

**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**

RESPONSE BRIEF OF EAST KENTUCKY POWER COOPERATIVE INC.

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 response brief and hereby tenders its response to the briefs filed by Fayette Alliance, Inc (“Fayette Alliance”) and Lexington-Fayette Urban County Government (“LFUCG”) on November 27, 2024, 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”). EKPC filed its post hearing brief on November 27, 2024. Fayette Alliance and LFUCG (collectively “the Intervenors”) also filed post-hearing briefs in this matter on November 27, 2024, respectively.

II. ARGUMENTS

A. The Evidence of Record Shows the Need for Both of the Proposed Projects.

The Intervenors’ post-hearing briefs both argued that EKPC has not met its burden to show the need for the Bluegrass Plains Project.¹ As stated in EKPC’s post-hearing brief, EKPC is an electric generation and transmission cooperative with a growing demand for electricity within its service territory.² 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.³ The Intervenors both argue that EKPC is a winter peaking utility and does not have the need for solar facilities that produce more energy in the summer months. What the Intervenors fail to acknowledge is that, 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.⁴ The proposed solar projects

¹ Fayette Alliance’s Post Hearing Brief pp. 4-5 (filed Nov. 27, 2024); and LFUCG’s Post Hearing Brief pp. 8-12 (filed Nov. 27, 2024).

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

³ *Id.*

⁴ *Id.*

will give EKPC the ability to hedge and be less reliant on market purchases of energy. In addition, the proposed solar projects will help to diversify EKPC's generation portfolio, increase its share of renewable energy and allow EKPC to move forward in meeting its Strategic and Sustainability Plan goals.

The only evidence in the entire record of this proceeding is EKPC's evidence which shows the need for both of the proposed solar projects. The Intervenor has not placed one piece of evidence into the record of this proceeding. There is absolutely no evidence that contradicts EKPC's need for the proposed projects. As the record supports, both of the proposed projects are necessary to provide safe and reliable service to EKPC's sixteen (16) Owner-Member distribution cooperatives ("Owner-Members"), provide for EKPC's growing load, including the increasing customer demand for renewable energy resources and renewable energy credits ("RECs"), and to assist EKPC in meeting its Strategic and Sustainability Plan goals.

EKPC's long-term load forecasts have consistently shown a need for additional generation capacity and energy.⁵ EKPC has a duty to serve its Owner-Members and its Owner-Members' retail customers and must upgrade and expand its system accordingly.⁶ EKPC has provided substantial evidence – that has not been contradicted – to show that additional energy is needed to serve the ongoing needs of its Owner-Members. Solar energy has been a part of EKPC's overall generation plan for several years. EKPC's 2022 IRP defined solar energy as an economic energy resource for EKPC's system.⁷ EKPC attempted to negotiate power purchase agreements ("PPA") for solar energy for several years. Multiple requests for proposal ("RFP") were issued for solar

⁵ Application, Exhibit 2, Direct Testimony of Julia J. Tucker, ("Tucker Direct Testimony").

⁶ KRS 278.030; KRS 278.260.

⁷ *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"); *See also*, Tucker Direct Testimony, pp. 6-8.

energy.⁸ None of these RFPs resulted in an executed PPA.⁹ The projects proposed in this proceeding will provide low-cost energy during summer peak periods, with limited production during winter peak load periods, but will allow EKPC to hedge its market purchases in the winter daytime load periods.¹⁰ The proposed solar facilities will generate energy and reduce EKPC's reliance on market energy purchases.¹¹ EKPC's portfolio will be improved with the addition of solar energy to diversify its mix of generation assets.¹² While the proposed solar facilities do not significantly contribute to EKPC's capacity due to PJM's current rules, they do generate energy when the sun is shining which is self-evidently useful and valuable. Solar power does not contribute to capacity in the traditional sense because its output is intermittent and dependent on sunlight, meaning it is not dispatchable over system peaks.¹³ However, solar does generate energy, meaning it contributes to the total electricity produced over time. This energy is valuable in reducing carbon intensity, particularly during peak sunlight hours when solar panels produce their maximum output.¹⁴ There is a need for the projects and the administrative record fully supports this conclusion.

⁸ Tucker Direct Testimony, pp. 12-18; and October 29, 2024 Hearing Video Transcript ("HVT") 11:36:23-11:50:12.

