



EAST KENTUCKY POWER COOPERATIVE

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April 5, 2005

HAND DELIVERED

Ms. Elizabeth O'Donnell  
Executive Director  
Public Service Commission  
211 Sower Boulevard  
Frankfort, KY 40602

Re: PSC Case No. 2004-00423

Dear Ms. O'Donnell:

Please find enclosed for filing with the Commission in the above-referenced case, an original and ten copies of the Petition for Confidential Treatment of Information regarding the enclosed Second Supplemental Prepared Testimony of David G. Eames, which is hereby filed along with the Response of East Kentucky Power Cooperative, Inc., ("EKPC") to the submittals filed by EnviroPower, L.L.C., on March 30, 2005. Included with the original Petition is a confidential set of all pages in said testimony which contain confidential information, along with 10 redacted copies of such testimony, EKPC's Response, and the Supplemental Prepared Testimony of James Shipp and Robert E. Hughes, Jr. on behalf of EKPC.

Very truly yours,

Charles A. Lile  
Senior Corporate Counsel

Enclosures

Cc: Service List

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

**PETITION FOR CONFIDENTIAL  
TREATMENT OF INFORMATION**

Comes now the Petitioner, East Kentucky Power Cooperative, Inc. (“EKPC”) and, pursuant to 807 KAR 5:001 Section 7 and KRS §61.870, requests confidential treatment of the designated information in the Second Supplemental Prepared Testimony of David G. Eames, which is filed by EKPC in response to the submittal of EnviroPower, L.L.C. dated March 30, 2005. As grounds for this petition, EKPC 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. EKPC asserts that the information identified in the abovementioned testimony are records generally recognized as proprietary and confidential which, if made public, would permit an unfair commercial advantage to competitors of EKPC, as more fully explained hereinbelow. 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. The designated information consists of detailed calculations concerning the evaluation of the most competitive proposals received in response to EKPC's Request for Proposals ("RFP") 2004-01. Disclosure of this information could provide useful pricing information to other utilities, power marketers and other entities which compete with EKPC in the bulk power market, which could put EKPC at an unfair disadvantage in efforts to market surplus power. Furthermore, the disclosure of details of the most competitive proposals to utilities, power marketers and project developers which would be potential bidders in future EKPC RFPs could lead to manipulation of those future proposals, resulting in higher costs for future capacity and related competitive disadvantages for EKPC. The Commission, on March 18, 2005 granted confidentiality protection to similar information which was filed in this case on March 7, 2005 and should grant the same protection to this evaluation information.

3. EKPC has protected the confidentiality of the subject evaluation information, which contains information known only by EKPC and its consultant, EnerVision, Inc., and has restricted access to this information to only EnerVision representatives and EKPC employees with a need to use it for the purposes of this case. One unredacted copy of the confidential pages of the subject responses, along with 10 redacted copies of the responses, 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 EKPC 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, EKPC respectfully requests the Commission to grant confidential treatment to the subject information and deny public disclosure of said information.

Respectfully submitted,

DALE W. HENLEY

A handwritten signature in cursive script, appearing to read "Charles A. Lile".

CHARLES A. LILE  
P. O. BOX 707  
WINCHESTER, KY 40392-0707  
(859) 744-4812

CERTIFICATE OF SERVICE

This is to certify that an original and ten copies of this Petition for Confidential Treatment of Information in the above-styled case were delivered to the Elizabeth O'Donnell, Executive Director, Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40602, and copies were mailed to parties on the service list in this case, this 5<sup>th</sup> day of April, 2005.



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CHARLES A. LILE





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

**In the Matter of:**

**THE APPLICATION OF EAST KENTUCKY )  
POWER COOPERATIVE, INC. FOR A )  
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CONSTRUCTION OF A 278 MW (NOMINAL) )  
CIRCULATING FLUIDIZED BED COAL FIRED )  
UNIT IN MASON COUNTY, KENTUCKY )**

**RESPONSE OF EAST KENTUCKY POWER COOPERATIVE, INC.  
TO COMMENTS OF ENVIROPOWER, L.L.C.**

East Kentucky Power Cooperative, Inc. (“EKPC”) hereby submits the following comments and the attached Supplemental Prepared Testimony of David G. Eames, Robert E. Hughes, Jr., and James Shipp, in response to the submittals of EnviroPower, L.L.C. (“EnviroPower”) in this case dated March 30, 2005.

1. EnviroPower has made extraordinary efforts to delay the progress of this case through the submission of wholly unsupported allegations of manipulations and misconduct by EKPC in the evaluation of EnviroPower’s proposals submitted in response to EKPC’s Request for Proposals 2004-01 (the “RFP”). As reflected by the prepared testimony of Mr. Frank L. Rotondi, submitted as comments by EnviroPower in this case, EnviroPower is well aware of the time pressures that face EKPC in attempting to secure sufficient generating capacity to serve the needs of Warren Rural Electric Cooperative Corporation (“Warren RECC”) by April 1, 2008. Even though EKPC filed its Application in this case on October 28, 2004, EnviroPower waited until eighteen days before the hearing, originally scheduled for February 18, 2005, to attempt to intervene in this case.

