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December 17, 2010

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Via Hand-Delivery

Mr. Jeffrey Derouen
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
P. O. Box 615
Frankfort, Kentucky 40602-0615

Re: Case No. 2010-00167

Dear Mr. Derouen:

Enclosed please find an original and ten (10) copies of the Joint Post-Hearing Brief of East Kentucky Power Cooperative, Inc. and Gallatin Steel to be filed in the above-referenced matter. Please return a file-stamped copy to me.

Please do not hesitate to let me know if you have any questions.

Very truly yours,

Mark David Goss

cc: Dennis Howard, II
Lawrence Cook
Ann Wood
Mike Kurtz

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PUBLIC SERVICE
COMMISSION

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

GENERAL ADJUSTMENT OF ELECTRIC RATES	)	**PSC CASE NO.**
OF EAST KENTUCKY POWER	)	**2010-00167**
COOPERATIVE, INC.	)	

JOINT POST-HEARING BRIEF OF EAST KENTUCKY POWER COOPERATIVE, INC. AND GALLATIN STEEL

Pursuant to the Commission's direction at the December 9, 2010 public hearing, East Kentucky Power Cooperative, Inc. ("EKPC") and Gallatin Steel ("Gallatin") hereby file their joint post-hearing brief in this case.

PROCEDURAL AND FACTUAL BACKGROUND

EKPC filed its Application on May 27, 2010 for an increase in its wholesale electric rates utilizing a forecasted test period. The Commission noted deficiencies in the Application, and after additional information was provided by EKPC, considered the Application filed on June 8, 2010 and the effective date to be July 8, 2010. The Commission suspended the proposed rates for six months, up to and including January 7, 2011. The Attorney General, by and through his Office of Rate Intervention ("AG"), and Gallatin Steel Company ("Gallatin") sought and were granted intervention in the proceeding. The Commission's June 21, 2010 Order established a procedural schedule that provided for two rounds of discovery, intervenor testimony, a round of discovery on the intervenor testimony, rebuttal testimony by EKPC, a public hearing, and the filing of briefs.

EKPC requested an increase in revenues of approximately $49.4 million, noting that without this increase EKPC's interest and debt coverage ratios would be inadequate to meet the requirements needed to attract private lenders in the capital markets and meet its loan covenants.

EKPC stated that this Application represented a necessary first step toward building its equity to an adequate level. EKPC also noted that the Management Audit Action Plans prepared by Liberty Consulting Group had stated,

> EKPC management should immediately evaluate and establish optimal equity level target and credit rating goals. Equity levels should be increased to 20 percent or more to establish the more adequate equity levels maintained by most other G&T companies that provide increased protection and attractiveness to capital markets and meet its loan covenants.[1]

The forecasted test period utilized in the Application was based on a modified version of EKPC's 2008 Load Forecast, which was the only approved load forecast available at the time the case was filed. All during the time that the case was going through the processes required under the procedural schedule, EKPC was developing and finalizing its 2010 Load Forecast. The preliminary results from the 2010 Load Forecast indicated significant reductions in demand and energy compared to the levels reflected in the 2008 Load Forecast.[2] EKPC continued to analyze and refine the 2010 Load Forecast and the EKPC Board of Directors approved this forecast at its November 2010 monthly meeting. The 2010 Load Forecast was filed with the Commission as part of the responses filed in Case No. 2010-00238.[3] The approved 2010 Load Forecast likewise reflected significant reductions in demand and energy compared to the levels reflected in the 2008 Load Forecast. The current stale economy has been identified as the primary factor contributing to these significant reductions.[4]

Representatives of EKPC, the AG, and Gallatin met on November 24, 2010 for the purpose of discussing settlement and related procedural issues. During these discussions EKPC

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[1] Focused Management and Operations Audit of EKPC, Final Action Plans presented by Liberty Consulting Group, June 16, 2010, at 16.
[2] Response to the Commission Staff's Second Data Request filed July 22, 2010, Item 11.b.
[3] Case No. 2010-00238, An Investigation of East Kentucky Power Cooperative, Inc.'s Need for the Smith 1 Generating Facility. The 2010 Load Forecast was filed with the Commission on November 18, 2010.
[4] December 9, 2010 Video Transcript, 2:53:30 pm.

