evaluation process that no one else could supply that much power from one site. We were also told that the self-build option would be for about 278MW. Again, as a benchmark bid, calculating half of the requirement was reasonable. But once we learned that there was to be a genuine division of the power requirement, we were concerned.

Q: When Mr. Eames told you that you needed to revise your bid to supply only half of the power you originally bid to supply, was that one of the changes in requirements permitted by that waiver clause you cited in the RFP earlier in your testimony?

A: Yes.

Q: How were you informed that EnviroPower was a finalist in the bidding process?

A: Mr. Eames telephoned me. He stated that EnviroPower and one other bidder were the finalists. He never informed me that the other finalist was the EKPC self-build project later known to us as Spurlock #4.

Q: During subsequent phone calls, did Mr. Eames discuss with you any other information?

A: Yes. He asked us whether we wished to increase our bid price.

Q: Is it routine and customary for the client or the representative of the evaluation team to ask a finalist to reconsider their bid price?

A: Yes, of course. It is customary to be asked to decrease one's price, but not to increase it.

Q: Are you sure that Mr. Eames wanted you to increase the price of the EP Proposal?

A: Yes. He stated categorically that coal prices, interest rates and steel prices were rising and that we might need to increase our price in order to more accurately reflect current market conditions. He added that a decision on the baseload contract award would be made soon.

Q: At any point did Mr. Eames suggest that EnviroPower lower its price?

A: No.

Q: Why do you think Mr. Eames specifically referred to interest rates, coal and steel prices when he asked you to raise the EnviroPower bid price, if doing so is not routine and customary?

A: It is common knowledge that interest rates, coal and steel prices were all rising. Over the past couple of years, standard steam coal prices have

increased from the high $20's/ton to well over $50/ton. The cost of steel has increased even more dramatically, from about $195/ton to nearly $500/ton. The two commodities that are used the most in the construction and operation of a power plant are coal, which is the fuel, and steel, which is in the plant construction and a large component in the most costly equipment supplied to the plant. By stating that coal and steel prices were escalating between the bid submission date and the award date, it was obvious that Mr. Eames wanted EnviroPower to find ways to increase our bid price in order to reflect these market price changes.

Q: How did you reply to the request to increase the EP Proposal price?

A: I simply informed Mr. Eames that our bid price was firm and final. There would be no increase. I wrote a letter confirming this on or about September 27, 2004.

Q: How did Mr. Eames react to your decision not to increase your bid price?

A: He said that he was surprised. He asked for EnviroPower to reconsider raising its price. He pressed on by saying that now was the time to raise the price because he would have to defend the winning price in front of the Commission. After a few minutes of discussion, and my continued refusal to raise our price, he stated that "the other finalist" would need to recheck their fuel prices, and once that was done, a final decision would be made.

Q: What did you think Mr. Eames meant when he referred to the other bidder rechecking fuel prices?

A: At that time I was fearful that the other bidder might be reducing their fuel prices in order to become the successful bidder.

Q: When did you learn the result of the RFP bid selection?

A: On or about September 13, 2004, Mr. Eames phoned to inform me that the EKPC self-build option known as Spurlock #4 had been selected as the winning bidder on the first 278MW , but that we and another bidder still would be considered for the final 278MW obligation. He stated that a decision would be announced soon.

Q: Now I am confused. Why would Mr. Eames have wanted EnviroPower to increase its bid price, if it had already been determined that Spurlock #4 was the lowest bidder?

A: Obviously, if EnviroPower had increased our bid price, it would have created more of a cushion, more separation in the price, when one compared the price of Spurlock #4 to the price of the EP Proposal.

Q: I still do not understand. Why would more separation in the price be necessary or helpful to EKPC? Isn't the lowest price, the lowest price?

A: In this case it was absolutely logical. According to EKPC's testimony in this case, the EKPC self-build option known as Spurlock #4 based its pricing almost exclusively on estimates from Owner's Engineer on Spurlock #4. The single largest cost item in a power plant is the Engineering Procurement and Construction ("EPC") contract, which represents about 80% of the total project cost. EKPC had not signed or obtained a firm EPC price quote, so its price was estimated. Fuel costs for Spurlock #4 were estimated by Energy Ventures Analysis, Inc. of Alexandria, Virginia. The costs of siting and permits were estimated. At the same time EnviroPower had binding commitments for all of those elements of our KMP project. In fact, we had most of our commercial negotiations completed. EnviroPower was able to guarantee our costs and back it up with a financial commitment from a world class banking institution. I am convinced that we had and still have the actual lowest price. The only way that Spurlock #4 could win would be through some gamesmanship. So, to answer your question succinctly, the lowest price is not the lowest price when there is a game being played. In such a circumstance, the issue is not what is the real, absolute lowest price, but what can be sold or characterized as the deemed lowest price. That is the game.

Q: Now, before I pursue the points raised in your last answer, please tell us whether Mr. Eames said anything else of note during or after that telephone call in which he informed you that the first requirement had been awarded to EnviroPower.

A: Yes he did.

Q: What else of note did he say?

A: As I noted earlier, Mr. Eames said that EnviroPower was still a finalist on the last requirement for the final 278MW, and that a decision would be made soon.

Q: Did Mr. Eames contact you soon thereafter?

A: Yes. Mr. Eames subsequently called to inform me that the final requirement had been awarded to the Clark County self-build project of EKPC and that the bid of EnviroPower had been fully rejected and our bid was deemed terminated.

Q: Now was this award to the Clark County self-build project of EKPC part of the RFP?

A: Yes. In the original RFP the Smith, Clark County self-build option was identified as a possible site to meet the baseload requirement.

Q: Is this Smith self-build option in Clark County subject to this case in which you are testifying?

A: No. EKPC has filed a separate petition for a separate Certificate of Convenience and Necessity in the Clark County or Smith project. I believe that case is 2005-00053, currently pending before the Commission.

Q: In your experience and judgment, was this RFP and evaluation process routine and customary, consistent with the rules of fair play and of competition on a level playing field, and otherwise consistent with the norms which you described as the standard practices in the industry?

A: Absolutely not.

Q: Was this process improper, deceptive, misleading, and colored with the appearance of self-dealing?

A: There is a real possibility.

Q: Why do you conclude that?

A: For the reasons I will discuss below, EnviroPower necessarily had the lowest price bid, with the greatest certainty of no cost increases, because of the guarantees we provided.

DID CIRCMSTANCES EXIST WHICH MIGHT SHED LIGHT ON WHY THE RFP AND BID PROCESS WENT AWRY?

Q: Can you explain why the bid process may have been conducted in the improper manner you described, and if so, upon what do you base your judgment?

A: I don't know what was discussed or what happened within EKPC. But I can discuss several circumstances which may or may not have colored EKPC's judgment.

Q: Please continue.

A: As a cooperative power generator, EKPC is eligible to apply for low cost financing from the Rural Utilities Service ("RUS") and the National Rural Utilities Cooperative Finance Corporation ("CFC"), both instrumentalities of the US government. In order for EKPC to qualify for financing from the RUS or the CFC, it must demonstrate that its self-build plants were the successful bidder in a competitive bidding process.

Q: But your answer concerning the RUS and CFC financing only applies to a situation in which EKPC actually has the lowest bid and wins. Is that right?

A: Yes.

Q: Why would EKPC have an incentive to bend the rules, to engage in the kind of improper conduct you have described in order to manipulate the award of the RFP?

A: I have no insight into EKPC's inner decision-making.

Q: Was there a circumstance in which EKPC found itself which may have affected its view of this RFP?

A: It is possible.

Q: Please discuss that circumstance.

A: There is another circumstance worthy of discussion. In January 2004, the federal government -the US Environmental Protection Agency ("US EPA") and the US Department of Justice – filed a lawsuit against EKPC alleging violation of the so-called "new source" rules of the Clean Air Act, as amended. This lawsuit, if successful against EKPC, carries very stiff financial penalties and could result in the US government ordering the closing of EKPC's existing power plants which do not comply with the Clean Air Act new source rules. The power plants at the heart of the lawsuit are at Spurlock and Smith.

Q: When was the US government lawsuit brought against EKPC?

A: I believe in January, 2004.

Q: When was the RFP in this case issued?

A: April 2, 2004.

Q: Are you saying that there is a relationship between the US government lawsuit against EKPC and the selection of the two EKPC self-build power plants as a result of the RFP?

A: It is possible.

Q: How serious are these "new source rule" lawsuits?

A: This is a serious matter. I recall seeing very recently a settlement entered into by Dynegy of Houston where the settlement fine was in the tens of millions of dollars.

Q: Was the Dynegy case similar to the EKPC case?

A: Fundamentally, yes. The US government alleges that EKPC mischaracterized certain equipment upgrades and improvements at its power plants, including Spurlock, in violation of the Clean Air Act and its regulations. I think that is similar to the Dynegy case.

Q: Have many of these types of lawsuits been filed against electric power generators?

A: Yes.

Q: Do these situations normally result in criminal liability for the companies and their officers and directors?

A: As I understand it, most often these situations are resolved by a negotiated settlement. If during the lawsuit, intentional wrongdoing became evident, criminal liability might be possible.

Q: Is there a pattern followed by these settlements, which is understood within the industry?

A: Generally, yes. One typical way in which these lawsuits are settled is for the polluting entity (EKPC) to construct additional new power generation, built to satisfy the current stringent pollution standards.

Q: Why does building a new power plant enable a power producer which has violated the Clean Air Act new source rules to settle the claim?

A: The US EPA looks at the total average pollution for which a power generator is responsible, in relation to the amount of power they produce. The more power produced, the more pollution one is permitted to emit.

