

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF EAST KENTUCKY POWER)	
COOPERATIVE, INC. FOR A CERTIFICATE OF)	
PUBLIC CONVENIENCE AND NECESSITY FOR)	
ALTERATION OF CERTAIN EQUIPMENT AT)	
THE COOPER STATION AND APPROVAL OF A)	CASE NO.
COMPLIANCE PLAN AMENDMENT FOR)	2013-00259
ENVIRONMENTAL SURCHARGE COST)	
RECOVERY)	

ORDER

On November 21, 2013, Sonia McElroy and Sierra Club (collectively "Sierra Club") filed a motion seeking to compel East Kentucky Power Cooperative, Inc. ("EKPC") to respond to certain discovery requests and for a continuance of the procedural schedule. Sierra Club contends that EKPC has unreasonably sought to withhold information to the following supplemental discovery questions propounded to EKPC: Items 2.5, 2.6, 2.12(c), 2.14(c)-(e), 2.31(a)-(b), 2.32(a)-(b) and (d)-(h), 2.33(a)-(b) and (d), and 2.46(a). Sierra Club maintains that it has been unable to fully determine whether EKPC's proposed pollution-control project represents the most prudent path toward compliance with relevant federal air-emissions requirements. EKPC filed a response to Sierra Club's motion on November 27, 2013, setting forth its arguments that Sierra Club's discovery requests are not relevant to the case and that EKPC has, in fact, fully responded to such requests. On December 5, 2013, Sierra Club filed a motion for leave to file out of time its reply in support of its motion to compel and to accept into the formal record, its reply, which was attached to the motion for

leave. Sierra Club notes that, pursuant to 807 KAR 5:001, Section 5(3), it had five days to file a reply. Because EKPC's response was filed on November 27, 2013, one day before the Thanksgiving holiday and the subsequent weekend, Sierra Club had only one day in which to file its reply. The Commission finds that Sierra Club has established good cause to permit it leave to file its reply out of time. The Commission will also grant Sierra Club's motion to compel to the extent set forth below on certain of the requests.

ITEMS 2.5 AND 2.6.

Item 2.5 requests EKPC to provide a historical breakdown of annual costs from 2003 through 2013 for each of EKPC's electric generating plants. Item 2.6 requests EKPC to provide the projected annual cost for each year of the net present value ("NPV") analysis in connection with each EKPC generating plant. Sierra Club contends that EKPC should at least be required to provide information for Cooper Unit 1, because such information is relevant to assessing the projected future costs for Cooper Unit 1. Sierra Club further contends that this information is needed to evaluate the various Mercury and Air Toxics Standards ("MATS") compliance options.

EKPC argues that its proposal must be evaluated on a forward-looking basis, based upon the bids received through the request for proposal ("RFP") process, and that the reasonableness of EKPC's proposal will be determined by the marketplace, not by historic unit-cost data. EKPC contends that it has provided fleet-wide data and that the unit specific data for Cooper Unit 1 could be determined simply by subtracting the base case information from the fleet information.

The Commission finds that the historic annual costs and the projected annual costs for Cooper Unit 1 are relevant to fully assess the economic feasibility of EKPC's proposed project to re-route the existing ductwork for that particular generating plant and, therefore, Sierra Club is entitled to the information for Cooper Unit 1.

ITEMS 2.31(a)-(b), 2.32(a)-(b), and 2.33(a)-(b).

Items 2.31(a)-(b), 2.32(a)-(b), and 2.33(a)-(b) request EKPC to provide documents that it had reviewed relating to potential compliance costs at Cooper Units 1 and 2 concerning the Clean Water Act section 316(b) rule ("316(b) rule"), the forthcoming coal combustion residuals rule ("CCR"), and the forthcoming Clean Water Act effluent limitations guidelines ("ELG"), respectively. Sierra Club contends that this information is relevant to determining whether EKPC's proposal represents the least-cost alternative in light of the fact that EKPC did not factor future environmental compliance costs into its economic analyses, even though it admittedly reviewed documents relating to future compliance costs associated with the CCR, ELG, and 316(b) rule.

EKPC argues that these requests are overly broad and would require production of documents which are beyond the scope of this proceeding, such as newspaper articles that discuss future environmental-compliance costs, commentary by public officials on the overreach of environmental regulators and their vow to overturn such efforts. EKPC contends that those documents that it reviewed were a mixture of what various third parties think, that these future environmental rules are not yet final, and that any costs associated with compliance with these regulations are speculative in nature. Lastly, EKPC asserts that Sierra Club, based upon its own admitted expertise in

the laws and regulations of energy production, sufficiently has the wherewithal to develop, support, and advocate its own position on future environmental compliance costs.

The Commission finds that Sierra Club's requests for documents reviewed by EKPC relating to future compliance costs are relevant to the issue of reasonableness of EKPC's decision to not include such costs in its economic analyses and, therefore, Sierra Club is entitled to this information.

ITEMS 2.32(d)-(h) AND 2.33(d).

Items 2.32(d)-(h) and 2.33(d) request information concerning current and future handling of CCR and liquid waste streams, respectively, for Cooper Units 1 and/or 2. Sierra Club contends that these discovery requests are narrowly drawn and are relevant to the issue of potential future compliance costs at Cooper Unit 1 during the lifetime of the proposed compliance project. Sierra Club contends that the units will face costs regarding CCR, and liquid wastes and would impact the reasonableness of the proposed compliance project relative to other alternatives.