made the AG and Gallatin aware of the impact the 2010 Load Forecast had on the billing determinants and resulting revenues. EKPC, the AG, and Gallatin agreed that the results of the 2010 Load Forecast significantly impacted the billing determinants used by EKPC to generate its proposed rates contained in the Application. EKPC, the AG, and Gallatin reached agreement on all issues contained in the rate Application, with the exception that the AG did not agree to the revenue increase that EKPC and Gallatin had reached in a "black box" settlement. At the public hearing on November 30, 2010, EKPC, the AG, and Gallatin represented to the Commission that a settlement in principle had been reached and a written agreement would be filed. A Settlement Agreement was prepared and filed with the Commission on December 3, 2010. During the public hearing on December 9, 2010 EKPC sponsored witnesses who 1) addressed the reasonableness of the Settlement Agreement and 2) responded to questions by the AG dealing with revenue requirement issues.

SUMMARY OF SETTLEMENT AGREEMENT

EKPC and Gallatin have agreed and stipulate that a $43.0 million increase in annual revenues for EKPC is fair, just, and reasonable. The AG does not agree to the $43.0 million increase in annual revenues. EKPC, the AG, and Gallatin have agreed to the following provisions which resolve all issues in this rate case, except for the increase in revenues:

Billing Determinants. The billing determinants based upon the 2010 Load Forecast would generate approximately $140.0 million less in annual revenue than that originally stated in the Application.[5] Recognizing this significant impact, EKPC, the AG, and Gallatin have agreed that the billing determinants used to develop rates will be derived from EKPC's 2010 Load Forecast. While the AG agrees with the use of billing determinants derived from the 2010 Load

[5] Settlement Testimony of Mike McNalley, Exhibit MM-2.

Forecast, he does not agree to any rates developed from the $43.0 million as he does not agree with the $43.0 million increase in annual revenues.

Effective Date. The annual revenue increase will be effective for service rendered on and after January 1, 2011 or the date of the Commission's Order placing such rates into effect, whichever is later, and this implementation date is fair, just, and reasonable.

Allocation of Revenue Increase. The allocations of the increase in annual revenue presented in Exhibit 1 of the Settlement Agreement and the rates set forth on the tariff sheets in Exhibit 2 of the Settlement Agreement are fair, just, and reasonable.

Gallatin Subsidy Issue. In its direct testimony concerning cost of service, Gallatin determined that it was subsidizing the other rate classes of EKPC by approximately $754,000.[6] EKPC filed rebuttal testimony disagreeing with this conclusion.[7] In the settlement discussions, EKPC, the AG, and Gallatin agreed that there should be a reduction in the allocation to Gallatin of $500,000 to partially address the subsidy argument, and that this reduction would be proportionally allocated to all other rate classes, except the pumping stations.

Over-Earning Mechanism. EKPC, the AG, and Gallatin agreed that the 2010 Load Forecast represented a significant change to EKPC's projected load and would have a significant effect on EKPC's finances. Compared to the 2008 Load Forecast utilized in the application, EKPC's revenues could be approximately $140.0 million lower than originally expected. However, if the economic conditions that impacted the 2010 Load Forecast improve during 2011, EKPC could possibly earn margins greater than expected.

In order to provide protection to both EKPC, its member cooperatives, and in turn the member-consumers of the member cooperatives, EKPC, the AG, and Gallatin agreed to establish

[6] Direct Testimony and Exhibits of Stephen J. Baron, Exhibit SJB-2, page 16 of 24.
[7] Rebuttal Testimony of Isaac S. Scott, pages 4 through 10.

an over-earning mechanism for calendar year 2011. If EKPC's audited financial statements for 2011 show it earned more than a 1.50 Times Interest Earned Ratio ("TIER"), EKPC will refund the amount in excess of the 1.50 TIER in a proportional manner according to the allocation established in Exhibit 1 of the Settlement Agreement by way of a surcredit application to be filed with the Commission. EKPC will also file a base rate case as soon as practical, but in no event more than one year after the 2011 financial results are known, in the event EKPC's TIER exceeds 1.50. This filing will be made in order for the Commission to determine that rates are appropriate. This new base rate case will allow the Commission, the AG, and Gallatin the opportunity through discovery to closely review EKPC's expenditures.

