

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

IN THE MATTER OF

THE JOINT APPLICATION OF EAST KENTUCKY	)	
POWER COOPERATIVE, INC. AND INTER-COUNTY	)	
ENERGY CORPORATION FOR APPROVAL OF	)	CASE NO.
AN INDUSTRIAL POWER AGREEMENT WITH	)	2020-00193
ECONOMIC DEVELOPMENT RIDER AND	)	
RENEWABLE ENERGY PURCHASES	)	

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**MOTION FOR CONFIDENTIAL TREATMENT**

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Come now East Kentucky Power Cooperative, Inc. (“EKPC”) and Inter-County Energy Corporation (“Inter-County”), collectively the “Joint Applicants”, by and through counsel, pursuant to KRS 61.878, 807 KAR 5:001, Section 13 and other applicable law, and for their Motion requesting that the Kentucky Public Service Commission (“Commission”) afford confidential treatment to two (2) of EKPC’s responses to two initial requests for information from Commission Staff and the Attorney General in the above-captioned proceeding, respectfully state as follows:

1. On June 26, 2020, the Joint Applicants filed an Application in this matter wherein they requested that the Commission enter an Order authorizing and approving an Industrial Power Agreement with Economic Development Rider and Renewable Energy Purchases by and between themselves and Diageo Americas Supply, Inc. (“Diageo”), dated May 28, 2020 (the “Agreement”).

2. On August 6, 2020, Commission Staff and Attorney General issued their initial request for information to the Joint Applicants. Contemporaneous with the filing of this Motion, the Joint Applicants are tendering information responsive to Commission Staff's and Attorney General's requests.

3. Certain responses provided by the Joint Applicants include commercially sensitive and proprietary information. Specifically, the Joint Applicants' response to Commission Staff Request No. 1 and Attorney General Request No. 13 are confidential in nature and contain information that should not be publicly disclosed.

4. Commission Staff's Request No. 1 states as follows:

Refer to the application, paragraph 15. For each billing period, provide a sample of the bill from EKPC to Inter-County and from Inter-County to Diageo Americas Supply, Inc. (Diageo).

In their response to Request No. 1, the Joint Applicants are providing a detailed sample bill from EKPC to Inter-County and another detailed bill from Inter-County to Diageo. The bills reveal specific information regarding Diageo's anticipated demand and energy usage.

5. Attorney General Request No. 13 states as follows:

Provide a forecast for the cost of RECs to the extent and duration for which one has already been obtained or calculated by the parties for utilization under Option A of EKPC Rate H.

In its response to Request No. 13, EKPC is providing a confidential exhibit entitled *REC Forward – 2020-2050*. This document shows the current expected forward price curve for RECs from several locations.

6. The information tendered by the Joint Applicants in response to Commission Staff’s Request Nos. 1 and Attorney General’s Request No. 13 is hereinafter referred to as the “Confidential Information.”

7. The Confidential Information contains extensive and detailed descriptions of the bill to be rendered by EKPC to Inter-County and the bill to be rendered by Inter-County to Diageo for public utility service associated with serving Diageo’s new load. This information is commercially sensitive, proprietary and unique to Diageo. It would be unfair for Diageo’s competitors and other industrial customers to have the precise information necessary to calculate Diageo’s energy consumption. While this information may be speculated upon based upon the terms of the Agreement – for which confidentiality has not been sought – giving the actual information would be prejudicial to Diageo. Moreover, if the Commission required customer-specific sample bills to be publicly provided, it would create a disincentive for other large utility customers seeking pricing advantages to locate in Kentucky.

8. The Confidential Information also includes EKPC’s proprietary and confidential estimate of forward price curves for RECs covering a period of thirty years. This information gives REC providers and brokers with tremendous insight into the assumptions and data relied upon to generate internal financial forecasts and budgets. To wit, the tendered forecast has application outside of the narrow scope of the Diageo Agreement and is used by EKPC’s management in regard to other renewable programs and transactions. The Commission has historically afforded confidential treatment to such forecasted financial information.<sup>1</sup>

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<sup>1</sup> See e.g. *In the Matter of the Application of East Kentucky Power Cooperative, Inc. for Approval of the Acquisition of Existing Combustion Turbine Facilities from Bluegrass Generating Company, LLC at the Bluegrass Generating Station in LaGrange, Oldham County, Kentucky and for Approval of the Assumption of Certain Evidences of Indebtedness*, Order, Case No. 2015-00267 (Ky. P.S.C. Nov. 24, 2015).

