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COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

A REVIEW PURSUANT TO 807 K.A.R. 5:058 )  
OF THE 2009 INTEGRATED RESOURCE PLAN ) CASE NO. 2009-106  
FOR EAST KENTUCKY POWER )  
COOPERATIVE, INC. )

SIERRA CLUB, KENTUCKY ENVIRONMENTAL FOUNDATION AND  
KENTUCKIANS FOR THE COMMONWEALTH MOTION FOR FULL  
INTERVENTION

Pursuant to K.R.S § 278.310 and 807 K.A.R. 5:001 § 3(8), the Sierra Club, Kentucky Environmental Foundation, and Kentuckians for the Commonwealth (collectively "Public Interest Groups") respectfully request that they be granted full intervention in this case. The Public Interest Groups, including their counsel and consultants, have a wealth of knowledge and experience in a wide variety of complex and rapidly changing issues which impact East Kentucky Power Cooperative's Integrated Resource Plan. The Public Interest Groups seek full intervention to help to ensure that East Kentucky Power Cooperative has an Integrated Resource Plan that results in rates and services that serve Kentuckians to the maximum extent possible. In support of this request, the Public Interest Groups state the following:

**I. BACKGROUND**

This matter is a review of East Kentucky Power Cooperative's Integrated Resource Plan. This Integrated Resource Plan is perhaps the most important one that East Kentucky Power Cooperative has or will ever file. We are at a critical point in terms of energy issues. Rapid and profound changes are occurring in the physical, economic,

and political realms. The climate crisis, the credit crunch, and the Obama Administration are three prominent examples. The Public Interest Groups closely track and in many cases actively engage in many processes that influence opportunities and obstacles that East Kentucky Power Cooperative will face during the time period covered by this Integrated Resource Plan. If allowed to fully intervene, the Public Interest Groups can help ensure an Integrated Resource Plan that adequately takes into account the current and future reality caused by these rapid and profound changes.

Section III contains relevant details about the Public Interest Groups. Here we provide a general description.

Sierra Club is a national grassroots nonprofit conservation organization formed in 1872 and headquartered in San Francisco, California. Sierra Club has over 750,000 members nationally and over 5,000 members in Kentucky. The Sierra Club has a statewide chapter in Kentucky called the Cumberland Chapter and five groups including a Northern Kentucky group and a Bluegrass Group. The Cumberland Chapter's address is:

Sierra Club  
Cumberland Chapter  
PO Box 1368  
Lexington, KY 40588-1368

The Sierra Club's interests encompass a broad range of energy and pollution concerns that fully complement the myriad issues parties will face in this proceeding. Specifically, Sierra Club has become a national and regional leader in the effort to reduce individual states', and thereby the nation's, dependence on fossil fuels. The highest current priority in the Sierra Club's work is reducing the need for fossil-fueled power plants through the development of affordable renewable energy and demand-side

management. This objective has the added benefit of creating well-paying, permanent jobs. As more fully described below, Sierra Club brings its unique perspective and experience in advancing innovative technical and regulatory solutions to increase renewable energy and demand-side sources while working to reduce the nation's carbon footprint.

Kentucky Environmental Foundation ("KEF") is a non-profit corporation organized under the laws of Kentucky, and maintains its offices in Berea, Kentucky. KEF has worked for over 18 years to ensure the safe disposal of the Army's stockpile of outdated chemical weapons which are stored in Richmond, Kentucky and 7 other sites throughout the nation. KEF also works to ensure that Kentucky has clean energy and that Kentuckians' exposure to toxic chemicals is minimized. KEF's address is:

Kentucky Environmental Foundation  
128 Main Street  
Berea, KY 40403

Kentuckians for the Commonwealth ("KFTC") is a 28-year old social justice organization with nearly 6,000 members statewide. Its membership is mostly middle- and low-income individuals from the mountains and other rural communities, small towns, and urban centers of our state. KFTC helps people organize to win change on a broad range of issues, including restoring voting rights, promoting sustainable economic development policies, reducing environmental destruction, and advancing sustainable energy policies and practices. The organization has nearly 2,000 dues paying members who live in counties served by East Kentucky Power Cooperative's member co-ops.