EKPC argues that these potential future compliance costs are highly dependent upon an evaluation of the requirements contained in future rules and regulations and, because these rules and regulations are not yet final, it is arguable whether Cooper Units 1 and 2 would realize CCR and liquid-waste compliance costs.

The Commission finds that Sierra Club's requests for information concerning current and future costs related to CCR and liquid-waste compliance for Cooper Units 1 and 2 are relevant to the underlying issue of the reasonableness of EKPC's decision to

not include such costs in its economic analyses and, therefore, Sierra Club is entitled to this information.

ITEM 2.12(c).

Item 2.12(c) sought information on the projected annual generation by each of EKPC's coal units for each year of the NPV analysis. Sierra Club contends that EKPC should be compelled to provide information responsive to this request because none of the responses provided by EKPC to other discovery requests contain the projected annual generation for Cooper Unit 1.

EKPC contends that it has provided information for its entire fleet and maintains that the information sought by Sierra Club could be derived by subtracting the base case information from the entire EKPC fleet information.

The Commission finds that Sierra Club's request for information concerning the projected annual generation is relevant to a full determination of the reasonableness of EKPC's economic analyses and, therefore, Sierra Club is entitled to this information to the extent that it relates to Cooper Unit 1.

ITEMS 2.14(c)-(e).

Items 2.14(c)-(e) request basic information relating to the various EKPC self-build proposals, such as descriptions of the proposals, an overview of what each proposal would have entailed, and the breakdown of the costs for each proposal. Sierra Club argues that it cannot properly assess whether EKPC considered these proposals without first knowing what the proposals are beyond the summaries of certain of the self-build options that have already been provided by EKPC.

EKPC contends that it would be inappropriate to focus on one subset of bids received in the RFP and that consistency was the standard in the treatment of all proposals by which EKPC conducted the RFP process. EKPC further contends that it provided information for all responses to the RFP, including those relating to the self-build proposals.

The Commission finds that the information EKPC has provided relating to the self-build proposals was high level summaries of each proposal and did not contain sufficient information responsive to Sierra Club's request. The Commission further finds that the information requested by Sierra Club concerning the self-build proposals is relevant and necessary to assess the reasonableness of EKPC's economic analyses relating to such bids. Therefore, the Sierra Club is entitled to this information.

ITEM 2.46(a).

Item 2.46(a) sought production of the contract in which Andritz guarantees that after the proposed ductwork project is completed, the modified flue gas desulfurization system will meet certain emissions limits and performance levels. Sierra Club contends that the Andritz contract is relevant to the evaluation of the guarantee and the conditions under which it applies.

EKPC argues that it has provided a two-page letter from Andritz documenting the guarantees and that this letter is sufficient to demonstrate that such guarantees exist.

The Commission finds that Sierra Club's request for production of the Andritz contract is reasonable and that EKPC should produce this contract.

REQUEST TO CONTINUE INTERVENOR DEADLINE

Because of EKPC's failure to provide the information requested, Sierra Club contends that its ability to fully evaluate and assess the reasonableness of EKPC's application, as well as its ability to fully develop its testimony by the filing deadline of November 27, 2013, has been hindered.¹ Accordingly, Sierra Club requests that EKPC be compelled to provide responses to the discovery items at issue, extend the deadline for the filing of intervenor testimony until ten days after such date of production, and extend all other remaining dates in the current procedural schedule accordingly.

EKPC asserts that extending several weeks to the current procedural schedule would prejudice EKPC's ability to begin and complete the proposed pollution control project on a timely basis.

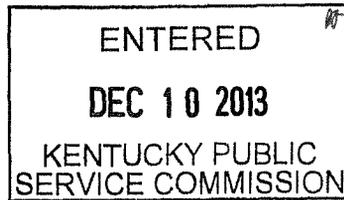
The Commission notes that rebuttal testimony is due on or before January 3, 2014, the hearing in this matter is scheduled for January 14, 2014, and that the statutory deadline for the issuance of an order for this matter is February 20, 2014. A modification of the current procedural schedule would necessitate a change to the hearing date. However, there are no reasonable alternative dates in January in which to reschedule the hearing in this matter to allow the Commission time to issue an order by the statutory deadline. The Commission will require EKPC to fully respond to the discovery items discussed herein within seven days from the date of this Order and allow Sierra Club to file supplemental testimony limited to addressing the information that is the subject of its motion to compel on or before December 27, 2013.

¹ Sierra Club filed its testimonies on November 27, 2013.

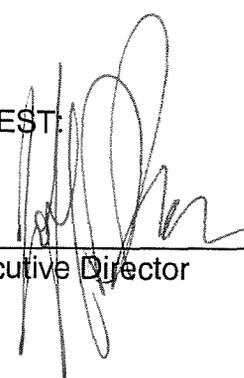
IT IS THEREFORE ORDERED that:

1. Sierra Club's motion for leave to file a reply in support of its motion to compel is granted.
2. Sierra Club's motion to compel is granted to the extent described herein.
3. EKPC shall file responses to the discovery items described herein within seven days of the issuance of this Order.
4. Sierra Club shall file supplemental testimony, if any, limited to addressing the information that is the subject of its motion to compel on or before December 27, 2013.
5. Sierra Club's motion for continuance to file intervenor testimony is denied.

By the Commission



ATTEST:



Executive Director

Case No. 2013-00259

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