As noted in the affidavit of Mr. Randall Alan Bird, which was submitted by EnviroPower in support of its request to intervene, EnviroPower had been an unsuccessful bidder for the Warren RECC power supply. Mr. Bird's affidavit included unsubstantiated claims that EKPC had improperly secured the Special Membership Agreement with Warren RECC. In that affidavit, and now in Mr. Rotondi's unsworn testimony, EnviroPower continues to make unfounded claims of intentional manipulation of the design of the EKPC process for evaluation of the RFP proposals, the actual evaluation of EnviroPower's proposal and the awarding of the successful proposal. Based on nothing more than the fact that the EnviroPower proposal was not selected in the RFP, Mr. Rotondi asks the Commission to order an independent engineering evaluation of EKPC's proposal compared to EnviroPower's, to dismiss the case or to refer it to "an appropriate court." EnviroPower is well aware that the inherent delay involved with any of these suggested steps could have the practical effect of eliminating the Spurlock 4 project as a viable power supply option for service to Warren RECC. Whether EnviroPower hopes to negotiate a power contract with EKPC after eliminating the Spurlock 4 option, or hopes that EKPC's Special Membership Agreement with Warren RECC will fail, leaving Warren RECC desperately in need of an alternative power supplier, is unclear. EKPC contends that neither scenario is in the best interest of EKPC or Warren RECC, and that there are no grounds presented by EnviroPower which in any way justify such irreversible actions by the Commission.

2. In response to the Commission's order in this case dated February 3, 2005 EKPC has previously submitted Prepared Testimony from Lynne S. Travis of EnerVision, the consultant hired by EKPC to conduct an independent evaluation of the

RFP proposals, and Supplemental Prepared Testimony from David G. Eames, EKPC Vice President of Finance and Planning, which detail the steps taken by EKPC to safeguard its RFP evaluation process. Additional information, addressing specific allegations of EnviroPower, was provided in response to the Commission Staff's Third Data Request dated February 25, 2005. With this response, EKPC is providing still more sworn testimony to rebut EnviroPower's continuing allegations of manipulation and unfairness in the RFP evaluation process, made in Mr. Rotondi's testimony. It is apparent that EnviroPower has no intent of refraining from making baseless charges, as this is the essence of its strategy of delay. EnviroPower obviously understands that it need not actually prove any of its offensive allegations in order to do potentially serious damage to EKPC's proposed project in this case. It needs only to delay a decision by the Commission indefinitely, by forcing EKPC to "prove a negative." EKPC understands that the Commission has a duty to examine facts when allegations of impropriety are made in the course of a case. However, EKPC cannot emphasize strongly enough that EnviroPower has not provided a single piece of evidence to support its allegations of improper evaluation of the RFP proposals, all of which have been rebutted by EKPC through sworn testimony.

3. EKPC's evaluation of the EnviroPower baseload proposal posed challenges that have not been addressed so far in this case, but are reflected in Mr. Rotondi's testimony. The EnviroPower proposal was for a power purchase agreement, and fundamental details of the project that would support such an agreement were not provided to EKPC. Mr. Rotondi's testimony states that EnviroPower has a fixed cost Engineering, Procurement and Construction contract, fixed cost financing commitments,

and allegedly below-market no-default fixed cost fuel supply arrangements in place, all of which supposedly allows EnviroPower to construct and operate its “special” “trade secret and proprietary design” plant very cheaply. No documentation of these remarkable assertions has been provided to the Commission by Mr. Rotondi, and it was never provided to EKPC, despite numerous requests during the evaluation process. Similarly, EnviroPower never provided documentation of its financial structure, or of the alleged “binding financial commitments” from “world class commercial banks” that Mr. Rotondi claims would secure the various guarantees that EnviroPower proposed. EKPC’s understanding is that EnviroPower has no history of constructing or operating electric generating plants. EKPC cannot prudently rely upon mere assertions of the existence of such secret commitments, which defy the prevailing movements of the construction, finance and fuel markets, from a company with no track record as a generator of electric power.

4. Even though EnviroPower had not provided sufficient support during the RFP evaluation process for a determination of its ability to perform its proposed contract commitments, EKPC did not have a clear basis for rejecting the EnviroPower bid prior to the selection of the “short list” bidders. Therefore, EKPC did continue to evaluate the EnviroPower proposal, assuming that its proposed price was valid, but facing the prospect of demanding the documentation necessary to perform due diligence examinations, should the EnviroPower proposal prove to be the lowest cost. EnviroPower’s assertions concerning the project elements supporting its proposed power contract could be true, but EKPC was not provided with proof, and EnviroPower has made no attempt in this case to demonstrate that it has a viable project. EKPC finds it

significant that EnviroPower has been attempting to sell the output of this project on the power market since 2001, and has not yet found a purchaser for a project that Mr. Rotondi declares to be impossible for EKPC to beat without “fraud, manipulation and other improprieties.” EKPC does not possess any significant information from the RFP process which would support relying on a power purchase contract with EnviroPower to supply Warren RECC’s power needs.

