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PUBLIC SERVICE
COMMISSION

**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

In the Matter of:

**AN APPLICATION OF EAST KENTUCKY POWER)
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**

**ADDITIONAL RESPONSES TO SONIA MCELROY AND SIERRA CLUB'S
NOVEMBER 4, 2013 SUPPLEMENTAL REQUESTS
PURSUANT TO COMMISSION'S ORDER DATED DECEMBER 10, 2013**

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

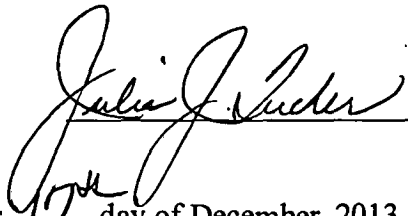
AN APPLICATION OF EAST KENTUCKY POWER
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OF PUBLIC CONVENIENCE AND NECESSITY FOR)
ALTERATION OF CERTAIN EQUIPMENT AT THE)
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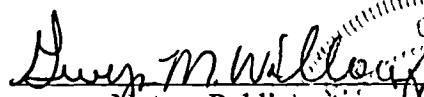
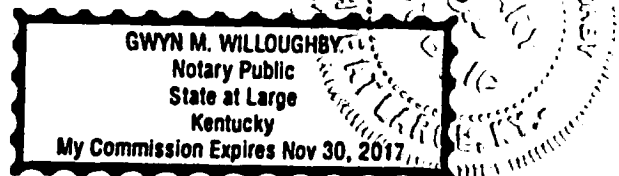
CERTIFICATE

STATE OF KENTUCKY)
)
COUNTY OF CLARK)

Julia J. Tucker, being duly sworn, states that she has supervised the preparation of the responses of East Kentucky Power Cooperative, Inc. to the Public Service Commission's Order contained in the above-referenced case dated December 10, 2013, and that the matters and things set forth therein are true and accurate to the best of her knowledge, information and belief, formed after reasonable inquiry.



Subscribed and sworn before me on this 17th day of December, 2013.


Notary Public #500144


EAST KENTUCKY POWER COOPERATIVE, INC.
PSC CASE NO. 2013-00259
RESPONSE TO INFORMATION REQUEST

INTERVENORS' SUPPLEMENTAL REQUESTS FOR INFORMATION DATED 11/04/13
REQUEST 5

RESPONSIBLE PARTY: David Crews

Request 5. Please provide a breakdown of EKPC's historical annual costs from 2002 through 2013 associated with each plant including:

- a. Variable O&M
- b. Fixed O&M
- c. Fuel Costs
- d. Depreciation
- e. Interest
- f. Capital additions
- g. Other costs

Responses 5a-g. EKPC objects to providing the historical annual costs for its plants because the analysis is not germane to the determination of whether or not EKPC should be granted a CPCN for the proposed Cooper Unit 1 project. The historic annual costs for the plants have no bearing on determining the reasonableness of the Cooper Unit 1 project.

Any analysis related to the CPCN should be performed on a forward-looking basis based on the bids received.

**ADDITIONAL RESPONSE PURSUANT TO THE COMMISSION'S DECEMBER 10,
2013 ORDER**

RESPONSIBLE PARTY: **Julia J. Tucker**

Response 5a-g. EKPC reports its historical costs on RUS Form 12 by generating plant and not by unit. Please see page 3 of this response for data for the Cooper plant, both units are included.

Cooper Station

	2013 (10 Mo)	2012	2011	2010	2009	2008	2007	2006	2005	2004	2003
Variable O&M Excl Fuel	6,356,383	10,769,234	8,844,210	9,929,223	15,666,791	12,518,562	17,607,012	15,471,160	10,437,809	9,011,489	10,338,374
Fixed O&M	10,331,315	12,766,156	8,800,537	7,416,348	7,084,704	6,902,360	6,797,384	6,866,306	6,468,765	6,438,725	6,604,507
Fuel Costs	33,260,791	47,635,118	55,153,475	61,415,937	50,024,650	59,110,791	44,924,501	46,518,626	43,895,606	37,332,284	24,626,092
Depreciation	12,397,397	6,474,095	2,973,561	2,204,827	2,334,091	1,027,873	632,446	425,185	581,174	490,070	117,389
Interest	9,161,044	7,236,693	4,532,715	4,520,404	4,526,778	5,243,226	4,555,687	3,941,318	3,004,587	2,863,538	2,314,835
Other Costs	-	-	-	-	-	-	-	-	-	-	-
	71,506,930	84,881,296	80,304,498	85,486,739	79,637,014	84,802,812	74,517,030	73,222,595	64,387,941	56,136,106	44,001,197