Q: This is complicated. Can you explain what you mean?

A: Yes. Under the EPA rules, various pollutants, especially those commonly called acid rain, which is typically caused by coal burning electric power plants, are measured and monitored. Under the Clean Air Act, the standards for reducing the airborne pollutants from coal fired power plants have become tighter and tighter over the past 15 years. Under the so-called "new source" rules, any time a coal fired power plant engages in upgrades or substantial overhaul of its operational plant, or undertakes capital improvements beyond routine maintenance, that power plant must conduct those upgrades or substantial overhaul so as to meet the current Clean Air Act standards. The failure to do so is a violation of federal law. That is what the US government alleges that EKPC did.

Q: But how does building a new power plant—or building two power plants--help solve this problem?

A: The key is reducing the overall average pollution level per MW of output. Let me give you an example. Assume that a polluter charged with a violation of the new source rules, like EKPC, generates 2000 MW of power currently. And, please allow me oversimplify the science and methodology to illustrate my point.

Q: OK. We have a power plant generator who generates 2000 MW, now what?

A: Let us assume that under today's clean air standards the total pollution permitted for a 2000 MW generator of power is represented by the numeric value 16 pollution points.

Q: What do you mean by 16 pollution points?

A: Here I am simplifying for illustration purposes only. Assume that the US EPA determines that the total acceptable level of pollution under the Clean Air Act for a power generator like EKPC and its hypothetical 2000MW of power generation is represented by the numeric value 16– that is 16 pollution points.

Q: OK. So what?

A: Now, let us assume that the actual pollution given off by EKPC is represented by the numeric value 18 pollution points.

Q: How did you get that number, 18?

A: For illustration, let us assume that the US EPA has tested, calculated, measured, calibrated and determined that the actual pollution released by EKPC is not the acceptable level of 16, but instead is 18 pollution points.

Q: Ok, so now what?

A: Now the US EPA alleges that EKPC engaged in upgrades, improvements, and other transformation of its power production processes which go beyond routine maintenance. This means that EKPC allegedly violated the new source rules because if it did all of that improvement work, it was required to have reduced its pollution points to 16. Continuing to pollute at the level of 18 is a necessary part of the alleged violation.

Q: So, why does this mean that EKPC would need to build a new power plant? I don't understand.

A: This is not a certainty. It is a viable possibility. It is a circumstance worthy of further investigation.

For example, let us assume that with state of the art technology, EKPC could add an additional 500 MW of power, which would add an additional level of only 2 pollution points. By adding that extra 500 MW of power, the total pollution points given off would be a value of 20 (that is 18 pollution points from the current production of 2000 MW +2 pollution points from the new, state of the art 500 MW plant=20 pollution points). Now if we look at the US EPA permitted level of pollution points for a total power generation system of 2500 MW (that is the original 2000 MW plus the new 500 MW built), let us assume that the permitted value would be 20 pollution points. We calculate this permitted value as follows. If the permitted value of 16 applies to 2000 MW, that means that

4 pollution points for each 500 MW. (500 MW x 5= 2500 MW, which means that 4 points x 5=20 pollution points).

Q: So what does this exercise mean?

A: It means that by building the two new power plants at Spurlock and at Smith, EKPC might create the critical circumstances for settling its lawsuit with the US government.

Q: Explain that again.

A: Here is another way of saying it. If EKPC can build two new power plants which help EKPC to reduce its overall average output of pollution, EKPC may be in a position to settle its lawsuit with the US EPA.

Q: Hypothetically, what would have happened to EKPC under this lawsuit if EnviroPower had won the RFP?

A: EKPC would be stuck with defending its lawsuit on the merits of what it did and whether the US EPA allegations are proper and sufficient when presented in court.

Q: So, if EKPC needed to build the new power plants at Spurlock and Smith, why did they need to have to conduct the RFP to begin with?

A: The only way that EKPC could afford to build the new power generation would be to finance them through the RUS and the CFC. And as I said, the only way to secure that financing was to show that the self-build options had won a competitive bid process.

Q: Why doesn't EKPC just go to the RUS and the CFC to borrow the money to settle the lawsuit and build the new power plants?

A: RUS and CFC funds may not be used to pay a settlement for an alleged violation of the Clean Air Act. And, again, RUS and CFC money is only available for a new power plant, and only if EKPC can show that they conducted a competitive bid, which resulted in an award to the self-build options of EKPC.

Q: Is this why you believe EKPC skewed the process and engaged in the other improprieties which you have discussed?

A: It is a possibility. I understand that the Commission has the authority to find out what happened with this RFP and why.

Q: Is it possible that the bid evaluation process for the RFP gave more weight to the site selection at Spurlock and Smith, because those are the sites involved in the lawsuit?

A: Anything is possible. Because the entire process was closed, secretive and conducted without adherence to the principle of a level playing field, I do not know. I believe the facts show the appearance of impropriety, which may have led to self dealing, manipulation and deception. However, the details of this process have been kept confidential from EnviroPower, so the confidentiality of the current process serves as a shroud, leaving EnviroPower unable to ascertain the truth, except for one thing of which we are certain.

Q: What is that of which you are certain?

A: That the ratepayers of Kentucky are not getting the lowest cost electric power through the EKPC self-build awards.

THE EKPC/ENERVISION EVALUATION OF THE EP PROPOSAL CONSTITUTED SUBSTANTIAL ERROR AND DICTATED THE RESULT THAT ENVIROPOWER WOULD BE AN UNSUCCESSFUL BIDDER.

Q: You stated that the second issue upon which you wished to assist the Commission involves substantial errors in the evaluation process and the evaluation of the bids, which caused EnviroPower to be denied its rightful position as the lowest cost bidder. Are you prepared to discuss this issue?

A: Yes.

Q: What steps did you take to evaluate the methodology employed by EKPC and EnerVision to evaluate the EP Proposal and the successful EKPC self-build proposal?

A: Upon receipt of the EKPC response to the Third Data Request, I personally conducted and directed an intensive review and evaluation of the methodology and results used by EKPC and EnerVision.

Q: Was your review comprehensive?

A: Yes, but only to the extent that data was provided to us through the Commission process. We do not have access to any of the redacted data. We have not had the opportunity to examine or cross-examine EKPC or EnerVision in order to clarify their assumptions and methodology.

Q: What was the purpose and goal of this review and evaluation by you and EnviroPower?

A: We performed this review and evaluation in order to determine whether EKPC and EnerVision accurately evaluated EnviroPower's proposal, or whether we could identify any reasonable basis upon which the methodology and results employed and obtained by EnerVision and EKPC could be justified.

Q: What were the summary conclusions which you reached from your review and evaluation?

A: We concluded that the information submitted to the Commission by EKPC, which characterized the EP Proposal, was in substantial error and caused EnviroPower to lose its position as the lowest bidder. The use of the EnerVision evaluation process and the resulting price adjustments were not routine and customary mathematical applications. EnerVision and EKPC imposed extraordinary and false (or miscalculated or omitted) assumptions on the EP Proposal in order to artificially inflate the EP Proposal's bid price, which had the effect of skewing the price evaluation in favor of the EKPC self-build project at Spurlock 4.

Q: What are your qualifications to comment on the EnerVision and EKPC methodology and its application to the evaluation of the EnviroPower proposal?

A: My professional experience includes approximately 20 years of comprehensive executive service in the energy business, including power plant development. I held senior executive positions with Montana Power Company, Kinder-Morgan, Inc., and subsidiaries of Shell Oil Company. During my career, I have participated in the evaluation, development, financing, construction, commercialization and operation of numerous power generation projects. I have developed a thorough analytical understanding of the business, finance, technical and commercial aspects of many different kinds of power generation projects.

Q: What is the core business of EnviroPower?

A: From the date of my appointment as President and CEO of EnviroPower, I helped establish world class, bankable commitments for financing. We established critical contracts regarding EPC, fuel supply and other project requirements. We devised a plan to deliver electric power at or below prevailing market rates, based upon proprietary techniques, methodologies and business arrangements. We are currently developing two power plants, each of approximately 578 MW, including one in Kentucky, Kentucky Mountain Power. The other plant is in Illinois, known as Franklin County Power. Our model utilizes a CFB (continuous fluidized bed) technology and consumes comparatively inexpensive low grade coal, while meeting the governing air quality and other environmental standards. As sophisticated independent power producers, we take a long term approach to our business and to the dynamics of its success.

THE EKPC/ENERVISION EVALUATON OF THE EP PROPOSAL MISCONSTRUED THE FOUR GUARANTEES PROVIDED BY ENVIROPOWER. THIS WAS SUBSTANTIAL ERROR WHICH DIRECTLY CAUSED THE EP PROPOSAL TO FAIL.

Q: You have testified that the information submitted to the Commission by EKPC, which characterized EnviroPower's proposal, was in substantial error and caused EnviroPower to lose its position as the lowest bidder. Would you please explain what you mean by this?

A: There are many errors. First, EnerVision and EKPC failed to treat the EP Proposal and the self-build Spurlock #4 Plant equitably, regarding the substantive differences in the guarantees offered by the parties. Specifically, EnviroPower provided EKPC with several guarantees, supported by strong, financial commitments. These guarantees were based on contracts in place and supported by binding financial commitments. The self-build plant legally and practically could not have offered comparable guarantees. And, in fact, the Commission has proof that no such guarantees were provided by EKPC.

Q: Why do you say that EKPC could not have offered guarantees comparable to those offered by EnviroPower?

A: The EKPC financial model relies on 100% debt financing through the RUS and the CFC. Those institutions do not offer guarantees of the type provided to EKPC by EnviroPower. EKPC does not have the balance sheet to support commercial guarantees comparable to the EnviroPower guarantees.