Smith Unit 1 Regulatory Asset Amortization. EKPC has pending before the Commission a request to establish a regulatory asset related to the cancellation of Smith Unit 1, Case No. 2010-00449.[8] The Settlement Agreement contains two provisions recognizing this pending case. After the Commission issues a final Order in Case No. 2010-00449, the Settlement Agreement provides that EKPC will file an application prior to the filing of the over-earning mechanism to address the recovery of the regulatory asset amortization.

The Settlement Agreement also designates that the interest expense relating to Smith Unit 1 contained in the agreement is $6,000,000 plus TIER. This designation is necessary as the Settlement Agreement represents a "black box" resolution of the issues in the rate case. Absent this designation, neither EKPC, the AG, Gallatin, nor the Commission would have any indication how much interest expense related to Smith Unit 1 was included in EKPC's base rates. In order to prevent and avoid a double-recovery of the Smith Unit 1 interest expense, it is critical to know how much of this interest expense is included in EKPC's base rates resulting from this rate case.

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[8] Case No. 2010-00449, An Application of East Kentucky Power Cooperative, Inc. for an Order Approving the Establishment of a Regulatory Asset for the Amount Expended on Its Smith 1 Generating Unit. The cancellation of Smith Unit 1 is addressed in the Settlement Agreement filed in Case No. 2010-00238.

The Settlement Agreement further addresses this need to prevent a double-recovery of the interest expense related to Smith Unit 1 by providing that once the final cancellation costs of Smith Unit 1 are determined, net of all cost mitigation efforts, then EKPC will reduce its base rates to all classes proportionally by $6,000,000 plus TIER and it will seek to recover the net cancellation costs over ten years pursuant to the Settlement Agreement filed in Case No. 2010-00238. EKPC, the AG, and Gallatin believe this approach provides transparency in that all costs associated with the Smith Unit 1 amortization would be addressed in the same rate-making mechanism. In addition, since EKPC will need to finance the regulatory asset with long-term financing, this approach would be beneficial in demonstrating to lenders that EKPC has been authorized to and is recovering the costs associated with the regulatory asset. While this approach is the preferred one, EKPC, the AG, and Gallatin acknowledge that the designated interest expense could remain in base rates and be adjusted from the amounts recovered in the amortization of the regulatory asset.[9] The intent of this provision in the Settlement Agreement was to ensure adequate provisions were made to prevent a double-recovery of the interest expense associated with Smith Unit 1. It was never the intent of EKPC, the AG, or Gallatin to restrict in any manner the Commission's authority to decide the most appropriate means to amortize the proposed regulatory asset.[10]

Additional Base Rate Case. If the Commission's final Order in this proceeding authorizes an increase less than the $43.0 million stipulated by EKPC and Gallatin, the Settlement Agreement will not restrict or prevent EKPC from filing a base rate case before the 2012 base rate case referenced as part of the over-earnings mechanism. Given the expected reductions in demand and energy presented in the 2010 Load Forecast, if an increase in revenues

[9] Both approaches are acknowledged in the Settlement Agreement filed in Case No. 2010-00238, page 5.
[10] EKPC, the AG, and Gallatin also acknowledge that this provision is contingent upon the Commission's approval to establish the regulatory asset requested in Case No. 2010-00449.

of less than $43.0 million is authorized, EKPC most certainly will have to submit another base rate case prior to 2012 in order to achieve sufficient interest and debt coverage ratios, meet loan covenants, and maintain momentum in its efforts to improve its equity position. This focus on financial condition not only is sound business practice, but totally consistent with the recommendations of the Management Audit.

Management Audit. Two provisions of the Settlement Agreement reference the Management Audit prepared by the Liberty Consulting Group. In those provisions, EKPC affirms to the AG and Gallatin that EKPC's Board of Directors and management have accepted all recommendations outlined in the Management Audit report and have implemented or are in the process of implementing those recommendations. EKPC also states it will follow the recommendations in the Management Audit report and provide proof of that compliance to the Commission and the AG.