EAST KENTUCKY POWER COOPERATIVE, INC.
PSC CASE NO. 2013-00259
RESPONSE TO INFORMATION REQUEST

INTERVENORS' SUPPLEMENTAL REQUESTS FOR INFORMATION DATED 11/04/13
REQUEST 6

RESPONSIBLE PARTY: David Crews

Request 6. Please provide EKPC's projected annual costs for each year of the NPV analysis associated with each plant including:

- a. Variable O&M
- b. Fixed O&M
- c. Fuel Costs
- d. Depreciation
- e. Interest
- f. Capital additions
- g. Other costs

Response 6a-g. EKPC objects to providing the projected annual costs for its plants because the analysis is not germane to the determination of whether or not EKPC should be granted a CPCN for the proposed Cooper Unit 1 project. The projected annual costs for its plants have no bearing on determining the reasonableness of the Cooper Unit 1 project.

Any analysis related to the CPCN should be performed on a forward looking basis based on the bids received. The relevant Cooper 1 costs have been provided in EKPC's response to the Staff's Initial Request, Response 5.

**ADDITIONAL RESPONSE PURSUANT TO THE COMMISSION'S DECEMBER 10,
2013 ORDER**

RESPONSIBLE PARTY: Julia J. Tucker

Response 6a-g. Please see page 3 of this response. The NPV analysis was not completed on a financial forecast basis. The NPV analysis was completed on an incremental cost basis for each bid. Those costs were reflected in the workbook containing all of the bid analysis previously provided. Therefore, the O&M, depreciation, interest and other capital additions data shown in the table on page 3 of this response are not consistent with the NPV analysis. Additionally, EKPC does not project interest cost by plant in its financial forecasting process, it is forecasted in total only and is provided as such. The data provided is for Cooper Station, which includes both units 1 and 2. Page 3 of this response is filed under seal along with a Motion for Confidential Treatment.

Cooper Station

	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>
Variable O&M Excl Fuel						
Fixed O&M						
Fuel Costs						
Depreciation						
<i>Interest *</i>						
Capital Additions						
Total:						

	<u>2020</u>	<u>2021</u>	<u>2022</u>	<u>2023</u>	<u>2024</u>	<u>2025</u>
Variable O&M Excl Fuel						
Fixed O&M						
Fuel Costs						
Depreciation						
<i>Interest *</i>						
Capital Additions						
Total:						

	<u>2026</u>	<u>2027</u>	<u>2028</u>	<u>2029</u>	<u>2030</u>	<u>2031</u>
Variable O&M Excl Fuel						
Fixed O&M						
Fuel Costs						
Depreciation						
<i>Interest *</i>						
Capital Additions						
Total:						

* EKPC does not project its financial reports by interest on specific plant, it is projected as total interest only.

EAST KENTUCKY POWER COOPERATIVE, INC.

PSC CASE NO. 2013-00259

RESPONSE TO INFORMATION REQUEST

**INTERVENORS' SUPPLEMENTAL REQUESTS FOR INFORMATION DATED 11/04/13
REQUEST 12**

RESPONSIBLE PARTY: Julia J. Tucker

Request 12. Refer to EKPC's response to Sierra Club request 1.24h.

Request 12a. Please provide EKPC's historical annual generation since 2002, by unit.

Response 12a. EKPC objects to providing the historical annual generation for its plants because the analysis is not germane to the determination of whether or not EKPC should be granted a CPCN for the proposed Cooper Unit 1 project. The historic annual generation for the plants has no bearing on determining the reasonableness of the Cooper Unit 1 project.

