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April 2, 2007

PUBLIC SERVICE COMMISSION
Hand-Delivered

Beth A. O'Donnell, Executive Director
Kentucky Public Service Commission
P.O. Box 615, 211 Sower Boulevard
Frankfort, Kentucky 40602-0615

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APR 02 2007

PUBLIC SERVICE
COMMISSION

Re: Case No. 2006-00564

Dear Ms. O'Donnell:

Please find enclosed for filing with the Commission in the above-referenced case an original and ten copies of an Application for Rehearing of the Petition to Intervene of the Cumberland Chapter of the Sierra Club. This is to supersede the "Application for Rehearing" the Sierra Club filed on 3/19/07, which the Commission has barred from consideration by its Order of 3/22/07. A copy of this application and cover letter has been mailed to all parties listed on the attached Certificate of Service.

Sincerely,



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Enclosures

cc: Parties of Record

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

APR 02 2007

PUBLIC SERVICE
COMMISSION

IN THE MATTER OF: AN INVESTIGATION INTO)
EAST KENTUCKY POWER COOPERATIVE, INC.'S)
CONTINUED NEED FOR CERTIFICATED GENERATION)

Case No. 2006-00564

APPLICATION FOR REHEARING OF
THE REQUEST TO INTERVENE OF THE
CUMBERLAND CHAPTER OF THE SIERRA CLUB

Pursuant to the Commission's Order of March 22, 2007 in this proceeding, the Cumberland Chapter of the Sierra Club ("Sierra Club") hereby submits an Application for Rehearing of the Request to Intervene in this case. This is to supersede the "Application for Rehearing" the Sierra Club filed on 3/19/07, which the Commission has barred from consideration by its Order of 3/22/07. (page 1, note 2)

In support of this Application for Rehearing, the Sierra Club submits the following seven grounds therefor:

1. The pertinent regulation requires that only one criterion be satisfied for intervention to be granted, not both.

In its Order of 3/22/07, the Commission reprinted the last sentence of Administrative Regulation 807 KAR 5:001, Section 3(8)(b), which reads as follows:

If the commission determines that a person has a special interest in the proceeding which is not otherwise adequately represented or that full intervention by the party is likely to present issues or to develop facts that will assist the commission in fully considering the matter without unduly complicating or disrupting the proceedings, such person shall be granted full intervention. (Order, page 3)

The Sierra Club holds that the first occurrence of the word “or” in this sentence means that if the Commission determines that the petitioner has met either of the two criteria, “such person shall be granted full intervention.” It is not necessary for the petitioner to meet both criteria. If the Commission, upon further deliberation, were to determine either: 1) that the Sierra Club has a special interest in this proceeding which is not otherwise adequately represented; or 2) that full intervention by the Sierra Club is likely to present issues or to develop facts that will assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings, then the Sierra Club should be granted full intervention.

2. Sierra Club members and their legitimate personal and public interests will be directly affected by the Commission’s final Order in this proceeding.

The Sierra Club has reviewed certain pertinent documents and testimony that have been made part of the official record of this proceeding, as well as documents and testimony that are part of the official record in two related proceedings, Case No. 2006-00471, The 2006 Integrated Resource Plan of East Kentucky Power Cooperative, Inc., and Case No. 2006-00472, General Adjustment of Electric Rates of East Kentucky Power Cooperative, Inc. The Sierra Club concludes from this review that EKPC has already begun incurring expenses for Smith CFB Unit 1, and if that unit is kept in the expansion plan as proposed, EKPC will continue to borrow and spend money on its construction from the present date forward until it is completed and brought on-line.

Several members of the Sierra Club are customers of retail electric cooperatives that are supplied by EKPC. If the Commission deems it necessary, the Sierra Club will provide the names and addresses of some of its members who are customers living in the

service territory of EKPC and its member distribution cooperatives. If EKPC continues to maintain indebtedness, in greater or lesser amounts, to finance the construction of Smith CFB Unit 1, Sierra Club members will be paying for these commitments through their electric bills for many years to come. In contrast, if EKPC were to change its expansion strategy and implement a plan that would meet the projected needs of its ultimate customers for energy services in a more energy-efficient way and at a lower total resource cost than its current plan, the electric bills of these customers will be lower over the coming few decades than they otherwise would have been. If the Sierra Club is granted full intervenor status in this proceeding, we are prepared to present evidence and analyses indicating approximately how many dollars these particular customers, and EKPC's other ultimate customers as well, would save over the next 15 to 20 years if EKPC were to change its expansion strategy to one that does not require the construction of Smith CFB Unit 1.

