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BEFORE THE PUBLIC SERVICE COMMISSION

AUG 02 2012

PUBLIC SERVICE
COMMISSION

In the Matter of:

The 2012 Integrated Resource Plan of
East Kentucky Power Cooperative, Inc.

)
) CASE NO. 2012-00149
)

**MOTION OF SONIA MCELROY AND SIERRA CLUB TO COMPEL EAST
KENTUCKY POWER COOPERATIVE TO RESPOND TO INTERVENORS INITIAL
REQUESTS FOR INFORMATION, AND FOR CONTINUANCE OF CASE SCHEDULE**

Sonia McElroy and the Sierra Club (collectively, “Intervenors”) hereby move the Kentucky Public Service Commission (“Commission”) to compel East Kentucky Power Cooperative (“EKPC”) to fully respond to Intervenors’ initial requests for information in this proceeding, and to provide an adequate opportunity for supplemental requests after such responses are provided. EKPC has hindered Intervenors’ ability to fully participate in the identification of a least cost resource plan for the company by failing to substantively respond to a number of Intervenors’ information requests regarding critical portions of EKPC’s 2012 Integrated Resource Plan (“IRP”). Without the requested information and the ability to further probe such issues through supplemental requests for information, Intervenors are unable to fully evaluate and comment on the reasonableness of the assumptions, projections, and analyses that went into EKPC’s IRP. As such, Intervenors respectfully request that the Commission compel EKPC to fully respond to requests number 3, 4, 6, 17, 19, 21, 24, 25, 26, 27, 35, 44, and 45(a)-(c) by a date certain, and to continue the deadline for Intervenors to file supplemental requests for information until 10 days after the date of such production.¹

¹ In an effort to resolve these issues without involving the Commission, counsel for Intervenors sent EKPC’s counsel a letter via electronic mail regarding the inadequacy of EKPC’s responses on July 31, 2012. On August 2,

I. Background

On April 20, 2012, EKPC filed with the Commission its 2012 IRP, which sets forth the company's proposed load forecast, power supply strategy, fuel cost projections, and demand side management evaluation for the next fifteen years. The filing raises a number of issues relevant to the future of EKPC and the costs that its ratepayers will face, including the level of cost-effective demand side management that EKPC could pursue, whether the company will bring various aging coal-fired generating units into compliance with environmental regulations through the installation of pollution controls or the retirement of those units, changing fuel prices, and the increasing feasibility and availability of renewable resources.

On May 25, 2012, the Commission issued a case management schedule in this docket. Intervenors moved to intervene on June 8 and, consistent with the deadline set in the case management schedule, submitted their initial information requests on the same day. While EKPC's responses to Intervenors' requests were due on June 25, the company on that day moved to delay the deadline for its responses to July 25. Intervenors did not object to such a delay, so long as the deadline for filing their supplemental information requests was also pushed back. The Commission then granted EKPC an extension for responding to Intervenors' initial requests until July 17 and established an August 3 deadline for Intervenors' supplemental requests.

The IRP process in Kentucky is governed by 807 KAR 5:058, which requires EKPC to submit every three years a plan that discusses historical and projected demand, resource options for satisfying that demand, and the financial and operating performance of the EKPC system. 807 KAR 5:058 Section i(2). As the Commission Staff explained in evaluating EKPC's 2009 IRP filing, the IRP process was created to:

2012, counsel for EKPC responded via e-mail that "EKPC believes it has been responsive, to the fullest extent possible, to the data requests at issue in your letter."

ensure that all reasonable options for meeting future supply needs were being considered and pursued in a fair and unbiased manner, and that ratepayers will be provided a reliable supply of electricity at the lowest possible cost²

Intervenors' initial requests for information sought to probe the adequacy and reasonableness of EKPC's 2012 IRP filing. As such, Intervenors propounded requests regarding EKPC's plans for achieving compliance with various existing and expected environmental regulations, pursuit of demand side management, consideration of renewable and other generation resources, and assessment of future energy needs. Such requests are all relevant to issues addressed in the IRP and that are directly at stake in developing a lowest possible cost plan for meeting future supply needs.