Any analysis related to the CPCN should be performed on a forward looking basis based on the bids received.

Request 12b. Please provide EKPC's historical annual capacity since 2002, by unit.

Response 12b. See response to 12a.

Request 12c. Please provide EKPC's projected annual generation, by unit, for each of the years of the NPV analysis.

Response 12c. Please see EKPC's Supplemental Response to the Sierra Club's Initial Requests for Information filed with the Commission on November 7, 2013, Response 15d for the Cooper 1 data.

Request 12d. Please provide EKPC's projected annual capacity (ICAP and UCAP), by unit, for each of the years of the NPV analysis.

Response 12d. EKPC objects to providing the projected annual capacity for its plants other than Cooper 1 because the analysis is not germane to the determination of whether or not EKPC should be granted a CPCN for the proposed Cooper Unit 1 project. The projected annual capacity for its plants has no bearing on determining the reasonableness of the Cooper Unit 1 project.

Any analysis related to the CPCN should be performed on a forward looking basis based on the bids received. The relevant Cooper 1 and other bid capacities have been provided in EKPC's response to the Staff's Initial Request, Response 5.

ADDITIONAL RESPONSE PURSUANT TO THE COMMISSION'S DECEMBER 10, 2013 ORDER

RESPONSIBLE PARTY: Julia J. Tucker

Response 12c. Each generation unit dispatches independently within the PJM system. Therefore, the only generation information that relates to Cooper Unit 1 is that unit itself. The annual generation for Cooper 1 has been provided on page 3 of this response. Page 3 of this response is filed under seal along with a Motion for Confidential Treatment.

Generation (MWh)
Cooper 1

<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>2022</u>
[Redacted]								

Generation (MWh)
Cooper 1

<u>2023</u>	<u>2024</u>	<u>2025</u>	<u>2026</u>	<u>2027</u>	<u>2028</u>	<u>2029</u>	<u>2030</u>	<u>2031</u>
[Redacted]								

REDACTED

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EAST KENTUCKY POWER COOPERATIVE, INC.

PSC CASE NO. 2013-00259

RESPONSE TO INFORMATION REQUEST

INTERVENORS' SUPPLEMENTAL REQUESTS FOR INFORMATION DATED 11/04/13

REQUEST 14

RESPONSIBLE PARTY: James Read

Request 14.

[REDACTED]

Request 14a.

[REDACTED]

Response 14a. The risk premium is an expected rate of return over and above the rate of return on fixed income securities of very high credit quality. The sum of the risk premium and the interest rate (see Response 14b below) is a proxy for the expected rate of return on investments with market risk comparable to the uncertain cash flows associated with the power supply proposals. The market risk of the uncertain cash flows associated with the power supply proposals is not directly observable. Market risk premiums are not directly observable either. The 2 percent p.a. figure used to compute the NPVs is a judgment based on my experience. For some alternative estimates of the expected rate of return on investments in investor-owned electric utilities, see, e.g., Ibbotson Cost of Capital, 2012 Yearbook, Chicago: Morningstar, 2012.

Request 14b.

[REDACTED]

Request 14d.

[REDACTED]

[REDACTED]

Response 14d.

See response to 14c.

Request 14e.

[REDACTED]

Response 14e.

See response to 14c.

Request 14f.

[REDACTED]

[REDACTED]

Response 14f.

The data in the "Energy Data" worksheet were produced using the RTSim generation simulation software.

Request 14g.

[REDACTED]

[REDACTED]

Response 14g.

The data underlying the "Case Ratio" worksheet were produced using the RTSim generation simulation software.

ADDITIONAL RESPONSE PURSUANT TO THE COMMISSION'S DECEMBER 10, 2013 ORDER

RESPONSIBLE PARTY:

James Read and Mary Jane Warner

Response 14c.

[REDACTED]

Response (c. i.)

[REDACTED]

Response (c. ii.)

[REDACTED]

Response (c. iii.)