⁹ *Id.*

¹⁰ *Id.*

¹¹ HVT 11:04:24-11:04:45; HVT 11:10:52-11:13:05.

¹² *Id.*

¹³ HVT 11:04:16-11:04:45.

¹⁴ *Id.*; Tucker Direct Testimony, pp. 7-11.

B. Fayette Alliance’s Argument that the PJM Queue is Irrelevant is Misplaced and Ignores the Evidence of the Impact of Timing at Issue in this Matter

Fayette Alliance argues that EKPC’s place in the PJM queue is “irrelevant” and EKPC could obtain the benefits of the IRA at a later date.¹⁵ This demonstrates a fundamental misunderstanding of the realities of how the power market operates and the significant constraints that utilities face when trying to develop new resources under tight, federally mandated deadlines. The testimony of EKPC’s witnesses explains the multiple requirements and considerations, one of which is the PJM queue, that have to be coordinated and aligned in order for a project to proceed and qualify for the IRA and New ERA funding. Fayette Alliance’s argument is flat wrong. The evidence in this proceeding shows that both the IRA funding and the New ERA funding are at considerable risk if EKPC were to have to start over with a project that does not currently have a place in the PJM queue.¹⁶ In addition to the PJM queue, the process to prepare all the documentation needed to seek Commission approval of a CPCN, the time it takes to receive a decision on a CPCN application and the delays in material procurement contribute to the delays that could jeopardize EKPC’s ability to receive the IRA funding, and especially the New ERA funding. It is misleading for Fayette Alliance to claim that EKPC could possibly, potentially benefit at a later date from deferring its participation in a program for which it has already been selected as an awardee based on absolutely no evidence in the record of this proceeding to support that claim. While Fayette Alliance claims that “the facts surrounding the current ‘need’ for the proposed solar array in Fayette County are murky at best,” both Fayette Alliance and LFUCG

¹⁵ Fayette Alliance’s Post Hearing Brief pp. 5-6 (filed Nov. 27, 2024).

¹⁶ EKPC’s Response to Commission Staff’s Second Request for Information dated July 3, 2024, Item 4 (filed July 19, 2024).; 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.

provided no evidence and acknowledge the deficiency of capacity going forward¹⁷ to which EKPC needs these projects to contribute. The projects' place in the PJM queue is a material fact that impacted the decision to determine which projects would meet the timing needed for EKPC to benefit from the IRA funding. EKPC reviewed numerous projects all across Kentucky when determining which solar projects to pursue.¹⁸ EKPC did not just look at Fayette County. EKPC also looked at multiple other items, besides the projects' place in the PJM queue, when determining which projects it would seek to construct, including but not limited to the location to a substation for a cost-effective tie-in to the transmission grid, fulfilling the goals of the IRP, contributing to the capacity and energy needed to address future deficiencies of the system, as well as many other requirements.¹⁹

C. The Evidence of Record Shows That the Proposed Projects Will Not Result in Wasteful Duplication

The Intervenors argue that EKPC has not met its burden to show that the proposed projects will not result in wasteful duplication. EKPC incorporates its arguments in its post-hearing brief and the evidence of record that directly addresses the issue of wasteful duplication.²⁰ Furthermore, the development of both proposed solar projects is consistent with EKPC's most recent IRP (2022) and its Sustainability Plan.²¹ 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,

¹⁷ Fayette Alliance's Post Hearing Brief p. 4 (filed Nov. 27, 2024); LFUCG's Post Hearing Brief pp. 10-12 (filed Nov. 27, 2024).

¹⁸ HVT 1:51:50-1:52:18; 1:56:35-1:59:32; 2:20:52-2:23:22.

¹⁹ 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.

²⁰ EKPC's Post Hearing Brief pp. 16-20.

²¹ EKPC 2022 IRP; *See also*, Tucker Direct Testimony pp. 6-8.

efficient and reasonable service.²² These projects are not unreasonably or unnecessarily duplicative and will serve a specific need in EKPC's system.²³ 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.²⁴ The Bluegrass Plains Project serves this same specific purpose.²⁵ 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.²⁶

Both of these projects were already included in PJM's queue,²⁷ with the Northern Bobwhite Project being fully approved and has an executed service agreement.²⁸ The Bluegrass Plains Project has also been fully approved and has an executed service agreement.²⁹ In addition to the PJM approval, EKPC has recently received the final Finding of No Significant Impact ("FONSI")

²² *Id.*

²³ Tucker Direct Testimony, pp. 7-8, 18-20.