10-Minute Interruptible Credit. EKPC proposed no change in the $5.60/kW 10-minute interruptible credit for Gallatin. Gallatin had argued this credit should be increased to $6.22/kW to reflect the cost of reserve margins avoided by EKPC due to Gallatin interruptions. In the Settlement Agreement, EKPC, the AG, and Gallatin agreed to raise the 10-minute interruptible credit to $6.22/kW and that the credit should remain fixed for a period of three years from the effective date of the rates in this case. It was also agreed that EKPC would absorb the revenue loss created by the increase in the credit rather than make up the revenue loss from other rate classes. If the Settlement Agreement is approved by the Commission, the 10-minute interruptible credit would not be an issue to address in the 2012 base rate case filed in conjunction with the over-earnings mechanism.

Special Contracts. Gallatin had noted in its direct testimony that the increase determined for Gallatin by EKPC was larger than the increase proposed in the flow-through case filed by Owen Electric Cooperative ("Owen") for Gallatin.[11] To avoid having other Owen customers pay part of Gallatin's wholesale rate increase, the Settlement Agreement provides that the increase determined for Gallatin under the terms of this agreement should be the amount passed through by Owen to Gallatin. EKPC, the AG, and Gallatin recommend that the Commission find this approach is consistent with the provisions of KRS 278.455(3) and recommend the Commission further find this approach is appropriate to other customers on tariff rate Schedule G.

Spurlock 1 Outage. EKPC had proposed that the remaining unamortized costs of the Spurlock 1 outage be amortized over two years while Gallatin had proposed three years. The Settlement Agreement provides that the unamortized costs will be amortized over three years.

REVENUE INCREASE

As noted previously, EKPC and Gallatin have agreed and stipulated that an increase in revenues of $43.0 million is fair, just, and reasonable. This is the only provision in the Settlement Agreement with which the AG does not agree. In reaching the agreed to revenue increase, EKPC and Gallatin considered the significant impacts the 2010 Load Forecast would have on EKPC's billing determinants and revenues.

When EKPC filed its application on May 27, 2010, it proposed an increase in its base rate revenues of approximately $49.4 million utilizing a forecasted test period. EKPC filed its application in full compliance and conformity with the statutes and regulations applicable when utilizing a forecasted test period. When EKPC became aware of the impacts of the 2010 Load Forecast on its rate application, it did not file a revision to its forecasted test period to reflect the

[11] Direct Testimony and Exhibits of Stephen J. Baron, page 24 and Case No. 2010-00179, Owen Electric Cooperative, Inc. Pass-Through of East Kentucky Power Cooperative, Inc. Wholesale Rate Adjustment, Direct Testimony and Exhibits of Stephen J. Baron, pages 4-8.

2010 Load Forecast because such a change was not contemplated by regulation.[12] However, EKPC believed it was obligated to make the parties and the Commission aware of the impacts the 2010 Load Forecast would have on its application as soon as that forecast was approved.

As noted previously, the billing determinants based upon the 2010 Load Forecast would generate approximately $140.0 million less in annual revenue than the levels originally indicated in the application. In response to a post-hearing data request, EKPC provided calculations showing that had it prepared its application using the 2010 Load Forecast, it would have sought an increase in revenues of $75.7 million instead of $49.4 million.[13] However, it should be noted that at no time during this proceeding has EKPC amended its request for a revenue increase of $49.4 million. While the stipulated increase in revenues of $43.0 million is lower than the $49.4 million originally requested, EKPC believes the stipulated increase is reasonable as it takes into consideration the current unprecedented economic circumstances reflected in the 2010 Load Forecast.[14]

EKPC anticipates the AG may object to the calculations showing a possible revenue increase of $75.7 million on the grounds that he has not been afforded the opportunity to conduct discovery on the calculations. If the AG does raise this challenge, EKPC requests that the Commission take into consideration two facts. First, the calculation of the $75.7 million increase has been provided as information that reflects current economic conditions, not as an adjustment or revision to the revenue request supported by EKPC. Second, the AG will be presenting for the first time his recommendations on this case in his post-hearing brief. The AG has not

[12] The impact of the 2010 Load Forecast may not reflect a correction of mathematical errors or reflect statutory or regulatory enactments that could not, with reasonable diligence, have been included in the forecast on the date it was filed. See 807 KAR 5:001, Section 10(8)(d).
[13] Gallatin's Data Request from Hearing held on December 9, 2010, filed December 13, 2010, Item 7, page 4 of 12.
[14] The Commission has in a previous forecasted test period application considered the current economic conditions when evaluating the reasonableness of a stipulation; see Case No. 1994-00197, Adjustment of Rates of Kentucky-American Water Company, final Order dated January 25, 1995, pages 2 and 3.

prefiled testimony nor sponsored witnesses supporting his proposed level of revenues. Consequently, EKPC and the Commission have not had the opportunity to conduct discovery on the AG's recommendations.

