

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

**In the Matter of:**

**ELECTRONIC APPLIACATION OF EAST )  
KENTUCKY POWER COOPERATIVE, INC. )  
FOR CERTIFICATES OF PUBLIC )  
CONVENIENCE AND NECESSITY AND )  
SITE COMPATABILITY CERTIFICATES )  
FOR THE CONSTRUCTION OF A 96 MW )  
(NOMINAL) SOLAR FACILITY IN MARION )  
COUNTY, KENTUCKY AND A 40 MW )  
(NOMINAL) SOALR 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**

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**RESPONSE TO MOTION TO SUPPLEMENT**

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Comes now East Kentucky Power Cooperative, Inc., (“EKPC” or the Company”) by and through the undersigned counsel and hereby tenders its response and objection to the motion to supplement filed by Lexington-Fayette Urban County Government (“LFUCG”) on November 15, 2024. EKPC objects to the proffered material being filed in the case record, however it does not object to the proffered material being filed as a public comment. In support of this response and objection EKPC respectfully states as follows:

1. On April 26, 2024, EKPC submitted its 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 the solar facilities. On May 14, 2024, the Commission entered an Order setting a deadline for requests for intervention for May 22, 2024. LFUCG filed its motion for intervention in the proceeding on May 22, 2024.

LFUCG admitted in its motion that EKPC is not required to comply with LFUCG's zoning process under state law.<sup>1</sup>

2. In its May 22, 2024 Petition, LFUCG argued it has an interest in the rates and services of EKPC because it is a customer of Blue Grass Energy Cooperative Corp. (Blue Grass) who then purchases power from EKPC. LFUCG argued it has a special interest and would develop facts to assist the Commission without complicating the proceedings because it is the only entity that fully understands its land use policies. LFUCG also stated that it would be able to discuss whether the solar facilities would offer benefits to LFUCG in light of the detriment to its land use policies.<sup>2</sup> LFUCG also argued that since there is no requirement for EKPC to obtain any approval from LFUCG for the projects, intervention is the only opportunity to participate in the project.<sup>3</sup>

3. On May 28, 2024, the Commission granted intervention to LFUCG finding that LFUCG has an interest in the rates or services of a utility.<sup>4</sup> The Commission's May 28, 2024 Order held that LFUCG shall adhere to the procedural schedule set forth in the Commission's May 14, 2024, Order and as amended by subsequent Orders.<sup>5</sup> Additionally, the Commission cited the standard for permissive intervention in 807 KAR 5:001, Section 4(11) requires a person to have either a special interest in the proceeding that is not otherwise adequately represented in the case, or that intervention is likely to present issues or develop facts that will assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings.<sup>6</sup>

<sup>1</sup> Lexington-Fayette Urban County Government Motion to Supplement, at 4.

<sup>2</sup> *Id.* at 3.

<sup>3</sup> *Id.* at 3-4.

<sup>4</sup> Commission's May 28, 2024 Order at 3.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 2.

4. EKPC has offered verified evidence in its Application that is supported by experts and professionals in the industry, in addition to responding to seven rounds of discovery throughout the proceedings in this case. On October 29, 2024, a duly noticed public hearing was held where EKPC offered its witnesses for further cross examination under oath on the information, materials, studies, and reports developed in the months prior to filing the Application and offered in support of its Application. LFUCG has offered no evidence during the pendency of this matter. LFUCG submitted two rounds of discovery to EKPC, and EKPC responded to those, as well as the multiple discovery propounded by the other parties and Commission Staff. Additionally, LFUCG participated in the October 29, 2024 hearing and had the opportunity to file testimony into the record by July 19, 2024 pursuant to the Commission’s May 14, 2024 procedural schedule, however it did not submit any information into the record which could be cross-examined or qualified.

5. LFUCG’s November 15, 2024 Motion to Supplement refers to the proffered material as an update to Mayor Linda Gorton's “public comments” both spoken at the evidentiary hearing and tendered into the record on October 29, 2024.<sup>7</sup> Mayor Linda Gorton’s statements were filed as public comments.

6. LFUCG had full opportunity to file testimony and produce witnesses under oath at the hearing to support the testimony and chose not to. Public comments are considered by the Commission, but they are characterized as comments rather than testimony. “Comments” are decidedly not under oath, verified, qualified, tested, or developed through discovery or cross-examination, and are therefore granted comparable weight in consideration. As explained in the

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<sup>7</sup> Lexington-Fayette Urban County Government Motion to Supplement, at 2.

Commission's September 4, 2019 Order in an administrative case to collect comments on net metering,

In contrast, public comments are not subject to statutory or regulatory filing requirements, beyond a Commission policy that they include a name and place of residence. They may be submitted by email. Public comments provide the opportunity for persons interested in the outcome of a case to offer their views. Every public comment submitted in this proceeding will be read and considered by the Commission. Public comments submitted in a proceeding do not typically carry the same weight as evidence submitted under oath or comments filed by stakeholders and utilities that have expertise in a particular matter. But public comments often affect the Commission's decisions.<sup>8</sup>

The materials at issue have not been qualified or produced properly within the pendency of the case record and the Commission should consider the materials as public comments when considering the weight of comments as evidence.

