COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

ELECTRONIC APPLICATION OF	**)**
EAST KENTUCKY POWER COOPERATIVE, INC.	**)**
FOR 1) CERTIFICATES OF PUBLIC	**)**
CONVENIENCE AND NECESSITY TO	**)**
CONSTRUCT A NEW GENERATION	**) Case No. 2024-00370**
RESOURCES; 2) FOR A SITE COMPATIBILITY	**)**
CERTIFICATE RELATING TO THE SAME; 3)	**)**
APPROVAL OF DEMAND SIDE MANAGEMENT	**)**
TARIFFS; AND 4) OTHER GENERAL RELIEF	**)**

ATTORNEY GENERAL'S POST-HEARING BRIEF

On November 20, 2024, East Kentucky Power Cooperative, Inc. ("EKPC" or "the Company") filed an application with the Public Service Commission ("Commission") requesting issuance of a Certificate of Public Convenience and Necessity ("CPCN") to construction new generation sources and other relief. The Attorney General of the Commonwealth of Kentucky, through his Office of Rate Intervention, was granted intervention in the matter on December 6, 2024. Other parties, including Nucor Steel Gallatin ("Nucor"), the Appalachian Citizens' Law Center, Kentuckians for the Commonwealth, and Mountain Association were also granted intervention, with the latter three intervenors collectively referred to as the "Joint Intervenors." After conducting extensive discovery in the matter, which included five rounds of data requests by Commission Staff and two by each of the intervenors, a public hearing was held on April 21-22, 2025. At that hearing, thirteen witnesses testified on behalf of the Company and two on behalf of the Joint Intervenors.

Statement of Facts

EKPC is a not-for-profit rural electric cooperative that generates capacity and energy to serve sixteen (16) owner-member distribution cooperatives, which serve 570,000 Kentucky ratepayers in eighty-nine (89) counties. EKPC currently owns and operates 2,963 MW of Summer Generating Capacity, 3,265 MW of Winter Generating Capacity, 2,994 circuit miles of high voltage transmission lines and related infrastructure, all of which are connect to the PJM Interconnection, LLC ("PJM") regional transmission organization. In Case No. 2024-00310, the Company recently requested approval to construct and operate a 214 MW generating station and related facilities near Liberty, Kentucky. That generating station will be composed of 12 Wartsila W18V50DF Reciprocating Internal Combustion Engines ("RICE") that burn natural gas.

EKPC's current request is to construct a 745 MW Combined Cycle Gas Turbine ("CCGT") unit at the existing John Sherman Cooper Power Station ("Cooper") in Pulaski County. EKPC additionally requests approval to "co-fire" coal units at Cooper and the Hugh L. Spurlock Station ("Spurlock") in Mason County. Under the proposal, Unit #2 at Cooper and Units #1, #2, #3, and #4 at Spurlock would be upgraded by installing burner and igniter equipment which would allow fuel gas to be burned in addition to coal.

Legal Standard

For the Commission to issue the CPCN, EKPC is required to demonstrate that the proposed construction is necessary and not wastefully duplicative.[1] EKPC has made

[1] KRS 278.020; *Kentucky Utilities Co v. Public Service Comm'n*, 252 S.W.2d 885 (Ky. 1952).

such a demonstration here, and the Commission should issue the CPCN.

Discussion

The Commission should approve the CPCN because (1) the proposed generation is necessary to maintain reliable electric service and (2) it is a cost-effective means of doing so. Further, EKPC should exercise care to ensure it observes laws related to retirement of fossil fuel-fired units.

I. The Proposed Generation Resources Are Necessary to Maintain Reliable Electric Service.

On March 31, 2025, EKPC CEO Tony Campbell wrote to President Trump to, among other things, voice his "growing concern" for "the steady erosion of the nation's reliable power plant capacity."[2] Campbell correctly concluded that the "decline" in reliable power plant capacity was "driven in large part by government policies that force rising costs and create roadblocks to building and operating reliable, dispatchable 24/7 power plants." He identified several steps the administration can take to promote electric grid reliability. These steps include ensuring long-term policy certainty by enrolling regulatory changes in statutes and preventing harm caused by inappropriate state intervention in federally regulated electricity markets.