²⁴ *Id.*

²⁵ *Id.*

²⁶ 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.

²⁷ 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, therefor the annual report and related analysis reflects the DY beginning and ending dates. (Tucker Direct Testimony, p. 7.)

²⁸ HVT 2:12:42-2:23:27, discussing the process of evaluating projects and the requirement that those projects be in the PJM queue.

²⁹ EKPC's Supplemental Response to LFUCG's Request for Information dated July 3, 2024, Item 8a, (filed Oct. 28, 2024).

environmental assessment approval from RUS pursuant to the NEPA. EKPC filed the notice of availability (“NOA”) and the RUS publications seeking comments on the NOAs as supplements to the Commission Staff’s First Request for Information on November 21, 2024.³⁰ Additionally, EKPC filed the final FONISs for both of the proposed projects as supplements to Commission Staff’s First Request for Information on December 4, 2024.³¹ As noted in the December 4, 2024 filing, RUS received no comments on either of the NOAs that were published for these projects.³²

D. The Intervenors’ Arguments are Premised in Red-Herring Arguments that Lack Substance.

The proposed solar projects will provide capacity and energy contributions for EKPC’s entire system, in other words the capacity generated will serve EKPC’s customers in all of the counties it serves. Both Intervenors have argued that Fayette County residents will not receive a direct benefit from the Bluegrass Plains Project.³³ The argument tries to isolate a direct benefit that is not required and the claim is misleading and shows the Intervenors’ fundamental lack of understanding of the transmission grid. If it was a requirement that the residents of the county where an electric generation asset is constructed be the beneficiaries of the electricity generated from that facility, then Fayette County would be without electricity. Is that the Intervenors’ desire end-state? EKPC has met the statutory requirements of KRS 278.020 and KRS 278.708 with a plethora of evidence in the record. Fayette Alliance and LFUCG have submitted absolutely no evidence to the contrary.

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

³¹ EKPC’s Supplemental Response to Commission Staff’s First Request for Information dated May 30, 2024, (filed Dec. 4, 2024).

³² *Id.*

³³ Fayette Alliance’s Post Hearing Brief pp.7-8 (filed Nov. 27, 2024).; LFUCG’s Post Hearing Brief p. 19 (filed Nov. 27, 2024).

In addition to the imaginary requirement of the generation having to benefit the citizens of Fayette County, LFUCG continues to argue that EKPC did not involve LFUCG in the process. However, the evidence in the record shows that EKPC met with LFUCG personnel, including Mayor Gorton’s chief of staff, prior to the filing of the Application in this proceeding.³⁴ In addition, Nick Comer attended an additional meeting that was hosted by a LFUCG’s council member regarding the project.³⁵ In addition, EKPC received the final FONSI for the Bluegrass Plains project. As part of that approval, RUS reviewed the impact on cultural resources and historic properties and found that there was no significant impact. EKPC coordinated with the State Historic Preservation Office (“SHPO”) and the Kentucky Heritage Council when establishing the area of potential effect (“APE”) and survey methodologies for the project.³⁶ Following the site-specific cultural resources surveys, RUS submitted the survey reports and a recommended finding of No Adverse Effect to Historic Properties for the project to multiple Consulting Parties, *including SHPO, the LFUCG Historic Preservation Office and the Blue Grass Trust.*³⁷ The SHPO responded on October 17, 2024 and concurred with the recommended finding of no adverse effect for the project. The LFUCG Historic Preservation Office responded on September 22, 2024 and also concurred with the recommended finding of no adverse effect for the project. RUS did not receive any comments from the Blue Grass Trust.³⁸ Although EKPC is not subject to the planning

³⁴ HVT 3:18:30-3:29:48; EKPC Responses to LFUCG Request for Information dated May 31, 2024, Item 13, and Item 71.

³⁵ HVT 3:18:20-3:30:45.

³⁶ EKPC’s Supplemental Response to Commission Staff’s First Request for Production dated May 30, 2024, Item 21(l) p. 6 (filed December 4, 2024).

