Law Offices of
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March 26, 2007

PUBLIC SERVICE COMMISSION

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

Re: Case No. 2006-00472

Dear Ms. O'Donnell:

Please find enclosed for filing with the Commission in the above-referenced case an original and ten copies of a Brief of the Cumberland Chapter of the Sierra Club re Interim Financial Relief. All parties listed on the attached Certificate of Service have been served by a copy of this letter.

Sincerely,

Oscar H. Geralds, Jr., Esq.
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Enclosures

cc: Parties of Record

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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF: GENERAL ADJUSTMENT)
OF ELECTRIC RATES OF EAST KENTUCKY) **Case No. 2006-00472**
POWER COOPERATIVE, INC.)

BRIEF OF THE CUMBERLAND CHAPTER OF THE SIERRA CLUB RE INTERIM FINANCIAL RELIEF

At the conclusion of the hearing in this proceeding held on March 22, 2007, the Commission stated that it would entertain briefs, to be limited to five pages or fewer, on the sole topic of interim financial relief for East Kentucky Power Co-op (EKPC) as permitted under the provisions of KRS 278.190 Section (2). The Commission directed the attention of the intervenors to the last sentence of this section, which reads as follows: "Provided, however, if the commission, at any time, during the suspension period, finds that the company's credit or operations will be materially impaired or damaged by the failure to permit the rates to become effective during the period, the commission may, after any hearing or hearings, permit all or a portion of the rates to become effective **under terms and conditions as the commission may, by order, prescribe."** (emphasis added)

Having reviewed the evidence presented by the Parties in this proceeding to date, including the testimony presented at the hearing on 3/22/07, Sierra Club sees no reason to depart from the dictionary definition of "material impairment," and believes that sufficiently weighty testimony was presented to provide the basis for a conclusion that EKPC's credit or operations would be materially impaired or damaged by the failure of the Commission to provide some form or forms of interim financial relief. Sierra Club hereby represents that it believes that the language of KRS 278.190 Section (2) provides sufficient legal basis for a decision by the Commission to grant interim rate relief to EKPC in any annualized amount between zero and $24 million.

It is Sierra Club's position that the Commission should attach the following condition, pursuant to KRS 278.190 Section (2), to such interim rate relief:

Condition 1: If the Commission's final Order in this proceeding results in an increase in base rates less than the amount of the interim rate increase, EKPC shall refund to its customers the difference between the revenue collected pursuant to the interim rate increase and the amount of the Commission's final rate increase.

EKPC, KIUC and AG have submitted testimony indicating that they would endorse the general terms of Condition 1.

It is Sierra Club's position that pursuant to the statute cited above and based on testimony presented at the hearing on 3/22/07, the Commission should also attach the following Condition 2 to such interim rate relief:

Condition 2: In order to boost the confidence of the financial community in EKPC's strategy to improve its financial condition, and to reduce the level of EKPC's debt and ongoing financing costs, the certificate of public convenience and necessity for the Smith CFB Unit 1 power plant in Clark County, Kentucky, is hereby revoked. If EKPC elects at a future time to submit an application for this generating unit or a substantially similar coal-fired generating unit, such application shall include a full assessment of the financial risks that result from investing in power plants that emit huge quantities of global warming gases over their operating lifetimes.

Sierra Club cites the following information introduced at the hearing on 3/22/07 in support of proposed Condition 2 above.

Three recent events have demonstrated that the financial community has become increasingly skeptical about investing capital in coal-fired power plants.

1. A $45 billion buyout offer of TXU by a team of private equity firms included the following conditions:

- that TXU cancel eight out of eleven proposed new coal-fired power plants;
- that TXU support federal legislation to impose a cap on carbon dioxide emissions and agree to cut the utility's own emissions to 1990 levels by 2020;
- that TXU join the U.S. Climate Action Partnership, a group of industrial and financial companies that are urging the government to create a cap-and-trade program for greenhouse gases;
- that TXU install more wind power and double the amount it spends on energy efficiency programs to $80 million for the next five years; and
- that TXU create a Sustainability Energy Committee, including Environmental Defense and the Natural Resources Defense Council, to advise the new company.

