

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

**ELECTRONIC APPLICATION OF EAST)
KENTUCKY POWER COOPERATIVE, INC.)
FOR CERTIFICATES OF PUBLIC)
CONVENIENCE AND NECESSITY AND)
SITE COMPATIBILITY CERTIFICATES)
FOR THE CONSTRUCTION OF A 96 MW)
(NOMINAL) SOLAR FACILITY IN MARION)
COUNTY, KENTUCKY AND A 40 MW)
(NOMINAL) SOLAR FACILITY IN FAYETTE)
COUNTY, KENTUCKY AND APPROVAL OF)
CERTAIN ASSUMPTION OF EVIDENCES)
OF INDEBTEDNESS RELATED TO THE)
SOLAR FACILITIES AND OTHER RELIEF)**

CASE NO.
2024-00129

EAST KENTUCKY POWER COOPERATIVE INC.’S BRIEF

Comes now East Kentucky Power Cooperative Inc. (“EKPC”), by counsel, pursuant to the Kentucky Public Service Commission’s (“Commission”) oral decision at the October 29, 2024 hearing in this matter setting forth the post-hearing procedural schedule and the deadline for submitting a brief in this matter, and respectfully states as follows:

I. INTRODUCTION

On April 26, 2024, EKPC submitted an Application for two Certificates of Public Convenience and Necessity (“CPCN”) to construct two solar facilities, Site Compatibility Certificates (“Certificates”), and the approval to assume leases associated with one of the solar facilities. The first solar project will be a 96 MW facility in Marion County, Kentucky (“Northern Bobwhite Project”) and the second will be a 40 MW facility in Fayette County, Kentucky (“Bluegrass Plains Project”).

The two proposed solar projects are necessary to provide safe and reliable service to the service areas of EKPC's sixteen (16) Owner-Member distribution cooperatives ("Owner-Members"), provide for EKPC's growing load while also satisfying increasing customer demand for renewable energy resources and renewable energy credits ("RECs"). EKPC has reviewed alternative means to invest in renewable energy resources and is confident that the two solar projects will have the least impact on the surrounding area and the property owners. The two solar projects are also needed to assist EKPC in providing low-cost energy to its Owner-Members. EKPC's 2022 Integrated Resource Plan ("IRP") defined solar energy as an economic energy resource for the system that is necessary to meet EKPC's increasing load.¹ The solar energy from these projects will provide low-cost energy during summer peak periods, with limited production during winter peak load periods. EKPC's portfolio will be improved with the addition of solar energy to diversify its mix of generation assets. In addition, large industrial and commercial customers that take service from EKPC's Owner-Members are requesting specific renewable energy supply on a regular basis. Construction of these projects places EKPC in a strategically desirable position to have renewable energy readily available when requested.

The parameters of the projects were also carefully calibrated to avoid wasteful duplication of investment and the unnecessary cluttering of landscape with utility infrastructure. Every transaction associated with the two solar generation projects is strictly voluntary and no exercise of eminent domain authority has been utilized. The transactions are the result of arms-length negotiations between independent parties. In order to evaluate the alternatives thoroughly, EKPC's power supply department conducted studies and issued requests for proposals ("RFP") to determine the best place to construct the solar facilities and the best method of construction. As it

¹ *Electronic 2022 Integrated Resource Plan of East Kentucky Power Cooperative, Inc.* Case No. 2022-00098 (Ky. P.S.C. Aug. 16, 2023). ("EKPC 2022 IRP").

did with the development of Cooperative Solar Farm 1, EKPC contracted with the National Renewable Cooperative Organization (“NRCO”) to assist in issuing the RFPs and evaluating the responses which led to the current proposals.

II. BACKGROUND

On April 26, 2024, EKPC filed its Application for Certificates of Public Convenience and Necessity and Site Compatibility Certificates for the construction of a 96 MW (Nominal) Solar Facility in Marion County, Kentucky and a 40 MW (Nominal) Solar Facility in Fayette County, Kentucky and approval of Certain Assumption of Evidences of Indebtedness Related to the Solar Facilities and other general relief. The Commission issued an Order for the processing of the case on May 14, 2024. On May 22, 2024, Lexington Fayette Urban County Government (“LFUCG”) and the Fayette Alliance (“FA”) moved to intervene. The Commission granted both requests for intervention,² and altered the procedural schedule to allow for the intervention.³ EKPC responded to multiple requests for information from Commission Staff and the intervenors.⁴ LFUCG and FA requested a formal hearing on the matter.⁵ A formal hearing was held on October 29, 2024, to take evidence on the application. EKPC offered six witnesses for cross-examination at the hearing. Neither LFUCG nor FA provided any direct testimony nor offered any witnesses for cross examination at the hearing. From the bench at the end of the hearing, the Commission issued a post-hearing procedural schedule, establishing the date for responses to post-hearing data requests

² May 28, 2024 Order (Ky. P.S.C. May 28, 2024) and June 6, 2024 Order (Ky. P.S.C. Jun. 6, 2024).

³ June 4, 2024 Order (Ky. P.S.C. Jun. 4, 2024) and June 17, 2024 Order (Ky. P.S.C. Jun 17, 2024).

⁴ EKPC’s Response to Staff DR1 (filed June 12, 2024); EKPC Responses to LFUCG (filed June 12, 2024); EKPC Response to Fayette Alliance Initial Requests (filed June 18, 2024); EKPC Responses to Staff DR2 (filed July 19, 2024); EKPC Responses to Fayette Alliance DR2 (filed July 19, 2024); EKPC Responses to LFUCG DR2 (filed July 19, 2024); EKPC Responses to Staff’s DR3 (filed August 16, 2024).

⁵ LFUCG and Fayette Alliance’s Motion for Hearing (filed August 16, 2024).

and setting the date for briefs to be filed. Post-hearing data requests were filed on November 1, 2024, and EKPC filed its responses to the post-hearing data requests on November 15, 2024. With the filing of briefs, the evidentiary record is complete and the case is ripe for adjudication.

III. PROPOSED PROJECTS

The Northern Bobwhite Project will be a 96 MW solar facility located on approximately 635 acres in Marion County, Kentucky. This project has previously been evaluated by the Kentucky State Board on Electric Generation and Transmission Siting (“Siting Board”) and was granted a Certificate of Construction.⁶ EKPC has obtained lease agreements from each of the affected property owners for this project to construct the solar facility.

The Bluegrass Plains Project will be a 40 MW solar facility located on approximately 388 acres in Fayette County, Kentucky. EKPC has obtained options to purchase and own the property needed to construct the facility. In addition to the CPCNs, EKPC is requesting Site Compatibility Certificates for each of the proposed projects. EKPC filed a Site Assessment Report for each of the projects that contained all of the information required by KRS 278.708.

