

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF:

APPLICATION OF SOUTH KENTUCKY RURAL)	
ELECTRIC COOPERATIVE CORPORATION)	CASE NO.
FOR APPROVAL OF MASTER POWER PURCHASE)	2018-00050
AND SALE AGREEMENT AND TRANSACTIONS)	
THEREUNDER)	

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 a post-hearing data request from the Commission Staff for information in the above-captioned proceeding, respectfully states as follows:

Following the hearing of the above referenced case, the Commission Staff, on May 21, 2018, filed its First Post-Hearing Request for Information to EKPC. The second information request in that filing included “a copy of EKPC’s most recent policies regarding its Board of Directors, including, but not limited to, policies that pertain to potential conflicts of interest”. EKPC’s response to this second information request is the subject of the instant Motion.

The entire library of EKPC’s Board policies is being submitted herein. This library includes: (1) the 100 level series that address Director duties, responsibilities, standards of conduct, and professional development; the establishment of Board Committees (Executive,

Governance, Board Risk Oversight, Audit, and Strategic Issues) and sets forth the charters for those committees. Also included in this series of policies are those that address conflicts of interest, whistleblower, anti-retaliation, and fraud risk assessment and deterrence; (2) the 200 level series that address financial transactions and procurement authorities, internal auditing, strategic financial management, credit policy, and investments; (3) the 300 level series that address ownership of facilities, transmission facilities and load management policy; (4) the 400 level series that address procurement procedures, the transaction authority limits for energy and energy related commodities and transportation and EKPC's hedging policy; (5) the 500 level series that set forth required employment practices; and (6) the remaining, miscellaneous, 600 through 900 series. Also included is EKPC's Code of Conduct. In addition to the one Board policy that specifically addresses conflict of interest (Board Policy 116) and the By-Law Section that does likewise, Section 4.02 (which is not subject to this Motion), other Board policies and By-Law sections produced herein identify and convey the import of fiduciary duties and the avoidance of conflicts of interest throughout.

The information and documents submitted by EKPC in response to the Commission Staff's request for EKPC's Board policies 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."

The Confidential Information contains extensive information that describes the internal delegations of authority, procurement strategies, hedging policies, and internal governance of EKPC. This information is commercially sensitive and proprietary. More specifically, the Confidential Information includes:

- a. Delegations of authority to bind EKPC with regard to various transactions;

- b. The means and methods of transactional processes;
- c. Procurement strategies;
- d. Governance records and policies;
- e. Hedging policies;
- f. Credit policies and investments.

The Confidential Information is not publicly available and if disclosed, could give potential vendors and competitors a competitive advantage in the course of ongoing and future negotiations to procure commodities, goods, and services. These market advantages would likely translate into higher costs for EKPC and, by extension, detrimentally higher rates for EKPC's owner-members. Thus, disclosure of the Confidential Information would be highly prejudicial to EKPC, EKPC's owner-members and those members' members.

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). The inner workings of EKPC are clearly set forth in its Board policies. 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 similar responses in a fuel adjustment clause proceeding.¹

¹ *See In the Matter of an Examination of the Application of the Fuel Adjustment Clause of East Kentucky Power Cooperative, Inc. from August 8, 2017 Through October 31, 2016*, Order, Case No. 2017-00002 (Ky. P.S.C., August 18, 2017). A copy of this Order is attached hereto as Exhibit 1.

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 Request No. 2, which includes redacted copies of such information. Due to the pervasive nature of the confidential and proprietary information included in the Confidential Information, confidential treatment is sought for the entirety of the Confidential Information.

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.

This 24th day of May, 2018.

Respectfully submitted,



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CERTIFICATE OF SERVICE

This is to certify that foregoing electronic filing is a true and accurate copy of the document being filed in paper medium; that the electronic filing was transmitted to the Commission on May 24, 2018; that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding; and that a copy of the filing in paper medium is being hand delivered to the Commission on this the 24th day of May.

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

In the Matter of:

APPLICATION OF SOUTH KENTUCKY RURAL)	
ELECTRIC COOPERATIVE CORPORATION)	CASE NO.
FOR APPROVAL OF MASTER POWER PURCHASE)	2018-00050
AND SALE AGREEMENT AND TRANSACTIONS)	
THEREUNDER)	

**RESPONSE OF EAST KENTUCKY POWER COOPERATIVE, INC.
TO COMMISSION STAFF'S FIRST POST-HEARING REQUEST FOR
INFORMATION DATED MAY 21, 2018**

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF SOUTH KENTUCKY RURAL)
ELECTRIC COOPERATIVE CORPORATION) CASE NO.
FOR APPROVAL OF MASTER POWER PURCHASE) 2018-00050
AND SALE AGREEMENT AND TRANSACTIONS)
THEREUNDER)

CERTIFICATE

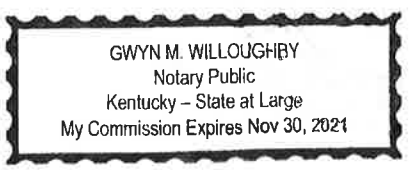
STATE OF KENTUCKY)
)
COUNTY OF CLARK)

Mike McNalley, being duly sworn, states that he has supervised the preparation of the responses of East Kentucky Power Cooperative, Inc. to the Commission Staff's First Post Hearing Request for Information in the above-referenced case dated May 21, 2018, 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.



Subscribed and sworn before me on this 24th day of May 2018.

 #590567
Notary Public



**EAST KENTUCKY POWER COOPERATIVE, INC.
PSC CASE NO. 2018-00050
RESPONSE TO POST HEARING DATA REQUEST**

**COMMISSION STAFF'S FIRST POST-HEARING REQUEST FOR
INFORMATION DATED 05/21/18**

REQUEST 1

RESPONSIBLE PARTY: Counsel

Request 1. Provide a copy of EKPC's most recent By-Laws.

Response 1. EKPC's most recent By-Laws are provided on pages 2 through 36
of this response.

EAST KENTUCKY POWER COOPERATIVE, INC. (“Corporation”)

BYLAWS

ARTICLE I

MEMBERS AND MEMBERSHIP

Section 1.01. Requirements for Membership. Any natural person, firm, corporation or body politic so authorized by Chapter 279 of the Kentucky Revised Statutes shall be eligible for membership in the Corporation by:

- (a) executing a written application for membership therein;
- (b) paying a membership fee as hereinafter specified;
- (c) agreeing to comply with and be bound by the Articles of Incorporation of the Corporation and these Bylaws and any amendments thereto;
- (d) agreeing to use electric energy furnished by the Corporation when such electric energy shall be available through its facilities;

provided, however, that no such person, firm, corporation or body politic shall become a member of this Corporation unless and until there has been an acceptance for said membership by the Board of Directors or by the members of the Corporation. At any meeting of the members, all applications for membership received more than ninety (90) days prior to such meeting and which have not been accepted by the Board of Directors shall be submitted by the Board of Directors to such meeting of the members, and subject to compliance by the applicant with the conditions set forth in subdivisions (a), (b), (c) and (d) of this section, such application for membership may be accepted by a vote of the members at such meeting.

Section 1.02. Membership Fee. The membership fee shall be One Hundred Dollars (\$100.00).

Section 1.03. Transfer of Membership. Membership in the Corporation and certificates representing such membership shall not be transferred, except that membership may be vested in a corporate successor to a member corporation provided the successor is eligible to membership and pays such membership fee, if any, as shall be determined by resolution of the Board of Directors. Upon cessation of existence, expulsion or withdrawal of a member, the membership of such member shall terminate, and the certificate of membership of such member shall be surrendered forthwith to the Corporation.