5. EKPC has provided substantial evidence that the EKPC self-build and EnviroPower proposals were fairly evaluated in the RFP, and can state without reservation that no improper conduct was involved in the process. EnviroPower has provided nothing but suspicions, speculations and smears, hoping that its objective of delay in this case will remove a major obstacle to the potential salvation of its apparently floundering project. As an electric cooperative, EKPC has no profit motive in building new generation, it is motivated by the need to secure the lowest cost, reliable supply of power for its member systems. Despite its self-serving denials, EnviroPower’s profit motive and apparent desperation concerning the prospects for its project are obvious. Granting any of Mr. Rotondi’s requests could effectively leave EKPC without a viable power supply option for meeting the Warren RECC service deadline, which would be a major victory for EnviroPower, but would not be a fair and reasonable result for EKPC or its member systems. The Spurlock Unit 4 project is the best alternative for meeting EKPC’s power supply needs identified in this case. The delay in this case so far has already begun to challenge the planned Spurlock Unit 4 construction schedule, although EKPC believes that it can still be maintained if the case moves along on an expedited basis. EKPC urgently requests the Commission to quickly dismiss EnviroPower’s

groundless allegations, and to proceed to the hearing in this case, which is scheduled for April 20, 2005.

Respectfully submitted,

DALE W. HENLEY

A handwritten signature in cursive script, appearing to read "Charles A. Lile".

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---

CHARLES A. LILE





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

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POWER COOPERATIVE, INC. FOR A )  
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**SECOND SUPPLEMENTAL PREPARED TESTIMONY OF  
DAVID G. EAMES ON BEHALF OF  
EAST KENTUCKY POWER COOPERATIVE, INC.**

Q. Please state your name and address.

A. My name is David G. Eames and my business address is P.O. Box 707, Winchester,  
Kentucky 40392.

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

A. I am employed by East Kentucky Power Cooperative, Inc. ("EKPC"), and I am Vice  
President of Finance and Planning.

Q. Have you previously filed testimony in this case?

A. Yes, I filed testimony which was included as Exhibit 8 to EKPC's Application in this  
case, and I filed supplemental testimony in this case on February 14, 2005 in response  
to the Commission's order dated February 3, 2005.

Q. What is EKPC's objective in conducting an RFP for new generation capacity?

A. EKPC's objectives in conducting an RFP process are to determine the best least cost and reliable capacity alternatives to meet the needs of EKPC's member systems and to satisfy the regulatory requirements of RUS.

Q. Are you familiar with certain prepared testimony filed by Frank L. Rotondi in this case on behalf of EnviroPower, L.L.C.?

A. Yes, I have reviewed that testimony.

Q. Beginning on page 4 of his testimony, Mr. Rotondi alleges that EKPC's evaluation of the RFP proposals was improperly designed with the intent to favor EKPC self-build options. Do you agree with these allegations?

A. Absolutely not. My supplemental testimony submitted on February 14 goes into substantial detail about the measures that EKPC took to assure that the RFP evaluation process was fair and objective. I consider Mr. Rotondi's characterization of the design of the evaluation process to be a total distortion, and his allegations of manipulation of this process in favor of EKPC's self-build proposal to be completely unsubstantiated and false. The EKPC Board of Directors charged us to find the best resources to maintain a reliable source of power at the lowest possible cost for our Members. This is why the Board of Directors directed us to engage an independent consulting firm to conduct an independent evaluation of all of the proposals.

Q. Would you characterize EKPC's evaluation process as a "level playing field"?

A. Yes. EKPC took steps as noted in my testimony filed on February 14 to maintain a separation of responsibilities during the RFP process. Through discussions with bidders, EKPC also tried to ensure that the scope of supply in the proposals was

consistent. The same process was utilized to evaluate each proposal, including the EKPC proposals.

Q. You have previously testified, on February 14, that EKPC's notice of its RFP stated that EKPC would be proposing its own self-build options and described the basic elements of those projects. Are you aware of any communication by EKPC that would have led any reasonable bidder in the RFP to conclude that EKPC's self-build proposals only represented "benchmarks" or would not be proposals that could be selected in the evaluation process?

A. No, EKPC was very forthright with bidders in stating that EKPC was evaluating the construction of its own self-build proposals. In fact, the first page of the RFP clearly delineates the "self-build options under consideration" by EKPC. The RFP states that EKPC's self build options are to erect gas fired turbines for peaking and circulating fluidized bed coal fired units for baseload capacity.

Q. Do you agree with Mr. Rotondi's arguments regarding the discount rate used in the analysis?

A. No, I do not. It is clear that Mr. Rotondi is simply trying to change the analysis for EnviroPower's benefit, to make their proposal look better. EKPC set up the analysis to determine the greatest benefit to our members and find the proposal that will be the best power supply alternative for EKPC's identified power requirements. A present value analysis, using a discount rate, reflects the premise that a dollar spent by our members today has a different value from a dollar spent in the future. One traditional approach utilizes the cost of capital (here, EKPC's cost to invest in new plant) to compare the lifetime cost of multiple projects with varying revenue

requirements patterns. That is reflected in the 6% discount rate analysis. In our discussions with EnerVision we told them we wanted to look more from the perspective of our members and their members, the ones who ultimately pay the power bills. Based on that, EnerVision suggested we consider a discount rate more closely approximating the inflation rate, since that is a measure of the cost increases consumers see for other goods and services. Based on government projections, the Consumer Price Index, the commonly-accepted measure of inflation, is expected to stay around 3% for many years. To be conservative, it was determined that 3% would be used as the discount rate in the evaluation. We looked at the results using both 3% and 6% to make sure our members were indeed getting the best economic option. Those rates were agreed on at the beginning of the evaluation process and remained unchanged during the evaluation.

