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APR 10 2007

PUBLIC SERVICE  
COMMISSION

April 10, 2007

HAND DELIVERED

Ms. Elizabeth O'Donnell  
Executive Director  
Public Service Commission  
Post Office Box 615  
Frankfort, KY 40602

Re: PSC Case No. 2006-00564

Dear Ms. O'Donnell:

Please find enclosed for filing with the Commission in the above-referenced case an original and ten copies of the Responses and Objections of East Kentucky Power Cooperative, Inc., to the Application for Rehearing of the Petition to Intervene of the Cumberland Chapter of the Sierra Club.

Very truly yours,



Charles A. Lile  
Senior Corporate Counsel

Enclosures

Cc: Parties of Record  
Oscar H. Geraldts, Jr., Esq.

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

**PUBLIC SERVICE  
COMMISSION**

**In the Matter of:**

**AN INVESTIGATION INTO EAST KENTUCKY )  
POWER COOPERATIVE, INC.'S CONTINUED ) CASE NO.  
NEED FOR CERTIFICATED GENERATION ) 2006-00564**

**RESPONSE AND OBJECTIONS OF EAST KENTUCKY  
POWER COOPERATIVE, INC., TO CUMBERLAND CHAPTER  
OF SIERRA CLUB APPLICATION FOR REHEARING**

East Kentucky Power Cooperative, Inc. ("EKPC"), hereby responds and objects to the Application for Rehearing filed by the Cumberland Chapter of the Sierra Club ("Sierra Club") in this case on April 2, 2007 concerning the Commission's denial of the Sierra Club Petition to Intervene in this case. The grounds for EKPC's objections are as follows:

1. The statutory authority for a request for a rehearing of any action by the Commission, KRS §278.400, applies to a party to a Commission proceeding seeking a rehearing of a determination made at a hearing in the case. That statute provides that "Upon the rehearing any party may offer additional evidence that could not with reasonable diligence have been offered on the former hearing." The Sierra Club was not made a party to PSC Case No. 2006-00564 and, therefore, lacks standing to request a rehearing pursuant to KRS §278.400. Even if the Sierra Club were a party to this case, and had authority pursuant to KRS §278.400 to seek a rehearing of a determination made at a hearing in the case, its Application for Rehearing does not demonstrate that the Sierra Club is seeking to present any new evidence relevant to any grounds for intervention in this case, which could not have been offered prior to the Commission's

ruling on its intervention request. The current Application merely restates and expands on arguments for intervention which were previously made in its original Petition to Intervene, filed on February 12, 2007, and in its Response to Objections to Full Intervention, filed on February 21, 2007, and which the Commission has already rejected.

2. The Sierra Club appears to be contradicting its own prior acknowledgement of the scope of the Commission's jurisdiction, in its attempt to broaden the scope of this case to fit its stated agenda. On page 1 of its Response to Objections to Full Intervention by Cumberland Chapter of Sierra Club, filed on February 21, 2007 in this case, it is stated that:

Sierra does not contest EKPC's statement that the Commission's jurisdiction is limited to issues of rates and service of regulated utilities, nor does Sierra contest the utility's statement that in the context of an investigation of a certificate of public convenience and necessity, the Commission's authority is to determine that the subject facilities are required to supply utility service, and that their construction would not amount to a wasteful duplication of facilities.

Despite this prior recognition of the limited scope of the Commission's jurisdiction, the Sierra Club now claims to be unable to locate any section of KRS Chapter 278 which "sets forth the mandate, role and purpose of the Public Service Commission," proceeds to seek "clues" to the Commission's jurisdiction in KRS §278.016, and then concludes that there is nothing in that retail service territory statute that says that the Commission should exclude the Sierra Club's environmental agenda in this case dealing with EKPC's continued need for generating facilities. (Sierra Club Application for Rehearing, p. 3-6) While KRS §278.016 is not relevant to this case, due to the lack of retail service territory issues, the Commission's jurisdictional statute, KRS §278.040, does clearly set out the

Commission's authority. That statute provides that "The commission shall have exclusive jurisdiction over the regulation of rates and service of utilities." The Kentucky Courts have consistently held that the Commission's jurisdiction is strictly limited to this statutory authority over the rates and services of utilities. City of Olive Hill v. Public Service Commission, 203 S.W.2d 68 (Ky. 1947); Boone County Water and Sewer Dist. v. Public Service Commission, 949 S.W.2d 588 (Ky. 1977); South Central Bell Telephone Co. v. Utility Regulatory Commission, 637 S.W.2d 649 (Ky. 1982).