Section 1.04. Termination of Membership. The Board of Directors of the Corporation may, by the affirmative vote of not less than two-thirds (2/3) of the Board of Directors, expel any member who shall have violated or refused to comply with any of the provisions of the Articles of Incorporation, or Bylaws of the Corporation. The Board of Directors may at any regular or special meeting thereof, determine by majority vote that if any member has ceased to satisfy the membership requirements as set forth in Chapter 279 of the Kentucky Revised Statutes and Section 1.01 herein, it has withdrawn from membership in the Corporation. Any member so expelled or determined to have withdrawn from membership may reapply pursuant to Section 1.01 and be reinstated as a member by a vote of the members at any annual or special meeting of the members. The action of the members with respect to any such reinstatement shall be final.

Section 1.05. Effect of Termination. Termination of membership in any manner shall not release the member from the obligations or liabilities of such member to the Corporation.

Section 1.06. Purchase of Electric Energy. Each member shall purchase electric energy from the Corporation and shall pay therefor monthly at rates which shall from time to time be fixed by the Board of Directors. It is expressly understood that amounts paid for electric energy in excess of the cost of service are furnished by members as capital and each member shall be credited

with the capital so furnished as provided as these Bylaws. Each member shall pay all amounts owed by it to the Corporation as and when the same shall become due and payable.

Section 1.07. Refund of Membership Fee. In case of withdrawal or termination of membership in any manner, the Corporation shall repay to the member the amount of the membership fee paid in cash by him, provided, however, that the Corporation shall deduct from the amount of the membership fee the amount of any debts or obligations owing from the member to the Corporation.

ARTICLE II

RIGHTS AND LIABILITIES OF MEMBERS

Section 2.01. Property Interest of Members. The assets of the Corporation in the event of dissolution shall be applied and distributed as follows:

- (1) All liabilities and obligations of the Corporation shall be paid, satisfied and discharged, or adequate provision shall be made therefore;
- (2) Assets held by the Corporation upon condition requiring return, transfer or conveyance, which condition occurs by reason of the dissolution, shall be returned, transferred or conveyed in accordance with such requirements;
- (3) Outstanding capital credits shall be retired as provided in Section 9.02; and
- (4) The remaining property and assets of the Corporation shall be distributed among the members and former members in the proportion which the aggregate contribution to patronage of each bears to the total patronage of all such members unless otherwise provided by law.

Section 2.02. Non-liability for Debts of the Corporation. The private property of the members shall be exempt from execution or other liability from the debts of the Corporation and no member shall be liable for any debts or liabilities of the Corporation.

ARTICLE III

MEETING OF MEMBERS

Section 3.01. Annual Meeting. For the purposes of electing Directors to the Board of the Corporation, hearing and approving reports covering the previous fiscal year, and transacting such other business as may properly come before the meeting, the annual meeting of the members shall be held during the month of June each year, on a specific date and at such location as the Board of Directors may from year to year fix: PROVIDED, that for good cause the Board may fix a different date for such annual meeting not more than sixty (60) days prior or subsequent to the date established for such meeting in this Section. It shall be the responsibility of the Board of Directors to make adequate plans and preparations for, and to encourage member attendance at, the annual meeting. Failure to hold the annual meeting at the designated time and place shall not constitute a forfeiture or dissolution of the Corporation.

Section 3.02. Special Meetings. Special meetings of the members may be called by the Chairman of the Board, by the Board of Directors, or upon the written request signed by any three (3) Directors or by at least thirty percent (30%) of all the members, and it shall thereupon be the duty of the Secretary to cause notice of such meeting to be given as hereinafter provided in Section 3.03. Special meetings of the members may be held at any place within the Commonwealth of Kentucky, on such date, and beginning at such time as shall have been designated in the notice of the special meeting.

Section 3.03. Notice of Member Meetings. Notice of a meeting of members stating the place, day and hour of the meeting and, in case of a special meeting, or of an annual meeting at which business requiring special notice is to be transacted, the purpose or purposes of the meeting, shall be given to each member not less than ten days nor more than thirty days before the date of the

meeting. Notice shall be provided electronically, personally, by mail, or as otherwise permitted by law, by or at the direction of the Secretary or, upon the Secretary's default in this duty, by the person or persons calling it in the case of a special meeting or by the Chairman of the Board, or any other Director in the case of an annual or special meeting which time, place and date have actually been fixed by the Chairman of the Board or by the Board of Directors. Except by a vote of the majority of all members, which shall also constitute a quorum, no matter, the carrying of which, as provided by law or by these Bylaws, requires the affirmative votes of at least a majority of the Corporation's members shall be acted upon at any meeting of the members unless notice of such matter shall have been contained in the notice of the meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the member at the member's address as it appears on the Corporation's records, with postage thereon prepaid and postmarked at least ten (10) days before the meeting date. The incidental failure of any member to receive such notice shall not invalidate any action which may be taken by the members at any such meeting, and the attendance of a member at any meeting of the members shall constitute a waiver of notice of such meeting unless such attendance shall be for the express purpose of objecting to the transaction of any business on the ground that the meeting shall not have been lawfully called, convened, or noticed.

Section 3.04. Quorum. The presence of a majority of all the members of the Corporation shall constitute a quorum for the transaction of business at all meetings of the members. If less than a quorum is present at any meeting, a majority of the said members present may adjourn the meeting to another time, date and place: PROVIDED, that the Secretary shall notify any absent members of the new time, date and place of such adjourned meeting by providing notice thereof as provided for in Section 3.03. At all meetings of the members, whether a quorum is present or

not, the Secretary shall annex to the meeting minutes, or incorporate therein by reference, a list of those who were present.

Section 3.05. Corporate Representatives. At all meetings of the members, each corporate member shall be entitled to have a representative and an alternate representative present. Each corporate member shall file with the Secretary of the Corporation an instrument in writing executed by an officer or the manager of such member, stating the names of its representative and alternate representative and the dates of expiration of their respective terms as directors of such member, and certify that such representative and alternate representative have been appointed in accordance with a resolution duly adopted by each corporate member's board of directors. Each corporate member may at any time by resolution of its board of directors terminate the appointment of its representative or alternate, and it shall thereupon notify the Corporation of such action by notice in writing executed by an officer or the manager of such member. The representative and alternate representative of a corporate member must be members of its board of directors thereof.

Section 3.06. Voting. Each member shall be entitled to only one vote upon each matter submitted to a vote at a meeting of the members. At all meetings of the members at which a quorum is present, all questions shall be decided by a vote of the majority of the members represented except as otherwise provided by law, the Articles of Incorporation of the Corporation or its Bylaws. Voting by proxy or by mail is prohibited.

The vote of each corporate member shall be cast only by a duly authorized representative. If such representative is not present at any meeting, the vote of such member shall be cast by a duly authorized alternate representative. The representative or alternate of each corporate member shall be deemed authorized to vote as the representative or alternate sees fit on all matters

submitted to a vote of the members of the Corporation unless such corporate member shall, by notice in writing executed by its president and secretary under its corporate seal pursuant to a resolution duly adopted by its board of directors, specifically limit the voting power of such representative or alternate. Nothing contained in this section shall be construed to grant to any member more than one vote. .

Section 3.07. Agenda. The agenda at the annual meeting of the members, and so far as possible at all other meetings of the members, shall be essentially as follows:

1. Ascertaining that a quorum is present.
2. Certification of the notice of the meeting and proof of the due publications or mailing thereof, or the waiver or waivers of notice of the meeting, as the case may be.
3. Approval of minutes of previous meetings of the members and the taking of necessary action thereon.
4. Presentation and consideration of, and acting upon, reports of Officers, Directors and Board Committees of the Corporation.
5. Election of Directors of the Corporation.
6. Unfinished business.
7. New business.
8. Adjournment.

Notwithstanding the foregoing, the Board of Directors of the Corporation or the members themselves may from time to time establish a different agenda for the purpose of assuring the earlier consideration of, and action upon, any item of business, the transaction of which is necessary or desirable in advance of any other item of business: PROVIDED, that no business other than adjournment of the meeting to another time and place may be transacted until and unless the existence of a quorum is first established.