Q. Are you familiar with the participation in the RFP evaluation process by Mr. James Shipp, EKPC's Power Production Engineering and Construction Manager?

A. Yes I am.

Q. What was the nature of Mr. Shipp's involvement in the evaluation process?

A. Mr. Shipp was responsible for development of the proposals for EKPC's self build options that were submitted in response to the RFP, but he was not a part of the proposal evaluation team.

Q. Given that Mr. Shipp was in charge of the EKPC group that had submitted the EKPC self-build proposal, what steps were taken to limit his access to information about competing proposals?

A. Mr. Shipp was not allowed access to any information in the evaluation process and did not participate in the conference calls with bidders shown in Exhibit 2 of EKPC's February 14 filing in this case. Mr. Shipp was involved later in the process in meetings with shortlist bidders to discuss technical aspects of proposals to ensure consistency of the scope of supply of the bids and compatibility with site conditions, but was not allowed access to any cost information or the rankings of any of the bidders.

Q. Are you aware of any evidence that any EKPC employee or consultant did anything that would in any way improperly influence the result of the subject RFP evaluations?

A. No, I'm not.

Q. Was this RFP evaluation substantially different from prior evaluations where EKPC submitted self-build proposals?

A. No, the process was essentially the same one that EKPC has used on five other occasions since 1991, except that this time a consultant was hired to assist in the evaluation process. In fact, EnviroPower submitted a proposal in response to EKPC's RFP No. 01A that was issued on January 12, 2001. That RFP also stated that it was issued to compare with EKPC's self-build options, so EnviroPower should have been quite familiar with EKPC's RFP process.

Q. Has EKPC always selected its own self-build proposals in past RFPs?

A. No. EKPC selected Calpine/BE&K's proposal to construct Smith CTs 6 & 7, and EKPC is in contract negotiations with General Electric regarding its proposal to construct Smith CTs 8-12. The GE proposal was selected in the current RFP process and is discussed in PSC Case No. 2005-00053. In addition, EKPC has entered into

power purchase agreements over the past 10 years with Electric Clearinghouse, LG&E Power Marketing, Hoosier Energy, Southern Company Services, TVA, and AEP, as a result of RFPs.

Q. What was the nature of the proposal submitted by EnviroPower in the RFP?

A. The EnviroPower proposal is for a long term Power Purchase agreement for capacity and energy. The proposal includes a capacity charge and an energy charge. One notable characteristic is that EnviroPower's proposal is a "must-take" proposal, meaning that EnviroPower would operate the unit at "the highest dispatch factor possible" and that EKPC would be required to purchase all energy produced, regardless of whether the energy is needed or economical compared to other options. I am singling this out because dispatchability is a key characteristic of power generation resources of this type and this factor puts EnviroPower's proposal in a negative position relative to others.

Q. How did EKPC attempt to determine if EnviroPower could perform under the proposed power contract terms?

A. During conference calls with EnviroPower, EKPC tried to determine the experience that EnviroPower has had with building and operating power plants. Although some individuals in the management of EnviroPower may have had some experience building and operating plants, while employed by other companies, to our knowledge, EnviroPower has not built or operated any plants in the United States. As such, we have no basis for concluding that they are capable of performing. Additionally, EKPC sought to evaluate the financial stability of EnviroPower through the examination of financial statements and bond ratings. EKPC also attempted to confirm the

equipment, construction, and financing arrangements asserted to be in place by EnviroPower. Lastly, EKPC desired to review the security arrangements for any of the guarantees offered by EnviroPower.

Q. Was EKPC able to determine the financial condition of EnviroPower?

A. No. EKPC has been unable to determine the financial condition of EnviroPower. EnviroPower is a privately owned company and no financial information is publicly available. Despite a requirement in the RFP that bidders shall provide audited financial statements from the previous three years, EnviroPower has not furnished financial statements to EKPC. They repeatedly denied our requests for financial information during the evaluation process.

Q. Was EKPC able to confirm EnviroPower's claims to have a firm price EPC contract for its proposed project?

A. On page 18 of his testimony, Mr. Rotondi states that EnviroPower had binding commitments for construction and fuel contracts related to their project. In fact, EnviroPower never presented to EKPC any copies of contracts or other documentation, which would support such an assertion.

Q. Did EnviroPower provide EKPC with any details of the "special" "trade secret and proprietary design" elements of its project that Mr. Rotondi refers to on page 49 of his testimony?