Q: What evidence is before the Commission proving that EKPC did not provide comparable guarantees?

A: The Warren Rural Electric Cooperative Corporation Special Membership Agreement ("WRECC SMA"), which is in evidence in this case, does not contain any guarantees by EKPC which are comparable to those provided by EnviroPower in the EP Proposal.

Q: Why do these guarantees matter in the evaluation process?

A: Since a guarantee of performance is a thing of value in the power generation business, the failure of EKPC/EnerVision to calculate accurately the value of each of our guarantees and to adjust the relative costs of the Spurlock #4 proposal was an error. **I call this error substantial because it was outcome determinative. I also call this substantial because this single error resulted in an artificial overpricing of the EnviroPower bid by between 15-20%.**

Q: Is it better for the Ratepayers of Kentucky to have a self-guaranteed self-build plant from EKPC than to have the third party guaranteed EnviroPower plant?

A: No. If an EKPC guarantee is made and then called, the ratepayer of Kentucky or the Kentucky members of the EKPC cooperative pay to honor the guarantee. As a private company, if the EnviroPower guarantee is called, the equity holders and the world class commercial banks issuing the bankable financial guarantees pay. EnviroPower would bring outside money into Kentucky.

Q: Wouldn't EKPC employ people in Kentucky, pay taxes in Kentucky and better serve the Kentucky ratepayer as compared to EnviroPower?

A: No. EnviroPower is a Kentucky corporation. We will employ people in Kentucky. We will pay taxes in Kentucky, and we will serve the ratepayers better because we have a lower price for our electricity and because we also offer lower risk due to the binding guarantee we provided to EKPC for our price and performance.

Q: Would you please explain the EnviroPower guarantees contained in the EP Proposal?

A: EnviroPower's bid contained four (4) separate guarantees. The first guarantee was a general performance guarantee. Based on our review of the WRECC SMA, it does not appear that EKPC has provided its members with a commensurate guarantee. EKPC/EnerVision did not present a mathematical formula or mechanism for valuing this EKPC deficiency. This is an error, which artificially deflated the true economic cost of the EKPC self-build bid (That means that EKPC/EnerVision artificially and improperly understated the true cost of power from Spurlock #4). In addition, there are three (3) other guarantees, which we offered.

Q: Discussing each of the three remaining guarantees contained in the EnviroPower bid, one at a time, would you please explain the nature of the guarantee offered by EnviroPower and why you have determined that an identical guarantee was not provided by EKPC in its bid for the self-build Spurlock #4 plant?

A: Yes. The second of four guarantees we offered was a guarantee to commence commercial operations on or before April 1, 2008. This guarantee, like all others provided by EnviroPower was legally and contractually supported by bankable assets or instruments, consistent with standard market practices, and drawn against entities with exceptional global financial capability.

Q: What does this guarantee mean?

A: This guarantee means that, in the event that EnviroPower, for whatever reason, did not commence commercial operations of the plant by April 1. 2008, EnviroPower would be liable to EKPC for a cash penalty or liquidated damages for the failure to commence commercial operations on time.

Q: How large is this guarantee?

A: This guarantee is worth up to $[redacted].

Q: Why can EnviroPower provide this guarantee, when EKPC cannot?

A: EnviroPower is able to provide this guarantee because we have equity financing in place, a world-class infrastructure development bank arranging debt financing and we have cross-guarantees, from our Engineering, Procurement and Construction contract (EPC), prime contractor.

Q: Why can't EKPC match that?

A: Besides the restrictions on the use of RUS and CFC funding previously mentioned, we learned from our review of EKPC testimony in this case that the EKPC self-build project Spurlock #4 did not have its financing in place nor its EPC contract finalized at the time of the RFP award. Without these underlying requirements in place, EKPC could not have offered a meaningful, reliable, bankable guarantee to meet the commercial operations start date of April 1, 2008. Based on EKPC's testimony in this case, it seems they intend to pass through the costs and risks of their comparable guarantees to the ratepayers and to WRECC.

Q: Why is this matter meaningful to the Commission?

A: In its testimony filed in this case, EKPC would have the Commission believe that the absence of a commercial operations start date guarantee represents little or no risk to its members, including WRECC. This position is completely untenable. The extraordinary volatility in the price and availability of electric power on the market, and the uncertain impact of fuel prices, simply underscore the inherent value of a financially sound guarantee of a commercial operations start date.

EKPC MAY NOT BE ABLE TO SECURE THE PERMITS NECESSARY TO COMMENCE OPERATIONS AT THE TIME REQUIRED BY THE RFP

Q: Are there any other reasons why you believe that EKPC could not have legitimately guaranteed a commercial operation start date of April 1, 2008, as called for by the RFP?

A: Yes. In order to build a power plant, a developer requires many permits. At the time of submitting our bid, we detailed 15 permits which EnviroPower had applied for prior to our bid submission. Of those 15 permits, 10 were fully issued and valid. The remaining five required largely ministerial extensions or re-issuances. In our experience, the most difficult permit to obtain is a PSD Title V, Phase II Acid Rain Air Permit. It requires approval by both the Division of Air Quality of the Commonwealth of Kentucky ("DAQ") and the US Environmental Protection Agency. At the time that EKPC awarded the self-build contract to itself, EnviroPower had this permit 100% issued and in hand. EKPC had not even applied for this permit.

Q: Do you have any information regarding the status of any of those 15 permits required to be obtained by EKPC for Spurlock #4?

A: Yes. EKPC filed for its DAQ air quality permit on September 13, 2004. That application for a permit has not issued to date. Based upon a request under the Kentucky Open Records Act, we have learned from the Kentucky DAQ that the DAQ has issued a deficiency letter to EKPC for Spurlock #4. Moreover, the nature of the deficiencies detailed by the DAQ require costly and time consuming engineering and scientific work to be completed. I attach a copy of the information we received from the DAQ.

Q: Did you testify about that date, September 13, 2004 earlier?

A: Yes. That was about the time we were informed that the first 278MW had been awarded to Spurlock #4.

Q: Is the application for a DAQ air quality permit, perfunctory, easy to assemble in a day or two?

A: No. It is a complicated matter which typically will take months, require outside consultants, and require significant costs.

Q: Is it routine and customary to gear up to file a DAQ air quality permit before a final, binding decision has been made to build a power plant?

A: No. To do so would risk a waste of time and money.

Q: Why is the DAQ air quality permit issue so important to you in the context of the second guarantee provided by EnviroPower?

A: In the power plant development business, time is money. Moreover, one cannot build a power plant without all of the necessary regulatory approvals and permits. With those approvals and permits in hand, or close to completion, the EnviroPower guarantee of a commercial commencement date had meaning. With the financial backing for such a commitment, the guarantee had value. EKPC had no basis for a meaningful or valuable guarantee regarding the commercial commencement date. Based on EKPC testimony, the EKPC permitting process was all speculative. EKPC/EnerVision completely ignored this reality. EKPC/EnerVision treated EKPC's speculative issuance of permits as being equal to the actual permits which EnviroPower held and disclosed in the EP Proposal. This is a substantial error.

Q: How long does it normally take to secure permits and construct a power plant?

A: Of course, the answer to this question must take into account unique circumstances, which vary case by case. However, as a rule of thumb, the process of obtaining all necessary permits and approvals usually runs from 12 to 24 months starting from the time when a complete and acceptable application for Air Quality Permit is filed. Construction of a CFB power plant may run from 36 to 48 months, depending on equipment availability and long lead items, the precise design and configuration, construction issues and other factors. As a point of reference, EnviroPower's bid to EKPC reflected [redacted] months for construction.

Q: Given everything you know about the permits and construction requirements, what was the likelihood, at the time of EKPC's award of the RFP to the EKPC self-build option, that EnviroPower would have its Kentucky Mountain Power Plant ("KMP") commence commercial operations by April 1, 2008?

A: It was, at the time of our proposal, very likely. We had, and continue to have, virtually all of our permits. EnviroPower had its EPC commercial arrangements in place and our financing was secured. EnviroPower had commenced construction. EnviroPower was certain that KMP would be in commercial operation by April 1, 2008. Because of this certainty, we provided a valuable commercial guarantee with substantial penalties for each day of late performance.

Q: Given everything you know about the permits and construction requirements, what is the likelihood that EKPC would have Spurlock #4 commence operations by April 1, 2008?

A: It is highly improbable. The permit and construction cycle at a minimum will take a total of 51 months. This assumes 12 months for permits and 39 months for construction. Given the nature of the permits which EKPC must obtain today before construction may commence, there are only 36 months of construction time remaining, if the construction were to commence on April 1, 2005. Yet, given the deficiency letter which DAQ issued, it would appear to us that EKPC has yet to perfect an acceptable application for Air Quality Permit. It is obvious on these facts that it will take EKPC longer than 36 months to achieve commercial commencement.

Q: Would you please discuss the third of four guarantees offered by EnviroPower as part of your bid?

A: The third of our four guarantees has to do with plant availability and a guarantee of power delivery. This is a very important guarantee. It means that after we start commercial production, EnviroPower guarantees for the [redacted] year life of the proposed power supply contract that the plant will be "available" to deliver power, irrespective of maintenance or other disruptions. The power delivery guarantee means that we are guaranteeing the actual availability of the electricity into the EKPC system.

Q: What was the precise nature of the EnviroPower guarantee and how did this compare with the similar guarantee of EKPC on its self-build plant at Spurlock #4?

