

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

In the Matter of:

ELECTRONIC APPLICATION OF EAST)	
KENTUCKY POWER COOPERATIVE, INC. FOR)	
A CERTIFICATE 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)	CASE NO. 2024-00129
(NOMINAL) SOLAR FACILITY IN FAYETTE)	
COUNTY, KENTUCKY AND APPROVAL OF)	
CERTAIN ASSUMPTIONS OF EVIDENCES OF)	
INDEBTEDNESS RELATED TO THE SOLAR)	
FACILITIES AND OTHER RELIEF)	

**LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT’S
POST HEARING BRIEF**

Lexington-Fayette Urban County Government (“LFUCG”), by and through counsel, tenders its post-hearing brief in this matter addressing East Kentucky Power Cooperative, Inc.’s (“EKPC” or “Company”) proposed construction of a 40 MW solar facility in Fayette County, Kentucky. The Company’s requests in the application related to the Fayette County, Kentucky Solar facility should be denied for the reasons set forth herein.

INTRODUCTION

On April 26, 2024, the company filed its application seeking approval for a Certificate of Public Convenience and Necessity under KRS Chapter 278 to construct two solar facilities - a 96 MW facility in Marion County, Kentucky and a 40 MW facility in Fayette County, Kentucky.¹ The Fayette County solar facility, or Bluegrass Plains Solar Project, would be located on approximately 388 acres zoned for agricultural purposes.² Total cost for the facility is estimated to be \$101,744,634.³ The company also seeks a site compatibility certificate for the Bluegrass Plains Solar project⁴ and a deviation from setback requirements from KRS 278.708(3)(a)(7) regarding the setback requirements contained in KRS 278.704(2).⁵

The application should be denied because: 1) EKPC has failed to satisfy KRS 278.020(1) because the proposed Bluegrass Plains Solar facility fails to satisfy the need criteria under law; 2) EKPC has failed to satisfy KRS 278.020(1) because the Application does not avoid wasteful duplication; and 3) it is unnecessary and imprudent. In the alternative, the case should either be dismissed or held in abeyance until LFUCG provides the Commission LFUCG's position on its solar zoning ordinances for agricultural land; else the Commission unnecessarily legislates a local zoning ordinance.

¹ Application pages 1, 5-6.

² See, for example, Application Attachment_PB-3_Bluegrass_Plains_SAR, at page 6 of 193.

³ Pref-filed Bischoff testimony, page 15 of 19, line 9.

⁴ Application pages 1, 5 – 6.

⁵ Application page 6, paragraph 22.

PARTIES

EKPC is a not-for-profit, rural electric cooperative corporation established under KRS Chapter 279 with its headquarters in Winchester, Kentucky.⁶ It is a “generation and transmission cooperative” under KRS 278.010(9)⁷ and a “utility” as defined under KRS 278.010(3)1(a).⁸ And as a utility, by simple definition, it is a monopoly.

EKPC owns and operates 2,963 MW of net summer generating capacity and 3,265 net summer generating capacity.⁹ Total existing resources available for EKPC’s use are 3,133 MW summer and 3,455 winter.¹⁰ The Company is a Winter Peaker.¹¹ The Company provides electric generating capacity and electric energy to its 16 Owner-Member Cooperatives which serve 570,000 meters in 89 Kentucky counties.¹² Through Clark Energy Cooperative and Bluegrass Cooperative, EKPC serves over 6,000 customers in Fayette County.¹³ Stated another way, of the 570,000 total company meters, only one percent (1%) of them are in Fayette County (6,000/570,000).

EKPC’s transmission system is operated by PJM, where the company has been fully integrated since June 1, 2013.¹⁴ Translated, PJM operates the dispatch of EKPC’s generation.¹⁵

⁶ Application page 2, paragraph 1.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ EKPC response to PSC First Requests, number 3a.

¹¹ Tucker testimony, VTE at 48:18.

¹² Application page 2, paragraph 1

¹³ Tucker testimony, VTE at 10:39:33.

¹⁴ Application at page 3, paragraph 3.

¹⁵ EKPC response to LFUCG Initial Requests, number 30.