KFTC's main address is:

KFTC  
P.O. Box 1450

London, KY 40743

Collectively, the Public Interest Groups have a long history of working on the whole life cycle of energy production and of educating the public and governmental decision-makers regarding that life cycle. For coal, the entire life cycle presents negative health and environmental impacts. These impacts begin with mining and transportation, then result in operational air pollution impacts at power plants, then end when polluted water and solid waste, both coal by-products, leave power plants. One of the principle ways the Public Interest Groups work on addressing the energy life cycle is by encouraging utilities to offer demand side management services and offer electricity generated from clean, renewable fuels like the wind and the sun.

Members of the Public Interest Groups are members of and rate payers to the distribution cooperatives that make up East Kentucky Power Cooperative. Members of the Public Interest Groups also live, own property, work, attend school, farm, garden and recreate in areas that are being affected by pollutants that East Kentucky Power Cooperative's power plants emit, and will continue to do so in the future. East Kentucky Power Cooperative's rates and services affect the amount of pollution that the members are exposed to as a result of the company's power generation mix. For example, as the saying goes, the cleanest kilowatt-hour of electricity is the one that is never generated. Thus, the more demand side management services East Kentucky Power Cooperative offers, the less electricity East Kentucky Power Cooperative has to generate and thus the less pollution it generates. The same holds true for renewable sources of electricity generation like solar and wind. The more East Kentucky Power Cooperative offers, the less pollution the Public Interest Groups are exposed to.

## **II. LEGAL STANDARDS FOR FULL INTERVENTION**

The Public Service Commission's regulations provide that one can request full intervention in a proceeding by submitting a timely motion. The regulations further provide:

If the commission determines that a person has a special interest in the proceeding which is not otherwise adequately represented or that full intervention by [the] party is likely to present issues or to develop facts that assist the commission in fully considering the matter without unduly complicating or disrupting the proceedings, such person shall be granted full intervention.

807 K.A.R. 5:001 § 3(8)(emphasis added).

## **III. REASONS WHY FULL INTERVENTION SHOULD BE GRANTED**

### **A. THIS REQUEST TO INTERVENE IS TIMELY**

This request to intervene is timely. East Kentucky Power Cooperative only filed their Integrated Resource Plan on April 21, 2009. The Commission has not yet entered a scheduling order.

### **B. THE PUBLIC INTEREST GROUPS WILL PRESENT ISSUES AND DEVELOP FACTS THAT WILL ASSIST THE COMMISSION IN FULLY CONSIDERING THE MATTER WITHOUT UNDULY COMPLICATING OR DISRUPTING THE PROCEEDINGS.**

It would be hard to reasonably dispute that East Kentucky Power Cooperative's 2009 Integrated Resource Plan (2009 IRP) is heavily coal dependant. The 2009 IRP provides that East Kentucky Power Cooperative will increase its consumption of coal for every year from 2009 to 2023 with the exception of a slight decrease between 2020 and

2021. See 2009 IRP at 8-121. In 2023, the final year covered by the IRP, it forecasts that EKPC will get over 86% of its electricity from burning coal. See 2009 IRP at 8-120.

The Public Interest Groups have a wealth of experience in a variety of areas that affect the risk of being so dependant on one particular resource, especially one as environmentally harmful as coal. More important, the Public Interest Groups will provide current data on feasible alternatives to reduce this dependency and provide options for less risky alternatives. The Public Interest Groups will bring a wealth of experience to this proceeding if granted full intervention.

For example, the Public Interest Groups have already released a report entitled, "A Portfolio of Energy Efficiency and Renewable Energy Options for East Kentucky Power Cooperative." The report details how East Kentucky Power Cooperative can meet its projected demand for electricity through a portfolio of energy efficiency programs and renewable energy resources while helping its customers realize savings on their monthly electric bills. The report was prepared by Susan Zinga and Andy McDonald. Ms. Zinga has twenty-five years experience working with a variety of organizations involved in the electric and natural gas industries in the United States, Europe and Asia. Her experience includes working with the Indiana Regulatory Commission as a member of a specialized team of experts to produce independent energy forecasts for Indiana electric utilities. Andy McDonald is the coordinator of the Kentucky Solar Partnership. He has been working on sustainability issues for over fifteen years. The Kentucky Environmental Quality Commission recently invited him to discuss solar energy issues when them.

