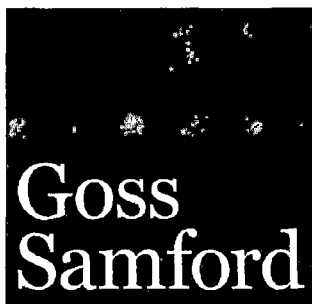


RECEIVED

JUL 17 2019

PUBLIC SERVICE
COMMISSION

David S. Samford
(859) 368-7740
david@gosssamfordlaw.com



ATTORNEYS AT LAW | PLLC

July 17, 2019

VIA HAND DELIVERY

Ms. Gwen Pinson
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, KY 40601

RE: *In the Matter of the Application of East Kentucky Power Cooperative, Inc. for an Order Approving the Establishment of Regulatory Assets for Present and Future Maintenance Expenses, Case No. 2019-00146*

Dear Ms. Pinson:

Enclosed, please find an original and six copies of the East Kentucky Power Cooperative, Inc.'s ("EKPC") responses to Nucor Steel Gallatin's First Data Request for Information dated June 26, 2019, Staff's Initial Request for Information and Attorney General's Data Requests both dated June 27, 2019. In addition, EKPC is filing an original and six copies of a Motion for Confidential Treatment. Please return a file-stamped copy of this filing to my office.

Please let me know if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "David S. Samford".

David S. Samford

Enc.

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF:

THE APPLICATION OF EAST KENTUCKY)
POWER COOPERATIVE, INC. FOR AN)
ORDER APPROVING THE ESTABLISHMENT) CASE NO. 2019-00146
OF REGULATORY ASSETS FOR PRESENT)
AND FUTURE MAINTENANCE EXPENSES)

MOTION FOR CONFIDENTIAL TREATMENT

Comes now East Kentucky Power Cooperative, Inc. (“EKPC”), by and through counsel, pursuant to KRS 61.878, 807 KAR 5:001, Section 13 and other applicable law, and for its Motion requesting that the Kentucky Public Service Commission (“Commission”) afford confidential treatment to certain documents filed in response to four requests for information in the above-captioned proceeding, respectfully states as follows:

1. EKPC filed its Application seeking authority to establish regulatory assets for certain minor property and maintenance expenses on May 13, 2019. Nucor and the Attorney General were subsequently granted leave to intervene. The first set of information requests were tendered by the Commission, Nucor and the Attorney General to EKPC on June 26th and 27th.

2. Request No. 5(b) from the Commission’s request for information states as follows:

5(b) Provide the forecasted costs in connection with major maintenance projects and the inspections and repair or replacement of minor components for the next five years.

3. In its response to Request No. 5(b), EKPC is providing a forecast of major maintenance and minor item replacement costs from 2019 through 2029.

4. Request No. 1 from Nucor's request for information states as follows:
 1. For calendar years 2020, 2021 and 2022 please provide EKPC's forecasted TIER, income statement and balance sheet if this Application is approved.
5. In its response to Nucor's Request No. 1, EKPC is providing a table of financial forecast data, which includes information that is responsive to the request for information.
6. Request No. 2 from Nucor's request for information states as follows:
 2. Please provide the same information requested in Question 1 assuming that the Application is not approved.
7. In its response to Nucor's Request No. 2, EKPC is providing a table of financial forecast data, which includes information that is responsive to the request for information.
8. Request No. 7 from Nucor's request for information states as follows:
 7. Please provide all documents presented to the EKPC Board of Directors on the subject matter of this Application.
9. In its response to Nucor's Request No. 7, EKPC is providing a summary of management's recommendation given to EKPC's Board and a copy of the resolution adopted by EKPC's Board authorizing the filing of the application.
10. The information and documents tendered by EKPC in response to Commission Request No. 5(b) and Nucor Requests No. 1, 2 and 7 are being tendered in redacted form in the public version of EKPC's filing and in an unredacted form filed under seal herewith. Collectively, this information and these documents are hereinafter referred to as the "Confidential Information."
11. The Confidential Information contains extensive information that describes EKPC's financial forecast, internal deliberations and strategy for maintaining its generation fleet. This information is commercially sensitive and proprietary. More specifically, the Confidential Information includes: forecasted expenditures for major maintenance and minor property

replacements on EKPC's generation fleet, forecasted financial data relating to EKPC's most critical financial metrics and documents reflecting internal policy and financial deliberations, recommendations and decisions.