ARTICLE IV

DIRECTORS

Section 4.01. Number and General Powers. The business and affairs of the Corporation shall be conducted by a Board of not less than five (5) nor more than twenty (20) Directors which shall exercise all of the powers of the Corporation except those which, by law, the Articles of Incorporation of the Corporation, or by these Bylaws, are conferred upon or reserved to the members or officers of the Corporation.

Section 4.02. Qualifications. Except as provided in Section 4.025 relating to mergers or consolidations of corporate members, each corporate member shall be entitled to one representative on the Board of Directors of the Corporation subject to election by the members as set out in Section 4.03. In order to be eligible to become or remain a Director, the following qualifications shall be met:

- (a) **General Director Qualifications.** To become and remain a Director of the Corporation, a person must comply with the following general qualifications (“General Director Qualifications”):
- (1) be an individual;
 - (2) have the capacity to enter into legally binding contracts;
 - (3) be a graduate from high school, college or earn an equivalent degree or certification;
 - (4) while a Director, and prior to becoming a Director, not be convicted of, or plead guilty to, a felony;
 - (5) while a Director, and prior to becoming a Director, not have a final judgment entered against him involving civil fraud, ethical violations, discrimination and/or acts of harassment;
 - (6) while a Director, and seven years immediately before becoming a Director, not be a debtor in a federal bankruptcy proceeding or a similar proceeding under applicable state law such as

insolvency, liquidation, receivership reorganization, or assignment for the benefit of creditors;

- (7) while a Director, and seven years immediately before becoming a Director, been a party to a foreclosure or other proceeding (judicial or non-judicial), which proceeding is or was instituted because of the Director's default on indebtedness;
- (8) except as otherwise provided by the Board of Directors for good cause shown, receive a Credentialed Cooperative Director designation, Director's Certificate, or similar designation or certification from the National Rural Electric Cooperative Association within 18 months of becoming an EKPC Director and after becoming a Director, participate in and complete required director training as established by the Board of Directors;
- (9) except as otherwise provided by the Board of Directors for good cause shown, attend at least ninety percent (90%) of all properly noticed Regular, Special Board Meetings, and Board Committee Meetings during each twelve month period (12) rolling period;
- (10) except as otherwise provided by the Board of Directors for good cause shown, not miss more than two (2) consecutive properly noticed Regular Board Meetings;
- (11) while a Director, not breach the Director's fiduciary duties to the Corporation, violate confidences, or engage in illegal activity under the color of authority as a Director; and
- (12) comply with any other reasonable qualifications determined, made, adopted, amended, and/or promulgated by the Board of Directors, not inconsistent with law, the Articles of Incorporation, or these By-Laws.

(b) Membership Director Qualifications: To become or remain a Director, a person must comply with the following membership qualifications ("Membership Director Qualifications"):

- (1) Each corporate member shall be entitled to one representative on the Board of Directors. The Director must be a qualified member¹ of the corporate member; and

¹ For purposes of this Bylaw, "qualified member" is defined as an individual whose primary residence is located within the service territory of that corporate member for which he is a representative on the Board of Directors and who is not an employee of that corporate member.

- (2) Candidates to represent corporate members shall be nominated by the corporate members for the office of Director of the Corporation upon notice of an election from the Secretary of the Corporation addressed to the corporate member; nominations shall include required documentation that candidate meets all qualifications herein and shall be evidenced by the certificate of any officer of the corporate member.
- (c) Conflict of Interest Director Qualifications: To become or remain a Director, a person must comply with the following conflict of interest qualifications (“Conflict of Interest Director Qualifications”):
- (1) prior to becoming a Director, and annually thereafter, complete and sign a conflict of interest certification and disclosure form approved by the Board of Directors;
 - (2) while a Director and during the three years immediately prior to becoming a Director, not be an employee of the Corporation or an employee of an entity controlled by the Corporation or in which the Corporation owns a majority interest (“Corporation Subsidiary”);
 - (3) while a Director and during the one year immediately prior to becoming a Director, not enhance the Director’s financial interest or have a Related Individual² who enhances the Director’s financial interest by competing with the Corporation or a Corporation Subsidiary;
 - (4) while a Director, not be a Related Individual of a Corporation Official³;
 - (5) while a Director, not be employed by another Director or be employed by, or receive more than 20 percent of annual gross income from, an entity in which another Director controls, owns more than 20 percent, or is a director or officer; and
 - (6) while a Director and during the one year immediately prior to becoming a Director, not be employed by, control, own more than 10 percent of, serve as a director or officer of, or receive more than 20 percent of annual gross income from an entity that: (A)

² Related Individual means an individual: (1) Who is the spouse of an Official (as defined in footnote 3); (2) Who is, or is the spouse of, a child, stepchild, grandchild, parent, step parent, grandparent, sibling, step sibling, half sibling, aunt, uncle, niece, or nephew of an Official or the Official’s spouse; (3) Residing with an Official; (4) For whom an Official is a trustee, guardian, personal representative, or similar fiduciary; or (5) Employing an Official.

³ Official means a Corporation Director, Corporation Officer, or Corporation Key Employee (as defined by policy).

enhances the entity's financial interest by competing with the Corporation or a Corporation Subsidiary; or (B) receives more than 20 percent of its annual gross income directly or indirectly from the Corporation or a Corporation Subsidiary.

(d) Director Disqualification. After being elected or appointed, if a Director does not comply with all General Director Qualifications, Membership Director Qualifications and Conflict of Interest Director Qualifications (collectively, "Director Qualifications"), then, except as otherwise provided by the Board for good cause, the Board shall disqualify the Director as soon as:

- (1) the Board notifies the Director in writing or electronically of the basis for, and provides the Director an opportunity to comment within 30 days regarding, the Board's disqualification; and
- (2) within 60 days after the Board notifies the Director of the disqualification, the Director neither complies with nor meets the Director Qualification.

If a majority of Directors authorized by these Bylaws complies with the Director Qualifications and approves or disapproves a Board action, then the failure of a Director to comply with the Director Qualifications does not affect the Board action. Therefore, nothing in this section shall be construed to affect in any manner whatsoever the validity of any action taken at a previous meeting of the Board of Directors.

Section 4.025. Transition Period for Merger or Consolidation. Notwithstanding the provisions of Section 4.02 above, in the event of a merger, consolidation or other business combination (hereinafter collectively referred to as "consolidation") of two or more corporate members, the Director representing each consolidating corporate member at the time of consolidation, may, at the option of the new or successor corporate member, continue to represent the new or successor corporate member as a Director (hereinafter referred to as a "Transitional Director") until such time as the Director ceases to be qualified pursuant to these Bylaws, or otherwise ceases to be a Director. The transition period created hereby shall continue for so long as the new or successor corporate member is represented by two or more Transitional

Directors. These Transitional Directors shall be considered Directors in all respects with the rights and privileges of all other Directors, except that the new or successor corporate member shall designate only one of these Transitional Directors as its voting Director. If the voting Director is absent, the remaining Transitional Director shall cast the vote of the new or successor corporate member. If there is more than one remaining Transitional Director, the new or successor corporate member shall designate the order in which the remaining Transitional Directors shall be authorized to cast the vote of the new or successor corporate member. At the end of the transition period, the new or successor corporate member shall be entitled to only one Director as set forth in Section 4.02 above.

Section 4.03. Election and Tenure. At each annual meeting of the members, Directors shall be elected, by the members, to serve until the next annual meeting of the members or until their successors shall have been elected and shall have qualified.

Section 4.04. Vacancies. Subject to the provisions of Sections 4.05 and 4.06 of these Bylaws, any vacancy occurring in the Board of Directors, whether by death, removal, resignation or disqualification of a Director, or otherwise, shall be filled by the affirmative vote of a majority of the remaining Directors of the Corporation. Nominations for filling any vacancy shall be made and certified as set forth in §4.02 of these Bylaws. Any Director thus elected shall serve until the next annual meeting of the members or until the Director's successor shall have been elected and shall have qualified. In the case of such a vacancy, the corporate member shall not be represented on the Board until said vacancy is filled by the Board of Directors as provided hereinabove.