The Public Interest Groups' experience with demand side management programs is not limited to studies and reports. For example, Kentucky Environmental Foundation

is actually running a demand side management program, that is a compact fluorescent light bulb sale, right now in Berea, Kentucky which includes part of Bluegrass Energy's service territory. Bluegrass Energy is an East Kentucky Power Cooperative member. This actual experience will allow the Public Interest Groups to raise issues and provide facts based on actual experience.

The Public Interest Groups have also recently released a report entitled "The Right Decision for Changing Times: How East Kentucky Power Cooperative Ratepayers Benefit from Canceling Plans for a New Coal Burning Power Plant In Clark County." The report examined East Kentucky Power Cooperative's financial and credit position and the financial impact that going forward with the proposed coal-fired Smith #1 plant will have on the Cooperative and its ratepayers. Much of the evidence used in the analysis came directly from public documents filed by East Kentucky Power Cooperative before the Kentucky Public Service Commission.

This report was by Tom Sanzillo. Tom is a senior associate with TR Rose Associates, a public policy and financial consulting firm in New York City. From 1990 to 2007, Tom served in senior management positions to the publicly elected chief financial officers of New York City and New York State. From 2003 to 2007, he served as the First Deputy Comptroller for the State of New York. Tom was responsible for a \$150 billion globally invested public pension fund; oversight of state and local budgets and debt offerings; audit programs for all state agencies, public authorities and local governments, and review and approval of state contracts. One estimate places the level of public assets under the State Comptroller's watch at over \$700 billion. Due to an early resignation, Tom served for a short period as the New York State Comptroller

from 2006-07. For the past two years TR Rose, under Tom's leadership has served several clients working to create alternatives to fossil fuel use in the United States. Tom has:

- served as an expert witness in a case brought by a coalition opposed to a coal fired power plant in Marshalltown, Iowa. Recently, the sponsor withdrew the plant;
- prepared a review of the financial and energy assumptions of a power plant in Michigan (the first study of its kind) for a coalition seeking to defeat the plant and support alternatives. Recently, the Governor initiated a temporary moratorium on all coal plants; and,
- prepared a review of a bond prospectus by a power authority in South Carolina for a coalition opposing plans for the Pee Dee coal power plant. Recently, the Governor publicly opposed the plant.

While preparing his East Kentucky Power Cooperative report, Mr. Sanzillo sent a series of questions to East Kentucky Power Cooperative to strengthen his analysis. East Kentucky Power Cooperative never responded to any of the questions. However, in this proceeding, if the Public Interest Groups are granted full intervention, East Kentucky Power Cooperative would be required to provide answers to questions to strengthen the analysis. At that point, the Public Interest Groups could provide the Commission with an even more robust analysis of how East Kentucky Power Cooperative's currently proposed generating unit additions impact its financial position.

The Public Interest Groups are also engaged in having experts prepare a report on the job creation and economic impact of the option of East Kentucky Power Cooperative on a county by county basis. While perhaps not a decisive factor in an Integrated



Resource Plan, it is certainly useful information for a non-profit cooperative in order to determine what mix of resources, that is rates and services, best serves its customers and the Commonwealth.

The Public Interest Groups are also engaged in having experts prepare a report on East Kentucky Power Cooperative's forecasted energy needs and the resource mix that would best serve this need. This is directly relevant to an IRP. In fact, it is the heart of an IRP. The Public Interest Groups are working to have a considerable amount of non-governmental, non-utility resources dedicated to this analysis. However, discovery will greatly enhance the robustness of this analysis.

The Public Interest Groups, and Sierra Club in particular, have substantial experience working with very technical aspects of power plants and utility planning. For example, Sierra Club has worked on numerous matters with Robert Koppe. Mr. Koppe has a long and outstanding career in the power industry. Among his many accomplishments, Mr. Koppe was instrumental in the development of the North American Electric Reliability Council's Generation Availability Data System (GADS) and has served in several lawsuits, including Sierra Club lawsuits, as an expert using GADS to predict future performance of power plants. GADS is a way of tracking various power plant performance statistics like availability factors, utilization factors and capacity factors. East Kentucky Power Cooperative has in the past used GADS data to try to convince the Public Service Commission of various points. See e.g. Case No. 2008-436, Application, Testimony of Craig Johnson at 2 (relying on GADS data).

