

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

**In the Matter of:**

<b>THE ELECTRONIC APPLICATION OF</b>	)	
<b>EAST KENTUCKY POWER COOPERATIVE,</b>	)	
<b>INC. FOR 1) A CERTIFICATE OF PUBLIC</b>	)	<b>CASE NO.</b>
<b>CONVENIENCE AND NECESSITY TO</b>	)	<b>2024-00310</b>
<b>CONSTRUCT A NEW GENERATION</b>	)	
<b>RESOURCE; 2) A SITE COMPATIBILITY</b>	)	
<b>CERTIFICATE; AND 3) OTHER GENERAL RELIEF</b>	)	

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**EKPC’S RESPONSE TO SIERRA CLUB’S EMERGENCY MOTION**

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Comes now East Kentucky Power Cooperative, Inc., (“EKPC” or the Company”) by and through the undersigned counsel, pursuant to 807 KAR 5:001 Section 5 other applicable law, and for its Response to the Sierra Club’s Emergency Motion respectfully states as follows:

On September 20, 2024, EKPC submitted an Application for a Certificate of Public Convenience and Necessity (“CPCN”) to construct a new generation resource (“RICE units”) and a site compatibility certificate for the project. On October 9, 2024, the Commission entered an Order establishing the procedural schedule for this proceeding. The Attorney General, through the Office of Rate Intervention (“Attorney General”), Nucor Steel Gallatin (“Nucor”), the Sierra Club (“Sierra Club”), and the Mountain Association together with Kentuckians for the Commonwealth (“Joint Intervenors”) were granted intervention by the Commission.

Based on the timeline established in the procedural schedule, EKPC has responded to a total of three rounds of data requests from the parties in this proceeding, with a fourth round currently pending from Commission Staff. In total, EKPC has responded to more than 800 data requests (including subparts) in this proceeding. In addition, EKPC has received requests from

parties to supplement its responses to certain requests, which EKPC has done when it has been requested. In addition to the more than 800 data requests, EKPC also participated in an informal conference on January 29, 2025 with Commission Staff and all of the parties. At this informal conference, each of the parties were given an opportunity to ask any questions of EKPC. Sierra Club did not take the opportunity to ask any questions of EKPC.

EKPC has attempted to respond to each and every data request presented in this matter by all parties. In response to Sierra Club's First Request for Information, EKPC believed it was responding to the question regarding expansion modeling, which EKPC did not conduct with respect to the Liberty RICE units. When it was brought to the attention of EKPC on February 7, 2025, that Sierra Club was also requesting cost production modeling, EKPC began gathering the information requested. This process was not as simple as the Sierra Club asserts. The cost production modeling was conducted as a whole, with the Liberty RICE units as well as the generation proposed in Case No. 2024-00370. Sierra Club did not intervene in Case 2024-00370, and since Sierra Club is not a party to that proceeding it is not entitled to confidential information from that case filing. To provide the cost modeling in this case, EKPC had to extract the information that pertains to the Liberty RICE units, review the information to make sure it was complete, and make sure that the information was accurate. Additionally, this information is confidential and a motion for confidential treatment had to be drafted before the filing could be made. In the motion filed contemporaneously with the modeling information, EKPC described the information as follows: "[t]he Confidential Information contains the modeling assumptions generated using the RTSim production cost modeling software." EKPC filed the information as quickly as it was able to after Sierra Club informally requested it. Sierra Club also requested the information in its third set of requests for information, however, EKPC filed the information on

February 14, 2025. EKPC did not hold the information, since it was available, and instead filed it ahead of the deadline for the responses to the third requests for information.

EKPC has put forth a tremendous amount of effort to respond to each of the more than 800 data requests in this proceeding to the best of its ability and in the timeframe allowed in the procedural schedule. EKPC has not purposefully withheld any information requested in this proceeding. EKPC has also attempted to respond to all informal requests received from the parties in this proceeding if they believe EKPC misunderstood a request, or may have missed responding to one of the many subparts contained in the requests. No party has filed a motion to compel EKPC to respond to any information requests. If any party believed that EKPC was not being responsive to its requests, it could have filed a motion to compel EKPC to respond to its discovery.