[REDACTED]

Response (c. iv.)

[REDACTED]

Response (c. v.)

[REDACTED]

Response (c. vi.)

REDACTED

INTERVENORS Request 14

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Response (c. vii.)

[REDACTED]

Response (c. viii.)

[REDACTED]

[REDACTED]

[REDACTED]

Response 14d.

[REDACTED]

REDACTED

INTERVENORS Request 14

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Response 14e.

[REDACTED]

EAST KENTUCKY POWER COOPERATIVE, INC.

PSC CASE NO. 2013-00259

RESPONSE TO INFORMATION REQUEST

INTERVENORS' SUPPLEMENTAL REQUESTS FOR INFORMATION DATED 11/04/13
REQUEST 31

RESPONSIBLE PARTY: Jerry B. Purvis

Request 31. Has EKPC reviewed any documents relating to the potential costs at Cooper Unit 1 and/or Cooper Unit 2 to comply with the forthcoming Clean Water Act section 316(b) regulation of cooling water intake structures?

Response 31. Yes.

Request 31a. If so, produce all such documents and state when they were reviewed.

Response 31a. EKPC objects to this request on the grounds that it is overly broad and will not result in relevant evidence concerning the reasonableness of the proposed Cooper Unit 1 project. As noted in EKPC response to the Sierra Club's Initial Request for Information, Response 60a, the EPA has not promulgated the final rule for the Clean Water Act Section 316(b). Any documents discussing the potential costs of compliance would be speculative in nature. Requesting copies of EKPC's research on a yet to be finalized regulation has no bearing on the determination of whether the proposed Cooper Unit 1 project should be granted a Certificate of Public Convenience and Necessity ("CPCN").

Request 31b. If not, explain why not.

Response 31b. See response to 31a.

Request 31c. Has EKPC prepared or caused to be prepared any estimates of the range of costs that Cooper unit 1 and/or Cooper unit 2 may face to comply with the forthcoming 316(b) rule?

- i. If so, produce all such documents.
- ii. If not, explain why not.

Response 31c. See response to the Sierra Club's Initial Request for Information, Response 60a.

ADDITIONAL RESPONSE PURSUANT TO THE COMMISSION'S DECEMBER 10, 2013 ORDER

RESPONSIBLE PARTY: Jerry Purvis

Response a-b. Documents responsive to this request are provided on the enclosed DVD. Inside the folder "DVD – PUBLIC" are copies of the Environmental Compliance Alert ("ECA") and Inside EPA Weekly Report ("IEPA") that were reviewed by EKPC personnel.

EKPC is not producing certain engineering reports and analyses, as well as communications from EKPC's legal department and outside legal counsel relating to the potential costs at Cooper Unit 1 and/or Cooper Unit 2 to comply with the forthcoming Clean Water Act section 316(b) regulation of cooling water intake structures because these engineering reports and analyses were generated as part of engineering studies performed at the request of and solely to provide attorneys representing EKPC with the technical information necessary to provide effective legal advice on compliance options. When engineers are retained to perform technical consulting work which is not intended to be disclosed to third parties, and is performed at the direction of and to provide attorneys representing EKPC with the technical information necessary to provide effective legal advice on compliance options, it is well established that this work and the data collected and analyzed as part of this work constitute Attorney-Client Communications which

are Privileged and Confidential and are protected from disclosure. *Collins v. Braden*, 2012 WL, 5285717 (KY 2012), see also, *U.S. v. Adlman*, 68 F.3d 1495 (2d Cir.1995) (“[u]nder certain circumstances, . . . the privilege for communication with attorneys can shield communications to others when the purpose of the communication is to assist the attorney in rendering advice to the client.” *Id.* at 1499.)

EAST KENTUCKY POWER COOPERATIVE, INC.

PSC CASE NO. 2013-00259

RESPONSE TO INFORMATION REQUEST

**INTERVENORS' SUPPLEMENTAL REQUESTS FOR INFORMATION DATED 11/04/13
REQUEST 32**

RESPONSIBLE PARTY: Jerry B. Purvis

Request 32. Has EKPC reviewed any documents relating to the potential costs at Cooper unit 1 and/or Cooper unit 2 to comply with the forthcoming Resource Conservation and Recovery Act regulations regarding coal combustion residuals?