Future availability of East Kentucky Power Cooperative's generating units is a critical issue in reviewing the 2009 IRP. For example, the 2009 IRP claims that Dale

Unit 1, which was built in 1954, will have a capacity factor of 0.24 and an availability factor of 0.89 in 2023. See 2009 IRP at 8-107. Whether a 69 year-old coal-fired power plant can be ready to operate 89% of the time, and whether if it can, it is a wise financial choice to invest the money to make that happen, is an issue relevant to this proceeding and is an issue that the Public Interest Groups and their experts have the experience and knowledge to evaluate.

One factor in such an evaluation is variable operation and maintenance (O&M) costs. This information is currently not provided in the publicly available version of the 2009 IRP. See e.g. 2009 IRP at 8-115. Upon being granted full intervention and entering into an appropriate confidentiality agreement like the one Sierra Club and East Kentucky Power Cooperative have entered into in the past, the Public Interest Groups could obtain this information and use it to ensure that the Public Service Commission is fully informed on critical issues with the relevant facts.

Similarly, the Public Interest Groups, and Sierra Club in particular, have worked on issues relating to power plant efficiency for years with a variety of experts such as Bill Powers. Mr. Powers has worked for the electric generators and their research organizations.

The 2009 IRP claims that the combustion turbines that are Smith Units 9 and 10 will have a heat rate of between 9760 and 9877 btu/kwh. See 2009 IRP at 8-117. Heat rate is a measure of how efficient an electric generating unit is and how efficient an electric generating unit is has a great deal to do with how cost effective it is and how often it is used. Smith Units 9 and 10 are GE LMS 100 Combustion Turbines. GE's literature claims that GE LMS 100 combustion turbines have a much lower heat rate than

what East Kentucky Power Cooperative provided in the 2009 IRP. But a factor in determining heat rate is how often a unit is used so there can be a self-fulfilling prophecy of a utility choosing to use a very efficient electric generating unit in a very inefficient manner to drive up its cost of operation. This would result in electric generating units which are inherently much less efficient being used more often. The Public Interest Groups, and the experts they regularly work with, can help the Public Service Commission explore the issue of whether the 2009 IRP is really optimizing the electric generating units to get the lowest overall system operation.

Finally, the Public Interest Groups and their counsel have considerable knowledge about the environmental and other regulatory systems. Sierra Club is involved in the permitting of almost every proposed coal fired power plant in the country. We are well aware that the Public Service Commission's jurisdiction does not extend to environmental laws and regulations. However, an IRP that is based on generating resources that will never be built because they will never obtain the necessary environment permits is nothing more than a recipe for disaster.

So, for example, East Kentucky Power Cooperative's current plan is to dispose of some of its coal ash from the proposed Smith 1 coal-fired unit in wetlands. However, Kentucky law prohibits the disposal of coal ash in wetlands. 401 KAR 30:031 Sec. 13; *see also* 401 KAR 47:030 Sec. 13. There are numerous other environmental challenges that various aspects of the 2009 IRP will face that the Public Interest Groups are very knowledgeable about. In contrast, the 2009 IRP talks about the Clean Air Mercury Rule (CAMR) and the Clean Air Interstate Rule (CAIR); two rules which have been

overturned by the U.S. Court of Appeals for the District of Columbia Circuit. See 2009 IRP at 8-61.

Full intervention is necessarily for the Public Interest Groups to fully present the issues and facts discussed above because the Public Interest Groups need access to discovery and they need access to confidential information. Limited intervention would not allow for a full presentation of these issues and facts.

The 2009 IRP deals with complicated topics. However, the Public Interest Groups helping the Commission to explore many of the assumptions and inputs into the 2009 IRP will not unduly complicate the matter. Rather, it will just allow for a more robust examination to ensure the East Kentucky Power Cooperative has the best IRP possible.

Finally, the Public Interest Groups are represented by experienced counsel. Their participation will not disrupt this proceeding.

