



February 27, 2007

HAND DELIVERED

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

RECEIVED

FEB 27 2007

PUBLIC SERVICE
COMMISSION

Re: PSC 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 each of the Responses of East Kentucky Power Cooperative, Inc., to the Commission Staff's Second Data Request and the Initial Data Request of the Attorney General, both dated February 20, 2007, and the First Data Request of Kentucky Industrial Utility Customers, Inc., dated February 19, 2007.

Very truly yours,

A handwritten signature in cursive script that reads 'Charles A. Lile'.

Charles A. Lile
Senior Corporate Counsel

Enclosures

Cc: Elizabeth E. Blackford, Esq.
Michael L. Kurtz, Esq.

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FEB 27 2007

PUBLIC SERVICE
COMMISSION

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

In the Matter of:

**GENERAL ADJUSTMENT OF ELECTRIC RATES) CASE NO.
OF EAST KENTUCKY POWER) 2006-00472
COOPERATIVE, INC.)**

**RESPONSES TO ATTORNEY GENERAL'S INITIAL REQUEST FOR
INFORMATION TO EAST KENTUCKY POWER COOPERATIVE, INC.
DATED FEBRUARY 20, 2007**

EAST KENTUCKY POWER COOPERATIVE, INC.

PSC CASE NO. 2006-00472

ATTORNEY GENERAL'S INITIAL REQUEST FOR INFORMATION

East Kentucky Power Cooperative, Inc. (EKPC) hereby submits responses to the Attorney General's Initial Request for Information, dated February 20, 2007. Each response with its associated supportive reference materials is individually tabbed.

EAST KENTUCKY POWER COOPERATIVE, INC.
PSC CASE NO. 2006-00472
INITIAL REQUEST FOR INFORMATION RESPONSE

ATTORNEY GENERAL'S INITIAL REQUEST FOR INFORMATION DATED 2/20/07
REQUEST 1

RESPONSIBLE PERSON: Robert M. Marshall
COMPANY: East Kentucky Power Cooperative, Inc.

REQUEST 1. Please refer to the testimony of Robert M. Marshall. Does East Kentucky Power Cooperative ("EKPC") acknowledge Mr. Marshall's testimony that the proposed rate increase which is the subject of the instant filing is needed for the following reasons: (a) a four-month forced outage at Spurlock 4 in 2004; (b) the 2004 EPA lawsuit regarding physical or operating changes to three coal-fired generators allegedly in violation of the Clean Air Act; (c) the 2006 EPA notice of alleged violations regarding the nameplate ratings on the Dale 1 and 2 generators; (d) increased interest expense for construction funds to meet new generation and transmission needs.

RESPONSE 1. Mr. Marshall's testimony does not specifically attribute the need for rate relief to these four factors. Rather, as stated on page 4 of his testimony, these factors contributed to the decline in EKPC's financial condition, particularly in 2004 and 2005. It is the resulting financial condition of the Company, which has now reached a critical stage, that mandates immediate rate relief to meet loan covenants to assure the financial community that EKPC will remain a viable entity going forward.

EKPC's base rate case does recognize certain expenses that relate to these four factors. These include the recognition of a certain level of forced outage costs in base rates, a higher TIER requirement to strengthen its equity level, a level of legal expense to

be built into rates in recognition of the on-going disputes with the Environmental Protection Agency and the acknowledgement of higher interest costs associated with financing new generation and transmission facilities to meet growing demand on the EKPC system.

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REQUEST 2

RESPONSIBLE PERSON: David G. Eames

COMPANY: East Kentucky Power Cooperative, Inc.

REQUEST 2. For each of the four reasons identified above, please state whether each event was foreseeable, and if not, why not? If the actions were foreseeable, what actions, if any, were taken to address and mitigate each event? Please explain in detail.