A. No.

Q. Was EKPC able to confirm that EnviroPower had fixed cost financing for its project, as Mr. Rotondi claims?



A. EKPC was not able to confirm that EnviroPower had any type of financing (fixed or otherwise) for its project. EnviroPower stated that West LB Bank would finance the project, but provided no written documentation as to its financing method or source.

Q. Mr. Rotondi, beginning on page 33 of this testimony, discusses a plant availability guarantee that EnviroPower offered and claims that this guarantee was unfairly evaluated by EKPC and EnerVision. Are you familiar with the facts surrounding the evaluation of that guarantee?

A. Yes, I am familiar with the facts surrounding the evaluation of the availability guarantee. This guarantee was viewed in light of the availability provisions of the EnviroPower proposal in whole. It was determined that the availability provisions, including the guarantee, are of limited value at best, and may have justified added cost compared to other proposals rather than a credit. As such, we did not increase nor reduce the cost associated with the EnviroPower proposal reflecting these provisions. It should be noted that the availability guarantee was not absolute and, per EnviroPower's proposed letter of intent, included exceptions for major outages and was subject to change based on what EnviroPower agreed to with their EPC contractor.

The 88% availability cited by EnviroPower is not exceptional for a coal unit. Mr. Rotondi has made much of EKPC's evaluation of the proposals at an 80% capacity factor. This 80% does not reflect the expected availability of units, but the expected need of the EKPC system for power from the units. For example, a unit could be available for dispatch at all times but only be economic to dispatch based on the needs

of the system 75% of the time. This unit would have an availability of 100% but a capacity factor of 75%. EKPC's evaluation was based on expected need for the energy, not the availability of the unit. It is likely that most of the proposals, and certainly the EKPC units, could produce at a capacity factor in excess of 88%, so the evaluation of the proposals using an 80% capacity factor was not an "error" and did not "penalize" EnviroPower.

Mr. Rotondi's confusion regarding capacity factor and availability may be based on one of the negative aspects of the EnviroPower proposal that I noted earlier. EnviroPower's proposal was based on their unit running in all hours it was available, with EKPC required to take all energy it could produce, regardless of whether the energy was needed or even economic compared with other resources. This aspect is a negative compared to other proposals, including the EKPC self-build options, which were dispatchable by EKPC based on system needs and economics. Based on this, the EnviroPower proposal could have been assessed a cost penalty, since being forced to purchase energy that is not needed or economic INCREASES the cost to EKPC members.

I would also like to point out that the EnviroPower proposal contained availability bonuses for EnviroPower if they were able to exceed 88% availability. That means that they could not only force EKPC to purchase energy that is not needed or economic, but would force EKPC to pay a capacity cost premium for the "right" to purchase that energy.

Q. Did EnerVision perform an analysis in which the transmission, Environmental Impact Statement (EIS), synchronous condensers and availability bonus costs were excluded in the evaluation of EnviroPower's proposal? If so, please explain the results.

A. Yes, EnerVision did perform such an analysis. EnerVision excluded the transmission, EIS, synchronous condenser and availability bonus costs. Removing these costs resulted in a total cost per MWh for EnviroPower's proposal of \$[REDACTED]. Even with the exclusion of these costs, EnviroPower remains more costly than Spurlock 4 (\$[REDACTED] per MWh). In addition, in order for Spurlock 4 to become more costly than EnviroPower, EnerVision calculated that a total of \$[REDACTED] must be added to the installed cost of Spurlock 4.

Q. Mr. Rotondi also alleges that EKPC failed to assign appropriate value to other contract guarantees that were proposed by EnviroPower. How did EKPC evaluate those contract guarantees?

A. The other guarantees that Mr. Rotondi refers to are a general performance guarantee, a commercial operation date guarantee, and a fuel procurement and deliverability guarantee. The general performance guarantee offers no additional benefit to the EnviroPower proposal when comparing to the Spurlock 4 proposal. EKPC has total control over the performance of the Spurlock 4 unit, therefore adding additional benefits to the proposal. To be conservative, we did not include a dollar benefit in the evaluation of the Spurlock 4 proposal to represent these benefits. Meeting the commercial operation date was considered a criteria as a part of the RFP and therefore was expected of the bidders. If a bidder could not meet this date, their proposal was penalized by adding the cost for market power until the unit became operational. The

responsibility of delivery and procurement of fuel was assumed to be a part of the proposal. This is a requirement of all the bidders, therefore the guarantee was of no value from the standpoint of the quantitative analysis.

Q. Did EnviroPower provide EKPC with any documentation of any security for the various guarantees concerning the power sale contract that Mr. Rotondi discusses in his testimony?

A. In his testimony, Mr. Rotondi asserts that “EnviroPower was able to guarantee our costs and back it up with a financial commitment from a world class banking institution.” At various points during discussions with EnviroPower personnel, references were made to some type of relationship that EnviroPower had with West LB Bank. In a meeting held on September 9, 2004, EnviroPower was requested to furnish documentation regarding the financial security related to their various performance guarantees. No details or documentations were ever provided to EKPC, despite EKPC’s request for such documentation.

