Law Offices of
OSCAR H. GERALDS, JR.
259 West Short Street
Lexington, KY 40507

April 17, 2007

PUBLIC SERVICE COMMISSION

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 Motion to Include Tariffs Related to Qualified Cogeneration and Small Power Production Facilities. A copy of this motion has been mailed to all parties listed on the attached Certificate of Service.

Sincerely,

Oscar H. Geralds, Jr., Esq.
259 West Short St.
Lexington, KY 40507
Ph: (859) 255-7946; Fax: (859) 233-4099
E-mail: ogeralds@lexkylaw.com

Enclosures

cc: Parties of Record

Law Offices of
OSCAR H. GERALDS, JR.
259 West Short Street
Lexington, KY 40507

April 17, 2007

Hon. Charles A. Lile
Senior Corporate Counsel
East Kentucky Power Cooperative, Inc.
4775 Lexington Road
P.O. Box 707
Winchester, KY 40392-0707

Re: Case No. 2006-00472

Dear Mr. Lile:

Please find enclosed a copy of a Motion to Include Tariffs Related to Qualified Cogeneration and Small Power Production Facilities submitted by the Cumberland Chapter of the Sierra Club in the above-referenced proceeding. An original and ten copies of this motion have been mailed to the office of Beth A. O'Donnell, Executive Director, Kentucky Public Service Commission.

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PUBLIC SERVICE
COMMISSION

Hon. Dennis Howard
Assistant Attorney General
Office of the Attorney General
Utility & Rate Intervention Division
1024 Capital Center Drive, Suite 200
Frankfort, KY 40601-8204

Re: Case No. 2006-00472

Dear Mr. Howard:

Please find enclosed a copy of a Motion to Include Tariffs Related to Qualified Cogeneration and Small Power Production Facilities submitted by the Cumberland Chapter of the Sierra Club in the above-referenced proceeding. An original and ten copies of this motion have been mailed to the office of Beth A. O'Donnell, Executive Director, Kentucky Public Service Commission.

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April 17, 2007

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PUBLIC SERVICE
COMMISSION

Hon. Michael L. Kurtz
Attorney at Law
Boehm, Kurtz & Lowry
36 East Seventh Street, Suite 1510
Cincinnati, OH 45202-4434

Re: Case No. 2006-00472

Dear Mr. Kurtz:

Please find enclosed a copy of a Motion to Include Tariffs Related to Qualified Cogeneration and Small Power Production Facilities submitted by the Cumberland Chapter of the Sierra Club in the above-referenced proceeding. An original and ten copies of this motion have been mailed to the office of Beth A. O'Donnell, Executive Director, Kentucky Public Service Commission.

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COMMISSION

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.)

MOTION TO INCLUDE TARIFFS RELATED TO QUALIFIED COGENERATION AND SMALL POWER PRODUCTION FACILITIES

On January 29, 2007, East Kentucky Power Co-op (EKPC) tendered its application to the Commission for an increase in general rates. On February 2, 2007, the Executive Director rejected the application as failing to conform to certain provisions of Section 10 of 807 KAR 5:001. On February 6, 2007, EKPC supplemented its application to cure the deficiencies. As part of its supplemental submission, EKPC requested a deviation from 807 KAR 5:001, Section 10(1)(b)(7), to relieve it of any obligation to file proposed tariff sheets for qualified cogeneration and small power production facilities. In its Order of February 13, 2007, the Commission granted EKPC's request for a deviation from 807 KAR 5:001, Section 10(1)(b)(7). (Page 5, Ordering Provision 1) The Cumberland Chapter of the Sierra Club ("Sierra Club"), intervenor herein, hereby submits a motion asking the Commission to reverse this particular provision of its Order of 2/13/07 and to include the tariffs for qualified cogeneration and small power production facilities in this proceeding for consideration and possible revision. In support of this motion we provide the following grounds:

I. Part of the justification EKPC provided for a deviation from 807 KAR 5:001, Section 10(1)(b)(7) was incorrect.

In its supplemental application of 2/6/07, EKPC stated that the tariff sheets for qualified cogeneration and small power production facilities "would only change outside of a rate filing and, therefore, have not been included as a part of Exhibit C or Exhibit D, as discussed below." (Cover letter, paragraph 1) The administrative regulation that relates to small power production and cogeneration, 807 KAR 5:054, contains the following provision: "Section 5. (1)(a) All electric utilities with annual retail sales greater than 500 million kilowatt hours shall provide data to the commission from which avoided costs may be derived not later than June 30, 1982, and not less often than every two (2) years thereafter unless otherwise determined by the commission." This means that although a regular, biannual schedule has been established for the consideration and possible revision of the tariffs for qualified cogeneration and small power production facilities, there is nothing that would prohibit the Commission from determining that these avoided costs and tariffs should be considered in the context of a general rate case as well. EKPC's statement to the effect that these tariffs "would only change outside of a rate filing" is therefore factually incorrect.