RESPONSE 2. With regard to the forced outage item listed as Item (a), EKPC and all other utilities experience unforeseeable forced outages in their generating units. Despite rigorous preventive maintenance practices and safeguards, equipment may wear out or conditions unexpectedly change resulting in a forced outage. EKPC has a comprehensive maintenance plan and, as cited in Exhibit DGE-2 of Mr. Eames' testimony, EKPC has an excellent record of forced outage levels. In this case, EKPC is seeking recognition of a reasonable, on-going level of forced outage costs in base rates. EKPC is not seeking recognition of the 2004 replacement costs in this proceeding.

With regard to the lawsuits listed as Items (b) and (c), such litigation was not foreseeable. EKPC maintains and will continue to maintain that its actions are justifiable and has vigorously contested the EPA's alleged violations. The legal effort to contest these allegations will continue indefinitely through the conclusion of these cases. The effect of the additional costs and penalties associated with the lawsuits has been removed for the

case. Only EKPC legal expenses are included.

The increased interest expense was foreseeable and EKPC took appropriate action with the Commission to seek regulatory approvals for new generation and transmission needs and to seek the lowest possible financing arrangements for interim and permanent financing.

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REQUEST 3

RESPONSIBLE PERSON: William A. Bosta /Ann F. Wood

COMPANY: East Kentucky Power Cooperative, Inc.

REQUEST 3. For each of the four reasons identified in question no. 1, above, please state when EKPC first became aware of them, what measures EKPC employed to deal with them, and any corrective measures EKPC may have employed to see that they do not occur again in the future.

RESPONSE 3. The Spurlock Unit 1 forced outage was not foreseeable. On July 1, 2004, a Spurlock Unit 1 abnormality was flagged by an alarm. The unit operator attempted to perform required procedures as outlined in the operator manual. Several backup protections failed: the Distributed Control System (DCS) processor modules failed; the automatic runback of the unit did not occur; and, the automatic trip of the unit did not occur. As a result, the generator stator was damaged from operating at excessive temperature.

EKPC involved several other entities in investigating the failure: Stanley Consulting, FM Global, EPRI, Alstom, and ABB. As indicated below, EKPC has taken steps to ensure that a similar outage does not recur.

The trip circuits have been verified. The control function logic of the Generator Stator cooling pumps has been modified in such a way that if the DCS processor modules fail

again, the stator cooling pumps will continue to operate and the generator will not overheat from a loss of stator cooling water.

With regard to the 2004 EPA lawsuit, EKPC became aware of the lawsuit on January 28, 2004. The lawsuit alleged that physical or operating changes to three coal-fired generators resulted in simultaneous violations of the Clean Air Act; the New Source Performance Standards (“NSPS”) of the Clean Air Act and the State Implementation Plan (“SIP”) for Kentucky. EKPC answered the lawsuit on June 18, 2004. Since that time discovery has been on-going and on January 17, 2006 the Company filed several motions with the Court that most, if not all claims, be dismissed. At present, the case is stayed, pending a ruling from the U.S. Supreme Court in a Duke Energy case.

With regard to the 2006 EPA lawsuit, the Company first received the Notice of Violation on January 17, 2006. The lawsuit was then filed on June 30, 2006. The suit charges EKPC with technical violations of the Clean Air Act acid rain program and the provisions of the Nox State Implementation Plan. EKPC filed its answer on August 8, 2006. Discovery is on-going and is expected to be completed by May 9, 2007. The Court has assigned the action for trial by jury on September 25, 2007.

EKPC’s load growth and construction needs are well documented through a number of CCN filings as well as its Integrated Resource Plan filing. EKPC has taken all of the necessary steps to secure financing through interim borrowings and ultimately RUS. Approval of the rate implementation on April 1 will help relieve concern by those lenders.

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REQUEST 4

RESPONSIBLE PERSON: William A. Bosta

COMPANY: East Kentucky Power Cooperative, Inc.

REQUEST 4. Please state whether the withdrawal of Warren R.E.C.C. from its prior commitment to join the EKPC system is a factor in EKPC's present need for a rate increase. If so, please explain in detail:

- a. the extent of nature of EKPC's financial losses resulting from Warren RECC's withdrawal; and
- b. whether EKPC deems such losses to be recurring or extraordinary.