IV. CPCN EVALUATION CRITERIA

KRS 278.020 governs a utility’s request for a CPCN, however, that statute does not contain the criteria that should be used by the Commission in its decision to grant or deny a CPCN application. Nevertheless, there is case law construing KRS 278.020(1) and providing the appropriate standard for evaluating a utility’s request for a CPCN, such as the request in this proceeding. Kentucky’s highest Court has articulated a two-part test for determining whether a

⁶ *Electronic Application of Northern Bobwhite Solar LLC for a Certificate of Construction for an Approximately 96 Megawatt Merchant Solar Electric Generating Facility in Marion County, Kentucky Pursuant to KRS 278.700 and 807 KAR 5:110*, Case 2020-00208, Order (Ky. Siting Board June 18, 2021).

CPCN is appropriate: (1) need; and, (2) absence of wasteful duplication. In *Kentucky Utilities Co.*

v. Public Service Comm'n,⁷ the Court wrote:

We think it is obvious that the establishment of convenience and necessity for a new service system or a new service facility requires first a showing of a substantial inadequacy of existing service, involving a consumer market sufficiently large to make it economically feasible for the new system or facility to be constructed and operated. Second, the inadequacy must be due either to a substantial deficiency of service facilities, beyond what could be supplied by normal improvements in the ordinary course of business; or to indifference, poor management or disregard of the rights of consumers, persisting over such a period of time as to establish an inability or unwillingness to render adequate service.⁸

The Court went on to say with regards to wasteful duplication that:

[W]e think that ‘duplication’ also embraces the meaning of an excessive investment in relation to productivity or efficiency, and an unnecessary multiplicity of physical properties, such as right of ways, poles and wires. An inadequacy of service might be such as to require construction of an additional facility to supplement an inadequate existing facility, yet the public interest would be better serviced by substituting one large facility, adequate to serve all the consumers, in place of the inadequate existing facility, rather than constructing a new small facility to supplement the existing small facility. A supplementary small facility might be constructed that would not create duplication from the standpoint of an excess of capacity, but would result in duplication from the standpoint of an excessive investment in relation to efficiency and a multiplicity of physical properties.⁹

The Court continued to evaluate wasteful duplication by stating, “[w]e are of the opinion that the Public Service Commission should have considered the question of duplication from the standpoints of excessive investment in relation to efficiency, and an unnecessary multiplicity of

⁷ *Kentucky Utilities Co. v. Pub. Serv. Comm'n*, 252 S.W. 2d 885, 890 (Ky. 1952).

⁸ *Id.*

⁹ *Id.* at 891.

physical properties.”¹⁰ Even though the avoidance of wasteful duplication is one of the primary factors for consideration of a CPCN application, *Kentucky Utilities Co.* makes clear that the Commission must not focus only on the cost of the proposal, but must also look at the application for a CPCN in relation to the service the utility is going to provide. The Court stated:

[W]e do not mean to say the *cost* (as embraced in the question of duplication) is to be given more consideration than the need for *service*. If, from the past record of an existing utility, it should appear that the utility cannot or will not provide adequate service, we think it might be proper to permit some duplication to take place, and some economic loss to be suffered so long as the duplication and resulting loss be not greatly out of proportion to the need for service.¹¹

The complete absence of wasteful duplication is not necessary, “it is sufficient that there is a reasonable basis of anticipation” that the “consumer market in the immediate foreseeable future will be sufficiently large to make it economically feasible for a proposed system or facility to be constructed....”¹² The Commission has consistently followed and cited the *Kentucky Utilities Co.* case.¹³

¹⁰ *Id.*

¹¹ *Id.* at 892. (emphasis in original)

¹² *Kentucky Utilities Co. v. Public Service Comm’n*, 59 P.U.R.3d 219, 390 S.W. 2d 168, 172 (Ky. 1965).

¹³ See *In re the Application of Big Rivers Electric Corporation for Approval of its 2012 Environmental Compliance Plan*, Case No. 2012-00063, Order, pp. 14-15 (Ky. P.S.C. Oct. 1, 2012) (“To demonstrate that that a proposed facility does not result in wasteful duplication, we have held that the applicant must demonstrate that a thorough review of all alternatives has been performed. Selection of a proposal that ultimately costs more than an alternative does not necessarily result in wasteful duplication. All relevant facts must be balanced.”) (citations omitted). See also, *In the Matter of: Electronic Application of the Harrison County Water Association, Inc. Request for a Certificate of Public Convenience and Necessity, Pursuant to KRS 278.020, or Alternatively a Declaratory Order Establishing that a Certificate of Public Convenience is Not Necessary, Pursuant to KRS 278.020 and 807 KAR 5:001 (15 and/or 19)*, Case No. 2023-00006, Order p. 2 (Ky. P.S.C. Feb. 3, 2023); *In the Matter of: Electronic Application of Delta Natural Gas Company, Inc. For a Certificate of Public Convenience and Necessity to Construct a Pipeline in Lincoln and Rockcastle Counties, Kentucky*, Case No. 2022-00295, Order, p. 2 (Ky. P.S.C. Dec. 13, 2022); *In the Matter of Electronic Application of Duke Energy Kentucky, Inc., for a Certificate of Public Convenience and Necessity to Close its East Landfill at the East Bend Generating Station and for Approval to Amend its Environmental Compliance Plan for Recovery by Environmental Surcharge Mechanism*, Case No. 2021-00290, Order, p. 3, (Ky. P.S.C. March 4, 2022); *In the Matter of: Electronic Application of Kentucky Utilities Company for a Certificate of Public Convenience and*

V. SITE COMPATIBILITY CERTIFICATE EVALUTION CRITERIA

KRS 278.216 governs the Commission's review of an application for a site compatibility certificate. KRS 278.216 states as follows:

(1) Except for a utility as defined under KRS 278.010(9) that has been granted a certificate of public convenience and necessity prior to April 15, 2002, no utility shall begin the construction of a facility for the generation of electricity capable of generating in aggregate more than ten megawatts (10MW) without having first obtained a site compatibility certificate from the commission.

(2) An application for a site compatibility certificate shall include the submission of a site assessment report as prescribed in KRS 278.708(3) and (4), except that a utility which proposes to construct a facility on a site that already contains facilities capable of generating ten megawatts (10MW) or more of electricity shall not be required to comply with setback requirements established pursuant to KRS 278.704(3). A utility may submit and the commission may accept documentation of compliance with the National Environmental Policy Act (NEPA) rather than a site assessment report.

(3) The commission may deny an application filed pursuant to, and in compliance with, this section. The commission may require reasonable mitigation of impacts disclosed in the site assessment report including planting trees, changing outside lighting, erecting noise barriers, and suppressing fugitive dust, but the commission shall, in no event, order relocation of the facility.

(4) The commission may also grant a deviation from any applicable setback requirements on a finding that the proposed facility is designed and located to meet the goals of this section and KRS 224.10-280, 278.010, 278.212, 278.214, 278.218, and 278.700 to 278.716 at a distance closer than those provided by the applicable setback requirements.

(5) Nothing contained in this section shall be construed to limit a utility's exemption provided under KRS 100.324. (6) Unless specifically stated otherwise, for the purposes of this section, "utility" has the same meaning as in KRS 278.010(3)(a) or (9).

Necessity for the Construction of Transmission Facilities in Hardin County, Kentucky, Case No. 2022-00066, Order pp. 18-19 (Ky. P.S.C. July 28, 2022).