Lexington-Fayette County Government (“LFUCG”) is an urban county government as established under KRS Chapter 67A.¹⁶ LFUCG filed for intervention on May 22, 2024, stating:

6. Given the location of the proposed site, and if the Commission approves this proposal, the Commission would effectively legislate LFUCG’s solar planning. Currently, LFUCG does not allow for commercial solar facilities under its zoning ordinances. Moreover, there are currently no known commercial-type solar facilities located in Lexington-Fayette County. Accordingly, LFUCG must be granted intervention if it is to preserve any authority over large scale solar planning in its County.

7. Indeed, if the Company is not required to obtain any approval from the LFUCG for the proposed site in Lexington-Fayette County, as it is not required to comply with the city’s zoning process under state law, the **only** meaningful opportunity for LFUCG to participate in the Company’s proposed plan will be through this case. The magnitude of this inequity can be seen with the stark contrast where a private, non-utility company engaged in identical actions would be subject to local regulations. As a result, LFUCG should be granted intervention to prevent this legal paradox.

In granting the intervention on May 28, the Commission found:

LFUCG has a special interest that is not otherwise adequately represented as it is the local government entity which would otherwise control zoning issues over the area in which the Bluegrass Plains Solar Project will be locate, and thus has an interest in the permanent consequences on its land use policies.

Fayette Alliance, Inc. (“FA”) is a nonprofit, Kentucky organization from the downtown, business, neighborhood and agricultural communities of Fayette County to serve as its first and only land-use advocacy group. To summarize its position for intervention:¹⁷

FA has serious concerns about the impacts of locating large-scale solar facilities, such as EKPC’s request, on Lexington-Fayette County’s world-renowned soils in

¹⁶ LFUCG Motion to Intervene at pages 3 -4. [LFUCG Petition Intervene Case No 2024-00129.pdf](#)

¹⁷ Fayette Alliance Inc. Motion to Intervene at page 2, filed May 22, 2024. [COMMONWEALTH OF KENTUCKY](#)

this case outside of the USB. In addition to the environmental impacts and the loss of prime, nationally significant farmland, FA is also concerned about the precedent set by permitting these types of commercial and industrial uses in our agricultural zones.

The Commission granted the intervention on June 6, 2024, finding:

Since the Fayette County solar facility is planned to be built on a parcel zoned agricultural, Fayette Alliance, an organization advocating for protection of farmland, has a special interest in the case... Fayette Alliance also noted its expertise regarding its knowledge of regional soil and environmental impacts which could assist the Commission in evaluating the case.¹⁸

BACKGROUND

The Company issued an RFP for solar power in August 2020, and then another one in the Fall of 2021 with the proposals submitted in January 2022, and then yet another one on July 13, 2022.¹⁹ (EKPC concluded that it could utilize solar power based on the results from its 2022 Integrated Resource Plan.^{20,21}) Toward the end of this process, the company determined the self-build solar generation would be best. On August 15, 2023, the EKPC Board of Directors approved the Bluegrass Plains Solar Project.²² November 21, 2023, EKPC obtained an option to purchase the proposed property in Fayette County for the Bluegrass Plains Solar project.²³

¹⁸ Order dated June 6, 2024, at page 3. [Intervention](#)

¹⁹ Pre-filed Tucker testimony at pages 12 -14.

²⁰ EKPC response to PSC First Requests, number 1.

²¹ Order dated August 7, 2022. [confidential grant](#)

²² EKPC August 15, 2023, Board Resolution, EKPC response to LFUCG Initial Requests, number 20.

²³ EKPC response to LFUCG Initial Requests, number 12.

At no point during the company's years of evaluating a Fayette County location for solar alternatives had the company reached out to LFUCG.²⁴

On Thursday, April 25, 2024, the Company filed a notice of intent to file an application for "CPCNs (Construction) and Financing" with the PSC no later than May 1, 2024.²⁵ On that day Company officials met with members of the LFUCG Mayor's office, although not the mayor herself.²⁶ On Friday, April 26, 2024, East Kentucky Power filed its application.²⁷ On that same day, owners of properties adjacent to the proposed solar farm were mailed packets of information regarding the proposed projects as well as an invitation to attend a May 16, 2024 meeting to be held by EKPC at its offices in Clark County, Winchester, Kentucky.²⁸ On the following Monday, April 29th, the company issued a press release stating it had filed the application.^{29,30} On May 9th and May 14th, EKPC advertised the May 16th meeting in the Lexington, Kentucky *Herald Leader*.³¹ No other press releases, media announcements or meetings regarding the Bluegrass Plains Solar project were sponsored by the company prior to the evidentiary hearing on this matter.³²

²⁴ EKPC responses to LFUCG Initial Requests, numbers 13-15.

