

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

In the Matter of:

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

**RESPONSE OF KENTUCKIANS FOR THE COMMONWEALTH AND  
MOUNTAIN ASSOCIATION TO EAST KENTUCKY POWER  
COOPERATIVE, INC. TO SIERRA CLUB’S EMERGENCY MOTION FOR  
LEAVE TO SUBMIT SUPPLEMENTAL REQUESTS FOR INFORMATION  
AND THE OPTION TO SUBMIT DIRECT TESTIMONY**

Come now Kentuckians For The Commonwealth and Mountain Association (together “Joint Intervenors”), pursuant to 807 KAR 5:001 Section 5(2), and hereby offer this response to Sierra Club’s Emergency Motion for Leave to Submit Supplemental Requests for Information and the Option to Submit Direct Testimony. Joint Intervenors support the motion of Sierra Club, and in support state as follows:

1. Sierra Club filed a Motion in the above-captioned matter on February 21, 2024, requesting opportunity to file additional requests for information and the option to file Direct Testimony. The motion requests additional adjustment to the procedural schedule prior to the currently-scheduled hearing to fully develop the record.

2. The motion was prompted by a supplemental response filed by EKPC on February 14, 2025, to Sierra Club’s request in its initial data request number 16 to EKPC: “Please explain what modeling was conducted to develop the EKPC Capacity Expansion Plan.” Sierra Club had also requested in its initial data request number 3 that EKPC:

Please provide supporting workpapers and modeling files, including (not limited to) all input files, output files, and pre- or post-processing of said inputs and outputs for all portfolios and scenarios for all years modeled, in electronic spreadsheet format with formulas intact, supporting each of the statements, testimonies, exhibits, and attachments included in the Cooperative's initial filing and direct testimonies.

3. In fact, both the Office of the Attorney General and Commission staff had requested modeling, or supporting workpapers, that should have required timely production of any modeling results relating to the application. Other requests that could have required production of the materials provided in the supplemental response include initial Staff First Request number 6 ("Refer to the Tucker Direct Testimony page 16 lines 11-23, page 17 lines 1- 16, and Exhibit JJT-3. Provide the resource selection and resource optimization analyses complete with a detailed explanation of all the assumptions... and all potential resource ... fixed and variable cost data used determine the specific resources selected and the timing of new resource implementation represented in Exhibit JJT-3."), and Attorney General initial request number 1 ("Provide copies of all workpapers supporting calculations at issue in this proceeding.").

4. Responses to initial data requests from Sierra Club as well as Joint Intervenors were not filed by EKPC until December 06, 2024, four days after supplemental requests were due (and filed). EKPC did not produce the modeling workpapers at issue until February 14, 2025 - 94 days after responses to initial data requests were due, and after even the recently-allowed third set of data requests were allowed by the Commission to more fully explore the issues in the application.

5. "A fair trial in a fair tribunal is a basic requirement of due process. This applies to administrative agencies which adjudicate as well as to courts." *Withrow v. Larkin*, 421 U.S. 35, 46-47 (1975) (internal citations and quotations omitted). This right

to procedural due process before administrative agencies has been affirmed by Kentucky Courts. *Am. Beauty Homes Corp. v. Louisville and Jefferson Co. Planning and Zoning Comm.*, 379 S.W.2d 450, 456 (Ky. 1964). “The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner.” *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (internal citation and quotation omitted).

6. The opportunity to explore the recently-disclosed information, and offer testimony in response, is required to ensure the basic due process rights of all intervenors. Sierra Club’s motion offers an expedited timeline in an attempt to fit the Commission’s scheduled hearing, already constrained by the legislatively-mandated compressed timeframe in KRS 278.019, and the already-limited availability of EKPC’s witnesses. EKPC Notice Regarding Hearing Availability (Dec. 05, 2024).

\* \* \*

WHEREFORE Joint Intervenors, by and through Counsel, respectfully submit this Response in support of Sierra Club’s Emergency Motion for Leave to Submit Supplemental Requests for Information and the Option to Submit Direct Testimony.

[Signature and Certificate of Service on following page]

Respectfully Submitted,

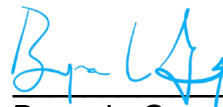


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### **CERTIFICATE OF SERVICE**

In accordance with the Commission's July 22, 2021 Order in Case No. 2020-00085, *Electronic Emergency Docket Related to the Novel Coronavirus COVID-19*, this is to certify that the electronic filing was submitted to the Commission on February 25, 2025; that the documents in this electronic filing are a true representation of the materials prepared for the filing; and that the Commission has not excused any party from electronic filing procedures for this case at this time.



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Byron L. Gary