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March 12, 2010

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**PUBLIC SERVICE
COMMISSION**

Via Hand-Delivery

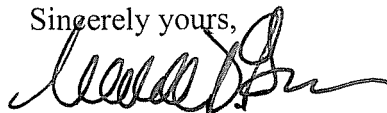
Mr. Jeffrey Derouen
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, Kentucky 40602

Re: In the Matter of: Dr. John Patterson, Fr. John Rausch, Wendell Berry,
Sierra Club, Kentucky Environmental Foundation and Kentuckians
for the Commonwealth
Case No. 2009-00426

Dear Mr. Derouen:

Please find enclosed for filing with the Commission in the above-referenced case an original and five copies of East Kentucky Power Cooperative's Reply to Response of Patterson, Rausch and Berry. Please return a file stamped copy of the above to me.

Sincerely yours,



Mark David Goss

Enclosures

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

In the Matter of:

MAR 12 2010

DR. JOHN PATTERSON, FR. JOHN RAUSCH,)
WENDELL BERRY, SIERRA CLUB, KENTUCKY)
ENVIRONMENTAL FOUNDATION AND)
KENTUCKIANS FOR THE COMMONWEALTH)

PUBLIC SERVICE
COMMISSION

PLAINTIFFS)

CASE NO.
2009-00426

vs.)

EAST KENTUCKY POWER COOPERATIVE, INC.)

DEFENDANT)

**EAST KENTUCKY POWER COOPERATIVE, INC.'S
REPLY TO RESPONSE OF PATTERSON, RAUSCH AND BERRY**

Comes now East Kentucky Power Cooperative, Inc. ("EKPC"), and replies to the Response of Plaintiffs, John A. Patterson, M.D., Fr. John Rausch, and Wendell Berry (the "Complainants") to EKPC's Answer.¹

I. Reply to Complainants' Legal and Procedural Arguments

The Complainants make several legal and procedural arguments which they assert should prevent the Commission from dismissing their Complaint. However, these arguments are legally insufficient to overcome EKPC's Motion to Dismiss the Complaint.

A. KRS 278.260 and 278.280 Do Not Authorize the Revocation of the Smith I CPCN

The Commission has previously granted EKPC a Certificate of Public Convenience and Necessity ("CPCN") to construct the Smith I CFB Unit ("Smith I") at Trapp, Kentucky after a

¹ By its Order entered February 9, 2010, the Commission directed EKPC to file its Reply to the Complainants' Response within ten days following its filing. However, because the Complainants' Response was filed one day late, the parties have agreed that the deadline for filing this Reply should be extended by one day as well to March 12, 2010.

long and arduous review process.² It is this CPCN which the Complainants seek to have revoked in this complaint. Having no other legal basis to do so, they attempt to employ KRS 278.260 and 278.280 as the vehicle to accomplish this goal.

Recognizing that the Commission seems to have already blessed this strategy,³ EKPC respectfully disagrees that it is a legally permissible one.

KRS 278.260, and by extension, KRS 278.280, provide a mechanism for an “interested” person to complain to the Commission about a particular rate, practice or act of a jurisdictional utility. Once this complaint has been lodged, the statute clearly allows for the Commission to exercise its discretion “. . . to make such investigation as it deems necessary or convenient.”⁴

In determining the extent of the investigation which it must make as a result of the complaint, the Commission should differentiate between those utility activities which have previously been reviewed and reduced to Order by the Commission, and those which have not. Common sense dictates that the investigation of a utility activity under KRS 278.260 which has been previously reviewed and fully litigated and which has resulted in a final Commission Order should be conducted more narrowly than one which has not been subject to prior Commission scrutiny.

To apply KRS 278.260 and 280 so as to allow private complainants to set aside a prior Order of the Commission that was rendered after months of labor and deliberation, volumes of testimony and discovery, and a due process hearing potentially renders ANY Order of the

² Case No. 2005-00053, Application of East Kentucky Power Cooperative, Inc. for a Certificate of Public Convenience and Necessity, and a Site Compatibility Certificate, for the Construction of a 278 MW (nominal) Circulating Fluidized Bed Coal Fired Unit and Five 90 MW (nominal) Combustion Turbines in Clark County, Kentucky; Case No. 2006-000564, An Investigation into East Kentucky Power Cooperative, Inc.’s Continued Need for Certificated Generation.