Indeed, as detailed by Mr. Campbell, many states forced the closure of dispatchable power plants in their own jurisdictions to achieve activist sustainability goals. But now, consequently, they rely more heavily on other states to which they are interconnected that have responsibly planned for their generation needs. For example,

[2] See Attorney General's Hearing Exhibit 1.

Maryland has dictated 50% of its electricity must come from renewables by 2030, but Maryland's native load is six times greater than the electricity it generates. New Jersey was reminded of its failed sustainability goals in a recent letter from PJM to the New Jersey Board of Public Utilities.[3] In response to New Jersey's letter to PJM expressing concerns over rising prices for electricity, PJM's President and CEO Manu Asthana stated:

> Since your letter focuses on the capacity market, I will address the remainder of my response to that topic. First, let me address the capacity situation in New Jersey.
>
> New Jersey has become increasingly dependent on electricity imports from other parts of PJM to keep the lights on because there is insufficient in-state generation capacity available to meet in-state demand. As you know, a significant part of New Jersey's plan to fill this gap was to build 7,500 MW of offshore wind, a target that was increased to 11,000 MW in 2022.
>
> Unfortunately, after seven years of work, that plan has failed to deliver any supply to date. As a result, PJM's capacity auction has had to signal the need for alternative supply to be built. Other things being equal, this results in an increase in prices, not just in New Jersey, but across the entire PJM footprint.

In response to the logical market effects caused by these poor policy decisions (i.e. higher prices), activist states have now taken the next predictable step to avoid the consequences of their actions, capping prices.[4] By arbitrarily manipulating market prices for needed generation, the activist states are forcing ratepayers in non-activist states to subsidize their bad policies. They attempt to "have their cake and eat it too" by promoting unrealistic goals and capping the market-based costs they pay as a result. But someone must pay to construct, operate, and maintain the generating plants that are the backbone of the nation. And to the extent the end-users of that electricity do not pay, the

[3] Letter of April 22, 2025, https://www.pjm.com/-/media/DotCom/about-pjm/who-we-are/public-disclosures/2025/20250423-pjm-board-response-to-njbpu-guhl-sadovy-letter.pdf.
[4] See FERC Docket Nos. ER25-1357 and EL25-46.

ratepayers of the location where the generating resources are located undoubtedly will.

EKPC and others are fighting these bad policies at the federal level. And policymakers, including the President, are listening. The President recently signed an Executive Order aimed at "increas[ing] domestic energy production, including coal."[5] The Executive Order recognizes that, "Coal is abundant and cost effective, and can be used in any weather condition." Coal will be "critical to meeting the rise in electricity demand due to the resurgence of domestic manufacturing and the construction of artificial intelligence data processing centers." As such, it is the policy of the United States to "remove[] federal barriers" and "encourag[e] the utilization of coal to meet growing domestic energy demands[.]" The Attorney General is 100% supportive of the effort to reform the "wrongheaded policies of the war on coal."[6]

But short of a wholesale reversal in federal policy, the most important thing EKPC can do to ensure reliability of service for its ratepayers is to make sure that it generates enough electricity to serve its native load, limiting unnecessary exposure to an increasing volatility of the market – lest Kentucky suffers the same fate as New Jersey. The proposal here supports that effort.

EKPC needs additional generation resources to serve its native load. EKPC completed a Long-Term Load Forecast ("LTLF") in 2024. The LTLF showed increases of greater than 200 MW in the 2025/26 winter peak compared to the 2022 IRP.[7] EKPC also

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[5] Executive Order 14241, *Reinvigorating America's Beautiful Clean Coal Industry*
[6] OP-ED: Trump is ending the war on coal. He's saving Kentucky jobs and our economy, https://www.kentucky.gov/Pages/Activity-stream.aspx?n=AttorneyGeneral&prId=1758.
[7] See Direct Testimony of Julia Tucker at 13.

utilized a 7% reserve margin to address the possibility of winter storms and generator outages. When compared to its available resources, EKPC expects to be short 200 MW of capacity in 2026/2027 for its winter peak, 454 MW when considering the reserve margin.[8] As additional load joins the system this deficit will continue to grow.