A: EnviroPower guaranteed an annual output of [redacted]%, with an additional guarantee of [redacted]% during the peak months. During the bid evaluation process in the summer of 2004, EKPC established an annual capacity factor for all bids, including EKPC's self-build at Spurlock #4 and our KMP plant, of 80% of annual output. This means that we were offering a better guarantee than the baseline for evaluation. Again, our guarantee is backed by bankable assets or financial instruments, and was valid for [redacted] years.

Q: How did EKPC/EnerVision value the extra guarantee provided by EnviroPower?

A: Totally improperly. Because we exceeded the baseline guarantee, we were guaranteeing extra power output. This means that KMP would have yielded more megawatts at a fixed rate than EKPC expected from other bidders including its self-build at Spurlock. Thus, the EP Proposal conferred greater reliability and a greater benefit or value to the Kentucky ratepayers and EKPC than the baseline which EKPC fixed for itself. This means that EKPC/EnerVision had to make a mathematical adjustment so that the two final bids could be equitably compared.

Q: So, what did EKPC/EnerVision do make this adjustment?

A: As explained in their response to the data requests of the Commission, EKPC/EnerVision increased the cost side of the EP Proposal to reflect the fact that there would be more cost to produce [redacted]% output as compared to the 80% output of the self-build proposal. EKPC/EnerVision, however,

did not correspondingly increase the value of the yield of the extra power generation which EnviroPower guaranteed. In other words, EKPC/EnerVision penalized EnviroPower for being more reliable and guaranteeing to provide greater output than the EKPC self-build option bid. EKPC/EnerVision calculated the cost of producing [redacted]% output and compared that to the 80% cost of output of the self-build. Then, EKPC/EnerVision completely failed to adjust for the value of the extra electricity output. Obviously that [redacted] % of extra guaranteed power at fixed rates is valuable. But that value was lost in the evaluation process. Moreover, our commercial guarantee for power in excess of the baseline 80% requirement has an intrinsic value, because it is a larger, fixed price guarantee. We see no evidence that the EnviroPower price per MWh was positively adjusted (that is, reduced to reflect the value of) for this guarantee. This is an egregious, substantial error.

Q: In your experience how should the price have been adjusted to reflect the superior value of the EnviroPower guarantee as compared to the EKPC self-build option?

A: There are several ways of doing this. EKPC/EnerVision could have recognized the greater output of megawatts from the KMP proposal and, accordingly, they could have recognized a positive value for KMP (that is a lower cost per MWh) to reflect the commercial value of the larger guarantee. In net effect, EKPC/EnerVision should have made one of two adjustments. The price per MWh calculated for EKPC should have been increased or the price per MWh calculated for EnviroPower should have been decreased to reflect the actual contractual penalties that EnviroPower would have been forced to pay to EKPC for failing to meet its guaranteed levels of performance. The valuation methodology for this particular adjustment should have also reflected the strength and certainty of the EnviroPower guarantee, sourced from highly bankable third parties.

Q: Are you able to estimate the value of the adjustment which should have been made?

A: Yes. **This error penalized EnviroPower about $267 Million over the life of the contract.** This calculation is fully explained later in this testimony. However, in summary, using the exact methodology (calculations and formulas) presented in the EKPC/EnerVision response to Data Request #3, adjusting EnviroPower back to an 80% capacity factor, which is the standard established for all alternatives, and then accurately applying penalties proposed by EnviroPower, our total cost of procured power would be reduced by an initial level of $7 Million/year, escalating over the life of the

contract, and totaling approximately $267 Million in rebates and penalties reimbursed to EKPC over the life of the proposed power supply agreement. Based on our replication of the EKPC/EnerVision analysis of EnviroPower's bid fully displayed later in this testimony, these rebate and penalty sums were completely omitted by the EKPC/EnerVision analysis.

Q: What is the practical effect of this error by EKPC/EnerVision in applying it own formula consistently and correctly?

A: It is absolutely outcome determinative. **Under the ranking system devised by EKPC/EnerVision, correcting this one error, would cause the EnviroPower bid to be ranked as the lowest cost alternative, beating Spurlock #4, the EKPC self-build.**

Q: Would you please discuss the fourth of the four guarantees offered by EnviroPower as part of your bid?

A: Yes. EnviroPower provided a guarantee to cover the procurement and delivery of fuel.

Q: What does this guarantee mean, and why is it important?

A: Anytime a power generator can eliminate a basis for a cost increase, a reduction in performance, a basis for claiming force majeure or any other uncertainty, it is a real, bankable value afforded to the purchaser of the electricity. EnviroPower guaranteed that EnviroPower would procure fuel and guarantee the delivery of the fuel to our plant for the period of [redacted] years, as a matter of certainty, without the possibility of price increase, a claim of force majeure or a basis to claim a legitimate reduction in performance.

Q: Is this a routine and customary guarantee in the industry?

A: No.

Q: Why not? Upon what information and belief do you conclude that your guarantee regarding fuel procurement and delivery was different from that which EKPC could have guaranteed?

A: Our guarantee is somewhat extraordinary in the industry, but not unheard of. It is an extraordinarily valuable guarantee. EnviroPower was able to provide this guarantee because our facility is located in immediate proximity to vast supplies of coal and waste coal, which are

very low grade, very low cost, perfectly suited for the proprietary design of our plant, but ill-suited for other uses. Our plant runs on waste fuels and run-of-mine fuel, from a site which is in close proximity of our KMP site. EnviroPower controls a significant portion of the source, means of supply and means of transport (over a very short distance) governing our fuel supply for the entire contract period. These facts enabled us to make a binding commercial guarantee.

Based on EKPC's testimony in this case, our review of the WRECC SMA, and based on the fuel adjustment case EKPC currently has pending before the Commission (Case No., 2004-00401), it is clear that EKPC intends to expose its members to market price movements in fuel over time. We understand that EKPC must transport its coal significant distances to the Spurlock #4 facility. Thus, it is highly unlikely that EKPC will be able to match the EnviroPower guarantee in order to insulate its members from fuel price risk.

Again, EKPC does not appear to be able to secure comparable guarantees from its financing source. The volatile market prices of the fuels over 30 years makes the ability to secure a commercial guarantee dubious. Third, the transportation risk—including cost, weather, equipment breakdowns and labor—does not lend itself to a defined risk which can be fully covered by a guarantee of the type offered by EnviroPower.

Q: How did EnerVision value the extraordinary guarantee provided by EnviroPower regarding fuel procurement and fuel delivery?

A: From the information made available to us, based on the redacted version of the data, it appears that **EnerVision ascribed no value to this EnviroPower guarantee.**

Q: Is it routine and customary in the industry for an evaluation model to exclude an extraordinary, or an extraordinarily valuable, guarantee?

A: No.

Q: Would you characterize this omission as inconsequential error or in some other way?

A: This omission is the type of error which could be outcome determinative and, therefore, I would not characterize it as inconsequential error. At a minimum, it is another substantial error. But when taken together with the other substantial errors, this pattern of error is deeply troubling.

EKPC/EnerVision have chosen to ignore the significant potential injury to the members of the EKPC cooperative, to the members of the Warren Rural Electric Cooperative Corporation, and to the ratepayers of Kentucky who otherwise receive power from EKPC. The EKPC/EnerVision treatment of guarantees functions as a mechanism to simply control the outcome of the bid process.

Q: These are strong words. Please think about this statement and tell us if you would consider rephrasing your answer?

A: These are strong words. But these significant errors did control the outcome of the evaluation. I also wonder about the attempt by EnerVision to whitewash or justify its errors by telling the Commission in response to Question 1 (a) on page 5 of 16, "No costs were added to EnviroPower's proposal in the evaluation process for the costs of providing the performance guarantees." Of course not. That misses the point.

Q: Why was that statement by EnerVision off point?

The point is that in representing the public interest, EKPC/EnerVision were obligated to accurately quantify the benefits of these guarantees and to adjust their cost analysis of EnviroPower and Spurlock #4 to recognize the true value of such guarantees. EKPC in its self-build bid, failed to provide guarantees which were co-equal to those provided by EnviroPower. This is a fact. The failure of EKPC/EnerVision to recognize, calculate and adjust the bid prices to reflect this fact begins to suggest a pattern of substantial error which categorically determines the outcome and I believe invalidates the RFP award results in this process.

Q: In your view, simply, how did EKPC/EnviroPower mishandle the issue of the guarantees?

A: EKPC/EnerVision double charged EnviroPower, either by misinterpreting the guarantees or by misapplying the fundamental mathematical "property of equality". To treat the benefits to EKPC provided by the EnviroPower guarantees as unworthy of recognition, runs directly counter to EKPC's obligation to represent the public interest.

DETAILED ANALYSIS OF CALCULATIONS AND METHODOLOGY

Q: You have testified that the application of the EKPC/EnerVision methodology to the EnviroPower bid created a series of substantial errors. Would you please elaborate on what you mean by this?

A: In addition to the errors regarding the guarantees, as I have just testified, EKPC/EnerVision inappropriately omitted the inflation factor from the evaluation of the EKPC cost of capital discount rate (6% case), which resulted in an artificially lower discount rate for EKPC.

Q: Would you please explain?

A: According to EKPC's published results in response to Data Request #3, EnviroPower's bid featured lower prices in the early years, as compared to Spurlock #4, and higher prices in the later years. Under these circumstances, lower discount rates penalize EnviroPower as compared to Spurlock #4.

Q: Why is that?

A: The lower the discount rate, the less weight it places on our lower prices in the early years.

Q: Do you object to the EKPC/EnerVision calculation of "cost of capital"?

