COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF EAST KENTUCKY	**)**	
POWER COOPERATIVE, INC. FOR A GENERAL	**)**	
ADJUSTMENT OF RATES, APPROVAL OF	**)**	**CASE NO.**
DEPRECIATION STUDY, AMORTIZATION OF	**)**	**2021-00103**
CERTAIN REGULATORY ASSETS, AND OTHER	**)**	
OTHER GENERAL RELIEF	**)**	

EAST KENTUCKY POWER COOPERATIVE, INC.'S BRIEF

Comes now East Kentucky Power Cooperative, Inc. ("EKPC"), by counsel, pursuant to the August 4, 2021 Order of the Kentucky Public Service Commission ("Commission") setting forth the post-hearing procedural schedule in the above-styled docket, and does hereby tender its Brief in support of the Joint Stipulation, Settlement Agreement and Recommendation filed on July 29, 2021 ("Joint Stipulation") and addressing other topics and subjects raised in the course of the hearing held in this matter on August 3-4, 2021, respectfully stating as follows:

I. INTRODUCTION

This case presents EKPC's first request for an increase in its base rates in over a decade. EKPC has significantly improved the quality and character of its service over the intervening years by making important changes to its governance that have yielded greater reliability, improved financial stability and higher credit ratings. Furthermore, EKPC has taken tremendous strides to modernize its operations and proactively address emerging issues within the industry. Examples of these efforts include: (1) joining and participating in the capacity, energy and ancillary services markets offered by PJM Interconnection, LLC ("PJM"); (2) renegotiating financing arrangements and establishing and maintaining a healthy, investment grade credit rating; (3) retiring four coal-fired units at the William C. Dale Generating Station ("Dale Station") and removing decades worth of accumulated ash deposits from the banks of the Kentucky River; (4) paying off higher interest rate debt without prepayment penalties through the 2018 Farm Bill enacted by Congress; (5) acquiring three combustion turbine generating units at the Bluegrass Generating Station ("Bluegrass Station") and assuring their ability to meet PJM's strict capacity performance obligations; (6) developing and implementing a nationally recognized safety program and operating culture; and (7) preserving a significant generation asset at the John Sherman Cooper Generating Station ("Cooper Station").

EKPC filed its Application seeking a $43.0 million increase in base rates while asserting that it could justify a higher $48.984 million increase. Through discovery and a two-day hearing, each of EKPC's assertions and claims have been measured and tested. The outcome of these discussions is the bargained-for Joint Stipulation which recommends that EKPC's base rate increase should be $38.343 million. Each of the intervenors' expert witnesses who testified at the hearing in this case affirmed their belief that the Joint Stipulation was a fair, just and reasonable resolution of the issues presented in this case.[1] The administrative record of this docket affirms this conclusion. Accordingly, for the reasons set forth herein, EKPC respectfully requests the Commission to approve the Joint Stipulation in its entirety without modification.

II. BACKGROUND

On April 1, 2021, EKPC tendered its Application with the Commission, pursuant to KRS 278.180, KRS 278.190 and other applicable law, for an adjustment of its wholesale rates, approval of a depreciation study, amortization of certain regulatory assets and other general relief

[1] *See* Examination of Mr. Lane Kollen, Hearing Video Record ("HVR") 17:06:35 (Aug. 3, 2021); Examination of Mr. Steven Baron, HVR 17:19:50 (Aug. 3, 2021); Examination of Ms. Sudeen Kelly, HVR 9:13:50 (Aug. 4, 2021).

("Application"). The Application was accepted for filing on April 6, 2021. Motions for intervention by the Attorney General ("AG"), Nucor Steel Gallatin ("Nucor") and AppHarvest Morehead Farm, LLC ("AppHarvest") were granted on March 5, 2021, March 25, 2021 and April 27, 2021, respectively. EKPC responded to three separate sets of data requests from Commission Staff and two sets of data requests from each intervenor. Five witnesses tendered testimony on behalf of the intervenors and EKPC tendered its rebuttal testimony on July 27, 2021. Contemporaneous with the discovery process, EKPC and the intervenors engaged in settlement discussions that ultimately proved to be successful. The Joint Stipulation was filed on July 29, 2021. At the hearing of the case, EKPC presented seventeen witnesses for cross-examination. Following the hearing, EKPC responded to additional post-hearing data requests from Commission Staff. With the submission of briefs, the matter is now ready for adjudication.

III. ARGUMENT

A. The Joint Stipulation Provides a Fair, Just and Reasonable Resolution of All Issues Set Forth in EKPC's Application and Should be Approved by the Commission.