³ Case No. 2009-00106, In the Matter of: 2009 Integrated Resource Plan of East Kentucky Power Cooperative, Inc., Order of July 13, 2009, at pages 7-8.

⁴ KRS 278.260(1).

Commission subject to collateral attack by virtually anybody at anytime since all activities of a utility ultimately involve a rate or service. If the Commission were to allow the Complainants to vitiate the Smith I CPCN Order in this fashion it could call into question the validity and finality of virtually all future Commission Orders.

B. The Complainants Lack Standing to Initiate a Complaint Under KRS 278.260

In their Response, the Complainants present a grossly incorrect statement of the doctrine of Standing:

“ . . . ‘standing’ is a term that arises from Article III of the United States Constitution, and applies only to the Federal Judicial Branch. Complainants do not have to meet this standard in this state executive branch tribunal.”⁵

No authority needs to be cited for the proposition that any litigant seeking relief as against another litigant in either a court of law or before an administrative agency must have a sufficient stake in the controversy to obtain judicial or administrative resolution of it.

Indeed, the Commission clearly recognized that Standing is a prerequisite for obtaining relief before it when it earlier dismissed the Sierra Club, the Kentucky Environmental Foundation, and Kentuckians for the Commonwealth for lack of Standing in this case.⁶

The Complainants also incorrectly argue that the Commission “. . . routinely allows parties who are not direct customers of EKPC . . . or who only have an ‘indirect’ interest in the rates, practices or acts of EKPC [to intervene]”.⁷ The Complainants cite the example of Gallatin Steel for this assertion and point to the fact that the Commission routinely allows Gallatin to intervene in EKPC cases. The Complainants are apparently unaware that there is currently (and has been for a number of years) a written Agreement for Electric Service between Gallatin,

⁵ Complainants’ Response, March 1, 2010, page 3.

⁶ Commission Order, December 22, 2009, pages 5-6.

⁷ Complainants’ Response, March 1, 2010, page 3.

Owen Electric and EKPC. Depending upon the matter at issue, this Agreement by itself will usually provide Gallatin with standing to intervene or file a complaint related to some rate or service of EKPC. The Complainants enjoy no such direct relationship with EKPC.

C. Kentucky Law on Collateral Estoppel Dictates that the Commission's Orders in 2005-00053 and 2006-000564 Preclude Complainants' Claims in This Case

In Yeoman v. Commonwealth, 983 S.W.2d 459 (Ky. 1998), the Kentucky Supreme Court explained Kentucky law on res judicata and collateral estoppel:

The doctrine of res judicata is that an existing final judgment rendered upon the merits, without fraud or collusion, by a court of competent jurisdiction, is conclusive of causes of action and of facts or issues thereby litigated, as to the parties and their privies, in all other actions in the same or any other judicial tribunal of concurrent jurisdiction.

Id. at 464. According to the Yeoman court, res judicata is made up of two components – Claim Preclusion and Issue Preclusion. Claim preclusion prohibits a party from litigating a previously adjudicated cause of action again and bars a new lawsuit on the same cause of action. Id. at 465. Issue Preclusion, on the other hand, “bars the parties from relitigating any issue actually litigated and finally decided in an earlier action.” Yeoman, 983 S.W.2d at 465. The elements required for Issue Preclusion are: (i) identity of issues; (ii) actual litigation of the issue in the first case; (iii) a decision on the issue in the first case; and (iv) the necessity of the decision on the issue in the first case on the court's judgment. Id. See also Sedley v. City of West Buechel, 461 S.W.2d 556 (Ky. 1970) (adopting concept of issue preclusion). The rule that issues that have already been litigated cannot be the subject matter of a later action “is not only salutary, but necessary to the speedy and efficient administration of justice.” Yeoman, 983 S.W.2d at 465.