A: EnviroPower can accept the methodology of using a "cost of capital" case for its basic decision case, provided that this case is internally consistent in order to render a valid result. Internal consistency mandates that whenever the annual costs are escalated for inflation (as they are for EnviroPower, and we trust, proportionately for Spurlock), the discount rate must also be increased by the rate of inflation. Thus, for example, if EKPC's actual cost of capital is 6% and their assumption for inflation is 3%, the discount rate, if consistently applied, must be higher to reflect inflation, maybe even up to 9%

Q: Was an inflation factor included in the 32 year projected cost of capital for EnviroPower, and if so, what was that rate?

A: Yes. Different cost components were escalated at different rates. This is logical since several critical variables were already subject to negotiated, fixed pricing over time. Long term fuel prices and interest rates were fixed through negotiation. All items, for which we did not have a fixed escalation rate, were inflated at the consumer price index rate ("CPI").

Q: Were all of the cost components in both the EP Proposal and the EKPC self-build bid, subject to the identical escalation factor?

A: No.

Q: Why not?

A: EnviroPower used CPI while EKPC/EnerVision used a flat rate of 3%.

Q: Is the difference between CPI and a flat 3% material?

A: No. That is not the issue.

Q: What is the issue?

A: In order to properly calculate the discount rate, the posited flat discount rate of 6% must be adjusted for inflation over time. If EKPC/EnerVision had adjusted this discount rate, it would have resulted in a higher discount rate. Based on the EKPC/EnerVision testimony, it is clear that they know that the lower the discount rate, the more favorable the EKPC self-build option appears. It may not necessarily be true, but again this is a mathematical, formulaic matter where the EKPC/EnerVision evaluation team chose to employ an improper, undisclosed standard which they now admit casts the EP Proposal in an unfavorable light. If they had applied their escalation factor (3%) to their deemed cost of capital, they would have compared the EP proposal more favorably to the EKPC self-build proposal .

Q: Why is this so important?

A: EnviroPower has guaranteed fixed prices over [redacted] years to deliver power. EKPC has not. Its prices fluctuate over time and changes between their current estimates and the actual prices which they realize are passed along to the ratepayers. The failure of EKPC/EnerVision to correctly adjust the discount rate to include escalation, results in a fundamentally inaccurate and improper calculation of the true comparative costs of the competing bids. It is troublesome because the EKPC/EnerVision methodology violates the fundamental mathematical property of equality.

Q: This is the second time you have referred to the fundamental mathematical "property of equality". What is that property?

A: Simply it means that if you apply a mathematical formula, value or process to one side of an equation, then you must apply the same formula, value or process to the other side of the equation. If the fundamental mathematical "property of equality" is applied consistently and properly,

the result is a level playing field, and EnviroPower has no objection to the results.

Q: You have testified that EnerVision and EKPC imposed extraordinary assumptions on the EnviroPower proposal which had the effect of skewing the price evaluation in favor of the EKPC self-build project at Spurlock 4 and of misrepresenting the true cost projections for the EnviroPower KMP facility. Would you please explain what you mean by this?

A: Yes. There are two examples of this: the arbitrary addition of costs to our bid for the cost of transmission and the deemed cost of an Environmental Impact Statement (EIS).

Q: Would you please explain why the cost of the transmission add-on to the EnviroPower bid by EnerVision was arbitrary and erroneous?

A: Yes. EKPC/EnerVision inappropriately added a deemed cost of transmission to our bid. EnviroPower's bid was absolutely clear that EnviroPower would bear the cost of interconnecting to the transmission grid. EnviroPower's capital budget also provided more than $30 Million to cover the cost of interconnecting KMP to the EKPC grid. Since these costs are already borne by EnviroPower, to add any amount to the EP Proposal cost for interconnection costs is arbitrary and erroneous.

Q: Would you please elaborate on the position taken by EnerVision and EKPC regarding this issue and explain why that position is in error?

A: Yes. EKPC refers in its March 7 filing on page 2 of 15 (PSC Request #1(b)) to a statement made by EnviroPower in its proposal (page 13 of 24) which states that "some additional transmission costs would be 'reimbursed to KMP through transmissions credits structured through the PPA.'" EKPC has totally misconstrued this statement.

Q: Please explain why this has been misconstrued.

A: In connecting an independent power plant, such as KMP to the transmission grid, the plant must bear the cost of building transmission facilities necessary to make such interconnections. In making its proposal, EnviroPower developed an interconnection plan to the EKPC grid. **This plan was developed in conjunction with the professional staff of EKPC, and incorporated into the EP Proposal at their suggestion.** The plan is presented in the EP Proposal on pages 12 and 13 and in Appendix 7.

Again, 100% of the costs of this interconnection plan were included in our price to EKPC. All costs of interconnection, whatever they might be, were always stated to be the responsibility of EnviroPower.

Q: Are there any other transmission issues associated with the EnviroPower interconnection plan?

A: Yes. By Federal law, independent power plants are also required to pay for upgrades to the host transmission system necessary to sustain system stability and to carry the new source power over the system. In some circumstances, the owner of the host system is required to reimburse the costs of such upgrades through credits against transmission service. In the case of EnviroPower's proposal in RFP 2004-01, EKPC is both the owner of the transmission grid and the customer. Power is delivered at the points of interconnection between our plant and the EKPC grid. Thus, the transmission service user is EKPC themselves. EKPC's assumed cost of transmission service is their cost of service for their own use of their own grid.

Q: What are the costs which EnviroPower would have to bear in order to upgrade the EKPC interconnection transmission system?

A: The costs that EnviroPower would have to bear to upgrade the EKPC system would have to be independently studied and calculated to define a sum certain. However, whatever they would be, they would result directly in increased assets on EKPC's balance sheet, at EnviroPower's expense. EnviroPower proposed to be reimbursed for the cost of financing such upgrade related assets on EKPC's behalf. That is all. In our proposal, a refund would occur through reimbursement of EKPC's cost of use of its grid as it relates to movement of energy from EnviroPower's project to EKPC's members. If such an agreement could have been made, then the cost to EKPC would net to zero ($0.00). If no such agreement were reached, then EKPC and its members would receive from EnviroPower a direct subsidy for the system upgrade amount. The net effect of the EnviroPower bid was to insure EKPC with one of two results: no additional EKPC costs or a windfall for the EKPC membership. **Under these circumstances, to penalize EnviroPower's project for fictious costs is arbitrary and clearly erroneous. This action has the effect of injuring the EP Proposal and benefiting, without basis, the Spurlock #4 proposal.**

Q: Did EKPC ask any questions to clarify the treatment of transmission costs in its bid evaluation process?

A: Not to my knowledge. The issue was so clear, it needed no further discussion during the evaluation period.

Q: Are you aware of the statements by EKPC in its testimony before the Commission that it was proper for EnerVision and EKPC to add the estimated cost of an EIS, deemed to be $2 million, to the cost of the EnviroPower bid?

A: I am aware of their statement. I have read the information provided on page 6 of 16 in response to PSC Request No. 1(a) submitted on March 7, 2005.

Q: Was the cost burden of $2 million a proper additional cost burden?

A: No. It was totally improper.

Q: Did EnviroPower make it clear to EKPC that there would be no additional charge for an EIS in the event that one was mandated?

A: Yes. The EP Proposal discussed an EIS and provided for no additional costs in the event that an EIS was required. EKPC admits, in its testimony, that there are reasons why an EIS may not be required

Q: How did EnviroPower make it's position clear?

A: During the evaluation process, I personally participated in numerous exchanges of e-mails, telephone calls, conference calls and requests for written clarification with EKPC. We stated, as EKPC acknowledges, that we consistently promised to take care of the costs of any EIS, without recourse to EKPC.

Q: Why was EnviroPower willing to bear the complete cost of an EIS?

A: EnviroPower's project had received its Air Permit, Kentucky Siting Certificate and all of the other permits described in the EP Proposal. In the process of acquiring these permits, the KMP project had been subjected to extensive and intensive, independent public scrutiny of environmental and other impacts. If an EIS was mandated, we were well equipped to expedite such a study and to reach a satisfactory assessment. Thus, if an EIS was required, our consistent position had been, and remains, that we would shoulder all of the EIS costs alone.

Q: Were you ever asked to provide a written confirmation of this statement by anyone at EKPC or EnerVision?

A: No. Our oral statements were unequivocal, were understood in the discussions with EKPC and were never questioned.

Q: Were you ever asked to clarify what you meant by "take care of" the costs of an EIS by anyone at EKPC or EnerVision?

A: Yes. In a bid review meeting with EKPC we were asked whether we would cover the costs of an EIS. We unequivocally stated that we would.

Q: Is it fair to estimate the cost of an EIS at $2 million?

A: Not in this case. If no previous environmental work had been done on the project, perhaps the cost could run to $2 million. Given our advanced state of environmental review and approval, the estimated EIS cost of $2 million was dramatically overstated. EKPC knew that we had our environmental permits and that we had undertaken substantial environmental compliance studies. EKPC knew that the basis for the estimate did not apply to the KMP project. Yet they inappropriately applied the full cost of an EIS to our bid. Thus, the Commission should completely ignore any additions to the EnviroPower proposal for an EIS.

Q: Did it ever occur to you that EnviroPower needed to reduce to writing the issue of who would cover the cost of an EIS, since the cost was deemed to be about $2 million?

A: No. We believe that the costs of all regulatory permits and governmental compliance to be the developer's responsibility. That is routine and customary. To add on the cost is not routine and customary. In essence, this is double accounting, since we provided for the cost of the EIS, if necessary, as part of our costs already contained in our bid price.

Q: In summary, did EKPC and EnerVision accurately evaluate the EnviroPower proposal?

A: No. fundamental and fatal errors were made in the calculation of terms and conditions proposed by EnviroPower. In addition, EKPC inaccurately applied certain cost additions to the EnviroPower proposal, to improperly inflate the cost of power under the EP Proposal.