RESPONSE 4. No. Warren withdrew its commitment to join the EKPC system on December 7, 2006, after EKPC filed its Notice of Intent to file a Rate Application on November 13, 2006.

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REQUEST 5

RESPONSIBLE PERSON: David G. Eames

COMPANY: East Kentucky Power Cooperative, Inc.

REQUEST 5. Please identify any and all other reasons for the rate increase not already set forth above. For each such reason not already identified above, please state in detail:

- a. the extent and nature of any and all financial losses EKPC may have incurred directly as a result of such reason; and
- b. whether EKPC deems such losses to be recurring or extraordinary.

RESPONSE 5. The major reasons for the rate increase are shown below:

<u>Item</u>	<u>Source of Explanation</u>
• Declining Financial Condition & Need to Build Equity w/Higher TIER	Marshall, Walker, Don and Eames Testimonies
• Forced Outage Cost	Eames Testimony, Exhibit DGE-1 and DGE-2, Exhibit F, Schedule 18
• Legal Expense Associated with On-going Litigation w/EPA	Eames Testimony, Item 31, PSC First Data Request

<u>Item</u>	<u>Source of Explanation</u>
• Interest Expense and AFUDC @ 3/31/07	Oliva Testimony, Exhibit F, Schedule 10
• Per Books Expense & Revenue	Wood Testimony and Exhibit F.
• Other Expense & Revenue Adjustments	Oliva, Wood and Bosta Testimonies Exhibit F, all other schedules

EKPC deems all adjusted test year expenses and revenues to be recurring.

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REQUEST 6

RESPONSIBLE PERSON: David G. Eames
COMPANY: East Kentucky Power Cooperative, Inc.

REQUEST 6. Does EKPC classify the costs associated with the four-month forced outage at Spurlock 4 in 2004 as non-recurring? If not, why not? Please explain in detail.

a. Are there any facts known to EKPC that indicate that a similar outage will occur again in the future? If so, please explain, in detail.

RESPONSE 6. As indicated in the response to Item AG-2, the costs associated with the forced outage in 2004 are not part of this case. A certain level of forced outages at generating plants will occur and the costs associated with these forced outage will recur. The issue in this case is whether the level of forced outages proposed by EKPC is reasonable. EKPC used a five-year average of forced outage MWH's multiplied by the known and measurable \$/MWH replacement cost in the test year. The five-year forced outage percentage for EKPC is lower than the national average for all utilities (see Exhibit DGE-2), is a fair representation of forced outage conditions and is a reasonable level to use on an on-going basis. As indicated in the response to AG-3, steps have been taken to minimize the likelihood that an event similar to the Spurlock 1 outage in 2004 will occur. However, as indicated above, forced outages are a normal part of generating plant performance.

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REQUEST 7

RESPONSIBLE PERSON: David G. Eames

COMPANY: East Kentucky Power Cooperative, Inc.

REQUEST 7. Does EKPC classify the costs associated with the 2004 EPA lawsuit as non-recurring? If not, why not? Please explain in detail.

RESPONSE 7. No. The legal expenses associated with the 2004 EPA lawsuit are considered recurring expenses. EKPC first incurred legal expenses relating to the EPA matters in the year 2000, seven years ago. EKPC has now been involved in the 2004 EPA lawsuit for three years and, as indicated in Mr. Eames' testimony, the resolution is not likely to occur in the near future. EKPC is not requesting recovery of any direct costs or penalties from these lawsuits and the legal fees are the only costs subject to recovery in this proceeding.

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REQUEST 8

RESPONSIBLE PERSON: David G. Eames

COMPANY: East Kentucky Power Cooperative, Inc.

REQUEST 8. Does EKPC classify its legal costs associated with both EPA actions described in question no. 1, above, as recurring? If so, explain in detail:

RESPONSE 8. EKPC classifies its legal costs associated with both EPA actions described in question no. 1 as recurring. Since 2000, EKPC has been incurring legal fees as a result of these EPA actions.