II. There is no reason to believe that the current tariffs accurately reflect EKPC's long-run avoided costs.

807 KAR 5:054 was enacted in order to implement the rules that the Federal Energy Regulatory Commission (FERC) adopted pursuant to Title II of the Public Utility Regulatory Policies Act of 1978 (PURPA), Section 210(f). The intent of this title was, in part, "to encourage cogeneration and small power production by requiring electric

utilities to sell electricity to qualifying cogeneration and small power production facilities and purchase electricity from such facilities." (807 KAR 5:054, Necessity, Function and Conformity)

Section 1 of 807 KAR 5:054 provides the following definition: "(1) 'Avoided costs' means incremental costs to an electric utility of electric energy or capacity or both which, if not for the purchase from the qualifying facility, the utility would generate itself or purchase from another source."

The date of issue of EKPC's current tariffs for qualified cogeneration and small power production facilities was December 2, 2004, and the tariffs became effective on January 1, 2005. If these tariffs reflected EKPC's long-run avoided costs at the beginning of 2005, then for the tariffs to continue to reflect the avoided costs today, one would need to assume that EKPC's projected energy and capacity costs have not changed during the 28 intervening months. Some of the factors that may have affected avoided costs in the past two years include but are not limited to the following:

- the decision by Warren Rural Electric Cooperative Corporation to join the EKPC system and its subsequent reversal of that decision;
- changes in the market prices of both coal and natural gas;
- changes in the market prices of coal-fired and natural gas-fired generating units;
- changes in EKPC's credit rating and consequently its ability to borrow money at below-market rates;
- changes in the availability and price of power in the regional wholesale power market;
- changes in the regulatory climate, nationally and internationally, as it relates to emitters of greenhouse gases;

- advances in the scientific community's understanding of climate change and the effects of greenhouse gases on the Earth's climate; and
- the decision of EKPC to come in to the PSC for a general rate increase.

It would be unreasonable to suggest that these and other factors have not caused EKPC's avoided costs to change between January 2005 and today. With respect to the last point above, a general rate case is the proceeding within which a utility quantifies and files its costs, separated into demand and energy, as part of the cost of service study it must file as part of the case. These numbers can be used in the process of determining avoided costs. It follows that there would be no more appropriate time to establish the utility's avoided costs than during a general rate case.

III. EKPC's existing tariffs contain serious anomalies.

EKPC's existing tariffs for cogeneration and small power production facilities fluctuate over time for no comprehensible reason. The summer off-peak payment for energy generated by facilities over 100 kW, for example, is set at \$0.01991 per kWh in 2005, \$0.02115 in 2006, \$0.02129 in 2007, \$0.01874 in 2008, and \$0.01667 in 2009. The rates for facilities with capacities below 100 kW show a similar pattern of increase and subsequent decline. If these rates had been based on long-term avoided costs, one would normally expect that they would steadily increase over time to reflect the general rate of inflation. A potential cogenerator or small power producer might look at the trend represented by the years 2007, 2008 and 2009 and conclude that EKPC intends to continue reducing the amount it will pay during the out-years of 2010 and beyond. That factor in itself could act to deter potential developers of cogeneration and small distributed generation (DG) projects in EKPC's service territory.

EKPC's existing tariffs include both an energy and a capacity component. To get an approximate idea of the relative size of these components, the Sierra Club hypothesized a DG facility with a net capacity of 200 kW that delivers its full production to the grid at a steady rate all year long. The total amount of energy delivered would be 1,753 MWh. Using EKPC's buyback rates listed in the tariff for the year 2007, the total amount paid for energy would be $61,462, which would correspond to an average payment of 3.50 cents per kWh. If EKPC were to dispatch the power produced by the DG facility, the amount paid for capacity would be $1,694 per year, i.e., only 2.7% of the total payment, while if EKPC did not dispatch the DG facility, the amount paid for capacity would be $1,929 per year, i.e., only 3.0% of the total payment. In either case, the capacity component is negligible compared to the energy component. There is no obvious reason why capacity should be so much less valuable to EKPC than energy. Moreover, there is no reason whatsoever why EKPC should pay more for capacity that the utility does not dispatch than capacity it does dispatch.