Following successful negotiations with the Attorney General, Nucor and AppHarvest, EKPC and the intervenors entered into the Joint Stipulation that was filed on July 29, 2021. The Joint Stipulation must be regarded in its totality and as the product of significant give-and-take by the parties. When viewed in its entirety, the Joint Stipulation fairly, justly and reasonably resolves each of the issues and claims asserted in EKPC's Application. To wit, the Joint Stipulation includes the following expression of support by the Parties:

> The Parties understand that this Stipulation is not binding upon the Commission, but believe it is entitled to careful consideration by the Commission. The Parties agree that this Stipulation, viewed in its entirety, constitutes a reasonable resolution of all issues in this proceeding. The Parties request that the Commission issue an Order approving this Stipulation in its entirety pursuant to KRS 278.190, including the rate increase, rate structure, depreciation study,

> amortization of regulatory assets, relief from certain existing reporting obligations, approval of textual changes to tariffs and recovery of rate case expense as described herein. The request is based upon the belief that the Parties' participation in settlement negotiations and the materials on file with the Commission adequately support this Stipulation. Adoption of this Stipulation will eliminate the need for the Commission and the Parties to expend significant resources in litigation of this proceeding and will eliminate the possibility of, and any need for, rehearing or appeals of the Commission's final Order herein.[2]

The substantive terms of the Joint Stipulation, discussed below, demonstrate that the Joint Stipulation is in fact fair, just and reasonable and should be approved.

1. The Joint Stipulation Appropriately Recommends a $38.343 Million Revenue Increase.

The Joint Stipulation recommends that the Commission approve a base rate increase of $38.343 million over EKPC's current test year revenues, which amounts to an adjusted base rate revenue requirement of $481.565 million. In arriving at this revenue increase, the Parties to the Joint Stipulation agreed to several facts and adjustments.

First, the Joint Stipulation is consistent with EKPC's Application which indicated that EKPC believed it could justify a $48.984 million rate increase, but that it would voluntarily limit the increase to $43.0 million.[3] Each of the adjustments recognized in the Joint Stipulation, are deducted from EKPC's original proposition that the $48.984 million increase could be justified. This rationale was set forth in EKPC's Application as follows:

> As part of EKPC's request for an increase in its base rates, it is seeking to increase its revenue requirement by a total of $43.0 million, even though it is possible to demonstrate that as much as $48.98 million in additional revenue is fully justified. This case is presented on the basis that EKPC is justified in recovering the full amount, so that any proposed adjustments from intervenors may be

[2] *See* Joint Stipulation, p. 2.

[3] *See* Application, ¶ 23; Direct Testimony of Ann Bridges, p. 9 (Apr. 1, 2021); Examination of Ann Bridges, Hearing Video Record ("HVR") at 10:45:50 – 10:48:00 (Aug. 3, 2021).

> taken into account without the revenue requirement dipping below the requested $43 million increase.[4]

Because it is not customary for a utility to voluntarily forego revenue to which it believes it would otherwise be entitled,[5] Ann Bridges, EKPC's Chief Financial Officer, offered additional explanation for the reasoning of EKPC's Board of Directors on this subject in her direct testimony:

> While EKPC could justify a higher award, the Board and management are mindful of the impact any rate increase has on its owner-members and their retail customers. At the same time, it is important to assure that EKPC does not lose ground in terms of maintaining a healthy financial condition. In light of these factors, EKPC's objective in preparing this case was to keep the total rate increase to approximately 5 percent, which it was able to do. In the event that any intervenor or the Commission should feel that any negative revenue requirement adjustments are necessary, EKPC would respectfully request that it first be offset by the revenue it has voluntarily chosen to forego. In other words, EKPC hopes for the end result of this rate case to be as close to a 5.2 percent increase as possible.[6]

In fact, the actual net rate increase represented by the Joint Stipulation is below what EKPC originally proposed and its Board believed would be necessary. Although there was discussion in the discovery phase of the proceeding as to how EKPC might somehow bridge the gap between the rate increase it believed it could justify and the amount it was proposing to actually recover,[7] the evidence presented at the hearing made it clear that the potential savings were aspirational in nature.[8] While EKPC always looks for ways to achieve cost savings and will continue to do so in

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[4] Application, ¶ 23.

[5] *See* Examination of Ann Bridges, HVR at 10:46:50 (Aug. 3, 2021).

[6] Direct Testimony of Ann Bridges, p. 9 (Apr. 1, 2021).

[7] *See* EKPC Response to Staff's Second Request for Information, Response 12 (June 6, 2021).

[8] *See* Examination of Ann Bridges, HVR at 9:31:50 (Aug. 3, 2021).

the future,[9] it is appropriate and consistent with the Application – and necessary for EKPC's long-term financial strength – for the starting point for all revenue adjustments to be the $48.984 million figure set forth in the Application.

Second, the Joint Stipulation represents a fair compromise with regard to revenue adjustments, which are set forth in Exhibit A therein as follows:

Amount (Millions)	Description
$48.984	Original Revenue Requirement Calculated by EKPC
($6.592)	Normalize Generation Maintenance over Five Most Recent Years (2015-2019)
($1.914)	General Plant Reserve Surplus Amortized Over 5 Years
($2.315)	Reduce Interest Expense on Environmental Construction Work in Progress Currently Being Recovered for the Spurlock CCR/ELG in the Environmental Surcharge Mechanism
$38.343	Adjusted Revenue Requirement Calculation Agreed to by Parties

The first adjustment relates to EKPC's generation maintenance expense and normalizes EKPC's generation maintenance expense over a five-year period from 2015-2019, which corresponds to the end of the test year.[10] The second adjustment is to EKPC's general plant reserve surplus and shortens the amortization period to five years, which results in a $1.914 reduction in EKPC's revenue requirement.[11] In the third adjustment, the Parties agreed to reduce EKPC's interest expense on its environmental surcharge construction work in progress ("CWIP") balances

[9] *See id.*, HVR at 9:43:42; 10:37:25.