Q. Did EnviroPower indicate to EKPC that any of these referenced contract guarantees would add to the cost of its proposal?

A. Yes. During the referenced September 9, 2004 meeting, the subject of performance guarantees was discussed. EnviroPower was asked about the source of any guaranteed liquidated damages that might need to be paid out by EnviroPower in the future. EnviroPower had previously stated that a letter of credit would likely be used, but did not identify the issuing financial institution. At this meeting the institution was still not identified, but Mr. Akhtar Ali Khan, Chairman and CEO of Khanjee Holdings, stated that the quality of the bond will cost us money. He was saying that better

security of the performance guarantees would increase the cost to EKPC. On top of this, Mr. Khan stated that EnviroPower would also ask EKPC for performance guarantees. These also would cost EKPC additional money, in order to enter into the purchased power contract with EnviroPower.

Q. Mr. Rotondi, in his testimony, restates an allegation, first made by Mr. Randall Bird in his affidavit supporting EnviroPower's unsuccessful motion to intervene in this case, that EnviroPower was asked by EKPC to increase its bid price, and alleges that you were the person making that request. Did that in fact happen, as characterized by Mr. Rotondi?

A. No, it did not. As I explained in detail in my Supplemental Prepared Testimony which was filed in this case on February 14, 2005, late in the evaluation process, EKPC initiated discussions with EnviroPower about their willingness to provide only half of the proposed project capacity. My conversations with EnviroPower about the pricing of one half of the project output reflected the fact that EKPC had been told by EnviroPower that they would not commit to keeping their stated pricing firm for only half of the project. In a letter to EKPC dated August 13, 2004, Mr. Rotondi stated that "...interest rates have increased by at least 50 basis points. EnviroPower cannot guarantee that such movements in interest rates and other project costs will not require adjustments to the Capacity and Energy Prices should East Kentucky Power Cooperative not advance its commitment to EnviroPower for base load power supply by September 15, 2004." Knowing that construction costs were rising, EKPC wanted EnviroPower to confirm its pricing for half of the project output, as EKPC would have confirmed such pricing with any short list bidder for any significant revision of a

proposal. Mr. Rotondi subsequently confirmed in writing that the pricing for one half of the output would remain the same as the original proposal only if EKPC signed a power purchase agreement by October 31, 2004. I discussed this letter with Mr. Rotondi in a later phone conversation, where I emphasized that this would be EnviroPower's last opportunity to revise its pricing and that their proposal would be thoroughly reviewed by the Commission, were it to be selected. At no time did I attempt to influence EnviroPower to increase their bid.

Q. You have stated that EKPC determined that EnviroPower had no experience in the construction or operation of power plants. Was this lack of construction and operation history a significant factor in the evaluation of EnviroPower's proposals?

A. No. EnviroPower's lack of experience was not quantifiable and therefore was not included in the evaluation of their proposal, meaning that EnviroPower was not penalized economically in the evaluation.

Q. Given the information that EKPC possesses in regard to the EnviroPower proposals for baseload power, could EKPC prudently rely on the proposal for its native load power supply?

A. No. Any reasonable bidder responding to the RFP should have been prepared to demonstrate its ability to perform in accordance with the proposed contract and to provide answers to the types of issues discussed in my testimony and required by the RFP. EnviroPower's lack of power plant operating experience and its inability to provide documentation or evidence of its construction contract, financing, or fuel supply arrangements have left EKPC being unable to prudently rely on EnviroPower's proposal for its native load power supply. Even though we gave them the benefit of

the doubt in the evaluation process, we could not justify moving forward as a prudent decision without documentation of their claims and “guarantees”.

Q. Does this conclude your testimony?

A. Yes.

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

**STATE OF KENTUCKY )  
 )  
COUNTY OF CLARK )**

David G. Eames, being duly sworn, states that he has read the foregoing prepared testimony and that he would respond in the same manner to the questions if so asked upon taking the stand, and that the matters and things set forth therein are true and correct to the best of his knowledge, information and belief.

\_\_\_\_\_  
David G. Eames

Subscribed and sworn before me on this \_\_\_\_\_ day of April, 2005.

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_



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 )  
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CONSTRUCTION OF A 278 MW (NOMINAL) )  
CIRCULATING FLUIDIZED BED COAL FIRED )  
UNIT IN MASON COUNTY, KENTUCKY )

SECOND SUPPLEMENTAL PREPARED TESTIMONY OF  
DAVID G. EAMES ON BEHALF OF  
EAST KENTUCKY POWER COOPERATIVE, INC.

AFFIDAVIT

STATE OF KENTUCKY )  
 )  
COUNTY OF CLARK )

David G. Eames, being duly sworn, states that he has read the foregoing prepared testimony and that he would respond in the same manner to the questions if so asked upon taking the stand, and that the matters and things set forth therein are true and correct to the best of his knowledge, information and belief.

David G. Eames

David G. Eames

Subscribed and sworn before me on this 4th day of April, 2005.

