

**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
GENERATION RESOURCE; 2) A SITE
COMPATIBILITY CERTIFICATE; AND 3) OTHER
GENERAL RELIEF

CASE NO. 2024-00310

**POST-HEARING RESPONSE BRIEF OF JOINT INTERVENORS
KENTUCKIANS FOR THE COMMONWEALTH AND MOUNTAIN
ASSOCIATION**

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POST-HEARING RESPONSE BRIEF OF JOINT INTERVENORS KENTUCKIANS FOR THE COMMONWEALTH AND MOUNTAIN ASSOCIATION

1. Introduction

East Kentucky Power Cooperative, Inc. (“EKPC”) has requested a Certificate of Public Convenience and Necessity (“CPCN”) for a 214 megawatt (“MW”) reciprocating internal combustion engine (“RICE”) made up of twelve individual units, each of approximately 18 MW capacity.¹ The generators, essentially oversize diesel truck engines,² would be placed on a greenfield site outside of Liberty, Kentucky, primarily surrounded by farmland and rural residences.³

Intervenors, including Joint Intervenors Kentuckians For The Commonwealth and Mountain Association, were allowed three sets of requests for information,⁴ after which a hearing was held in this matter on March 17 and March 18, 2025.⁵ At the hearing in this matter the Commission set a supplemental procedural schedule allowing for simultaneous post-hearing briefs,⁶ filed April 11, 2025,⁷ and simultaneous response briefs.⁸ After submission of these response briefs this case stands submitted for decision.⁹ Joint Intervenors offer the below responses to portions of the initial briefs of the parties in turn. Failure to take a position on each point in a party’s brief does not constitute or imply agreement.

¹ East Kentucky Power Cooperative, Inc.’s Post-Hearing Brief at 1 (Apr. 11, 2025) (“EKPC Brief”).

² March 17 Hearing Video Transcript (“HVT”) at 10:39:00 to 10:40:00 a.m.

³ Direct Testimony of Brad Young at 11-12.

⁴ Order (Oct. 09, 2024) and Order (Jan. 16, 2025).

⁵ Order (Jan. 14, 2025); March 17 and 18 HVT.

⁶ Order (Mar. 20, 2025); March 18 HVT at 2:12:00 to 2:13:00 p.m.

⁷ Brief of Nucor Steel Gallatin (Apr. 11, 2025); Attorney General’s Post-Hearing Brief (Apr. 11, 2025); Sierra Club’s Post Hearing Brief (Apr. 11, 2025); Post-Hearing Brief of Joint Intervenors Kentuckians For The Commonwealth and Mountain Association (Apr. 11, 2025) (“JI Brief”); and EKPC Brief.

⁸ Order (Mar. 20, 2025); March 18 HVT at 2:12:00 to 2:13:00 p.m.

⁹ Order (Mar. 20, 2025).

2. East Kentucky Power Cooperative has failed to meet its burden for a CPCN or a site compatibility certificate.

EKPC and Joint Intervenors agree on the standard for a CPCN, citing the same cases, and even largely quoting the same portions of those cases.¹⁰ In order to obtain a CPCN a utility must demonstrate “first a showing of a substantial inadequacy of existing service,”¹¹ in other words, a need.¹² Second, a utility must demonstrate that granting of the CPCN will not result in wasteful duplication,¹³ including a demonstration that “a thorough review of all reasonable alternatives has been performed.”¹⁴ Although “[s]election of a proposal that ultimately costs more than an alternative does not necessarily result in wasteful duplication,”¹⁵ “[t]he fundamental principle of reasonable least-cost alternative is embedded in such an analysis.”¹⁶

As the party seeking Commission approval in this proceeding, EKPC bears the burden of proof by clear and satisfactory evidence that both need and an absence of wasteful duplication has been sufficiently established.¹⁷ EKPC spends the majority of its

¹⁰ JI Brief at 5-7; EKPC Brief at 4-5.

¹¹ *Kentucky Utilities Co. v. Pub. Serv. Comm’n*, 252 S.W. 2d 885, 890 (Ky. 1952); EKPC Brief at 4.

¹² EKPC Brief at 4.

¹³ *Kentucky Utilities Co. v. Pub. Serv. Comm’n*, 252 S.W. 2d 885, 890-91 (Ky. 1952); EKPC Brief at 4.

¹⁴ Case No. 2022-00314, *In re Electronic Application of East Kentucky Power Cooperative Inc. For A (1) CPCN For The Construction Of Transmission Facilities In Madison County, Kentucky; And (2) Declaratory Order Confirming That A CPCN Is Not Required For Certain Facilities*, Final Order at 8 (Feb. 23, 2023); see also Case No. 2024-00129, *Electronic Application of East Kentucky Power Cooperative, Inc. 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*, Final Order at 3 (Dec. 26, 2024); JI Brief at 7.