REQUEST 8a. How many times has the EPA initiated legal / regulatory proceedings against EKPC that required the company to incur legal fees? Please explain in detail, providing the style of each such action, the outcome, the total sum of legal fees so expended, and whether the company treated these expenses as recurring under any prior rate case.

RESPONSE 8a. EPA has initiated legal/regulatory proceedings against EKPC twice that required EKPC to incur legal fees. On January 28, 2004, the federal Environmental Protection Agency (EPA) sued EKPC alleging that physical or operating changes to three coal-fired generators resulted in simultaneous violations of the Prevention of Significant Deterioration provision of the Clean Air Act; the New Source Performance Standards of the Clean Air Act; and the State Implementation Plan for Kentucky, as approved by EPA.

On January 17, 2006, the Cooperative received a Notice of Violation (NOV) from the EPA alleging violations of the Federal Clean Air Act's Acid Rain Program and NOx SIP Call Allowance Trading Program at Dale Units 1 and 2. At issue is EPA's allegation that the Cooperative incorrectly reported the turbine, rather than the generator, nameplate ratings, thus placing the Units under the Acid Rain Program. On February 10, 2006, the Cooperative received an NOV from the Kentucky Environmental and Public Protection Cabinet regarding the same matter. The NOV's cover the years 2000 through 2004.

The total legal fees expended through 2006 total approximately \$10.9 million. Because these EPA actions are fairly recent, such legal fees were not applicable in prior rate cases.

REQUEST 8b. For how many more years does EKPC anticipate that it will incur legal fees in these actions?

RESPONSE 8b. EKPC has been incurring legal fees in these matters since 2000; as indicated in Mr. Eames' testimony, the resolution is not likely to occur in the near future.

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**ATTORNEY GENERAL'S INITIAL REQUEST FOR INFORMATION DATED 2/20/07
REQUEST 9**

RESPONSIBLE PERSON: William A. Bosta

COMPANY: East Kentucky Power Cooperative, Inc.

REQUEST 9. At an informal conference held in case no. 2006-00455 at the offices of the PSC, did EKPC's representatives represent to the PSC staff and to the Attorney General that the company has incurred a number of significant and extraordinary expenses, including the EPA enforcement actions referenced in question no. 1, above?

RESPONSE 9. A variety of topics were discussed at the informal conferences held at the Commission's offices on October 25, 2006 and again on December 15, 2006 in Case No. 2006-00455. EKPC described the status of the two EPA lawsuits and indicated that the financial effects of the 2006 lawsuit had been booked in December 2005. As indicated in the response to AG-2, EKPC did not include the effect of these costs in this case. The other event that was significant in regard to the Company's financial performance was the four-month long Spurlock 1 forced outage in 2004. As indicated in the response to AG-6, the replacement costs for this outage are not included in the case and the description "extraordinary" is applicable only as it relates to the length of the forced outage. Forced outages are recurring events.

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REQUEST 10

RESPONSIBLE PERSON: William A. Bosta

COMPANY: East Kentucky Power Cooperative, Inc.

REQUEST 10. If you agree that the events inquired about in the questions above are non-recurring, please explain in detail the basis on which it is appropriate to award a permanent rate increase based on a financial condition that is the consequence of a series of non-recurring costs.

RESPONSE 10. See the response to AG-9. The costs included in the case are considered recurring costs.

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REQUEST 11

RESPONSIBLE PERSON: Frank J. Oliva

COMPANY: East Kentucky Power Cooperative, Inc.

REQUEST 11. Would EKPC be willing to consider a term rate increase that will sunset when the financial crisis now faced is resolved?

RESPONSE 11. EKPC would be amenable to discussing various rate options, subject to prudent business practices.

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REQUEST 12

RESPONSIBLE PERSON: Frank J. Oliva

COMPANY: East Kentucky Power Cooperative, Inc.

REQUEST 12. Would EKPC be willing to consider a staged rate change that reduces the amount of the rate increase when the current financial crisis is resolved and the company has realized that amount of revenue necessary to meet added financing costs?

RESPONSE 12. Please refer to Response No. 11.