Section 4.05. Removal of Directors by Members. Any member of the Corporation may bring a claim pursuant to Section 4.02 herein, or otherwise, against a Director by filing it in writing

with the Secretary of the Corporation, together with a petition signed by thirty percent (30%) of the members, requesting the removal of the Director in question. The removal shall be voted upon at the next annual or special meeting of the members. A majority vote of the members of the Corporation shall be required to remove a Director. The Director against whom such claim has been brought shall be informed in writing of the claim thirty days prior to an annual or special meeting and shall have an opportunity at that meeting to be heard in person or by counsel and to present evidence; and the person or persons bringing the claim against the Director shall have the same opportunity.

Section 4.06. Rules, Regulations, Rate Schedules and Contracts. The Board of Directors shall have power to make, adopt, amend and promulgate rules and regulations governing the procedure of the Board and the operations of the Corporation, and shall manage and conduct the business and affairs of the Corporation.

Section 4.07. Compensation. Directors as such shall not receive any salary for their services; provided, however, that by resolution of the Board of Directors or pursuant to Board policy, Directors may receive such payments (including, but not limited to, retainers, per diem payments, and expense reimbursement) as may be specified in such resolution or Board policy. No Director shall receive compensation for serving the Corporation in any capacity other than as a Director, unless said compensation is either specifically authorized by a majority of the members, or certified and approved by a majority vote of the non-affected Directors.

Section 4.08. Committees. The Board of Directors shall have the right and power to designate from among the Corporation's Directors, Officers, agents, or employees; or directors, officers, agents or employees of the Corporation's members, such committees as it deems necessary. This

right and power may be delegated by the Board of Directors to the Chairman of the Board or the President and Chief Executive Officer (“President and CEO”).

Section 4.08.1. Executive Committee. The Board of Directors shall have an Executive Committee. The Executive Committee is a permanent committee of the Board and shall consist of the elected officers of the Board and the Chairperson of the Governance Committee. In the event of an emergency, the Executive Committee may exercise all Board authority regarding a matter as provided by law or these Bylaws. At the next Board Meeting following an exercise of Board authority, the Executive Committee must report to the Board regarding its exercise of Board authority. Unless otherwise stated in Board policies or charters, the Executive Committee shall appoint the Chairperson and respective committee members of each Board Committee. The Executive Committee shall also perform such other duties as may from time to time be delegated to it by the Board.

Section 4.09. Accounting System and Reports. The Board of Directors shall cause to be established and maintained a complete accounting system of the Corporation’s financial operations which, subject to applicable laws and rules and regulations of any regulatory body, shall conform to such accounting system as may from time to time be designated by the Administrator of the Rural Utilities Service of the United States of America or otherwise. The Board of Directors shall, after the close of each fiscal year, cause to be made a full, complete and independent audit of the Corporation’s financial accounts, books and records reflecting operations during, and as of the end of, such fiscal year. A detailed summary of such audit reports shall be submitted to the members at the ensuing annual meeting of the members.

Section 4.10. Indemnification of Directors, Officers, Employees, and Members of Board

Committees. Every present or past Director, Officer, employee of the Corporation, and member of a Board Committee of the Corporation shall be indemnified by the Corporation against all judgments, penalties, fines, settlements and reasonable expenses, including legal fees (collectively, “losses”), incurred by such person as a result of or in connection with any threatened, pending or completed civil, criminal, administrative or investigative proceeding (“proceeding”) to which such person may be made a party by reason of such person acting or having acted within the course and scope of such person’s official capacity as a Director, Officer, employee of the Corporation and member of a Board Committee of the Corporation or in any other capacity such person may hold at the request of the Corporation as its representative in any affiliated organization, subject to the following conditions:

- (1) Such Director, Officer, employee of the Corporation, and member of a Board Committee of the Corporation must have conducted themselves in good faith and, in the case of criminal matter, have had no reasonable cause to believe that their conduct was unlawful. When acting within the course and scope of their official capacity with the Corporation, such person must have honestly believed that his or her conduct was in the best interests of the Corporation, and when acting in any other capacity of an affiliated organization, have honestly believed that his or her conduct was at least not opposed to the best interests of the Corporation.
- (2) If the proceeding was brought by or on behalf of the Corporation, however, indemnification shall be made only with respect to reasonable expenses referenced above. No indemnification of any kind shall be made in any such proceeding in which the Director, officer, employee, or member of a Board Committee shall have been adjudged liable to the Corporation, except that no professional employee shall be liable to the Corporation for any losses occasioned by errors or omissions made in such person’s official capacity with the Corporation unless such losses were the result of such person’s gross negligence or willful misconduct.
- (3) In no event, however, will indemnification be made with respect to any described proceeding which charges or alleges improper personal benefit to a Director, officer, employee, or member of a Board Committee where

liability is imposed upon such person on the basis of the receipt of such improper personal benefit.

- (4) In order for any person to receive indemnification under this Bylaw, such person shall vigorously assert and pursue any and all defenses to those claims, charges or proceedings covered hereby which are reasonable and legally available and shall fully cooperate with the Corporation or any attorneys involved in the defense of any such claim, charges, or proceedings.

No indemnification shall be made in any specific instance until it has been determined by the Corporation that indemnification is permissible in that specific case under the standards set forth herein and that the expenses claimed are reasonable. These two determinations shall be made by a majority vote of at least a quorum of the Directors of the Corporation consisting solely of Directors who were not parties to the proceeding. If such a quorum cannot be obtained, a majority of at least a quorum of the Board, including Directors who are parties, shall designate a Board Committee which shall consist solely of three or more Directors who are not parties to the proceeding, and such Committee shall make said determinations by majority vote. If it is not possible to make said determinations by either of the above methods, then a special legal counsel selected by a majority vote of at least a quorum of the Board, including Directors who may be parties, shall make said determinations. However, in making such determinations the termination of any proceeding by judgment, order, settlement, conviction, or upon plea of nolo contendere or its equivalent shall not, in and of itself, be conclusive that the person did not meet the standards of conduct set forth in (1) through (4) above.

The reasonable expenses, as shall be determined above, that have been incurred by a Director, Officer, employee of the Corporation, and member of a Board Committee of the Corporation who has been made a party to a proceeding as defined herein may be paid or reimbursed in advance upon a majority vote of a quorum of the full Board of Directors, including those who

may be a party to the proceedings. Provided, however, that such Director, officer, employee, or member of a Board Committee shall have provided the Cooperative with a written affirmation under oath that such person in good faith believes that such person has met the standards of conduct contained herein and a written undertaking that such person shall repay any amounts advanced with interest accumulated at the legal rate if the Directors of the Corporation ultimately determine that such person has not met such standards of conduct. In addition to the indemnification provided herein, the President and CEO shall, as part of the ordinary course of business of the Corporation direct that insurance and/or self-funded liability protection shall be purchased or provided, to the extent reasonably practical, by the Corporation that would insure it, its Directors, officers, employees, or members of Board Committees against liabilities and reasonable expenses arising out of the performance of their duties for the Corporation.

ARTICLE V

MEETINGS OF DIRECTORS

Section 5.01. Regular Meetings. A regular meeting of the Board of Directors of the Corporation (hereinafter in this Bylaw “Board of Directors”) shall be held pursuant to this Bylaw, including immediately after, and at the same place as, the annual meeting of the members. Regular meetings of the Board of Directors shall also be held at such time, date and place as the Board of Directors may provide by resolution. Except when business to be transacted thereat shall require special notice, such regular meetings may be held without notice other than such resolution fixing the date, time and place thereof: PROVIDED, that any Director absent from any meeting of the Board at which such a resolution determines or makes any change in the date, time or place of a regular meeting shall be entitled to receive written notice of such determination or change at least five (5) days prior to the next meeting of the Board.

Section 5.02. Special Meetings. Special meetings of the Board of Directors may be called by the Chairman of the Board, by the Board of Directors, or any three (3) Directors and it shall thereupon be the duty of the Secretary to cause notice of such meeting to be given as hereinafter provided in Section 5.03. The Chairman of the Board of Directors, the Board of Directors or the three (3) Directors calling the special meeting of the Board of Directors shall fix the date, time place, and purpose of such meeting.