7. Further, LFUCG argues that the subject matter of the materials goes to its intervention in this matter, however LFUCG's efforts to explore solar generation was an issue already addressed in Mayor Linda Gorton's public comment made on October 29, 2024<sup>9</sup> and is not relevant to EKPC's Application herein. EKPC is required to obtain approval for this project from the Commission<sup>10</sup> and is not required to obtain approval from LFUCG.<sup>11</sup> Similarly, the Commission rejected a motion to take administrative notice in Case No. 2010-00203, deciding that the need for administrative notice had not been shown regarding materials that had already been filed in part by other parties and filed in another matter, and therefore those

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<sup>8</sup> Case No. 2019-00256, *In the Matter of: Elec. Consideration of the Implementation of the Net Metering Act*, (Ky P.S.C. Sept. 4, 2019) at 2.

<sup>9</sup> Public Comment of Mayor Linda Gorton, October 29, 2024, stating, "Our government supports solar. We are developing our own solar programs, as well as investigating whether our Haley Pike landfill can accommodate solar. We think solar projects are possible here without forcing us to give up irreplaceable farmland, a key component of our signature industry."

<sup>10</sup> KRS 278.020(1) and KRS 278.216.

<sup>11</sup> Lexington-Fayette Urban County Government Petition to Intervene, at 3.

materials were not relevant to the issues of that application.<sup>12</sup> The fact that the materials had already been filed in part and had not been shown to be relevant to the subject of the application in that case led the Commission to deny the motion to take administrative notice in that matter,<sup>13</sup> as the Commission should deny LFUCG's motion to supplement the record herein.

8. LFUCG fully participated in the proceedings of this case, and had opportunity to file meaningful evidence, but chose not to. LFUCG now argues that the subject of its Motion to Supplement the Record are materials relevant to the Commission's consideration of EKPC's Application, when the substance of Exhibit A and Exhibit B to its motion are press releases noticing the intent to explore solar generation, already stated in filed public comments.<sup>14</sup> The materials the Commission has granted administrative notice for include laws and reports by independently verifiable industry organizations, for example portions of the Clean Air Act,<sup>15</sup> and Green House Gas Rules<sup>16</sup> in cases where the subject of the law directly impacted the subject of the case, as opposed to the materials

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<sup>12</sup> Case No. 2010-00203, *Application of Duke Energy Kentucky, Inc. for Approval to Transfer Functional Control of its Transmission Assets from the Midwest Independent Transmission System Operator to the PJM Interconnection Regional Transmission Organization and Request for Expedited Treatment*. (Ky P.S.C. Nov. 3, 2010). The Commission found that MISO had not shown the need for judicial notice of requested filings from federal cases, already filed partially by Duke, additionally the Commission noted that its hearings are exempt from the procedures set forth in KRS Chapter 13B. See KRS 13B.020(3)(d) 3.a. Confirmation that the Commission decides the issue of administrative notice on a case-by-case basis.

<sup>13</sup> *Id.*

<sup>14</sup> Public Comment of Mayor Linda Gorton, October 29, 2024, stating, "Our government supports solar. We are developing our own solar programs, as well as investigating whether our Haley Pike landfill can accommodate solar. We think solar projects are possible here without forcing us to give up irreplaceable farmland, a key component of our signature industry."

<sup>15</sup> Case No. 2023-00413, *Electronic Application of Duke Energy Kentucky, Inc. for an Adjustment to Rider NM Rates and for Tariff Approval* (Ky PSC May 24, 2024), re: Clean Air Act (CAA) Section 111(b) and 111(d).

<sup>16</sup> Case No. 2022-00402, *Electronic Joint Application of Kentucky Utilities Company and Louisville Gas and Electric Company for Certificates of Public Convenience and Necessity and Site Compatibility Certificates and for Approval of a Demand Side Management Plan and Approval of Fossil-Fuel Fired Generating Unit Retirements* (Ky PSC Nov. 6, 2023) at 172. LG&E/KU's motion for the Commission to take administrative notice of their Hearing Exhibit 1, Joint Comment ERCOT, MISO, PJM, and SPP in EPA Docket No. EPA-HQ-OAR-2023-0072, New Source Performance Standards for Greenhouse Gas Emissions from New, Modified, and Reconstructed Fossil Fuel-Fired Electric Generating.

proffered herein. LFUCG cites its “unofficial” policy and describes the information offered as generally providing “insight”.<sup>17</sup> LFUCG claims a general benefit of the materials and does not show that the materials are relevant to the Commission’s analysis of EKPC’s Application. EKPC respectfully submits that this material should properly be admitted as public comment and not be entered into the record of these proceedings.

9. LFUCG was granted intervention under the standard that it was likely to present issues or develop facts that will assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings, however, it has not submitted any evidence that can be verified, developed, or cross-examined by the parties in this matter. LFUCG has been a party to this proceeding since May and has had notice of these developments for at least as long. LFUCG has had the opportunity outside this matter to review the proposed projects by enacting its own ordinances for the development of solar facilities and it has not acted. LFUCG should not now be allowed to submit comments as evidence to express what it believes the proper ordinances in Fayette County should be through state level proceedings at the Commission.

10. Even though LFUCG’s motion to supplement the record should not be granted, they may still file it as a public comment.

WHEREFORE, on the basis of the foregoing, EKPC respectfully requests the Commission to deny the request to supplement the record from LFUCG and permit the materials to be filed as public comment.

This the 21<sup>st</sup> day of November, 2024.

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<sup>17</sup> Lexington-Fayette Urban County Government Motion to Supplement, at 2.

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 21, 2024, and that there are no parties that the Commission has excused from participation by electronic means in this proceeding. Pursuant to prior Commission Orders, no paper copies of this filing will be made.

  
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*Counsel for East Kentucky Power Cooperative, Inc.*