

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

**In the Matter of:**

<b>THE ELECTRONIC APPLICATION OF EAST</b>	)	
<b>KENTUCKY POWER COOPERATIVE, INC.</b>	)	
<b>FOR A GENERAL ADJUSTMENT OF RATES</b>	)	<b>Case No. 2021-00103</b>
<b>APPROVAL OF DEPRECIATION STUDY</b>	)	
<b>AMORTIZATION OF CERTAIN REGULATORY</b>	)	
<b>ASSETS AND OTHER GENERAL RELIEF</b>	)	

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**EAST KENTUCKY POWER COOPERATIVE, INC.’S**  
**MOTION FOR CONFIDENTIAL TREATMENT**

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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 information filed in its Responses to: (1) the Supplemental Joint Requests for Information from the Attorney General (“AG”) and Nucor Steel Gallatin (“Nucor”) (AG/Nucor-DR2”); and (2) Nucor’s Supplemental Data Requests (“Nucor-DR2”), in the above-captioned proceeding, respectfully states as follows:

1. EKPC’s Application in the above-styled proceeding was deemed filed on April 6, 2021.
2. Both AG/Nucor-DR2 and Nucor-DR2 were issued on June 4, 2021. A portion of the material being provided as part of the responses to these data requests includes information that is confidential and proprietary in nature and confidential treatment is necessary to assure that load, peak, billing demand, bill credit and metering information concerning specific industrial

customers of EKPC's Owner-Member Cooperative's ("owner-members"), EKPC's own proprietary formulas and data and other information remain confidential. In particular, EKPC seeks confidential treatment for documents and information provided in response to: AG/Nucor-DR2-11; AG/Nucor-DR2-13; Nucor-DR2-3a; Nucor-DR2-3b; Nucor-DR2-4; Nucor-DR2-5; Nucor-DR2-7; and Nucor-DR2-10. Collectively this information and these documents are hereinafter referred to as the "Confidential Information."

3. AG/Nucor-DR2-11 states as follows:

Refer to the Company's responses to AG-Nucor 1-13 and 1-14. Indicate whether the Company performed a calculation of the weather normalized revenues in the test year for any reason(s). If so, describe the calculation(s), the reason(s) for the calculation(s), and provide a copy of the calculation(s), including all assumptions, data, analyses, and electronic spreadsheet files in live format and with all formulas intact.

4. In response, EKPC is providing two spreadsheets – *AG Nucor DR2 Response 11 Coop Sales CONFIDENTIAL.xlsx* and *AG Nucor DR2 Response 11 FAC CONFIDENTIAL.xlsx* – that include the requested calculations. These spreadsheets also include detailed customer load information that is both historic and projected. This information is so detailed that it concerns individual commercial and retail customers of EKPC's owner-members, which gives tremendous insight into their load characteristics and power purchases. This information would also be very valuable for other jurisdictions that might seek to entice them to leave Kentucky and create a resulting loss of jobs and investment. Moreover, it is well-understood that individual customers have a reasonable expectation of privacy with regard to their unique transactions with a regulated utility.<sup>1</sup> Also, the spreadsheets contain formulas and other trade secret information that is closely

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<sup>1</sup> See 807 KAR 5:001, Section 4(10); *In the Matter of the Electronic Application of Duke Energy Kentucky, Inc. for: 1) An Adjustment of the Electric Rates; 2) Approval of an Environmental Compliance Plan and Surcharge Mechanism; 3) Approval of New Tariffs; 4) Approval of Accounting Practices to Establish Regulatory Assets and Liabilities and 5) All Other Required Approvals and Relief*, Order, Case No. 2017-00321 (Ky. P.S.C. May 3, 2018); *In the Matter of*

held by EKPC and is not otherwise publicly available. The disclosure of this information would harm EKPC and its owner-members by causing the loss of valuable data, planning assumptions and analysis that was expensive and time-consuming to develop.

5. AG/Nucor-DR2-13 states as follows:

Provide calculations of adjustments to annualize test year revenues for changes in customers and usage within the test year. For increases or reductions in customers or loads that were added or lost during the year, then annualize the base revenues that were added or lost. For customers that migrated from one tariff to another during the test year, provide the annualized effect on revenues as if they had been on the most recent tariff for the entire test year. This request specifically does not address or request post-test year changes in customers and usage. Provide all supporting assumptions, data, and calculations, including electronic workpapers in live format with all formulas intact.

