

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)	

MOTION FOR CONFIDENTIAL TREATMENT

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.¹

¹ 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 17th day of August, 2020.

Respectfully submitted,

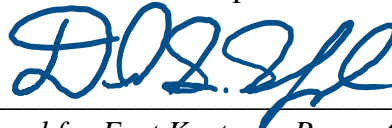


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and Inter-County Energy Corporation*

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.



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

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)	

**RESPONSES TO COMMISSION STAFF'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)
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 Commission Staff'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 17th day of August, 2020.



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

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

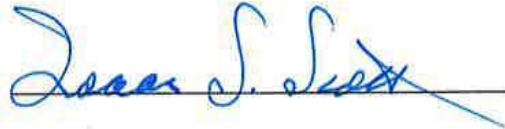
**ELECTRONIC JOINT APPLICATION OF EAST)
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**CASE NO.
2020-00193**

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 Commission Staff'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 17th 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

**COMMISSION STAFF'S INITIAL REQUEST FOR INFORMATION DATED 08/06/2020
REQUEST 1**

RESPONSIBLE PARTY: Isaac S. Scott

Request 1. 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).

Response 1. Please see the attached Excel spreadsheet which presents the requested sample bills for the period prior to June 30, 2022, the period July 1, 2022 through June 30, 2023, and the period July 1, 2023 and later. It should be noted that the first year of the EDR discount corresponds with the period July 1, 2022 through June 30, 2023. The second through the fifth years of the EDR discount are shown with the period July 1, 2023 and later. After the end of the EDR discount, the sample bill with no EDR discount shown for the period July 1, 2023 and later would be the applicable billing. The attachment is provided in connection with a Motion for Confidential Treatment tendered herewith.

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

COMMISSION STAFF'S INITIAL REQUEST FOR INFORMATION DATED 08/06/2020
REQUEST 2

RESPONSIBLE PARTY: **Isaac S. Scott**

Request 2. Refer to the application, paragraph 20. Provide support for the statement that EKPC and Inter-County will recover all variable costs associated with providing electric energy to Diageo and that additional incremental revenues will contribute to both utilities' fixed costs that would otherwise have been paid by EKPC's other Owner-Members and Inter-County's retail members.

Response 2. Paragraph 20 of the application makes reference to page 8 of the Commission's September 24, 1990 Order in Administrative Case No. 327.¹ In that Order, the Commission found that each time an EDR contract was submitted for approval, utilities were to demonstrate that the discounted rate exceeded the total short-run marginal, or variable, costs associated with serving the customer for each year of the discount period. The demonstration of marginal cost recovery was to be accomplished through the use of a current marginal cost-of-

¹ 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. 8.

service study, which was conducted no more than one year prior to the date of the contract and was to include both marginal capacity costs and marginal energy costs.

Paragraph 21 of the application states that the required marginal cost-of-service study was filed with the application as Exhibit 4. The marginal cost-of-service study demonstrates that, looking at the entire EDR discount period, the demand-related marginal costs are covered and the excess would be a contribution to the fixed costs EKPC incurs. For the post-EDR discount period, the demand rate of \$6.98 exceeds the expected PJM Base Residual Auction (“BRA”) results. This would demonstrate that the demand rate exceeds the demand-related marginal costs, represented by the BRA results. The marginal cost-of-service study also shows that EKPC’s energy rate, the tariffed energy rate less the applicable fuel adjustment clause rate, exceeds the historical marginal costs. The marginal cost-of-service study provided as Exhibit 4 of the application was prepared in a manner consistent with marginal cost-of-service studies EKPC has submitted to the Commission in conjunction with four previous industrial power agreements with an EDR.

The majority of the variable costs associated with the Diageo contract are EKPC costs. Concerning any variable costs Inter-County may incur, it should be noted that Inter-County had a base rate case which was decided in January 2019 and its Schedule IND G tariff was established in December 2019. Consequently, Inter-County’s rates reflect current levels of operation and maintenance expenses and should be adequate to recover any variable costs associated with the Diageo contract.

EAST KENTUCKY POWER COOPERATIVE, INC.