¹⁵ EKPC Brief at 5-6, n. 20.

¹⁶ Case No. 2022-00402, *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 Demand Side Management Plan and Approval of Fossil Fuel-Fired Generating Unit Retirements*, Final Order at 11 (Nov. 06, 2023).

¹⁷ KRS 278.430 (“[. . .] [T]he party seeking to set aside any determination, requirement, direction or order of the commission shall have the burden of proof to show by clear and satisfactory evidence that the determination, requirement, direction or order is unreasonable or unlawful.”); JI Brief at 6.

brief on the first prong of the requirement, the need,¹⁸ continuing to give short shrift to any meaningful analysis of alternatives in the context of wasteful duplication.¹⁹

As addressed further in Section 2.c., below, Joint Intervenors do not agree with EKPC regarding the standard for granting a site compatibility certificate,²⁰ nor with EKPC's assertion that the evidence provided meets the standard.²¹

- a. It is possible that EKPC will have an inadequacy of existing service, but EKPC has not adequately demonstrated a need for this facility.*

As a basis for its need for the facility, EKPC begins with the record events of Winter Storm Elliott, which “rocked [their] world,”²² assumes it will only get worse from there, and then adds a 7% reserve margin on top of that with no quantitative analysis.²³ Then, EKPC adds a mess of other qualitative justifications for the facility need, largely based on assertions with no supporting evidence and none of which stand up either on their own or in combination.²⁴

In case none of those amount to enough, EKPC makes a last ditch effort to instead shift the burden to intervenors to prove a negative, pointing out that neither the Joint Intervenors or Sierra Club (conflating the three separate intervening groups down to just one monolith, instead of two distinct parties with differing positions, as discussed

¹⁸ EKPC Brief at 8-22.

¹⁹ EKPC Brief at 22-25.

²⁰ EKPC Brief at 6-8.

²¹ EKPC Brief at 25-28.

²² March 18 HVT at 1:36:30 to 1:37:30 p.m.; EKPC Brief at 10-11.

²³ Direct Testimony of Julia J. Tucker at 11.

²⁴ EKPC Brief at 8-9 (“to reduce its carbon intensity which is used by economic development projects to score different project sites”); EKPC Brief at 9 (“to add additional renewable energy to its system since it is flexible generation that can quickly follow sudden changes caused by intermittent resources”); *Id.* (“to meet the growing demand in PJM’s system and the significant base load generation retirements within the PJM system”); *Id.* (“the nationwide push for electrification and the rapid expansion of stringent federal environmental regulation for utilities”); *Id.* at 14-16 (“to improve the transmission issues EKPC has experienced in the area”); EKPC Brief at 16-18 (the change in PJM methodology for capacity accreditation to ELCC); EKPC Brief at 18-20 (the need to hedge against market purchases); EKPC Brief at 20-21 (the that demand-side management and energy efficiency investments are insufficient)

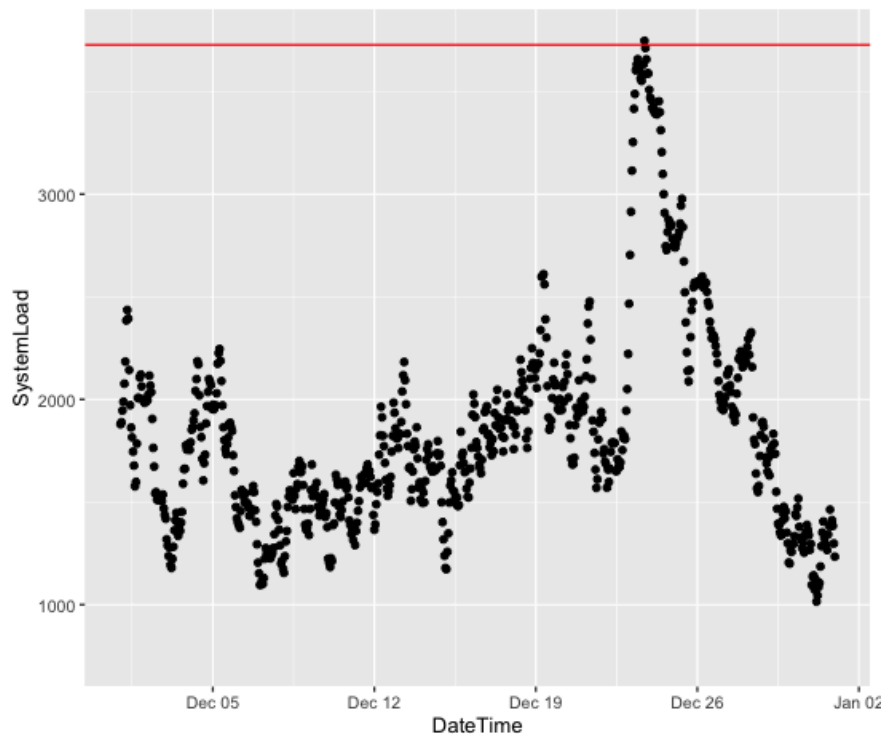
further below) offered any witnesses, and inferring Joint Intervenors' positions from questions.²⁵

- i. EKPC has not had any problems keeping the lights on, and hasn't shown that it will have any trouble absent the applied-for facility.