The Complainants argue that because they were not parties in either Case Nos. 2005-00053 or 2006-000564, they cannot be precluded from relitigating the identical claims and/or

issues in this Complaint case. That is a misstatement of the law. As stated in Yeoman, as long as the current parties or “their privies” were part of the prior cases, and all other necessary elements are met, a relitigation of the same claims or issues is prohibited.

The Kentucky Attorney General was a full intervenor and active party in both Case Nos. 2005-00053 and 2006-000564. KRS 367.150(8) grants the Attorney General the right and obligation to appear before regulatory bodies of the Commonwealth of Kentucky “to represent and be heard on behalf of consumers’ interests.” The individual Complainants in this case are certainly the “consumers” which the Attorney General was obligated to represent in Case Nos. 2005-00053 and 2006-000564. This statutory relationship makes the Attorney General and the individual Complainants in this case “privies” for purposes of res judicata and collateral estoppel (claim preclusion and issue preclusion).

Because all of the elements for the application of both res judicata and collateral estoppel have been met in this case, the Complainants’ action to set aside the Smith I CPCN should be dismissed by the Commission.⁸

II. Reply to Complainants’ Factual Arguments

The Complainants’ Response also makes several factual arguments which they assert should prevent the Commission from dismissing their Complaint. However, these arguments are legally insufficient to overcome EKPC’s Motion to Dismiss the Complaint. They will be addressed here in the same order contained in the Complainants’ Response.

A. Total Energy Requirement Forecast

The information below was previously provided on July 24, 2009 in Case No. 2009-00106, EKPC’s Response to the first set of data requests from the Sierra Club, Kentucky

⁸ It is noteworthy that the Sierra Club’s Motion to Intervene as a party in Case No. 2006-000564 was denied by Commission Order from which an appeal was never taken. Commission’s Order, March 22, 2007.

Environmental Foundation and Kentuckians for the Commonwealth (Collectively “Public Interest Groups”) [Response 47]:

While EKPC’s forecast models have not changed between 2004 and 2008, the exogenous driver variables have. When the 2004 load forecast was being prepared, forecast drivers were projecting a relatively strong economy for the EKPC service area. For example, employment projections in 2004 were nearly 15% higher than the 10 year projections developed by Global Insight for EKPC in 2008. In 2004, the manufacturing sector was believed to be relatively healthy in Kentucky. The current severe recession led to EKPC’s long-term forecast developed in 2008 to be more modest than previous forecasts.

The information below was previously provided on October 2, 2009 in Case No. 2009-00106, East Kentucky Power Cooperative, Inc.’s Response to Comments on 2009 IRP From Sierra Club, Kentucky Environmental Foundation and Kentuckians for the Commonwealth:

The Environmental Groups know absolutely nothing about energy supply forecasting. First, comparing one forecast to another forecast cannot establish the accuracy of either. Only by comparing forecasts to actual results allows one to make judgments about forecast accuracy. Ironically, the difference in the two forecasts mentioned on page 6 of Environmental Groups’ comments proves that EKPC does amend its forecasts to take into account changing circumstances. While it is true that the forecasts prepared in 2004, 2006 and 2008 are different, it is inappropriate to draw a conclusion that there is an “over-estimation” trend until the 2020 actual data has been collected and compared to the different forecasts. Assumptions did change dramatically from the 2004 to the 2008 forecast mainly due to the economic downturn in the United States. That is one reason why the Rural Utilities Service (“RUS”) requires forecasts to be completed every two years so that these changes and the resulting impacts will be captured. In actuality, in comparing historical actual total requirements to the load forecast appropriate for comparison to that time period, EKPC has actually under forecasted in 7 of the last 15 years (1994 to 2008) by approximately 0.3%.