Pursuant to this statute, the Commission requires a utility seeking a site compatibility certificate to either submit a site assessment report (“SAR”) or show that it is in compliance with the National Environmental Policy Act (“NEPA”). In this proceeding, EKPC has provided both a SAR, containing all of the required information,¹⁴ and its notice of availability of an environmental assessment issued by RUS pursuant to NEPA.¹⁵

The fact that KRS 278.216 requires a utility to file a SAR, including the information required for a merchant generator applying for a Certificate of Construction through the Siting Board, indicates that the legislature intended for the Commission to consider the factors contained within the SAR when making a determination to issue a site compatibility certificate.¹⁶ However, the fact that KRS 278.216(2) allows the utility to submit compliance with NEPA provides the Commission with alternative criteria to review when ensuring a utility has done its due diligence in regards to site selection. The Commission does not have the statutory authority to consider the best use of the land as property rights are inherently constitutional in nature,¹⁷ and the General Assembly has not abrogated the fundamental rights of landowners.

VI. ARGUMENT

A. EKPC Has Shown the Need for the Northern Bobwhite Project and the Bluegrass Plains Project

In order for a CPCN to be granted by the Commission, EKPC must show a need for the facilities. The Commission has found that the demonstration of need requires the following:

¹⁴ Application, Exhibit 3, Attachments PB-2, Parts 1-3 and PB-3.

¹⁵ EKPC’s Supplemental Response to Commission Staff’s First Request for Information dated May 30, 2024, (filed November 21, 2024).

¹⁶ *Electronic Joint Application of Kentucky Utilities Company and Louisville Gas and Electric Company for a Site Compatibility Certificate for the Construction of a Solar Facility in Mercer County, Kentucky*, Case No. 2023-00361, Order p. 23 (Ky. P.S.C. July 12, 2024).

¹⁷ KY Const. § 13 and §242; U.S. Const., amend. V and XIV.

[A] showing of a substantial inadequacy of existing service, involving a consumer market sufficiently large to make it economically feasible for the new system or facility to be constructed or operated.

[T]he inadequacy must be due either to a substantial deficiency of service facilities, beyond what could be supplied by normal improvements in the ordinary course of business; or to indifference, poor management or disregard of the rights of consumers, persisting over such a period of time as to establish an inability or unwillingness to render adequate service.¹⁸

EKPC is an electric generation and transmission cooperative with a growing demand for electricity within its service territory.¹⁹ In addition, the increasing integration of the regional electric transmission system, two consecutive winters with extremely cold temperatures, the ongoing nationwide shift towards electrification, and the unprecedented, rapid expansion of stringent federal environmental regulation affecting utilities all combine to make the ownership of different types electric generation a continuous consideration for EKPC.²⁰ On April 1, 2022, EKPC filed its most recent triennial Integrated Resource Plan (“2022 IRP”), which analyzed EKPC’s forecasted load, capacity needs, and related issues over a fifteen-year period from 2022 through 2036. The 2022 IRP indicates that EKPC’s total energy requirement will increase by 1.1% per year over this fifteen-year period.²¹ Reflecting EKPC’s status as a winter-peaking utility, the 2022 IRP indicates that EKPC’s winter net peak demand will increase 0.6% annually while its

¹⁸ *In the Matter of: Electronic Application of Kentucky Utilities Company for a Certificate of Public Convenience and Necessity for the Construction of Transmission Facilities in Hardin County, Kentucky*, Case No. 2022-00066, Order pp. 18-19 (Ky. P.S.C. July 28, 2022). (citing *Kentucky Utilities Co. v. Pub. Serv. Comm’n*, 252 S.W. 2d 885, 890 (Ky. 1952)).

¹⁹ Application, Exhibit 2, Direct Testimony of Julia J. Tucker, p. 6 (“Tucker Direct Testimony”).

²⁰ *Id.*

²¹ EKPC 2022 IRP.

summer net peak demand will increase by 0.8% annually.²² Also, the 2022 IRP predicts that EKPC's annual load factor would increase from 50% to 54%.²³

EKPC desires to keep its plans as flexible as possible to be able to adjust to market and load conditions as needed. EKPC regularly monitors its load and all economic power supply alternatives and uses these evaluations to update its long-term load forecast every two years.²⁴ EKPC also regularly evaluates its resource portfolio compared to its forecasted load profile and considers how best to hedge its energy market price exposure, and meet future load needs, while providing reliable power supply during extreme conditions.²⁵ Although, EKPC has sufficient capacity resources to meet its forecasted summer load peaks for the near future, the proposed solar projects provide additional economically and environmentally advantageous energy which improves the overall EKPC power supply portfolio.²⁶ EKPC continues to move forward with its comprehensive plan to cover the future winter period needs including the filing of Case Nos. 2024-00310 (CPCN for RICE units) and 2024-00370 (CPCNs for the Cooper combined cycle unit, the co-firing of units at Cooper and Spurlock Stations). The addition of the proposed solar projects helps EKPC move towards both its strategic and sustainability goals while also improving economic energy supply to its owner members.²⁷ The projects will help satisfy the need for EKPC's increasing energy requirements and help meet sustainability goals on an economic basis, without resulting in excessive investment or wasteful duplication.

²² *Id.*; see also, Tucker Direct Testimony pp. 6-7.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

It is well-established that both current and future need can be used to show “need” under the statute.²⁸ As the Commission recently stated:

Based on evidence of record, including study results that indicate the current transmission system could not adequately serve Ford’s demand, not to mention future demand in the area, the Commission finds that KU has demonstrated a need for additional transmission to provide service to the Ford facilities and the Glendale Megasite.²⁹

In that case, KU did not have a special contract signed with Ford prior to the CPCN being granted by the Commission.³⁰ There was no guarantee at the time the CPCN was granted that the Ford load would actually materialize or what the future load would be. Additionally, the Commission found in Case No. 2021-00275 that Big Rivers Electric Corporation (“BREC”) demonstrated a need for the transmission line and substations it proposed. The Commission found, “BREC needs these projects to continue to provide reliable electric service to its member-owner Jackson Purchase. BREC anticipates load growth in McCracken County resulting from future energy-intensive cyber currency mining facilities locating in the area.”³¹ The Commission went on to say:

Because BREC is now obligated to provide the power necessary for Jackson Purchase to serve Blockware and any other business locating to Industrial Park West, it must upgrade its transmission

²⁸ *In the Matter of: Electronic Application of Kentucky Utilities Company for a Certificate of Public Convenience and Necessity for the Construction of Transmission Facilities in Hardin County, Kentucky*, Case No. 2022-00066, Order pp. 18-19 (Ky. P.S.C. July 28, 2022); *See also, In the Matter of: Electronic Application of Duke Energy Kentucky Inc., for a Certificate of Public Convenience and Necessity to Construct a 138 kV Transmission Line and Associated Facilities in Boone County, Kentucky (Oakbrook to Aero Transmission Line Project)*, Case No. 2019-00251, Order p. 8 (Ky. P.S.C. Dec. 18, 2019). (“the Commission finds that Duke Kentucky has established sufficient evidence to demonstrate that the proposed transmission line project is needed to provide service to **anticipated load growth** in the local area....”)(emphasis added).

