

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

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COMMISSION

In the Matter of:

Application of Kentucky Power Company for Approval of )  
its Environmental Compliance Plan, Approval of its Amended ) CASE NO. 2011-00401  
Environmental Cost Recovery Surcharge Tariffs, and for the )  
Grant of Certificates of Public Convenience and Necessity )  
for the Construction and Acquisition of Related Facilities )

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MOTION BY INTERVENORS TOM VIERHELLER, BEVERLY MAY, AND  
SIERRA CLUB FOR AN EXTENSION OF TIME TO FILE DIRECT TESTIMONY

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Tom Vierheller, Beverly May, and Sierra Club (collectively “Sierra Club”) move the Kentucky Public Service Commission for a two week extension of time to file direct testimony as Sierra Club’s ability to prepare its testimony has been hindered by Kentucky Power Company’s (“KPC” or “the Company”) failure to respond to requests for information in a timely and complete manner.<sup>1</sup> Sierra Club understands that KRS 278.183(2) imposes a six-month statutory deadline in which the Kentucky Public Service Commission must consider and rule upon the proposed 2011 Environmental Compliance Plan at issue in this docket but believe this extension will not interfere with meeting that deadline.

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<sup>1</sup> Sierra Club counsel Kristin Henry contacted Mark Overstreet, KPC counsel, on February 23, 2012 to inquire if KPC would support this motion. On February 24, 2012, Mr. Overstreet informed Mrs. Henry that it would not oppose this motion to extend all deadlines in the current procedural schedule by two weeks. By not opposing this motion, KPC is not agreeing to any of the reasons stated in this motion regarding the need for the extension. Finally, KPC wanted to note that neither the parties nor the Commission can extend the statutory deadline for the Commission action on the Company’s application under KRS 278.183 and, in any event, KPC does not agree to an extension of the statutory deadline. (Sierra Club does not concede that KPC and the Commission cannot agree to extend the statutory deadline.)

**I. Information has Hindered Sierra Club's Ability to Effectively Prepare Its Direct Testimony by March 2, 2016.**

Under the December 28, 2011 scheduling order, Sierra Club direct testimony is due on March 2, 2012. That due date, however, was established based on other established deadlines, including KPC's timely response to Sierra Club's initial and supplemental requests for information. KPC was supposed to file responses to Sierra Club's initial data requests by January 27, 2012. KPC did not actually produce all of the documents that the Company deemed responsive to these information requests until February 13, 2012, which is over two and half weeks after responses to initial data requests were due.<sup>2</sup> In addition, there were a number of responsive documents related to critical pieces of information that KPC did not produce until after Sierra Club filed a motion to compel, some of which are still outstanding. KPC's failure to respond to requests for information in a timely and complete manner has prejudiced Sierra

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<sup>2</sup> The week of January 30, 2012, Sierra Club counsel contacted KPC counsel Mark Overstreet to inform him that the company had omitted a number of attachments from its response to Sierra Club's initial requests for information. Mr. Overstreet said that he was not surprised there were some omissions as it was a real push for the Company to get the responses out the door. Mr. Overstreet said that he would correct those omissions, which he did by submitting supplemental responses on a rolling basis.