[10] *See* Supplemental Testimony of Ann Bridges, p. 4 (July 29, 2021).

[11] *See id*., p. 4.

that are currently being recovered for the Hugh L. Spurlock Generating Station's ("Spurlock Station") Coal Combustion Residuals and Effluent Limitation Guideline compliance projects.[12] Although the AG/Nucor witness had proposed a higher adjustment based upon a higher interest rate, using the lower interest rate associated with the Credit Facility made more sense as it is the source of funds for the projects in question.[13] This adjustment further decreases EKPC's revenue requirement by $2.135 million.[14]

2. The Joint Stipulation's Times Interest Earned Ratios ("TIER") Are Also Appropriate.

Another key tenant of the Joint Stipulation is keeping EKPC's TIER at 1.50 for base rates and reducing its ES TIER to 1.475. EKPC's TIER was set at 1.50 in its prior base rate case,[15] however, achieving its authorized TIER has been very difficult to do in practice. As set forth in the testimony of Mr. Tom Stachnik, EKPC has not actually achieved its authorized TIER in any year within a five year period ending with the test year.[16] Thus, even taking into account favorable federal credit policies such as the Farm Bill's Cushion of Credit program, achieving an authorized 1.50 TIER has not been possible. It also bears emphasis that EKPC's achieved TIER currently lags all other "A" or higher credit rated generation and transmission cooperatives which are not rate regulated.[17]

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[12] *See id.*, p. 5.

[13] *See id.*

[14] *See id.*

[15] *See In the Matter of the General Adjustment of Electric Rates of East Kentucky Power Cooperative, Inc.*, Order, Case No. 2010-00167 (Ky. P.S.C. Jan. 14, 2011).

[16] *See* Direct Testimony of Tom Stachnik, p. 18 (Apr. 1, 2021).

[17] *See id.*

Authorizing EKPC to continue to target a 1.50 TIER accomplishes several important objectives, including: (1) making it more likely that EKPC will actually achieve a TIER that is sufficient to satisfy its debt covenants;[18] (2) preventing the deferral of system reliability projects and other investments;[19] (3) preserving the gains in governance, financial discipline and reliability made since the Liberty Management Audit;[20] (4) affording a bit of insulation to EKPC in the event of an abnormal weather year which disproportionately affects EKPC relative to other utilities in light of its high concentration of residential customers;[21] (5) sending a positive signal to credit ratings agencies, whose ratings are critical to minimizing interest expense;[22] (6) providing some margin for what are certainly to be increasing costs of debt in coming years;[23] and (7) mitigating the risk to customers of any future excess margins by virtues of the earnings mechanism that is also included in the Joint Stipulation.[24] Ms. Bridges summarized the importance of the Joint Stipulation's recommendation thusly: "The 1.50 TIER gives us confidence that we will have the resources we need to continue improving our system and remaining financially healthy while the revenue mechanism will assure that customers receive the benefits of any excess margins."[25] While any of these reasons standing alone is sufficient to justify retaining a 1.50 TIER, the

[18] *See* Supplemental Testimony of Ann Bridges, p. 6 (July 29, 2021).

[19] *See id*.

[20] *See id*.

[21] *See id*., pp. 6-7.

[22] *See id*., p. 7.

[23] *See id*.

[24] *See id*.

[25] *See id*., pp. 7-8.

cumulative impact of these factors presents a cornucopia of reasons to approve the Joint Stipulation's recommendation.

With regard to the ES, the Joint Stipulation's recommendation of a somewhat reduced authorized TIER of 1.475 is also appropriate. The Joint Stipulation is in line with other recent Commission precedent that required a lower rate of return on common equity for cost-recovery surcharge mechanisms.[26] This bargained-for element of the Joint Stipulation is appropriate within the larger context of the settlement and EKPC fully supports it under this particular circumstance.

3. The Joint Stipulation's Earning Mechanism Benefits Customers.

A critical component of the Joint Stipulation is the Earnings Mechanism, which is described as follows:

> The Parties agree that EKPC should return any excess margins to its Owner-Members for contemporaneous pass-through to ratepayers in the form of a bill credit in the event that EKPC achieves per book margin in excess of a 1.40 TIER in any calendar year. Any excess margins will be returned to EKPC's Owner-Members for contemporaneous pass-through to ratepayers in the form of a bill credit that is allocated based upon the percentage of each rate class's total revenue for the most recent calendar year. EKPC agrees to make an annual filing with the Commission which sets forth its calculations of margins and any required bill credit on or before April 30th of each year. This earnings mechanism will remain in place until EKPC's base rates are next adjusted. EKPC will file a tariff for Commission review within thirty (30) days of the Commission entering a final Order approving this Stipulation.[27]

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[26] *See, e.g., In the Matter of the Electronic Application of Louisville Gas and Electric Company for an Adjustment of its Electric and Gas Rates, a Certificate of Public Convenience and Necessity to Deploy Advanced Metering Infrastructure, Approval of Certain Regulatory and Accounting Treatments, and Establishment of a One-Year Surcredit*, Order, Case No. 2020-00350 (Ky. P.S.C. June 30, 2021); *In the Matter of the Electronic Application of Kentucky Utilities Company for an Adjustment of its Electric Rates, a Certificate of Public Convenience and Necessity to Deploy Advanced Metering Infrastructure, Approval of Certain Regulatory and Accounting Treatments, and Establishment of a One-Year Surcredit*, Order, Case No. 2020-00349 (Ky. P.S.C. June 30, 2021); *In the Matter of the Electronic Application of Kentucky Power Company for (1) A General Adjustment of its Rates for Electric Service; (2) Approval of Tariffs and Riders; (3) Approval of Accounting Practices to Establish Regulatory Assets and Liabilities; (4) Approval of A Certificate of Public Convenience and Necessity; and (5) All Other Required Approvals and Relief*, Order, Case No. 2020-00174 (Ky. P.S.C. Jan. 13, 2021).