Winter Storm Elliott was an significant weather event, setting a record winter peak demand on EKPC's system, and the "genesis of their need."²⁶ But EKPC kept the lights on²⁷: EKPC's resources, including PJM participation, were adequate to meet recent winter storm peaks.

In fact, the event only exceeded EKPC's peak capacity for a single hour, and only by less than 20 MW, as shown below in figure 1.²⁸

Figure 1 - EKPC Winter Storm Elliott hourly load v. installed capacity



²⁵ EKPC Brief at 21-22.

²⁶ March 17 HVT at 09:18:00 to 09:19:00 a.m.

²⁷ March 18 HVT at 09:19:00 to 09:19:20 a.m.

²⁸ SystemLoad for December 2022 from Responses to Joint Intervenor's Post-hearing Information Request no. 3 ("JI PHDR Response 3"), attachment; the red line represents existing winter capacity from Direct Testimony of Julia J. Tucker, Attachment JJT-3.

Notably, EKPC did not experience bulk power system failures at that winter peak, but neighboring utilities Louisville Gas & Electric and Kentucky Utilities (“LG&E/KU”) did.²⁹ That was the case despite the fact that, just as LG&E/KU experienced gas pressure losses causing its firm load shedding, EKPC lost gas pressure to their Bluegrass Station and Smith Stations.³⁰ Still, EKPC’s resources proved adequate.³¹ The following year, Winter Storm Gerri resulted in a higher peak, weather-normalized,³² and again, EKPC’s resources were adequate. In both cases, the lights stayed on at least in part because of EKPC’s membership in PJM, which allowed them to purchase needed energy.³³ EKPC seems to argue PJM membership has not been a net benefit,³⁴ but has not provided the receipts, so to speak, as discussed further below in Section 2.a.iii.

EKPC also claims that transmission issues in the area of south-central Kentucky support the need for the facility.³⁵ However EKPC has stated it has not done the analysis to determine whether identified voltage issues would be resolved by the new facility.³⁶

²⁹ FERC, NERC, & Regional Entity Staff, *Inquiry into Bulk-Power System Operations During December 2022 Winter Storm Elliott*, at 5–7, 11 (Oct. 2023)

³⁰ Case No. 2024-00137, *An Examination of the Application of the Fuel Adjustment Clause of East Kentucky Power Cooperative, Inc. From November 1, 2022 Through April 30, 2023*, Responses to Commission Staff’s Information Request to East Kentucky Power Cooperative, Inc., Response 7 (Aug. 26, 2024)

³¹ March 18 HVT at 09:19:00 to 09:19:20 a.m.

³² Direct Testimony of Julia J. Tucker at 11.

³³ EKPC Brief at 19. Notably, EKPC cites to “HVT day 2 9:30:00-9:42:00” (n. 99), but support for the assertion doesn’t seem to appear in this portion of the hearing. However, as discussed further *infra* at 2.a.iii., Joint Intervenors agree that PJM proved to be a reliable backup to keep the lights on.

³⁴ EKPC Brief at 12 (“After joining PJM in 2013, EKPC believed that it could rely on the PJM market instead of using a Reserve Margin”); EKPC Brief at 13 (“This increase in the summer Reserve Margin is necessary to allow EKPC to hedge from potentially volatile PJM capacity market prices.”).

³⁵ EKPC Brief at 14-16; a need also claimed in the still-pending case, PSC Case no. 2024-00370, *Electronic Application of East Kentucky Power Cooperative, Inc. For 1) Certificates of Public Convenience and Necessity to Construct a New Generation Resources; 2) for a Site Compatibility Certificate Relating to the Same; 3) Approval of Demand Side Management Tariffs; And 4) Other General Relief*, Direct Testimony of Don Mosier at 18 (Nov. 20, 2024).

³⁶ JI DR 3 Response 17.c. (“Power-flow analysis simulating the exact real-time operating conditions that were occurring when these voltage violations occurred has not been conducted.”)