²⁹ *Kentucky Utilities*, Case No. 2022-00066 pp. 18-19.

³⁰ *Id.* at 17-18.

³¹ *In the Matter of: Electronic Application of Big Rivers Electric Corporation for a Certificate of Public Convenience and Necessity to Construct a 161 kV Transmission Line in McCracken County, Kentucky*, Case No. 2021-00275, Order p. 9 (Ky. P.S.C. Jan. 14, 2022).

system to accommodate the needs of its owner-member and the retail customer. BREC is not currently experiencing reliability issues currently, but it stated that the addition of Blockware’s load connected at 69 kV has the potential to result in reliability issues due to much heavier loadings on the existing facilities. BREC stated the heavy loadings will likely exceed facility ratings and may result in equipment damage and facility outages. These concerns are alleviated by the 161 kV circuit.³²

Furthermore, in Case No. 2022-00295,³³ Delta Natural Gas Company, Inc. (“Delta”) proposed to construct a transmission pipeline to service unserved sections of Rockcastle and Lincoln counties. In that proceeding, Delta “estimate[d] adding 2000 new customers, including residences, businesses, school, and manufacturing facilities.”³⁴ The Commission granted the CPCN stating, “[t]he area is unserved, is designed in part for economic development, and demand is expected from residential, commercial and industrial sectors.”³⁵ The Commission went on to say: “The Cabinet for Economic Development also identified this corridor for having significant economic potential.”³⁶

Kentucky law supports the notion that the timeline for determining “need” for CPCN purposes is not strictly based upon the immediate circumstances, but also circumstances that are reasonably foreseeable. In *Kentucky Utilities Co. v. Pub. Serv. Comm’n*,³⁷ the Court stated:

One of the alternative tests of inadequacy stated in East Kentucky is ‘a substantial deficiency of service facilities, beyond what could be supplied by normal improvements in the ordinary course of

³² *Id.*

³³ *In the Matter of: Electronic Application of Delta Natural Gas Company, Inc. For a Certificate of Public Convenience and Necessity to Construct a Pipeline in Lincoln and Rockcastle Counties, Kentucky*. Case No. 2022-00295 Order (Ky. P.S.C. December 13, 2022).

³⁴ *Id.* at 2.

³⁵ *Id.* at 3.

³⁶ *Id.*

³⁷ *Kentucky Utilities Co. v. Pub. Serv. Comm’n*, 390 S.W.2d 168, (Ky. 1965).

business’. The deficiency is not to be measured by the needs of the particular instant, but by ‘immediately foreseeable needs’. Clearly, in view of the substantial period of time required to construct and place in operation a major electric service facility, the immediately foreseeable future may embrace a number of years.³⁸ (citations omitted)

Although EKPC does not know the actual load that will materialize in the service territory of its Owner-Members, its long-term load forecast consistently shows a need for additional generation capacity and energy.³⁹ EKPC has a duty to serve its Owner-Members and its Owner-Members’ retail customers and must upgrade its system accordingly.⁴⁰ Like any prudent utility, EKPC is constantly striving to anticipate the challenges that it may face over both the short-term and long-term. EKPC has provided substantial evidence to show that additional generation is needed to serve the ongoing needs of its Owner-Members. EKPC’s 2022 IRP defined solar energy as an economic energy resource for EKPC’s system.⁴¹ The projects proposed in this proceeding will provide low-cost energy during summer peak periods, with limited production during winter peak load periods.⁴² EKPC’s portfolio will be improved with the addition of solar energy to diversity its mix of generation assets.⁴³

The two solar projects, Northern Bobwhite and Bluegrass Plains, are integral to EKPC’s economic development and sustainability goals. These projects are designed to diversify EKPC’s generation portfolio, reducing reliance on market purchases and increasing the share of renewable

³⁸ *Id.* at 170.

³⁹ Tucker Direct Testimony.

⁴⁰ KRS 278.030; KRS 278.260.

⁴¹ EKPC 2022 IRP; *See also*, Tucker Direct Testimony, pp. 6-8.

⁴² *Id.*

⁴³ *Id.*

energy. This diversification is crucial for EKPC to meet its Strategic and Sustainability Plans, which aim to provide sustainable, competitively-priced energy. By adding solar energy to its mix, EKPC can offer more renewable energy options to its Owner-Members and their end-use retail members. This strategic move not only aligns with EKPC's long-term goals but also positions the cooperative to better handle future regulatory requirements and market demands for green energy solutions.

From an economic development perspective, the solar projects are expected to provide lasting economic value to EKPC and its Owner-Members. The internal and independent analyses confirm that these projects are financially sound and prudent investments. They are projected to add value to EKPC's system by providing competitively-priced energy during peak summer periods and by reducing the need for more expensive energy sources. Northern Bobwhite is expected to offset \$11.9 million in fuel and/or market purchase costs annually, while Bluegrass Plains is expected to offset \$4.6 million, or a total of \$16.5 million annually which would otherwise be passed to the end-use consumer through the FAC. This cost-effectiveness is crucial for maintaining competitive energy prices for EKPC's Owner-Members, which can attract and retain businesses in the region. Additionally, the projects will create jobs during the construction and operational phases, further contributing to local economic growth.

The solar projects support EKPC's sustainability goals by increasing access to renewable energy and providing experience in managing intermittent power sources. The projects are designed to meet the growing demand for green energy from end-use retail members, including large industrial and commercial clients. This not only helps EKPC fulfill its sustainability commitments but also enhances its reputation as a forward-thinking and environmentally responsible energy provider. Overall, the Northern Bobwhite and Bluegrass Plains solar projects

are key components of EKPC's strategy to promote economic development and achieve its sustainability objectives.

The proposed solar projects will offer renewable energy resources to assist in economic development opportunities for the state of Kentucky. The end-use members of EKPC's Owner-Members are increasingly requesting green energy supply and the addition of these resources will place EKPC in a strategically desirable position to have green energy readily available when it is requested, thus it is critically important in economic development efforts.

B. EKPC Has Shown the Construction of the Northern Bobwhite and Bluegrass Plains Solar Projects Do Not Result in Wasteful Duplication

1. Wasteful Duplication Definition

EKPC also must show that construction of the two solar projects will not result in wasteful duplication. “Wasteful duplication” is defined as “an excess of capacity over need” and “an excessive investment in relation to productivity or efficiency, and an unnecessary multiplicity of physical properties.”⁴⁴ In order to demonstrate that the proposed solar facilities do not result in wasteful duplication, the Commission has held that the applicant must demonstrate that a thorough review of all reasonable alternatives has been performed.⁴⁵ The Commission has also found that even if a proposed project ultimately costs more than an alternative, this does not necessarily result in wasteful duplication.⁴⁶ Pursuant to KRS 278.030(2), EKPC has an obligation to furnish adequate, efficient and reliable service to its Owner-Members.

⁴⁴ *Kentucky Utilities*, Case No. 2022-00066, pp. 14-15 citing *Kentucky Utilities Co.* at 890.

