

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF EAST	)	
KENTUCKY POWER COOPERATIVE, INC. FOR	)	
1) A CERTIFICATE OF PUBLIC CONVENIENCE	)	CASE NO.
AND NECESSITY TO CONSTRUCT A NEW	)	2024-00310
GENERATION RESOURCE; 2) A SITE	)	
COMPATIBILITY CERTIFICATE; AND 3) OTHER	)	
GENERAL RELIEF	)	

ORDER

On February 21, 2025, Sierra Club filed an emergency motion for leave to submit supplemental requests for information and the option to submit direct testimony (Motion)<sup>1</sup> wherein Sierra Club asserted that East Kentucky Power Cooperative, Inc. (EKPC), failed to timely provide certain modeling information, impaired its ability to participate in this proceeding and violated its due process rights.

BACKGROUND

EKPC filed its application for a certificate of public convenience and necessity (CPCN) on September 20, 2024, seeking authorization to construct a new electric generation station using Reciprocating Internal Combustion Engine (RICE) generators in Casey County, Kentucky (the Liberty RICE Facility), the issuance of a Site Compatibility Certificate for the Liberty RICE Facility, and other general relief.<sup>2</sup> The Commission

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<sup>1</sup> Sierra Club's Emergency Motion (Motion) (filed Feb. 21, 2025).

<sup>2</sup> Application (filed Sept. 20, 2024).

established a procedural schedule on October 9, 2024,<sup>3</sup> and amended it on January 16, 2025,<sup>4</sup> allowing for multiple rounds of discovery, which EKPC complied with by responding to over 800 data requests, including multiple supplemental responses.<sup>5</sup>

Sierra Club was granted intervention on November 21, 2024,<sup>6</sup> and actively participated in discovery. However, it did not raise concerns regarding missing modeling data until February 7, 2025, and EKPC supplemented its responses on February 14, 2025.<sup>7</sup> Sierra Club filed the present Motion on February 21, 2025, after the deadline for intervenor testimony of January 6, 2025, and deadlines for all discovery had passed.

### DISCUSSION

The Commission has broad discretion in managing procedural schedules and ensuring the orderly administration of cases. Sierra Club's Motion seeks an adjustment to the entire procedural schedule, not just an extension of a single deadline. The Commission has reviewed the record and the Motion and finds that Sierra Club has not demonstrated good cause for the Commission to amend the procedural schedule. EKPC

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<sup>3</sup> Order (Ky. PSC Oct. 9, 2024).

<sup>4</sup> Order (Ky. PSC Jan. 16, 2025).

<sup>5</sup> EKPC's Response to Sierra Club's Emergency Motion (filed Feb. 24, 2025) at 1-2.

<sup>6</sup> Order (Ky. PSC Nov. 21, 2024).

<sup>7</sup> Motion at 4-5.

responded to extensive data requests and supplemented its responses.<sup>8</sup> Sierra Club had ample opportunity to raise discovery issues earlier but failed to do so in a timely manner.

Sierra Club participated in an informal conference (IC) on January 29, 2025,<sup>9</sup> but did not raise concerns regarding missing data in EKPC's data responses provided on December 6, 2024,<sup>10</sup> or in regard to data responses provided in EKPC's response in Case Number 2024-00370 on January 10, 2025.<sup>11</sup> Moreover, no motion to compel was filed during the discovery period. Granting the requested relief would disrupt the procedural schedule and unfairly burden all parties to this matter by requiring additional discovery responses and additional analysis of new testimony that possibly may be filed until midnight of the night before the scheduled hearing. While the Commission encourages applicants and intervenors to work through discovery issues amongst themselves, here intervenor's actions, or lack thereof, to resolve this discovery issue are not well taken. An intervenor seeking to participate in a Commission proceeding must demonstrate that its

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<sup>8</sup> EKPC's Response to Commission Staff's First Request for Information (filed Nov. 12, 2024). EKPC's Response to the Attorney General's First Request for Information (filed Nov. 12, 2024). EKPC's Response to Joint Intervenor's First Request for Information (filed Dec. 6, 2024). EKPC's Response to Sierra Club's First Request for Information (filed Dec. 6, 2024). EKPC's Response to the Attorney General's Second Request for Information (filed Dec. 6, 2024). EKPC's Response to Sierra Club's Second Request for Information (filed Dec. 16, 2024). EKPC's Response to Commission Staff's Second Request for Information (filed Dec. 16, 2024). EKPC's Response to Joint Intervenor's Second Request for Information (filed Dec. 16, 2024). EKPC's Supplemental Response to Sierra Club's First Request for Information (filed Dec. 31, 2024). EKPC's Supplemental Response to Sierra Club's First Request for Information (filed Jan. 3, 2025). EKPC's Supplemental Response to Sierra Club's First Request for Information (filed Feb. 14, 2025). EKPC's Response to Commission Staff's Third Request for Information (filed Feb. 20, 2025). EKPC's Response to Sierra Club's Third Request for Information (filed Feb. 20, 2025). EKPC's Response to Joint Intervenor's Third Request for Information (filed Feb. 20, 2025).