To the extent these issues began arising in 2022, EKPC has had plenty of time to do the quantitative analysis and modeling to present a fuller picture of the need, as well as the alternatives to meet it. Instead, from the historically high starting point of Winter Storm Elliott, EKPC instead then adds a new 7% reserve margin, based on a “quantified” risk of a 1-in-10 loss of load expectation (“LOLE”), despite the fact that EKPC has experience no loss of load with a 0% reserve margin during these back-to-back historic highs. EKPC provided absolutely no quantitative analysis or modeling for this new reserve margin or LOLE assertion, aside from a statement that they assumed “an extreme weather event occurring every two years for a 48-hour period.”³⁷ While there may be some need, EKPC has not done the work to quantify and analyze it, let alone present a full picture of the alternatives, and carry its burden to obtain a CPCN.

ii. EKPC’s claims regarding reduced carbon intensity and economic development are wholly unsupported by the record.

EKPC also claims that the facility is needed “to reduce its carbon intensity which is used by economic development projects to score different project sites.”³⁸ To the extent this argument constitutes “a showing of a substantial inadequacy or existing service,” EKPC has not offered any specifics as to how this will aid in economic development, or specific development it would support. It has also offered little evidence of how a new fossil generator to meet claimed load growth reduces their carbon intensity, and has certainly not quantified this.

The primary claim for how a new fossil generator would lead to a reduction in carbon intensity is that it would allow EKPC “to add additional renewable energy to its

³⁷ EKPC Brief at 13, Direct Testimony of Julia J. Tucker at 13.

³⁸ Direct Testimony of Julia J. Tucker at 20.

system since it is flexible generation that can quickly follow sudden changes caused by intermittent resources.”³⁹ In their original application EKPC made references to California’s experience with the “Duck Curve,” wherein “a steep drop in generation needs [occurs] in the morning as the sun becomes fully available and a steep incline [occurs] in the evening when the sun sets and is no longer available.”⁴⁰

But EKPC is putting the cart before a horse that doesn’t even exist at this point. EKPC has admitted to not tracking solar penetration in Kentucky, let alone California.⁴¹ The sum total of solar on its own system right now amounts to 9 MW,⁴² or less than two and a half tenths of a percent of their total capacity. Suffice to say this is significantly lower than the penetration of solar in California, and even according to EKPC it would be impossible to achieve California’s level of penetration on their system.⁴³ It is also unclear why a RICE unit is needed to balance the intermittency of solar if, as EKPC claims, “EKPC is in the beginning stages of building solar facilities and does not currently have enough solar generation to justify energy storage to compliment [sic] that resource.”⁴⁴ Indeed, if they did have sufficiently high solar penetration, “energy storage resources would be paired with renewable energy resources to ensure that energy is available when most needed.”⁴⁵

EKPC claims that “increased penetration of renewable solar energy into PJM Interconnection LLC (‘PJM’) requires a generation unit that provides reliable capacity

³⁹ EKPC Brief at 9.

⁴⁰ Direct Testimony of Don Mosier at 6; Direct Testimony of Julia J. Tucker at 21.

⁴¹ Responses to Mountain Association and Kentuckians for the Commonwealth’s First Request Information Request no. 3.b. (“JI DR 1 Response 3.b.”).

⁴² *Id.*

⁴³ March 18 HVT at 10:06:00 to 10:09:30 a.m.;

⁴⁴ JI DR 1 Response 15.c.

⁴⁵ *Id.*

with swift and flexible dispatch characteristics.”⁴⁶ But it is not EKPC’s job to balance the entirety of the PJM system.

iii. EKPC’s participation in, and reliability oversight from, PJM has resulted in a reliable bulk power system.

As referenced above, EKPC’s participation in the PJM marketplace has resulted in their bulk power system experiencing no loss of firm load during several historic winter events in a row.⁴⁷ EKPC claims that JIs misunderstand the discrepancies between EKPC and PJM based on discovery requests and hearing questions.⁴⁸ However, it seems it is EKPC that misstates or confounds PJM requirements itself, as referenced above in their claims to match solar penetration energy profiles across PJM. To the extent parties are unable to discern the clear discrepancy between EKPC’s LTLF and PJM’s forecast for the EKPC zone, it is because EKPC has not adequately explained the difference, or presented the two in a comparable manner.⁴⁹ However, to the extent discernable, there still appears to be a discrepancy greater than the 214 MW at issue here.⁵⁰

As a PJM member, EKPC’s capacity obligation is based on their summer peak load.⁵¹ EKPC purchases its assigned capacity requirement in the Reliability Pricing Model (“RPM”) auction based upon its summer load requirements.⁵² EKPC also sells into that RPM market all of its capacity.⁵³ EKPC has determined its summer capacity obligation to achieve in excess of a complete 100% hedge (essentially a 107% hedge)

⁴⁶ EKPC Brief at 2.

⁴⁷ March 18 HVT at 09:19:00 to 09:20:00 a.m.