Additionally, as the Kentucky IRP statute clearly demonstrates, it is incorrect to say that a utility’s load forecast is the sole driver behind decisions related to power supply capital investment. There are numerous drivers behind the decisions made regarding future power supply. Many variables are evaluated in the resource planning model including: natural gas price

projections, coal price projections, renewable energy technologies and purchase power agreements, emission price projections, market price projections, long term energy purchases and peaking purchases, generation technology capital costs for construction, maintenance and operation of existing and planned units, transmission issues relating to the EKPC system and state and regional transmission issues. In addition, EKPC's current lack of generating capacity influences decisions on future power supply.

All of this input is used to produce the optimal power supply plan that will result in reliable, least cost electricity for the end consumer.

It should be noted that EKPC only mentions 1994 to rebut the Complainant's claim that EKPC is "historically wrong in its predictions for load forecasts". Again, in actuality, in comparing historical actual total requirements to the load forecast appropriate for comparison to that time period, EKPC has actually under forecasted in 7 of the last 15 years (1994 to 2008) by approximately 0.3%.

As previously stated on January 4, 2010 in Case No. 2009-00426:

EKPC's long-term projection of energy sales is around 2% per year. Historical sales have been twice that amount.

The 2009 forecast for total requirements is based on a normal weather scenario (as are all forecast values). It is important to consider the role that the weather plays on total energy requirements when doing any comparison with historical data. The table below illustrates the differences in heating and cooling degrees between 2008 and 2009.

| January – November | 2008 | 2009 | % Diff (over 2008) |
|---------------------|------|------|--------------------|
| Heating Degree Days | 3888 | 3733 | -4% |
| Cooling Degree Days | 1201 | 1028 | -14% |

The 2009 summer was much different than the 2008 summer. This is one reason for lower total requirements. The economic recession is another. EKPC monitors the economy closely and gathers data from outside data sources such as Global Insight in order to account for economic cycles. Improvement in the economy is expected over the long term. Considering the long term nature of the load forecast and integrated resource plan, these tools remain appropriate for long term resource planning.

When the 2008 load forecast was modeled, which was in the spring and summer of 2008, many member systems had already seen a decrease in new homes and energy sales for year-end 2007. This was the starting point for the 2008 load forecast. Therefore, the first 5 years of the 2008 load forecast reflected a dampened growth rate compared to historical growth rates.

EKPC's forecast process is not based on percentages. (Load forecasts based on percentage growth have not been utilized in the industry for over 30 years.) EKPC performs regression analysis on historical monthly class sales. Growth rates and percentage changes are calculated once the forecast is prepared. As previously stated, Rural Utilities Service ("RUS") requires forecasts to be completed every two years according to a pre-approved work plan. RUS reviews and approves both the load forecast methodology and the load forecast itself. Therefore, EKPC believes the methodology it uses is appropriate.

The Complainants are taking many of EKPC's statements out of context. The information below was previously given on July 24, 2009 in Case No. 2009-00106, East

