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December 6, 2013

RECEIVED

DEC - 9 2013

PUBLIC SERVICE
COMMISSION

Mr. Jeff Derouen
Executive Director
Kentucky Public Service Commission
P.O. Box 615
Frankfort, Kentucky 40602


Re: *In the Matter of the Application of East Kentucky Power Cooperative, Inc. for a Certificate of Public Convenience and Necessity for Alteration of Certain Equipment at the Cooper Station and Approval of a Compliance Plan Amendment for Environmental Surcharge Cost Recovery, Case No. 2013-00259*

Dear Mr. Derouen:

Enclosed please find for filing with the Commission in the above-referenced case an original and ten (10) copies of East Kentucky Power Cooperative, Inc.'s Response in Opposition to Intervenor's Motion for Leave to File Out of Time Reply in Support of Motion to Compel and For a Continuance. Please return a file-stamped copy to me in the enclosed self-addressed, stamped envelope.

Do not hesitate to contact me if you have any questions

Very truly yours,



Mark David Goss

Enclosures

COMMONWEALTH OF KENTUCKY

RECEIVED

BEFORE THE PUBLIC SERVICE COMMISSION

DEC - 9 2013

IN THE MATTER OF:

PUBLIC SERVICE COMMISSION

AN APPLICATION OF EAST KENTUCKY)
 POWER COOPERATIVE, INC. FOR A)
 CERTIFICATE OF PUBLIC CONVENIENCE)
 AND NECESSITY FOR ALTERATION OF) CASE NO. 2013-00259
 CERTAIN EQUIPMENT AT THE COOPER)
 STATION AND APPROVAL OF A COMPLIANCE)
 PLAN AMENDMENT FOR ENVIRONMENTAL)
 SURCHARGE COST RECOVERY)

**EAST KENTUCKY POWER COOPERATIVE, INC.’S RESPONSE IN OPPOSITION
 TO INTERVENOR’S MOTION FOR LEAVE TO FILE OUT OF TIME
 REPLY IN SUPPORT OF MOTION TO COMPEL AND FOR A CONTINUANCE**

Comes now East Kentucky Power Cooperative, Inc. (“EKPC”), by and through counsel, pursuant to 807 KAR 5:001, Section 5 and other applicable law, for its Response in opposition to the Motion for Leave to File Out of Time filed by Sonia McElroy and the Sierra Club (collectively, the “Sierra Club”), respectfully states as follows:

On November 21, 2013, the Sierra Club filed a Motion to Compel and for a Continuance (“Motion to Compel”) in this proceeding. Pursuant to 807 KAR 5:001, Section 5(2), EKPC filed a timely response in opposition to the Motion to Compel on November 27, 2013. On December 4, 2013, the Sierra Club filed 1) a Motion for Leave to File Out of Time Their Reply in Support of Motion to Compel and for a Continuance (“Motion to File Out of Time”) and 2) a Reply in Support of Motion to Compel and for a Continuance.

In the Motion to File Out of Time, the Sierra Club acknowledges that pursuant to 807 KAR 5:001, Section 5(3) it had five days to file a reply to EKPC’s response, which made the

Sierra Club reply due December 2, 2013. The Sierra Club notes that due to the Thanksgiving holiday and following weekend it only had one business day to reply to EKPC's response. The Sierra Club contends it was further hindered in meeting the 807 KAR 5:001, Section 5(3) deadline because it had no knowledge that the EKPC response had been filed as counsel for EKPC did not send a courtesy copy of the EKPC response through electronic mail. The Sierra Club requests that the Commission accept its Reply in Support of Motion to Compel and for a Continuance as it is being filed only two days after the deadline established by 807 KAR 5:001, Section 5(3) and only three business days after EKPC's response was filed. The Sierra Club states it does not believe any prejudice will result to any party from this delay.

807 KAR 5:001, Section 5 states:

Motion Practice. (1) All requests for relief that are not required to be made in an application, petition, or written request shall be by motion. A motion shall state precisely the relief requested.

(2) Unless the commission orders otherwise, a party to a case shall file a response to a motion no later than seven (7) days from the date of filing of a motion.

(3) Unless the commission orders otherwise, a party shall file a reply no later than five (5) days of the filing of the most recent response to the party's motion. The reply shall be confined to points raised in the responses to which they are addressed, and shall not reiterate an argument already presented.

The requirements of 807 KAR 5:001, Section 5 are clear. The November 27, 2013 filing of EKPC's response to the Sierra Club's Motion to Compel was timely filed and in accordance with the provisions of the regulation. Any reply by the Sierra Club was due December 2, 2013. The occurrence of a holiday or weekend during the five day period is not relevant.

EKPC filed its response to the Sierra Club's Motion to Compel with the Commission on November 27, 2013 and the Commission posted an electronic copy of the response on its website on that same date. Thus, while EKPC did not provide the Sierra Club with a copy of the response through electronic mail, the response was publicly available on November 27, 2013.

Since the Sierra Club filed its Motion to Compel on November 21, 2013, it should have expected EKPC would file a response within the time period established in the regulation. The fact that it was not provided with a copy of the EKPC response through electronic mail does not justify granting the Motion to File Out of Time. This is especially true when considering the fact the EKPC response was available on the Commission's website on November 27, 2013, but apparently the Sierra Club did not check the Commission's website to see if a filing had been made.

In filing its Motion to File Out of Time, the Sierra Club is in effect requesting a deviation to 807 KAR 5:001, Section 5(3). However, while deviations to the regulation can be requested, 807 KAR 5:001, Section 21 states that deviations can only be permitted for good cause shown. The contention that its reply time period included a holiday and weekend, as well as the failure of the Sierra Club to monitor the developments in this proceeding utilizing all available resources, do not constitute good cause to grant the deviation the Sierra Club in essence is seeking in this filing.

In its motion to intervene in this proceeding, the Sierra Club stressed that granting its intervention would not unduly complicate or disrupt the proceeding. Specifically, on page 8 of its motion, the Sierra Club stated,

Finally, the Movants are represented by experienced counsel and will comply with all deadlines in the proceeding established by the Commission. As such, Movants' participation will not disrupt this proceeding.

In filing its Motion to File Out of Time, the Sierra Club is not complying with deadlines established in the Commission's regulations and is disrupting this proceeding. The Sierra Club's experienced counsel clearly was aware of the deadline established in 807 KAR 5:001, Section 5(3). However, the Sierra Club now seeks an adjustment to that deadline based solely on the fact

it failed to monitor the developments in the proceeding by apparently not utilizing all the informational resources at its disposal.

The Commission should deny the Sierra Club's Motion to File Out of Time and not accept into the record the accompanying Reply in Support of Motion to Compel and for a Continuance. The Sierra Club has failed to provide good cause for the Commission to grant a deviation to the requirements of 807 KAR 5:001, Section 5(3). In filing this Motion to File Out of Time, the Sierra Club is now contradicting the assurances it provided to the Commission in its motion to intervene, as it is seeking to change a deadline established by the Commission's regulations and as a result is disrupting this proceeding.

WHEREFORE, on the basis of the foregoing, EKPC respectfully requests the Commission to DENY the Sierra Club's Motion to File Out of Time and not accept the accompanying Reply in Support of Motion to Compel and for a Continuance.

This 6th day of December 2013.

Respectfully submitted,



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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing was deposited in the custody and care of the U.S. Mail, postage prepaid, on this the 6th day of December 2013, addressed to the following:


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