³⁷ *Id.*

³⁸ *Id.*

and zoning ordinance of LFUCG, nor does EKPC have to include LFUCG in its decision-making process, EKPC met with LFUCG representatives prior to filing the application in this proceeding, attended at least one other meeting hosted by LFUCG representatives and RUS provided LFUCG's Historic Preservation Office the finding of no significant impact with the opportunity to provide comments. How can LFUCG continue to make the argument that EKPC did not include LFUCG in this process, when EKPC has provided substantial evidence in the record of this proceeding regarding the interactions EKPC had with LFUCG representatives, and LFUCG has conceded that EKPC is not subject to LFUCG's planning and zoning ordinances?³⁹

E. EKPC Has Provided Substantial Evidence on the Alternatives Analyzed in This Proceeding.

Fayette Alliance and LFUCG argue in their briefs that EKPC has not reviewed all possible, reasonable alternatives.”⁴⁰ However EKPC has provided proof in the record of the alternatives reviewed.⁴¹ EKPC reviewed multiple solar projects that had positions in the PJM queue in multiple counties.⁴² In addition to self-build solar projects, EKPC had also issued RFPs for solar PPAs that did not lead to any executed PPAs.⁴³ EKPC provided testimony regarding the criteria it used in evaluating the projects and how the selection was made for the two projects proposed in this proceeding.⁴⁴ One of the determining factors was where the transmission upgrades that may be

³⁹ Fayette Alliance's Post Hearing Brief p. 2 (filed Nov. 27, 2024); LFUCG's Post Hearing Brief pp17-18, (filed Nov. 27, 2024); KRS 100.324.

⁴⁰ LFUCG's Post Hearing Brief p. 14, (filed Nov. 27, 2024).

⁴¹ HVT 2:16:01-2:23:22.

⁴² *Id.*; 2:18:17; 2:20:29.

⁴³ Tucker Direct Testimony pp. 12-18; HVT 11:36:23-11:44:45.

⁴⁴ Application, Exhibit 3, Direct Testimony of Patrick Bischoff, pp.4-5; HVT 1:51:50-1:59:32.

needed would occur.⁴⁵ The transmission upgrades that may be needed for the two proposed projects would all be on EKPC's system, where other projects could have required transmission upgrades to transmission systems in other states.⁴⁶ EKPC has evaluated all reasonable alternatives and the projects do not result in wasteful duplication.

F. EKPC Has Complied With All of the Requirements to Receive a Site Compatibility Certificate for the Bluegrass Plains Project.

Fayette Alliance stated that it “commends use of renewable energy sources but not at the *expense* of agricultural land/farms...in Fayette County.”⁴⁷ (emphasis added). In other words, “we love solar, just not here.” EKPC has provided substantial evidence in the record to show that the Bluegrass Plains Project will not have a significant impact on the land or soil, and that it is likely that the soil will be in better condition than it is currently.⁴⁸ EKPC provided a SAR that included all required studies.⁴⁹ In addition, the SAR laid out certain mitigation measures that EKPC will perform in order to mitigate any visual or environmental impacts.⁵⁰ In addition to the SAR, the FONSI found that:

Rack-mounted solar panels are generally less than 15 feet in height at their highest tilt. With topography consisting of rolling hills and valleys, and with many roadways located within the valleys, large portions of the Project site are in areas that will not be visible from roadways or residences. The Project will incorporate vegetative buffers where the project is visible from residences or roadways, ***thus there would be no significant impacts on aesthetics resulting from the proposed action.*** (Emphasis added).

⁴⁵ HVT 2:20:29-2:22:52.

⁴⁶ *Id.*

⁴⁷ Fayette Alliance's Post Hearing Brief p. 7, (filed Nov. 27, 2024).

⁴⁸ HVT 2:09:20-2:11:58; 2:12:30-2:13:45, 2:28:35-2:39:10, 3:37:16-3:39:32; Application, Exhibit 3, PB-3.

⁴⁹ Application, Exhibit 3, PB-3, p. 36/193.

⁵⁰ *Id.* at 9-14/193.