²⁵ Docket, April 25, 2024, at PSC Case Filings [View Case Filings for: 2024-00129](#)

²⁶ EKPC response to LFUCG Initial Requests, number 13.

²⁷ Docket, entry dated April 26, 2024.

²⁸ EKPC response to LFUCG Initial Requests, number 61.

²⁹ EKPC response to LFUCG Initial Requests, number 65.

³⁰ Comer testimony, VTE at 4:27:00.

³¹ EKPC response to LFUCG Initial Requests, number 65.

³² Comer testimony, VTE at 4:38:35

Several rounds of discovery were issued to and answered by the Company. The Company filed a number of supplemental answers to discovery requests. There were two notable discovery oversights by EKPC as follows.

On Friday, October 25th at 9:27pm, the company filed a response to LFUCG Second Request 21a regarding the EKPC Environmental Affairs' Phase I Environmental Site Assessment for Bluegrass Plains Solar Project. It was filed under Seal and made available to the undersigned counsel on Sunday, October 27th at 10:29pm. While the document became available at the end of July or first of August³³, the company failed to file it sooner because of oversight.³⁴

On the day before the hearing, Monday, October 28th, at 4:14pm, EKPC filed a supplemental response, over objection, to LFUCG Supplemental Request 8a. Namely, the company filed its Generation Interconnection Agreement ("GIA"), dated September 19, 2024, consisting of 161 pages. At the October 29, 2024, evidentiary hearing, EKPC testified the document became publicly available shortly after September 16, 2024.³⁵ The Company stated the reason for late filing at PSC was "identified the deficiency and identified the request to supply that document."³⁶

As it relates to the importance of the document, the following exchange took place at the hearing:

³³ Young testimony, VTE at 4:09:00

³⁴ *Id.*

³⁵ Bischoff testimony, VTE at 2:56:28.

³⁶ Bischoff testimony, VTE at 2:56:44.

Q. How important is this letter to the company in going forward with the Bluegrass Plains solar project?³⁷

A. This is the final step with PJM to move forward with the project but currently the developer still holds the project. East Kentucky Cooperative is not the developer of the project at this time

Q. This is the key for the facility to connect with PJM?³⁸

A. This is the authorization for the developer to begin construction.

An evidentiary hearing was conducted on October 29, 2024. At the beginning of the hearing, LFUCG moved to hold the case in abeyance or dismiss it. As part of its argument, LFUCG discussed the company's late filings. The motion was overruled.

On November 14th, Lexington announced a significant development in its adoption of solar as a sustainable energy source. LFUCG moved to supplement the record the next day; the Company objected, and the Commission held in favor of the Company but stated "LFUCG may further express its position in its post-hearing brief."³⁹

ARGUMENT

I. **EKPC FAILS TO SATISFY KRS 278.020(1) BECAUSE THE PROPOSED BLUEGRASS PLAINS SOLAR FACILITY FAILS TO SATISFY NEED.**

The Commission's standard of review of a request for a CPCN is well settled.⁴⁰ Under KRS 278.020(1), no utility may construct or acquire any facility to be used in

³⁷ Bischoff testimony, VTE at 2:57:00.

³⁸ *Id.*

³⁹ See Order dated November 25, 2024, page 4.

⁴⁰ *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 Approval of a*

providing utility service to the public until it has obtained a CPCN from the Commission. To obtain a CPCN, a utility must demonstrate a need for such facilities and an absence of wasteful duplication.⁴¹

"Need" requires:

[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.⁴²

"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."⁴³ To demonstrate that a proposed facility does 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.⁴⁴ The

Demand Side Management Plan and Approval of Fossil Fuel-fired Generating Unit Retirements, Case No. 2022-402, Order dated November 6, 2023, at page 10. Case dealing with CPCNs for new construction, including solar, with the backdrop of retiring coal-fired generation.