⁴⁸ EKPC Brief at 21.

⁴⁹ JI Brief at 10-11.

⁵⁰ *Id.*

⁵¹ March 18 HVT at 09:34:30 to 09:36:00 a.m.

⁵² JI DR 3 Response 4.d.

⁵³ *Id.*

against its financial obligation to purchase capacity.⁵⁴ Their winter peak has no impact on their PJM capacity obligation.⁵⁵

As a load-serving entity, EKPC is similarly required to purchase every kilowatt hour of energy needed to serve its customers through participation in PJM energy markets, and also sells each kilowatt hour produced.⁵⁶ To the extent that EKPC is unable to produce enough energy to meet its demand in a given hour, such as at 5 p.m. on December 23, 2025 during Winter Storm Elliott,⁵⁷ it is only required to purchase the amount of energy, in kilowatt-hours, that it is shy of in that given hour.

It is not at all clear from the record how “EKPC’s winter peak [being] approximately 1,000 MW higher than its summer peak ... represents a financial risk should EKPC not carry enough available capacity to offset its required load obligation purchase from the PJM capacity market.”⁵⁸ To the contrary, EKPC has asserted the exact opposite. In requesting to join PJM EKPC stated:

Capacity benefits are the single largest category of benefits that accrue in the context of EKPC’s full integration into PJM. Due to the fact that EKPC is a winter peaking system and PJM as a whole is summer peaking, EKPC has the unique opportunity to monetize this diversity through the reduction of its own peak reserve requirements to match those of PJM. Thus, instead of maintaining our current 12% planning reserve requirement in both the winter and summer seasons, EKPC would only be required to maintain a 2.8% installed planning reserve for EKPC’s summer peak as a fully participating member of PJM’s RPM.⁵⁹

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ JI PHDR Response 5.a.

⁵⁷ Responses to Joint Intervenor’s Post-hearing Information Request no. 3. This is the only hour during Winter Storm Elliott that EKPC’s demand exceeded its installed capacity, as shown in Figure 1, above.

⁵⁸ EKPC Brief at 17.

⁵⁹ Case No. 2012-00169, *Application of East Kentucky Power Cooperative, Inc. To Transfer Functional Control of Certain Transmission Facilities to Pjm Interconnection, LLC*, Direct Testimony of Don Mosier at 32 (May 03, 2012).

This is an assertion which EKPC has maintained as recently as July, 2024, (less than two months before filing this application), stating in a subsequent filing in the same docket:

EKPC is currently able to cover its winter peak load plus a minimal reserve margin because the PJM RTO has more than 20% capacity reserves during the winter peak period. As a stand alone entity, EKPC previously planned to maintain a minimum of 12% capacity reserve margin in the winter. EKPC would have to purchase and/or construct additional capacity to maintain an acceptable winter peak operating reserve level.⁶⁰

Furthermore, EKPC has presented absolutely no financial analysis of the benefit or risk associated with this application compared to a scenario in which the Liberty RICE is not constructed, or where seasonal purchase power agreements for the marginal amount of energy needed for the past three winters were instead procured in advance. While EKPC has made much of the Commission's stated preference for a "steel in the ground," it ignores a critical caveat made by the Commission that it "expects our vertically integrated utilities, in furtherance of their service, and now reliability, obligations to replace generation capacity with 'steel in the ground' or a *Purchase Power Agreement*."⁶¹

iv. The only party with an evidentiary burden is EKPC.

Instead of carrying the burden to show a "substantial inadequacy of existing service," EKPC wraps up its discussion of the "need" by guessing at the alternatives for which intervenors Sierra Club and Joint Intervenors might advocate.⁶² They argue that

⁶⁰ Case no. 2012-00169, East Kentucky Power Cooperative, Inc. Annual Report and Request for Confidential Treatment at page 4 (July 31, 2024) (emphasis added).

⁶¹ Case No. 2022-00402, *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 Demand Side Management Plan and Approval of Fossil Fuel-Fired Generating Unit Retirements*, Order at 95 (Nov. 06, 2023).

⁶² EKPC Brief at 22.

neither “offered any witnesses or evidence in this proceeding” so instead the Commission should take at face value the assertion of Sierra Club in a wholly unrelated matter (an integrated resource plan (“IRP”) proceeding for a different utility) that “[g]as-burning generation is more flexible than [a] coal-burning unit,” and therefore a need should be assumed.⁶³

First, alternative solutions to a potential need are not typically part of the analysis of whether there is a need, but instead whether a construction would result in wasteful duplication.⁶⁴ For this reason, arguments about alternatives such as demand-side management and battery storage are addressed in the following section regarding wasteful duplication. Second, although the Commission has noted at times whether an intervening party has offered evidence on an issue to rebut a utility’s initial evidence meeting its burden of proof, simply because a utility’s evidence is the only evidence in the record does not mean the utility has met its burden.⁶⁵

b. It is possible that there is a need for additional capacity, but EKPC has not adequately supported the absence of wasteful duplication