6. In response, EKPC is providing a spreadsheet – *AG Nucor DR2 Response 13 CONFIDENTIAL.xlsx* – which provides the requested information. However, this information is drawn from, and similar to, EKPC’s prior response to AG/Nucor-DR1-16, which includes information by rate class on individual commercial and industrial customers of EKPC’s owner-members and financial information that is outside the test year. This information is already subject to a motion for confidential treatment filed by EKPC, which it adopts and incorporates herein as if set forth in full.<sup>2</sup>

7. Nucor-DR2-3a and 3b state as follows:

Please provide in an excel file the following information for each month of the 2019 test year:

- a. The on-peak, off-peak and total MWh energy associated with Nucor’s Pickle Galvanizing Line (PGL), as recorded on Nucor meter M-5. Please confirm that these MWh amounts are

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*the Proposed Revision of Rules Regarding the Provision of Wholesale Water Service by the City of Versailles to Northeast Woodford Water District*, Order, Case No. 2011-00419 (Ky. P.S.C. Mar. 14, 2012) (commercial account information).

<sup>2</sup> See EKPC Motion for Confidential Treatment, Case No. 2021-00103 (filed May 28, 2021).

included in the total MWh shown for Nucor Gallatin in the EKPC class cost of service study and in the EKPC rate design analysis.

- b. The coincident peak kW demand (CP demand) associated with Nucor's Pickle Galvanizing Line (PGL), as recorded on Nucor meter M-5. Please confirm that these CP kW demand amounts are included in the total Nucor CP billing demand shown for Nucor Gallatin in the EKPC class cost of service study and in the EKPC rate design analysis.

8. In response, EKPC is providing an Excel spreadsheet – *Nucor DR2 Response 3-4 CONFIDENTIAL.xlsx*– that provides the energy usage, metering data and bill credit of a single customer at a single meter. Information that is unique to a customer is generally regarded as confidential with customers enjoying a reasonable expectation of privacy with regard to their unique information. Moreover, this spreadsheet provides extraordinary insight into the operations of large commercial and industrial customer within the EKPC system. The Commission has already determined that the bill credit is confidential.<sup>3</sup>

9. Nucor-DR2-4 states as follows:

With regard to the response to AG & Nucor Initial Request 18, please provide in an excel file with formulas intact, on a monthly basis, the on and off-peak kWh and CP kW billing demand used to calculate the revenues for 2019 and 2020. Also show the calculation of the revenues shown in the response to Request 18, using these billing determinants.

10. In response, EKPC is providing an Excel spreadsheet – *Nucor DR2 Response 3-4 CONFIDENTIAL.xlsx* – that again lists peak and coincident peak billing demand for a single industrial customer of one of EKPC's owner-members and financial information by rate case that is outside the test year.

11. Nucor-DR2-5 states as follows:

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<sup>3</sup> See *In the Matter of the Electronic Tariff Filing of East Kentucky Power Cooperative, Inc. of an Amendment to an Industrial Power Agreement with Interruptible Service Between East Kentucky Power Cooperative, Inc. Owen Electric Corporation, Inc. and Nucor Steel Gallatin, LLC f/k/a Gallatin Steel Company*, Order, Case No. 2020-00317 (Ky. P.S.C. March 9, 2021).

With regard to the response to Nucor Initial Request 1, please provide the hourly loads for the year 2019, in an excel spreadsheet, for Rate TGP, Steam and the Nucor Gallatin Meter M-5.

12. In response, EKPC is providing a spreadsheet – *Nucor DR2 Response 5 CONFIDENTIAL.xlsx* – that includes information regarding test year hourly loads for three particular industrial customers of EKPC’s Owner-Members. As set forth above, customers generally enjoy a reasonable expectation of privacy with regard to their unique transactions with a regulated utility.

13. Nucor-DR2-7 states as follows:

Please confirm that EKPC calculated both its 12 CP demands and its Maximum NCP Demands by Class in its class cost of service study using 15-minute demands, not hourly demands. Please provide the corresponding 12 CP demand and Maximum NCP Demands by Class based on hourly demands in an excel spreadsheet.

