

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

In the Matter of:

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)	CASE NO. 2024-00370
COMPATIBILITY CERTIFICATE RELATING TO THE)	
SAME; 3) APPROVAL OF DEMAND SIDE)	
MANAGEMENT TARIFFS; AND 4) OTHER)	
GENERAL RELIEF)	

**MOTION OF JOINT INTERVENORS APPALACHIAN CITIZENS' LAW
CENTER, KENTUCKIANS FOR THE COMMONWEALTH, AND MOUNTAIN
ASSOCIATION TO AMEND PROCEDURAL SCHEDULE**

Come now Appalachian Citizens' Law Center, Kentuckians For The Commonwealth, and Mountain Association, (collectively "Joint Intervenors" or "JIs"), by and through counsel, and respectfully move the Commission to amend the procedural schedule in order to afford intervenors a fair and meaningful opportunity to provide testimony addressing the full record, which newly includes evidence of record from Case No. 2024-00310, incorporated by reference two days before the current testimony deadline. Because intervenor testimony is currently due Friday, February 14, 2025, Joint Intervenors respectfully request an expedited ruling on this request. In support of this Motion, JIs state as follows:

1. On December 5, 2024, the Commission established a procedural schedule calling for all supplemental requests for information to EKPC to be filed by no later than January 17, 2025, and the filing of verified intervenor testimony by no later than February 14, 2025, among other dates. Those two procedural deadlines were not modified by subsequent scheduling orders on December 20, 2025, and January 8,

2025. In setting the original procedural schedule for this case, the Commission recognized the possibility of needing to amend the schedule. *Order* at 3 (Dec. 05, 2024).

2. On February 12, 2025, in recognition of the need “to review and reference both applications” “in order to adequately address the proposed projects,” the Commission ordered that the record of case no. 2024-00310 be incorporated into the record of this case. *Order* (Feb. 12, 2025). The public application and exhibits in that case amount to more than an additional 900 pages, plus 210 requests for information and responses as well as dozens of PDF and Excel attachments to those responses.

3. “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, 95 S. Ct. 1456, 1464 (1975) (internal citations and quotations omitted).

4. “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).

5. The Supreme Court has held that “a myopic insistence upon expeditiousness in the face of a justifiable request for delay can render the right to defend with counsel an empty formality.” *Ungar v. Sarafite*, 376 U.S. 575, 589 (1964) (internal citations and quotations omitted). Further, “[t]here are no mechanical tests for deciding when a denial of a continuance is so arbitrary as to violate due process. The answer must be found in the circumstances present in every case, particularly in the reasons presented to the trial judge at the time the request is denied.” *Id.*

6. Circumstances here show that intervenors need additional time before filing direct testimony in order to have a fair and meaningful opportunity to address the complete record. An already voluminous record on an already tight schedule was supplemented with a separate record consisting of 913 pages of testimony and responses to over 200 discovery responses two days prior to testimony being due. It is not possible to review and assess the newly incorporated evidence before intervenor testimony is due on February 14th. While no testimony was filed on behalf of intervenors in case no. 2024-00310, JI do intend to file expert testimony in the current case. Without an extension, JI experts in this case will not have time to review and incorporate into their testimony the EKPC testimony and discovery responses from case no. 2024-00310. Additionally, JI's experts in this case were not signatories to the non-disclosure agreement in the previous case, and therefore have not to date had the opportunity to receive any confidential information filed in Case No. 2024-00310. Also, while two of three organizations comprising JIs in this case intervened in the previous docket, Appalachian Citizens' Law Center did not.

7. The current procedural schedule requires that intervenors file expert testimony tomorrow, February 14, 2025. . Because this would not allow for intervenors to be heard in a meaningful time and manner, JI respectfully request that the Procedural Schedule issued December 05, 2024, be amended as follows:

Procedural event	Original Schedule	Proposed Schedule
Intervenor testimony, if any, in verified prepared form shall be filed no later than	02/14/2025	2/28/2025
All requests for information	02/28/2025	03/11/2025

to Intervenors shall be filed no later than		
Intervenors shall file responses to requests for information no later than	03/14/2025	03/18/2025
EKPC shall file, in verified form, its rebuttal testimony no later than	03/28/2025	03/31/2025
Public hearing to be held at 9 a.m. Eastern Daylight Time at the offices of the Public Service Commission at 211 Sower Boulevard, Frankfort, Kentucky, for the purpose of cross-examination of witnesses of EKPC and intervenors	04/15/2025–04/17/2025	04/15/2025-04/17/2025
Post-hearing briefs, if any	To be scheduled	To be scheduled

8. Amending the procedural schedule as proposed would not result in ultimate delay of the hearing in the case, and thus would not result in prejudice to any other party, or in abbreviating the time for consideration of the case by the Commission.

9. Finally, Joint Intervenors request expedited consideration of this motion before the currently established deadline for intervenor testimony, February 14, 2025. Such an extraordinary request is warranted in this limited circumstance, where intervenors have good cause to request additional time before putting forward direct testimony, the voluminous records cannot be fully accessed or adequately reviewed in two days, and reasonable adjustments to the existing schedule are possible.

WHEREFORE, Joint Intervenors, by and through counsel, respectfully request that the procedural schedule be amended as proposed above to allow additional time

for filing of intervenor testimony, and to adjust the remaining procedural schedule prior to hearing accordingly.

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 13, 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