[27] Joint Stipulation, ¶ 6.

At the hearing, the expert for the AG and Nucor described the Earnings Mechanism in the Joint Stipulation as "asymmetrical" in the sense that it only advantaged customers and "a pure consumer protection."[28] The Earnings Mechanism will be a tariff-based rate sur-credit that will be operative in the year following a calendar year when EKPC has exceeded margins equivalent to a 1.40 TIER. No later than April 30th of each year, EKPC will file an annual report which details its financial performance and final TIER for the preceding calendar year. If the TIER exceeds 1.40, the excess margins will be returned to EKPC's Owners as a credit to rates. By returning excess margins in the form of a bill credit, it is assured that the benefit of the excess margins is returned to end-use retail customers of EKPC's Owner-Members as quickly as possible. In keeping with the terms of the Joint Stipulation, EKPC intends to file a tariff to effectuate the Earnings Mechanism so that any excess margins in 2021 – if they were to be achieved – could be refunded in 2022. The tariff will also provide guidance on the timing of the credit (whether a one-time credit or provided over a period of months). Importantly, the Earnings Mechanism will supplement – and not replace – the ability of EKPC to make distributions to its Owner-Members through retirement of capital credits.[29]

The Earnings Mechanism must be viewed in the context of the revenue adjustment and TIER recommendations also included in the Joint Stipulation. Without the intervenors' agreement to the revenue increase and the TIER recommendations, EKPC would likely have found it impossible to gain a Board consensus to agree to the Earnings Mechanism – and any further decrease in the revenue increase or TIER recommendation may cause EKPC to void the Joint Stipulation. But taken in their totality, the revenue increase and TIER recommendation and

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[28] *See* Examination of Lane Kollen, HVR 17:11:45 (Aug. 3, 2021).

[29] *See* Supplemental Testimony of Ann Bridges, pp. 8-9 (July 29, 2021).

Earnings Mechanism represent a finely tuned and well-balanced outcome. EKPC is afforded a better opportunity to achieve its necessary financial metrics and the objectives described above while its Owner-Members and their end-use retail members are fully protected in any given year where EKPC's earnings might be excessive relative to its financial needs. The result is fully consistent with EKPC's plan to limit its further growth in equity.[30] This balanced approach is the quintessential example of a fair, just and reasonable outcome and should be approved.

4. The Joint Stipulation's Allocation of the Revenue Increase is Appropriate.

In the rebuttal testimony of EKPC's witness, Richard Macke, EKPC agreed with three of the proposed adjustments to the cost of service study ("COSS") prepared for this case.[31] The adjusted methodology resulted in an increase in the rates for Nucor of 2.6%. In discussions with the intervenors, it was agreed that this same percentage increase should be applied to all other rate classes with the exception of EKPC's Rate E, which would receive the balance of the rate increase.[32] The 5.2% increase which Rate E would receive under the Joint Stipulation is consistent with EKPC's Board's original preference that the total rate increase would be approximately 5.2%,[33] however, the actual rate impact upon residential customers should be substantially less. As described by Ms. Bridges in her supplemental testimony:

> The wholesale rates charged by EKPC to its Owner-Members for power purchases are just one component of a retail rate. Accordingly, the actual rate increase experienced by residential customers should be less than the percentage rate of the wholesale

[30] *See* Examination of Tony Campbell, HVR 9:30:40 (Aug. 3, 2021).

[31] *See* Rebuttal Testimony of Richard Macke, pp. 2-3 (July 27, 2021).

[32] Tennessee Gas Pipeline Company has two natural gas pumping stations that are served under special contracts to which EKPC is not a party. Those two special contracts do not allow for any increase in EKPC's wholesale rates to be passed along on a retail basis. Thus, they two pumping station special contracts are exempt from the proposed rate increase. These special contracts are the subject of another term of the Joint Stipulation, which is addressed *infra*.

[33] *See* Direct Testimony of Ann Bridges, p. 9 (Apr. 1, 2021).

> increase. We believe that the actual average residential monthly bill increase will range from 2.76% to 3.94%, with an average increase of 3.4% across all sixteen of EKPC's owner-members.[34]

Importantly, the recommended rate allocation is in line with EKPC's objectives of reducing the subsidy of the Rate E class by other rate classes.[35] Based upon the original COSS, the greatest revenue deficiency by rate class was the Special Contract rate,[36] however, after modifying the COSS study, the highest revenue deficiency – 6.1% – is attributable to Rate E customers.[37] Thus, in rebuttal testimony, EKPC had urged allocating a larger portion of the rate increase to Rate E.[38] The Joint Stipulation is consistent with this revenue allocation while assuring that all rate classes are allocated some portion of the increase. Accordingly, the allocation of the revenue to the various rate classes is fair, just and reasonable and should be approved.