During his cross-examination of EKPC's witnesses, the AG asked whether the data contained in the 2010 Load Forecast was "known, measurable, and certain."[15] EKPC respectfully submits that the "known and measurable" standard is applicable in a base rate case utilizing a historic test period. EKPC's rate case was filed utilizing the forecasted test period. When a forward-looking test period approach is used, the focus is on determining the reasonableness of the utility's budgeting and other processes used to arrive at the forward-looking test period balances.[16] EKPC observes that to date the AG has not challenged the budgeting or other processes used to arrive at the balances presented in its May 27, 2010 application. EKPC also notes that the Commission Staff's report on EKPC's 2009 Integrated Resource Plan commented that EKPC's current forecasting methodology was consistent with the methodology used in previous plans and provided a thorough and well-reasoned overall approach to forecasting EKPC's long-term resource needs.[17] At the public hearing, EKPC testified that the 2010 Load Forecast utilized the same forecasting methodology as was used for the 2008 Load Forecast.[18]

EKPC believes the following issues relating to the determination of the revenue increase will be raised by the AG in his post-hearing brief.

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[15] December 9, 2010 Video Transcript, 11:04:00 am and 1:37:00 pm.
[16] See Case No. 2005-00042, An Adjustment of the Gas Rates of The Union Light, Heat and Power Company, final Order dated December 22, 2005, page 4.
[17] Case No. 2009-00106, 2009 Integrated Resource Plan of East Kentucky Power Cooperative, Inc., Commission Staff Report issued December 2, 2010, page 18.
[18] December 9, 2010 Video Transcript, 3:00:40 pm. The 2008 Load Forecast was reviewed in the 2009 Integrated Resource Plan.

TIER. EKPC based its requested increase in revenues of approximately $49.4 million on a 1.50 TIER. EKPC supported the use of the 1.50 TIER through testimony filed with the Application. To date, no party has questioned the reasonableness of using a 1.50 TIER. EKPC also notes that while the Settlement Agreement does not specify a 1.50 TIER, that TIER level is used in the over-earnings mechanism, a provision of the Settlement Agreement to which the AG does agree. Also, EKPC expects to apply a 1.5 TIER to the $6 million of Smith 1 interest expense contained in base rates when the amortization of the regulatory asset is recovered.

Employee Wages and Salaries. During the public hearing the AG introduced AG Exhibit 1, an August 3, 2010 press release from Mercer which summarizes expected pay raises for 2011. The AG noted that the press release showed energy utilities providing base pay increases in 2010 of 2.9 percent and projected base pay increases for 2011 of 3.0 percent. While EKPC does not question the accuracy of the information summarized by Mercer, it does question the relevance of this particular exhibit. The information in the press release appears to reflect national averages. The press release does not define what companies are included in the energy utilities category and it is not apparent from the text that cooperatives are included in the summary results. There is no distinction of whether union employees are included or excluded in the summary results. Lastly, the AG provided no witness to sponsor or support this exhibit. Due to these factors, EKPC believes AG Exhibit 1 has little relevance when determining the reasonable level of wages and salaries that should be included in EKPC's forecasted test period.

Forced Outage Expense. EKPC included in its forecasted test period $10,000,000 for expenses associated with forced outages that are not recoverable through the fuel adjustment clause. At the public hearing, the AG questioned the reasonableness of the budgeted expense due to the fact that EKPC had purchased a forced outage insurance policy. In response to a post-hearing data request, EKPC provided the declaration sheet for the forced outage insurance policy.[19] The policy carries a term deductible amount of $1,000,000 and an aggregate capacity deductible of 100 MW. These deductibles translate into forced outage expenses that EKPC will not recover under the insurance policy.[20] While the existence of the forced outage insurance policy provides protection to EKPC against a significant forced outage, it does not cover or offset all expenses associated with forced outages. EKPC believes the amount it included in its forecasted test period is reasonable in light its previous experience with forced outage expenses and the limitations contained in the forced outage insurance policy.