⁴¹ *Kentucky Utilities Co. v. Pub. Serv. Comm'n.*, 252 S.W.2d 885 (Ky. 1952).

⁴² *Kentucky Utilities Co. v. Pub. Serv. Comm'n.*, 252 S.W.2d at 890.

⁴³ *Kentucky Utilities Co. v. Pub. Serv. Comm'n.*, 252 S.W.2d at 890.

⁴⁴ Case No. 2005-00142, *Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for a Certificate of Public Convenience and Necessity for the Construction of Transmission Facilities in Jefferson, Bullitt, Meade, and Hardin Counties, Kentucky* (Ky. PSC Sept. 8, 2005).

fundamental principle of reasonable least-cost alternative is embedded in such an analysis. Selection of a proposal that ultimately costs more than an alternative does not necessarily result in wasteful duplication.⁴⁵ All relevant factors must be balanced.⁴⁶

In its application, the Company argues “need” by essentially claiming: 1) the project would provide low-cost energy during summer peak periods, 2) the projects would offer an improvement in the Company’s diversification of its generation assets, and, 3) offer the availability of renewable energy for potential large and industrial customers.⁴⁷ None of these arguments applies to “need” for the service offered, i.e., electricity service. Rather, each assertion relates to some sort of goal, while laudable or not, and does not justify approval of a CPCN. Because none of the arguments offers evidence of a need, or substantial inadequacy, the Bluegrass Plains project should not be approved.

The Company’s load forecast does not support need. The Company uses its load forecast from its 2022 Integrated Resource Plan (IRP) as updated in response to Commission staff’s requests. The Company’s seasonal capacity and reserve margins are included in response to discovery.⁴⁸ The table below has data depicting the Company’s capacity without the solar projects.

⁴⁵ See *Kentucky Utilities Co. v. Pub. Serv. Comm’n*, 390 S.W.2d 168, 175 (Ky. 1965). See also Case No. 2005-00089, *Application of East Kentucky Power Cooperative, Inc. for a Certificate of Public Convenience and Necessity for the Construction of a 138 kV Electric Transmission Line in Rowan County, Kentucky* (Ky. PSC Aug. 19, 2005)

⁴⁶ Case No. 2005-00089, Aug. 19, 2005 Order at 6.

⁴⁷ Application page 6, paragraph 18.

⁴⁸ See EKPC Response to PSC Second Requests, number 1.

YEAR	Projected Peaks Long Term LF 2022		Planning Reserves		Capacity Required		Existing Capacity		Reserve Margin	
	WIN	SUM	WIN	SUM	WIN	SUM	WIN	SUM	WIN	SUM
2024	3,349	2,558	0	77	3,349	2,635	3,434	3,132	85	497
2025	3,370	2,590	0	78	3,370	2,668	3,434	3,132	64	464
2026	3,400	2,603	0	78	3,400	2,681	3,434	3,132	34	451
2027	3,419	2,619	0	79	3,419	2,698	3,434	3,132	15	435
2028	3,452	2,640	0	79	3,452	2,719	3,434	3,132	-18	413
2029	3,467	2,656	0	80	3,467	2,736	3,434	3,132	-33	396
2030	3,484	2,669	0	80	3,484	2,749	3,434	3,132	-50	383
2031	3,504	2,686	0	81	3,504	2,767	3,434	3,132	-70	365
2032	3,535	2,708	0	81	3,535	2,789	3,434	3,132	-101	343
2033	3,551	2,727	0	82	3,551	2,809	3,434	3,132	-117	323
2034	3,578	2,748	0	82	3,578	2,830	3,434	3,132	-144	302
2035	3,607	2,771	0	83	3,607	2,854	3,434	3,132	-173	278
2036	3,651	2,804	0	84	3,651	2,888	3,434	3,132	-217	245
2037	3,673	2,828	0	85	3,673	2,913	3,434	3,132	-239	219
2038	3,704	2,854	0	86	3,704	2,940	3,434	3,132	-270	192

The next table depicts the Company's capacity with the addition of the two proposed solar projects.