Fayette Alliance argues in its brief, for the first time, that EKPC has not complied with the requirements for Kentucky Scenic Byways.⁵¹ However, the relevant statutes and regulations does not spell out any requirements that EKPC would have to meet in order to construct the Bluegrass Plains Project at the proposed location.⁵² In addition, KRS 177.573 states: “The Transportation Cabinet, in coordination with the Tourism, Arts and Heritage Cabinet and the Kentucky Heritage Council, shall promulgate administrative regulations...”⁵³ According to KRS 177.573, the Kentucky Heritage Council was to be involved in developing the regulations regarding scenic byways.⁵⁴ The Kentucky Heritage Council was involved with EKPC in determining its area of potential effect for the Bluegrass Plains Project.⁵⁵ Both the SHPO and LFUCG Historic Preservation Office concurred with the recommended finding of No Adverse Effect to Historic Properties for the project.⁵⁶ Both the SAR and the FONSI provided by EKPC in this proceeding show that the Bluegrass Plains Project will not have a significant impact on the aesthetics of the surrounding area.⁵⁷ In addition, EKPC has committed to including a vegetation buffer for the project.⁵⁸ Fayette Alliance acknowledges the studies regarding the visual impact of the projects

⁵¹ Fayette Alliance’s Post Hearing Brief pp. 9-12 (filed November 27, 2024).

⁵² KRS 177.571 through KRS 177.576; 603 KAR 4:055.

⁵³ KRS 177.573.

⁵⁴ *Id.*

⁵⁵ EKPC’s Supplemental Response to Commission Staff’s First Request for Production dated May 30, 2024, Item 21(l) p. 6 (filed Dec. 4, 2024). Anyone who travels along U.S. 60 adjacent to the proposed Bluegrass Plains project will note that a high-voltage electric transmission line runs parallel to the roadway and that no less than two electric utility substations are located within a mile of each other in this area. Fayette Alliance’s portrayal of the corridor as pristine agricultural pastures is simply disingenuous.

⁵⁶ EKPC’s Supplemental Response to Commission Staff’s First Request for Information dated May 30, 2024 (filed Dec. 4, 2024); LFUCG Historic Preservation Letter dated September 22, 2024 attached as Exhibit 1.

⁵⁷ *Id.*; Application, Exhibit 3, PB-3.

⁵⁸ Application, Exhibit 3, PB-3; HVT 3:09:01.

and the compatibility of the facilities with the scenic surroundings. ⁵⁹The project will not impact the scenic byway designation of US 60.

The Intervenor also argue that the land should be maintained as farmland and there has been multiple statements made regarding the soil being “prime” soil. The FONSI, issued by RUS for the Bluegrass Plains Project, addresses land use and important farmland. It is important to note that USDA/RUS is the entity that determines the significance of “prime farmland” impacts and RUS states in the FONSI that the project will have minimal impact on farmland in Fayette County.⁶⁰ The Intervenor appear to be requesting the Commission to find that the land should remain farmland. The property owner has negotiated to sell the land for the solar project to be constructed. The Commission does not have the statutory authority to consider the best use of the land as property rights are inherently constitutional in nature,⁶¹ and the General Assembly has not abrogated the fundamental rights of landowners. This was acknowledged by the Chair Hatton at the hearing in this matter.⁶²

G. EKPC Has Not Been Indifferent to LFUCG in This Process and the Case Should Not be Held in Abeyance

LFUCG claims that “failure to produce significant discovery documents in a timely manner illustrates EKPC’s cavalier attitude or indifference towards LFUCG.”⁶³ In a proceeding of this type, assessments and approvals are released throughout the progression of the proceeding and it

⁵⁹ Fayette Alliance’s Post Hearing Brief, pp. 10-11 (filed Nov. 27, 2024).

⁶⁰ EKPC’s Supplemental Response to Commission Staff’s First Request for Production dated May 30, 2024, Item 21(l) p. 4, section D.1 (filed Dec. 4, 2024).

⁶¹ KY Const. § 13 and §242; U.S. Const., amend. V and XIV.

⁶² HVT 3:41:20-3:41:40.

⁶³ LFUCG’s Post Hearing Brief, p. 21 (filed Nov. 27, 2024).

is not “gamesmanship” but is the normal course of business for applications of this type that require multiple permits and assessments. LFUCG commented on the filing of updated reports in the file and intimated that EKPC has not been, “forthcoming”⁶⁴ but, that is incorrect. EKPC has been forthcoming with LFUCG prior to filing the Application as well as throughout this entire proceeding. EKPC filed the final reports as soon as it discovered that they had not yet been filed into the record of this proceeding. The FONSI for the Northern Bobwhite Project was signed on November 22, 2024 and the Bluegrass Plains Project was signed on December 2, 2024 and upon the publishing of the Notice of Availability in the the *Lebanon Enterprise* and the *Herald Leader*, respectively, on December 4, 2024, the project approvals became official.⁶⁵ LFUCG has mischaracterized EKPC’s compliance with the requirements pursuant to KRS 278.020, KRS 278.708 and KRS 278.216, as “indifference toward LFUCG.”⁶⁶ In fact, LFUCG’s Historic Preservation Office received the FONSI documents from RUS and concurred with RUS that the project as proposed would “result in No Adverse Effect”.⁶⁷ LFUCG’s argument that EKPC has not included LFUCG in this process is disingenuous. EKPC has complied with the statutory requirements, discussed the filing of the Application with LFUCG prior to its filing and attended other meetings involving LFUCG representatives, and has responded to the questions posed by LFUCG in this proceeding. Furthermore, LFUCG’s Historic Preservation Office received all of the information from RUS and concurred with the finding of No Adverse Effect from RUS.

