

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

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In the Matter of:

THE APPLICATION OF EAST KENTUCKY )  
POWER COOPERATIVE, INC. FOR DEVIATION FROM )  
OBLIGATION RESULTING FROM CASE NO. 2012-00169 )

Case No.  
2015-00358

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ATTORNEY GENERAL'S OPPOSITION TO APPLICATION FOR DEVIATION

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The Attorney General, through his Office of Rate Intervention, submits his Response in opposition to the Application filed by East Kentucky Power Cooperative, Inc., (EKPC) requesting a deviation from the prior order, wherein the Commission awarded EKPC the authority to fully integrate into PJM, pursuant to KRS 287.218.<sup>1</sup> In the original action, EKPC was ordered by this Commission to create a rate mechanism designed to share PJM based profits and benefits with its Member Owners, and thus the eventual ratepayers, by no later than November 30, 2015.

The scope of review for transfers of control pursuant to KRS 278.218 requires that these transactions must be: 1) for a proper purpose; and 2) in the public interest.<sup>2</sup> After testimony, extensive discovery, and settlement discussions, the Commission approved the terms of the transfer, and found the transaction as proposed by EKPC met both prongs of review. By Order, the Commission held that the revenues the Company would realize were substantial trade benefits, and the Commission ordered that "EKPC's membership in PJM *should be conditioned* on EKPC's agreeing to file no later than November 30, 2015, an application for approval of a

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<sup>1</sup> *In re 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) (KY PSC).

<sup>2</sup> KRS 278.218(2).

rate mechanism to flow back to customers the capacity market benefit expected to accrue.”<sup>3</sup> The Attorney General supported EKPC’s Application in 2012, as the PJM integration would not “adversely affect EKPC’s level of service, but rather will save ratepayers money while allowing the EKPC system to become more efficient and reliable.”<sup>4</sup> Both the Commission’s Order and the Attorney General’s support were premised upon the idea that the transaction would save the ratepayers money as a direct result of this transaction and full integration into PJM.

Now, less than three years later, EKPC seeks to remove the financial benefits to end use customers, before they even receive the first cent earned from the PJM integration. In the instant Application, EKPC expounds upon the depth and breadth of uncertainty in the environmental regulatory landscape for electric generating units.<sup>5</sup> The Company further predicts that the uncertain legal status of the Clean Power Plan’s future has had, and will have, a substantially negative impact the Company’s financial outlook.

In the Application for Deviation the Company argues it “expects significant capital outlays in the years to come in order to remain compliant” with ever increasing complex environmental regulations.<sup>6</sup> But, while this Application forecasts a bleak and uncertain future on the horizon for EKPC, earlier this month, the Company presented a very different financial picture. In Case No. 2015-00267, relating to EKPC’s acquisition of the Bluegrass Generating Station, Mr. Mike McNalley, EKPC’s Executive Vice President and Chief Financial Officer testified that “while the future looked a lot more solid before the Clean Power Plan came out, I’m

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<sup>3</sup> *In re Application of East Kentucky Power Cooperative, Inc. to Transfer Functional Control of Certain Transmission Facilities to PJM Interconnection LLC*, Case No. 2012-00169, Order at 20 (December 20, 2012)(KY PSC)(emphasis added).

<sup>4</sup> *Id.* at 8.

<sup>5</sup> *In re Application of East Kentucky Power Cooperative Inc. for Deviation from Obligation Resulting from Case No. 2012-00169*, Application (October 30, 2015)(KY PSC).

<sup>6</sup> *In re Application of East Kentucky Power Cooperative Inc. for Deviation from Obligation Resulting from Case No. 2012-00169*, Application at 9 (October 30, 2015)(KY PSC).

confident we will find our way through the Clean Power Plan and have a good future.”<sup>7</sup> EKPC cannot have it both ways.

Although the changing landscape of environmental regulations continues to require new and alternative solutions to current electric generation from coal, EKPC cannot be both confident in their success to handle that landscape **and** in desperate need of additional income streams as a result of the Clean Power Plan. Further, although the changing environmental landscape has always been, and will continue to be, a major factor in forecasting financial outcomes for utilities, nowhere in the original application did the Commission rule the integration into PJM was beneficial for EKPC based upon the environmental regulatory landscape as it existed at the time the Order was issued.

