

**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 RESPONSE BRIEF

Lexington-Fayette Urban County Government (“LFUCG”), by and through counsel, by and through counsel, tenders its response brief to East Kentucky Power Cooperative, Inc. (the “Company”). The Company’s requests in the application fail to satisfy need under KRS 278.020(1); and, the application related to the Fayette County, Kentucky Solar facility should be denied.

EKPC has failed to demonstrate how the proposed construction of a 40 WM solar facility is needed for the Company to provide safe, adequate and reliable service to the service areas of its sixteen owner-member distribution companies. Specifically, the Company has not met its burden under KRS 278.020(1) because the company’s proposal does not satisfy its need for generation. According to the company,

“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.”¹

There is no capacity “need” for the Fayette County solar project in the summer.

Insofar as the winter, and understanding EKPC is a winter peaking utility, we need only review the Company’s generation capacity with some detail. Without the facilities, the EKPC’s capacity positions for the foreseeable future are:

| YEAR | Projected Peaks | | Planning Reserves | | Capacity Required | | Existing Capacity | | Reserve Margin | |
|------|-------------------|-------|-------------------|-----|-------------------|-------|-------------------|-------|----------------|-----|
| | Long Term LF 2022 | | 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 |

¹ East Kentucky Power Cooperative, Inc. Brief dated November 27, 2024, at page 10.

With the solar projects facilities, the capacity positons are:

| 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 tables indicates there is no improvement in the company’s winter capacity; 3434 MW remains constant. Hence, the Company cannot demonstrate how the Fayette County solar project satisfies need under KRS 278.020.

The Company intends to address its winter need - outside of this case.

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).²

The first case is a Company request for the construction of a Reciprocating Internal Combustion Engine facility with net output of 218 MW to be situated on a 100-acre

² *Id.*

greenfield site.³ “The Liberty RICE Facility project cost is estimated at \$500 million.”⁴

The second case, Case number 2024-00370, is a Company request for the construction of an integrated combined cycle gas turbine (CCGT) at Cooper Station with a capacity of 745 MW and coal to gas co-firing conversion at Cooper as well as coal to natural gas co-firing conversion at Spurlock. Total project cost is estimated at \$1,577.8 million for all of the projects proposed in the Application.⁵

The two referenced cases combined have 963 MW at a cost of \$2,077.8 million.

EKPC has \$4.68 billion in assets.⁶

As the Company states in the second case, its most recently filed CPCN request,

EKPC needs the solar facilities it has proposed in Case No. 2024-00129 to help to meet the needs of its Owner-Members’ and businesses for renewable energy and to assist EKPC in meeting its sustainability goals. Renewable energy is important for economic development. However, due to the intermittent nature of solar, EKPC also needs to construct the other generation assets proposed in Case No. 2024-00310 and this proceeding in order to meet its generation, capacity, and reliability needs.⁷

The case at bar is not about the need to provide safe, adequate and reliable service.

Instead, the Company’s obvious intent is to address sustainability goals⁸ and not any

³ Case No. 2024-00310, Application page 5, paragraph 10. [Application with Exhibits.pdf](#)

⁴ Case No. 2024-00310, Application, Mosier prefiled testimony at page 7. [Application with Exhibits.pdf](#)

⁵ Case No. 2024-00370, Application, Mosier prefiled testimony at page 14. [Application New Gen - Final to File.pdf](#)

⁶ Case No. 2024-00370, Application, Mosier testimony prefiled at page 3. [Application New Gen - Final to File.pdf](#)

⁷ Case No. 2024-00370, Application filed November 20, 2024, Mosier prefiled testimony at page 7.

⁸ The Company “anticipates seeking a CPCN for additional renewable energy as soon as next year due in part to the investment tax credits and New ERA funds available to cooperatives.” *Id.* at page 7. Filed November 20, 2024, this statement begs questions about the Company’s assertions of losing favorable tax treatment in the current case if a decision is not rendered by year’s end.

service need. The Company's true need is being addressed outside of this matter. The Company has failed to demonstrate how the construction of the Bluegrass plains project can satisfy any need under applicable law.

CONCLUSION

East Kentucky Power Cooperative, Inc. cannot satisfy need or the avoidance of wasteful duplication under KRS 278.020(1); and the application is unnecessary and imprudent. Moreover, the proposed construction of the facility on a scenic highway fails not to comply with scenic surroundings under the Kentucky Scenic Byways and Highways statutes, KRS 177.571 through 177.576.⁹ Accordingly, the Commission should not approve this application and effectively zone 388 acres of agricultural land in Lexington for a 40 MW solar facility based on a company goal. The application should be denied for the reasons stated in LFUCG's post-hearing brief as well as for the arguments stated herein.

WHEREFORE, LFUCG moves the Commission to deny the company's request for the Bluegrass Plains Solar Project as well as the other associated or related issues contained in the application.

⁹ LFUCG agrees with, and hereby adopts, Fayette Alliance's argument contained in its initial brief as well as response brief that EKPC has failed to comply with KRS 177.571 through 177.576; to wit, the proposed construction would not contribute in harmony to the quality of the scenic byway.

Respectfully submitted,

/s/ Dennis G. Howard, II
Dennis G. Howard, II
Howard Law PLLC
740 Emmett Creek Lane
Lexington, Kentucky 40515
Telephone: 859.536.0000
Fax: 859.245.1811
dennisghowardii@gmail.com

/s/ David J. Barberie
David J. Barberie
Acting Commissioner of Law
200 East Main Street
Lexington, Kentucky 40507
Telephone: 859.258.3500
dbarberi@lexingtonky.gov
Attorneys for LFUCG

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 6th day of December 2024.

/s/ Dennis G. Howard II
Dennis G. Howard, II