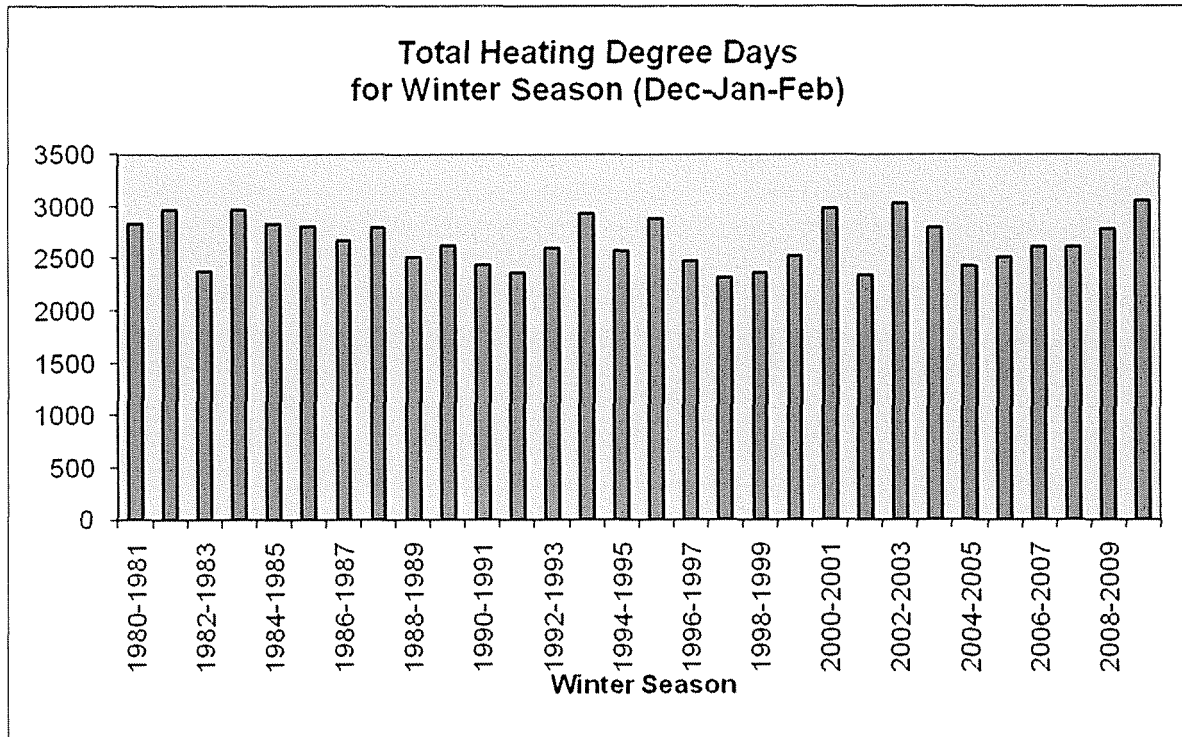
Kentucky Power Cooperative, Inc.'s Response to Attorney General's Initial Requests for Information [Response 1]:

The major contributing factor for EKPC's growth rate being higher than some other utilities is due to the customer mix. As stated in Request 1, EKPC is mainly residential. Typically, each year, nearly 60% of EKPC's member systems' sales are to the Residential Class. Nationwide, utilities have seen significant declines in sales due to the economic impacts on the commercial and industrial classes. While the recession is starting to impact some of EKPC's member systems' commercial and industrial customers, the resulting change in the growth rate is small due to the sales to the Residential Class. Another contributing factor to EKPC's higher growth than the surrounding utilities is the location of EKPC's member cooperatives' territory. The investor owned utilities' territories are mostly saturated; therefore, the expected growth is moving into the distribution cooperatives' territories. Once the economy has recovered, EKPC's member systems can reasonably expect to grow.

EKPC has had no change in position relating to its forecast of demand and energy. Its current load forecasting process is state of the art, is used by many other utilities across the country, and has been in place since 2002. If the Complainants believe that the Kentucky economy is not going to improve any time soon, they should have supported such a belief with valid and reasonable data, reports, and forecasts.

A presentation made at the 21st Annual Economic Outlook Conference for 2010, sponsored by the Gatton College of Business and Economics of The University of Kentucky, states that Kentucky's economy is expected to grow in 2010 by 2.0%.

With regard to climate change, the table below reports historical heating degree days. While certainly not a trend, it nonetheless is interesting to note that annual heating degree days have increased over the past 6 years. The Complainants should have produced information or other documentation to justify their statement that less electricity for heating will be required in the future.



EKPC uses long-term averages of historical degree days when it prepares its energy forecasts. Any trends, up or down, will be reflected in this manner.

EKPC is currently purchasing 100 MW 16 hours a day, 7 days a week. EKPC is short capacity and energy today. It is incorrect to say that Smith 1 will be underutilized. Smith 1's annual capacity factor is projected to be approximately 75%.