9. The Confidential Information is retained by the Joint Applicants on a “need-to-know” basis and is not publicly available. Public dissemination of the Confidential Information would likely impair the ability of the Joint Applicants to enter into future discussions with customers and potential customers, and may detrimentally influence EKPC’s relationships with both the businesses to which the Confidential Information relates and others. Due to the nature of the Confidential Information, its disclosure may adversely impact EKPC and its Member Systems’ ability to obtain and retain customers. Confidentiality is one of the most critical aspects of negotiations involving new or expanding loads.

10. The Kentucky Open Records Act exempts the Confidential Information from public disclosure. *See* KRS 61.878(1)(c) and (d). As set forth above, disclosure of the Confidential Information would permit an unfair advantage to third parties, and it is clear that the business considerations, developments, and negotiations for which confidential treatment is sought represent “information concerning the inner workings of a corporation [which] is ‘generally accepted as confidential or proprietary.’” *Hoy v. Kentucky Industrial Revitalization Authority*, 907 S.W.2d 766, 768 (Ky. 1995). Moreover, Kentucky law exempts from disclosure “records pertaining to a prospective location of a business or industry where no previous public disclosure has been made of the business’ or industry’s interest in locating in, relocating within or expanding within the Commonwealth.” *See* KRS 61.878(1)(d). Having satisfied both statutory and common law standards, the Confidential Information should be afforded confidential treatment.

11. In accordance with the provisions of 807 KAR 5:001, Section 13(2), the Joint Applicants are filing one copy of the Confidential Information separately under seal. The filing of the Confidential Information is noted in the public version of the Joint Applicants’ response to

Commission Staff Request No. 1 and Attorney General Request 13, which include redacted copies of such information. Due to the pervasive nature of the confidential and proprietary information included in the Joint Applicants' responses to these requests, confidential treatment is sought for the entirety of the Confidential Information.

12. In accordance with the provisions of 807 KAR 5:001, Section 13(3), the Joint Applicants respectfully request that the response to Commission Staff Request No. 1 be withheld from public disclosure for a period of ten years and that the response to Attorney General Request No. 13 be withheld from public disclosure for a period of fifteen years (half the forecasted period). 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 the Joint Applicants if publicly disclosed. However, the Joint Applicants 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, the Joint Applicants 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 and a period of fifteen years, respectively, from the date of entry of such an Order.

This 17<sup>th</sup> day of August, 2020.

Respectfully submitted,



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and Inter-County Energy Corporation*

### **CERTIFICATE OF SERVICE**

This will certify that the foregoing document was filed via the Commission's electronic filing system today. The undersigned hereby certifies that the electronic filing is a true and accurate copy of the documents being filed in paper medium; the electronic filing was transmitted to the Commission on August 17, 2020; there are currently no parties that the Commission has excused from participation by electronic means in this proceeding; paper copies of this information will be hand-delivered to the Commission within thirty (30) days of the lifting of the present State of Emergency relating to the COVID-19 pandemic.



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*Counsel for East Kentucky Power Cooperative, Inc.  
and Inter-County Energy Corporation*

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

**IN THE MATTER OF:**

<b>ELECTRONIC JOINT APPLICATION OF EAST</b>	)	
<b>KENTUCKY POWER COOPERATIVE, INC. AND</b>	)	
<b>INTER-COUNTY ENERGY COOPERATIVE</b>	)	<b>CASE NO.</b>
<b>CORPORATION FOR APPROVAL OF AN</b>	)	<b>2020-00193</b>
<b>INDUSTRIAL POWER AGREEMENT WITH</b>	)	
<b>ECONOMIC DEVELOPMENT RIDER AND</b>	)	
<b>RENEWABLE ENERGY PURCHASES</b>	)	

**RESPONSES TO ATTORNEY GENERAL'S INITIAL REQUEST FOR  
INFORMATION TO EAST KENTUCKY POWER COOPERATIVE, INC.  
AND INTER-COUNTY COOPERATIVE, INC.**

**DATED AUGUST 6, 2020**

**COMMONWEALTH OF KENTUCKY**

**BEFORE THE PUBLIC SERVICE COMMISSION**

**In the Matter of:**

**ELECTRONIC JOINT APPLICATION OF EAST )  
KENTUCKY POWER COOPERATIVE, INC. AND )  
INTER-COUNTY ENERGY COOPERATIVE ) CASE NO.  
CORPORATION FOR APPROVAL OF AN ) 2020-00193  
INDUSTRIAL POWER AGREEMENT WITH )  
ECONOMIC DEVELOPMENT RIDER AND )  
RENEWABLE ENERGY PURCHASES )**

**CERTIFICATE**

**STATE OF KENTUCKY )  
 )  
COUNTY OF CLARK )**

Darrin Adams, being duly sworn, states that he has supervised the preparation of the responses of East Kentucky Power Cooperative, Inc. to the Attorney General's Initial Request for Information in the above-referenced case dated August 6, 2020, 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 17<sup>th</sup> day of August, 2020.