<sup>9</sup> IC Memo and Sign In Sheet (filed Feb. 7, 2025)

<sup>10</sup> EKPC's Response to Sierra Club's First Request for Information.

<sup>11</sup> Case No. 2024-00370, *Electronic Application of East Kentucky Power Cooperative, Inc. For 1) Certificates of Public Convenience and Necessity to Construct a New Generation Resources; 2) For A Site Compatibility Certificate Relating to the Same; 3) Approval of Demand Side Management Tariffs; and 4) Other General Relief* (filed Jan. 10, 2025), EKPC's Response to Joint Intervenor's First Request for Information, Response 1-28.

involvement will contribute to the proceeding without unduly complicating or disrupting the process. Here, Sierra Club's actions, or lack thereof, indicate a failure to address discovery concerns in a timely manner, and its belated request for an amendment to the procedural schedule runs counter to this standard.<sup>12</sup>

The Commission finds that Sierra Club's argument regarding due process is one-sided. Sierra Club had multiple opportunities to request necessary information and participate in discovery but does not appear to have acted diligently in reviewing material for presenting its case. In addition, Sierra Club is not the only party that is entitled to due process and granting Sierra Club's Motion would be unduly burdensome on the other parties in this matter. The Commission must weigh the interests of all parties as well as the law to ensure that all parties' due process rights are protected. Sierra Club may still participate in the hearing, post hearing requests for information as well as briefing, should it so desire.

IT IS THEREFORE ORDERED that:

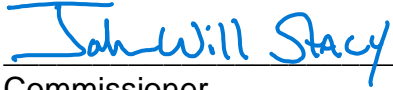
1. Sierra Club's emergency motion for leave to submit supplemental requests for information and the option to submit direct testimony is denied.
2. The procedural schedule established on October 9, 2024, and amended on January 16, 2025, in this proceeding shall remain in effect.
3. This case shall proceed to hearing as scheduled.

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<sup>12</sup> 807 KAR 5:001, Section 4(11).

PUBLIC SERVICE COMMISSION

  
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Chairman

  
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Commissioner

  
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Commissioner

ATTEST:

  
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Executive Director

ENTERED  
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AH  
KENTUCKY PUBLIC  
SERVICE COMMISSION

\*L. Allyson Honaker  
Honaker Law Office, PLLC  
1795 Alysheba Way  
Suite 1203  
Lexington, KENTUCKY 40509

\*Heather Temple  
Honaker Law Office, PLLC  
1795 Alysheba Way  
Suite 1203  
Lexington, KENTUCKY 40509

\*Honorable Michael L Kurtz  
Attorney at Law  
Boehm, Kurtz & Lowry  
425 Walnut Street  
Suite 2400  
Cincinnati, OHIO 45202

\*Angela M Goad  
Assistant Attorney General  
Office of the Attorney General Office of Rate  
700 Capitol Avenue  
Suite 20  
Frankfort, KENTUCKY 40601-8204

\*Jacob Watson  
East Kentucky Power Cooperative, Inc.  
4775 Lexington Road  
P. O. Box 707  
Winchester, KY 40392-0707

\*Nathaniel Shoaff  
Sierra Club  
2101  
Webster St. , Suite 1300  
Oakland, CALIFORNIA 94612

\*Ashley Wilmes  
Kentucky Resources Council, Inc.  
Post Office Box 1070  
Frankfort, KENTUCKY 40602

\*Jody Kyler Cohn  
Boehm, Kurtz & Lowry  
425 Walnut Street  
Suite 2400  
Cincinnati, OHIO 45202

\*East Kentucky Power Cooperative, Inc.  
4775 Lexington Road  
P. O. Box 707  
Winchester, KY 40392-0707

\*Byron Gary  
Kentucky Resources Council, Inc.  
Post Office Box 1070  
Frankfort, KENTUCKY 40602

\*John G Horne, II  
Office of the Attorney General Office of Rate  
700 Capitol Avenue  
Suite 20  
Frankfort, KENTUCKY 40601-8204

\*Joe F Childers  
Joe F. Childers & Associates  
300 Lexington Building  
201 West Short Street  
Lexington, KENTUCKY 40507

\*Kristin Henry  
Staff Attorney  
Sierra Club Environmental Law Program  
2101 Webster Street  
Suite 1300  
Oakland, CALIFORNIA 94612

\*Tom Fitzgerald  
Kentucky Resources Council, Inc.  
Post Office Box 1070  
Frankfort, KENTUCKY 40602

\*Lawrence W Cook  
Assistant Attorney General  
Office of the Attorney General Office of Rate  
700 Capitol Avenue  
Suite 20  
Frankfort, KENTUCKY 40601-8204

\*Greg Cecil  
East Kentucky Power Cooperative, Inc.  
4775 Lexington Road  
P. O. Box 707  
Winchester, KY 40392-0707

\*J. Michael West  
Office of the Attorney General Office of Rate  
700 Capitol Avenue  
Suite 20  
Frankfort, KENTUCKY 40601-8204