COMPARISON OF THE EP PROPOSAL TO THE EKPC SELF-BUILD UTILIZING THE EKPC/ENERVISION EVALUATION PRESENTED TO THE COMMISSION, ADJUSTED FOR ONLY THE MOST EGREGIOUS, SUBSTANTIAL ERRORS

Q: In your review of the submission by EnerVision and EKPC did you run a comparison of the EP Proposal against the EKPC self-build utilizing adjustments only for the most egregious errors identified above?

A: Yes.

Q: Please explain the tables which you prepared and which follow.

A: In its response to PSC Request 1 in this case, EKPC presented TABLE Q1-A, "RFP NO. 2004-01 SUMMARY OF RESULTS BASELOAD PROPOSALS" along with TABLE Q1-B, "RFP2004-01 Baseload Proposal Evaluation Details and Assumptions." In these tables, EnerVision set forth the results of its economic analysis and ranking of the base load RFP responses. The relevant portion of Table Q1-A are presented below:

3% Discount Rate		
Rank	Bid#	Average $/MWh
1	15	23.21
2	15	23.70
3	15	24.74
4	15	24.83
5	28	26.42

6% Discount Rate		
Rank	Bid#	Average $/MWh
1	15	14.59
2	15	14.69
3	15	15.08
4	15	15.37
5	28	16.45

Q: Which errors discussed above did you reverse in preparing the following table?

A: The following table reverses the improper charge of $2 Million for the EIS. It also reverses the improper charge for transmission costs which were not to be charged by EnviroPower to EKPC. We also calculated the cash amount of the guaranteed availability rebates and penalties provided by EnviroPower to EKPC .

Q: Which errors discussed above are not included in the following table?

A: We did not calculate the benefit of any of the other guarantees provided by EnviroPower to EKPC. We did not charge any amount to EKPC representing the difference between its estimates and EnviroPower's firm guarantees. We did not adjust for, or challenge, any of the EKPC/EnerVision cost estimates upon which EKPC awarded the contract to Spurlock #4. Those are cost estimates to which we do not have access.

3% Discount Rate		
Rank	Bid#	Average $/MWh
1	EnviroPower	22.91
2	15	23.21
3	15	23.70
4	15	24.74
5	15	24.83

6% Discount Rate		
Rank	Bid#	Average $/MWh
1	EnviroPower	14.25
2	15	14.59
3	15	14.69
4	15	15.08
5	15	15.37

Q: How did you determine the results posited above, which you ascribe to the EnerVision and EKPC model?

A: In the EKPC filing in response to PSC Information Request No. 1(b) dated 2/25/05, EKPC/EnerVision set forth the formulas used to evaluate the EnviroPower proposal, under the title Q1b.3 "Supporting Calculations for EnviroPower Evaluation in response to Kentucky PSC Question 1b from 2_25_05 request. This is precisely the information which we used.

EnviroPower treated these formulas presented by EnerVision as a given, when we replicated the economic model used by EKPC and EnerVision. Our model was calibrated back to the results of TABLE Q1-A described and presented above.

Q: Has EnviroPower been provided with any data, which you used in the economic model above, which has not been presented to the Commission by EKPC or EnerVision?

A: No. EnviroPower has not been provided data as to the actual amounts of cost additions EKPC and EnerVision added to our bid. EnviroPower would like access to these numbers so that we could more precisely dispute the calculations of EKPC and EnerVision. We believe our actual costs are even lower than the deemed values using the EnerVision model. However, we understand that EKPC has requested confidential treatment of these numbers and the Commission has agreed. Nonetheless, in terms of EKPC/EnerVision's methodology as employed to evaluate our proposal, the replicated model matches the evaluation methodology and results set forth by EKPC and EnerVision in all material respects.

Q: After you replicated the EKPC and EnerVision mathematical model for evaluation of the bids, did you take any other steps to refine your analysis?

A: Yes. Once the baseline model was developed and calibrated to the EnerVision results, we made specific corrections to assure accurate calculations of the availability penalties and bonuses, transmission costs, and EIS cost were made. These model runs resulted in the revised results presented above. Copies of all relevant model runs are attached to this testimony, as Excel spreadsheets.

Q: You have referred to miscalculations by EKPC and EnerVision which result in these differences. Please provide a description of the miscalculations.

A: Relating to the availability bonuses and penalties, it is apparent that EKPC and EnerVision failed to understand either the calculations or the intent of this provision. The availability bonuses and penalties have emerged in the independent power generation development business in recent decades. They have two purposes. The first of these purposes is to provide the owner of an independent power plant with a strong incentive to increase the availability of the plant and to avoid prolonged or

inopportune outages, **on behalf of its customers' interest.** The second purpose is to allow parties who purchase power from independent facilities to pass outage risk back to the owner of the power plant, **again to the benefit of the customer.** The results of these benefits are that a power customer has the opportunity to assure availability of a very low cost baseload resource during the largest possible number of hours of a year, providing a direct offset to higher market prices for purchased power. Even if the power buyer does not have a load requirement to use the increased generated power, the energy can be sold off-system at a profit to offset the power buyer's overall cost of power.

Two forms of the penalties and bonuses were proposed by EnviroPower in RFP 2004-01, as presented in the draft legal documents provided by EnviroPower to EKPC. These were structured to maximize the benefit to EKPC and its members by increasing the bonuses and penalties for the "on-peak" seasons when alternative market prices for power are higher and much more volatile. **In addition, it is critical to note that these penalties are based on financial guarantees which EnviroPower and its investors would make to EKPC. The result is that penalties payable to EKPC represent bankable liquidated damages to EKPC and its members for performance failures on the part of EnviroPower's generating unit. EKPC and its members have no such benefit from construction and ownership of Spurlock #4, and must replace power associated with performance failures of that unit without the benefit of liquidated damages.** It is readily apparent from the results presented by EKPC in their Table Q1-A that they failed to give credit to EnviroPower's bid for the proposed penalties associated with failing to meet the guaranteed performance levels. **While EKPC and EnerVision state in their testimony that they included an "availability bonus" in their calculations, it is critical for the Commission to note that at both [redacted]% and [redacted]% capacity factors, EnviroPower would pay penalties, not receive bonuses.** Due to the extensive redactions in EKPC's testimony, it is impossible for EnviroPower to determine exactly how this provision was applied. Thus, with this testimony, we formally present the correct calculations as summarized in the revised evaluation results above, and in the attached model runs.

Q: Does the foregoing chart adjust for correcting the error made in omitting the inflation component from the "cost of capital" discount rate?

A: No. Since all of the data regarding the Spurlock project is redacted, we have no ability to compare Spurlock to EnviroPower at different discount

rates. We urge the Commission and its independent consultants to include this adjustment in their analysis.

Q: On the basis of the analysis EnviroPower performed, were you able to determine whether EKPC applied its methodology and assumptions reasonably and equitably to all alternatives under RFP 2004-01?

A: No. The totality of the redactions in EKPC and EnerVision's filing of March 7, 2005 prevents such analysis from taking place.

Q: Is this lack of information of concern to EnviroPower?

A: Yes. EKPC has indicated that EnviroPower's intervention in this case is driven by EnviroPower's status as a for-profit entity. We would argue that the interest rate return on borrowed funds to construct Spurlock is also profit. However, the issue before the PSC is not the profits of EKPC or EnviroPower, but rather the cost of power to Kentucky's power consumers. Given the magnitude of the errors made in the evaluation of EnviroPower's proposal, it is not clear that the consumers' interest can be served without a complete independent third party technical and commercial evaluation of all proposals in RFP 2004-01.

ENVIROPOWER HAD THE LOWEST BID PRICE BY A WIDE MARGIN

Q: Taken collectively, how much did EKPC and EnerVision penalize the EP Proposal?

A: Taken collectively, the EP Proposal was recast and penalized by at least 20-25%.

Q: So, you assert that before the price adjustments, including errors and omissions, made by EKPC and EnerVision, the EP Proposal was the lowest price bid?

A: Without a doubt.

Q: Had the adjustments been properly made, as described above would the EP Proposal have remained the lowest cost solution?

A: Without a doubt.

Q: Have you seen all of the bid evaluation data, and have you been privy to all of the bid evaluation formulas and methodology of EKPC and EnerVision?

A: No. But, it does not matter.

Q: Why doesn't it matter and why are you so certain?

A: Fundamentally in the power plant business there are three big cost factors. The single largest cost is the EPC contract. The second largest cost factor is the cost of financing. The third largest cost variable is fuel. It is impossible for EKPC to have its self-build facility be cost competitive with EnviroPower, without fraud, manipulation and other improprieties.

Q: Are you sure this is not just the sour grapes of an unsuccessful bidder?

A: Yes. We know this business.

Q: Please explain why EKPC cannot be cost competitive, and let us start with the EPC contract.

A: The EPC contract cost represents about 80% of the total capital cost of building a new power plant. The norm in the industry is that a 300 MW CFB coal fired power plant will entail an EPC cost of between $390 and $410 Million.

Q: Does that mean that the EnviroPower roughly 578 MW power plant at KMP will cost double that amount?

A: For some parties and projects, it could. But not for EnviroPower.

Q: What makes EnviroPower's project special?

A: This is the essence of our trade secret and proprietary design and other engineering information.

Q: Are you suggesting that EnviroPower is able to build a roughly 578 MW power plant for less than $780 to $820 Million.

A: Absolutely.

Q: By how much?

A: We will not make this public. However, we note that the EP Proposal price was fixed, with no variables for escalation for steel, interest rates, or fuel. Thus the Commission does have the basis for calculating this number. In an appropriate in camera proceeding, with safeguards to protect confidentiality of our trade secrets, we would disclose the number to the Commission. But the percentage cost savings we have achieved in our EPC contracting is significant.