Moreover, Kentucky’s regulatory structure already has a statutory mechanism to recover costs expended on environmental compliance: a surcharge pursuant to KRS 278.183, also known as the Environmental Surcharge Statute.<sup>8</sup> The Commission historically has noted that:

[T]he General Assembly, in enacting KRS 278.183(1), has made it very clear that an electric utility. . . has the right to current recovery by environmental surcharge of its reasonable and prudent costs for complying with the Federal Clean Air Act as amended as well as those federal, state, or local government regulations applicable to coal combustion wastes and by-products from facilities utilized by production of energy from coal.<sup>9</sup>

The effect and the purpose of this statute was to provide utilities “an alternative procedure to increasing the base rate by allowing utilities to recover costs of environmental compliance by

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<sup>7</sup> *In Re Application 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*, Public Hearing, November 4, 2015, Mike McNally, VTE 15:09:33-15:09:45.

<sup>8</sup> *In re Application of Louisville Gas & Electric Company for Certificates of Public Convenience and Necessity and Approval of its 2011 Compliance Plan for Recovery by Environmental Surcharge*, Case No. 2011-00162, Order, December 15, 2011 (KY PSC).

<sup>9</sup> *Id.*

means of a surcharge rather than by opening a general rate case.”<sup>10</sup> If EKPC is in need of additional funds to invest in environmental compliance, it can do so in an amended filing to its Environmental Compliance Plan.

EKPC is currently addressing its needs in an amendment to its Environmental Compliance Plan, and those changes are under review.<sup>11</sup> When asked to provide a status update on the Company’s Environmental Compliance Plan, Mr. Jerry Purvis, Director of Environmental Compliance, testified that studies that the Board of Directors commissioned regarding the most recent environmental regulations had not yet been completed or vetted.<sup>12</sup> As to how these regulations affect EKPC’s generation fleet, Mr. Purvis explained that EKPC is not in a position to file a revised Environmental Compliance Plan that accounts for the myriad of new regulations that have been handed down by the federal government, until those studies are vetted internally.<sup>13</sup>

The Attorney General argues that the Environmental Compliance Plan, which EKPC is intending to file, can provide for the direct recovery of any expenses related directly to environmental compliance, and that the surcharge case is the most appropriate mechanism to handle any “significant capital outlays” that the Company foresees pursuing as a result of the Clean Power Plan. The Company has stated no grounds to modify the original order of PJM

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<sup>10</sup> *KIUC v. Kentucky Utilities Co.*, 983 S.W2d 493, 497 (Ky. 1998).

<sup>11</sup> *In Re Application 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*, Public Hearing, November 4, 2015, Jerry Purvis, VTE 12:43:59-12:44:40.

<sup>12</sup> *In Re Application 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*, Public Hearing, November 4, 2015, Jerry Purvis, VTE 12:43:59-12:44:40.

<sup>13</sup> *In Re Application 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*, Public Hearing, November 4, 2015, Jerry Purvis, VTE 12:43:59-12:44:40.

revenue and benefit sharing, when a mechanism already exists for the Company to assess and recover environmental expenditures. Should the Company, after receipt, review and vetting of its studies, feel that the Environmental Compliance Plan needs to be amended to recoup the capital expenditure it forseees, the Company is free to make such a filing.

The Attorney General sees no need to suspend the prior order of the Commission, which directs substantial savings to the ratepayers, while the federal courts work through the legal challenges that both the industry, and various States have pending over the implementation and authority of the Clean Power Plan. The fate of the Clean Power Plan's implementation is uncertain, and given that level of political, judicial and legislative uncertainty, the Attorney General sees no reason that the ratepayers should not benefit from the revenues earned through EKPC's integration into PJM as the Commission had intended.

WHEREFORE, the reasons discussed above, the Commission should deny EKPC's request to deviate from the Commission's Order in Case No. 2012-00169, and EKPC should file a rate mechanism designed to share the benefits of PJM integration with its Member Owners as soon as is practical.

Respectfully submitted,

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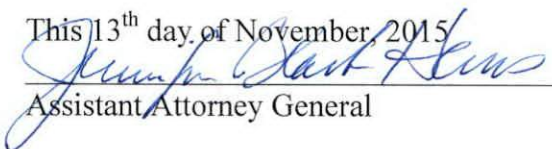
Counsel certifies that an original and ten photocopies of this Motion to Intervene were served and filed by hand delivery to Jeff Derouen, Executive Director, Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601; counsel further states that true and accurate copies of the foregoing were mailed via First Class U.S. Mail, postage pre-paid, to:

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This 13<sup>th</sup> day of November 2015

  
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