12. The Confidential Information is retained by EKPC on a "need-to-know" basis and is not publicly available. If disclosed, the Confidential Information would give potential vendors and competitors tremendous competitive advantages by disclosing the timing and magnitude of EKPC's planned major maintenance and minor property replacements. These market advantages would arise from knowing when EKPC is most likely to be entering the market for labor and services related to the planned maintenance and replacements as well as the market for equipment necessary to effectuate such work. Moreover, energy market participants would benefit from knowing when EKPC's units are likely to be offline due to maintenance outages and could translate such information into higher costs for purchased power by EKPC and, by extension, detrimentally higher rates for EKPC's Members. The Confidential Information also offers competitors an unnecessary window into EKPC's expected future financial performance and the inner workings of its management team. Thus, disclosure of the Confidential Information would be highly prejudicial to EKPC, EKPC's Owner-Member Cooperatives and those owner-embers' End-Use Retail Members.

13. The Kentucky Open Records Act exempts the Confidential Information from public disclosure. *See* KRS 61.878(1)(c). As set forth above, disclosure of the Confidential Information would permit an unfair advantage to third parties. Moreover, the Kentucky Supreme Court has stated, "information concerning the inner workings of a corporation is 'generally accepted as confidential or proprietary.'" *Hoy v. Kentucky Industrial Revitalization Authority*, 907 S.W.2d 766, 768 (Ky. 1995). Because the Confidential Information is critical to EKPC's effective execution

of business decisions and strategy, it satisfies both the statutory and common law standards for being afforded confidential treatment. Indeed, the Commission has already recognized the confidential nature of the information included in the responses and has afforded confidential treatment to forecasted maintenance expense,¹ forecasted financial data,² and Board materials³ in prior proceedings.

14. EKPC does not object to limited disclosure of the Confidential Information, pursuant to an acceptable confidentiality and nondisclosure agreement, to the Attorney General and Nucor for the sole purpose of participating in this case. In fact, EKPC has already entered into confidentiality agreements with the AG and Nucor concerning the information in question.

15. In accordance with the provisions of 807 KAR 5:001, Section 13(2), EKPC is filing one copy of the Confidential Information separately under seal. The filing of the Confidential Information is noted in the public version of EKPC's response to Commission Request No. 5(b) and Nucor Request Nos. 1, 2 and 7, which include redacted copies of such information. Due to

¹ See *In the Matter of the Application of Louisville Gas & Electric Company for an Adjustment of its Electric and Gas Rates*, Order, Case No. 2014-00372 (Ky. P.S.C. Jan. 14, 2016); *In the Matter of the Application of East Kentucky Power Cooperative, Inc. for Approval of the Acquisition of Existing Combustion Turbine Facilities from Bluegrass Generating Company, LLC at the Bluegrass Generating Station in LaGrange, Oldham County, Kentucky and for Approval of the Assumption of Certain Evidences of Indebtedness*, Order, Case No. 2015-00267 (Ky. P.S.C. Nov. 24, 2015);

² See *In the Matter of the Application of East Kentucky Power Cooperative, Inc. for Deviation from Obligation Resulting from Case No. 2012-00169*, Order, Case No. 2015-00358 (Ky. P.S.C. July 18, 2016); *In the Matter of the Application of Kentucky Power Company for (1) A Certificate of Public Convenience and Necessity Authorizing the Transfer to the Company of an Undivided Fifty Percent Interest in the Mitchell Generating Station and Associated Assets; (2) Approval of the Assumption by Kentucky Power Company of Certain Liabilities in Connection with the Transfer of the Mitchell Generating Station; (3) Declaratory Rulings; (4) Deferral of Costs Incurred in Connection with the Company's Efforts to Meet Federal Clean Air Act and Related Requirements; and (5) All Other Required Approval and Relief*, Order, Case No. 2012-00578 (Ky. P.S.C. Oct. 18, 2013).

³ See *In the Matter of the Application of Grayson Rural Electric Cooperative Corporation for an Adjustment of Rates*, Order, Case No. 2018-00272 (Ky. P.S.C. Mar. 13, 2019); *In the Matter of the Application of Kentucky Utilities Company for Certificates of Public Convenience and Necessity and Approval of its 2011 Compliance Plan for Recovery by Environmental Surcharge*, Letter from Jeff Derouen, Case No. 2011-00161 (Ky. P.S.C. Oct. 10, 2011).

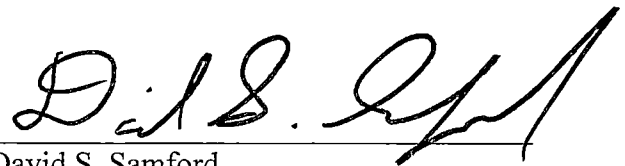
the pervasive nature of the confidential and proprietary information included in in the Confidential Information, confidential treatment is sought for the entirety of the Confidential Information.