Linda Hewitt

Notary Public

My Commission expires:

January 27, 2008



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

**In the Matter of:**

**THE APPLICATION OF EAST KENTUCKY )  
POWER COOPERATIVE, INC. FOR A )  
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CIRCULATING FLUIDIZED BED COAL FIRED )  
UNIT IN MASON COUNTY, KENTUCKY )**

**SUPPLEMENTAL PREPARED TESTIMONY OF  
JAMES SHIPP ON BEHALF OF  
EAST KENTUCKY POWER COOPERATIVE, INC.**

Q. Please state your name and address.

A. My name is James Shipp, and my business address is P.O. Box 707, Winchester,  
Kentucky 40392.

Q. By whom are you employed, and in what capacity?

A. I am employed by East Kentucky Power Cooperative, Inc., (“EKPC”) and I am  
Manager of Plant Engineering.

Q. Have you previously filed testimony in this case?

A. Yes. I filed prepared testimony which was included as Exhibit 11 to EKPC’s  
Application in this case.

Q. Are you familiar with certain prepared testimony filed by Frank L. Rotondi in this  
case on behalf of EnviroPower, L.L.C.?

A. Yes, I have reviewed that testimony.

Q. Were EKPC's self-build proposals, which were submitted in EKPC's RFP 2004-01, prepared by EKPC staff under your supervision?

A. Yes

Q. Were restrictions placed on you, and members of your staff, during the evaluation of the RFP proposals to limit your access to information about competing proposals?

A. Yes. Neither I or any member of my staff had access to any of the information contained in any of the bids during the bid evaluation.

Q. Did you participate in the process of evaluating the RFP responses?

A. No, I had no role in the evaluation of the proposals.

Q. Did you attend meetings with bidders, during which aspects of the bidders' proposals were discussed?

A. Yes, I attended certain meetings with bidders, after the submission of all proposals, including EKPC's self-build proposal, for the purpose of clarifying technical aspects of the generating facilities involved in the other proposals.

Q. During those meetings, were the bidders informed of your involvement in the preparation of EKPC's self-build proposal and your purpose for attending the meeting?

A. Yes. It was explained that I was responsible for submitting the EKPC self build proposal and that I was only attending the meeting to assess the technical aspects of the bidder's proposal.

Q. Did you discuss any technical aspects of the EKPC self-build proposal with the other bidders during such meetings?

A. No.

Q. Were you present during any discussions of the bid prices of any other RFP bidders during such meetings?

A. No.

Q. Mr. Rotondi refers to your attendance at a meeting with EnviroPower representatives during the evaluation process. What was the reason for your attendance at that meeting?

A. As with the other meetings with bidders, I was present at this meeting at EKPC headquarters to discuss technical aspects of the EnviroPower proposal.

Q. Do you know of any communications between EKPC and EnviroPower that would have led a reasonable bidder to believe that the EKPC self-build proposals would not actually be submitted in the RFP, but would only serve as benchmarks for the other bidders?

A. No.

Q. Were you ever provided with any information about other competing proposals in the RFP which could have been used to manipulate EKPC's own proposals, to increase the likelihood that such proposals would be selected in the RFP?

A. No.

Q. Are you aware of any evidence that any EKPC employee improperly exchanged or obtained confidential information about competing proposals which could have been used to manipulate the RFP evaluation process?

A. No.

Q. Are you aware of any facts that would indicate that any such manipulation of the RFP process took place?

A. No.

Q. What experience does EKPC have in the construction and operation of electric generating facilities like those represented in EKPC's baseload proposals?

A. EKPC has just completed and placed into operation the Gilbert Generating Unit, which is the third power generating unit located at Spurlock Station. This unit was placed in commercial operation on March 1, 2005 and was completed one month early and on budget. It is meeting its performance goals and guarantees. The EKPC bid submitted for Spurlock 4 was a replication of the Gilbert Unit, with the same design and construction team used for the just-completed Gilbert Unit. The experience and knowledge that EKPC has gained from construction of the Gilbert Unit was used to develop the estimated cost for the Spurlock 4 bid.

Q. Are you familiar with the expertise and experience that EnviroPower has in constructing and operating electric generating units?

A. To my knowledge, EnviroPower has no experience in constructing or operating electric generating plants.

Q. Does this conclude your testimony?

A. Yes.

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

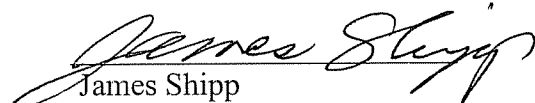
THE APPLICATION OF EAST KENTUCKY )  
POWER COOPERATIVE, INC. FOR A )  
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UNIT IN MASON COUNTY, KENTUCKY )

SUPPLEMENTAL PREPARED TESTIMONY OF  
JAMES SHIPP ON BEHALF OF  
EAST KENTUCKY POWER COOPERATIVE, INC.

AFFIDAVIT

STATE OF KENTUCKY )  
 )  
COUNTY OF CLARK )

James Shipp, being duly sworn, states that he has read the foregoing prepared testimony and that he would respond in the same manner to the questions if so asked upon taking the stand, and that the matters and things set forth therein are true and correct to the best of his knowledge, information and belief.

  
James Shipp

Subscribed and sworn before me on this 4th day of April, 2005.