Q: Why are you so certain of the price for your EPC contract?

A: We have a signed contract in place and had it before we submitted the EP Proposal.

Q: Who are the pre-eminent EPC contractors in the world for this type of power plant?

A: Black & Veatch, Foster Wheeler, Hitachi, Alstom, Bechtel, Zachary and perhaps a few other companies.

Q: Who is the EnviroPower EPC contractor?

A: Black & Veatch.

Q: Is there any other reason why the EnviroPower bid must be lower than the EKPC bid?

A: Yes. The EKPC bid entails two boilers in two different locations, one at Spurlock #4 and one at Smith in Clark County. That means that there must be two different boiler foundations constructed. There must be two different boiler maintenance and spare parts packages purchased, two different sets of ancillary equipment purchased, etc. The EnviroPower bid has an economy of scale by only needing one foundation, one set of ancillary equipment, etc. This issue alone reduces the comparable equipment procurement cost per megawatt of power produced by 15 to 20%, to the advantage of EnviroPower. Again, it is logically, factually and actually impossible for EKPC to have a lower EPC cost per megawatt hour given the configuration of their self-build options. Why would anyone give equal weight to EKPC's estimated costs on the one hand and EviroPower's firm, fixed and commercially guaranteed costs on the other?

Q: Let us discuss interest rates. Are interest rates a significant component of the total cost of a project?

A: Yes. Perhaps up to 10 % of the total project cost will be represented by the cost of funds.

Q: EKPC must have the advantage over EnviroPower with regard to interest rates because they borrow from a US government agency like the RUS or the CFC, agencies which do not make a profit on the funds, so how can EnviroPower compete with EKPC on the basis of interest rates?

A: We compete favorably on interest rates. The view you have articulated is a public relations truism, which does not necessarily track with reality. The RUS and CFC rates are low, market driven rates, but are not subsidized by the federal government.

Q: Please explain how you can compete favorably with government financing.

A: Let us assume that the EPC cost of a 300 MW project is $400 Million, which represents 80% of the cost. This means that the total project cost is about $500 Million. When EKPC borrows funds they must borrow nearly 100% of the project cost. The RUS rate floats with the market and is not locked in until the funds are committed. Interest rates are rising, but are deemed to be about 6.3% for EKPC. To simplify for purposes of illustration, 6.3% interest on $500 Million calculated as simple interest is about $31 million per annum.

Q: How can EnviroPower beat the government lending rate or improve on the EKPC deal?

A: EnviroPower already has its funding commitments in place. We have [redacted]% equity. This means that if our plant cost exactly the same as EKPC, instead of costing substantially less as we pointed out above, we would only need to finance $350 Million, because $[redacted] Million would be invested as cash equity. We have a lock in on our interest rates at [redacted]%. Thus, on a simple interest basis, the EnviroPower full debt service per annum is nominally only $26 Million. **The interest during construction for EnviroPower, which is subject to one of those guarantees we discussed above is less than the interest during construction for EKPC.** Now if one recognizes that the cost of our building a power plant is less than the cost incurred by EKPC, suddenly our borrowed principal drops and we save even more. Also, with the $[redacted] Million in equity, EnviroPower has the ability to manage its draw down of borrowed funds, and thereby reduce its debt service further.

Q: Are there other financing differences which enable EnviroPower to have a lower financing rate than EKPC?

A: Yes. The RUS and the private banks each charge fees for loan origination and documentation. Typically, the RUS charges 1% of the loan principal, which in our example would be about $5 Million (that is $500 Million of loan principal x 1% fee= $5 Million). However, this is an annually recurring fee. The private banks which EnviroPower uses already are locked in with a one-time loan origination fee of [redacted]% of loan principal. Since we have a lower loan principal in the example above, the EnviroPower loan origination fee would be $[redacted] Million. Assume that RUS financing is only for 10 years. The annually recurring fees may total as much as $50 Million (10 years x $5 Million/year). The total loan origination fees incurred by EnviroPower would be about $[redacted] Million. In this example, the private financing program saves about $40 Million over the life of the project.

Q: Are both EKPC and EnviroPower locked in with their financing?

A: No. EnviroPower is locked in, but EKPC cannot be locked in until it processes the RUS loan application, which may be delayed because of the delay in the issuance of the DAQ permit.

Q: What would a delay in locking in financing mean for EKPC?

A: It would mean more costs. The RUS and the CFC do not have funds appropriated by the US Treasury or Congress to lend to cooperatives. The funds they lend are funds which the RUS or CFC borrow from the marketplace. Because the RUS and CFC have the full faith and credit of the US government behind their borrowing, they do get relatively low rates, but the rates still fluctuate with the market conditions. With interest rates rising, the RUS and CFC must pass through those higher costs of funds to EKPC.

Q: In your answer above you indicated a market rate of 6.3% for RUS funds, but EKPC showed in its response to Data Request #3, a putative interest rate of 6%. Can you explain this difference?

A: Yes. When the bids were originally evaluated, I think that 6% was a fair estimate of the interest rates likely to be charged by the RUS to EKPC. Since then, we have seen the Federal Reserve Board increase the discount rate, which has increased interest rates in the market. As the cost of

procuring funds increases for the RUS, those higher costs will be passed along to EKPC.

Q: Does the fluctuation in the interest rates in the market affect the bid evaluation methodology conducted by EnerVision and EKPC?

A: Yes. It proves what we pointed out before. EnviroPower has a guaranteed interest rate, which fixes our cost of interest as a key part of our capital costs. EKPC does not and cannot have a guaranteed interest rate until their loan is approved by RUS or CFC. EnerVision and EKPC had this information and chose to treat the EKPC cost estimates as if they were guaranteed interest rates, just like the guarantees of EnviroPower. There are econometric models which are readily available for predicting the future value of interest rates so that an estimate may be recast fairly to approximate a present value guarantee. EnerVision and EKPC did not employ this kind of routine and customary technique of valuation, because it would have added cost to the EKPC bid. The dynamic of the EKPC/EnerVision process was to only increase the EP Proposal costs, because they had to make up for the inherent, unmistakable lower price of the EP Proposal.

Q: Switching to the cost of fuel issue, can you summarize why the EnviroPower bid necessarily entails a lower fuel cost than the EKPC self-build options?

A: Yes. As previously noted. EnviroPower has access to a reliable fuel supply, supplied by committed parties, with little transportation cost. Our CFB system uses less expensive coal than the system designed by EKPC. Coal costs are rising. In the marketplace, coal suppliers are not offering 30 year supply contracts for the type of coal which EKPC must use for its plant. Hence there is a market price risk associated with the EKPC bid. EnviroPower provided a bankable guarantee regarding fuel costs, and fuel delivery, which is simply unavailable to EKPC. Any fair evaluation of the two bids would have added a market based price fluctuation factor to the EKPC cost basis. Instead, astoundingly, EKPC and EnerVision invented a basis to add costs to the EP Proposal. This factor alone might, conservatively, account for as much as 10-15% increase in the EKPC cost basis.

Q: Is there any conceivable way in which a reasonable assessment of the EPC contract, of the interest rates and of the fuel costs could have produced the result that EKPC had the lowest cost option to provide electricity to the ratepayers of Kentucky?

A: It is mathematically impossible, both in theory and in practice.

THERE ARE SIMPLE PROCEDURES FOR THE COMMISSION TO ADOPT WHICH WOULD AFFORD THE COMMISSION A FULL, COMPLETE AND ACCURATE PICTURE OF THE COST IMPLICATION OF THE COMPETING BIDS.

Q: In light of the substantial errors which have had the effect of changing the outcome of the bid process, as noted above, what steps, if any would you recommend that the Commission consider as a part of this investigation and the handling of this case?

A: I have three possible recommendations for the Commission to consider:

1. The Commission might consider appointing an independent consulting engineering firm of stature and experience in power plant construction to evaluate the EKPC self-build proposal and the EP Proposal as submitted on May 7, 2004. This evaluation may include advising the Commission on the standards of routine and customary conduct of the issued RFP and the conduct of the bid evaluation process as well.

2. The Commission might consider staying the entire proceeding and referring EKPC and EnviroPower to an appropriate court which can oversee an in camera review of the bid data so that the two bidders may present their arguments on equal footing, and with a level playing field.

3. The Commission might consider dismissing the pending petition for a Certificate of Convenience and Necessity because consideration of the merits is premature, until such time as the Commission can be assured that the results of the RFP and the conduct of the evaluation process have been certified as valid by a court or other body of appropriate jurisdiction.

Q: Does this conclude your testimony?

A: Yes. Thank you.