Responses 32. Yes.

Request 32a. If so, produce all such documents and state when they were reviewed.

Response 32a. EKPC objects to this request on the grounds that it is overly broad and will not result in relevant evidence concerning the reasonableness of the proposed Cooper Unit 1 project. As noted in EKPC's response to the Sierra Club's Initial Request for Information, Response 61b, the EPA has not promulgated the final regulations for handling of coal combustion residuals under the Resource Conservation and Recovery Act. Any documents discussing the potential costs of compliance would be speculative in nature. Requesting copies of EKPC's research on a yet to be finalized regulation has no bearing on the determination of whether the proposed Cooper Unit 1 project should be granted a CPCN.

Request 32b. If not, explain why not.

Response 32b. N/A.

Request 32c. Has EKPC prepared or caused to be prepared any estimates of the range of costs that Cooper unit 1 and/or Cooper unit 2 may face to comply with the forthcoming CCR rule?

- i. If so, produce all such documents.
- ii. If not, explain why not.

Response 32c. Please see EKPC's response to the Sierra Club's Initial Request for Information, Response 61b.

Request 32d. Please provide any analyses or documents prepared or caused to be prepared by EKPC regarding the current and/or future handling of coal combustion residuals at Cooper units 1 and 2.

Response 32d. EKPC objects to this request as it is overly broad and is not designed to provide relevant evidence concerning the determination of whether a CPCN should be granted for the proposed Cooper Unit 1 project. EKPC is currently in compliance with all existing rules and regulations concerning the handling of coal combustion residuals. The future handling of coal combustion residuals will be dependent on an evaluation of the requirements contained in as yet to be promulgated rules and regulations. Any analysis or documents concern such future handling and compliance would be speculative at best. Consequently, analysis or documents concerning the current or future handling of coal combustion residuals is not relevant to the determination of the reasonableness of the proposed Cooper Unit 1 project.

Request 32e. Please explain how coal combustion residuals are currently handled and/or disposed of at the Cooper plant.

Response 32e. Coal combustion residuals are being disposed of in accordance with our existing landfill permit provided by the Kentucky Division of Waste Management, Solid Waste Permit # SW10000015.

Request 32f. Please explain how coal combustion residuals are currently handled and/or disposed of at the Dale plant.

Response 32f. EKPC objects to this request on the grounds that the handling and disposal of coal combustion residuals for the Dale plant is not relevant to the determination of whether or not EKPC should be granted a CPCN for the proposed Cooper Unit 1 project. The operation of the Dale plant is not the subject of this proceeding and has no bearing on the reasonableness of the proposed Cooper Unit 1 project.

Request 32g. Please confirm that outside consultant AMEC performed an assessment of the coal combustion surface impoundments at the Dale plant.

i. Please provide any progress on upgrading the ponds to a “satisfactory” level and the associated or estimated costs to do so.

Response 32g. EKPC objects to this request on the grounds that any assessments performed for coal combustion surface impoundments at the Dale plant are not relevant to the determination of whether or not EKPC should be granted a CPCN for the proposed Cooper Unit 1 project. The assessments of coal combustion surface impoundments at the Dale plant is not the subject of this proceeding and has no bearing on the reasonableness of the proposed Cooper Unit 1 project.

Request 32h. If there are coal combustion surface impoundments at the Cooper plant, state whether EKPC has performed or had performed any assessment of such impoundments.

i. If so, produce such assessment

ii. If not, explain why an assessment was performed for the Dale plant but not for the Cooper plant.

Response 32h. EKPC Cooper Power Plant has an active landfill permit at this facility.

ADDITIONAL RESPONSE PURSUANT TO THE COMMISSION'S DECEMBER 10, 2013 ORDER

RESPONSIBLE PARTY: Jerry Purvis

Response 32a-b. Documents responsive to this request are provided on the enclosed DVD. Inside the folder "DVD – PUBLIC" are copies of the ECA and IEPA publications that were reviewed by EKPC personnel.