Section 5.03. Notice of Directors' Meeting. Notice of the date, time, place and purpose or purposes of any special meeting of the Board of Directors and, when the business to be transacted at said meeting shall require such, of any regular or annual meeting of the Board, shall be provided to each Director not less than five (5) days prior thereto electronically, personally, by mail, or as otherwise provided by law, by or at the direction of the Secretary or, upon the Secretary's default in this duty, by the individual(s) calling it in the case of a special meeting or by any Director in the case of a regular meeting which date, time and place have already been fixed by Board resolution. No matter which is not listed in the notice of a meeting as a purpose of such meeting, when required by these Bylaws, shall be acted upon at any regular or special meeting except at the unanimous consent of those Directors present. If mailed, such notice shall be deemed to be effective in accordance with law. The attendance of a Director, at any meeting of the Board, shall constitute a waiver of notice of such meeting unless such attendance shall be for the express purpose of objecting to the transaction of any business on the grounds that the meeting shall not have been lawfully called or conveyed.

Section 5.04. Quorum. The presence of a majority of the Directors in office shall constitute a quorum for the transaction of business at any meeting of the Board of Directors, held pursuant to Section 5.01, 5.02 and 5.03 herein: PROVIDED, that if less than a majority of the Directors are

present at said meeting, a majority of the Directors present may adjourn the meeting from time to time, but shall cause any absent Directors to be duly and timely notified of the date, time and place of such adjourned meeting.

Section 5.05. Manner of Acting. The act of the majority of the Directors present at a meeting held pursuant to Sections 5.01, 5.02 and 5.03 herein, at which a quorum is present, shall be the act of the Board of Directors, unless these Bylaws provide otherwise.

Section 5.06. Presence of Persons Other Than Directors. At all regular and special meetings of the Board of Directors, any individual member of the Corporation or the duly authorized representatives, alternate representatives, officers, or managers, of the corporate members of the Corporation shall be entitled to be present and, in the Chairman's discretion, have a voice in the proceedings, provided, however, that only the Directors of the Corporation shall be entitled to vote, as provided in these Bylaws.

5.06.1. Member System CEOs. The Corporation recognizes that the Chief Executive Officers of its member system cooperatives possess useful knowledge of electricity, energy, business, cooperative management, and related issues, and their input on these issues is, therefore, advantageous to the Corporation. Accordingly, the Corporation encourages and supports the CEOs of its member system cooperatives to attend meetings of the Corporation's Board of Directors for the purpose of offering input. To protect East Kentucky Power's proprietary and confidential information, the CEOs and/or the duly authorized representatives, alternate representatives, officers, or managers, of the member system cooperatives will be required to execute a written confidentiality and non-disclosure agreement. From time to time, as circumstances so require, one or

more of the CEOs may be requested not to attend closed sessions of the Corporation's Board to facilitate the rendering of professional, including, but not limited to legal, services to the Corporation.

ARTICLE VI

OFFICERS

Section 6.01. Number. The officers of the Corporation shall be a Chairman of the Board, Vice-Chairman of the Board, Secretary, and Treasurer, all of whom shall be Directors, and the President and CEO, who shall be appointed by the Board of Directors and such other officers as may be determined from time to time by the Board of Directors. Any two (2) or more offices may not be held by the same person, except that the offices of Treasurer and Secretary may be held by the same person.

Section 6.02. Election and Term of Office. The officers shall be elected annually by and from the Board of Directors at the first meeting of the Board of Directors held after each annual meeting of the members. If the election of such officers shall not be held at such meeting, such election shall be held as soon as possible. Each officer shall hold office until the first meeting of the Board of Directors following the next succeeding annual meeting of the members or until a successor shall have been duly elected. If the Chairman, Vice-Chairman, or Secretary of the preceding Board are not re-elected as Directors at such annual meeting of the members, or at the option of the Chairman, the General Counsel of the Corporation or the General Counsel's designee shall preside over the election of new officers. No person shall continue to hold any elected office in the Corporation after such person shall have ceased to be a Director.

Section 6.03. Removal. Any officer elected or appointed by the Board of Directors may be removed by a majority of the Directors whenever, in the Board of Directors' judgment, the best interest of the Corporation would be served thereby.

Section 6.04. Vacancies. Except as otherwise provided in these Bylaws, a vacancy in any officer position shall be filled by the Board of Directors for the unexpired portion of that officer's term. Elections to fill such vacancies shall be conducted as set forth in §6.02.

Section 6.05. Chairman of the Board. The Chairman of the Board:

- (a) shall be the principal presiding officer of the Corporation and shall preside at all meetings of the members and of the full Board of Directors, and may consult with the President and CEO in the formulation and preparation of the agenda for meetings of the Board of Directors;
- (b) shall sign, with the Secretary, certificates of membership, the issuance of which shall have been authorized by resolution of the Board of Directors, and shall sign any deeds, mortgages, deeds of trust, notes, bonds, contracts, or other instruments authorized by the Board of Directors to be executed, except in cases in which the execution thereof shall be expressly delegated by the Board of Directors or by these Bylaws to some other officer or agent of the Corporation or shall be required by law to be otherwise executed; and
- (c) in general shall perform all duties incident to the office of Chairman of the Board, consistent with these Bylaws, and such other duties as may be prescribed by the Board from time to time.

Section 6.06. Vice-Chairman of the Board. In the absence of the Chairman of the Board, or in the event of such person's inability or refusal to act, the Vice-Chairman of the Board shall perform the duties of the Chairman of the Board, and when so acting, shall have all the powers of and be subject to all the restrictions upon the Chairman of the Board and shall perform such other duties as from time to time may be assigned to the Vice-Chairman of the Board by the Board of Directors.

Section 6.07. Secretary. In the absence of the Chairman of the Board and the Vice-Chairman of the Board, or in the event of their inability or refusal to act, the Secretary of the Board shall perform the duties of the Chairman of the Board, and when so acting, shall have all the powers of and be subject to all the restrictions upon the Chairman of the Board. In addition to the foregoing, the Secretary also:

- (a) shall keep the minutes of the meetings of the members and of the Board of Directors in one or more books provided for that purpose;
- (b) shall ensure that all notices are duly given in accordance with these Bylaws or as required by law;
- (c) shall be custodian of the corporate records and of the seal of the Corporation and ensure that the seal of the Corporation is affixed to all certificates of membership prior to their issuance and to all documents, the execution of which on behalf of the Corporation under its seal is duly authorized in accordance with the provisions of these Bylaws;
- (d) shall keep a register of the mailing address of each member which shall be furnished to each individual member and to the secretary of each corporate member;
- (e) shall sign, with the Chairman of the Board, certificates of membership, the issuance of which shall have been authorized by resolution of the Board of Directors;
- (f) shall have general charge of the books of the Corporation in which a record of the members is kept;
- (g) shall keep on file at all times a copy of these Bylaws containing all amendments thereto, which copy shall always be open to the inspection by any member, and at the expense of the Corporation forward a copy of these Bylaws and of all amendments thereto to each member; and
- (h) shall in general perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned to the Secretary by the Board of Directors.

Section 6.08. Treasurer. The Treasurer:

- (a) shall have charge and custody of and be responsible for all funds and accounts of the Corporation;

- (b) shall receive and give receipts for funds due and payable to the Corporation from any source whatsoever, and deposit all such funds in the name of the Corporation in such financial institution or institutions as shall be selected in accordance with the provisions of these Bylaws; and
- (c) shall in general perform all the duties incident to the office of Treasurer and such other duties as from time to time may be assigned to the Treasurer by the Board of Directors.

