

**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)	

**PUBLIC SUPPLEMENTAL BRIEF OF JOINT INTERVENORS
APPALACHIAN CITIZENS' LAW CENTER, KENTUCKIANS FOR THE
COMMONWEALTH, AND MOUNTAIN ASSOCIATION
REGARDING REI REPORT**

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Date: June 06, 2025

I. INTRODUCTION

Pursuant to the Commission’s May 15, 2025 Order, Appalachian Citizens Law Center, Kentuckians for the Commonwealth, and Mountain Association (collectively “Joint Intervenors”) hereby submit this supplemental briefing regarding the Reaction Engineering International report (“REI Report”)¹ that East Kentucky Power Cooperative, Inc. (“EKPC”) produced to the Joint Intervenors on May 27, 2025. Joint Intervenors appreciate the Commission *sua sponte* amending the procedural schedule in this proceeding to allow for the parties to submit such supplemental briefing on the REI Report, which is directly relevant to whether EKPC’s proposal to co-fire with natural gas Units 3 and 4 of the Spurlock Generating Station, which currently operate only on coal, is technically feasible.

II. DISCUSSION

The feasibility of the gas co-firing proposal at Spurlock 3 and 4 was put into question by EKPC’s own 2023 comments to the U.S. EPA noting that Spurlock 3 and 4 are circulating fluidized bed (“CFB”) units and stating that:

CFBs cannot co-fire natural gas because they depend upon coal ash contacting the steam generating tubes inside the furnace. Much research would need to be conducted to see if a viable alternative would be possible and economic.²

Further questions about the technical feasibility of the Spurlock 3 and 4 gas co-firing proposal were raised in the Project Scoping Report prepared by Burns & McDonnell Engineering

¹ Reaction Eng’g Int’l, *EKPC Spurlock 3 Co-Fire Project: Final Report* (last revised Dec. 19, 2024) (“REI Report”).

² Joint Intervenors’ Hearing Ex. 1, *East Kentucky Power Cooperative Inc.’s Comments on New Source Performance Standards for Greenhouse Gas Emissions from New, Modified, and Reconstructed Fossil Fuel-Fired Electric Generating Units; Emission Guidelines for Greenhouse Gas Emissions from Existing Fossil Fuel-Fired Electric Generating Units; and Repeal of the Affordable*, Docket ID No. EPA–HQ– OAR–2023–0072-0542, at 29 (posted Aug. 10, 2023).

Company, Inc. (“BMcD”) that EKPC submitted with its Application in this proceeding. That Project Scoping Report stated feasibility concerns in at least four different places, noting that gas co-firing at Spurlock 3 and 4 “requires novel design solutions that are unproven,” that “the proposed co-firing modifications have not been executed to BMcD’s knowledge,” and that the “first of a kind” design is a “major risk[.]”³ The Project Scoping Report, however, goes on to identify the REI Report as showing that co-firing Spurlock Units 3 and 4 “on 50% gas at full load appears technically feasible.”⁴ In response to discovery, EKPC confirmed that no other engineering studies or research beyond the REI Report were performed regarding the feasibility of gas co-firing at Spurlock 3 and 4.⁵ As such, the question is whether the REI Report constitutes the “much research” that EKPC stated would be needed to overcome its 2023 contention that gas co-firing at Spurlock 3 and 4 was not feasible and BMcD’s concerns about such feasibility stated in the Project Scoping Report.

Unfortunately, EKPC's lengthy resistance to producing the REI Report until after the testimony deadline and evidentiary hearing in this proceeding forecloses the ability to confidently answer that question. The REI Report consists of [Confidential]

██████████/Confidential]. Evaluating the accuracy, reasonableness, and robustness of such modeling would require technical review by experts that cannot happen at this late stage of the

³ Application Ex. 4, Direct Test. of Brad Young, Attach. BY-3, *Spurlock Station Units 1-4 Co-fire Project Scoping Report (Rev. 4)*, Case No. 2024-00370, at pp. 1-7, 1-10, 7-8, and Appendix P line 039 (Oct. 2024) (“Attach. BY-3”).

⁴ *Id.* at p. 7-2.

⁵ East Kentucky Power Cooperative Inc.’s Responses to Joint Intervenors’ Supplemental Information Request to East Kentucky Power Cooperative, dated January 17, 2025, Case No. 2024-00370, Question 47(d) (Jan. 31, 2025) (“EKPC Resp. to JI 2-47(d)”).

proceeding. Based only on attorney review, it is true that the REI Report states that

[Confidential] [REDACTED]

[REDACTED]⁶ /CONFIDENTIAL] But the REI Report also states that its [CONFIDENTIAL] [REDACTED]

[REDACTED]⁷ /CONFIDENTIAL] In

addition to meaningful technical review of these results not being possible at this stage of the proceeding, what is not addressed in the REI Report, or elsewhere in the record, is whether or to what extent these modeling results align with the operational assumptions in EKPC's economic assessment of the Spurlock gas co-firing project.