B. Capital Costs of Smith 1

Because of permitting delays, the date to begin construction on the Smith 1 project has been rescheduled several times, causing increases and uncertainty in the costs for required construction contracts. Due to these uncertainties in the final project cost, EKPC has estimated a proposed financing level greater than the current expected cost. EKPC intends to fund no more than the actual cost of the project. It should be noted that capital costs for all generation technologies have increased, not just the Circulating Fluidized Bed technology to be employed in

Smith 1. According to Energy Information Administration (“EIA”) data,⁹ over the time period of 2003 to 2009, all technology capital costs (\$/kw), with the exception of geothermal, have increased. See the table below:

| Technology | % Change |
|--|----------|
| Scrubbed Coal New | 60% |
| Integrated Coal-Gasification Comb Cycle (IGCC) | 56% |
| IGCC with carbon sequestration | 52% |
| Conv Gas/Oil Comb Cycle | 53% |
| Adv Gas/Oil Comb Cycle (CC) | 33% |
| Adv CC with carbon sequestration | 49% |
| Conv Comb Turbine | 39% |
| Adv Comb Turbine | 17% |
| Fuel Cells | 113% |
| Adv Nuclear | 67% |
| Distributed Generation - Base | 45% |
| Distributed Generation - Peak | 45% |
| Biomass | 81% |
| Geothermal | -33% |
| MSW - Landfill Gas | 48% |
| Wind | 63% |
| Solar Thermal | 63% |
| Photovoltaic | 30% |

To say that EKPC does not currently have financing for Smith 1 is to take the facts out of context. At the time the CPCN was issued, EKPC’s intentions were to finance Smith 1 through RUS, just as it has financed its capital needs for over 50 years. Since then, however, RUS no longer provides financing for baseload generating facilities. As indicated in the response to Commission questions, EKPC is confident that it will be able to attract the capital necessary to build Smith 1.

⁹ EIA Annual Energy Outlook Assumptions 2004 – [http://www.eia.doe.gov/oiaf/archive/aeo04/assumption/pdf/0554\(2004\).pdf](http://www.eia.doe.gov/oiaf/archive/aeo04/assumption/pdf/0554(2004).pdf) ; EIA Annual Energy Outlook 2010 Early Release Generation Technologies Cost Assumptions Table – <http://www.eia.doe.gov/oiaf/aeo/index/html>

EKPC does not use absurd capital cost figures. As has been previously explained, Navigant Consulting, an outside consultant, researched and provided capital costs for all generation types. The data was based on industry data. The Complainants have provided no data, information, or any facts at all regarding the cost of natural gas generation.

C. Off System Sales

Complainant claims that Smith 1 will be more expensive to dispatch than Gilbert or Spurlock 4 due to its lime feed. This is an incorrect conclusion. Although the lime feed is an added cost, this will not greatly impact the dispatch cost of Smith 1. The fuel plus variable operations and maintenance costs will still have Smith 1 dispatching closely to the top performers of the fleet; the Smith 1 dispatch costs will be in line with the dispatch costs of Spurlock 1.

It is true that both the wholesale market and an individual system must adhere to constraints imposed by transmission congestion when loading available units for least cost dispatch. EKPC considers the wholesale movement of power during transmission planning and generator siting studies to ensure, to the extent possible, that the effects of transmission congestion will be minimized during the loading of its fleet either for serving native load or making wholesale power transactions.

The incremental dispatch cost for wind and other low fuel-cost generation (solar, run-of-river hydro, etc.) is often substantially lower than fossil fueled units. Accordingly, these units will be dispatched first subject to operational constraints such as transmission congestion. The forward cost curves EKPC uses in evaluating the potential for off-system sales has the expected impact of increased wind penetration built in due to market forces. The industry, and EKPC, also recognizes that substantial operational constraints will likely come with trying to move large

amounts of wind generation from areas where wind is plentiful to areas where none exists, further adding costs to that type of resource.

It should be noted that in 2009, there were a scant number of days where the most efficient natural gas fueled generation was less costly than the highest cost coal units. During these times, natural gas generation was on the margin in the wholesale market as some more costly coal units were shut down. The forward cost curves that EKPC uses in evaluating the potential for off-system sales has the possibility that this could occur again built in due to market forces.