Notary Public - #590567  
Commission expires - 11/30/2021



COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC JOINT APPLICATION OF EAST )
KENTUCKY POWER COOPERATIVE, INC. AND )
INTER-COUNTY ENERGY COOPERATIVE )
CORPORATION FOR APPROVAL OF AN )
INDUSTRIAL POWER AGREEMENT WITH )
ECONOMIC DEVELOPMENT RIDER AND )
RENEWABLE ENERGY PURCHASES )

CASE NO.
2020-00193

CERTIFICATE

STATE OF KENTUCKY )
)
COUNTY OF CLARK )

Jerry Carter, being duly sworn, states that he has supervised the preparation of the responses of East Kentucky Power Cooperative, Inc. to the Attorney General's Initial Request for Information in the above-referenced case dated August 6, 2020, 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.

[Handwritten signature of Jerry Carter]
Jerry Carter

Subscribed and sworn before me on this 17th day of August, 2020.

[Handwritten signature of Notary Public]

Notary Public - #590567
Commission expires - 11/30/2021

**COMMONWEALTH OF KENTUCKY**

**BEFORE THE PUBLIC SERVICE COMMISSION**

**In the Matter of:**

**ELECTRONIC JOINT APPLICATION OF EAST )  
KENTUCKY POWER COOPERATIVE, INC. AND )  
INTER-COUNTY ENERGY COOPERATIVE )  
CORPORATION FOR APPROVAL OF AN )  
INDUSTRIAL POWER AGREEMENT WITH )  
ECONOMIC DEVELOPMENT RIDER AND )  
RENEWABLE ENERGY PURCHASES )**

**CASE NO.  
2020-00193**

**CERTIFICATE**

**STATE OF KENTUCKY )  
 )  
COUNTY OF CLARK )**

David Crews, being duly sworn, states that he has supervised the preparation of the responses of East Kentucky Power Cooperative, Inc. to the Attorney General’s Initial Request for Information in the above-referenced case dated August 6, 2020, 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.

  
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Subscribed and sworn before me on this 17<sup>th</sup> day of August, 2020.

  
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Notary Public - #590567  
Commission expires - 11/30/2021

**COMMONWEALTH OF KENTUCKY**

**BEFORE THE PUBLIC SERVICE COMMISSION**

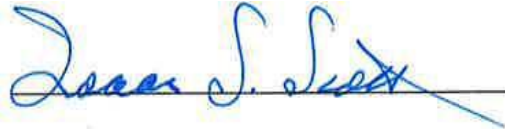
**In the Matter of:**

**ELECTRONIC JOINT APPLICATION OF EAST )  
KENTUCKY POWER COOPERATIVE, INC. AND )  
INTER-COUNTY ENERGY COOPERATIVE ) CASE NO.  
CORPORATION FOR APPROVAL OF AN ) 2020-00193  
INDUSTRIAL POWER AGREEMENT WITH )  
ECONOMIC DEVELOPMENT RIDER AND )  
RENEWABLE ENERGY PURCHASES )**

**CERTIFICATE**

**STATE OF KENTUCKY )  
 )  
COUNTY OF CLARK )**

Isaac S. Scott, being duly sworn, states that he has supervised the preparation of the responses of East Kentucky Power Cooperative, Inc. to the Attorney General's Initial Request for Information in the above-referenced case dated August 6, 2020, 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 17<sup>th</sup> day of August, 2020.



Notary Public - #590567  
Commission expires - 11/30/2021

**EAST KENTUCKY POWER COOPERATIVE, INC.**

**PSC CASE NO. 2020-00193**

**RESPONSE TO INFORMATION REQUEST**

**ATTORNEY GENERAL'S INITIAL REQUEST FOR INFORMATION DATED 08/06/2020  
REQUEST 1**

**RESPONSIBLE PARTY: David Crews**

**Request 1.** Confirm that there is no subsidization by non-party customers of the utilities for the energy purchased pursuant to the power purchase agreements (“PPAs”).