(http://www.nytimes.com/2007/02/25/business/25coal.html?ex=1330059600&en=81690 5b5c8601775&ei=5088 ; http://www.dallasnews.com/sharedcontent/dws/dn/latestnews/ stories/022507dnbustxucoal.1af8266.html)

Sierra Club observed in testimony on 3/22/07 that the two large, well-established private equity firms involved, Kohlberg Kravis Roberts & Company and the Texas Pacific Group, are motivated primarily by considerations of risk minimization and return on investment, not altruism or an idealistic interest in the environment.

Sierra Club alluded to the next two events but was unable to provide details about them at the 3/22/07 hearing:

2. A notice of decision issued on February 28, 2007 by the North Carolina Utilities Commission (NCUC) approved the construction of only one of two proposed 800-MW coal-fired units proposed by Duke Energy, and included the conditions that Duke retire four aging, 100-MW coal-fired units at the existing site, invest one percent of its annual retail electric revenue into demand-side management (DSM) programs, and retire additional coal units on a MW-per-MW basis. The NCUC noted that Duke had failed to demonstrate the need for both units. (Notice of Decision by the North Carolina Utilities Commission in Docket No. E-7, Sub 790, 2/28/07)

3. An agreement on March 19, 2007 between Kansas City Power and Light (KCPL) and environmental groups provides that KCPL will build only one out of five coal-fired power plants originally proposed, and that the parties will ask regulators and state legislatures to allow KPCL to earn a rate of return on the money it spends on DSM programs, just as it would earn a rate of return on a new power plant. (http://www.nytimes.com/2007/03/20/business/20energy.html?o=&_r=3&oref=slogin&ref=envi&pagewanted=print)

Sierra Club testified on 3/22/07 that the relevant lesson that can be learned from these recent events is that the financial establishment in the United States is looking with increasing skepticism at investments in new coal-fired power plants. The financial community is also beginning to take environmental and climate change considerations seriously, not because financial institutions have suddenly become "tree-huggers" but because of hard, cold financial considerations such as relative risk and expected return.

A heavily coal-dependent utility such as EKPC, which has shown by its actions over a period of years that it is still firmly wedded to its plans to build yet more coal-fired generation, may be incurring significant risks, the nature and magnitude of which it has not yet adequately recognized or assessed. Sierra Club hereby states that it is willing to work constructively with EKPC to develop a long-term plan to meet its ultimate customers' future demands for energy services that entails significantly lower financial risks and lower total resource costs than EKPC's present plan that includes constructing more coal-fired power plants, as exemplified by Smith CFB Unit 1.

Although the positive effects on EKPC's financial condition would be maximized if EKPC were to cancel its plans to build Smith CFB Unit 1 voluntarily in the context of a thorough reevaluation of its long-term resource strategy, even the imposition of Condition 2 by the Commission over EKPC's objection would in reality constitute an important form of financial relief to EKPC. Sierra Club submits that the imposition of proposed Condition 2 would be fully consistent with the provisions of KRS 278.190 Section (2), and that the financial relief represented by Condition 2 would be additive to any interim rate relief the Commission might decide to award to EKPC.

Respectfully submitted,

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COUNSEL FOR SIERRA CLUB

March 27, 2007

CERTIFICATE OF SERVICE

I hereby certify that an original and ten copies of the foregoing Brief of the Cumberland Chapter of the Sierra Club re Interim Financial Relief filed in the above-styled case were mailed to the office of Beth A. O'Donnell, Executive Director of the Kentucky Public Service Commission, 211 Sower Boulevard, Frankfort, KY 40601, and that copies were mailed to the following Parties of Record on this, the 26th day of March, 2007.

Hon. Dennis Howard
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