16. In accordance with the provisions of 807 KAR 5:001, Section 13(3), EKPC respectfully requests that the Confidential Information be withheld from public disclosure for a period of ten years. This will assure that the Confidential Information – if disclosed after that time – will be less likely to include information that continues to be commercially sensitive so as to impair the interests of EKPC if publicly disclosed. However, EKPC reserves the right to seek an extension of the grant of confidential treatment if it is necessary to do so at that time.

WHEREFORE, on the basis of the foregoing, EKPC respectfully requests the Commission to enter an Order granting this Motion for Confidential Treatment and to so afford such protection from public disclosure to the unredacted copies of Confidential Information, which is filed herewith under seal, for a period of ten years from the date of entry of such an Order.

Done this 17th day of July, 2019.

Respectfully submitted,



David S. Samford
L. Allyson Honaker
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2365 Harrodsburg Road, Suite B-325
Lexington, KY 40504
(859) 368-7740
david@gosssamfordlaw.com
allyson@gosssamfordlaw.com

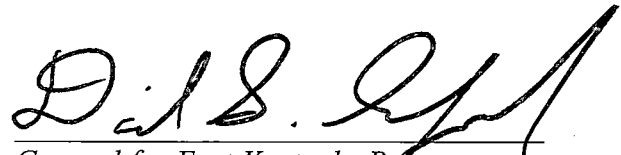
*Counsel for East Kentucky Power
Cooperative, Inc.*

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing was sent via U.S. Mail, postage pre-paid, and via email to the following individuals on this the 17th day of July, 2019:

Mr. Kent Chandler
Mr. Larry Cook
Mr. Justin McNeil
Assistant Attorneys General
700 Capital Ave., Suite 20
Frankfort, KY 40601-8204

Mr. Mike Kurtz
Ms. Jody Kyler Cohn
Boehm, Kurtz & Lowry
36 East Seventh Street
Cincinnati, OH 45202



*Counsel for East Kentucky Power
Cooperative, Inc.*

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JUL 17 2019

**PUBLIC SERVICE
COMMISSION**

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

IN THE MATTER OF:

**THE APPLICATION OF EAST KENTUCKY)
POWER COOPERATIVE, INC. FOR AN)
ORDER APPROVING THE ESTABLISHMENT) CASE NO. 2019-00146
OF REGULATORY ASSETS FOR PRESENT)
AND FUTURE MAINTENANCE EXPENSES)**

**RESPONSES TO NUCOR STEEL GALLATIN'S FIRST SET OF
DATA REQUESTS TO EAST KENTUCKY POWER COOPERATIVE, INC.**

DATED JUNE 26, 2019

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF EAST KENTUCKY)
 POWER COOPERATIVE, INC. FOR AN)
 ORDER APPROVING THE ESTABLISHMENT) CASE NO. 2019-00146
 OF REGULATORY ASSETS FOR PRESENT)
 AND FUTURE MAINTENANCE EXPENSES)

CERTIFICATE

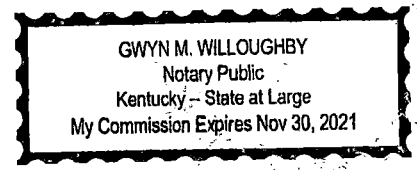
STATE OF KENTUCKY)
)
 COUNTY OF CLARK)

Mike McNalley, being duly sworn, states that he has supervised the preparation of the responses of East Kentucky Power Cooperative, Inc. to Nucor Steel Gallatin's First Set of Data Requests in the above-referenced case dated June 26, 2019, and that the matters and things set forth therein are true and accurate to the best of his knowledge, information and belief, formed after reasonable inquiry.

Mike McNalley

Subscribed and sworn before me on this 17th day of July, 2019.

Gwyn M. Willoughby #580567
 Notary Public



EAST KENTUCKY POWER COOPERATIVE, INC.

PSC CASE NO. 2019-00146

RESPONSE TO INFORMATION REQUEST

NUCOR STEEL GALLATIN'S FIRST SET OF DATA REQUESTS DATED 06/26/19

REQUEST 1

RESPONSIBLE PARTY: Mike McNalley and Michelle K. Carpenter

Request 1. For calendar years 2020, 2021 and 2022 please provide EKPC's forecasted TIER, income statement and balance sheet if this Application is approved.