YEAR	Projected Peaks Long Term LF 2022		Planning Reserves		Capacity Required		Existing Capacity		Reserve Margin	
	WIN	SUM	WIN	SUM	WIN	SUM	WIN	SUM	WIN	SUM
2024	3,349	2,558	0	77	3,349	2,635	3,434	3,132	85	497
2025	3,370	2,590	0	78	3,370	2,668	3,434	3,132	64	464
2026	3,400	2,603	0	78	3,400	2,681	3,434	3,132	34	451
2027	3,419	2,619	0	79	3,419	2,698	3,434	3,269	15	571
2028	3,452	2,640	0	79	3,452	2,719	3,434	3,269	-18	549
2029	3,467	2,656	0	80	3,467	2,736	3,434	3,269	-33	533
2030	3,484	2,669	0	80	3,484	2,749	3,434	3,269	-50	519
2031	3,504	2,686	0	81	3,504	2,767	3,434	3,269	-70	501
2032	3,535	2,708	0	81	3,535	2,789	3,434	3,269	-101	480
2033	3,551	2,727	0	82	3,551	2,809	3,434	3,269	-117	460
2034	3,578	2,748	0	82	3,578	2,830	3,434	3,269	-144	438
2035	3,607	2,771	0	83	3,607	2,854	3,434	3,269	-173	415
2036	3,651	2,804	0	84	3,651	2,888	3,434	3,269	-217	381
2037	3,673	2,828	0	85	3,673	2,913	3,434	3,269	-239	356
2038	3,704	2,854	0	86	3,704	2,940	3,434	3,269	-270	329

A comparison of the two tables demonstrates the Company's summer capacity position remains positive, as do its reserves. In fact, in the second table showing data with the construction of the solar projects, the reserves would increase in year 2027 after the solar units come on system. However, the winter capacity position experiences a **winter** deficit in the years beginning 2028 and continues **even** with the addition of the solar units. The construction of proposed solar facilities contribute nothing to the Company's capacity problems in the wintertime as observed in the second table (with the addition of the solar units).

Q. With the addition of the two solar projects that the reserve margin for EKPC does not go up in the winter time?

A. That is correct.⁴⁹

While the summertime "existing capacity" increases from 3,133 to 3,269, the wintertime remains at 3,434. Accordingly, the proposed solar unit would provide nothing to EKPC's need for capacity. Because the proposed construction would do nothing to address any substantial inadequacy, the application must be denied.

II. EKPC FAILS TO SATISFY KRS 278.020(1) BECAUSE THE APPLICATION DOES NOT AVOID 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."⁵⁰

⁴⁹ Tucker testimony, VTE at 54:00.

⁵⁰ *Kentucky Utilities Co. v. Pub. Serv. Comm'n.*, 252 S.W.2d at 890.

In the instant matter, the investment would not result in any meaningful contribution to the Company's productivity or efficiency; to wit, the proposed construction would not alleviate the Company's winter capacity problems. As the Company agrees it is a winter peaking utility, and solar generation is ineffective in the winter, the proposed construction would be inherently wasteful. If the application is approved, the Company would spend \$102 million to construct a facility that would provide it with what it basically has already in its generation. Any energy contribution would be marginal, at best.

The proposed Bluegrass Plains solar unit, even when reviewed in the most favorable light possible, fails to demonstrate how it would meaningfully contribute to the Company's energy requirement. Indeed, there is scant evidence to support any such claim. Indeed, the opposite would seem to be the case at hand. As per the Company's own calculations,⁵¹ the Bluegrass project would energize 6,095 homes per month. Out of 570,000 meters, this equates to 1% of the total meters. However, because the energy generated from the solar unit would not be dedicated to only residential use, the total number of meters served would be even less than 1%.⁵² Thus, the solar unit does not appear to provide any significant amount of energy, at least not worth the cost of \$102 million investment.

In addition, assuming EKPC demonstrates a need for solar generation, the Company must demonstrate the proposed facility does not result in wasteful

⁵¹ EKPC response to LFUCG Supplement Requests, number 18.

⁵² Tucker testimony, VTE at 1:01:20.

duplication. The Commission has held that the applicant must demonstrate that a thorough review of all reasonable alternatives has been performed.”⁵³ LFUCG has proven the Company has failed to do so here. Indeed, the inconvenient question for the Company persists as to whether it has conducted a thorough review of all possible, reasonable alternatives.