  
Notary Public

My Commission expires:

January 27, 2008





**COMMONWEALTH OF KENTUCKY**

**BEFORE THE PUBLIC SERVICE COMMISSION**

**In the Matter of:**

**THE APPLICATION OF EAST KENTUCKY )  
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UNIT IN MASON COUNTY, KENTUCKY )**

**SUPPLEMENTAL PREPARED TESTIMONY OF  
ROBERT E. HUGHES, JR. ON BEHALF OF  
EAST KENTUCKY POWER COOPERATIVE, INC.**

Q. Please state your name and address.

A. My name is Robert E. Hughes, Jr. and my business address is P.O. Box 707,  
Winchester, Kentucky 40392.

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

A. I am employed by East Kentucky Power Cooperative, Inc. (“EKPC”), and I am  
Manager of Environmental Affairs.

Q. Have you previously filed testimony in this case?

A. Yes, I filed testimony which was included as Exhibit 9 to EKPC’s Application in this  
case?

Q. Are you familiar with certain prepared testimony filed by Frank L. Rotondi in this  
case on behalf of EnviroPower, L.L.C.?

A. Yes, I have reviewed that testimony.

Q. In that testimony, beginning on p. 20, Mr. Rotondi speculates that EKPC was motivated to construct new electric generating capacity as a way to resolve a federal lawsuit against EKPC alleging Clean Air Act violations. Are you familiar with such a lawsuit involving EKPC?

A. Yes, I am familiar with the EPA lawsuit against EKPC.

Q. Has EKPC considered, or has EPA proposed, that EKPC construct additional generating capacity as a way to resolve that litigation?

A. Proposals to construct new generation are not involved in the EKPC case, or any other similar case on New Source Review that EPA has brought forward. This case involves only Spurlock 2 and Dale 3&4. There are no other units at EKPC, existing or proposed, involved in the case.

Q. What is your opinion of the scenario suggested by Mr. Rotondi as EKPC's motivation to prefer constructing its own new generating capacity to resolve that litigation with the EPA?

A. It could be considered an interesting concept from an outsider with no experience in such cases, but having been involved in the EKPC case directly for over four years, I can state from experience that it is not part of the discussions, and is not allowed under EPA's procedures.

Q. In Mr. Rotondi's testimony, he also alleges, beginning on p. 30, that EKPC may not be able to obtain its air quality permit to construct the proposed Spurlock 4 Unit on schedule. Are you familiar with EKPC's application for the necessary air permit for the proposed Spurlock 4 Unit?

A. Yes, I have been directly responsible for that process.

- Q. What is the status of EKPC's application for this permit?
- A. EKPC has received a "Notice of Deficiency" (NOD) from the Division for Air Quality on the application filed for construction of the unit. This is the normal procedure for asking questions by the Division. The NOD did not identify any major areas that would prevent the permit issuance. A response is being prepared and will be submitted within the next few days. Following this submittal there will be meetings with the Division for Air Quality to clarify any additional questions. This permit will be then made available for Public Notice prior to final issuance.
- Q. Do you anticipate any significant issues in regard to EKPC's air permit for Spurlock 4 which would potentially delay the start of construction of the project?
- A. There are two basic issues addressed in the letter. The first issue is the air quality Impact. There were no problems raised, only a request to do the modeling slightly differently, which we have done, and which has yielded the same results. The second issue is the level of environmental controls necessary on the unit. This technical issue is being addressed and information, as requested, is being supplied to demonstrate that the proper levels of controls were proposed for the unit.
- Q. Do you have any other reactions to the allegations made in Mr. Rotondi's testimony concerning environmental issues that may have affected the evaluation of proposals received by EKPC in response to its RFP 2004-01?
- A. There was no evaluation of environmental issues used, to my knowledge, during the review of the proposals. Each project was assumed, during the initial evaluation process, to be in compliance with environmental regulatory requirements. During the

final evaluation steps , any project that was still under consideration was reviewed to insure that all environmental requirements on the project were met. This included a review of the NEPA requirements of RUS. Any project that did not have all requirements met was adjusted to include these costs and efforts in the scope of the project.

Q. Does this conclude your testimony?

A. Yes.

COMMONWEALTH OF KENTUCKY

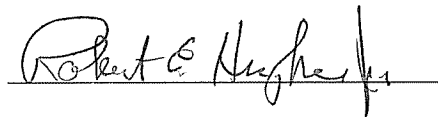
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF EAST KENTUCKY )  
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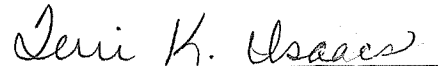
STATE OF KENTUCKY )  
 )  
 COUNTY OF CLARK )

Robert E. Hughes, Jr., being duly sworn, states that he has read the foregoing prepared testimony and that he would respond in the same manner to the questions if so asked upon taking the stand, and that the matters and things set forth therein are true and correct to the best of his knowledge, information and belief.



Robert E. Hughes, Jr.

Subscribed and sworn before me on this 1<sup>st</sup> day of April, 2005.

  
 Notary Public

My Commission expires:

12/20/08