Response 1. Please see page 2 of 2 of this response.

REDACTED

EAST KENTUCKY POWER COOPERATIVE

Statement of Operations			
In \$ Millions			
	2020	2021	2022
Total Revenue			
Fuel and Purchased Power			
Operations and Maintenance			
Other (incl. SG&A, D&A, Net Interest)			
Total Expense			
Net Margin			
TIER			
<i>Note: Target TIER is 1.50</i>			
BALANCE SHEET			
In \$ Millions			
	2020	2021	2022
Assets			
Utility Plant Net			
Cash and Investments			
Other Assets			
Total Assets			
Equities and Liabilities			
Equity			
Long term Debt			
Other Liabilities			
Total Equity and Liabilities			

Note: Does not include minor item replacements due to failure / obsolescence, which could increase the regulatory assets.

EAST KENTUCKY POWER COOPERATIVE, INC.

PSC CASE NO. 2019-00146

RESPONSE TO INFORMATION REQUEST

NUCOR STEEL GALLATIN'S FIRST SET OF DATA REQUESTS DATED 06/26/19

REQUEST 2

RESPONSIBLE PARTY: Mike McNalley and Michelle K. Carpenter

Request 2. Please provide the same information requested in Question 1 assuming that the Application is not approved.

Response 2. Please see page 2 of 2 of this response.

REDACTED

EAST KENTUCKY POWER COOPERATIVE

Statement of Operations			
In \$ Millions			
	2020	2021	2022
Total Revenue			
Fuel and Purchased Power			
Operations and Maintenance			
Other (incl. SG&A, D&A, Net Interest)			
Total Expense			
Net Margin			
TIER			
<i>Note: Target TIER is 1.50</i>			
BALANCE SHEET			
In \$ Millions			
	2020	2021	2022
Assets			
Utility Plant Net			
Cash and Investments			
Other Assets			
Total Assets			
Equities and Liabilities			
Equity			
Long term Debt			
Other Liabilities			
Total Equity and Liabilities			

Note: Does not include minor item replacements due to failure / obsolescence, which could reduce margin.

REDACTED

EAST KENTUCKY POWER COOPERATIVE, INC.

PSC CASE NO. 2019-00146

RESPONSE TO INFORMATION REQUEST

NUCOR STEEL GALLATIN'S FIRST SET OF DATA REQUESTS DATED 06/26/19

REQUEST 3

RESPONSIBLE PARTY: Mike McNalley and Michelle K. Carpenter

Request 3. Please explain why the requested accounting change is not more appropriately incorporated in EKPC's next base rate case.

Response 3. Incorporating the costs for which EKPC has requested regulatory asset treatment into EKPC's next base rate defeats the overall purpose of the application, which is to smooth the margin and rate impact of these expenditures and to ensure timely recovery. Because the expenditures are highly variable, setting an appropriate base rate recovery amount will either result in over-recovery in many years, or under-recovery and under performance (possibly failure to achieve financial metrics) in other years, depending on the amount in the test year and final approved rate change. These depend simply on the timing of the base rate case relative to the timing and magnitude of these expenditures. Following the changes in these expenditures over time in base rates implies frequent, expensive rate case proceedings to both raise and lower rates, which is inefficient for both EKPC and the Commission, especially since the proposed accounting treatment would avoid those negative consequences.

EAST KENTUCKY POWER COOPERATIVE, INC.

PSC CASE NO. 2019-00146

RESPONSE TO INFORMATION REQUEST

NUCOR STEEL GALLATIN'S FIRST SET OF DATA REQUESTS DATED 06/26/19

REQUEST 4

RESPONSIBLE PARTY: Mike McNalley and Michelle K. Carpenter

Request 4. Do the other utilities subject to the Commission's jurisdiction operate under the same capitalization versus expensing accounting protocols as EKPC?

Response 4. All electric utilities under the Commission's jurisdiction follow either the Rural Utilities Service ("RUS") Uniform System of Accounts or the Federal Energy Regulatory Commission Uniform System of Accounts, which are virtually identical in structure. Utilities are not permitted to vary from this structure without approval from a regulator, such as the Commission. However, each utility must make its own determinations in setting thresholds for retirement units. How those thresholds are initially established dictate how costs will be treated in the future (replacement of a retirement unit (capitalized) or maintenance expense). Therefore, based upon how the asset structure was initially established, two utilities can replace the same part, but for one utility, it could be considered the replacement of a retirement unit (capital) while the other may be required to treat it as replacement of a minor component (maintenance).