Section 6.09. Delegation of Secretary's and Treasurer's Responsibilities. Notwithstanding the duties, responsibilities and authorities of the Secretary and of the Treasurer hereinbefore provided in Section 6.07 and 6.08, the Board of Directors by resolution may, except as otherwise provided by law, delegate, wholly or in part, the responsibility and authority for, and the regular or routine administration of, one or more of such officers' duties to one or more agents, employees or other officers of the Corporation who are not Directors. To the extent that the Board does so delegate with respect to either such officer's duties, that officer as such shall be released from such duties, responsibilities and authorities.

Section 6.10. President and CEO. The President and CEO shall also be the chief operating officer of the Cooperative unless those operating duties are delegated to another corporate officer. The President and CEO is charged with the duties and obligations of managing the foreseeable business affairs of the Corporation, that shall include, but is not limited to, the Corporation's approved budget and programs, and the formulation and preparation of the agenda for each regular meeting of the Board of Directors. Also, the President and CEO shall perform such other duties and have such other authority that the Board may from time to time vest in the President and CEO.

Section 6.11. Bonds of Officers. The Board of Directors shall require the Treasurer, and any other officer, agent or employee of the Corporation charged with the responsibility for the

handling of any of its funds and/or property to give bond in such sum and with such surety as the Board of Directors shall determine. The Board of Directors in its discretion may also require any other officer, agent or employee of the Corporation to give bond in such amount and with such surety as it shall determine. The cost of all such bonds shall be borne by the Corporation.

Section 6.12. Reports. The appropriate officers of the Corporation shall submit, at each annual meeting of the members, reports covering the business of the Corporation for the previous fiscal year.

Section 6.13. Qualifications of Employees. No persons, except Directors as provided for in Section 4.02, shall be qualified to retain or accept any kind of employment by the Corporation including the rendering of technical and professional services, who is in any way employed by or financially interested in a competing enterprise or an affiliate of a competing enterprise, unless, in the opinion of the Board of Directors, or the President and CEO, such employment or interest does not present a conflict of interest, or would not be detrimental to the Corporation. The Board of Directors shall establish reasonable provisions as to the qualifications of employees with regard to nepotism and conflict of interest considerations by the adoption of appropriate Board policies. All other factors to be considered in the qualifications for employment shall be as is provided for under the Corporation's policies and normal hiring procedures.

Section 6.14. Compensation. The compensation, if any, of any officer who is also a Director shall be determined as provided for in Section 4.07 of these Bylaws; and the compensation for all other officers shall be fixed by the Board of Directors. The Board of Directors may delegate authority to fix the compensation for any or all such other officers other than the President and CEO to the President and CEO.

ARTICLE VII

CONTRACTS, CHECKS AND DEPOSITS

Section 7.01. Contracts. Except as otherwise provided in these Bylaws, the Board of Directors may authorize any officer, agent or employee to enter into any contract or execute and deliver any instrument in the name and on behalf of the Corporation, and such authority may be general or confined to specific instances.

Section 7.02. Checks, Drafts, Etc. All checks, drafts or other orders for the payment of money, and all notes, bonds or other evidences of indebtedness issued in the name of the Corporation, shall be signed by such officer, officers, agent or agents, employee or employees of the Corporation and in such manner as shall from time to time be determined by resolution of the Board of Directors, or as provided for in these Bylaws.

Section 7.03. Deposits and Investments. All funds of the Corporation shall be deposited or invested from time to time to the credit of the Corporation in such bank, banks, federal savings and loan associations, or other institutions or securities as the Board of Directors may select. However, the Board of Directors may, by resolution, delegate this selection to the discretion of the Treasurer or President and CEO, or both.

ARTICLE VIII

MEMBERSHIP CERTIFICATES

Section 8.01. Certificates of Membership. Membership in the Corporation may be evidenced by a certificate of membership which shall be issued by the Board of Directors not contrary to, or inconsistent with, the Corporation's Articles of Incorporation or Bylaws. Such certificate, if authorized to be issued by the Board, shall be signed by the Chairman of the Board and by the Secretary and the corporate seal shall be affixed thereto or a facsimile thereof printed thereon.

Section 8.02. Issue of Membership Certificates. No membership certificates shall be issued for less than the membership fee fixed in these Bylaws, nor until such membership fee has been fully paid in cash.

Section 8.03. Lost Certificate. In case of a lost, destroyed or mutilated certificate, a new certificate may be issued therefore upon such terms and such indemnity to the Corporation as the Board of Directors may prescribe.

ARTICLE IX

NON-PROFIT OPERATION

Section 9.01. Interest or Dividends on Capital Prohibited. The Corporation shall at all times be operated on a cooperative, non-profit basis for the mutual benefit of its members. No interest or dividends shall be paid or payable by the Corporation on any capital furnished by its members.

Section 9.02. Patronage Capital in Connection with Furnishing Electric Energy. In the furnishing of electric energy the Corporation's operations shall be so conducted that all members will through their patronage furnish capital for the Corporation. In order to induce patronage and to assure that the Corporation will operate on a non-profit basis, the Corporation is obligated to account on a patronage basis to all its members for all amounts received and receivable from the furnishing of electric energy plus any non-operating revenue in excess of the sum of: (a) operating costs and expenses properly chargeable against the furnishing of electric energy plus any non-operating costs, and (b) amounts required to offset any losses incurred during the current or any prior fiscal year. The books and records of the Corporation shall be set up and kept in such a manner that at the end of each fiscal year the amount of capital, if any, so furnished by each member is clearly reflected and credited in an appropriate record to the capital

account of each member and the Corporation shall within a reasonable time after the close of the fiscal year notify each member of the amount of capital so credited to its account. All such amounts credited to the capital account of any member shall have the same status as though they had been paid to the member in cash in pursuance of a legal obligation to do so and the member had then furnished the Corporation corresponding amounts of capital. In the event of dissolution or liquidation of the Corporation, after all outstanding indebtedness of the Corporation shall have been paid, outstanding capital credits shall be retired without priority on a pro rata basis before any payments are made on account of property rights of members. If, at any time prior to dissolution or liquidation, the Board of Directors shall determine by majority vote that the financial condition of the Corporation will not be impaired thereby, the capital then credited to members' accounts may be retired in full or in part. Any such retirements of capital shall be made in order of priority according to the year in which the capital was furnished and credited, the capital first received by the Corporation being first retired. In no event, however, may any such capital be retired unless, after the proposed retirement, the capital of the Corporation shall equal at least twenty percent (20%) of the total assets of the Corporation.

The members of the Corporation, by dealing with the Corporation, acknowledge that the terms and provisions of the Articles of Incorporation and Bylaws shall constitute and be a contract between the Corporation and each member, and both the Corporation and the members are bound by such contract, as fully as though each member had individually signed a separate instrument containing such terms and provisions.

Section 9.03. Patronage Refunds in Connection with Furnishing Other Services. In the event that the Corporation should engage in the business of furnishing goods or services other than electric energy, all amounts received and receivable therefrom which are in excess of costs

and expenses properly chargeable against the furnishing of such goods or services shall, insofar as permitted by law, be (a) used to offset any losses incurred during the current or any prior fiscal year and (b) to the extent not needed for that purpose, allocated to the members on a patronage basis, and any amounts so allocated shall be included as a part of the capital credited to each member's account.

Section 9.04. Applications of Capital Credits to Accounts Receivable. Notwithstanding any other provisions of these Bylaws, no credits to a capital account shall be paid or retired to any member owing a past due accounts receivable to the Corporation except if and to the extent that, after applying such capital credit to such account receivable any excess remains.

Section 9.05. This Article to be Posted. The provisions of this Article of the Bylaws shall be called to the attention of each member of the Corporation by posting a copy of it in a conspicuous place in the Corporation's principal office.

ARTICLE X

WAIVER OF NOTICE

Section 10.01. Waiver of Notice. Any member or Director or officer may waive, in writing, any notice of meetings required to be given by these Bylaws. In addition thereto, the attendance at the meeting of any member or Director entitled to notice of a meeting shall constitute a waiver of notice of such meeting as set forth in Section 3.03 and 5.03.