As part of the review of the alternatives, and given the magnitude of the issues involved, EKPC should have discussed the project with Lexington. In *Kentucky-American Water Company KRS II*,⁵⁴ the Commission presided over a politically charged case where the water Company presented its plan for addressing the source of supply of water for central Kentucky. The Company had studied the issue for over two decades; and there were many stakeholders with varying positions concerning the Company’s proposal. Before adjudicating the case, the Commission directed LFUCG to respond to a number of requests for information, including whether LFUCG had discussed possible public-private partnerships with KAWC. As the Commission articulated its demand:

Our review of the existing record indicates that, while most of the parties in this proceeding have formally adopted a position on the proposed facilities, Lexington Fayette Urban County Government (“LFUCG”) has not. Its silence is perplexing. Kentuckians living within LFUCG’s boundaries comprise most of Kentucky-American’s existing retail customer base. Arguably, our decision will have a greater impact upon LFUCG’s constituents than that of any other party to this proceeding.⁵⁵

⁵³ Case No. 2005-00142, *supra*.

⁵⁴ *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.

⁵⁵ *Kentucky-American Water Company KRS II*, order dated December 21, 2007, at page 2. [200700134_12212007.pdf](#)

Even more importantly, the Commission directed Kentucky-American to respond to requests for information as to whether the Company had discussed the plan with LFUCG.

Similarly, the Commission is uncertain what, if any, discussions Kentucky American and Louisville Water Company (“LWC”) have had previously regarding the feasibility of a joint plan to serve the water supply needs of Kentucky-American’s and BGWSC’s customers from the Ohio River. **Such discussions would indicate the level and completeness of utility management’s review of available options before embarking upon the present course of action.**⁵⁶ [Emphasis added.]

Kentucky-American Water Company KRS II was an unprecedented case involving the then present as well as future supply of water for central Kentucky, as well as the level of participation by effected of stakeholders. Likewise, the current case appears to be precedential in nature because it may decide the current, and future, land use policies on agricultural land in Lexington-Fayette Urban County through LFUCG’s zoning ordinances. As a result, the Commission should require the Company to demonstrate its efforts in collaborating, or at least substantively discussing, the project with LFUCG. But the Company cannot do such a demonstration because no discussions occurred.

In fact, quite the opposite happened. EKPC had a team that developed the EKPC proposal for Fayette County.⁵⁷ The Company knew about Lexington’s PDR programs and concluded the parcels did not have conservation easements on them.

⁵⁶ *Kentucky-American Water Company KRS II*, order dated December 21, 2007, at page 3. [200700134_12212007.pdf](#)

⁵⁷ Bischoff testimony, VTE at 3:02:20

Q. Was the Company at any point in time concerned that you would not be able to build a solar facility on land in Fayette County because of PDR or otherwise?

A. The team that developed the proposal reviewed the PDR program and confirmed that the parcels that are part of the project were not included within that program.⁵⁸

The team was advised that Lexington's zoning ordinances did not apply.

Q. Were you concerned about any zoning restrictions?

A. We did not review zoning restrictions.

Q. Why didn't you?

A. We were advised by counsel that local planning and zoning ordinances were not applicable in this case.⁵⁹

It is clear the Company knew of LFUCG's potential concerns even before the application was filed, yet, at no point during the development of the project did the Company approach Lexington. The Commission should not allow EKPC, as a utility monopoly, to advance its proposal until it can demonstrate a thorough review of all reasonable alternatives, inclusive of those of Lexington. Given its lack of collaboration with a significant stakeholder, LFUCG, the application should be denied.

III. IN THE ALTERNATIVE, THE CASE SHOULD EITHER BE DISMISSED OR HELD IN ABEYANCE UNTIL LFUCG PROVIDES THE COMMISSION LFUCG'S POSITION ON ITS SOLAR ZONING ORDINANCES FOR AGRICULTURAL LAND. ELSE, THE COMMISSION UNNECESSARILY LEGISLATES LOCAL ZONING ORDINANCES.

In *Kentucky-American Water Company KRS II*, the Commission, prior to rendering its decision, demanded Lexington provide its position in a case that would determine

⁵⁸ *Id.*

⁵⁹ Bischoff testimony, VTE at 3:03:40

the future of water supply for central Kentucky. In the instant case, if the Commission approves the Company's application and approves the construction of a solar facility on agricultural land, even if LFUCG has a zoning ordinance against it, the Commission would effectively and permissively "legislate" zoning law in favor of solar generation. The Commission need not make that decision when it should either hold the case in abeyance, or if that option is not available, dismiss it and allow the Company to file it again.⁶⁰ The impact of a Commission decision is clear on local zoning.