EKPC's responses, however, were inadequate in numerous respects, despite the fact that the company had more than five weeks to respond. The inadequacies fall into three categories: (1) requests to which EKPC provided no response or failed to respond to the question that was posed, (2) requests that EKPC improperly objected to as "overly broad and unduly burdensome," and (3) requests that EKPC erroneously claimed are irrelevant the IRP proceeding. In order to ensure an open and transparent evaluation of the lowest cost resource plan for EKPC, Intervenors request the Commission to compel EKPC to provide full responses to each of Intervenors' initial requests that are listed below.

II. The Commission Should Compel EKPC To Respond to A Number of Intervenors' Initial Requests

There are a number of Intervenors' initial requests to which EKPC provided no response or failed to respond to the question that was posed. The Commission should compel EKPC to respond to these requests.

² *Staff Report on the 2009 Integrated Resource Plan of East Kentucky Power Cooperative, Inc.*, Case No. 2009-00106 (Nov. 2010), at 1.

a. Request 17

In Request 17, Intervenor sought clarification as to whether any of the “five lowest cost” resource optimization plans identified in Table 8.5(a) on page 162 of the IRP assumed the retirement of any of EKPC’s coal-fired generating units and, if not, to explain why not. EKPC did not respond to that request, but instead simply noted that it “has no plans to retire any of its coal-fired generating units,” and then referenced Section 1.4, page 6 of the IRP.

The Commission should compel EKPC to answer Request 17 because EKPC’s response does not address the question asked. The fact that EKPC is apparently not planning to retire any of its coal units does not answer whether any of the five lowest cost plans identified in the IRP assumed the retirement of one or more coal units. In addition, both Section 1.4 of the IRP, and EKPC’s response to Staff Request 1-14 appear to suggest that retirement is an option that may have or should have been evaluated. In particular, Section 1.4 of the IRP notes that EKPC is faced with the decision whether to make significant capital investments into the “older Dale and Cooper 1 units,” or to “replace that capacity with a more economic alternative in 2015.” Similarly, in response to Staff Request 1-14a, EKPC stated that the 275/250MW addition in 2016 that is identified in Table 8.(4)(a) of the IRP “represents the replacement for Dale Station (195MW) and Cooper 1 (110MW)” and “represent the plan identified as Plan 1 in Table 8.5(a).” These statements strongly suggest that the assessment of least cost resource options for meeting future energy needs either did or should have evaluated retirement of certain coal units. Intervenor sought, and EKPC should be required to provide, an identification of which of the resource plans listed in Table 8.5(a) included retirement of one or more EKPC coal units or, if no plan included such a retirement, an explanation as to why not.

EKPC also failed to respond to a portion of Request 17b, in which Intervenors sought the identification of and capital cost for the environmental modification identified in resource plan 5 on Table 8.5(a). EKPC responded that the modification is the addition of a dry scrubber on Cooper Unit 1, but failed to identify the assumed capital cost for such scrubber. Such cost data is plainly relevant to the development of a least cost plan and, therefore, should be provided.

b. Request 24

In Request 24, Intervenors sought the capital costs, O&M costs, and heat rate penalty from pollution controls that EKPC “has committed” (IRP at p. 176) to install on Cooper Unit 1 in the Regional Haze plan that EKPC filed with the Kentucky Division of Air Quality (“DAQ”). Intervenors also sought any analysis comparing the cost of installing such controls with the cost of retiring and replacing Cooper Unit 1. In response, EKPC identified the controls that it had committed to installing, but then suggests that it is not certain that Kentucky DAQ will require such controls. EKPC, therefore, declined to provide the information requested about such controls.

EKPC’s response is inadequate because the question of whether Kentucky DAQ requires the controls that EKPC “has committed” to has no import as to the cost, heat rate penalty, or comparative economics of installing such controls on Cooper Unit 1. Even if those controls were not necessary to comply with Regional Haze requirements (which they are), such controls may be necessary to bring Cooper Unit 1 into compliance with other environmental regulations if the unit continues to operate. As such, the requested information is plainly relevant to evaluating the “resource assessment and acquisition plan for providing an adequate and reliable supply of

electricity to meet forecasted electricity requirements at the lowest possible cost,” 807 KAR 5:058 Section 8(1), and EKPC should be required to produce it.

c. Request 25

In Request 25, Intervenors sought identification of any pollution controls that EKPC anticipated needing to install on any of its coal units, the capital and O&M costs of such controls, and any assessment or analysis of the need to install or economics of installing controls on any EKPC coal unit. EKPC did not produce any documents or identify any controls, but instead noted that it “closely monitor[s] all new EPA rules and regulatory actions” and that the company is “in the process of engaging an engineering firm to conduct a formal analysis” of compliance options that should be complete in 2013.

