

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

In the matter of:	:	
ELECTRONIC APPLICATION OF EAST	:	CASE NO.
KENTUCKY POWER COOPERATIVE, INC.	:	2024-00129
FOR A 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 ASSUMPTIONS OF EVIDENCES OF	:	
INDEBTEDNESS RELATED TO THE SOLAR	:	
FACILITIES AND OTHER RELIEF	:	

FAYETTE ALLIANCE’S RESPONSIVE POST-HEARING BRIEF

Comes the Fayette Alliance, Inc., (“FA”), 169 N. Limestone Ave., Lexington, Kentucky 40507, by counsel and intervener in this action, and respectfully submits the following responsive post-hearing brief:

East Kentucky Power Cooperative (“EKPC”) seeks at a certificate of public convenience and necessity (CPCN) and site compatibility certificate to construct a 96 MW solar facility in Marion County, Kentucky and a 40 MW solar facility (“Bluegrass Plains”) in Fayette County, Kentucky.

EKPC’s post-hearing brief confirms these proposed solar facilities to essentially be vanity projects to meet “sustainability” goals.¹ EKPC concedes that it already has sufficient capacity resources to meet its forecasted summer load peaks for the near future.² These proposed solar projects only provide capacity contribution to demand peaks in the summer

¹ The projects will help satisfy the need for EKPC’s increasing energy requirements and help meet *sustainability* goals on an economic basis... (emphasis added) EKPC’s Brief, p. 10 (last sentence of page), dated November 27, 2024.

months with zero planned capacity contribution to the demand peaks in the winter months.³ And, basically EKPC plans to just sell the extra summer solar capacity from Bluegrass Plains into PJM.⁴ With regard to winter period needs, when EKPC might actually need some additional dispatchable capacity, EKPC has also recently filed two new CPCNS for natural gas fired power seeking 1,245 MW of dispatchable capacity combined – with a price tag to ratepayers exceeding \$2 billion dollars.⁵ EKPC does not “need” Bluegrass Plains and it is wasteful duplication. Fayette County residents and organizations⁶ do not support Bluegrass Plains. Lastly, Bluegrass Plains also does not comply with Kentucky Scenic Byway statutes or KRS 278.708(3)(b) ([a]n evaluation of the compatibility of the facility with scenic surroundings).

LEGAL STANDARD

Per KRS 278.020(1), any person or corporation providing a utility service to the public shall initially obtain a certificate of necessity from the Commission before commencing construction upon “any plant, equipment, property or facility....” [t]o be entitled to such a certificate of necessity, the applicant must demonstrate a need for the proposed facility and the absence of wasteful duplication. *Kentucky Utilities Co. v. Public Service Commission*, 252 S.W.2d 885 (Ky.1952). A “need” may be demonstrated by “showing of a substantial inadequacy of existing service” and “wasteful duplication” may be demonstrated by showing “an excess capacity over need,” “excessive investment in relation to productivity,” or “unnecessary multiplicity of physical properties.” *Citizens for Alternative Water Solutions v. Ky. PSC*, 358

² ...EKPC has sufficient capacity resources to meet its forecasted summer load peaks for the near future...EKPC’s Brief, p.10 (middle of page) dated November 27, 2024.

³ EKPC Response to PSC Staff’s Second Request No. 1 dated July 31, 2024.

⁴ EKPC Response to LFUCG Initial Request No. 30 dated May 31, 2024.

⁵ 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). EKPC’s Brief, p. 10, dated November 27, 2024.

⁶ Such as the Lexington Mayor, State Rep. Adreille Camuel, Bluegrass Land Conservancy, Fayette County Farm Bureau and Kentucky Thoroughbred Association.

S.W.3d 488 at 490 (Ky.App.2011) citing *Kentucky Utilities Co. v. Public Service Commission*, 252 S.W.2d at 890.

I. BLUEGRASS PLAINS IS MERELY A VANITY PROJECT TO MEET INTERNAL SUSTAINABILITY GOALS – NOT BASED ON NEED.

Applying the law to the facts here, EKPC requests permission to add Bluegrass Plains as a generating asset. Bluegrass Plains would provide power in the summer when EKPC does not need power – so there is no “substantial inadequacy of existing service”.⁷ EKPC already has sufficient generating assets to support summertime demand.⁸ Simply put, adding EKPC’s Bluegrass Plains project clearly meets the definition of “an excess capacity over need” a/k/a wasteful duplication as EKPC already has sufficient generating assets for the summertime – it should be denied.

By analogy, prior to the implementation of child support guidelines (KRS 403.212) in the Commonwealth of Kentucky, in determining child support Kentucky Circuit Courts would focus on the “reasonable needs” of the children. In determining “reasonable needs”, “[b]eyond a certain point, additional child support serves no purpose but to provide extravagance and an unwarranted transfer of wealth. While to some degree children have a right to share in each parent’s standard of living, child support must be set in an amount which is reasonably related to the realistic needs of the children. This is sometimes referred to as the “Three Pony Rule.” That is, no child, no matter how wealthy the parents, needs to be provided more than three ponies.”⁹

EKPC’s request to add Bluegrass Plains seems like a third pony – EKPC does not “need” excess unnecessary summertime capacity – they want it for internal “sustainability” goals. Said another way, EKPC does not need additional summertime capacity yet they acknowledge these

⁷ EKPC Response to PSC Staff Request No. 1 dated July 3, 2024.

⁸ *Id.*

solar projects help meet their “sustainability goals” (a vanity project) meanwhile EKPC will merely feed the proposed excess solar summertime capacity back into PJM as an offset.¹⁰ They do not need this solar array. With regard to the winter¹¹, EKPC separately seeks to add gas fired power seeking 1,245 MW of dispatchable capacity combined in other pending CPCNS – with a price tag to ratepayers exceeding \$2 billion dollars.¹²

The Commission should deny EKPC’s request to add Bluegrass Plains as it is merely excess unneeded capacity like a third pony.