EKPC is not producing certain engineering reports and analyses, as well as communications from EKPC's legal department and outside legal counsel relating to the potential costs at Cooper Unit 1 and/or Cooper Unit 2 to comply with the forthcoming coal combustion residuals regulations because these engineering reports and analyses were generated as part of engineering studies performed at the request of and solely to provide attorneys representing EKPC with the technical information necessary to provide effective legal advice on compliance options. When engineers are retained to perform technical consulting work which is not intended to be disclosed to third parties, and is performed at the direction of and to provide attorneys representing EKPC with the technical information necessary to provide effective legal advice on compliance options, it is well established that this work and the data collected and analyzed as part of this work constitute Attorney-Client Communications which are Privileged and Confidential and are protected from disclosure. *Collins v. Braden*, 2012 WL, 5285717 (KY 2012), see also, *U.S. v. Adlman*, 68 F.3d 1495 (2d Cir.1995) ("[u]nder certain circumstances, . . . the privilege for

communication with attorneys can shield communications to others when the purpose of the communication is to assist the attorney in rendering advice to the client.” Id. at 1499.)

Response 32d. Please see the enclosed DVD, folder “DVD – PUBLIC” and files labeled “SC 2.32d”, which are comments filed by EKPC to the EPA concerning CCR.

Response 32e. Please see the enclosed DVD, folder “DVD – PUBLIC” and files labeled “SC 2.32e”, which is the Cooper Landfill Permit and related documents, including the Quality Assurance/Quality Control Plan for the landfill.

Response 32f-g. These requests deal specifically with the Dale plant. The Commission’s December 10, 2013 Order expressly limited the question of current and future costs related to CCR and liquid-waste compliance for Cooper Units 1 and 2. Consequently, no further information is provided.

Response 32h. After Kingston, TVA incident occurred on December 22, 2008, EPA performed assessments of surface impoundments across the United States. EPA requested to assess Spurlock and Dale surface impoundments. The reports appear on the EPA web site in the public domain at <http://www.epa.gov/osw/nonhaz/industrial/special/fossil/surveys2/>. Both Spurlock and Dale met EPA expectations. EKPC Cooper Power Plant has an active permitted landfill on site.

EAST KENTUCKY POWER COOPERATIVE, INC.

PSC CASE NO. 2013-00259

RESPONSE TO INFORMATION REQUEST

**INTERVENORS' SUPPLEMENTAL REQUESTS FOR INFORMATION DATED 11/04/13
REQUEST 33**

RESPONSIBLE PARTY: Jerry B. Purvis

Request 33. Has EKPC reviewed any documents relating to the potential costs at Cooper Unit 1 and/or Cooper Unit 2 to comply with the forthcoming Clean Water Act ELGs for steam electric power plants?

Response 33. Yes.

Request 33a. If so, produce all such documents and state when they were reviewed.

Response 33a. EKPC objects to this request on the grounds that it is overly broad and will not result in relevant evidence concerning the reasonableness of the proposed Cooper Unit 1 project. As noted in EKPC's response to the Sierra Club's Initial Request for Information, Response 59b, the EPA has not promulgated the final rule for the Clean Water Act ELGs for steam electric power plants. Any documents discussing the potential costs of compliance would be speculative in nature. Requesting copies of EKPC's research on a yet to be finalized regulation has no bearing on the determination of whether the proposed Cooper Unit 1 project should be granted a CPCN.

Request 33b. If not, explain why not.

Response 33b. N/A

Request 33c. Has EKPC prepared or caused to be prepared any estimates of the range of costs that Cooper unit 1 and/or Cooper unit 2 may face to comply with the forthcoming ELG rule?

- i. If so, produce all such documents.
- ii. If not, explain why not.

Response 33c. Please see EKPC's response to the Sierra Club's Initial Request for Information, Response 59b.