3. The environmental fallout from EKPC's current power plant construction strategy will have direct economic impacts on the utility's ultimate customers and therefore should be within the scope of this proceeding.

In its 3/22/07 Order the Commission stated, "The environmental consequences of the proposed generation plants, regardless of their significance to the health of Sierra Club members, are not within the scope of this proceeding." (page 3) The Sierra Club notes that KRS Chapter 278.00, Public Utilities Generally, does not contain a section that explicitly sets forth the mandate, role and purpose of the Public Service Commission. It is therefore necessary to infer the intent of the General Assembly by examining particular sections of the statute in search of clues. The statute, KRS 278.016, titled,

“Commonwealth to be divided into geographical service areas,” provides a great deal of guidance concerning the intended role of the Commission in regulating the electric utility industry in Kentucky. It reads as follows:

It is hereby declared to be in the public interest that, in order to encourage the orderly development of retail electric service, to avoid wasteful duplication of distribution facilities, to avoid unnecessary encumbering of the landscape of the Commonwealth of Kentucky, to prevent the waste of materials and natural resources, for the public convenience and necessity and to minimize disputes between retail electric suppliers which may result in inconvenience, diminished efficiency and higher costs in serving the consumer, the state be divided into geographical areas, establishing the areas within which each retail electric supplier is to provide the retail electric service as provided in KRS 278.016 to 278.020 and, except as otherwise provided, no retail electric supplier shall furnish retail electric service in the certified territory of another retail electric supplier.

History: Created 1972 Ky. Acts ch. 83, sec. 2.

From this statute it is possible to infer the following conclusions about the General Assembly’s intent in establishing the Public Service Commission:

1) Furthering the public interest is important to the General Assembly, and the Commission should seek to do so by means of its decisions;

2) The Commission should seek to encourage the orderly development of retail electric service, avoid wasteful duplication of electric facilities, avoid unnecessarily encumbering the landscape of the Commonwealth of Kentucky, prevent the waste of materials and natural resources, act so as to further the public convenience and necessity, and minimize disputes between retail electric suppliers; and

3) The Commission should seek to prevent or avoid inconvenience, diminished efficiency and higher costs in serving the consumer.

It is also important to note what the Kentucky General Assembly did *not* say or imply in KRS 278.016: that the Commission should disregard and ignore all aspects of the public interest except those narrow, short-term economic aspects that can be communicated via customers' monthly electric bills. Several detailed technical studies have been conducted that estimate the economic impacts of coal-fired power plant emissions as they relate to premature mortality, chronic illnesses, myocardial infarction (i.e., heart attacks), respiratory and cardiovascular hospital admissions, asthma-related emergency room visits, and days of work lost due to pollution-related illnesses. ("Power Plant Emissions: Particulate Matter-Related Health Damages and the Benefits of Alternative Emission Reduction Scenarios," June 2004, prepared for Clean Air Task Force, Boston, MA, project manager Conrad Schneider, prepared by Abt Associates, Bethesda, MD with Computer Sciences Corp. and E.H. Pechan Associates, Inc, web link: http://www.abtassociates.com/reports/Final_Power_Plant_Emissions_June_2004.pdf) The economic costs that living, breathing families must bear as a result of air pollution from coal-fired power plants are real, tangible, and more or less quantifiable.

The Sierra Club must take issue with the Commission's statement, cited above, that consideration of such economic impacts on consumers is "not within the scope of this proceeding." (Ibid., page 3) Please consider two hypothetical scenarios that are mutually exclusive: A) EKPC pursues an expansion strategy that meets its ultimate customers' projected future needs for energy services by building several new coal-fired power plants; and B) EKPC eliminates its projected demand growth by dramatically expanding its energy efficiency programs, thereby meeting its ultimate customers' projected future needs for energy services without building any new coal-fired power

plants. Please assume for the moment that the impacts on the utility's revenue requirements and rates are identical in the two scenarios. Scenario B would clearly result in less air pollution, fewer negative health effects, and lower economic costs to people who breathe than Scenario A. If, however, the Commission were to impose Scenario A on society because of a mistaken preconception that such economic and health impacts were "not within the scope of this proceeding," then the Commission would have acted contrary to the intent of the General Assembly, as expressed in KRS 278.016, by mandating that EKPC damage the public interest, wastefully duplicate electrical facilities, encumber the landscape of the Commonwealth of Kentucky with unnecessary coal-fired power plants, waste materials and natural resources, act in wanton disregard of the public convenience and necessity, multiply inconvenience, diminish efficiency, and guarantee higher total costs (if we include medical costs and lost productivity) in serving the consumer than would have occurred if Scenario B had been chosen instead.