5. Changes to the ES Resulting from the Joint Stipulation are Necessary and Reasonable and Benefit End-Use Retail Customers.

The Joint Stipulation also includes several terms which do not have an immediate impact upon EKPC's base rates, but that are nevertheless important. An example of this is the impact of changes in EKPC's depreciation rates as a result of the study conducted by Mr. John Spanos, the updated interest expense for CWIP and the adjustment to the ES TIER. To encourage administrative efficiency, the Joint Stipulation provides that these changes will be reflected in the monthly surcharge filing for the Expense Month of October 2021, which will be filed with the

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[34] Supplemental Testimony of Ann Bridges, pp. 9-10 (July 29, 2021). Filings made in each of the sixteen pass through cases on July 30, 2021 affirm Ms. Bridges' estimate.

[35] *See* Examination of Ann Bridges, HVR 10:04:15 (Aug. 3, 2021).

[36] *See* Examination of Richard Macke, HVR 14:28:30 (Aug. 3, 2021) citing Application, Tab 16, Exhibit RJM – Schedule 2, p. 17 (Apr. 1, 2021).

[37] *See id.*, HVR 14:30:32 (Aug. 3, 2021) citing Rebuttal Testimony of Richard Mack, Exhibit 4, Schedule 2, p. 17 (July 27, 2021).

[38] *See* Rebuttal Testimony of Richard Mack, p. 8 (July 27, 2021).

Commission on November 19, 2021.[39] The Joint Stipulation further affirms that the adjustments to CWIP and TIER will reduce revenues collected by EKPC through the ES by $7.1 million annually.[40]

6. The Generation Maintenance Tracker Encourages Reliability and Promotes Financial Stability.

As part of the Joint Stipulation, the Parties agreed to normalize EKPC's generation maintenance expense and make a revenue adjustment based upon that normalization.[41] The outcome of that normalization calculation is an annual generation maintenance expense of $81.067 million per year, which represents one of the largest elements of EKPC's base rates. Using this figure as a benchmark, the Joint Stipulation provides:

> Beginning with calendar year 2022, and in each year thereafter, EKPC will track its actual generation maintenance expense and record a regulatory asset for seventy-five percent (75%) of all expenses in excess of the normalized amount and, if the actual annual generation maintenance expense is less than the normalized generation maintenance expense, record a regulatory liability for seventy-five percent (75%) of the difference between the actual annual generation maintenance expense and the normalized generation maintenance expense. EKPC agrees to make an annual filing with the Commission (on or before April 30th of each year) which sets forth its calculation of any regulatory asset or liability recorded for the prior year, and including a cumulative net calculation of all such assets or liabilities. In EKPC's next base rate case, the cumulative regulatory asset or regulatory liability shall be amortized and either recovered from, or returned to, EKPC's Owner-Members as appropriate over a reasonable period of time.[42]

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[39] *See* Joint Stipulation, ¶ 4.

[40] *See id*.

[41] *See* Joint Stipulation, ¶ 5.

[42] *Id*.

The Joint Stipulation represents a bargained-for and reasonable resolution on how to account for what is a material element of EKPC's base rate cost structure. The proposed mechanism affords EKPC the ability to undertake all necessary maintenance on its generation assets, which has the benefit of enhancing reliability and minimizing the risks for non-performance under PJM's Capacity Performance rules. In years where these expenses exceed the normalized amount, EKPC's financial position will not be put at risk through its ability to record 75% of the excess expense as a regulatory asset. By the same token, the mechanism assures that in years where EKPC's maintenance spending is below its normalized annual spending level, consumers will receive 75% of the benefit of the reduced spending through the recording of a regulatory liability. The regulatory balances will then be offset against one another and either collected or refunded as part of EKPC's next base rate case.

Though there were some questions at the hearing concerning whether the Joint Stipulation's proposal on this point was consistent with Commission precedent regarding the establishment of regulatory assets and liabilities, it bears emphasis that this mechanism is well within the scope of the Commission's plenary ratemaking authority,[43] and, even in this narrow context, approval of the Joint Stipulation would qualify as a regulatory mandate that justifies the creation of a regulatory asset or liability under Commission precedent.[44] Here again, the Joint Stipulation presents an elegant and balanced resolution to the perennial challenge of balancing the

[43] *See Kentucky Pub. Serv. Comm'n v. Com. ex rel. Conway*, 324 S.W.3d 373, 377 (Ky. 2010); *National-Southwire Aluminum Co. v. Big Rivers Elec. Corp.,* 785 S.W.2d 503, 514 (Ky. App. 1990 ("[T]he PSC has many appropriate rate-making methodologies available to it, and it must have some discretion in choosing the best one for each situation. Again, we must look more to whether the result is fair, just and reasonable rather than at the particular methodology used to reach the result.") citing *Citizens Telephone Co. v. Public Service Comm'n,* Ky., 247 S.W.2d 510 (1952).