II. IN ADDITION TO BEING UNNECESSARY, PUBLIC COMMENTS DO NOT SUPPORT BLUEGRASS PLAINS AND IT FAILS TO COMPLY WITH KENTUCKY SCENIC BY-WAY STATUTES.

As described above, adding Bluegrass Plains merely adds unnecessary summertime capacity contrary to *Citizens for Alternative Water Solutions v. Ky. PSC*, 358 S.W.3d 488 at 490 (Ky.App.2011) citing *Kentucky Utilities Co. v. Public Service Commission*, 252 S.W.2d at 890.

In addition to Bluegrass Plains being an unnecessary extravagance, it would also be an eyesore ending agriculture on an approximate 400-acre farm in rural Fayette County. Public comments¹³ largely do not support Bluegrass Plains in Fayette County and the project would not comply with the scenic surroundings.

EKPC’s brief asserts that the Bluegrass Plains SAR addresses, “compatibility with scenic surroundings”.¹⁴ Bluegrass Plains is proposed to be on the Winchester Road Corridor which is a

⁹ *Downing v. Downing*, 45 S.W.3d 449, 455-56 (Ky.App.2001) citing *Matter of Marriage of Patterson*, 920 P.2d 450, 455 (Kan.,1996).

¹⁰ EKPC Response to LFUCG Initial Request No. 30 dated May 31, 2024.

¹¹ EKPC Response to PSC Staff’s Second Request No. 1 dated July 3, 2024.

¹² 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). EKPC’s brief, p. 10, dated November 27, 2024.

¹³ Such as the Lexington Mayor, State Rep. Adreille Camuel, Bluegrass Land Conservancy, Fayette County Farm Bureau and Kentucky Thoroughbred Association.

¹⁴ EKPC Post-Hearing Brief, p. 22, dated November 27, 2024.

Kentucky Scenic Byway.¹⁵ Regardless of the vegetative buffer the solar array will be visible from Winchester Road.¹⁶ Tetra Tech (hired engineer for the Bluegrass Plains SAR) did not address the Kentucky Scenic Byway statutes which require, “[a]ll elements of the landscape including...manmade development, **must** contribute in harmony to the quality of the scenic byway’s...visual environment and share in its intrinsic qualities.”¹⁷ The solar array would not comply with Kentucky Scenic Byway statutes. Additionally, Tetra Tech only analogized this proposed large scale industrial solar array to an impermissible land use (larger greenhouses) in rural Fayette County¹⁸ in its SAR to try and comply with SAR requirements (KRS 278.708(3)(b)(evaluation of the compatibility of the facility with scenic surroundings).¹⁹ If large greenhouses are not allowed why would large scale industrial solar be allowed?

In sum, the Bluegrass Plains project lacks public support, fails to comply with zoning regulations of Fayette County and does not comply with the scenic surroundings and statutory requirements of this Kentucky Scenic By-way. Last, in addition to the reasons stated previously, allowing this vanity project without the support of the local government and the public, which poses risks to the local economy and landscape that the community relies upon for their livelihood would set a bad precedent going forward.

CONCLUSION

Bluegrass Plains should be denied:

- It is an unneeded generating asset to meet sustainability goals like a third pony;

¹⁵<https://transportation.ky.gov/LocalPrograms/Documents/Kentucky%20State%20and%20National%20Scenic%20Byways%20and%20Highways.pdf>

¹⁶ VR, 10/29/24, EKPC Hearing, Witness Young, 3:07 p.m., 4:15

¹⁷ KRS 177.572(11)

¹⁸[https://codelibrary.amlegal.com/codes/lexingtonfayettecoky/latest/lexingtonfayettecoky_zone/0-0-0-14089#JD_8-](https://codelibrary.amlegal.com/codes/lexingtonfayettecoky/latest/lexingtonfayettecoky_zone/0-0-0-14089#JD_8-1)

[1](https://codelibrary.amlegal.com/codes/lexingtonfayettecoky/latest/lexingtonfayettecoky_zone/0-0-0-14089#JD_8-1)

¹⁹ [https://psc.ky.gov/psccef/2024-00129/allyson%40hloky.com/04262024083034/Attachment_PB-3 - Bluegrass_Plains_SAR.pdf](https://psc.ky.gov/psccef/2024-00129/allyson%40hloky.com/04262024083034/Attachment_PB-3_-_Bluegrass_Plains_SAR.pdf) (p. 7 of 193).

- EKPC seeks additional natural gas fired power CPCNs in pending matters before the Commission in excess of \$2 billion dollars to be paid by the ratepayers;
- It does not comply with the scenic surroundings of the Kentucky Scenic By-way or the mandatory statutes associated with the Kentucky Scenic By-ways.²⁰

Respectfully submitted,

/s/Matt Malone

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CERTIFICATE OF SERVICE

I hereby certify that FA's December 6, 2024 electronic filing is a true and accurate copy of FA's pleading and Read 1st Document to be filed in paper medium; that the electronic filing has been transmitted to the Commission on December 6, 2024; that an original and one copy of the filing will not be mailed to the Commission given the pandemic orders; that there are currently no parties excused from participation by electronic service; and that, on December 6, 2024, electronic mail notification of the electronic filing is provided to all parties of record.

/s/Matt Malone

ATTORNEY FOR FAYETTE ALLIANCE, INC.

²⁰ Notably, the Northern Bobwhite project in Marion County does not appear to have the same scenic byway entanglements.