Smith Unit 1 Interest Expense. When the May 27, 2010 application was filed, EKPC was still planning on constructing Smith Unit 1 and it included the interest expense on $175,000,000 in debt associated with the long-term financing for the project. Since the filing of the Application, EKPC has decided to cancel the project and seek the establishment of a regulatory asset for the cost of Smith Unit 1, net of mitigation efforts. EKPC anticipates that the AG will recommend that the interest expense in the forecasted test period be reduced to a level based on the current investment in Smith Unit 1 and an appropriate interest rate.

While EKPC understands the logic in such an adjustment, it asks the Commission not to consider such an adjustment in isolation. One of the factors that contributed to the decision to cancel Smith Unit 1 was the 2010 Load Forecast. And as with the 2010 Load Forecast, pursuant to 807 KAR 5:001, Section 10(8)(d), EKPC could not have filed revisions to its forecasted test period to reflect the cancellation of Smith Unit 1. The decision to cancel Smith Unit 1 and the recognition of the impacts of the 2010 Load Forecast on billing determinants and revenues

[19] AG's Data Request from Hearing held on December 9, 2010, filed December 13, 2010, Item 2, pages 2 through 4 of 4.

[20] The policy also contains an event duration limit of 2,160 consecutive hours (90 days) and a Power Price Index limit of $100/MWH (if the Power Price Index for any Delivery Day exceeds $100/MWH, the price is limited to $100/MWH).

reflects the current economic conditions faced by EKPC today. EKPC is not arguing for an inflated level of interest expense to be included in the determination of its revenue requirement. EKPC is suggesting that any adjustment to its interest expense should be compared against the calculation of the $75.7 million increase that would have resulted had the Application been based on the 2010 Load Forecast. If this interest expense adjustment is made against the originally requested increase of $49.4 million, it would reflect the recognition of one portion of the 2010 Load Forecast's impact while selectively ignoring the rest, which would not be reasonable.

SUMMARY

EKPC has filed this base rate case recognizing the need to improve its financial ratios, meet its loan covenants, and improve its equity position. The filing of this Application is also consistent with the recommendations contained in the Management Audit report. While base rate cases utilizing a forecasted test period present unique challenges, this Application has been complicated by the results of the 2010 Load Forecast, which was finalized and approved after the filing of the Application. The impacts of the 2010 Load Forecast on EKPC's billing determinants and revenues are such that the originally proposed rates designed to generate a revenue increase of $49.4 million would fall far short of that level. Even if the Commission granted the full $49.4 million increase and the originally proposed rates, given the impact of the 2010 Load Forecast on the billing determinants, EKPC would have to begin preparations for a new base rate case almost immediately.

EKPC believes it had the obligation to and has made the AG, Gallatin, and the Commission aware of the impacts of the 2010 Load Forecast. In negotiations with the AG and Gallatin, EKPC reached an agreement on all issues in this base rate case, except for the revenue increase. The AG could not agree to the revenue increase, which considers the impact of the

2010 Load Forecast, but he agrees with all other provisions of the Settlement Agreement, including the use of the billing determinants resulting from the 2010 Load Forecast. EKPC and Gallatin have agreed that a $43.0 million revenue increase is fair, just, and reasonable, while the AG will present his recommendation concerning the revenue increase in his post-hearing brief.

EKPC believes that the Settlement Agreement, taken as a whole, represents a reasonable resolution of all the issues in this base rate case. The Settlement Agreement represents a balancing of the interests and the positions of the parties and will allow EKPC to move forward. An important protection contained in the Settlement Agreement is the provision of an over-earnings mechanism, which in the event economic conditions improve more rapidly than is expected, EKPC would refund earnings in excess of a 1.50 TIER. In anticipation that the Commission will approve the establishment of the Smith Unit 1 regulatory asset, the Settlement Agreement establishes the level of interest expense plus TIER that is considered included in the $43.0 million revenue increase. This provision will prevent the double-recovery of the interest expense associated with the regulatory asset. While the Settlement Agreement suggests a specific means of handling the interest expense when the regulatory asset amortization is established, EKPC, the AG, and Gallatin recognize this is only one way the issue can be addressed and did not intend to limit the Commission's decision concerning the appropriate amortization of the requested regulatory asset.

Therefore, EKPC and Gallatin respectfully request that the Commission approve the Settlement Agreement *in toto*.

This 17th day of December, 2010.

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