The construction of the proposed solar facility would be on agricultural land⁶¹ and it would be the first project of this magnitude in Fayette County.

The construction of solar on agricultural land is currently not allowed in Fayette County under its zoning ordinances.⁶²

Lexington, however, is currently determining whether to change its zoning laws to accommodate this type of construction on agricultural land.⁶³ Specifically, the Urban County Council is reviewing its zoning ordinances to determine whether it wants to permit large scale solar on agricultural land.⁶⁴

Under current law, local zoning ordinances do not appear to apply to utility companies. Specifically, KRS 100.324 generally provides that "public utilities operating

⁶⁰ EKPC argues the Commission must decide the case by December 26, 2024, pursuant to statutory deadline for Commission action under KRS 278.019 and that dismissal of the action would prevent the Company from gaining favorable financial treatment. However, because there is no justification for the project under KRS 278.020, dismissal is warranted resulting in no cost to the ratepayers.

⁶¹ See, for example, Application Attachment PB-3 at page 6 of 193.

⁶² LFUCG oral argument, VTE at 34:50.

⁶³ *Id.*

⁶⁴ *Id.*

under the jurisdiction of the Public Service Commission . . . shall not be required to receive the approval of the planning unit for the location or relocation of any of their service facilities,”⁶⁵ which the Kentucky Court of Appeals has interpreted as exempting utility service facilities from the jurisdiction of local planning and zoning commissions.”⁶⁶ While this exemption makes sense for most utility projects, it should not be used as the basis to allow for construction of the first large scale solar project in a locality in which such facilities are currently not permitted.

Thus, if EKPC is granted approval for the project, Lexington’s ability to meaningfully restrict or control commercial solar projects will be severely compromised due to the precedent setting nature of this project.

Because *Kentucky-American Water Company KRS II* should control, the Commission should either hold the case in abeyance or dismiss it given the Company’s incomplete review of potential alternatives had it explored them with LFUCG. To do otherwise, and if the Commission approves the application, the Commission may well become the default local government zoning authority for solar projects.

IV. THE APPLICATION SHOULD BE DENIED BECAUSE IT IS UNNECESSARY AND IMPRUDENT.

As argued above, there is no need for the Bluegrass Plains project, so it is unnecessary and imprudent. The project is wasteful, so it is unnecessary and imprudent.

⁶⁵ KRS 100.324

⁶⁶ *Oldham County Planning and Zoning Com’n v. Courier Communications Corp.*, 722 S.W.2d 904, 906 (Ky. App. 1987)

From a pure policy argument, the project is imprudent in light of the inequitable consequences for a major stakeholder, LFUCG. The proposed facility would be built on 388 acres of prime farmland in the Horse Capital of the World without any apparent prioritization for land that is otherwise less practical for economic industry, such as a landfill or reclaimed surface mine. While the Company may argue such a proposition might be more expensive, the long-term gains for the ratepayers might offset the short run costs.

If the application is approved, LFUCG forfeits control over its land use policies for solar construction, inclusive of the 388 acres of farmland in question, regardless of its zoning ordinances. There would be no apparent quantifiable benefits for the county, a county with only approximately 7,000 meters of the total EKPC 570,000 meters, or 1% of the Company total (7,000/570,000). The land would be displaced for at least 30 years, the proposed lifetime of the project. Even if the land returns to an agricultural purpose, it is not clear whether the modules at the facility can be recycled.⁶⁷ During the life of the facility, the number of jobs related to the agricultural and equine industry would be displaced in favor of possibly two EKPC employees who would work at multiple facilities.⁶⁸ If the application is approved, these known and foreseeable consequences for LFUCG are untenable.

The uncooperative manner in which this process has taken place begs for more transparency by the Company through its public disclosure and discourse as well as

⁶⁷ EKPC response to LFUCG Initial, number 28.