EAST KENTUCKY POWER COOPERATIVE, INC.

PSC CASE NO. 2019-00146

RESPONSE TO INFORMATION REQUEST

NUCOR STEEL GALLATIN'S FIRST SET OF DATA REQUESTS DATED 06/26/19

REQUEST 5

RESPONSIBLE PARTY: Mike McNalley and Michelle K. Carpenter

Request 5. Instead of creating regulatory assets to effectively capitalize items that would otherwise be expensed, does EKPC have the authority to simply change its systems of accounts and accounting policies to achieve the same result?

Response 5. No, neither the RUS nor the Commission allows EKPC to change its system of accounts without prior approval. Also, it should be noted that assets are capitalized based upon policies and structures in existence at the time of capitalization.

EAST KENTUCKY POWER COOPERATIVE, INC.

PSC CASE NO. 2019-00146

RESPONSE TO INFORMATION REQUEST

NUCOR STEEL GALLATIN'S FIRST SET OF DATA REQUESTS DATED 06/26/19

REQUEST 6

RESPONSIBLE PARTY: Mike McNalley and Michelle K. Carpenter

Request 6. Have EKPC's outside auditors provided any guidance or opinions on the subject of this Application? If yes, please provide that information.

Response 6. EKPC's outside audit firm, Ernst & Young, LLP, does not opine on Commission applications nor Commission proceedings.

EAST KENTUCKY POWER COOPERATIVE, INC.

PSC CASE NO. 2019-00146

RESPONSE TO INFORMATION REQUEST

NUCOR STEEL GALLATIN'S FIRST SET OF DATA REQUESTS DATED 06/26/19

REQUEST 7

RESPONSIBLE PARTY: Mike McNalley and Michelle K. Carpenter

Request 7. Please provide all documents presented to the EKPC Board of Directors on the subject matter of this Application.

Response 7. Documents are provided on pages 2 through 6 of this response.

REDACTED

Board Agenda Item-Vote

APRIL

TO: Board of Directors
FROM: Anthony S. Campbell
DATE: March 29, 2019
SUBJECT: Request Approval of Regulatory Asset Treatment of Certain Maintenance Projects, and to File an Application with the Kentucky Public Service Commission for Accounting Authorization (Executive Summary)

Background

[REDACTED]

Justification and Strategic Analysis

[REDACTED]

REDACTED

Board Agenda Item-Vote

APRIL

[REDACTED]

Recommendation

[REDACTED]

Resolution-Vote

APRIL

REQUEST APPROVAL OF REGULATORY ASSET TREATMENT OF CERTAIN MAINTENANCE PROJECTS, AND TO FILE AN APPLICATION WITH THE KENTUCKY PUBLIC SERVICE COMMISSION FOR ACCOUNTING AUTHORIZATION

Whereas,

[REDACTED]

Whereas,

[REDACTED]

Whereas,

[REDACTED]

Whereas,

[REDACTED]

Whereas,

[REDACTED]

Whereas,

[REDACTED]

Whereas,

[REDACTED]

Whereas,

[REDACTED]

Resolved,

[REDACTED]

Resolved,

[REDACTED]

REDACTED

FROM THE MINUTE BOOK OF PROCEEDINGS
OF THE BOARD OF DIRECTORS OF
EAST KENTUCKY POWER COOPERATIVE, INC.

At a regular meeting of the Board of Directors of East Kentucky Power Cooperative, Inc. held at the Headquarters Building, 4775 Lexington Road, located in Winchester, Kentucky, on Tuesday, April 9, 2019, at 9:30 a.m., EDT, the following business transacted:

Request Approval of Regulatory Asset Treatment of Certain Maintenance Projects, and to File an Application with the Kentucky Public Service Commission for Accounting Authorization

[REDACTED]

Whereas, [REDACTED]

Whereas, [REDACTED]

Whereas, [REDACTED]

Whereas, [REDACTED]

Whereas, [REDACTED]

Whereas, [REDACTED]

Whereas, [REDACTED]

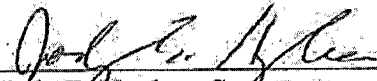
Whereas, [REDACTED]

Resolved, [REDACTED]

Resolved, [REDACTED]

The foregoing is a true and exact copy of a resolution passed at a meeting called pursuant to proper notice at which a quorum was present and which now appears in the Minute Book of Proceedings of the Board of Directors of the Cooperative, and said resolution has not been rescinded or modified.

Witness my hand and seal this 9th day of April 2019.



Jody E. Hughes, Secretary

Corporate Seal