⁶⁴ LFUCG’s Post Hearing Brief, p. 22 (filed Nov. 27, 2024).

⁶⁵ EKPC’s Supplemental Response to Commission Staff’s First Request for Information dated May 30, 2024 (filed Dec. 4, 2024)

⁶⁶ LFUCG’s Post Hearing Brief, p.21 (filed Nov. 27, 2024).

⁶⁷ LFUCG Historic Preservation Office letter, dated September 22, 2024, attached as Exhibit 1.

LFUCG seems to argue that EKPC should have complied with LFUCG's zoning requirements, even though those do not apply to EKPC.

LFUCG's argument to delay this case or deny based upon the Commission waiting for LFUCG to determine its solar ordinance is unreasonable. This matter is not analogous to the Kentucky-American Water Company KRS II case cited heavily in LFUCG's brief.⁶⁸ First, the salient issue here is that this project is under the exclusive jurisdiction of the Commission. Second, LFUCG's plan for solar is completely irrelevant to the Commission's review of this Application.⁶⁹ Fayette Alliance and LFUCG were granted intervention and had the opportunity to fully participate in this matter. The process was conducted openly and the Intervenors chose not to file any evidence or produce witnesses to support their evidence. The Intervenors cannot sit on their rights and then try to end run the statutory deadline for this case.⁷⁰

EKPC is not subject to LFUCG zoning regulation, therefore EKPC should not have been expected to waste Owner-Members' resources by reviewing or negotiating zoning restrictions that could not as a matter of law apply to the project. Additionally, the extraneous and derogatory comments made about "a fully transparent and forthcoming process" are incorrect. This matter is of public record and EKPC has followed all of the appropriate procedures for the applicable statutes, including providing proper notice and updating the record when subsequent reports and materials have become available.

⁶⁸ LFUCG's Post Hearing Brief, pp. 14-18 (filed November 27, 2024), citing *In the Matter of the Application of Kentucky-American Water Company for a Certificate of Convenience and Necessity Authorizing the Construction of Kentucky River Station II, Associated Facilities and Transmission Main*, Case No. 2007-00134, (Ky P.S.C Dec. 21, 2007).

⁶⁹ KRS 100.324

⁷⁰ EKPC's Response to LFUCG's Motion to Supplement, (filed Nov. 21, 2024); Order, pp.3-4, (Ky P.S.C., Nov. 25, 2024).

H. LFUCG's Argument that EKPC is a Monopoly is Incorrect

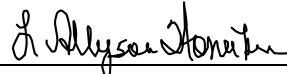
At the hearing in this matter,⁷¹ and in its post-hearing brief,⁷² LFUCG made statements indicating that EKPC is a monopoly. EKPC is a not-for-profit, rural electric cooperative corporation established under KRS Chapter 279 with its headquarters in Winchester, Kentucky. Pursuant to various agreements, EKPC provides electric generation capacity and electric energy to its sixteen (16) Owner-Member Cooperatives, which in turn serve over 545,000 Kentucky homes, farms and commercial and industrial establishments in eighty-nine (89) Kentucky counties. EKPC's Board has stated its strategic objective is to maintain a generation fleet that prudently diversifies its fuel sources while maximizing its capital investments and minimizing stranded assets. EKPC is a "utility" as that term is defined in KRS 278.010(3)(a) and a "generation and transmission cooperative" as that term is defined in KRS 278.010(9). EKPC's Board of Directors, which is made up of representatives from its 16 Owner-Members, voted to proceed with each of these projects. EKPC does not have service territory, but each of its Owner-Members have certified service territories, which were established by KRS 278.016. EKPC is regulated by the Kentucky Public Service Commission. EKPC must have tariffs on file and approved by the Commission for the rates it charges for its services to its Owner-Members. In addition, each of the Owner-Members also have to have tariffs on file and approved by the Commission for its rates and services. In addition to tariff filings, EKPC and its Owner-Members must seek approval from the Commission for rate increases, certain construction projects, certain financing transactions and many other areas of its business. EKPC cannot charge whatever it wishes for the services it provides, as you see in a monopoly situation such as utilities operated by a municipal government.