Given this deficit, EKPC must add generating resources. As reliable, dispatchable resources are retired from the PJM grid and are replaced by unreliable, intermittent resources, PJM will be hard-pressed to serve its rapidly increasing load.[9] Market prices will increasingly reflect this constrained supply. The failure of EKPC to add resources will subject its ratepayers to the pricing of the PJM market, with tighter supply and market participants more desperate to secure that supply resorting to more increasingly manipulative measures. Thus, EKPC's plan to serve its native load through "steel in the ground," as opposed to simply planning to meet its PJM requirements, is prudent and the correct public policy for the Commonwealth.

II. The Proposed Generation Resources Are Cost-Effective.

EKPC projects that the currently proposed projects will have an impact on rates averaging 2% per year over the next 20 years.[10] These increases are reasonable when compared to the return of 735 MW of needed, new generation and the extended lifespan of five other units. But perhaps most persuasive is the analysis of the expected net benefit for the system that will accrue resulting from the investments. EKPC expects that, based

[8] See Direct Testimony of Julia Tucker at 17.
[9] See Attorney General's Hearing Exhibit 2. "PJM has been expressing concerns regarding rapid demand growth, baseload generating unit retirements, and the relatively slow pace of new resources coming online."
[10] See Response to Attorney General's Data Request 4.

on forecasted dispatch and pricing, the revenues achieved by the dispatch of the units in the PJM system will far exceed the associated costs.[11] Therefore, this new generation is a good deal for ratepayers.

III. EKPC should exercise care to ensure it observes laws related to retirement of fossil fuel-fired units.

EKPC recently notified PJM of "its intent to deactivate through retirement John Sherman Cooper Station's Unit #1, effective on or about December 31, 2030."[12] EKPC represented that the letter is "procedural in nature and it does not reflect a definitive decision as to when Cooper Unit 1 will be retired."[13] The General Assembly recently enacted laws regarding requirements that must be met before an electric generating unit can be retired.[14] The General Assembly also created the Energy Planning and Inventory Commission for the purpose of, among other things, studying the impact of the retirement of coal units on the available supply of dispatchable and reliable power before that retirement occurs.[15]

While EKPC's letter to PJM supported its effort to achieve positive financial terms within PJM, EKPC should be careful not to put the cart before the horse regarding retirement of its existing units. The Attorney General urges EKPC and other utilities to strictly abide by the laws the General Assembly has enacted related to resource retirements. The General Assembly sets policy for the Commonwealth. That policy states

[11] See Nucor Hearing Exhibits 4 and 5.
[12] See Letter of April 3, 2025 attached to the Supplemental Response to the PSC Data Request 3-12.
[13] See Supplemental Response to the PSC Data Request 3-12.
[14] KRS 278.264.
[15] KRS 164.2807.

in part that, "[f]urther retirement of fossil fuel-fired electric generating resources is not necessary for the protection of the environment or the health, safety, and welfare of the citizens of the Commonwealth[.]"[16] While that policy does not altogether foreclose the possibility of the retirement of fossil fuel-fired resources, it is recognition that those resources offer important characteristics that are not easy to replicated by new resources typically constructed today. As such, extra scrutiny is required before a retirement can take place. The policies dictated by these laws must be strictly followed.

While EKPC explained its belief that the notice it provided to PJM was "procedural in nature and it does not reflect a definitive decision as to when Cooper Unit 1 will be retired," other interested parties may take a contrary view given the plain language of the letter. EKPC should take care not to render the processes put in place by the General Assembly a nullity by assuming a retirement will occur before it has been approved.

Conclusion

The Commission should approve EKPC's request for issuance of the CPCNs at issue here because EKPC needs the generation to serve its ratepayers, and the proposal represents a cost-effective and responsible means of meeting that need.

[16] KRS 164.2807.

Respectfully submitted,

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Certificate of Service and Filing

Pursuant to the Commission's Order dated March 17, 2020 in Case No. 2020-00085, and in accord with all other applicable law, Counsel certifies that, on May 6, 2025, a copy of the forgoing was served on the individuals on the e-service list.

this 6th day of May, 2025.

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Assistant Attorney General