

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

2009 INTEGRATED RESOURCE	)	CASE NO.
PLAN OF EAST KENTUCKY POWER	)	2009-00106
COOPERATIVE, INC.	)	

O R D E R

On October 2, 2009, East Kentucky Power Cooperative, Inc. ("East Kentucky") filed a Motion to Strike the Supplemental Comments filed on September 29, 2009 by the Sierra Club, Kentucky Environmental Foundation, and Kentuckians for the Commonwealth (collectively, "Environmental Groups"). East Kentucky argues that the information contained in the Supplemental Comments is irrelevant to the present proceeding, which is limited to a review by Commission Staff of East Kentucky's 2009 Integrated Resource Plan ("IRP"). The Environmental Groups did not file a response to East Kentucky's Motion to Strike.

The Supplemental Comments filed by the Environmental Groups discuss a September 21, 2009 order issued by the United States Environmental Protection Agency ("EPA") regarding an air quality permit issued to East Kentucky for its Spurlock 4 electric generating unit. A copy of the EPA order was attached to the Supplemental Comments. East Kentucky notes that Spurlock 4 has already been constructed pursuant to a Certificate of Public Convenience and Necessity ("CPCN") granted by the Commission and has been in operation since April 2009. East Kentucky

points to the Commission's prior rulings in this case holding that issues regarding East Kentucky's Smith 1 electric generating unit are not relevant to a consideration of East Kentucky's IRP.<sup>1</sup> East Kentucky argues that, if issues related to its Smith 1 facility are not relevant to this IRP review, then issues related to its Spurlock 4 facility are similarly irrelevant to this proceeding. East Kentucky also argues that, pursuant to the procedural schedule established by the Commission's July 2, 2009 Order, the last date for filing comments was September 18, 2009 and, thus, the supplemental comments were filed out of time and should be stricken for that reason as well.

Based on the Motion and being otherwise sufficiently advised, the Commission finds that the Supplemental Comments filed by the Environmental Groups relate to a public document and the Commission may take administrative notice of public documents. The EPA issued its September 21, 2009 order after the September 18, 2009 deadline for filing comments in this case. Therefore, since the issue upon which the Environmental Groups based their Supplemental Comments did not arise until after the expiration of the deadline for the filing of comments, the Commission finds good cause to accept the late-filed comments.

As to the substance of the Environmental Groups' Supplemental Comments, the Commission finds that they relate to East Kentucky's Spurlock 4, a generating unit which was constructed pursuant to a properly issued CPCN and is now in service. Thus, the comments do not appear to have been filed in an effort to collaterally attack the previously issued CPCN for Spurlock 4. While East Kentucky has properly raised a

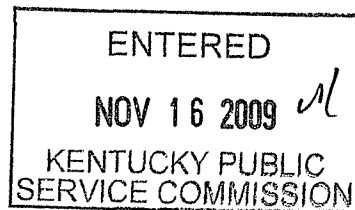
---

<sup>1</sup> July 13, 2009 Order at 7 and August 19, 2009 Order at 6-7. ("Any comparison of EKPC's demand-side options must be made to its projected supply-side resources that have not already been authorized to be constructed pursuant to a CPCN.")

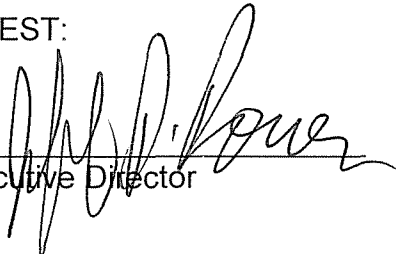
question as to the relevancy of the Supplemental Comments, the Commission finds no prejudice to East Kentucky by not striking them. We will allow the Supplemental Comments to remain in the record and direct Staff to consider them in its review and give them the weight that Staff deems appropriate.

IT IS HEREBY ORDERED that East Kentucky's Motion to Strike the Environmental Groups' Supplemental Comments on its 2009 IRP is denied.

By the Commission



ATTEST:

  
Executive Director

Anthony Campbell  
President/CEO  
East Kentucky Power Cooperative, Inc.  
4775 Lexington Road  
P. O. Box 707  
Winchester, KY 40392-0707

Lawrence W Cook  
Assistant Attorney General  
Office of the Attorney General Utility & Rate  
1024 Capital Center Drive  
Suite 200  
Frankfort, KY 40601-8204

Mark David Goss  
Frost, Brown, Todd, LLC  
250 West Main Street  
Suite 2700  
Lexington, KY 40507

Honorable Michael L Kurtz  
Attorney at Law  
Boehm, Kurtz & Lowry  
36 East Seventh Street  
Suite 1510  
Cincinnati, OH 45202

Robert Ukeiley  
435R Chestnut Street, Suite 1  
Berea, KY 40403