3. The Commission has already ruled that the fact that the Sierra Club could have members who are consumers of EKPC member systems does not establish a special interest in this case that is not otherwise adequately represented, since the Attorney General (the "AG") already represents ratepayer financial interests in this case, pursuant to KRS §367.150(8)(a). (Order, March 22, 2007, p.4) The Commission also correctly ruled in that Order that the environmental consequences of the construction of the subject generating plants are not within the scope of this proceeding, which has been defined by the Commission as a determination of the continued need for the subject generating plants following the decision of Warren RECC to withdraw from its power supply arrangement with EKPC. (Id., p. 3-4) The Sierra Club's sustained attempts to ignore the established limits of the proceedings, and to inject environmental issues into these proceedings, remain improper and unjustified.

4. Not only does the Sierra Club's Application for Rehearing fail to show that it has any special interest relevant to this case, it's attacks on the participation of the AG and Gallatin Steel Company ("Gallatin Steel"), on pages 10-14 of the Application, further show that its intervention in the case would not be justified under the

Commission's second test for discretionary intervention. (807 KAR 5:001 Section 3 (8))

The Sierra Club appears to be unaware that the AG and Gallatin Steel were intervenors in PSC Case No. 2004-00423 and PSC Case No. 2005-00053, where the original certificates for these generating units were granted, before they were made parties to this case by the Commission. The AG has filed an appropriate response to the Sierra Club's attempts to usurp its statutory role in these proceedings. (Attorney General's Response to Application for Rehearing by the Cumberland Chapter of the Sierra Club, filed April 5, 2007) The Commission is well aware of Gallatin Steel's long-established special interest in the rates and service of EKPC, as the largest retail customer on the EKPC system, with unique rates and service conditions. The Sierra Club's tactic of criticizing the participation of these parties in this case, in the process of arguing its own dubious claims for intervention, along with its obviously minimal understanding of the facts or the role of the AG and Gallatin Steel in the underlying Commission cases, plus its clear fixation on pursuing environmental issues which are beyond the scope of the proceedings, vividly illustrate that its intervention would be unlikely to present issues or develop facts which would assist the Commission in deciding this case, but would be very likely to create undue complications and disruption of the proceedings.

5. The Sierra Club has not demonstrated any valid authority or grounds for the Commission to grant a rehearing of its denial of intervention. EKPC hereby renews its objections to the Sierra Club request for intervention, as stated in its Response and Objections to such intervention, which was filed in this case on February 16, 2007, and incorporates those objections by reference as additional grounds for its objections to the Sierra Club request for rehearing.

WHEREFORE, EKPC formally objects to the Application for Rehearing of the Petition to Intervene of the Sierra Club, and urges the Commission to deny said Application, for the reasons stated hereinabove.

Respectfully submitted,

*David A. Smart*  
by T.I.


DAVID A. SMART

*Charles A. Lile*

CHARLES A. LILE  
ATTORNEYS FOR EAST KENTUCKY  
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**CERTIFICATE OF SERVICE**

This is to certify that an original and ten copies of the foregoing Response and Objections of East Kentucky Power Cooperative, Inc., to Cumberland Chapter of Sierra Club Application for Rehearing of its Request to Intervene in the above-referenced case, were delivered to Elizabeth O'Donnell, Executive Director, Kentucky Public Service Commission, 211 Sower Boulevard, Post Office Box 615, Frankfort, Kentucky 40601, and copies were mailed to Oscar H. Gerald, Jr., Esq., 259 West Short Street, Lexington, Kentucky, 40507-1237, and to parties on the Service List in this case, on this 10<sup>th</sup> day of April, 2007.



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CHARLES A. LILE