

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

In the Matter of:

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| |) | |
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| ELECTRONIC APPLICATION OF EAST |) | |
| KENTUCKY POWER COOPERATIVE, INC. |) | Case No. 2024-00310 |
| 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 |) | |

**SIERRA CLUB’S EMERGENCY MOTION FOR LEAVE TO SUBMIT
SUPPLEMENTAL REQUESTS FOR INFORMATION AND THE
OPTION TO SUBMIT DIRECT TESTIMONY**

Sierra Club hereby submits this Emergency Motion for Leave to Submit Supplemental Requests for Information and the Option to submit Direct Testimony to ensure that its procedural due process rights are not violated. Sierra Club also respectfully asks that the Commission shorten the response time for both responses to the motion and to information requests so that the hearing date for this matter is not impacted.

BACKGROUND

1. EKPC has filed an application for a Certificate of Public Convenience and Necessity (“CPCN”) to construct a new 214 MW electric generation station using Reciprocating Internal Combustion Engine (“RICE”) generators (the “Liberty RICE” Facility), the issuance of a Site Compatibility Certificate for the Liberty RICE Facility, and other general relief.¹

¹ 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 (Sept. 20, 2024) (“EKPC CPCN Application”) at 1.

2. EKPC claims that the proposed Liberty RICE Facility is needed to improve reliability concerns in the area when generation is not available, meet the forecasted load growth, support the addition of increased renewable energy and other issues that existing service is inadequate to provide.² EKPC also claims that the Liberty RICE Facility is needed to serve the growing demand in EKPC's service territory, as demonstrated in EKPC's 2024 Long Term Load Forecast, and it will also help further economic development efforts.³

3. On October 28, 2024, Sierra Club filed a timely Motion to Intervene,⁴ which the Commission granted on November 21, 2024.⁵

4. On October 28, 2024, Sierra Club filed its First Set of Requests for Information to EKPC.⁶ Request for Information 1-3 stated:

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.⁷

5. Sierra Club's Request for Information 1-16, from the same set of requests, stated:

Please refer to the Direct Testimony of Witness Tucker at pages 15-16.

a. Please explain what modeling was conducted to develop the EKPC Capacity Expansion Plan.

- i. If modeling was conducted, please provide the name of the modeling software used, whether the modeling used capacity expansion and production cost modeling, and the planning period.
- ii. If modeling was conducted, please provide all modeling input and output files in machine readable format.

² *Id.* at 5.

³ *Id.* at 6.

⁴ Sierra Club's Motion to Intervene in Case No. 2024-00310 (Oct. 28, 2024).

⁵ Order in Case No. 2024-00310 (Nov. 21, 2024).

⁶ Sierra Club's First Set of Information Requests to East Kentucky Power Cooperative in Case No. 2024-00310 (Oct. 28, 2024).

⁷ *Id.* (emphasis added).

- iii. If modeling was conducted, please provide the supporting workbooks, with all formulas and links intact, used to develop the Present Value of Revenue Requirements (“PVRR”) for each modeling run.
- iv. If modeling was conducted, please provide the first year in which new resources could be selected, annual build limits applied to each resource, and cumulative build limits applied to each resource.
- v. If modeling was conducted, did modeling allow for economic additions of new resources, i.e. not limited to capacity need additions? If not, please explain why not.
- vi. If modeling was conducted, was the 757 megawatts of renewable energy that EKPC announced as part of the New ERA program included? If it was included, please identify which modeling scenarios or portfolios included this resource?
- vii. If modeling was conducted, was the new proposed 745 MW combined cycle gas plant that the Board recently announced included? If it was included, please identify which modeling scenarios or portfolios included this resource?
- viii. If modeling was conducted, which scenarios or portfolios, if any, included the proposed Liberty Rice Station, the 757 megawatts of renewable energy that EKPC announced as part of the New ERA program, and the new proposed 745 MW combined cycle gas plant? If all of these proposed new generation sources were all included, please identify which modeling scenarios or portfolios included these resources....⁸

6. EKPC responded to Sierra Club’s First Set of Requests for Information on December 6, 2024. In response to Information Request 1-3, EKPC stated: “Please see response Commission Staff’s First Request for Information (Staff’s First Request) Item 1 for supporting workpapers and modeling files related to EKPC’s 2024 Long Term Load Forecast. Refer to EKPC’s response to Staff’s First Request, Item 6 for a discussion on the EKPC Capacity Expansion Plan.”⁹ Although the narrative response to 1-3 includes a reference to “modeling files,” no modeling input or output files were produced in response to Staff’s Request for Information 1-1 or 1-6.

⁸ *Id.* (emphasis added).

⁹ EKPC’s Response to Sierra Club’s First Set of Information Requests in Case No. 2024-00310 (Dec. 6, 2024).

7. In response to Information Request 1-16, EKPC stated:

16a. (all subparts) The EKPC Capacity Expansion Plan utilized the 2024 LTLF for peak load assumptions and compared them to existing capacity available to meet that load. Scenarios for new resource assumptions were not explicitly modeled, however, comparisons were evaluated prior to modeling as discussed in the Direct Testimony of Julia J. Tucker within the Application and expanded upon in EKPC's response to Staff's First Request for Information, Item 6.