⁴⁵ *Kentucky Utilities*, Case No. 2022-00066, p. 15, citing *Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for the Construction of Transmission Facilities in Jefferson, Bullitt, Meade, and Hardin Counties, Kentucky*, Case No. 2005-00142, *Order*. (Ky. P.S.C. Sept. 8, 2005).

⁴⁶ *Kentucky Utilities*, Case No. 2022-00066, p. 15, citing *See Kentucky Utilities Co. v. Pub. Serv. Comm'n*, 390 S.W.2d 168, 175 (Ky. 1965). (See also Case No. 2005-00089, *The Application of East Kentucky Power Cooperative, Inc. for*

2. The Addition of the Proposed Solar Facilities in Marion County and Fayette County Do Not Result in Wasteful Duplication

The development of both proposed solar projects is consistent with EKPC's most recent IRP (2022) and its Sustainability Plan.⁴⁷ These projects will supply solar power, which is planned as part of EKPC's over-all commitment to build a resilient system and is necessary to provide adequate, efficient and reasonable service.⁴⁸ These projects are not unreasonably or unnecessarily duplicative and will serve a specific need in EKPC's system.⁴⁹ The Northern Bobwhite Project serves the specific requirement to provide an additional renewable resource to EKPC's Owner-Members and ultimately the Owner-Members' end-use members.⁵⁰ The Bluegrass Plains Project serves this same specific purpose.⁵¹ Both of the projects will be constructed in close proximity to an EKPC substation and can be easily connected without the need for long transmission line spans reducing the footprint of the projects and eliminating the potential for unnecessary cluttering of the landscape.⁵²

a Certificate of Public Convenience and Necessity to Construct a 138 kV Electric Transmission Line in Rowan County, Kentucky (Ky. P.S.C. Aug. 19, 2005)).

⁴⁷ EKPC 2022 IRP; *See also*, Tucker Direct Testimony pp. 6-8.

⁴⁸ *Id.*

⁴⁹ Tucker Direct Testimony, pp. 7-8, 18-20.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² Application, Exhibit 3, Direct Testimony of Patrick Bischoff, Attachments PB-1 and PB2; *See also*, HVT 2:27:26-2:29:26, 3:26:30-3:36:38.

Both of these projects were already included in PJM’s queue,⁵³ with the Northern Bobwhite Project being fully approved and has an executed service agreement.⁵⁴ The Bluegrass Plains Project has also been fully approved and has an executed service agreement.⁵⁵ In addition to the PJM approval, EKPC has received the notice of availability of the environmental assessment approval from RUS pursuant to the NEPA. These notices of availability of the environmental approvals were filed into the record of this proceeding as supplements to the Commission Staff’s First Request for Information on November 21, 2024.⁵⁶

3. EKPC Thoroughly Reviewed All Reasonable Alternatives

EKPC provided evidence throughout the proceeding on the alternatives it reviewed and analyzed for additional renewable generation. EKPC conducted multiple Requests for Proposals (“RFP”), beginning in August 2020.⁵⁷ EKPC was willing to consider proposals to develop/build a solar array as well as offers for a power purchase agreement (“PPA”).⁵⁸ In total EKPC issued RFPs on three separate dates for renewable energy, August 2020, fall of 2021 and July 2022.⁵⁹

⁵³ HVT 2:12:42-2:18:30; EKPC joined PJM on June 1, 2013, which has significantly beneficially impacted its operations and improved its ability to economically serve its native load. EKPC realized significant savings benefits from operating within PJM from June 1, 2013 through May 31, 2023, as described in its annual reports to the Commission. (See post case correspondence annual filings for Case No. 2012-00169, Application of East Kentucky Power Cooperative, Inc. to Transfer Functional Control of Certain Transmission Facilities to PJM Interconnection, LLC.) PJM begins the capacity delivery year (“DY”) on June 1st and ends the DY on May 31st, therefore the annual report and related analysis reflects the DY beginning and ending dates. (Tucker Direct Testimony, p. 7.)

⁵⁴ HVT 2:12:42-2:23:27, discussing the process of evaluating projects and the requirement that those projects be in the PJM queue.

⁵⁵ EKPC’s Supplemental Response to LFUCG’s Request for Information dated July 3, 2024, Item 8a, (filed Oct. 28, 2024).

⁵⁶ EKPC’s Supplemental Response to Commission Staff’s First Request for Information dated May 30, 2024, (filed Nov. 21, 2024).

⁵⁷ Tucker Direct Testimony, pp. 12-15; HVT 11:36:23-11:44:45.

⁵⁸ Tucker Direct Testimony, p. 15.

⁵⁹ *Id.* at 12-15.

EKPC entered into discussions as a result of the first two RFPs, but a binding agreement was never developed for multiple reasons.⁶⁰ Shortly after the July 2022 RFP was issued, the Inflation Reduction Act (“IRA”) was passed into law and contained a host of changes to the domestic renewable generation subsidy landscape.⁶¹ A part of the IRA included the ability for cooperatives, such as EKPC, to realize the benefits comparable to tax incentives that were not previously available to them because of their non-taxable status.⁶²

After the IRA became law, and due to the issues EKPC had with securing a viable PPA during the first two RFP processes, EKPC launched an initiative to work toward conservative utility scale self-build solar costs for three different sized projects.⁶³ A more detailed discussion on each of the RFPs issued, the results of those RFPs and EKPC’s decision for a self-build option are outlined in the testimony of Julia J. Tucker, both the pre-filed written testimony⁶⁴ and her testimony at the October 29, 2024 hearing.⁶⁵ There has been an abundance of evidence presented in this proceeding to show that these projects will not result in wasteful duplication.

4. Building the Proposed Solar Facilities is the Most Prudent Alternative and the same Economic Opportunity Will Not Exist if the Projects Are Not Approved

EKPC has proposed the two solar projects in order to aid in fulfilling EKPC’s Strategic and Sustainability Plans by diversifying EKPC’s generation portfolio to become less reliant on carbon-intensive generation while adding to its renewable energy offerings to its Owner-Members

⁶⁰ Tucker Direct Testimony; HVT 11:35:45-11:38:11.

⁶¹ Tucker Direct Testimony, HVT 11:35:45-11:43:10, discussing whole process; 11:38:18 discussing IRA specifically.

⁶² *See, Id.*

⁶³ Tucker Direct Testimony, p. 14; HVT 11:35:45-11:43:10.

⁶⁴ Tucker Direct Testimony, pp. 12-18.

⁶⁵ HVT 11:26:23-11:50:12.

and the Owner-Members' customers.⁶⁶ The projects also help to keep EKPC well-positioned to comply with existing, and forthcoming environmental regulations, such as the Green House Gas Rule ("GHG Rule") and other mandates.⁶⁷ These projects will also give EKPC the opportunity to gain more experience in working with intermittent power resources while at the same time increasing access to renewable energy resources for those customers in EKPC's system who contract to specifically be served by renewable energy.⁶⁸ The projects are also economically viable due to the changes that were enacted with the IRA.⁶⁹ One portion of the IRA is an elective pay Investment Tax Credit ("ITC"), which is expected to provide cost reimbursement for 40% of the Northern Bobwhite Solar Project and the Bluegrass Plains Solar Project.⁷⁰ In addition to the ITC, EKPC also is in the final stages to receive additional grants and low interest financing through the Rural Utilities Service's New ERA program.⁷¹ It has been announced that EKPC is on track to receive the equivalent of \$1.4 billion in special financing as a result of the New ERA funding.⁷² However, in order to receive the New ERA funding, the projects have to be in operation by September 30, 2031.⁷³ As described by EKPC witnesses Tucker and Bischoff, EKPC identified the benefits available when the IRA became an option and evaluated the projects based upon a

⁶⁶ Tucker Direct Testimony, Attachment JJT-2.