[44] *See In the Matter of the Application of East Kentucky Power Cooperative, Inc. for an Order Approving Accounting Practices to Establish a Regulatory Asset Related to Certain Replacement Power Costs Resulting from Generation Forced Outages*, Order, Case No. 2008-00436 (Ky. P.S.C. Dec. 23, 2008); Examination of Ann Bridges, HVR 9:46:50 (Aug 3, 2021); Examination of Isaac Scott, HVR 12:39:20 (Aug. 3, 2021).

need to maintain reliability and mitigate risk against the goal of keeping EKPC's Owner-Members' rates as low as possible.

7. The Joint Stipulation Appropriately Recognizes and Respects the Unique Interests of AppHarvest Morehead Farms, LLC.

AppHarvest's intervention in the rate case presented its own sort of challenges as the intervenor's initial interests appeared focused upon matters that were better suited for discussion in an integrated resource plan docket. Nevertheless, EKPC and AppHarvest were able to agree upon three points which sufficiently resolved AppHarvest's unique issues. First, EKPC and AppHarvest agree to "work in good faith … to develop a demand response program whereby AppHarvest will be able to participate in [PJM's] demand response program with EKPC acting as its Curtailment Service Provider."[45] It is further agreed that EKPC will "charge a reasonable administrative fee to cover its costs for any such program."[46] Second, EKPC and AppHarvest agree to "work in good faith … to develop an AgriTech Tariff that considers the unique energy requirements of large scale indoor agricultural technology."[47] This will include, without limitation, studying "whether a reasonable and cost-effective commercial and industrial energy efficient lighting program similar to the general commercial and industrial lighting demand side management program that was terminated by EKPC in 2019 may be reinstated…."[48] It is EKPC's hope that a narrower, more-targeted lighting program may pass the California Tests in contrast to the more general lighting tariff which failed to do so in its most recent evaluation.[49] In both of the

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[45] Joint Stipulation, ¶ 7(a).

[46] *Id*.

[47] *Id*., ¶ 7(b).

[48] *Id*.

[49] *See* Supplemental Testimony of Ann Bridges, p. 11; Examination of Ann Bridges, HVR 10:49:40 – 10:51:00 (Aug. 3, 2021).

foregoing discussions – a demand response program and an AgriTech Tariff – any final tariff or special contract must be submitted to and approved by the Commission in order to become effective.[50] Finally, the agreement includes a carve-out such that nothing in the Joint Stipulation would limit AppHarvest's ability to litigate the issues it has raised in Fleming-Mason Energy Cooperative, Inc.'s pass through case.[51] These three provisions of the Joint Stipulation offer an amicable resolution to the issues raised by AppHarvest and should be approved.

8. The Joint Stipulation Recognizes a Potential Concern with two Special Contracts.

The Joint Stipulation includes a term that recognizes the anomalous outcome of the rate case for the two Tennessee Gas Pipeline special contracts. As part of the overall agreement between the Parties, EKPC agrees to inquire and consult with Fleming-Mason Energy Cooperative, Inc. and Taylor County Rural Electric Cooperative Corporation – two of its Owner-Members regarding the status and reasonableness of these contracts.[52]

9. The Joint Stipulation Appropriately Recommends Approval of Other Items in EKPC's Application.

Apart from the aforementioned terms, the Joint Stipulation also includes a recommendation that the remaining items in EKPC's Application should also be approved.[53] The first such item is the approval of EKPC's depreciation study, which is the first it has undertaken in fifteen years. The study was conducted by Mr. John Spanos, an independent expert with an extensive list of

[50] *See* Joint Stipulation, ¶ 7(a)-(b).

[51] *See id.*, ¶ 7(c).; *In the Matter of the Electronic Application if Fleming-Mason Energy Cooperative, Inc. for Pass-Through of East Kentucky Power Cooperative, Inc. Wholesale Rate Adjustment*, Application, Case No. 2021-00109 (Apr. 1, 2021). The application of the pass through mechanism is to be the subject of briefs filed in Case No. 2021-00109 on or before September 1, 2021.

[52] *See* Joint Stipulation, ¶ 8.

[53] *See id.*, ¶ 9.

credentials and expertise in such matters.[54] The Joint Stipulation recommends that the new depreciation rates be made effective as of the same date that EKPC's new rates become effective.[55]

The Joint Stipulation additionally recommends that the Commission approve the proposed amortization of four regulatory assets, including: (1) the Smith Unit 1 regulatory asset authorized in Case No. 2010-00449,[56] consistent with the provisions of the Stipulation Agreement approved in Case No. 2015-00358;[57] (2) retirement of the Dale Station, pursuant to the Commission's Order in Case No. 2015-00302;[58] (3) depreciation and accretion expense associated with the Dale Station asbestos abatement asset retirement obligation, pursuant to Case No. 2014-00432;[59] and (4) 2019 major maintenance expenses at the Spurlock Station, as permitted by the Rural Utilities Service ("RUS") accounting treatment.[60] Mr. Scott offered extensive testimony on these regulatory assets and why the proposed amortization periods are reasonable and appropriate.[61]

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[54] *See* EKPC's Application, Tab 13, Exhibit JJS-Appendix A (Apr. 1, 2021).

[55] *See* Joint Stipulation, ¶ 9(a).