**Response 1.** The design of the East Kentucky Power Cooperative Inc. (“EKPC”) Green Tariff assures that there is no subsidization of the Green Tariff participants by non-participants. The Green Tariff participants pay their share of the legacy fixed costs through the Inter-County Energy Cooperative Corporation (“Inter-County”) Rate G tariff, from which they will receive service. Inter-County’s Rate G Tariff distributes Inter-County’s and EKPC’s fixed and variable cost to all customers that take service under this tariff. EKPC’s Green Tariff rider also applies on top of Inter-County’s Rate G Tariff and credits participants with the lower of the unburned fuel, avoided variable environmental compliance expenses and variable operations and maintenance expenses, or avoided market purchases. The renewable energy from EKPC’s Green Tariff supplants the energy that would have been provided from EKPC’s generators or market purchases. EKPC Green Tariff participants are charged for the renewable energy EKPC secures for them. Crediting Diageo for expenses not incurred does not create any subsidization. Subsidization would only occur should Diageo not carry its burden of the legacy fixed costs. The Inter-County Rate G

tariff distributes the legacy fixed cost to customers that take service under that tariff. EKPC's Green Tariff does not absolve Diageo or any other customer from their share of the legacy fixed cost burden.

**EAST KENTUCKY POWER COOPERATIVE, INC.**

**PSC CASE NO. 2020-00193**

**RESPONSE TO INFORMATION REQUEST**

**ATTORNEY GENERAL’S INITIAL REQUEST FOR INFORMATION DATED 08/06/2020  
REQUEST 2**

**RESPONSIBLE PARTY: David Crews/Jerry Carter**

**Request 2.** Explain how the parties insure there is no subsidization by non-party customers of the utilities.

**Request 2a.** In the event EKPC and/or Inter-County have to procure any additional physical, software, or firmware infrastructure components to prevent any such subsidization, describe in full who will pay the costs of such installations and related costs, and whether ratepayers would be responsible for any portion of such costs.

**Response 2a.** As explained in Response 1, EKPC relies on its Green Tariff design to assure that subsidization does not occur. EKPC’s current systems that manage interactions with PJM and customer accounting can settle this transaction. EKPC doesn’t expect to have to purchase any physical, software, or firmware infrastructure components to prevent any such subsidization. As it relates to Inter-County, any physical, software or firmware infrastructure – or services related thereto – that might be needed will be paid for directly by Diageo and will not be charged to Inter-County’s other members.

**EAST KENTUCKY POWER COOPERATIVE, INC.**

**PSC CASE NO. 2020-00193**

**RESPONSE TO INFORMATION REQUEST**

**ATTORNEY GENERAL'S INITIAL REQUEST FOR INFORMATION DATED 08/06/2020  
REQUEST 3**

**RESPONSIBLE PARTY: Isaac S. Scott**

**Request 3.** Regarding the tariffs described in numerical paragraph 13 of the application, state whether any portion of those tariffs will not be followed or adhered to in the event the proposed transaction is approved.

**Response 3.** Pursuant to Paragraph 3(b)(1) of the Industrial Power Agreement with Economic Development Rider and Renewable Energy Purchases, Exhibit 1 of the application, the demand ratchet provision incorporated into EKPC's Rate G and Inter-County's Schedule IND G shall not apply from the Effective Date of the Agreement through June 30, 2022. During this period the actual demand will be the billing demand.

Pursuant to Paragraph 4(a)(5) of the Agreement in Exhibit 1 of the application, EKPC's administrative fee under Rate H - Wholesale Renewable Energy Program, Monthly Program Contribution - Option A Only, will be waived for REC purchases made on behalf of Diageo. However, all EKPC direct costs for RECs will pass directly through to Diageo.

Pursuant to Paragraph 5(b) of the Agreement in Exhibit 1 of the application, during the five-year EDR discount period, Diageo may fail to achieve the 60 percent minimum

load factor for no more than 10 months during the discount period. EKPC's Rate EDR – Economic Development Rider, and Inter-County's Rate Economic Development Rider, provide for the 60 percent load factor requirement to be waived during the first 12 months of the EDR discount period and the customer could fail to achieve the 60 percent minimum load factor for no more than 8 months during the remaining 48 months of the EDR discount period (this is assuming a five-year discount period).

If the Commission approves the Agreement in Exhibit 1 of the application, these will be the only deviations to the terms and conditions to the various tariffs listed in paragraph 13 of the application. All the listed tariffs will be followed and adhered to, as modified by the Commission's approval of the Agreement in Exhibit 1 of the application.