⁶⁸ EKPC response to LFUCG Initial Requests, number 75.

meaningful cooperation at the Commission. Indeed, EKPC's actions do not lend themselves to any present or future collaborative planning and are contrary to sound public policy in the planning of solar generation in the Commonwealth as a whole. Regarding the point, the Company met with LFUCG officials the Friday before the Monday April 29th filing of the application. After the application was filed, the Company sponsored one meeting – May 16, 2024 – with the public. There were no other meetings. The Company's antagonism continued into discovery all the way up to the afternoon before the hearing. Claiming oversight, there were two distinct examples of Company indifference.

First, on Friday, October 25th at 9:27pm, the Company filed a supplemental response to LFUCG Second Request 21a regarding the EKPC Environmental Affairs' Phase I Environmental Site Assessment for Bluegrass Plains Solar Project. It was filed under Seal and made available to undersigned counsel on Sunday, October 27th at 10:27pm. While it became available in July or August, the Company failed to file it sooner because of oversight.

Then, the day before the hearing, Monday, October 28th, at 4:14pm, EKPC filed a supplemental response, over objection, to LFUCG Supplemental Request 8a. Namely, the Company filed its Generation Interconnection Agreement ("GIA"), dated September 19, 2024, consisting of 161 pages. At the hearing, EKPC testified the document became available shortly after September 16, 2024. The Company stated the reason for late filing at PSC was "identified the deficiency and identified the request to supply document."

The importance of this document cannot be overstated. The Company emphasized that an existing PJM interconnection for the Bluegrass Plains project was the driving force behind the proposal in the application.⁶⁹ The Generation Interconnection Agreement would be the key for the facility to connect to PJM.

Q. How important is this letter to the Company in going forward with the Bluegrass Plains solar project?

A. This is the final step with PJM to move forward with the project but currently the developer still holds the project. East Kentucky Cooperative is not the developer of the project at this time

Q. This is the key for the facility to connect with PJM?

A. This is the authorization for the developer to begin construction.

The failure to produce significant discovery documents in a timely manner illustrates EKPC's cavalier attitude or indifference toward LFUCG.

The Company's indifference to Lexington has persisted even after the October 29th hearing. In particular, on November 14th, Lexington announced a significant development in its adoption of solar as a sustainable energy source. LFUCG moved to supplement the record the next day; the Company objected, and the Commission held in favor of the Company but stated "LFUCG may further express its position in its post-hearing brief."⁷⁰ LFUCG reasserts its motion to supplement the record with the information as it relates to the existence of the announcement - to wit, Lexington will

⁶⁹ See for example, Application page 7, paragraph 20, EKPC response to PSC First Requests, number 1.

⁷⁰ See Order dated November 25, 2024, page 4.

investigate potential of solar energy- rather than the merits of the details in the announcement. The Commission should take note of the Company's continued antagonism toward Lexington as a stakeholder in this process. To be clear, the Company's objection, in and of itself, demonstrates the Company's refusal to consider any efforts by Lexington, including whether it may possess an alternative location for a solar facility. The Company's actions beg the question that it has not given LFUCG the deference that public policy should require.

EKPC is a sophisticated business entity which happens to be a utility monopoly Company. Public policy should require the Company to explore alternatives with an eye toward equitable outcomes for all interested stakeholders through a fully transparent and forthcoming process. EKPC has failed to do so; the application should be denied.

CONCLUSION

WHEREFORE, EKPC respectfully requests the Commission deny the application because: 1) EKPC has failed to satisfy KRS 278.020(1) because the proposed Bluegrass Plains Solar facility fails to satisfy the need criteria under law; 2) EKPC has failed to satisfy KRS 278.020(1) because the Application does not avoid wasteful duplication; and 3) it is unnecessary and imprudent. In the alternative, the case should either be dismissed or held in abeyance until LFUCG provides the Commission LFUCG's position on its solar zoning ordinances for agricultural land; else the Commission unnecessarily legislates a local zoning ordinance.

Respectfully submitted,

/s/ Dennis G. Howard, II

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Certificate of Service

Pursuant to the Commission's Orders in Case No. 2020-00085, and in accordance with all other applicable law, Counsel certifies that an electronic copy of the foregoing was served and filed by e-mail to the parties of record on this 27th day of November 2024.

/s/ Dennis G. Howard II

Dennis G. Howard, II