It is important to note that the insufficiencies of the evidentiary record on the question of the feasibility of gas co-firing at Spurlock Units 3 and 4 fall entirely at the feet of EKPC, which bears the burden of proof in this proceeding. It is EKPC that decided not to acknowledge, much less explain, in its Application and testimony its about-face from its 2023 statement to U.S. EPA that "CFBs cannot co-fire natural gas" to its 2024 request to this Commission to approve a project that would do exactly that. In addition, it is EKPC that initially suggested it was producing the REI Report in response to Joint Intervenor data request 2.47(c), but then without basis refused to do so on the grounds of attorney-client and work product privilege claims that the Commission has found had no support in the record.⁸

⁶ REI Report at 8-10. Interestingly, BMcD's one-sentence summary of the REI Report results [CONFIDENTIAL] [REDACTED] /CONFIDENTIAL] stating only that the modeling shows that gas co-firing at full load "appears technically feasible." Attach. BY-3 at 7-2. It is unknown and, at this point, unknowable, whether that [CONFIDENTIAL] [REDACTED] /CONFIDENTIAL] suggests a difference of opinion about the REI modeling results.

⁷ REI Report at 10.

⁸ May 15, 2025 Order, Case No. 2024-00370, at 10.

Notably, even in finally producing the REI Report in response to the Commission’s granting of Joint Intervenors’ motion to compel, EKPC persisted in claiming that the document was somehow privileged.⁹ This persistence is confounding because it is clear from a review of the REI Report itself that it is not privileged. In particular, nothing in the REI Report suggests that it was created at the direction of EKPC counsel, or to provide legal advice. Instead, the Report makes clear that its objective was to [Confidential] [REDACTED]

[REDACTED] /Confidential] and no counsel for EKPC is mentioned [Confidential] [REDACTED].¹⁰ /Confidential]

Similarly, EKPC’s claims that the REI Report “contains information central to its counsels’ Section 111 implementation legal theories and compliance and negotiation strategies,”¹¹ and that the REI Report “reveals, in part, EKPC’s strategy in upcoming negotiations regarding the GHG Rule and EKPC’s compliance and state specific plan for compliance with same,”¹² are belied by the fact that the REI Report never even mentions, much less discusses, the 111 or GHG Rule, compliance strategies for that rule, or negotiations around state specific plans.¹³

⁹ EKPC Mot. for Confidential Treatment, Case No. 2024-00370, at 3 (May 19, 2025); EKPC Mot. For Confidential Treatment, Case No. 2024-00370, at 3 (May 27, 2025).

¹⁰ REI Report at 4, 15.

¹¹ EKPC Resp. to Joint Intervenors’ Mot. to Compel, Case No. 2024-00370, at 6 (May 1, 2025).

¹² EKPC Mot. for Confidential Treatment, Case No. 2024-00370, at 4 (May 19, 2025).

¹³ EKPC’s initial response to the Commission’s granting of Joint Intervenors’ Motion to Compel was to propose that the REI Report would only be made available for viewing at the Commission, EKPC’s headquarters, or at the offices of EKPC’s counsel, and that no duplication of any portion of the report would be allowed during such viewing. EKPC Mot. for Confidential Treatment, Case No. 2024-00370, at 3-4 (May 19, 2025). After Joint Intervenors objected, EKPC agreed to produced directly to them a copy of the REI Report with the information purportedly “related to strategy and information for the negotiations over the Kentucky implementation of the GHG Rule” redacted. EKPC Reply in Support of Mot. for Confidential Treatment, Case No. 2024-00370, at 2 (May 23, 2025). The only information redacted in the version of the REI Report that was produced appears to be [CONFIDENTIAL] [REDACTED]

/CONFIDENTIAL] See REI Report at 8, 9, 29, 81, 86, 100, and 109. It strains credulity for EKPC to

III. CONCLUSION

In short, the REI Report is plainly an engineering analysis that should have been produced when requested in discovery so that the Commission and parties could have benefited from a complete record of whether the Spurlock 3 and 4 co-firing project is feasible. While the record does not definitively show that the Spurlock 3 and 4 co-firing project is infeasible, EKPC's failure to directly address the feasibility issue and produce the REI Report when it was requested could provide an adequate basis for the Commission to conclude that EKPC has not met its evidentiary burden and, as such, that the CPCN for the Spurlock 3 and 4 co-firing project should be denied without prejudice to EKPC's ability to resubmit a properly supported application for that project.¹⁴

[SIGNATURE PAGE TO FOLLOW]

suggest that such data somehow constitutes legal theories and compliance strategies. And given that EKPC would presumably provide consistent data to state and federal regulators in negotiating 111 Rule compliance plans, the suggestion that production of such information, pursuant to a confidentiality agreement, would somehow harm EKPC is baseless.

¹⁴ The Spurlock 3 and 4 co-firing project is part of a larger project to convert all four Spurlock units to co-fire with gas, and to pay for an approximately \$400 million pipeline to bring gas to the plant site. It is unclear what the economics of that total project would be if only Spurlock Units 1 and 2, instead of all four units, were converted to gas co-firing. So, in the event that the Commission were to deny the CPCN for the Spurlock 3 and 4 co-firing without prejudice, the Commission could also be justified in delaying any approval of the Spurlock 1 and 2 gas co-firing and gas pipeline costs until EKPC resubmits a properly supported application for Spurlock 3 and 4.

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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 June 06, 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