**EAST KENTUCKY POWER COOPERATIVE, INC.**

**PSC CASE NO. 2020-00193**

**RESPONSE TO INFORMATION REQUEST**

**ATTORNEY GENERAL'S INITIAL REQUEST FOR INFORMATION DATED 08/06/2020  
REQUEST 4**

**RESPONSIBLE PARTY: David Crews**

**Request 4.** Reference paragraph 15. Explain whether Diageo's contemplated purchase of at least 42,000 MW hours from PPAs, "or," physical renewable resources, is intended to be conjunctive; i.e., whether Diageo will make use of a combination of both such resources, or alternatively only one or the other.

**Request 4a.** Explain which of the Joint Applicants will make the determination of the sources to pursue (i.e., PPAs, physical renewable sources, or RECs); in other words, whether it will be EKPC, Inter-County, Diageo, all of the above or any portion thereof.

**Response 4a.** At this time, EKPC expect to enter into one or more PPAs in EKPC's name to fulfill its obligations under the contract. As described in the contract, EKPC will consult and collaborate with Diageo, but EKPC will determine which renewable purchases will be executed. The contract requires Diageo to provide EKPC security for the Mark to Market of these contracts to protect the balance of EKPC's and Inter-County's customers from an unforeseen/unexpected default by Diageo. The transaction is structured such that all of Diageo's energy requirements are

not served from PPAs because Diageo's load will vary and the output of the solar generation will vary. It would be difficult to make the load and PPA match perfectly. The contract structure utilizes Renewable Energy Credits (RECs) to resolve the difference between the energy purchased through PPAs and Diageo's load. EKPC and Diageo will monitor the renewable energy received from the PPAs and Diageo's year-to-date energy use throughout the year. EKPC will purchase RECs and retire them for Diageo to provide green attributes for the energy that Diageo requires that is not provided by the renewable PPAs and Diageo's participation in the Cooperative Solar tariff.

**Request 4b.** Explain whether there is any possibility that Diageo's purchase of RECs would, or could conceivably become the sole means by which Diageo meets its self-imposed renewable energy consumption requirement.

**Response 4b.** The contract provides for Diageo to meet its renewable energy objectives in the beginning of the contract solely from REC purchases. The renewable energy market is not liquid enough currently to expect to be able to contract for renewable energy prior to June 1, 2022 when the first contract is proposed. Should Diageo decide it wanted to meet its renewable energy objectives by solely purchasing RECs in advance of EKPC executing a contract for renewable energy to fulfill the Diageo contract, EKPC would be agreeable to modify the contract.

**Request 4c.** Provide a discussion regarding how the Agreement addresses the variable nature of renewable power resources; in other words, what resources the Joint Parties will utilize to meet Diageo's load due to solar intermittency.

**Response 4c.** This contract does not attempt to balance load and renewables in real time. This contract offsets Diageo's energy requirements with renewable energy on an annual basis. As explained in Response 1, Diageo pays for its share of Inter-County/EKPC's legacy fixed generation, transmission and distribution cost through the application of Inter-County's Rate G. The load following attributes of EKPC's generation are sold into PJM. EKPC purchases load-following services from PJM. The PJM load-following revenues and costs are used to offset each other. As a result of Diageo paying for its share of the generation legacy costs, it should be entitled to the benefits of the load-following attributes of EKPC's fleet like any other customer that shares the costs of EKPC's generation assets.

**Request 4d.** Explain whether EKPC has or will conduct any analyses to determine whether any potential renewable self-build options could provide a lower cost resource to Diageo than potential PPAs. Include in your response whether any appropriately sized and scaled options could also provide power to EKPC's member-owners.

**Response 4d.** EKPC is currently tax exempt and as a result cannot take advantage of the tax credits for renewable energy projects. When EKPC built the community solar array on its

campus, Clean Renewable Energy Bonds (“CREBS”) were available to EKPC and the CREBS made building the solar farm a competitive alternative. Given the time frame and that EKPC cannot benefit from a tax credit, EKPC and Inter-County believe it is in Diageo’s best interest that EKPC fulfill its obligations through a PPA.

**EAST KENTUCKY POWER COOPERATIVE, INC.**  
**PSC CASE NO. 2020-00193**  
**RESPONSE TO INFORMATION REQUEST**

**ATTORNEY GENERAL'S INITIAL REQUEST FOR INFORMATION DATED 08/06/2020**  
**REQUEST 5**

**RESPONSIBLE PARTY: David Crews**

**Request 5.** Reference Application numerical paragraph 19. In the event EKPC is required to obtain a market purchase to meet Diageo's load, regardless of whether during summer or winter operating conditions, explain whether EKPC could conceivably incur any PJM penalties for doing so, and if so, who would pay the cost of any such penalty.