⁶⁷ Tucker Direct Testimony, pp. 8-11; HVT 10:55:58-10:58:56.

⁶⁸ Tucker Direct Testimony pp. 21-22.

⁶⁹ HVT 11:38-18-11:43:10.

⁷⁰ EKPC's Responses to Commission Staff's First Request for Information, Item 1-23; EKPC's Responses to LFUCG's First Request for Information Item 1-39; HVT 2:44:20-2:44:31, 2:45:00-2:46:00.

⁷¹ EKPC's Supplemental Response to Commission Staff's First Request for Information dated May 30, 2024, (filed Nov. 21, 2024).

⁷² HVT 1:03:35-1:12:15.

⁷³ HVT 2:22:46-2:23:27.

multiple filters, including timing, in order to optimize the economic benefit available.⁷⁴ If the projects are not in operation by the federal deadline, the funding will be lost.⁷⁵ The opportunity for this level of federal funding is unique and fleeting. Even though these projects are economically viable without the inclusion of the New ERA funding, it would benefit EKPC, its Owner-Members and, ultimately, the end-use members to take advantage of this opportunity. Time is of the essence to receive approval, procure the materials needed for the projects and complete the construction. The opportunity to receive this level of funding will only exist during this specific window of time. Additionally, as stated prior, both projects are already in the PJM queue process.⁷⁶ If the Commission does not approve these projects as filed, EKPC will lose queue positioning and will not make the operational date required in the New ERA funding.

C. EKPC Satisfied its Burden of Proof for the Issuance of Site Compatibility Certificates for Both Projects

1. Northern Bobwhite Solar Project

EKPC provided a SAR that contained all of the information required for the issuance of a Site Compatibility Certificate for each of the proposed projects. The Northern Bobwhite Solar Project was originally being developed by EDF Renewables.⁷⁷ EDF Renewables had already completed the process with the Siting Board for approval of the project.⁷⁸ During that process,

⁷⁴ Tucker Direct Testimony, pp. 14-15; Bischoff Direct Testimony, p. 5; HVT 11:35:45-11:43:10; 2:12:42-2:17:33; 2:20:52-2:23:45.

⁷⁵ Bischoff Direct Testimony, pp. 6-10; Attachment PB-2, Parts 1-3.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Electronic Application of Northern Bobwhite Solar LLC for a Certificate of Construction for an Approximate 96 Megawatt Merchant Solar Generating Facility in Marion County, Kentucky Pursuant to KRS 278.700 and 807 KAR 5:110*, Case No. 2020-00208, Order, (Ky. Siting Board, Sept. 27, 2021).

EDF Renewables submitted a SAR that was acceptable to the Siting Board.⁷⁹ EKPC developed a revised SAR to reflect the new scope of the project.⁸⁰ The EKPC SAR details the various aspects of the project, including the proposed site development plan, compatibility with scenic surroundings, property value impacts, anticipated noise levels, impact on road and railways, and multiple mitigation measures.⁸¹ The proposed site development plan includes a comprehensive description of the facility layout, surrounding land uses, legal boundaries, access control, facility buildings, utilities, and noise evaluation.⁸² The plan details setbacks that will be utilized and addresses noise concerns through detailed analysis.⁸³ The project's compatibility with scenic surroundings is evaluated, highlighting its passive nature and minimal visual impact compared to alternative land uses.⁸⁴ It also contains multiple proposed mitigation measures such as setbacks, vegetative screening, and visual buffering are proposed to mitigate any potential visual impacts on neighboring properties and roadways.⁸⁵ In addition, the property value assessment indicated that there would be no negative impacts on adjoining properties.⁸⁶ Additional information is also provided in the SAR to show that the project is expected to operate within acceptable noise levels.⁸⁷ In other words, the SAR demonstrates that the site is compatible for the use of the land

⁷⁹ Bischoff Direct Testimony, p. 10.

⁸⁰ Bischoff Direct Testimony, Attachment PB-2.

⁸¹ *Id.*

⁸² *Id.*, at Appendix A.

⁸³ *Id.*

⁸⁴ Bischoff Direct Testimony, Attachment PB-2, p. 6.

⁸⁵ *Id.* at 10.

⁸⁶ Bischoff Direct Testimony, Attachment PB-2, Part 1, Appendix A.

⁸⁷ Bischoff Direct Testimony, Attachment PB-2, Part 3, Appendix D.

as a solar electric generating facility. The SAR showed compliance with regulatory requirements for a solar facility and incorporates reasonable mitigation measures to minimize any potential adverse effects on surrounding areas. In addition, EKPC has stated it would comply with all of the mitigation measures contained in the Siting Board's Order in Case No. 2020-00208 related to the Northern Bobwhite Solar Project, except for a few mitigation measures.⁸⁸ In addition to the SAR, EKPC has provided proof of the notice of availability of the environmental assessment from RUS for compliance with NEPA.⁸⁹

2. Bluegrass Plains Solar Project

Unlike the Northern Bobwhite Solar Project, the Bluegrass Plains Solar Project has not been before the Siting Board. EKPC engaged Tetra Tech to develop a SAR for this project.⁹⁰ The Bluegrass Plains SAR addresses and provides documentation, including all necessary studies, to support the proposed site development plan for the solar project, compatibility with scenic surroundings, property value impacts, anticipated noise levels, effects on road and railways, and discusses mitigation measures.⁹¹ The SAR details the surrounding land use, which is a mix of agricultural and residential properties.⁹² It also includes measures to minimize visual and environmental impacts.⁹³ The additional comprehensive studies included in the SAR, property

⁸⁸ EKPC's Responses to Commission Staff's Post-Hearing Request for Information Item 3. (filed Nov. 15, 2024)

⁸⁹ EKPC's Supplemental Response to Commission Staff's First Request for Information dated May 30, 2024, (filed November 21, 2024).

⁹⁰ Bischoff Direct Testimony, Attachment PB-3.

⁹¹ *Id.*

⁹² *Id.* at 5.

⁹³ *Id.* at 9.

value impact study,⁹⁴ acoustic study,⁹⁵ traffic and dust study,⁹⁶ concluded that the Bluegrass Plains Project is not expected to have significant adverse effects on property values, noise levels, traffic patterns, or air quality in the surrounding area.⁹⁷ Specifically, EKPC provided a Property Value Impact Study developed by Kirkland Appraisals.⁹⁸ This study found that the Bluegrass Plains Project will not have a negative impact on property values.⁹⁹ The Siting Board has reviewed similar studies by Kirkland Appraisals and has agreed with the conclusion of the report: solar facilities do not have a negative effect on nearby property values.¹⁰⁰ EKPC has also provided

⁹⁴ Bischoff Direct Testimony, Attachment PB-3, Appendix B.