[56] *See In the Matter of the Application of East Kentucky Power Cooperative, Inc. for an Order Approving the Establishment of a Regulatory Asset for the Amount Expended on its Smith 1 Generating Unit*, Order, Case No. 2010-00449 (Ky. P.S.C. Feb. 28, 2011).

[57] *See In the Matter of Application of East Kentucky Power Cooperative, Inc. for Deviation from Obligation Resulting from Case No. 2012-00169*, Order, Case No. 2015-00358, (Ky. P.S.C. Jan. 10, 2017). Mr. Scott fully explained how the "Smith Solution" represented in the Commission's Order in Case No. 2015-00358 was unique in its treatment of the amortization of the asset when compared to a more "traditional" regulatory asset amortization. *See* Examination of Isaac Scott, HVR 11:49:25 – 12:03:20 (Aug. 3, 2021).

[58] *See In the Matter of Application of East Kentucky Power Cooperative, Inc. for an Order Approving the Establishment of a Regulatory Asset for the Undepreciated Balance of the William C. Dale Generation Station*, Order, Case No. 2015-00302, p. 7-8 (Ky. P.S.C. Feb. 11, 2016).

[59] *See In the Matter of An Application of East Kentucky Power Cooperative, Inc. for an Order Approving the Establishment of Regulatory Assets for the Depreciation and Accretion Expenses Associated with Asset Retirement Obligations*, Order, Case No. 2014-00432 (Ky. P.S.C. Mar. 6, 2015) and Rehearing Order (Ky. P.S.C. July 21, 2015).

[60] *See In the Matter of Application of East Kentucky Power Cooperative, Inc. for an Order Approving the Establishment of Regulatory Assets for Present and Future Maintenance Expenses*, Order, Case No. 2019-00146, p. 10 (Ky. P.S.C. Dec. 20, 2019). Per the Commission's request at the hearing, EKPC addresses the creation of this regulatory asset, *infra*.

[61] *See* Examination of Isaac Scott, HVR 11:39:45 – 12:25:40 (Aug. 3, 2021).

A third category of additional relief recommended to be granted in the Joint Stipulation is the elimination of several reporting obligations that have become obsolete or are no longer relevant due to changed circumstances. For instance, EKPC has filed monthly financial reporting relating to twelve (12) month margins, budgets, the calculation of twelve (12) month TIER and Debt Service Coverages ("DSC") since 2007 and variable interest rates on outstanding loans since 1995.[62] These obligations date to an era when EKPC's financial condition was considerably less certain. Due in part to the diligence of its Board and management, and in direct response to the Commission-ordered management audit, EKPC's financial condition has improved and such monthly reporting is no longer necessary. As with other utilities, EKPC's filing of its annual report should be sufficient. Likewise, EKPC is currently required to semi-annually report on the status of its mitigation efforts to reduce the balance of the Smith 1 regulatory asset.[63] With all mitigation efforts now exhausted,[64] this reporting obligation is obsolete. The annual report pertaining to the regulatory assets for Dale Station Projects 5 and 10 is similarly rendered obsolete by the amortization of these assets as part of this proceeding.[65] Similarly, reports requiring figures on

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[62] *See In the Matter of General Adjustment of Electric Rates of East Kentucky Power Cooperative, Inc.*, Order, Case No. 2006-00472, ordering paragraph 6 (Ky. P.S.C. Apr. 1, 2007); Order, Case No. 2006-00472, ordering paragraph 8 (Ky. P.S.C. Dec. 5, 2007); *In the Matter of the Application of East Kentucky Power Cooperative, Inc. for the Approval of Financing in the Amount of Approximately $6,734,000 for Transmission Facilities and System Improvements*, Order, Case No. 1995-00135, ordering paragraph 3 (Ky. P.S.C. May 26, 1995); Examination of Patrick Woods, HVR 15:58:20; 15:59:35 (Aug. 3, 2021).

[63] *See In the Matter of Application of East Kentucky Power Cooperative, Inc. for an Order Approving the Establishment of a Regulatory Asset for the Amount Expended on Its Smith 1 Generating Unit*, Order, Case No. 2010-00449, ordering paragraph 3 (Ky. P.S.C .Feb. 28, 2011); Examination of Patrick Woods, HVR 15:59:10 (Aug. 3, 2021).

[64] *See id.*, HVR 15:59:10 (Aug. 3, 2021).

[65] *See In the Matter of the Application of East Kentucky Power Cooperative, Inc. for an Order Approving the Establishment of a Regulatory Asset for the Undepreciated Balance of the William C. Dale Generation Station*, Order, Case No. 2015-00302, ordering paragraph 7 (Ky. P.S.C. Feb. 11, 2016); Examination of Patrick Woods, HVR 15:59:20 (Aug. 3, 2021).

annual interruptions for Nucor and AGC,[66] and another report on the operating performance of the Bluegrass Station units,[67] have outlived their usefulness. The same is especially true for the annual report filed in compliance with Administrative Case 387[68] – the report has not changed for several years and is unlikely to do so at any point in the foreseeable future.[69] The last report from which EKPC sought relief arises from Case No. 2012-00169 and relates to the reporting of detailed transmission rights, hedging strategies and benefits and costs arising from EKPC's participation in PJM.[70] EKPC is willing to continue to file information regarding hedging and transmission rights, but contends that the cost/benefit analysis is no longer useful and, therefore, should be removed.[71]