Request 33d. Please provide analyses or documents prepared or cause to be prepared by EKPC regarding the current and/or future handling at Cooper Unit 1 or 2 of all liquid waste streams that EPA has proposed to be regulated under the ELGs.

Response 33d. EKPC objects to this request as it is overly broad and is not designed to provide relevant evidence concerning the determination of whether a CPCN should be granted for the proposed Cooper Unit 1 project. EKPC is currently in compliance with all existing rules and regulations concerning the handling of liquid waste streams. The future handling of liquid waste streams proposed to be regulated under the ELGs will be dependent on an evaluation of the requirements contained in as yet to be promulgated rules and regulations. Any analysis or documents concern such future handling and compliance would be speculative at best. Consequently, analysis or documents concerning the current or future handling of liquid waste streams is not relevant to the determination of the reasonableness of the proposed Cooper Unit 1 project.

ADDITIONAL RESPONSE PURSUANT TO THE COMMISSION'S DECEMBER 10, 2013 ORDER

RESPONSIBLE PARTY: Jerry Purvis

Response 33a-b. Documents responsive to this request are provided on the enclosed DVD. Inside the folder "DVD – PUBLIC" are copies of the ECA and IEPA publications that were reviewed by EKPC personnel.

EKPC is not producing certain engineering reports and analyses, as well as communications from EKPC's legal department and outside legal counsel relating to the potential costs at Cooper Unit 1 and/or Cooper Unit 2 to comply with the forthcoming Clean Water Act ELGs for steam electric power plants regulation because these engineering reports and analyses were generated as part of engineering studies performed at the request of and solely to provide attorneys representing EKPC with the technical information necessary to provide effective legal advice on compliance options. When engineers are retained to perform technical consulting work which is not intended to be disclosed to third parties, and is performed at the direction of and to provide attorneys representing EKPC with the technical information necessary to provide effective legal advice on compliance options, it is well established that this work and the data collected and analyzed as part of this work constitute Attorney-Client Communications which are Privileged and Confidential and are protected from disclosure. *Collins v. Braden*, 2012 WL, 5285717 (KY 2012), see also, *U.S. v. Adlman*, 68 F.3d 1495 (2d Cir.1995) ("[u]nder certain circumstances, . . . the privilege for communication with attorneys can shield communications to others when the purpose of the communication is to assist the attorney in rendering advice to the client." Id. at 1499.)

Response 33d. Please see the enclosed DVD, folder "DVD – PUBLIC" and files labeled "SC 2.33d", which are comments filed by EKPC to the EPA concerning ELGs for steam electric power plants.

EAST KENTUCKY POWER COOPERATIVE, INC.

PSC CASE NO. 2013-00259

RESPONSE TO INFORMATION REQUEST

INTERVENORS' SUPPLEMENTAL REQUESTS FOR INFORMATION DATED 11/04/13
REQUEST 46

RESPONSIBLE PARTY: Block Andrews

Request 46. Please refer to EKPC's response to Sierra Club's discovery request 1.39.

Request 46a. Please produce the contract in which Andritz guarantees that "the modified FGD system . . . will meet or exceed certain emissions limits and performance levels specific in the contract."

Response 46a. Please see EKPC's response to the Staff's Initial Request, Response 20.

Request 46b. Identify any penalties that Andritz would incur, or remediation that Andritz is required to provide, under the contract in the event that the emissions limits or performance levels are not met.

Response 46b. If Andritz does not meet performance guarantees specifically related to lime consumption, the contract provides for predetermined liquidated damages. Should Andritz fail to meet other performance guarantees for specific system and emissions requirements, the contract requires that they repair or replace any or all components or parts to achieve the guaranteed level of performance, at their cost. In the event Andritz fails to meet the Mercury removal performance Guarantee, the contract requires them to provide a separate treatment system specifically for that purpose, at no cost to EKPC.

**ADDITIONAL RESPONSE PURSUANT TO THE COMMISSION'S DECEMBER 10,
2013 ORDER**

RESPONSIBLE PARTY: **Mary Jane Warner**

Response 46a. The entirety of this response is included on the CD filed under seal and subject to confidential treatment.