A Renewable Portfolio Standard can cause a utility to choose more costly renewable resources over less costly fossil generation such as Smith 1. To say that EKPC's response to this issue does not completely reflect current realities is to say that the energy markets as a whole do not reflect current realities. EKPC utilizes forward market data in the evaluation of its projected portfolio of resources. This forward market data includes the integrated knowledge of leading energy experts who are continually evaluating the current realities as well as many potential future realities.

D. Environmental Regulations

Complainants state that NO_x emissions on E.On's Ghent pulverized coal units are less than half of Smith Unit 1's emission levels in the draft permit. Research of the Final Title V air permit indicates that Ghent has NO_x limits 10 times greater than the EKPC Smith Unit 1 CFB.

Complainants state that dry ash will become regulated as hazardous waste. Based on EKPC's most recent information, dry ash will not become regulated as hazardous waste. However, EPA has not ruled on this re-classification.

Complainants state that TVA Paradise is a pulverized coal fired unit; this statement is incorrect. TVA Paradise utilizes cyclone coal-fired, slag-type boilers. Sluicing ash is inherent to the cyclone technology. Sluiced ash is being addressed by the EPA as a result of the TVA Kingston incident. This incident raised the issue to possibly re-classify sluiced “wet” ash as hazardous. There is no comparison between the TVA Paradise units and CFB technology. CFB technology offers EKPC an advantage to handle ash dry, not sluiced with water. Under the EPA reclassification, dry ash is still non-hazardous, a major advantage to the CFB technology and EKPC.

Complainants raise the following issues for Smith 1:

- Modeling issue for ozone
- NAAQS for NOx and Ozone
- PM10 as a surrogate for PM2.5

The Division of Air Quality (DAQ) has produced the draft permit for public comment; comments have been received. The EPA has 45 days to make its determination based upon DAQ submittal of the draft permit.

Complainants state that Spurlock Station’s permit has been petitioned and objected to several times. Each time the permit has prevailed.

E. Baseload Natural Gas

As has been previously explained, EKPC does not pay up to three times the national average for natural gas. EKPC’s monthly price paid is the sum of (a) the wholesale cost of the gas plus any transportation charges, (b) any charges for intraday nomination, and (c), net gains or losses due to EKPC’s natural gas hedging strategy. The occasional large deviation between EKPC price paid for natural gas and Kentucky Citygate is not indicative of the purchase price of the gas – rather, the deviations are indicative of either intraday nomination or hedge impacts.

As has been previously explained, EKPC does not use unrealistic gas costs. Navigant Consulting reviewed all fuel costs assumptions prior to modeling. Their review was based on industry data.

Over the past several years, EKPC has provided justification after justification for Smith 1, relative to alternative sources of power supply. The Complainants, while critical of coal fired generation, having intervened in EKPC's 2009 IRP, and having filed a complaint against EKPC, have had numerous opportunities to produce data, information, model results, or other documentation related to the relative benefits of gas versus coal – despite all these opportunities, the Complainants have produced no evidence or documentation relating to natural gas generation.

F. EKPC Can Meet Its Future Energy Needs Through Demand Side Management and Renewable Energy

Landfill gas to energy (“LFGTE”) is recognized throughout the industry as being a renewable form of energy. EKPC is currently investigating several forms of renewable energy projects such as LFGTE, solar, wind, low-impact hydro, and biomass. The table below reflects EKPC's future power supply plans as outlined in its 2009 IRP (through 2023):

| | |
|-----------------|--------|
| Renewable Power | 30 MW |
| Purchases | 250 MW |
| Nuclear | 200 MW |
| Natural Gas | 294 MW |
| Coal | 278 MW |

EKPC believes that the above expansion plan shows a responsible and reasonable amount of technology and fuel diversity. Please note that the above information excludes DSM, conservation, and efficiency programs.

As noted above, EKPC is investigating the cost effectiveness of a nuclear plant. EKPC recognizes that to meet any Renewable Portfolio Standard in the future it must consider several types of renewable energy technologies.