**Response 5.** Diageo's load will be part of the load EKPC serves from PJM in the future and will become part of EKPC's load obligation. When EKPC's purchases capacity from the capacity auction, EKPC gains the right to purchase energy from the day-ahead and real-time balancing markets. EKPC will not incur any penalties for purchasing energy to serve Diageo's load.

**EAST KENTUCKY POWER COOPERATIVE, INC.**

**PSC CASE NO. 2020-00193**

**RESPONSE TO INFORMATION REQUEST**

**ATTORNEY GENERAL'S INITIAL REQUEST FOR INFORMATION DATED 08/06/2020  
REQUEST 6**

**RESPONSIBLE PARTY: Isaac S. Scott**

**Request 6.** Reference Application numerical paragraph 21. Provide a discussion of how EKPC will recover its future marginal costs for both energy and capacity associated with serving the proposed project.

**Response 6.** EKPC will recover its future costs associated with serving the proposed project, both marginal and fixed, through the application of its approved tariff rates to the demand and energy usage experienced in the appropriate billing periods. As stated in Paragraph 3 of the Agreement in Exhibit 1 of the application, the tariffs set forth in Paragraph 2 can be modified, replaced, or adjusted from time to time by the Commission. This potential modification, replacement, or adjustment to the tariffs set forth in Paragraph 2 will be accomplished by EKPC filing a base rate case application.

**EAST KENTUCKY POWER COOPERATIVE, INC.**  
**PSC CASE NO. 2020-00193**  
**RESPONSE TO INFORMATION REQUEST**

**ATTORNEY GENERAL'S INITIAL REQUEST FOR INFORMATION DATED 08/06/2020**  
**REQUEST 7**

**RESPONSIBLE PARTY:**           **David Crews**

**Request 7.**           Provide a discussion of whether any prospective or contemplated PJM policy changes would or could in any manner impact the proposed agreement and the proposed project. If so, describe in full and explain whether any modifications to the agreement would be necessary.

**Response 7.**           The only PJM policy change on the horizon that would impact the contract is the Minimum Offer Price Rule ("MOPR"). The contract provides for EKPC to credit Diageo should EKPC be able to sell the resource supplying the PPA into the PJM capacity market. The MOPR will likely make that impossible. The contract acknowledges that a capacity credit is dependent on the outcome of the MOPR.

**EAST KENTUCKY POWER COOPERATIVE, INC.**  
**PSC CASE NO. 2020-00193**  
**RESPONSE TO INFORMATION REQUEST**

**ATTORNEY GENERAL'S INITIAL REQUEST FOR INFORMATION DATED 08/06/2020**  
**REQUEST 8**

**RESPONSIBLE PARTY:**           **David Crews**

**Request 8.**           Explain whether Diageo's proposed subscription to EKPC's Community One Solar Project would, or could trigger any plans on EKPC's part, to construct any additional solar facilities for the benefit and use of its member-owners.

**Response 8.**           Diageo's participation in the Inter-County CS Tariff will not drive EKPC to construct additional solar facilities.

**Request 8a.**           Provide the percentage of EKPC's Community One Solar Project that Diageo's subscription will represent.

**Response 8a.**           Approximately 1%.



**EAST KENTUCKY POWER COOPERATIVE, INC.**  
**PSC CASE NO. 2020-00193**  
**RESPONSE TO INFORMATION REQUEST**

**ATTORNEY GENERAL'S INITIAL REQUEST FOR INFORMATION DATED 08/06/2020**  
**REQUEST 9**

**RESPONSIBLE PARTY:** Isaac S. Scott

**Request 9.** Reference the Agreement, paragraph 3 (b)(1). Given that no demand ratchet would apply, in the event Diageo's facility is for any reason unable to operate, explain whether ratepayers would remain insulated from the costs of serving Diageo's facility.

**Response 9.** EKPC would first note that, as stated in the response to Request 3 above, the waiver of the demand ratchet provision in EKPC's Rate G and Inter-County's Schedule IND G will only be in place from the Effective Date of the Agreement through June 30, 2022. After that date, the demand ratchet will be operational in both tariffs. Therefore, the non-ratchet period identified in the request is only possible for a period of approximately 19 months during the first two years of the Agreement (assuming the Commission approves the Agreement effective November 30, 2020).