ARTICLE XI

DISPOSITION OR ENCUMBERING OF PROPERTY

MERGER, CONSOLIDATION AND DISSOLUTION

Section 11.01. Disposition or encumbering of Property. The Board of Directors may not sell, lease, lease-sale, exchange, transfer or otherwise dispose of any of the Corporation's property except:

- (a) property that is not necessary in operating and maintaining the Corporation's system, but sales of such property shall not, in any one year exceed ten percent (10%) in value of all the property of the Corporation other than merchandise and property acquired for resale;
- (b) services and electric energy;
- (c) property acquired for resale; and
- (d) merchandise;

unless the Board shall first adopt by the affirmative vote of three-fourths of all Directors a resolution recommending the transaction and directing the submission of the proposal to a vote of not less than the majority of the total members and shall call a special meeting of the members for consideration thereof and action thereon, which meeting shall be held not sooner than ninety days after the giving of such notice to the members; provided, that consideration and action by the members may be given at the next annual member meeting if the Board so determines and if such annual meeting is held not sooner than ninety days after the giving of such notice.

If the Board of Directors looks with favor upon any proposal for sale, lease, lease-sale, exchange or transfer or other disposal of all or substantially all of the Corporation's properties and assets, it shall first cause three independent, non-affiliated appraisers, experts in such matters, to render their individual opinions as to the value to the Corporation of such sale, lease, lease-sale, exchange, transfer, or other disposition of all or substantially all of the Corporation's properties and assets, and as to any other terms and conditions which should be considered. The three such appraisers shall be designated by the Clark Circuit Court Judge. If such judge refuses to make such designations, they shall be made by the Board of Directors.

If the Board of Directors, after receiving such appraisals (and other terms and conditions which are submitted, if any), determines that the proposal shall be submitted for consideration by the members, it shall first give every other electric cooperative situated and operating in Kentucky (which has not made such an offer) an opportunity to submit competing proposals. Such opportunity shall be in the form of a written notice to each such electric cooperative, which notice shall be attached to a copy of the proposal which the Corporation has already received and copies of the respective reports of the three appraisers. Each such electric cooperative shall be given not less than ninety days during which to submit competing proposals, and the actual minimum period within which proposals are to be submitted shall be stated in the written notice given to them.

Any (3) or more members, by so petitioning the Board not less than thirty days prior to date of such special or annual meeting at which any such proposal approved by the Board under this Section 11.01 is to be voted on, may cause the Corporation, with the cost to be borne by the Corporation, to mail to all members any opposing or alternate positions which they may have to the proposals that have been submitted or any recommendations that the Board has made.

The Board of Directors of the Corporation, without authorization by the members, shall have full power and authority to authorize the execution and delivery of a mortgage or mortgages or a deed or deeds of trust and a security interest or interests upon, or the pledging and encumbering of any or all of the property, assets, rights, privileges, licenses, franchises and permits of the Corporation, whether acquired or to be acquired, and wherever situated, as well as the revenues and income therefrom, and of a note or notes or other instrument evidencing the indebtedness secured thereby, all upon such terms and conditions as the Board of Directors of the Corporation

shall determine, to secure any obligation of the Corporation, any provision of the Articles of Incorporation or Bylaws of the Corporation to the contrary notwithstanding.

Section 11.02. Merger or Consolidation. The Board of Directors may not merge or consolidate the Corporation's property and assets with any other corporation except as otherwise provided by law unless the Board shall first adopt by the affirmative vote of three-fourths of all Directors a resolution recommending the transaction and directing the submission of the proposal to a vote of not less than a majority of the total members and shall call a special meeting of the members for consideration thereof and action thereon, which meeting shall be held not sooner than ninety days after the giving of such notice to the members; provided, that consideration and action by the members may be given at the next annual member meeting if the Board so determines and if such annual meeting is held not sooner than ninety days after the giving of such notice.

If the Board of Directors looks with favor upon any proposal for merger or consolidation of the Corporation's properties and assets, it shall first cause three independent, non-affiliated appraisers, expert in such matters to render their individual opinions as to the value of the Corporation with respect to merger or consolidation of all or substantially all of the Corporation's properties and assets, and as to any other terms and conditions which should be considered. The three such appraisers shall be designated by the Clark Circuit Court Judge. If such judge refuses to make such designations, they shall be made by the Board of Directors.

If the Board of Directors, after receiving such appraisals (and other terms and conditions which are submitted, if any), determines that the proposal shall be submitted for consideration by the members, it shall first give every other electric cooperative situated and operating in Kentucky (which has not made such an offer) an opportunity to submit competing proposals. Such

opportunity shall be in the form of a written notice to each such electric cooperative, which notice shall be attached to a copy of the proposal which the cooperative has already received and copies of the respective reports of the three appraisers. Such electric cooperatives shall be given not less than ninety days during which to submit competing proposals, and the actual minimum period within which proposals are to be submitted shall be stated in the written notice given to them.

Any (3) or more members, by so petitioning the Board not less than twenty days prior to the date of such special or annual meeting, at which any such proposal approved by the Board under this Section 11.02 is to be voted on, may cause the Corporation, with the cost to be borne by the Corporation, to mail to all members any opposing or alternate positions which they may have to the proposals that have been submitted or any recommendations that the Board has made.

Section 11.03. Dissolution. The Board of Directors may not dissolve the Corporation unless the Board shall first adopt by the affirmative vote of three-fourths of all Directors a resolution recommending the transaction and directing the submission of the proposal to a vote of not less than the majority of the total members and shall call a special meeting of the members for consideration thereof and action thereon, which meeting shall be held not sooner than ninety days after the giving of such notice to the members; provided, that consideration and action by the members may be given at the next annual member meeting if the Board so determines and if such annual meeting is held not sooner than ninety days after the giving of such notice.

Section 11.04. Evaluative Considerations. In connection with the exercise of its judgment in determining what is in the best interest of EKPC and its members when evaluating any proposal for dissolution, merger, consolidation, sale, lease, lease-sale, exchange, transfer or other disposal

of all or substantially all of the Corporation's assets, the Board of Directors shall consider all of the following factors and other factors which it deems relevant:

1. The societal and economic effects of the transaction upon the Corporation's employees;
2. The societal and economic impact of the transaction upon the community and service territories; and
3. The long-term as well as short-term interest of the Corporation and its members, including the possibility that these interests may be best served by the continued existence of the Corporation.

Section 11.05. Alteration and Amendment to Bylaws. Bylaws 11.01 through 11.05 as amended and adopted shall take effect upon the affirmative vote of not less than three-fourths of all Directors; and shall remain in effect until altered, amended or repealed by a similar vote of all Directors and not less than a majority of the total members.

ARTICLE XII

FISCAL YEAR

Section 12.01. Fiscal Year. The fiscal year of the Corporation shall begin on the first of January of each year and end on the thirty-first day of December of the same year.

ARTICLE XIII

RULES OF ORDER

Section 13.01. Rules of Order. Parliamentary procedure at all meetings of the members, and of the Board of Directors, shall be governed by the most recent edition of Robert's Rules of Order that is kept available at the Corporation's headquarters building, except to the extent such procedure is otherwise required by law or by the Corporation's Articles of Incorporation or Bylaws.

ARTICLE XIV

SEAL

Section 14.01. Seal. The corporate seal of the Corporation shall be in the form of a circle and shall have inscribed thereon the name of the Corporation and the words “Corporate Seal, Kentucky.”

ARTICLE XV

AMENDMENTS

Section 15.01. Amendments. Except as otherwise provided in Section 11.05, these Bylaws may be altered, amended or repealed at any regular or special meeting of the Board of Directors by the affirmative vote of a majority of the Directors. After any alteration, amendment or repeal of these Bylaws has been adopted, all members shall be notified of such action as soon as is conveniently possible.

ARTICLE XVI

GENDER

Section 16.01. Gender. Any inclusion in these Bylaws of the male pronouns, he or his, is fully intended to and shall, where applicable, be deemed to necessarily include and apply equally to the feminine gender pronouns, she or hers.