The deadline for filing testimony in this proceeding was January 6, 2025, forty-six days before Sierra Club filed its emergency motion. No party other than EKPC has filed any testimony in this proceeding. The Commission amended the procedural schedule in this proceeding to allow each of the parties to submit a third set of data requests in this proceeding and also held an informal conference which allowed the parties to ask any additional questions. As noted above, Sierra Club participated in the informal conference but did not ask any questions of EKPC.

Sierra Club's motion sets out a procedural schedule that is unduly burdensome to EKPC, and based upon the prior requests for information from the Sierra Club, cannot possibly be met. Sierra Club's proposed schedule only allows EKPC four days to respond to additional discovery requests, after EKPC has already responded to more than 800 requests (including subparts) in this proceeding. Sierra Club then requests twelve days to draft and file testimony, sixty-five days after the deadline to submit testimony in this proceeding, and does not give EKPC time to review the testimony and develop discovery based upon that testimony. Sierra Club's proposed schedule then

requires EKPC, and Commission Staff, to submit requests for information to Sierra Club the very next day. This lack of opportunity to meaningfully submit request for information would violate EKPC's due process rights in this proceeding. EKPC has the burden of proof in this proceeding, and would be dramatically harmed if it is not allowed ample time to review information filed in this proceeding and to have sufficient time to prepare for a hearing. This proceeding has been ongoing for more than five months. The responses to requests for information that EKPC had to supplement do not change the record in this proceeding in any meaningful way that would have prevented the Sierra Club to develop and file testimony at the originally ordered deadline by the Commission. Sierra Club should not now get another round of discovery, file testimony (65 days after the deadline for testimony to be filed), and take time away from EKPC that is being used to prepare for the formal hearing. Allowing Sierra Club to request additional discovery and giving EKPC such a short time to respond to that discovery unfairly takes the time that EKPC is using to prepare for the hearing in this matter that is currently set only three weeks away. In addition, if Sierra Club is allowed to now develop and file testimony in this proceeding, according to the proposed procedural schedule of Sierra Club, that testimony would be filed just five days before the hearing in this matter, allow only twenty-four hours for EKPC to review that testimony and develop and file any data requests EKPC may have regarding that testimony, and for Sierra Club's responses to those requests to be due the Friday before a Monday hearing. This would not allow EKPC enough time to review and prepare for the hearing in this matter and to develop any cross-examination EKPC may have for the newly introduced Sierra Club witness.

This case has an eight-month statutory deadline. The hearing date was set for mid-March to allow enough time for post-hearing data requests and briefs and for the Commission to enter its Order before the statutory deadline. Sierra Club has had every opportunity to file data requests,

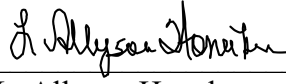
ask questions at the informal conference and had the information that it says it did not receive, nearly a week before the emergency motion was filed. Sierra Club should not be able to come in at the eleventh hour and try to disrupt the entire proceeding. Sierra Club chose not to file testimony when it was due, over sixty-five days ago, but now would ask the Commission to violate EKPC's due process rights to allow Sierra Club to do something it chose not to do when it was due.

Sierra Club's motion argues that it received the cost production modeling after the deadline for testimony to be filed in this matter and that Sierra Club should have the opportunity to ask follow-up discovery questions on that cost production modeling. Since this is the only information that Sierra Club claims that it did not receive in a timely manner, if the Commission grants Sierra Club the opportunity to issue more discovery requests to EKPC these discovery requests should be limited to questions solely regarding the cost production modeling. In addition, since the deadline for testimony passed months before Sierra Club's emergency motion was filed, Sierra Club should only be allowed to file testimony regarding the cost production modeling.

WHEREFORE, on the basis of the foregoing, EKPC respectfully requests the Commission to deny Sierra Club's emergency motion in this proceeding. However, if the Commission grants any portion of Sierra Club's emergency motion, Sierra Club should be limited to only asking discovery and/or filing testimony on the cost production modeling.

This the 24<sup>th</sup> day of February, 2025.

Respectfully Submitted,



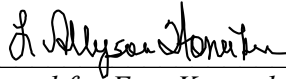
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**CERTIFICATE OF SERVICE**

This is to certify that the foregoing electronic filing was transmitted to the Commission on February 24, 2025, 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.*