KHANJEE HOLDINGS

EnviroPower
CLEAN ENERGY FOR AMERICA

[redacted]

Mr. T.C. Christopher
Resource Planning Team
East Kentucky Power Cooperative
4775 Lexington Road
Winchester, Kentucky 40391

RE: RFP No. 2004-01 – Baseload Requirement

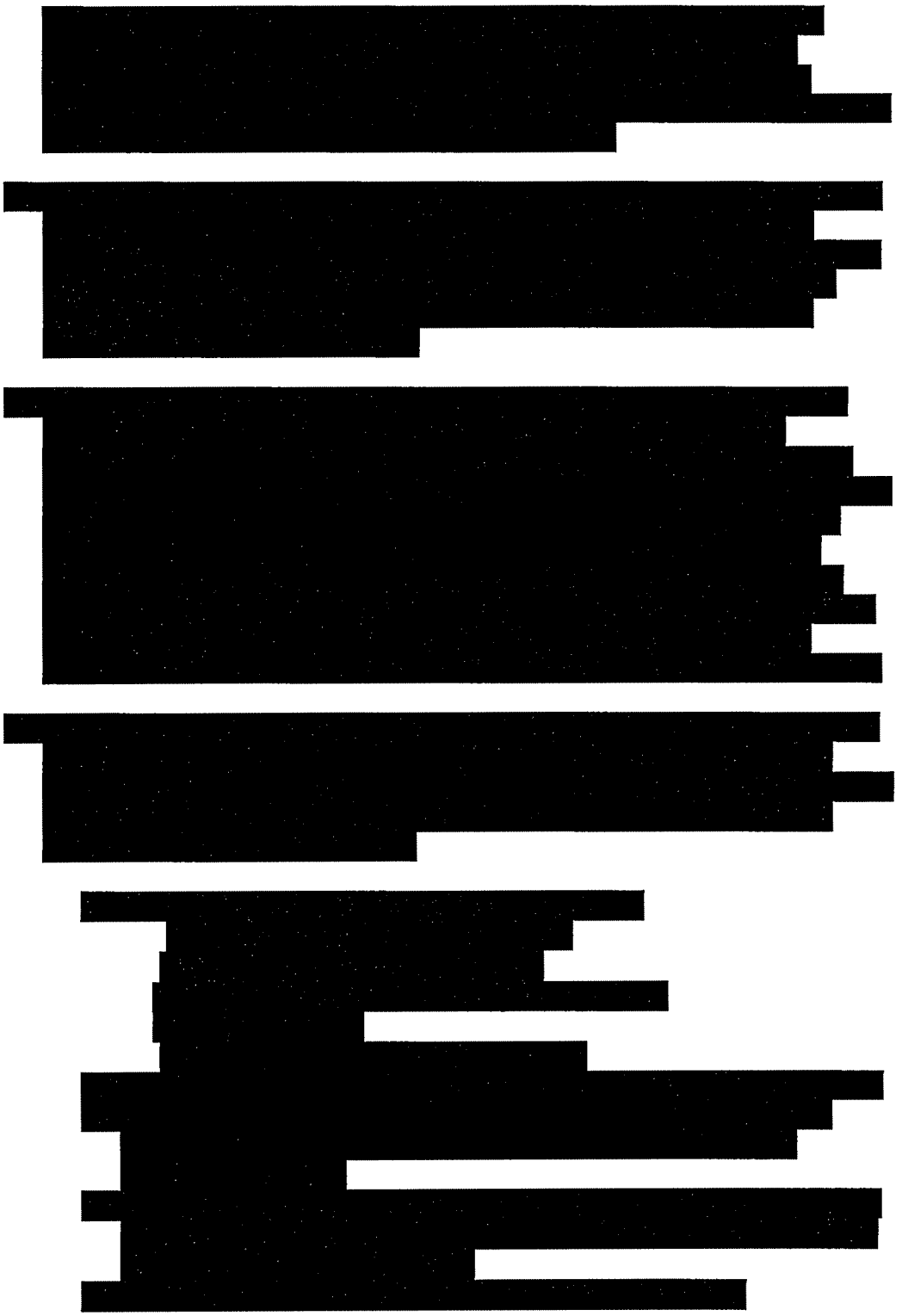
Dear Mr. Christopher,

This document, complete with all attachments and accompanying data, comprises the response of EnviroPower, LLC ("EnviroPower") to the Baseload Requirements portion of RFP No. 2004-01 presented for public review and response by East Kentucky Power Cooperative ("EKP") on [redacted].

OVERVIEW OF PROPOSAL

EnviroPower offers this proposal in the form of a long-term Power Purchase Agreement through which EKP will be provided a fully guaranteed commitment of capacity and energy from Kentucky Mountain Power, LLC, a wholly owned subsidiary of EnviroPower. Kentucky Mountain Power, LLC, in turn, holds 100% ownership of EnviroPower's Kentucky Mountain Power ("KMP") power generation project.

[redacted]



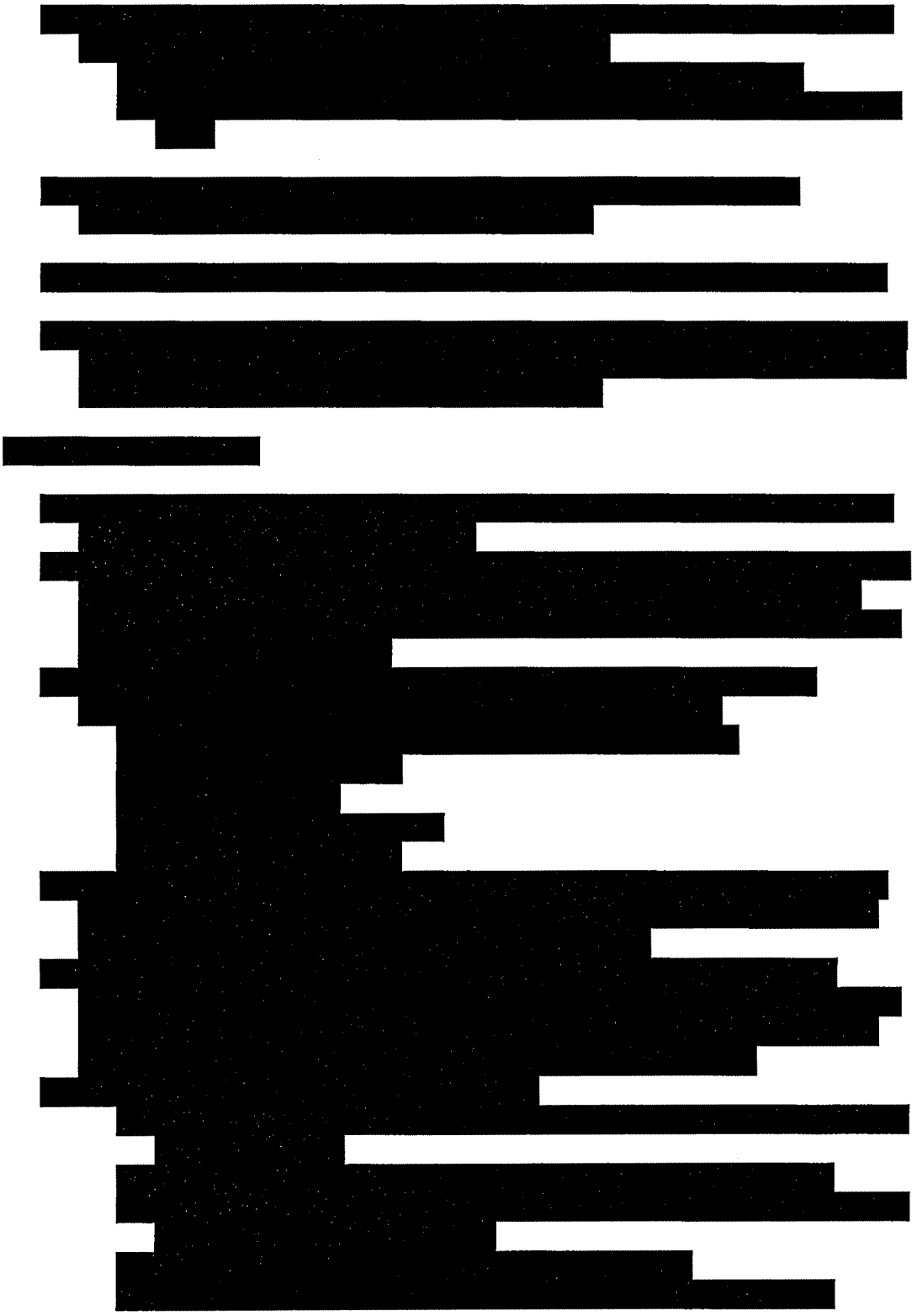
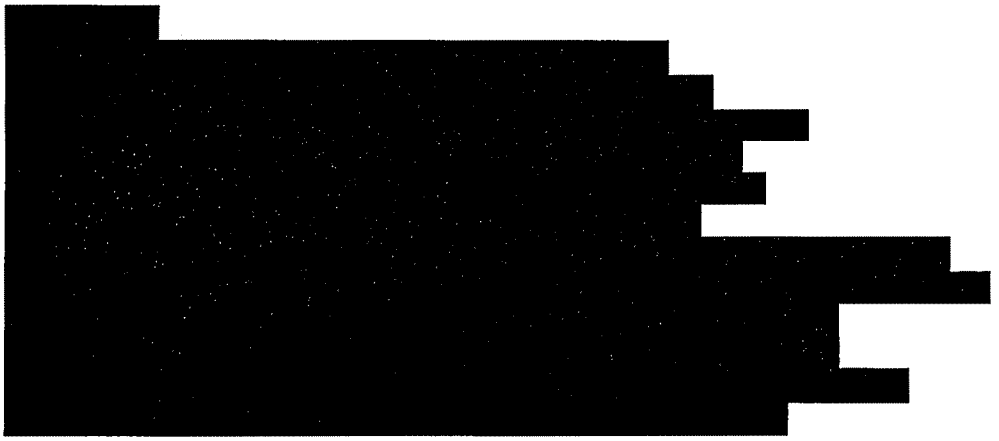


TABLE OF CONTENTS FOR DETAILED PROPOSAL SUBMITTAL



[redacted]

[redacted]

TABLE OF BASELOAD POWER PRICES

YEAR	CAPACITY CHARGE	ENERGY CHARGE
Units >	$/kW/Month	$/MW-Hour
2008	[redacted]	[redacted]
2009		
2010		
2011		
2012		
2013		
2014		
2015		
2016		
2017		
2018		
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