4. Events have caused the focus of this proceeding to shift from the continued need for the seven proposed generation units to the relative costs of various possible expansion plans.

In its Order of 3/22/07 the Commission stated:

"We had previously found that the generation plants in question were the most reasonable and low cost options for meeting EKPC's expected power requirements. The stated purpose of this proceeding is the continued need for the proposed generation units in light of Warren County Rural Electric Cooperative's decision to 'terminate its agreement with EKPC for future power supply and return to a power supply arrangement with the Tennessee Valley Authority.' Simply put, the only question before us is whether recent revisions to EKPC's expected power requirements obviate the need for the planned generation plants." (Order of 3/22/07, pages 3-4)

The seven generation plants in question are a 278-MW (nominal) circulating fluidized bed coal-fired unit in Mason County, Kentucky, a 278-MW (nominal) circulating fluidized bed coal-fired unit in Clark County, Kentucky, and five 90-MW (nominal) combustion turbines in Clark County, Kentucky. (Order of January 5, 2007, page 2, footnote 2) In prepared testimony filed with the Commission in this proceeding on February 23, 2007, however, James C. Lamb, EKPC's Senior Vice President of Power Supply, made the following written statement:

EKPC is not now seeking authorization for any combustion turbines other than Smith CT Units 8 & 9, and would agree that the Commission should rescind its authorization for Smith CT Units 10, 11, and 12. EKPC believes that the relative certainty about the availability of peaking generation means that EKPC can respond to future peaking needs in a quicker, more predictable manner. (Prepared testimony, page 14, answer 17)

The nominal generating capacity of Smith CT Units 10, 11, and 12 totals 270 MW, which is very close to the Smith CFB Unit 1 coal-fired power plant's nominal capacity of 278 MW. If the only simple question before us were whether recent revisions to EKPC's expected power requirements in fact obviate the need for the planned generation plants, then EKPC has already provided its own answer that appears to the Sierra Club to be conclusive: Yes, the recent revisions to EKPC's expected power requirements have obviated the need for at least 270 MW of generating capacity. EKPC has put its answer in the form of an official statement to the effect that "EKPC would agree that the Commission should rescind its authorization for Smith CT Units 10, 11, and 12." EKPC maintains that the other four planned generating units – two CFB coal-fired units and two CTs – are still needed. (Ibid., answers 5 through 19, inclusive)

EKPC has taken the position that the three CTs are no longer needed but that Smith CFB Unit 1, with approximately the same generating capacity, is needed. The Sierra Club hereby stipulates that it accepts EKPC's conclusion to the effect that at least 270 MW of generating capacity, out of the total capacity represented by the seven generating units under reconsideration in this proceeding, is no longer needed. The Sierra Club makes no stipulation at this time about whether it is three previously-certificated CTs with nominal capacities of 90 MW each – a total of 270 MW – that are no longer needed or one previously-certificated CFB coal-fired power plant with a nominal capacity of 278 MW that is no longer needed.

Why didn't EKPC come to the opposite conclusion instead: that Smith CFB Unit 1 is no longer needed and that all five of the certificated CTs are still needed? In support of its stated conclusion, EKPC relies on arguments about the relative long-term costs of various expansion plans. Mr. Lamb's prepared testimony included the following statement:

Baseload generation tends to have high fixed costs and low operating costs. Peaking generation tends to have the opposite cost characteristics. EKPC's expansion planning models search for the right mixture of both, such that total cost to meet the load duration curves in the chart are minimized. Please note, for example, that EKPC modeled 3,500 possible expansion plans, from which it chose the least cost plan. Smith 1 CFB, with updated capital cost information, was selected by the model as a least cost resource option to meet EKPC's projected load growth. It is likely that had the load duration curves looked differently, the least cost expansion plan would have been a different set of resources. (Ibid., pages 4-5, answer 9)

Reasoning logically from this testimony, the Sierra Club would submit that "the only question before us" is actually not the one posed by the Commission in its statement quoted above. It is the Sierra Club's position that the only question before us in this

proceeding is actually whether the expansion plan currently proposed by EKPC, which envisions the construction of two coal-fired CFB units and two gas-fired CTs, is the lowest-cost plan or not. Recent events, including the decision of Warren County Rural Electric Co-op to remain with TVA and the filing of Mr. Lamb's testimony on 2/23/07, have caused the focus of this proceeding to shift ineluctably from the question of "the continued need for the proposed generation units" – i.e., all seven of the specified, previously-certificated units – to the question of which of a multitude of possible expansion plans, 3,500 of which have been modeled by EKPC, is the least-cost one.