Wholly aside from and in addition to the demonstration of “a substantial inadequacy of existing service” based on clear and convincing evidence, EKPC is also required to demonstrate that the specific resource for which they have applied for a CPCN would not result in wasteful duplication.⁶⁶ This demonstration requires “a

⁶³ *Id.*

⁶⁴ *Kentucky Utilities Co. v. Pub. Serv. Comm’n*, 252 S.W. 2d 885, 890-91 (Ky. 1952); EKPC Brief at 4.

⁶⁵ See, e.g., Case no. 2020-00174, *Electronic Application of Kentucky Power Company for (1) a General Adjustment of Its Rates for Electric Service; (2) Approval of Tariffs and Riders; (3) Approval of Accounting Practices to Establish Regulatory Assets and Liabilities; (4) Approval of a Certificate of Public Convenience and Necessity; And (5) All Other Required Approvals and Relief*, Order at 22, n.70 (May 14, 2021).

⁶⁶ *Kentucky Utilities Co. v. Pub. Serv. Comm’n*, 252 S.W. 2d 885, 890-91 (Ky. 1952); EKPC Brief at 4; JI Brief at 4-5..

thorough review of all reasonable alternatives has been performed.”⁶⁷ Although “[s]election of a proposal that ultimately costs more than an alternative does not necessarily result in wasteful duplication,”⁶⁸ “[t]he fundamental principle of reasonable least-cost alternative is embedded in such an analysis.”⁶⁹

EKPC asserts that it has “provided evidence throughout the proceeding that the Liberty RICE facility, with the additional generation resources presented in Case No. 2024-00370, are the least costly and most reasonable options for the generation EKPC needs.”⁷⁰ However, the two cases have not been consolidated,⁷¹ nor even has the record from that subsequent case been incorporated here for reference, as counsel for EKPC pointed out at the hearing in this matter.⁷² Therefore, although EKPC has made reference to a “comprehensive resource plan” and an “overall Strategic Plan,”⁷³ EKPC cannot rely on that docket to support the absence of wasteful duplication here based on

⁶⁷ Case No. 2022-00314, *In re Electronic Application of East Kentucky Power Cooperative Inc. For A (1) CPCN For The Construction Of Transmission Facilities In Madison County, Kentucky; And (2) Declaratory Order Confirming That A CPCN Is Not Required For Certain Facilities*, Final Order at 8 (Feb. 23, 2023); see also Case No. 2024-00129, *Electronic Application of East Kentucky Power Cooperative, Inc. 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*, Final Order at 3 (Dec. 26, 2024); JI Brief at 7.

⁶⁸ EKPC Brief at 5-6, n. 20.

⁶⁹ Case No. 2022-00402, *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 Demand Side Management Plan and Approval of Fossil Fuel-Fired Generating Unit Retirements*, Final Order at 11 (Nov. 06, 2023).

⁷⁰ EKPC Brief at 23.

⁷¹ See 807 KAR 5:001 Section 4(14).

⁷² March 18 HVT at 01:46:20 to 01:47:30 p.m.

⁷³ See, e.g., Direct Testimony of Don Mosier on Behalf of EKPC, at 7 (“EKPC . . . has identified the need for further additions and changes to its generation, investments in demand response and energy efficiency, new highly efficient natural gas generation and the possible co-firing of EKPC’s coal units at its Spurlock Station in Maysville, KY and Cooper’s coal units at Burnside, KY. These future additions will be complimentary to the addition of the Liberty RICE Facility and will help meet EKPC’s commitment to our Board’s Sustainability Plan and its overall Strategic Plan to diversify and decarbonize our generation fleet over the next decade”; Case No. 2024-00370, Direct Testimony of Don Mosier on Behalf of EKPC, at 7-8 (walking through the contributions of the Liberty RICE facility and the previous application for solar generation).

that “overall Strategic Plan.” Instead, it bears the burden of proving an absence of wasteful duplication for this applied-for resource on its own, based on the record in this case, a burden which it has not, and cannot meet with the various cases ongoing separately.⁷⁴

EKPC argues that although it did not issue an RFP it evaluated all options.⁷⁵ No mention is made of capacity expansion or resource optimization modeling.⁷⁶ The only alternative for which any quantitative comparison was made is a simple-cycle combustion turbine,⁷⁷ an analysis rife with issues not reiterated here, but discussed at length in JI’s initial brief.⁷⁸

While battery storage and demand-side management are more extensively discussed by EKPC in their section on the “need” for the facility, a full analysis of such alternatives would have been more proper to demonstrate an absence of wasteful duplication, however EKPC has not conducted any such comparison.⁷⁹ It is clear just from its discussion of demand-side management within the need that EKPC has not placed DSM on an equal footing with new generating resources to avoid any capacity need that may exist and avoid costly capital investments.⁸⁰ According to the analysis that is available in the parallel case requesting an expansion of current demand-side management programs, it appears as though EKPC is leaving at least 135 MW of

⁷⁴ See JI Brief at 13-17.