The Sierra Club considers these anomalies to be indicators that imply that these tariffs are long overdue for the kind of serious, comprehensive reevaluation that can best be performed in the context of a general rate case.

IV. If the tariffs do not approach the member co-ops' wholesale rate, they will virtually never be used.

Section 7 of 807 KAR 5:054 establishes standards for the rates that a utility company shall pay for power and/or energy produced by qualified facilities that have either a design capacity of 100 kilowatts or less or a design capacity over 100 kilowatts.

In both cases, the standard is the same: such "rates shall be just and reasonable to the electric customer of the utility, in the public interest and nondiscriminatory."

Until recently, EKPC's member distribution cooperatives had full-requirements contracts that seriously limited their ability to purchase power from sources other than EKPC. That is now no longer the case, to the extent that a member co-op may obtain up to 15% of its energy from other sources, until the total amount purchased by all of EKPC's member co-ops reaches 5% of EKPC's total generation. Judging from the set of incentives faced by member cooperatives as a result of EKPC's wholesale tariffs now in effect, it would be reasonable to assume that a typical distribution co-op would be willing to pay a cogenerator or small power producer a rate approximately equal to the wholesale rate that the co-op pays to EKPC. The amount a distribution co-op would be willing to pay might be slightly less than EKPC's wholesale rate if the co-op wishes to be compensated for its administrative costs, or somewhat more than the wholesale rate if the co-op believes the electricity from the DG facility is more valuable to the co-op than the electricity it obtains from EKPC's centralized power plants. The wholesale rate paid by the distribution co-op, however, would constitute a reasonable starting point or guidepost. If EKPC's tariffs for cogenerators and small power producers were significantly lower than its wholesale rates to its member co-ops, any rational DG provider would contract with the appropriate member co-op instead. Virtually no one would contract with EKPC directly, and its tariffs would remain unused. EKPC's tariff would, in effect, become unreasonable and discriminatory against DG providers because it would discourage all DG above and beyond the amount that had been facilitated by the distribution co-ops on their own. The intent of PURPA Section 210(f) to encourage cogeneration and small power production would be thwarted, and the economic interests of customers, as well as the public interest generally, would be disadvantaged.

V. EKPC's existing tariffs appear to ignore several economic benefits provided to the electric system by DG.

In the Sierra Club's public comments submitted to the Commission in Case No. 2006-00045, Consideration of the Requirements of the Federal Energy Policy Act of 2005 Regarding Time-Based Metering, Demand Response and Interconnection Service, we outlined a large number of economic benefits that DG can confer on the electric system. We will not recapitulate that argument here. EKPC has given no indication, however, that it understands the potential magnitude of these economic benefits or that it has taken them into account when estimating its long-run avoided costs and when developing its proposed tariffs for qualified cogeneration and small power production facilities. (Sierra Club public comments, July 18, 2006)

VI. Summary and Conclusion

The Sierra Club holds that there are sufficient grounds to include a consideration of EKPC's tariffs for qualified cogeneration and small power production facilities in the present proceeding. These include the following:

I. EKPC's justification for excluding the tariffs was factually incorrect;

II. The current tariffs do not accurately reflect EKPC's avoided costs;

III. The existing tariffs contain serious anomalies;

IV. If the tariffs do not approach or exceed the level of EKPC's wholesale rates they will never be used in practice; and

V. The tariffs appear to ignore several important economic benefits to EKPC and its customers.

Wherefore, the Sierra Club respectfully moves that the Commission reverse its first Ordering provision of 2/13/07 and include the tariffs for qualified cogeneration and small power production facilities in this proceeding for consideration and possible revision.

Respectfully submitted,

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E-mail: ogeralds@lexkylaw.com

COUNSEL FOR THE SIERRA CLUB

CERTIFICATE OF SERVICE

I hereby certify that an original and ten copies of the foregoing Motion to Include Tariffs Related to Qualified Cogeneration and Small Power Production Facilities 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 17th day of April, 2007.

Hon. Dennis Howard
Assistant Attorney General
Office of the Attorney General
Utility & Rate Intervention Division
1024 Capital Center Drive, Suite 200
Frankfort, KY 40601-8204

Hon. Michael L. Kurtz
Attorney at Law
Boehm, Kurtz & Lowry
36 East Seventh Street, Suite 1510
Cincinnati, OH 45202- 4434

Hon. Charles A. Lile
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