EKPC’s answer is not responsive to the question asked. Regardless of whether EKPC is currently engaging in a comprehensive review of controls that may be needed on its coal units, EKPC has almost certainly carried out other such evaluations in the past few years. For example, EKPC presumably evaluated installing pollution controls on Cooper Unit 1 before committing to the Regional Haze plan described in the discussion of Request 24 above. The Commission should require EKPC to produce such evaluation and any other analysis or information regarding pollution controls that may be needed to bring EKPC coal units into compliance with environmental regulations.

d. Request 26

In Request 26, Intervenors sought a series of information or studies - such as undepreciated book value, depreciation studies, and condition assessments – for each of EKPC’s

existing coal units. EKPC did not produce any of the requested information but, instead, responded only that it has no plans to retire any of its coal units. But most of the information sought in Request 26 would exist regardless of whether EKPC planned to retire various coal units and are relevant to whether it is reasonable for EKPC to not retire any coal units. For example, a generating unit has an undepreciated book value regardless of whether the unit is being retired. Similarly, most utilities carry out depreciation studies and condition assessments of their generating assets. And evaluation of the transmission grid impacts of retiring a unit could be relevant to whether the utility is going to shut a unit down. Given that the question of whether to retire or retrofit various coal units is plainly relevant to developing a least cost plan for meeting future energy needs, the Commission should compel EKPC to respond to Requests 26(b) – (j) which seek information that may be relevant to the retrofit versus retirement decision.

e. Request 27

In Request 27, Intervenors sought any evaluation of continued operation of any of EKPC's coal units compared to retiring and replacing each unit with various other energy resources. EKPC again did not respond, but instead simply noted that it has no plans to retire any of its coal units. But the fact that EKPC does not plan to retire any of its coal units does not mean that it has not evaluated continued operation versus retirement of some of its coal units. EKPC should produce any such responsive evaluation or, if no such evaluation has been undertaken, so state.

f. Request 44

In Request 44, Intervenors sought the identification and production of any demand side management potential study performed by or for EKPC in the past five years. EKPC identified one such study, carried out by the Electric Power Research Institute (“EPRI”), but did not produce it. While EKPC asserts that it did not rely on the EPRI study in developing its proposed demand side management plans, such a study, which evaluated the economic potential for energy savings amongst residential customers, could plainly be relevant to the reasonableness of those plans whether or not EKPC relied on it. As such, the Commission should compel the production of the EPRI study and of any other demand side management potential studies for EKPC.

III. The Commission Should Compel EKPC to Produce its Workpapers, Source Documents, and Modeling Input and Output Files.

EKPC also refused to produce workpapers, source documents, and modeling files on the specious grounds that the requests were “overly broad and unduly burdensome.” Two of those requests – number 3 and 6 - sought workpapers, source documents, and input and output files for modeling used in creating the IRP and for screening demand side management programs. A third request – number 4 – sought workpapers and source documents for the projection of the number of customers in the EKPC service area. EKPC’s refusal to provide any substantive response to these requests should be rejected by the Commission because that refusal forecloses an effective review of the IRP.

Transparency on the part of EKPC is an essential element to the ability of Intervenors and the Commission Staff to be able to review and evaluate the adequacy and reasonableness of EKPC’s IRP. And review of the information and files sought in Requests 3, 4, and 6 is critical to such transparency, as EKPC’s IRP relies heavily on modeling and other numeric calculations as

the basis for its conclusions regarding the identification of a resource plan that is purportedly least cost. Claims that requests for workpapers, source documents, and modeling input and output files are unduly burdensome or overly broad strain credulity given that such files are presumably readily accessible to the EKPC staff and consultants who were involved in creating the IRP. In addition, Requests 3, 4, and 6 seek the types of information and files regularly produced by utilities in Commission proceedings evaluating the reasonableness and adequacy of utility planning activities. Consistent with the disclosure of such information and files in other proceedings, the Commission should require EKPC to fully respond to Requests 3, 4, and 6 here.

IV. The Commission Should Reject EKPC's Unsupported Claims That Certain of Intervenors Requests Seek Information That is Irrelevant to the IRP Proceeding.