The types of testimony, data and analysis that the Sierra Club has offered to provide to the Commission, per its original "Petition to Intervene of the Cumberland Chapter of the Sierra Club," dated February 12, 2007, and its "Response to Objections to Full Intervention of the Cumberland Chapter of the Sierra Club," dated February 21, 2007, can now be seen to be manifestly relevant to this proceeding. In its Petition to Intervene, the Sierra Club implied that it would submit information to substantiate its provisional belief that "the utility may be overlooking promising strategies to meet projected future energy needs at a lower cost and in a more environmentally sound manner than building new baseload power plants." (Petition, bottom of page 2) The Sierra Club also implied that it would present information to substantiate its provisional claim that "it is also possible that an alternate strategy would lead to lower electric rates for all customers, in both the short and long terms, than EKPC's proposed construction strategy." (Ibid., top of page 3) In its response to EKPC's meritless objections, the Sierra Club stated forthrightly that it "intends to present information that will assist the Commission in determining whether alternate strategies could enable EKPC and its

member cooperatives to provide the energy services that will be needed by their end-use customers at a lower cost than building certain of the proposed power plants.” (Response of 2/21/07, pages 1-2) Such information would be directly relevant to the question of whether EKPC’s proposed expansion plan is the least-cost plan, the question which the Sierra Club holds is now, “simply put, the only question before us.”

5. Denial of the Sierra Club’s petition to intervene has left certain legitimate individual and public interests unrepresented.

In its Order of 3/22/07 the Commission stated:

As to any financial interest that Sierra Club members may have as ratepayers of EKPC member cooperatives, we note that the Attorney General, who has intervened in this matter, represents all of the persons and interests that are likely to be affected by the proposed generation plants. The AG has the statutory duty “to represent and appear on behalf of consumers’ interests.” (footnote: KRS 367.150(8)(a)) This duty extends to all customers of EKPC and its member cooperatives and all members of the public. Denial of the Sierra Club’s petition will not leave its members unrepresented in this proceeding. (Order, page 4)

When consumers involuntarily consume higher than necessary levels of airborne pollutants such as fine particulate matter and toxic metals by breathing them into their lungs over extended periods of time, they incur serious and more or less measurable financial costs (as well as grave, irreversible damage to their physical health and well-being). Over the past several years, for whatever reason or reasons, the AG has not represented the interests of those consumers who will be forced to expend significant financial resources because of the health-assaulting pollutants that will be spewed forth by the Smith CFB Unit 1 power plant over its future operating lifetime. Moreover, the Sierra Club has seen no indication whatsoever that the AG intends to start representing the particular health and financial interests of those consumers now or in the near future,

if the defense of those interests might entail even the slightest, short-term upward pressure on electric rates (Presentation of Dennis Howard, Assistant Attorney General, Utility & Rate Intervention Division, to the “Fifth Fuel” Energy Efficiency Conference held in Lexington, Kentucky on November 28, 2006) or even the slightest, short-term financial strain to the regulated utility company (Attorney General’s Comments, filed on January 8, 2007 in Case No. 2006-00547, The Application of East Kentucky Power Cooperative, Inc., for Continuation of Touchstone Energy Home Program Rebate). The Sierra Club has been compelled to conclude, with regret, that to leave these matters entirely in the hands of the AG is likely to leave unrepresented certain vital interests of those ultimate customers of EKPC who desire to consume fewer pollutants via their airways and lungs.

6. The Commission’s current de facto policy regarding the granting of full intervention appears to be inconsistent.

The Sierra Club notes that the Commission made the AG and Gallatin Steel Company parties to this proceeding in its initial Order establishing the case on January 5, 2007. Said Order included not a word of explanation as to why Gallatin Steel Company was being granted the status of a full intervenor, even though the AG presumably represents all of the persons and interests, including Gallatin Steel Company, that are likely to be affected by the proposed generation plants; even though the AG has the statutory duty to represent and appear on behalf of consumers’ interests; and even though this duty of the AG extends to all customers of EKPC and its member cooperatives and all members of the public, including Gallatin Steel Company. The Sierra Club is compelled to inquire why the Commission is requiring it to submit lengthy, detailed,

closely-reasoned and well-documented justifications for its request to intervene while simultaneously granting full intervention to Gallatin Steel Company *ab initio*. The Commission's current de facto policy regarding which parties are to be granted full intervention appears to the Sierra Club to be somewhat inconsistent, and arguably even discriminatory.

7. The Sierra Club's asserted expertise in energy-efficient technologies, DSM programs, renewable energy technologies, and alternative energy strategies is directly relevant to the actual central issue the Commission will consider in this proceeding.