14. In response, EKPC is providing a spreadsheet – *Nucor DR2 Response 7 CONFIDENTIAL.xlsx* – which includes detailed data on EKPC’s coincident peaks and non-coincident peaks at 60-minute intervals. This data is proprietary to EKPC and is derived from information which is already subject to a motion for confidential treatment.<sup>4</sup> If disclosed, the information would reveal detailed information about specific customer information of industrial customers of EKPC’s owner members. As set forth above, customers generally have a reasonable expectation of privacy with regard to their data.

15. Nucor-DR2-10 states as follows:

Please reconcile the "Sum of Maximum Class NCP" from line 80, tab 'Revenue Input' of the spreadsheet" PSC DR Response 16 App Exhibit 39 CCOSS and RD Confidential.xlsx" to the maximum hourly demand for each rate class provided in the spreadsheet "Nucor DR1 Response 1 CONFIDENTIAL.xlsx". If there are

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<sup>4</sup> See EKPC Motion for Confidential Treatment (filed May 28, 2021).

additional metered loads included in the Sum of Maximum Class NCP for any rate class which were not provided in response to Nucor DR1, please provide those on the same hourly basis.

16. In response, EKPC is providing a spreadsheet – *Nucor DR2 Response 10 2019 CCOSS CONFIDENTIAL.xlsx* – which includes the entire CCOSS spreadsheet, including billing determinants for all customers. This spreadsheet includes all of the formulas, data, assumptions and other information built into EKPC’s CCOSS and is therefore very valuable. It is the product of significant investment by EKPC and constitutes a trade secret under Kentucky law. *See* KRS 365.880(4).

17. 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. Because the Confidential Information is included on spreadsheets, the Confidential Information is so pervasive that confidential treatment should be afforded for the entire file and no redacted file may be uploaded to the Commission’s website without compromising the integrity of the filing.

18. The Confidential Information is retained by EKPC on a “need-to-know” basis and is not publicly available. If disclosed, the Confidential Information would give competitors of the specific industrial clients involved a tremendous advantage in each of the areas detailed above. This information would also be useful to other jurisdictions that might seek to lure these businesses out of Kentucky. The loss of these loads 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-member cooperatives and those owner-members’ end-use retail members.

19. The Kentucky Open Records Act exempts the Confidential Information from public disclosure. *See* KRS 61.878(1). Moreover, the Kentucky Supreme Court has stated, “information

concerning the inner workings of a corporation is ‘generally accepted as confidential or proprietary.’” *Hoy v. Kentucky Industrial Revitalization Authority*, 907 S.W.2d 766, 768 (Ky. 1995). Because the Confidential Information is critical to EKPC’s effective execution of business decisions and strategy, it satisfies both the statutory and common law standards for being afforded confidential treatment.

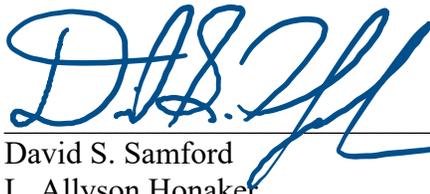
20. EKPC does not object to limited disclosure of the Confidential Information, pursuant to an acceptable confidentiality and nondisclosure agreement, to the Attorney General and Nucor who have a legitimate interest in reviewing the same for the sole purpose of participating in this case. EKPC tendered a confidentiality agreement AppHarvest Morehead Farms, LLC (“AppHarvest”) on May 26, 2021, but has not yet received a signed copy back from AppHarvest. However, due to ongoing contractual negotiations with AppHarvest’s affiliates, EKPC does not believe that it is appropriate to provide any of the spreadsheets provided in response to AG/Nucor-DR2 or Nucor-DR2 to AppHarvest notwithstanding any confidentiality agreement AppHarvest may be willing to enter into. These spreadsheet includes detailed information about each of the other significant commercial and industrial loads served by EKPC and its owner-members and a commercial billing credit term that is currently subject to contract negotiation, which would give AppHarvest a significant and unprecedented insight into the load profiles and characteristics of other similarly situated customers and unique bargaining leverage in negotiating an interruptible billing credit. Under the circumstances, such disclosures would be unfair to EKPC’s other retail commercial and industrial customers.

21. 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 an indefinite period of 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 the periods set forth herein.

This 16<sup>th</sup> day of June, 2021.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

This is to certify that the 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 June 16, 2021; 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 will be delivered to the Commission within thirty (30) days of the conclusion of the present COVID-19 related state of emergency.



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*Counsel for East Kentucky Power Cooperative, Inc.*