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PUBLIC SERVICE
COMMISSION

Via Overnight Mail

November 6, 2015

Mr. Jeff Derouen, Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, Kentucky 40602

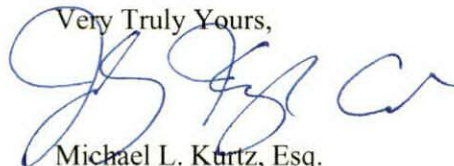
Re: Case No. 2015-00358

Dear Mr. Derouen:

Please find enclosed the original and ten (10) copies each of KENTUCKY INDUSTRIAL UTILITY CUSTOMERS, INC's: 1) MOTION TO INTERVENE; and 2) RESPONSE for filing in the above-referenced matter. 3

By copy of this letter, all parties listed on the Certificate of Service have been served. Please place this document of file.

Very Truly Yours,



Michael L. Kurtz, Esq.

Kurt J. Boehm, Esq.

Jody Kyler Cohn, Esq.

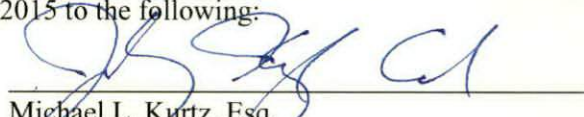
BOEHM, KURTZ & LOWRY

MLKkew
Attachment

cc: Certificate of Service
Quang Nyugen, Esq.
Richard Raff, Esq.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by electronic mail (when available) and by regular, U.S. mail, unless other noted, this 6th day of November, 2015 to the following:



Michael L. Kurtz, Esq.
Kurt J. Boehm, Esq.
Jody Kyler Cohn, Esq.

East Kentucky Power Cooperative, Inc.
4775 Lexington Road
P. O. Box 707
Winchester, KY 40392-0707

David S Samford
Goss Samford, PLLC
2365 Harrodsburg Road, Suite B325
Lexington, KENTUCKY 40504

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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 DEVIATION FROM : Case No. 2015-00358
OBLIGATION RESULTING FROM CASE NO. 2012-00169 :

MOTION TO INTERVENE OF
KENTUCKY INDUSTRIAL UTILITY CUSTOMERS, INC.

Pursuant to K.R.S. §278.310 and 807 KAR 5:001, Section 4(11), Kentucky Industrial Utility Customers, Inc. ("KIUC") requests that it be granted full intervenor status in the above-captioned proceeding and states in support thereof as follows:

1. KIUC is an association of the largest electric and gas public utility customers in Kentucky. The purpose of KIUC is to represent the industrial viewpoint on energy and utility issues before this Commission and before all other appropriate governmental bodies. The members of KIUC who purchase electricity from East Kentucky Power Cooperative, Inc. and who will participate herein are: AGC Glass Company North America, Air Liquide Industrial US LP, Nucor Steel Gallatin, International Paper and Wausau Paper Corp. KIUC will supplement the names of additional intervenors when necessary.
2. The matters being decided by the Commission in this case may have a significant impact on the rates paid by KIUC for electricity. Electricity represents a significant cost of doing business for KIUC. The attorneys for KIUC authorized to represent them in this proceeding and to take service of all documents are:

Michael L. Kurtz, Esq.
Kurt J. Boehm, Esq.
Jody Kyler Cohn, Esq.
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3. The position of KIUC cannot be adequately represented by any existing party. KIUC intends to play a constructive role in the Commission's decision-making process herein and KIUC's participation will not unduly prejudice any party.

WHEREFORE, KIUC requests that it be granted full intervenor status in the above captioned proceeding.

Respectfully submitted,



Michael L. Kurtz, Esq.

Kurt J. Boehm, Esq.

Jody Kyler Cohn, Esq.

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**COUNSEL FOR KENTUCKY INDUSTRIAL UTILITY
CUSTOMERS, INC.**

November 6, 2015

**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

In the Matter of the Application of East Kentucky Power Cooperative, Inc. : Case No. 2015-00358
for Deviation from Obligation Resulting from Case No. 2012-00169. :

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**RESPONSE OF
KENTUCKY INDUSTRIAL UTILITY CUSTOMERS, INC.**

PUBLIC SERVICE
COMMISSION

Kentucky Industrial Utility Customers, Inc. ("KIUC") submits this Response to the Application filed by East Kentucky Power Cooperative, Inc. ("EKPC" or "Company") on October 30, 2015. In its Application, EKPC requests permission to deviate from the Commission's directive in Case No. 2012-00169 that EKPC file *"no later than November 30, 2015, an application for approval of a rate mechanism to flow back to customers the capacity market benefits expected to accrue from membership in PJM."*¹ EKPC claims that *"the tremendous uncertainty and potentially massive complications that accompany recent federal environmental regulations"* warrant an 18-month suspension of EKPC's filing obligation, which would push its application deadline back to May 31, 2017.²

The Commission should deny EKPC's request to delay its required filing. The Company's concerns regarding the uncertainties surrounding environmental regulations are insufficient to justify depriving customers of the capacity market benefits resulting from EKPC's integration into PJM in a timely manner. As an initial matter, EKPC could raise the same environmental concerns in its required filing and the Commission could consider those concerns while also addressing the mechanism to flow back PJM capacity market benefits to customers. Mandating that EKPC comply with the Commission's directive in Case No. 2012-00169 therefore would not foreclose the Company of an opportunity to raise environmental issues that it may view as relevant in its required filing.