EKPC also attempted to justify a refusal to substantively respond to certain of Intervenors' initial requests on the erroneous basis that those requests seek irrelevant information. In particular, EKPC claimed that Requests 35 and 45(a)-(c), which seek data regarding past budgets and energy savings achieved through load control and DSM programs, respectively, are not relevant to the IRP. But EKPC has not provided any explanation for why such information is purportedly not relevant. And the reality is that EKPC relied on its past experience with DSM and load control program in estimating the amount of future demand reduction and energy savings from DSM and load control programs should be assumed in the IRP.

For example, in response to Staff Request 1 regarding why EKPC assumed only 50MW of cumulative demand reduction from DSM programs over the next five years, EKPC explained that its existing DSM programs have averaged approximately 4MW per year of savings for the

past decade. Similarly, in response to Intervenor's Request 10 regarding EKPC's claim that it costs more for EKPC to run DSM programs than is assumed in the California Standard Practice Manual, EKPC relies on its experience in implementing DSM programs since the 1990s. Plainly, if EKPC is going to rely on its past experience implementing DSM programs in projecting future levels of DSM, the details of such past experience such as cost and energy saved are relevant to this proceeding. Therefore, the Commission should compel EKPC to respond to Requests 35 and 45(a)-(c).

EKPC also claims that Intervenor's Requests 19 and 21, which seek information regarding emissions testing and emissions from EKPC's coal units, are somehow not relevant to the IRP. But EKPC itself notes that the emissions testing at issue in Request 19 is being done "to determine the best way to achieve compliance with" the U.S. EPA's Mercury and Air Toxics Standards ("MATS"). (IRP at p. 172). Compliance with that rule will require either installation of controls or retirements of some coal units and, therefore, is directly relevant to any evaluation of the lowest cost resource options for meeting EKPC's future energy needs. Similarly, Request 21 requests information regarding emission rates and annual emissions from the coal units, information which, once again, is directly relevant to what steps would be needed to bring such units into compliance with MATS and other environmental standards. As such, EKPC should be required to produce the requested information.

V. Intervenor's Reserve Their Rights With Regards to Responses For Which EKPC Claims Confidentiality Protection.

Intervenor's are in the process of negotiating with EKPC a protective order that should allow Intervenor's to gain access to information that EKPC believes is entitled to confidential business information or trade secret protection. EKPC has refused to respond to date to

Intervenors' Requests 2, 5, 11, 12, 15, 16, 28, and 30 on the grounds that the requested information is confidential or proprietary. It is unclear as to which of those requests EKPC intends to provide a response to when and if a protective order is agreed to. As such, Intervenors reserve their right to pursue further relief from the Commission if EKPC is not forthcoming with responses to any of those requests after a protective order is signed.

VI. The Commission Should Continue the Deadline for the Filing of Supplemental Information Requests.

The ability of Intervenors and Staff to further investigate, through supplemental information requests, issues raised in EKPC's responses to initial requests is critical to the transparent process that should occur here. The current case management schedule requires that Intervenors and the Staff serve supplemental information requests by the end of business on this Friday, August 3. EKPC's failure to date to substantively responded to many of Intervenors' initial requests, however, means that Intervenors and Staff would not have the opportunity to engage in such follow-up investigation unless the deadline for supplemental requests is extended. As such, Intervenors request that the Commission establish a date certain by which EKPC will be required to provide complete responses to the requests for information discussed above, and extend the deadline for Intervenors and the Staff to submit supplemental requests until 10 days after such date of production.

VII. Conclusion

For the foregoing reasons, Intervenors request that the Commission compel EKPC to fully respond to Intervenors' initial requests for information numbers 3, 4, 6, 17, 19, 21, 24, 25,

26, 27, 35, 44, and 45(a)-(c) by a date certain, and to continue the deadline for Intervenor and Staff to file supplemental requests for information until 10 days after the date of such production.

Respectfully submitted,



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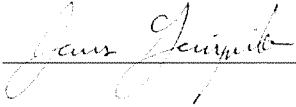
Dated: August 2, 2012

CERTIFICATE OF SERVICE

I certify that I had filed with the Kentucky Public Service Commission and served a copy of this **MOTION OF SONIA MCELROY AND SIERRA CLUB TO COMPEL EAST KENTUCKY POWER COOPERATIVE TO RESPOND TO INTERVENORS INITIAL REQUESTS FOR INFORMATION, AND FOR CONTINUANCE OF CASE SCHEDULE** via electronic mail and U.S. Mail on August 2, 2012 to the following:

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