EKPC appears to indicate that no modeling was conducted and, again, no modeling input or output files were produced in response to Staff's First Request for Information, Item 6. In addition, EKPC did not provide a response to Sierra Club's Information Request 1-16(a)(iii – viii).¹⁰

8. On February 6, 2025, Ms. Henry, counsel for Sierra Club, called Ms. Honaker, counsel for EKPC, and left a voicemail asking Ms. Honaker to call her back.¹¹ The two attorneys communicated over email and set up a time to talk on February 7, 2025. On February 7, 2025, Ms. Henry asked Ms. Honaker to investigate whether EKPC had produced all responsive documents to Sierra Club's discovery requests. Ms. Henry noted that Sierra Club had requested all modeling files in Information Requests 1-3 and 1-16 but that EKPC had not produced any modeling files to date. Ms. Henry then directed Ms. Honaker to an EKPC response in docket number 2024-00370 in which EKPC stated, "Yes, the modeling included the operation of the Liberty RICE units."¹² Ms. Henry noted that this response indicated that modeling of the Liberty Rice Units had been performed. Ms. Henry noted that in their third set of information requests, filed February 6, 2025, that Sierra Club again asked for all modeling files but urged Ms. Honaker

¹⁰ *Id.*

¹¹ See Henry Affidavit, attached hereto.

¹² EKPC's Response to Joint Intervenors' First Set of Information Requests in Case No. 2024-00370, Response to 1-28 (Jan. 10, 2025).

to produce such files as a supplement (if they existed) rather than wait until responses to the third set were due.

9. On Friday, February 14, 2025, at 10:30 p.m. EKPC supplemented its response to Sierra Club Information Request 1-16 and produced two confidential spreadsheets which are modeling input and output files that appear to have been created in May 2024.¹³ These modeling files were produced after pre-hearing discovery in this matter closed on February 6, 2025¹⁴ and after the deadline for intervenors to submit direct testimony on January 6, 2025.¹⁵

10. This supplemental response was still not fully responsive to Sierra Club's information request. For instance, Sierra Club Information Request 1-16 asked EKPC to explain what modeling was conducted, including the name of the modeling software and whether it used capacity expansion and production cost modeling. The files provided are definitely not from capacity expansion modeling, but it is unclear whether this represents full production cost modeling or some more limited unit operation and dispatch model. In addition, Sierra Club Information Request 1-16 asked for PVRR workbooks; EKPC did not supply any PVRR workbooks or state that none existed. Finally, EKPC did not respond to Request 1-16(a)(iv)-(vii).

LEGAL STANDARD

Parties appearing before an administrative commission "are entitled to procedural due process." *See Am. Beauty Homes Corp. v. Louisville and Jefferson Co. Planning and Zoning Comm.*, 379 S.W.2d 450, 456 (Ky. 1964). This requires that a party be granted "sufficient notice and opportunity to make his defense." *Somsen v. Sanitation Dist. of Jefferson Co.*, 197 S.W.2d 410, 411 (Ky. 1946). Due process is violated where a party is not given the chance to test,

¹³ EKPC's Supplemental Response to Sierra Club's First Set of Information Requests in Case No. 2024-00310 (Feb. 14, 2025).

¹⁴ Order in Case No. 2024-00310 (Jan. 16 2025).

¹⁵ Order in Case No. 2024-00310 (Oct. 9 2024).

explain, or refute evidence considered by the fact-finder. *See, e.g.*, 16 Am.Jur.2d Const. Law 5 1013.

ARGUMENT

Sierra Club’s ability and opportunity to make its case regarding whether there is a need for the Liberty Rice Units and whether such resource additions will lead to wasteful duplication were severely impeded because EKPC did not produce the modeling files that support the addition of the Liberty Rice Units until after the window for intervenor testimony and subsequent discovery had closed.

Consequently, proceeding under the current procedural schedule without relief for Sierra Club to seek additional discovery and possibly present direct testimony would be a reversible violation of Sierra Club’s due process rights. *See, e.g., Somsen*, 197 S. W.2d at 411 (Ky. 1946) (due process requires that a party be granted “sufficient . . . [o]ppportunity to make his defense”); 16 Am.Jur.2d Const. Law 8 1013 (party must have opportunity to test, explain, or refute evidence considered by the fact-finder).

Therefore, to ensure that Sierra Club’s procedural due process rights are not violated, and to ensure that EKPC is not improperly rewarded for its failure to comply with discovery obligations as set out in the Commission’s orders, Sierra Club requests that the Commission grant Sierra Club and other parties the ability to ask supplemental discovery regarding this recently produced modeling and the option to submit intervenor direct testimony prior to the hearing. Given EKPC’s late disclosure of information and the March 17, 2025 hearing date, Sierra Club also asks that the Commission shorten the response time for both responses to the motion and to information requests so that the hearing date for this matter is not delayed. Sierra

Club respectfully requests that the Commission modify the procedural schedule and incorporate these dates:

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| February 24, 2025 | All supplemental requests for information to EKPC |
| February 28, 2025 | EKPC shall file responses to supplemental requests |
| March 12, 2025 | Intervenor testimony, ¹⁶ if any, in verified prepared form, based on newly-discovered information |
| March 13, 2025 | All information requests to Intervenors |
| March 16, 2025 | Intervenors shall file responses to information requests |

For the reasons set forth above, Sierra Club respectfully requests that the Commission grant all parties the right to file additional information requests and the option to submit direct testimony.

Dated: February 20, 2025

Respectfully submitted,

/s/ Joe F. Childers
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¹⁶ At this point in time, Sierra Club is still reviewing the modeling files and hasn't determined yet if it will need to file direct testimony in order to make its case.

CERTIFICATE OF SERVICE

This is to certify that the foregoing copy of Sierra Club's Emergency Motion for Leave to Submit Supplemental Requests for Information and the Option to Submit Direct Testimony in this action is being electronically transmitted to the Commission on February 20, 2025, and that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding.

/s/ Joe F. Childers
JOE F. CHILDERS