⁷⁵ EKPC Brief at 23.

⁷⁶ See JI Brief at 20.

⁷⁷ JI DR 3 Response 5, attachment.

⁷⁸ See JI Brief at 20-22.

⁷⁹ See JI Brief at

⁸⁰ See, e.g., Case No. 2018-00348, *Electronic 2018 Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company*, Staff Report at 22-23 (Jul. 20, 2020).

reasonably achievable potential DSM programs on the table,⁸¹ more than half the capacity to be added here.⁸²

Contrary to EKPC's assumptions regarding Joint Intervenor's positions, we do not ask that battery storage be constructed instead of the Liberty RICE. We ask only that a thorough analysis of alternatives be conducted, fully evaluating options such as battery storage and renewables, rather than disregarding such options out of hand.⁸³ Joint Intervenor's have separately recommended that EKPC's proposed DSM plan be approved, with modifications; that EKPC be ordered to pursue realistically achievable DSM programs identified in their potential study; and that EKPC be required to re-evaluate and update its DSM plan, putting integrated analysis of DSM potential on equal footing with supply-side resources.⁸⁴ Again, it is only a fulsome analysis of the situation and alternatives, as required by the standard for a CPCN, that JIs insist upon.

c. A dozen massive stationary combustion engines are not compatible with the Liberty site, nor are associated impacts.

A site assessment report pursuant to KRS 278.708(3) and (4) was also required,⁸⁵ and the Commission is entitled to deny an application for a site compatibility certificate, or require reasonable mitigation of impacts.⁸⁶ The elements of a site assessment report constitute the elements on which the Commission must evaluate and approve or deny a site compatibility certificate.⁸⁷ "A utility may submit and the

⁸¹ See Case No. 2024-00370, Direct Testimony of Maria Roumpani at 18-19 (Feb. 14, 2025).

⁸² See Direct Testimony of Julia J. Tucker at 25 (Sept. 20, 2024). Given that the facility is to be made up of twelve roughly 18 MW "Gensets," it would seem that a 135 MW reduction in peak demand could reduce the need from a dozen to only 4-5 gensets, presumably greatly reducing the cost and the impact on the surrounding area and roads.

⁸³ JI Brief at 17-20.

⁸⁴ Case No. 2024-00370, Direct Testimony of Maria Roumpani at 3-5 (Feb. 14, 2025).

⁸⁵ KRS 278.216(2).

⁸⁶ KRS 278.216(3).

⁸⁷ KRS 278.708(3).

commission may accept documentation of compliance with the National Environmental Policy Act (NEPA) rather than a site assessment report.”⁸⁸ However, this does not, as EKPC asserts, “provide[] the Commission with alternative criteria to review when ensuring a utility has done its due diligence in regards to site selection.”⁸⁹ The statute only states that NEPA documentation may be submitted in place of a site-assessment report, to fulfill the same requirements.

JIs reiterate the issues with the site assessment report cited in our initial brief,⁹⁰ and only address several issues raised in the initial brief of EKPC here.

First, regarding noise impacts, Joint Intervenors concede the record states that the modeling conducted “assumes all twelve of the Wartsila engines will be operating at the same time.”⁹¹ Indeed this is precisely the mode in which it is claimed the engines must run in order to be economical.⁹² However, support cannot be found in the written record or the hearing video for the assertion that modeling was conducted “without the additional sound mitigation EKPC has planned.”⁹³ To the contrary, the sound study appears to state that the expected design modeled *did* include several of these measures, including at least three separate silencers on different pieces of equipment.⁹⁴

Second, Traffic would not just increase during construction,⁹⁵ it would be highly congested with an estimated 450 trucks coming through at early morning and early evening hours, and eleven-fold increase on the daily number of trucks currently coming

⁸⁸ KRS 278.216(2).

⁸⁹ EKPC Brief at 7.

⁹⁰ JI Brief 20-24.

⁹¹ EKPC Brief at 26.

⁹² See JI Brief at 20-22, 26.

⁹³ *Id.*

⁹⁴ Direct Testimony of Brad Young, Attachment BY-2, Vol. 2, Appendix D - Sound Study Report at 4-2 and Appendix B.