In its Order of 3/22/07 the Commission stated:

Similarly, the Sierra Club's asserted expertise in "alternative energy strategies" is of little assistance in this proceeding when the focus of this proceeding centers upon the magnitude of EKPC's current expected power requirements in light of Warren County Rural Electric Cooperative Corporation's decision to remain with its currently [sic] power supplier. Nothing in the Sierra Club's petition or reply indicates that it intends to present any evidence on this subject or that it has any special expertise or knowledge in on [sic] this issue.

If there is merit in Ground Number 4 above, then the focus of this proceeding has already shifted from the magnitude of EKPC's current expected power requirements to the question of which of a multitude of possible expansion plans, 3,500 of which have been modeled by EKPC, is the least-cost one. The Sierra Club's original petition of 2/12/07, its reply of 2/21/07, and this application for rehearing all indicate that the Sierra Club, if granted full intervention, intends to present evidence, data, analysis and testimony on the subject of the relative costs of alternative expansion strategies for EKPC.

At the public hearing held at the Commission's offices on March 22, 2007, in a related proceeding, Case No. 2006-00472, the leader of the Sierra Club's team, Geoffrey M. Young, introduced oral testimony concerning his education and professional experience related to a range of energy technologies, DSM programs, and electric industry regulatory issues. The Sierra Club's team also includes a number of other individuals with considerable expertise in such matters, and Sierra Club members from across the country have already provided technical assistance and expressed a willingness to share their perspectives with the team again in the future, if asked and if their time allows. The Sierra Club submits that the special expertise and knowledge represented by these individuals is highly relevant to the question of whether there exist any alternative resource strategies that could meet the projected future needs of EKPC's ultimate customers for energy services at a lower total resource cost and in a more environmentally sound manner than EKPC's current proposed expansion plan as described in James C. Lamb's prepared testimony of February 23, 2007.

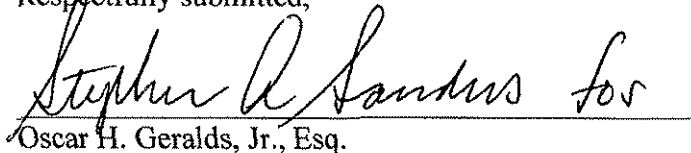
Conclusion

The Sierra Club believes that it has complied with both of the requirements of 807 KAR 5:001 Section 3(8) governing full intervention, even though compliance with only one of the two requirements would be sufficient (Please refer to Ground Number 1 above). The Sierra Club hereby submits that it has provided sufficient information to enable the Commission to determine that both of the following pertinent conditions currently obtain: 1) the Sierra Club has a special interest in this proceeding which is not otherwise adequately represented; and 2) full intervention by the Sierra Club is likely to

present issues or to develop facts that will assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings.

WHEREFORE, the Cumberland Chapter of the Sierra Club requests that the Commission reconsider and reverse its Order of 3/22/07 and grant the Sierra Club full intervenor status in the above-captioned proceeding. Because the last date mentioned in the current procedural schedule for this proceeding is April 10, 2007, on or before which date "any party desiring to file briefs in this matter shall do so" (Order of March 14, 2007), the Sierra Club respectfully requests that the Commission issue a written Order in response to this application for rehearing at such time and in such manner as to allow the Sierra Club (and the other parties) as much lead time before April 10, 2007 as practically possible.

Respectfully submitted,



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COUNSEL FOR THE SIERRA CLUB

April 2, 2007

CERTIFICATE OF SERVICE

I hereby certify that an original and ten copies of the foregoing Application for Rehearing of the Petition to Intervene of the Cumberland Chapter of the Sierra Club filed in the above-styled case were hand-delivered to Beth A. O'Donnell, Executive Director of the Kentucky Public Service Commission, 211 Sower Boulevard, Frankfort, KY 40601, and that copies were mailed to the following Parties of Record, this 2nd day of April, 2007.

Hon. Dennis Howard
Assistant Attorney General
Office of the Attorney General
Utility & Rate Intervention Division
1024 Capital Center Drive, Suite 200
Frankfort, KY 40601-8204

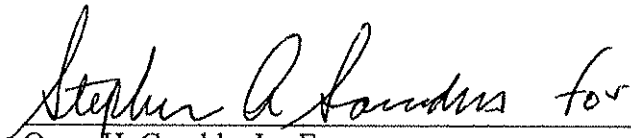
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PUBLIC SERVICE
COMMISSION

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Oscar H. Gerald, Jr., Esq.

COUNSEL FOR THE SIERRA CLUB

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Assistant Attorney General
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Sincerely,



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April 2, 2007

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