Second, pursuant to the terms of the Agreement, the rates charged by EKPC and Inter-County to Diageo are established by existing tariffs, which can only be changed or modified by Order of the Commission. Such a change or modification would be the result of a base rate case. As the Diageo facility was not taking service from EKPC and Inter-County at the

time of the utilities' last base rate cases, other ratepayers currently are insulated from the costs of serving the Diageo facility, as the Diageo costs were not part of the test year and were not incorporated into the resulting tariffed rates. These other ratepayers will continue to be insulated until either EKPC or Inter-County seeks approval from the Commission to change or modify their respective tariffs, and that approval is granted. Please also see the response to Request 16 concerning further requirements for EKPC and Inter-County during a future rate case.

**EAST KENTUCKY POWER COOPERATIVE, INC.**

**PSC CASE NO. 2020-00193**

**RESPONSE TO INFORMATION REQUEST**

**ATTORNEY GENERAL'S INITIAL REQUEST FOR INFORMATION DATED 08/06/2020  
REQUEST 10**

**RESPONSIBLE PARTY: David Crews**

**Request 10.** Explain whether the Joint Parties anticipate filing copies of the PPAs contemplated in the Agreement. If not, why not?

**Response 10.** EKPC plans to file the PPA agreements.

**EAST KENTUCKY POWER COOPERATIVE, INC.**  
**PSC CASE NO. 2020-00193**  
**RESPONSE TO INFORMATION REQUEST**

**ATTORNEY GENERAL'S INITIAL REQUEST FOR INFORMATION DATED 08/06/2020**  
**REQUEST 11**

**RESPONSIBLE PARTY:**                   **Darrin Adams/Isaac S. Scott**

**Request 11.**                   Explain whether as a result of the proposed Agreement, EKPC may have to construct new or modified transmission facilities in order to serve Diageo's load.

**Response 11.**                   EKPC is constructing a new distribution substation near the planned Diageo facility, and associated 161 kV transmission line extension (distance of approximately 0.3 mile) to the new substation. PJM and EKPC have identified the need for a transmission line upgrade as a result of this load addition to the system. The maximum conductor operating temperature of the EKPC Marion County-Marion County Industrial Park Tap 161 kV line must be increased from 142 degrees Fahrenheit to 167 degrees Fahrenheit due to the Diageo load addition.

**Request 11a.**                   If so, or if that possibility exists, explain what measures EKPC will take in order to determine what portion of the projected costs of such facilities that Diageo would pay for, and what portion other customers would pay for.

**Response 11a.** EKPC will first determine whether any new or modified transmission facilities exclusively serve Diageo or if other customers are served by those facilities. This evaluation will be based on the nature and purpose of the facilities rather than on a set formula for allocation. If the determination is that the new or modified transmission facilities exclusively serves Diageo, pursuant to paragraph 5(d) of the Agreement in Exhibit 1, the actual costs of such facilities will be recovered from Diageo over the initial term of the Agreement. If only a portion of the actual costs for new or modified transmission facilities serves Diageo, again pursuant to paragraph 5(d), the actual costs allocated to Diageo will be recovered over the initial term of the Agreement. The portion of these actual costs not attributable to Diageo would eventually be recognized in a future EKPC cost-of-service study that would be performed in conjunction with a base rate case.

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**REQUEST 12**

**RESPONSIBLE PARTY:**           **David Crews**

**Request 12.**           Reference the Agreement, Appendix A. Given the current lack of any wind resources in the Commonwealth, can EKPC confirm that Diageo would be responsible for any and all transmission costs associated with the import of any power from wind resources, including any potential congestion charges?

**Response 12.**           The Request For Proposal for PPAs will require resources that are not on EKPC’s transmission system be settled at the AEP/Dayton (AD) Hub in PJM. The AD Hub is a liquid hub in PJM. Historically, the AD Hub settles very close to the EKPC zone. EKPC could manage congestion from the AD Hub to the EKPC zone with Financial Transmission Rights (“FTRs”). PJM provides Auction Revenue Rights (“ARRs”) to EKPC based on load. Since ARR are distributed based on load and ARR are used to buy FTRs, it carries forward that using FTRs to hedge Diageo’s load is not a subsidization.

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REQUEST 13**

**RESPONSIBLE PARTY: David Crews**

**Request 13.** Provide a forecast for the cost of RECs to the extent and duration for which one has already been obtained or calculated by the parties for utilization under Option A of EKPC Rate H.