PSC CASE NO. 2020-00193

RESPONSE TO INFORMATION REQUEST

**COMMISSION STAFF'S INITIAL REQUEST FOR INFORMATION DATED 08/06/2020
REQUEST 3**

RESPONSIBLE PARTY: David Crews

Request 3. Refer to the Industrial Power Agreement with Economic Development Rider and Renewable Energy Purchases (Agreement), Section 4(a)(5). Explain what the last sentence is referring to when it references EKPC's administrative fee under Rate H – Wholesale Renewable Energy Program.

Response 3. EKPC will purchase RECs for Diageo under EKPC's Rate H Option A. Rate H Option A provides for an administration fee to cover the costs of administering this tariff. The tariff did not envision that a participant would purchase thousands of RECs. EKPC chose to waive the administrative fee in the Diageo contract because the per-block cost for EKPC to purchase and track thousands of RECs for Diageo will be very small. In this contract, the administrative fee would have placed an unacceptable burden on Diageo.

EAST KENTUCKY POWER COOPERATIVE, INC.

PSC CASE NO. 2020-00193

RESPONSE TO INFORMATION REQUEST

**COMMISSION STAFF'S INITIAL REQUEST FOR INFORMATION DATED 08/06/2020
REQUEST 4**

RESPONSIBLE PARTY: David Crews

Request 4. Refer to the application, Exhibit 3, Direct Testimony of David Crews (Crews Testimony), page 6, line 7. Explain which electric utility serves the existing Diageo facility.

Response 4. Shelby Energy Cooperative serves the existing Diageo distillery within its service territory.

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

COMMISSION STAFF'S INITIAL REQUEST FOR INFORMATION DATED 08/06/2020
REQUEST 5

RESPONSIBLE PARTY: David Crews

Request 5. Refer to the Crews Testimony, page 13, lines 9–23 and page 14, lines 1–11. Even though EKPC's capacity reserve margin satisfies PJM's summer peak requirements, EKPC is a winter peaking utility. Explain how Finding 5 is satisfied relative to EKPC's winter peak.

Response 5. Table 8-6 on page 142 of EKPC's 2019 Integrated Resource Plan filed on April 1, 2019 in Case No. 2019-00096 shows that EKPC has excess available winter capacity through 2026.

EAST KENTUCKY POWER COOPERATIVE, INC.

PSC CASE NO. 2020-00193

RESPONSE TO INFORMATION REQUEST

**COMMISSION STAFF’S INITIAL REQUEST FOR INFORMATION DATED 08/06/2020
REQUEST 6**

RESPONSIBLE PARTY: Isaac S. Scott

Request 6. Refer to the application, Exhibit 4, page 5 of 5. Confirm that the applicable FAC Rates in the table are the rates charged to customers in each of the months listed in the table.

Response 6. When the table on page 5 of 5 was being prepared, the billing month was inadvertently stated in error. Please see the attached corrected table. EKPC confirms that the FAC rate listed was charged to customers in the months listed in the corrected billing month reference.

Billing Month Ended (Corrected)	Energy Rate as \$ per kWh				
	Rate G Tariffed Rate	Applicable FAC Rate	Net Energy Rate	Cost of Market Purchases	Difference
July 2019	\$0.038467	-\$0.003490	\$0.034977	\$0.024240	\$0.010737
August	\$0.038467	-\$0.004830	\$0.033637	\$0.022570	\$0.011067
September	\$0.038467	-\$0.005230	\$0.033237	\$0.023490	\$0.009747
October	\$0.038467	-\$0.006120	\$0.032347	\$0.022810	\$0.009537
November	\$0.038467	-\$0.005640	\$0.032827	\$0.022900	\$0.009927
December	\$0.038467	-\$0.006590	\$0.031877	\$0.021660	\$0.010217
January 2020	\$0.038467	-\$0.001190	\$0.037277	\$0.025840	\$0.011437
February	\$0.038467	-\$0.005110	\$0.033357	\$0.022820	\$0.010537
March	\$0.038467	-\$0.006540	\$0.031927	\$0.021330	\$0.010597
April	\$0.036947	-\$0.007810	\$0.029137	\$0.018730	\$0.010407
May	\$0.036947	-\$0.009170	\$0.027777	\$0.017070	\$0.010707
June 2020	\$0.036947	-\$0.010190	\$0.026757	\$0.016460	\$0.010297
Averages for the Current 12-month Period	\$0.038087	-\$0.005993	\$0.032095	\$0.021660	\$0.010435