Amendments to EKPC bylaws:

Approved by EKPC Board	-	12/11/79
Amended by EKPC Board (Article IX, Section 2)	-	08/17/82
Amended at Board Meeting	-	05/13/86
Amended at Board Meeting	-	10/11/88

Amended at Board Meeting	-	12/13/88
Amended at Board Meeting	-	05/09/89
Amended at Board Meeting	-	10/03/89
Amended at Board Meeting	-	01/08/91
Amended at Board Meeting	-	08/03/93
Amended at Board Meeting	-	12/06/94
Amended at Board Meeting	-	04/08/97
Amended at Board Meeting	-	12/09/97
Amended at Board Meeting	-	11/13/01
Amended at Board Meeting	-	02/10/04
Amended at Board Meeting	-	06/06/11
Amended at Board Meeting	-	10/11/11
Amended at Board Meeting	-	04/10/12
Amended at Board Meeting	-	06/02/14
Amended at Board Meeting	-	06/13/16
Amended at Board Meeting	-	11/08/16

**EAST KENTUCKY POWER COOPERATIVE, INC.
PSC CASE NO. 2018-00050
RESPONSE TO POST HEARING DATA REQUEST**

**COMMISSION STAFF'S FIRST POST-HEARING REQUEST FOR
INFORMATION DATED 05/21/18
REQUEST 2**

RESPONSIBLE PARTY: Counsel

Request 2. Provide a copy of EKPC's most recent policies regarding its Board of Directors, including, but not limited to, policies that pertain to potential conflicts of interest.

Response 2. EKPC's most recent policies regarding its Board of Directors, including, but not limited to, policies that pertain to potential conflicts of interest are provided as an Attachment to Request 2 and are filed subject to a request for confidential treatment.

ATTACHMENT TO REQUEST 2

Filed separately subject to a Motion for Confidential Treatment

**EAST KENTUCKY POWER COOPERATIVE, INC.
PSC CASE NO. 2018-00050
RESPONSE TO POST HEARING DATA REQUEST**

**COMMISSION STAFF'S FIRST POST-HEARING REQUEST FOR
INFORMATION DATED 05/21/18
REQUEST 3**

RESPONSIBLE PARTY: David Crews

Request 3. Provide a copy of the email from Sally Witt to David Crews dated May 14, 2018, that set forth EKPC's weather normalized MWh sales data from January 2016 through March 2018, which is the weather-normalized version of the same non-weather-normalized data that was provided by EKPC in response to South Kentucky Rural Electric Cooperative Corporation's ("South Kentucky") First Request for Information to EKPC, Item 51.

Response 3. Please see page two of this response for the requested email dated May 14, 2018.

Sent from my iPhone

Begin forwarded message:

From: Sally Witt <sally.witt@ekpc.coop>
Date: May 14, 2018 at 11:55:24 AM EDT
To: David Crews <David.Crews@ekpc.coop>, Mike McNalley <Michael.McNalley@ekpc.coop>
Cc: Julie Tucker <julie.tucker@ekpc.coop>
Subject: RE: So Ky Weather normalize data

Date	HDD	NHDD	MWh	Normalized MWh	adj	Date	HDD	NHDD	MWh	Normalized MWh	adj
Dec-16	856	900	1,248,995	1,264,682	15,687	Dec-17	924	900	1,300,306	1,233,150	(67,156)
Jan-17	758	990	1,200,768	1,283,482	82,714	Jan-18	1045	990	1,497,149	1,437,996	(59,153)
Feb-17	507	787	969,106	1,115,986	146,880	Feb-18	563	787	1,035,671	1,156,484	120,813
Mar-17	530	606	1,045,449	1,065,267	19,818	Mar-18	670	606	1,125,672	1,081,232	(44,440)
			4,464,318	4,729,418					4,958,798	4,908,862	
									494,480	179,445	
									97.3%	35.3%	

- 1) The data quoted by South Kentucky is not weather normalized.
- 2) They used only the winter peak months. Load across those specific months has grown slightly and would cover 35% of their PPA.

David for your information, we have grown but not as much as budget was expecting. On an annual basis, considering all months, load has only grown 2.2%. The increase stated by South Kentucky is also driven by the increased load of Gallatin (7% or 64,000 MWh) and TGP (20% or 44,000 MWh) for 2016 compared to 2017.

**EAST KENTUCKY POWER COOPERATIVE, INC.
PSC CASE NO. 2018-00050
RESPONSE TO POST HEARING DATA REQUEST**

**COMMISSION STAFF'S FIRST POST-HEARING REQUEST FOR
INFORMATION DATED 05/21/18
REQUEST 4**

RESPONSIBLE PARTY: Mike McNalley

Request 4. Provide the amount of stranded costs, in the aggregate and by project, for elections for alternate source power prior to November 2017.

Response 4. Please see EKPC's response to South Kentucky's First Request for Information, Request 59. Each of these projects was so small that any stranded costs would have been minimal. Also, these earlier, smaller projects were consistent with the Cooperative Principles, as discussed in the Direct Testimony of Anthony S. Campbell, page 24, lines 2 through 6.

EAST KENTUCKY POWER COOPERATIVE, INC.
PSC CASE NO. 2018-00050
RESPONSE TO POST HEARING DATA REQUEST

**COMMISSION STAFF'S FIRST POST-HEARING REQUEST FOR
INFORMATION DATED 05/21/18
REQUEST 5**

RESPONSIBLE PARTY: Mike McNalley

Request 5. Explain how EKPC accounted for stranded costs from elections for alternate source power prior to receiving South Kentucky's notice in November 2017. If the stranded costs were not reallocated, explain why they were not.

Response 5. The six projects are:

Owner-Member	Project	MW	Delivery Date
Farmers	Federal Mogul DG	3.6	2005
Jackson	Irvine LFGTE	1.6	10/2013
Salt River	Lock 7	2.0	2013
Jackson	Dupree Energy Sys	1.0	03/2015
Farmers	Glasgow LFGTE	1.0	11/2015
Owen	Owen Office	2.0	2016

There would be no accounting differences for these costs. Any impacts on the environmental surcharge would have automatically been reallocated consistent with the surcharge methodology and Commission reviews. These reallocations would have been very small.

The two projects with Farmers would be treated differently than the other projects. For the 2005 project, any other stranded costs would have been reflected in the total cost of service in our subsequent base rate cases. For the 2015 project, EKPC would note that the Commission specifically found

The price being charged to Farmers by EKPC fully recovers the cost of production from the Glasgow LFGTE facility, the purchase of capacity, energy and environmental attributes and would not result in subsidization of Farmers by EKPC's other members. EKPC will recover all costs from Farmers associated with the design, construction, and interconnection of the proposed LFGTE project through the monthly capacity charge. Under the Agreement, the cost of capacity, energy, and environmental attributes sold to Farmers are priced below the cost of the bundled wholesale rate charge by EKPC to Farmers under the Wholesale Power Contract. The Agreement between EKPC and Farmers also incorporates a Times Interest Earned Ratio component in the determination of the charges to Farmers. Farmers is obligated to pay the cost of the LFGTE facility if the facility is unable to generate electricity on a temporary or permanent basis. EKPC's construction and operation of the facility will not result in an increase in EKPC's wholesale power rates.¹ (footnotes omitted)

The remaining four projects were initiated after the last base rate case and thus to date any base rate impacts, which are only nominal, would slightly reduce EKPC margins until a base rate case is filed.

¹ See *In the Matter of Application of East Kentucky Power Cooperative, Inc. for an Order Declaring the Glasgow Landfill Gas to Energy Project to be an Ordinary Extension of Existing Systems in the Usual Course of Business and a Joint Application of Farmers Rural Electric Cooperative Corporation and East Kentucky Power Cooperative, Inc. for Approval to Enter into a Ten Year Purchased Power Agreement and Approval of a Special Contract*, Order, Case No. 2014-00292, (Ky. P.S.C., Apr. 2, 2015).