**C. THE PUBLIC INTEREST GROUPS HAVE A SPECIAL INTEREST IN THIS PROCEEDING WHICH IS NOT OTHERWISE ADEQUATELY REPRESENTED.**

As noted above, 807 K.A.R. 5:001 § 3(8) provides two alternative basis for granting full intervention. Parties either need to have a special interest not adequately represented or be likely to present issues and facts that will help the Commission fully consider the matter. As explained in Section III.B., above, the Public Interest Groups will likely present issues and facts that will help the Commission fully consider the matter. Therefore, the Commission can grant full intervention on that basis alone and need not consider the Public Interest Groups' special interest. Nevertheless, as explained

below, the Public Interest Groups also have special interests that are not adequately represented.

The Public Interest Groups have thousands of members who are customers of distribution cooperatives which are served by and make up East Kentucky Power Cooperative. This includes members of the Public Interest Groups who own businesses and thus are not only residential class customers. In this regard, the Public Interest Groups are like Gallatin Steel, which the Commission granted full intervention in East Kentucky Power Cooperative's last IRP case. See Case No. 2006-471, Dec. 5, 2006 Order granting Gallatin Steel full intervention. Of course, the Commission should not treat organizations with similar interests differently.

The Public Interest Groups represent those members in ensuring that East Kentucky Power offers services and has rates that reflect the objectives of the Public Interest Groups. These objectives include equality and sustainability.

It is important to recall that electric distribution cooperatives in Kentucky are monopolies. Thus, forcing someone to have their electricity come from sources that the person finds objectionable and then denying that person the right to have their say in determining where their electricity comes from would be a particularly unjust result.

Furthermore, the members of the Public Interest Groups have legally protected interests in their property and their health which can be adversely impacted by East Kentucky Power Cooperatives' rates and services. For example, the more real demand side management programs East Kentucky Power Cooperative implements, the less pollution the Public Interest Groups are exposed to. Similarly, one "demand side management" program that was evaluated in the 2009 IRP but rejected without any

publicly available analysis is progressive block rates. That is, the more electricity someone uses, the more it would cost. The Public Interest Groups refer to this as "making it pay to save [electricity]." Again, this is a rate structure that impacts the members of the Public Interest Groups' protected rights in their property and their health.

The Public Interest Groups are particularly interested in a holistic assessment of the value of East Kentucky Power Cooperative's IRP. For example, if one saves \$5 per month on its electric bill because it has cheap rates because of dirty generating units but pays \$10 per month for asthma medicine for a child who is exposed to the pollution from the dirty generating unit, the Public Interest Groups hardly call that cost effective. To its credit, East Kentucky Power Cooperative did include an "adder" in some of its analysis, mainly to reflect the potential for future greenhouse gas regulation. However, the adder is not comprehensive enough.

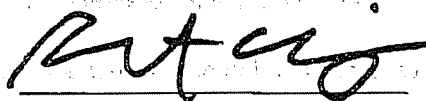
The Attorney General's participation, while important, will not adequately represent the Public Interest Groups' interests. To begin with, the Kentucky Attorney General does not, by definition, have the breadth of nation-wide experience that the Public Interest Groups have on energy issues. There are a lot of good ideas out there with regard to smart energy planning. The Public Interest Groups have been fortunate enough to be exposed to, and to have worked on, many of them. In addition, the Public Interest Groups and their consultants and counsel have extremely specialized knowledge and experience with regard to power plant performance and regulation which we imagine the Attorney General has not had need to obtain. Furthermore, the Public Interest Groups have significant resources that the Attorney General may not have for experts, in part because their non-profit status often allows the Public Interest Groups to enjoy *pro bono*

assistance. Finally, past actions indicate that the Attorney General does not share as holistic a view as the Public Interest Groups.

#### IV. CONCLUSION

Therefore, for the reasons stated above, the Public Interest Groups respectfully request full intervention in this matter. Undersigned counsel contacted counsel for East Kentucky Power Cooperative to see if they would agree to this intervention. East Kentucky Power Cooperative said they would not agree to the Public Interest Group's full intervention, thus refusing the Public Interest Groups offer to spend the Public Interest Group's resources to help ensure that East Kentucky Power Cooperative's IRP is in the best interest of its members.

Respectfully submitted,



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Dated: May 4, 2009

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