⁷¹ HVT 3:37:56-3:39:15.

⁷² LFUCG's Post Hearing Brief, p.3 (filed Nov. 27, 2024).

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,

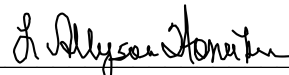


L. Allyson Honaker
Brittany Hayes Koenig
Heather S. Temple
HONAKER LAW OFFICE, PLLC
1795 Alysheba Way, Suite 1203
Lexington, KY 40509
(859) 368-8803
allyson@hloky.com
brittany@hloky.com
heather@hloky.com

*Counsel for East Kentucky Power Cooperative,
Inc.*

CERTIFICATE OF SERVICE

This is to certify that the foregoing electronic filing was transmitted to the Commission on December 6, 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.

EXHIBIT 1
LFUCG HISTORIC PRESERVATION
OFFICE LETTER



September 22, 2024

Christopher M. Gunn
Archaeologist
Environmental and Historic Preservation Division
Rural Utilities Service
United States Department of Agriculture

RE: Section 106 Review
USDA RD Rural Utilities Service Finding of No Adverse Effect
East Kentucky Power Cooperative
Bluegrass Plains Solar Generating Facility Project Fayette County, Kentucky

Dear Mr. Gunn:

The Lexington-Fayette Urban County Government (LFUCG) Historic Preservation Office received the plans and specifications for the above referenced project on September 9, 2024. Pursuant to Section 106 of the National Historic Preservation Act of 1966 (as amended), a review was initiated of the proposed project.

The applicant East Kentucky Power Cooperative (EKPC) is seeking financial assistance from the USDA Rural Development (RD), Rural Utilities Service (RUS) for its proposed Bluegrass Plains Solar Generating Facility Project in Fayette County, Kentucky. This Project will not be using the NPA.1 EKPC proposes to construct, operate, and maintain a 40-megawatt alternating current (MWac) photovoltaic (PV) electrical generating facility approximately 6.0 miles east of the city of Lexington, Kentucky. The new facility would be sited between U.S. 60 and Interstate 64, and to the north and east of the existing EKPC Avon 138/345 kV Transmission Substation, which is located at 5481 Winchester Road, Lexington, KY 40509, and be centered at roughly 38.035982°N, 84.313909°W.

LFUCG Historic Preservation Office has reviewed the proposal as stated in the submittal the cultural historic survey report describes the results of the investigation within the cultural historic APE. The review of previously recorded resources indicated that two previously surveyed properties are within the APE. FA-66, FS 75 (known as Edgewood,) is individually listed in the NRHP. FA-1116, FS 78 is listed in the NRHP as a contributing element to the NRHP listed Upper Reaches of Boone Creek Historic District (NRIS 09000569, no KHC number assigned). A small corner of the Upper Reaches of Boone Creek Historic District extends into the southwestern edge of the APE. The submittal assessed eighty-one (81) resources, including the



two previously identified resources. Newly identified resources were designated FA 1523 – FA 1601.

The submittal recommended that FA 1523 – FA 1601 are not eligible for the NRHP. The submittal recommends that Edgewood (FA-66) and the farmstead at 5290 Winchester Road (FA-1116), which is a contributing property in the Upper Reaches of Boone Creek Historic District, retain sufficient integrity and significance to remain listed in the NRHP. The submittal recommended that FA-66, FA-1116, and the Boone Creek Historic District would not be adversely affected by the proposed project. The RUS agrees with these findings and recommendations.

Based on the review of the submitted documentation results of the survey efforts, a finding of no adverse effect in accordance with 36 CFR § 800.5(b) is appropriate for the referenced project. Consequently, the LFUCG Historic Preservation Office concurs that as proposed, the project would result in *No Adverse Effect*.

Sincerely,



Barry K Dennis
Historic Preservation Specialist and
Federal Section 106 Review Coordinator

Cc: Bettie Kerr, Director, Historic Preservation Office, LFUCG

