

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF EAST)	
KENTUCKY POWER COOPERATIVE, INC. FOR)	
CERTIFICATES OF PUBLIC CONVENIENCE AND)	
NECESSITY AND SITE COMPATIBILITY)	
CERTIFICATES FOR THE CONSTRUCTION OF A)	
96 MW (NOMINAL) SOLAR FACILITY IN MARION)	CASE NO.
COUNTY, KENTUCKY AND A 40 MW (NOMINAL))	2024-00129
SOLAR FACILITY IN FAYETTE COUNTY,)	
KENTUCKY AND APPROVAL OF CERTAIN)	
ASSUMPTIONS OF EVIDENCES OF)	
INDEBTEDNESS RELATED TO THE SOLAR)	
FACILITIES AND OTHER RELIEF)	

ORDER

On November 15, 2024, Intervenor Lexington-Fayette Urban County Government (LFUCG) filed a motion to supplement the record in this case with a press release generated by LFUCG and an article in *The Lane Report*.¹ LFUCG further asked that the Commission take administrative notice of LFUCG's investigation into solar energy.² LFUCG argued that (1) this information provides the Commission with an update to Mayor Gorton's public comments at the October 29, 2024 hearing; (2) LFUCG's investigation relates directly to its special interest in land-use policies in Fayette County; (3) LFUCG made a motion at the hearing asking the Commission to hold this case in abeyance pending its investigation into alternate solar facility sites; and (4) the announcement of

¹ LFUCG's Motion at 1.

² LFUCG's Motion at 1.

LFUCG's investigation occurred after the hearing but while the record was still open and so no undue prejudice to applicant East Kentucky Power Cooperative, Inc. (EKPC) would occur.

LEGAL STANDARD

Under KRS 278.310, “[a]ll hearings and investigations before the commission or any commissioner shall be governed by rules adopted by the commission, and in the conduct thereof neither the commission nor any commissioner shall be bound by the technical rules of legal evidence.” Therefore, the Commission has broad latitude to set its own procedural rules for its cases and to allow production of evidence consistent with those rules while not being bound by technical rules of evidence.

However, the Commission is still bound by Constitutional standards for due process, including the right to cross-examine witnesses.³

PROCEDURAL BACKGROUND

This case involves EKPC's application for two Certificates for Public Convenience and Necessity (CPCNs), approval of a lease assumption, and application for two Site Compatibility Certificates (SCCs) pertaining to the construction of two solar power facilities, in Marion County and Fayette County, Kentucky. LFUCG was permitted to intervene in the case, in part, because the Commission found that LFUCG had a special interest that would not otherwise be adequately represented as it was the local government entity which would otherwise control zoning issues over the area in which the Fayette County solar facility would be built.⁴

³ See *Kaelin v. City of Louisville*, 643 S.W.2d 590, 591-2 (Ky. 1982).

⁴ Order at 2 (Ky. PSC May 28, 2024).

LFUCG's intervention was conditioned on its adherence to the Commission's procedural schedule, issued May 14, 2024.⁵ The Commission routinely establishes procedural schedules to ensure timely processing of cases. These procedural schedules are of greater importance in light of the adoption of KRS 278.019, which sets an eight-month deadline for resolving CPCN applications. The procedural schedule in this case allowed intervenors until July 4, 2024, to submit data requests to EKPC, July 19, 2024, to provide testimony in support of its case, and August 28, 2024, to request a hearing.⁶ LFUCG submitted data requests to EKPC. LFUCG did not provide testimony. LFUCG and intervenor Fayette Alliance, Inc., jointly, requested a hearing.⁷ A hearing was held on October 29, 2024, at which LFUCG was permitted to cross-examine EKPC witnesses who sponsored testimony or data request responses.

DISCUSSION AND FINDINGS

Having reviewed the motion and record in this case, the Commission finds that LFUCG's motion to supplement the record should be denied for the following reasons. LFUCG had the opportunity to contribute to the record according to the procedural schedule established by order but did not file any testimony in the record. A party seeking to add evidence to the record after the hearing, other than within the bounds of permitted post-hearing information request responses, is equivalent to providing testimony outside of the procedural schedule deadline and beyond the other parties' ability to cross-examine. This is true regardless of the fact that the information sought to be admitted

⁵ Order at 3 (Ky. PSC May 28, 2024).

⁶ Order (Ky. PSC May 14, 2024), Appendix.

⁷ LFUCG and Fayette Alliance, Inc.'s joint Motion for Hearing (filed Aug. 16, 2024).

into the record is neither proffered by any witness nor would it pass muster under technical rules of evidence. Although LFUCG argued that granting its motion would not unduly prejudice EKPC, the Commission disagrees. LFUCG requested a hearing and was permitted to cross-examine EKPC's witnesses. If the Commission were to permit admission of additional evidence under these particular circumstances, it would be depriving EKPC's reciprocal due process right to challenge LFUCG's evidence.

LFUCG argued that the evidence to be added to the record came into existence after the hearing and after LFUCG sought an abeyance of the case at hearing. However, the new evidence was generated by LFUCG, a party to this matter. As a party, LFUCG was aware of and had opportunity to submit evidence within the timeline set forth in the procedural schedule. In contrast, the Commission could not have held the case in abeyance, as it must render a final Order in this case by December 26, 2024, pursuant to KRS 278.019, while allowing time for post-hearing information requests and briefing. Aware of its statutory mandate, the Commission set forth procedural deadlines for submission of evidence pursuant as broadly permitted by KRS 278.310 and as constrained by KRS 278.019. Allowing the introduction of new evidence other than that pertaining to the issues addressed by post-hearing information requests would conflict with the purposes of the procedural deadlines, namely timely processing the case prior to the statutory deadline, and providing all parties the equal opportunity to due process.

The Commission, therefore, finds that LFUCG's motion to supplement the record should be denied, but notes that LFUCG may further express its position in its post-hearing briefs.

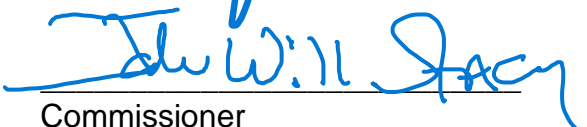
IT IS THEREFORE ORDERED that LFUCG's November 15, 2024 motion to supplement the record is denied.

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PUBLIC SERVICE COMMISSION



Chairman



Commissioner

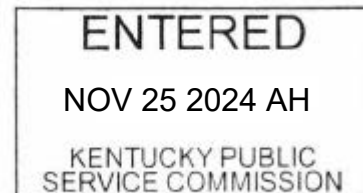


Commissioner

ATTEST:



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