⁹⁵ Bischoff Direct Testimony, Attachment PB-3, Appendix D.

⁹⁶ Bischoff Direct Testimony, Attachment PB-3, Appendix E.

⁹⁷ Bischoff Direct Testimony, Attachment PB-3, pp. 4-9.

⁹⁸ Bischoff Direct Testimony, Attachment PB-3, Appendix B.

⁹⁹ *Id.* at 2.

¹⁰⁰ *Electronic Application of Horus Kentucky 1 LLC for a Certificate of Construction for an Approximately 125 Megawatt Merchant Electric Solar Generating Facility in Christian County, Kentucky Pursuant to KRS 278.700 and 807 KAR 5:110*, March 8, 2024 Case No. 2023-00246, Order p. 12 (Ky. Siting Board March 8, 2024); *Electronic Application of Horus Kentucky 1 LLC for a Certificate of Construction for an Approximately 69.3 Megawatt Merchant Electric Solar Generating Facility in Simpson County, Kentucky Pursuant to KRS 278.700 and 807 KAR 5:110*, Case No. 2020-00417, December 12, 2021 Order (Ky. Siting Board Dec. 12, 2021). *Electronic Application of Turkey Creek Solar, LLC for a Construction Certificate to Construct an Approximately 50 Megawatt Merchant Solar Electric Generating Facility in Garrard County, Kentucky Pursuant to KRS 278.700 and 807 KAR 5:110*, Case No. 2020-00040, September 23, 2020 Order (Ky. Siting Board Sept. 23, 2020). *Electronic Application of Glover Creek Solar, LLC for a Construction Certificate to Construct an Approximately 55 Megawatt Merchant Solar Electric Generating Facility in Metcalfe County, Kentucky Pursuant to KRS 278.700 and 807 KAR 5:100*, Case No. 2020-00043, September 23, 2020 Order (Ky. Siting Board Sept. 23, 2020); *Electronic Application of Horseshoe Bend Solar, LLC for a Certificate of Construction for an Approximately 60 Megawatt Merchant Electric Solar Generating Facility in Green County, Kentucky Pursuant to KRS 278.700 and 807 KAR 5:110*, Case No. 2020-00190, June 11, 2021 Order (Ky. Siting Board June 11, 2021); *Electronic Application of Mt Olive Cree Solar, LLC Certificate of Construction for an Approximately 60 Megawatt Merchant Electric Solar Generating Facility in Russell County, Kentucky Pursuant to KRS 278.700 and 807 KAR 5:110*, Case No. 2020-00226, November 3, 2021 Order (Ky. Siting Board Nov. 3, 2021); *Electronic Application of Unbridled Solar, LLC for a Certificate of Construction for an Approximately 160 Megawatt Merchant Electric Solar Generating Facility and Nonregulated Transmission Line in Henderson and Webster Counties, Kentucky*, Case No. 2020-00242, June 4, 2021 Order (Ky. Siting Board June 4, 2021); *Electronic Application of Martin County Solar Project, LLC for a Certificate of Construction for an Approximately 200 Megawatt Merchant Electric Solar Generating Facility in Martin County, Kentucky Pursuant to KRS 278.700 and 807 KAR 5:110*, Case No. 2021-00029, November 15, 2021 Order (Ky. Siting Board Nov. 15, 2021); *Electronic Application of Sebree Solar, LLC for a Certificate of Construction for an Approximately 250 Megawatt Merchant Electric Solar Generating Facility and Approximately 4.5 Mile Nonregulated Transmission Line in Henderson County and Webster*

evidence to show that it has received the notice of availability of an environmental assessment from RUS for compliance with NEPA.¹⁰¹ In addition, EKPC has stated it would also comply with all of the mitigation measures contained in the Siting Board’s Order in Case No. 2020-00208 related to the Northern Bobwhite Solar Project, except for a few mitigation measures., for the Bluegrass Plains Project¹⁰² EKPC has provided a complete record supported by sworn testimony from qualified professionals, and expert evidence for issuance of a site compatibility certificate for the Bluegrass Plains Solar Project.

D. LFUCG and Fayette Alliance Offered No Evidence in Support of Their Positions

LFUCG and FA did not provide any evidence in this proceeding. None. Each intervenor asked two rounds of written discovery and cross-examined EKPC’s witnesses at the hearing in this matter. The position of both LFUCG and FA can best be described as “solar is great, just not here.” This myopic perspective has not been supported by qualified evidence or testimony for a fairly simple reason – it is unreasonable. Questions were asked regarding the number of customers that EKPC’s Owner-Members serve in Fayette County and how many customers in Fayette County would receive the solar energy produced at the facility.¹⁰³ However, if only the customers located in the county where a generation asset is built were to be the ones to benefit from that generation,

County, Kentucky Pursuant to KRS 278.700 and 807 KAR 5:110, Case No. 2021-00072, February 9, 2022 Order (Ky. Siting Board Feb. 9, 2022); Electronic Application of Bluebird Solar, LLC for a Certificate of Construction for an Approximately 100 Megawatt Merchant Electric Solar Generating Facility in Harrison County, Kentucky Pursuant to KRS 278.700 and 807 KAR 5:110, Case No. 2021-00141, August 3, 2022 Order (Ky. Siting Board Aug. 3, 2022); Electronic Application of Blue Moon Energy, LLC for a Certificate of Construction for an Approximately 70 Megawatt Merchant Electric Solar Facility and Nonregulated Transmission Line in Harrison County, Kentucky Pursuant to KRS 278.700 and 807 KAR 5:110, Case No. 2021-00414, August 3, 2022 Order (Ky. Siting Board Aug. 3, 2022).

¹⁰¹ EKPC’s Supplemental Response to Commission Staff’s First Request for Information dated May 30, 2024, (filed Nov. 21, 2024).

¹⁰² EKPC’s Responses to Commission Staff’s Post-Hearing Request for Information Item 3. (filed Nov. 15, 2024).

¹⁰³ HVT 10:37:21-10:40:32.

then Fayette County would be without electricity altogether. The very premise of the intervenors' inquiry demonstrates unawareness of how the electric grid operates.

Likewise, LFUCG and FA asked questions regarding the soil quality of the property associated with the Bluegrass Plains Solar Project,¹⁰⁴ however the record explains how the processes employed to install the proposed facilities will not affect the quality of the soil.¹⁰⁵ As reiterated by EKPC witness, Patrick Bischoff, the soil's moisture retention has been shown to improve,¹⁰⁶ and the uncontroverted evidence is that native grasses have grown better, even improving soil health after decommissioning.¹⁰⁷ Many comments were filed into the record of this proceeding claiming special qualities for agricultural soil or the bluegrass farmland soil. However, EKPC testified regarding the limited amount of disturbance to the soil with the type of installation expected to be able to be utilized in this project.¹⁰⁸ In addition, there is no evidence to support any claims that the soil will be contaminated with the solar facility. None. EKPC plans to leave the property in at least the same shape it was prior to the project, but probably better.¹⁰⁹ EKPC has also reduced the initial footprint of the project from the previous developer's design.¹¹⁰ EKPC is not taking prime farmland out of production, and especially not land currently being used for thoroughbreds.¹¹¹ Additionally, KRS 278.216 does not permit the Commission to consider the

¹⁰⁴ HVT 2:09:20-2:15:55; 3:03:48-3:08:07.