On Tuesday, February 7, 2012, Sierra Club counsel Kristin Henry contacted KPC counsel Mark Overstreet regarding the omission of additional electronic files along with numerous other files that Sierra Club just discovered were also missing. Mrs. Henry informed Mr. Overstreet that responses to request 1-69 were a top priority for Sierra Club. On February 8, 2012, Mr. Overstreet responded regarding 1-3, 1-4, 1-20, 1-21, 1-28, 1-42, 1-69, AG 1-14, AG 1-26, KIUC 1-7; KIUC 1-18; and KIUC 1-43 that "[KPC] checked the master disc and the files are present." Mrs. Henry and Sierra Club experts at Synapse Energy Economics once again reviewed the discovery produced to confirm that Sierra Club did not have those electronic files. On February 9, 2012, Mrs. Henry once again emailed Mr. Overstreet informing him that Sierra Club has no files or discs responsive to 1-69. On February 10, 2012, Mr. Overstreet left a voicemail message for Mrs. Henry once again informing her that the master disc that KPC has contained the requested files. Mr. Overstreet also left contact information for Ms. Lila Munsey and suggested that Mrs. Henry call Ms. Munsey so that she could explain where the files are located. Mrs. Henry called Ms. Munsey and explained that while KPC's master disc may have the relevant files, Sierra Club was never provided a copy of that compact disc. A telephone call with Mrs. Henry, Tyler Comings of Synapse Energy Economics, Mr. Munsey and others at KPC was held. During this call, KPC realized that Sierra Club never received responses to other parties' discovery requests and these responses included compact discs that contained files responsive to our questions. KPC agreed to send those documents and files so that Sierra Club would receive them on Monday, February 13, 2012. It thus took Sierra Club seven additional days to obtain these electronic files, which were not even completely responsive to Sierra Club's initial data requests.

Club's ability to fully participate in this docket unless the Commission grants an extension to file testimony.

As noted in the Motion to Compel, Sierra Club participates in Certificate of Public Convenience and Necessity ("CPCN") cases around the country. In these dockets, Sierra Club examines key assumptions and analyses of the applicant to determine if they are reasonable, meaning that you could draw a linear and moderately logical line between key assumptions, analyses, and conclusions. If the assumptions and/or analyses are flawed, then the resulting conclusions are typically not reasonable. In a typical case, Sierra Club would expect to see:

- a) the company's estimate (or bid) for their environmental upgrade and the estimate (or bid) for replacement capacity;
- b) a logically structured modeling analysis in which Sierra Club and other interveners could examine both the input assumptions and the output results;
- c) sensitivity analyses that demonstrate a robust conclusion, including explicit sensitivity inputs and outputs;
- d) a clearly defined analytical framework for comparing the results of model runs; and
- e) a justification of the project based on the model results.

Sierra Club propounded specific discovery under each of these categories so that it could probe KPC's analyses and conclusions. However, KPC's responses to Sierra Club requests for information have been untimely and incomplete and have hindered our ability to address three of the key areas outlined above.<sup>3</sup>

Under the December 28, 2011 scheduling order, Sierra Club should have had five weeks from when it received responses to its initial data requests to synthesize the information and

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<sup>3</sup> Sierra Club's Motion to Compel filed on February 17, 2012 details how the incompleteness of KPC's responses to data requests has hindered Sierra Club's ability to fully evaluate the modeling analysis through examination of both the input assumptions and the output results, the sensitivity analyses, including explicit sensitivity inputs and outputs to determine whether KPC's conclusions are robust, and the defined analytical framework for comparing the results of model runs.

examine KPC's key assumptions and analyses to determine if they are reasonable. In fact, almost all of the electronic files, which contain the heart of the analysis Sierra Club intends to address in its direct testimony, were not delivered to Sierra Club until February 13, 2012, two and half weeks after the responses were due. *See* footnote 2 *infra*. Moreover, the data responses were incomplete regarding three critical areas of KPC's analysis – the Strategist model, the Aurora Model, and the Exhibits of Scott C. Weaver, prompting Sierra Club to file a motion to compel on February 17, 2012. While not conceding that it had failed to completely respond to these data requests, KPC nonetheless remedied or is in the process of remedying most of these deficiencies. With regard to the Strategist files, KPC has agreed to make Mr. Becker available to Sierra Club experts to discuss problems associated with the input files provided. With regard to the Aurora model and the Scott Weaver exhibits, KPC has finally provided Sierra Club with “live” spreadsheets, which were delivered on February 23, 2012 (almost one month after they were initially due and eight days before our direct testimony is due). Finally, KPC has agreed to provide Sierra Club with unmodified Aurora files once EPIS, Inc. agrees that the Company can release the documents, which it has not yet done.