**Response 13.** EKPC's Rate H Option A allows participants to purchase their choice of Wind, Solar, Hydro or Biomass Renewable Energy Credits (RECs). EKPC's Rate H Option A does not guarantee a set number of RECs to an End-Use Retail Member ("retail member") participating in Rate H. Participants choose a renewable technology and pledge a set amount of dollars toward a purchase of RECs from that renewable technology. EKPC purchases RECs from the REC market and retires those RECs on behalf of the retail member. The number of RECs purchased and retired is dependent on the cost of RECs and the total pledges collected in the delivery year. EKPC purchases wind, solar and hydro RECs in the market that is lowest cost for that year. EKPC typically supplies biomass RECs from its land fill gas fleet.

REC values vary depending on where the RECs have been qualified to participate in REC markets. Renewable resources must register and meet the qualifications of a State to be able to sell RECs in that State's REC market. REC values also change year over year depending on the demand. High loads in a particular State can drive REC purchase higher because States that have REC markets generally are attempting to green up a certain percentage of the State's electric energy demands. Recently, demand has been influenced by industrial members purchasing RECs directly from the REC markets.

The attached confidential spreadsheet, *REC Forward – 2021-2050*, shows the forward curve for RECs in many locations. It is provided in connection with a Motion for Confidential Treatment tendered herewith.



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**REQUEST 14**

**RESPONSIBLE PARTY: David Crews**

**Request 14.** Discuss whether Diageo's utilization of Community Solar One requires the construction of additional solar facilities.

**Response 14.** There are adequate panels in Cooperative Solar 1 to satisfy the 333 licenses in the Diageo contract.

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**REQUEST 15**

**RESPONSIBLE PARTY: David Crews**

**Request 15.** Please discuss the factors EKPC will consider in analyzing whether to self-supply. See Testimony of David Crews at page 10.

**Response 15.** See Response to 4d.

**Request 15a.** Please fully discuss whether such self-supply would require production of additional facilities.

**Response 15a.** See Response to 4d.

**Request 15b.** Please fully discuss whether additional construction and/or self-supply would cause additional costs, fixed or variable, to be borne by EKPC's general rate base.

**Response 15b.** See Response to 4d.

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**REQUEST 16**

**RESPONSIBLE PARTY:** Isaac S. Scott

**Request 16.** See Testimony of David Crews at page 15<sup>1</sup> where he states, “the discounted demand rate charged to Diageo was less than the capacity price established by the BRA for 2021-22 in the first two years of the discount period and higher in the last three years of the discount period. Overall, the total discounted demand exceeded marginal costs over the full discount period.” Based on this analysis, is Diageo being subsidized by other ratepayers during the first two years of the contract?

**Response 16.** No. The Marginal Cost Analysis simply indicates that during the first two years of the Agreement, the tariffed demand rate net of the applicable EDR discount is less than the capacity price established by the BRA in those years. This difference does not constitute a subsidy for Diageo, as the tariffed rates charged to other ratepayers are not automatically adjusted to make up the difference. As discussed previously, tariffed rates can only be changed or modified by the filing of an application and the Commission approving those changes or modifications. In addition, as discussed in Mr. Crews’ direct testimony, Exhibit 3 of the application at pages 16-17,

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<sup>1</sup> See also Marginal Cost Analysis at Page 4.

finding 8 of the Commission's September 24, 1990 Order in Administrative Case No. 327 requires a utility with an active EDR contract to demonstrate in the course of a rate proceeding that non-participating ratepayers are not adversely affected by the economic development special contract customer.

EKPC would also note that finding 6 and the subsequent ordering paragraph 1 of the September 24, 1990 Order<sup>2</sup> requires the filing of the Marginal Cost Analysis. While the Order discussion mentions the calculations should be by year, the finding paragraph does not state the evaluation of the Marginal Cost Analysis is to be done on a year-by-year basis. Further, the results shown in the Diageo Marginal Cost Analysis are similar to the results found in the marginal cost analyses submitted by EKPC in three of its four other EDR contracts. In those analyses, at some point the first-year demand rate net of the applicable EDR discount was lower than the capacity price established by the BRA for that year. However, when looking at the entire five-year analysis period for each of those contracts, the demand rate net of the EDR discount was larger than the capacity price established by the BRA. The Commission approved all three of these EDR contracts.

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<sup>2</sup> See *In the Matter of An Investigation Into the Implementation of Economic Development Rates by Electric and Gas Utilities*, Order, Administrative Case No. 327 (Ky. P.S.C. Sept. 24, 1990), p. 26, 28.