¹⁰⁵ HVT 2:12:30-2:13:45, 2:28:35-2:39:10, 3:37:16-3:39:32.

¹⁰⁶ HVT 2:09:20-2:11:58.

¹⁰⁷ HVT 2:09:20-2:15:55.

¹⁰⁸ HVT 3:03:48-3:08:07.

¹⁰⁹ *Id.*; HVT 3:37:16-3:39:32.

¹¹⁰ HVT 2:25:57-2:28:53.

¹¹¹ HVT 4:17:29-4:18:03.

best use of a particular piece of land.¹¹² Nor does KRS 278.216 allow the Commission to select a different location for the project, as LFUCG infers should be done.¹¹³ KRS 278.216 requires the Commission to only consider if the requirements of KRS 278.708 have been met.¹¹⁴ The Bluegrass Solar Plains project clearly meets the statutory goals and shows the site is compatible for the use of a solar electric generating facility. EKPC will mitigate any impacts to the viewshed by using vegetation buffers and positioning the solar panels so that the hill located on the property will help to mitigate the visual impact of the solar facility.¹¹⁵

EKPC has a willing seller for the property. The landowner has the fundamental right under the Constitutions of the United States and the Commonwealth of Kentucky to use and dispose of their property as they see fit, as long as it does not significantly harm any others.¹¹⁶ The Fifth Amendment of the U.S. Constitution grants a person the right to use that property for reasonable economic purposes. The development of a solar facility that will provide renewable energy to EKPC's Owner-Members and their end-use members that could also assist in economic development in the Commonwealth and the counties the facilities are located, are reasonable economic purposes. In addition, EKPC has provided significant evidence in the record of this proceeding to show that the solar facility will not harm the land, will not affect the surrounding property values and will be built in a way to have the least amount of impact on the viewshed.¹¹⁷

¹¹² HVT 3:41:20-3:41:40.

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ HVT 4:15:30-4:16:02, 4:19:45-4:21:52.

¹¹⁶ KY Const. § 13 and §242; U.S. Const., amend. V and XIV.

¹¹⁷ Bischoff Direct Testimony, Attachments PB-2 and PB-3.

LFUCG made a motion at the hearing to hold this case in abeyance until LFUCG could determine what its position was regarding solar.¹¹⁸ LFUCG has known of this application prior to its filing. EKPC personnel met with LFUCG personnel, including the Mayor's chief of staff prior to filing this application.¹¹⁹ LFUCG's comments at the hearing and the subject of its November 15, 2024 Motion to Supplement, which was a press release, stating that LFUCG is studying solar at its Haley Pike landfill site, are irrelevant to the Commission's consideration of EKPC's Application in this case.¹²⁰ The fact that the city is studying solar at a municipal landfill, is not evidence to rely on this proceeding.¹²¹ Moreover, the Commission denied LFUCG's Motion to Supplement, stating:

Having reviewed the motion and record in this case, the Commission finds that LFUCG's motion to supplement the record should be denied for the following reasons. LFUCG had the opportunity to contribute to the record according to the procedural schedule established by order but did not file any testimony in the record.... Although LFUCG argued that granting its motion would not unduly prejudice EKPC, the Commission disagrees. LFUCG requested a hearing and was permitted to cross-examine EKPC's witnesses. If the Commission were to permit admission of additional evidence under these particular circumstances, it would be depriving EKPC's reciprocal due process right to challenge LFUCG's evidence.¹²²

In addition, LFUCG issued a press release regarding its intervention in this matter stating "Under state law, utilities are exempt from local zoning regulations. The only opportunity the city

¹¹⁸ HVT 9:38:46-9:46:23.

¹¹⁹ HVT 3:18:30-3:21:06.

¹²⁰ EKPC's Response to LFUCG's Motion to Supplement, (filed, Nov. 21, 2024).

¹²¹ *Id.*

¹²² Order, pp.3-4, (Ky. P.S.C., Nov. 25, 2024).

has to weigh in on this proposal before the Commission is by intervening.”¹²³ It has participated in the process but voluntarily chose not to offer a single iota of evidence to support a position contrary to that taken by EKPC in this proceeding.

E. EKPC Has Met Its Burden of Proof on the Assumption of the Lease Agreements

EKPC has proposed in this proceeding to assume approximately fourteen leases for the land the Northern Bobwhite Solar Project will be built on.¹²⁴ The leases are currently held by Northern Bobwhite Solar, LLC, the original developer of the project.¹²⁵ EKPC believes that assuming the existing lease obligations which are already established and were negotiated by the original developer is preferred by the property owners.¹²⁶ EKPC provided all of the necessary exhibits for the financing approval associated with the lease agreements and there has been no opposition to the financing. Assuming the leases will not have a material effect on EKPC’s financial position¹²⁷ and the assumption of these leases should be approved.

VII. CONCLUSION

EKPC has met its burden to show that the solar projects are needed, will not result in wasteful duplication and that a site compatibility certificate should be granted for both of these projects. There are many benefits that will be derived from the projects including adding generation assets that will help to diversify EKPC’s generation portfolio, assist its Owner-Members in offering renewable energy for their end-use customers, aid in economic development and provide reliable energy at a competitive price. In addition, EKPC has met its burden of proof

¹²³ EKPC’s Response to LFUCG’s First Request for Information, Item 1-71, (filed June 12, 2024).

¹²⁴ Application Exhibit 4, Direct Testimony of Thomas Stachnik p. 5. (“Stachnik Direct Testimony”).

¹²⁵ *Id.*

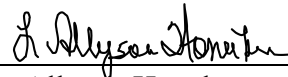
¹²⁶ *Id.*

¹²⁷ Stachnik Direct Testimony p. 5.

regarding the assumption of the lease agreements for the Northern Bobwhite project. There has been no opposition to the Northern Bobwhite project, and the opposition to the Bluegrass Plains project have not offered any evidence in this proceeding to support any of their arguments. EKPC has provided substantial evidence from industry experts to more than meet its burden for the approval of all necessary items to construct both of these solar projects.

WHEREFORE, EKPC requests the Commission to issue CPCNs and site compatibility certificates for the construction of the Northern Bobwhite Solar Project and the Bluegrass Plains Solar Project, approval of the assumption of the lease agreements for the Northern Bobwhite Solar Project, and any other relief that EKPC may be entitled.

Respectfully submitted,

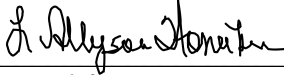


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CERTIFICATE OF SERVICE

This is to certify that the foregoing electronic filing was transmitted to the Commission on November 27, 2024 and that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding. Pursuant to the Commission's July 22, 2021 Order in Case No. 2020-00085 no paper copies of this filing will be filed.



Counsel for East Kentucky Power Cooperative, Inc.