The withheld information is critical to fully evaluate the Company's CPCN applications and related environmental surcharge requests. The modeling analysis, sensitivity analysis, and analytical framework are critical factors in determining whether KPC's decision to retrofit the Big Sandy coal-fired power plant is reasonable. If the modeling and sensitivity analysis is artificially constricted with unreasonable assumptions it does not truly reflect the costs of certain scenarios. These key assumptions and analyses can be skewed so as to favor keeping the existing unit on-line or favor retirement. Only by looking at these assumptions and analyses in depth can one determine if a conclusion is reasonable. As such, in order to analyze whether the proposed

project proffered by KPC represents a reasonable and prudent decision, all parties and the Commission need to know the information regarding the STRATEGIST model, Aurora model, and underlying analytical framework that the Companies used. Only after each of these areas has been probed and audited can one determine whether KPC's analysis and conclusions are reasonable. Unless the Commission grants Sierra Club's Motion for an Extension of time, KPC's untimely and incomplete discovery responses will effectively prejudice Sierra Club's ability to fully participate in this docket as it will only have eight days to synthesize all of the critical information just submitted to Sierra Club and examine KPC's key assumptions and analyses to determine if they are reasonable.

**II. A Two Week Extension for Sierra Club to File Direct Testimony will Not Interfere with the Kentucky Public Service Commission's Six-Month Statutory Deadline to Rule on this Docket.**

KRS 278.183(2) imposes a six-month statutory deadline in which the Kentucky Public Service Commission must consider and rule upon the proposed 2011 Environmental Compliance Plan. Accordingly, the deadline for the issuance of an order in this matter is June 5, 2012, as KPC's application was deemed complete as of December 5, 2011. If KPC grants Sierra Club's motion for extension of time to file direct testimony, it will not interfere with the Commission's six-month statutory deadline to rule on this docket as it will still have six weeks after the new deadline for KPC rebuttal testimony to hold a public hearing and issue a decision.

On December 28, 2012, the Commission issued an Order establishing a procedural schedule for the processing of this case. The procedural schedule provided for two rounds of discovery on KPC, an opportunity for the filing of intervenor testimony, one round of discovery on intervenor testimony, and an opportunity for KPC to file rebuttal testimony. The Commission has not yet scheduled the public hearing for this matter. The key dates on this order are detailed

below:

January 13, 2012	All Initial requests for information to KPC shall be filed
January 27, 2012	KPC shall file responses to initial requests for information
February 8, 2012	All supplemental requests for information on KPC shall be filed
February 20, 2012	KPC's responses to supplemental requests for information shall be filed
March 2, 2012	Intervenor testimony shall be filed
March 16, 2012	All requests for information to Intervenors shall be filed
March 29, 2012	Intervenor's responses to requests for information shall be filed
April 10, 2012	KPC shall file rebuttal testimony

If the Commission grants Sierra Club's motion for a two week extension of time to file its direct testimony and adjusts all subsequent dates by two weeks, the Commission would still have six weeks to hold a public hearing on this matter and issue its decision. Although losing two weeks of time to hold a public hearing and issue a decision on this matter is not ideal, it is the only remedy that will address the prejudice to Sierra Club caused by KPC's untimely discovery responses.

### **Conclusion**

Sierra Club requests that the Commission provide Sierra Club two additional weeks to submit its testimony to remedy the prejudice caused by KPC's untimely and incomplete discovery responses. Such an extension of time will still allow the Commission enough time to comply with its statutory deadlines.

Respectfully submitted,



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Dated: February 24, 2012

## CERTIFICATE OF SERVICE

I certify that I mailed a copy of Intervenor Tom Vierheller, Beverly May, and Sierra Club Motion for Extension of Time to File Direct Testimony by first class mail on February 24, 2012 to the following:

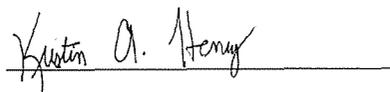
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