It is true that EKPC generates more green energy credits than any other utility in Kentucky; however, EKPC realizes that the amount of renewable energy it now generates is far from the amount that will be required if and when a Renewable Portfolio Standard is adopted. Evaluation of other sources of renewable energy has so far resulted in energy that would be more expensive for its Member Systems than current energy sources in EKPC's portfolio.

EKPC has the rights to 170 MW of hydroelectric power from the Southeastern Power Administration, as well as 60 MW from the Greenup hydroelectric facility; however, energy from these hydroelectric plants is not considered to be renewable even though it is carbon free.

It should be noted that E.On's press release to discuss their efforts regarding the purchase and import of a large block of wind energy said very clearly that such a purchase was not least cost.

Again, EKPC remains committed to least cost / risk adjusted power supply. The types and amounts of power supply being evaluated reflect a rigorous resource planning process. EKPC believes that each of these power supply options has a part to play within the overall spectrum of power supply. Each type of power supply has a unique set of cost characteristics, operating characteristics, and dispatch characteristics. EKPC has performed very detailed computer modeling, described in its IRP, in order to put together a diverse expansion plan for the future, all the while mindful of cost and risk to its customers.

G. The Smith 1 Technology is Outdated

The technology for a Supercritical CFB and the Smith 1 CFB is similar insofar as how each boiler combusts the coal and mitigates combustion emissions. The difference between the Smith 1 CFB and the Forster Wheeler Polish CFB is not incremental, but a major design difference. Changing Smith 1 CFB to a supercritical unit would require a major redesign in the following systems:

1. Boiler
2. Steam supply system
3. Feedwater System including piping and pumps
4. Boiler water treatment system
5. Steam Turbine.
6. Foundation design
7. Structural steel design

The capital cost of a Supercritical Steam Generating Unit has typically been more than the capital cost of a Subcritical Steam Generating Unit. The main drivers in the cost difference have been the material cost of the boiler, the steam piping system, and the material cost of the turbine cycle equipment including the Steam Turbine. The cost difference between the Supercritical and Subcritical units is mitigated as the unit gets larger; that is why most Supercritical Units are larger than 650 MW. The same cost issues are present in the cost of the Supercritical and Subcritical CFB Units. It is noted that the Foster Wheeler Unit in Poland is 460 MW, which will be the largest CFB unit in operation. EKPC suspects that Foster Wheeler planned for this larger size in order to mitigate the associated costs risks associated with a Supercritical Unit.

The CFB Units for Spurlock and Smith were selected for the following reasons:

1. Environmental Performance
2. Fuel Flexibility including pet coke, bio-mass, waste wood, chipped tires.
3. Low cost for the performance obtained.

ADM (Archer Daniel Midland) and AES have the most CFB boilers in operation. More than likely, the financial analysis performed by each of these companies equals or exceeds the financial analysis done by an IOU, and the decision to select CFB boilers was made for the same reasons EKPC used to select CFB Boilers.

East Kentucky is certainly willing to embrace new technology in order to lower cost and improve environmental performance as shown in the Spurlock and Smith CFB units but also must exercise caution when considering a major investment in a first or second-of-a-kind equipment.

III. Conclusion

For the reasons stated above, EKPC respectfully renews its request that the Commission grant the following relief:

- (1) that the Complaint be dismissed and held for naught; and,
- (2) that this matter be closed on the Commission's docket.

This 12th day of March, 2010.




Mark David Goss
Frost Brown Todd LLC
250 West Main Street
Suite 2800
Lexington, KY 40507-1749
Counsel for East Kentucky Power Cooperative, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served by U.S. Mail, postage prepaid, on March 12, 2010 to the following:

Hon. Robert Ukeiley
Law Office of Robert Ukeiley
435 R Chestnut Street, Suite 1
Berea, KY 40403
Counsel for Plaintiffs Patterson, Rausch and Berry

Hon. Michael R. Campbell
Law Office of Campbell, Rogers Hill, PLLC
154 Flemingsburg Road
Morehead, KY 40351
Co-Counsel for Plaintiffs Patterson, Rausch and Berry



Counsel for East Kentucky Power Cooperative, Inc.