⁹⁵ EKPC Brief at 27.

through the area, persisting for up to 6 months.⁹⁶ It also would not be “slight” after construction,⁹⁷ but consist of up to 5,466 tanker trucks per year to deliver diesel fuel, lube oil, and reactant for pollution controls, and up to 38 trucks per day, traveling through otherwise rural farmland.⁹⁸

Finally, contrary to assertions in their initial brief,⁹⁹ EKPC has not yet completed negotiation of all options to buy necessary properties to maintain a 1,000 foot setback.¹⁰⁰ At hearing it was made clear that there is at least one piece of property for which they have not yet acquired possession or an option required to achieve the necessary setback.¹⁰¹

Again, EKPC asserts that because “[n]one of the intervenors in this matter provided any evidence that EKPC has not met its burden to be granted a Site Compatibility Certificate” the Commission should issue a certificate.¹⁰² As made clear above and in Joint Intervenors’ initial brief, EKPC has not met its burden of proof in the first place, and neighbors have expressed that “[w]e live in a rural area that is very peaceful and serene, and this plant would drastically alter the neighborhood.”¹⁰³

3. Other Intervenors

Nucor Steel Gallatin offered a post-hearing brief pointing to the lack of an incentive for EKPC to maximize its rate base as a cooperative, and briefly comparing EKPC’s *owned* capacity to recent peaks.¹⁰⁴ However, EKPC’s incentive or motive for

⁹⁶ Site Assessment Report Volume 2, Appendix E at page 3.

⁹⁷ EKPC Brief at 27.

⁹⁸ *Id.*

⁹⁹ EKPC Brief at 27.

¹⁰⁰ EKPC Brief at 27.

¹⁰¹ March 17 HVT at 10:30:30 to 10:32:42 a.m (Young cross-examination).

¹⁰² EKPC Brief at 28.

¹⁰³ Response to JI 3-11, attachment, JI3.11_-_Summary_of_all_Public_Comments.pdf.

¹⁰⁴ Brief of Nucor Steel Gallatin at 1 (Apr. 11, 2025).

requesting a CPCN is wholly irrelevant to whether it met its burden to demonstrate need and an absence of wasteful duplication. In addition, in comparing the capacity that EKPC owns and operates, Nucor omits EKPC's purchased power, interruptible load, and peak reduction mechanisms.¹⁰⁵ In total, EKPC currently has an existing winter capacity of 3,727 MW.¹⁰⁶

The Office of the Attorney General also offered a post-hearing brief.¹⁰⁷ Generally, the brief of the Attorney General and the remaining points of Nucor are supportive of the arguments made by EKPC, and already addressed above and in the initial brief of Joint Intervenors.

Sierra Club argues that "EKPC has not given the Commission the opportunity to consider its overall power supply plan in totality because EKPC has broken up its requests for regulatory approval into separate proceedings,"¹⁰⁸ an argument that largely parallels one made by Joint Intervenors.¹⁰⁹ Sierra Club additionally states that EKPC did not conduct "industry standard" modeling, did not produce even the modeling it did conduct until after the opportunity for discovery had concluded and only when inquired about by counsel, and has failed to provide support for the stated capacity factor for the facility, a critical component of the unit's economic analysis.¹¹⁰ While JI's cannot speak to the efforts of Sierra Club counsel to ensure completeness of the record, or how they may have specifically been deprived of due process,¹¹¹ JIs generally agree with and adopt the arguments above regarding compliance with the CPCN standard. However,

¹⁰⁵ Direct Testimony of Don Mosier at 4.

¹⁰⁶ Direct Testimony of Julia J. Tucker at attachment JJT-3.

¹⁰⁷ Attorney General's Post-Hearing Brief (Apr. 11, 2025).

¹⁰⁸ Sierra Club's Post Hearing Brief at 1 (Apr. 11, 2025) ("SC Brief").

¹⁰⁹ JI Brief at 13-17.

¹¹⁰ SC Brief at 4-5.

¹¹¹ SC Brief at 7-12.

JIs do not agree that “EKPC has demonstrated that it is prudent to invest in new generation to meet a growing winter peak demand....”¹¹² As stated above, while EKPC may have some need going forward, it has not adequately supported it on the record presented in this case.

4. Conclusion

For the foregoing reasons and those presented in our initial brief, Joint Intervenors respectfully request that the Commission deny the application for a CPCN for the Liberty RICE due to an absence of a showing of need or lack of wasteful duplication. In addition, JIs recommend the Commission deny the site compatibility certificate due to the clear incompatibility of the proposed plant with the surrounding setting.

[Signature and Certificate on following page]

¹¹² SC Brief at 14.

Respectfully Submitted,

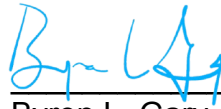


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CERTIFICATE OF SERVICE

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 April 18, 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.



Byron L. Gary