Additionally, uncertainties surrounding how Kentucky will comply with pending or anticipated environmental regulations could persist for years or even indefinitely. For example, Kentucky may not submit an

¹ *In the Matter of the Application of East Kentucky Power Cooperative, Inc. to Transfer Functional Control of Certain Transmission Facilities to PJM Interconnection, LLC*, Case No. 2012-00169, Order (December 20, 2012) ("PJM Integration Order") at 20.

² EKPC Application at 2.

initial state implementation plan (“SIP”) in compliance with the Clean Power Plan until September of 2016 and may not submit a final SIP until September 2018. If EKPC’s required filing is allowed to be delayed until a final SIP is approved by EPA, then the Company’s customers could be deprived of PJM capacity market benefits for far longer than the Commission intended when Case No. 2012-00169 was decided. Further, legal challenges could result in additional uncertainty regarding how Kentucky may or may not be required to comply with the Clean Power Plan well beyond September of 2018. And there is seemingly endless uncertainty with respect to potential future environmental regulations that could be promulgated even after Clean Power Plan-related issues are resolved. This ongoing uncertainty does not and should not justify suspending the Commission’s consideration of the proper flow back of PJM capacity market benefits to customers.

EKPC is accustomed to ratemaking and operating in the midst of regulatory uncertainty. The Company acknowledges that it *“has already undertaken efforts to comply with many anticipated rules and regulations consistent with prudent utility practices and management.”*³ And Kentucky has already established a mechanism, the environmental surcharge, which gives utilities reasonable assurance that coal-related environmental compliance costs will be recoverable. Hence, there is no valid reason to unnecessarily delay customers from receiving benefits that the Commission intended them to receive.

The PJM capacity market benefits that EKPC could receive and flow back to customers during the Company’s requested delay may be substantial. As a winter-peaking utility, EKPC benefits from a lower PJM reserve requirement, which allows the Company to sell more capacity into the PJM market and generate more revenue. The Commission recognized this benefit in Case No. 2012-00169, explaining:

*The ability to maintain a lower reserve margin is expected to produce additional revenue for EKPC, since any generating capacity in excess of its load and reserve margin can be sold at the PJM capacity market price. These capacity market benefits are substantial, and are expected to yield \$137 million over the study period.*⁴

And the amount of capacity that EKPC could sell into that market will significantly increase in the near future given: 1) the elimination of EKPC’s requirement to holdback 3% of its capacity after the Company switches to an RPM Entity in PJM on June 1, 2016; and 2) the Company’s pending request to acquire 495 MW of

³ Direct Testimony of Jerry B. Purvis, Case No. 2015-00267 (July 24, 2015) at 5:15-17.

⁴ PJM Integration Order at 14.

summer capacity from Bluegrass Generation Company, LLC, which could be bid into PJM incremental capacity auctions as soon as the 2016/17 Delivery Year.⁵ For example, the elimination of the 3% holdback will allow EKPC to sell approximately 80 MW of additional capacity into the PJM markets. If EKPC receives \$150/MW-day (the most recent BRA clearing price for Base Capacity) for this additional capacity, then the Company's annual margins would increase by \$4.38 million.⁶

In light of EKPC's ability to benefit substantially from the PJM capacity markets in the near future, it is reasonable to begin flowing back some of those benefits to customers as soon as possible. Although customers currently receive some of the benefits of EKPC's move to PJM through the Fuel Adjustment Clause, the greater potential benefits stem from the capacity market revenues that EKPC will receive as of June 1, 2016, which was part of the Commission's rationale for requiring a filing by November 30, 2015:

Finally, the Commission finds that the bulk of the trade benefits that EKPC expects to accrue as a member of PJM will flow back to its 16 member cooperatives and their retail customers through the Fuel Adjustment Clause. However, absent a base rate case filing by EKPC, there is no existing mechanism to flow back to customers the capacity market benefits. While we recognize that the capacity market benefits will not actually increase EKPC's revenues until June 2016 and thereafter, those benefits are expected to be more than three times the trade benefits. For this reason, the Commission finds that EKPC's membership in PJM should be conditioned upon EKPC agreeing to file, no later than November 30, 2015, an application for approval of a rate mechanism to flow back to customers the capacity market benefits expected to accrue from membership in PJM. EKPC's Chief Executive Officer should file within seven days of the date of this Order, a letter accepting and agreeing to be bound by this condition.⁷

Requiring EKPC to comply with the Commission's timetable would not hurt the Company, which is in a strong position financially and "well on the way to achieve the Board of Directors' goal of a 15% equity-to-assets ratio by the end of 2015."⁸ Rather, it would help ensure that customers receive capacity market benefits in a timely manner, consistent with the Commission's directive in Case No. 2012-00169.

⁵ See *In the Matter of East Kentucky Power Cooperative, Inc. for Approval of the Acquisition of Existing Combustion Turbine Facilities from Bluegrass Generation Company, LLC at the Bluegrass Generating Station in LaGrange, Oldham County, Kentucky and for Approval of the Assumption of Certain Evidences of Indebtedness*, Case 2015-00267.

⁶ 80 MW x \$150 x 365.

⁷ PJM Integration Order at 20.

⁸ Direct Testimony of Mike McNalley (October 30, 2015) at 4:8-9.

WHEREFORE, for the reasons discussed above, the Commission should deny EKPC's request to deviate from the Commission's directive in Case No. 2012-00169.

Respectfully submitted,



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CUSTOMERS, INC.**

November 6, 2015