Fourth, the Joint Stipulation recommends that approval be given to all proposed textual changes to EKPC's tariffs as set forth in the Application. Most of these tariff changes may be fairly characterized as non-substantive.[72] In addition, EKPC proposes to eliminate Rate A, which

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[66] *See In the Matter of Application of East Kentucky Power Cooperative, Inc. for Approval of a Special Contract Between EKPC, Owen Electric Cooperative, and Gallatin Steel Company*, Order, Case No. 2013-00174, ordering paragraph 3 (Ky. P.S.C. Feb. 27, 2014); *In the Matter of Application of East Kentucky Power Cooperative, Inc. for the Approval of a Special Contract*, Order, Case No. 2015-00422, ordering paragraph 2 (Ky. P.S.C. Mar. 14, 2016); Examination of Patrick Woods, HVR 16:00:05 (Aug. 3, 2021). Nucor's corporate witness further affirmed that Nucor has no objection to eliminating this reporting requirement. *See* Examination of Cathy Waddell, HVR 17:16:20 (Aug. 3, 2021).

[67] *See In the Matter of Application of East Kentucky Power Cooperative, Inc. for Approval of the Acquisition of Existing Combustion Turbine Facilities from Bluegrass Generation 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, ordering paragraphs 3 and 4 (Ky. P.S.C. Dec. 1, 2015); Examination of Patrick Woods, HVR 16:00:50 (Aug. 3, 2021).

[68] *See id.*, HVR 16:01:22.

[69] *See id.*

[70] *See In the Matter of Application of East Kentucky Power Cooperative, Inc. to Transfer Functional Control of Certain Transmission Facilities to PJM Interconnection, LLC, Order, Case No. 2012-00169, ordering paragraph 6 (Ky. P.S.C. Dec. 20, 2012).*

[71] *See* Examination of Julie Tucker, HVR 15:52:42 (Aug. 3, 2021); Examination of Patrick Woods, HVR 16:02:10 (Aug. 3, 2021).

[72] *See* Examination of Isaac Scott, HVR 11:37:20 – 11:39:50 (Aug. 3, 2021).

has not been used by any of its Owner-Members for over a decade,[73] and to implement a performance assurance provision in its Economic Development Rate ("EDR") tariff to protect existing customers against the risk of default by an EDR customer.[74]

Finally, the Joint Stipulation recommends that EKPC be allowed to recover its rate case expense on an amortized basis over a three (3) year period. The final update for this amount was filed with the Commission on August 18, 2021.

10. The Joint Stipulation's Request for New Rates to be Effective on the First of the Month is Necessary.

The Joint Stipulation recommends that EKPC's new rates be placed in effect for all service rendered on and after October 1, 2021. While this is five days before the suspension deadline (two of those days being a weekend), EKPC's billing system must synchronize with that of its sixteen (16) Owner-Members. Placing rates into effect on a day other than the first of the month invites administrative headaches and mismatches that cause significant problems for EKPC's Owner-Members.[75] If an Order cannot be entered by October 1st, it is likely that EKPC would not be able to implement the rate increase until November 1, 2021. Delaying the rate increase to November would not be ideal. EKPC's budget includes an assumption of at least one quarter of additional revenue attributable to a rate increase and the rate case was filed so that new rates would go into effect during the "shoulder season" so as to minimize the immediate impact of any increase in rates on end-use retail customers.[76] Both of these are important considerations and EKPC

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[73] *See* Direct Testimony of Isaac Scott, pp. 34-35.

[74] *See id*., p. 37.

[75] *See* Examination of Ann Bridges, HVR 9:39:10 (Aug. 3, 2021).

[76] *See* Application, ¶ 23; *See* Examination of Tony Campbell, HVR 9:14:45 (Aug. 3, 2021).

respectfully requests the Commission to enable a change in rates to become effective on October 1, 2021.

B. EKPC Established the Rural Utilities Service Approved Regulatory Asset in Good Faith and for a Proper Purpose.

At the conclusion of the hearing on August 4, 2021, the Commission requested EKPC to include within its brief a discussion regarding the RUS regulatory asset approved in a January 30, 2020 letter to Mr. Anthony Campbell,[77] and its relationship to the Commission's December 20, 2019 Order in Case No. 2019-00146.[78] This discussion necessarily begins with a recitation of the relief which EKPC sought in the 2019 proceeding, which was stated as follows:

> EKPC respectfully requests the Commission to authorize it to: (1) establish regulatory assets without the need to first obtain Commission approval, both now and in the future, for certain costs that would otherwise be accounted for as maintenance expenses; and (2) amortize those regulatory assets over a reasonable time period for which they will provide benefits. In lieu of the traditional application process, EKPC proposes to: (1) give the Commission notice of its intent to establish a regulatory asset under the provisions set forth in this case; and (2) make an annual filing providing updates as to the status of all regulatory assets established under the provisions of this case in order to provide an appropriate level of transparency. If approved, this proposal will allow EKPC to avoid spikes in operating expenses which might trigger base rate increases and the costs associated with those base rate cases, while also diminishing the administrative burden currently resting upon the Commission.[79]

While there were planned maintenance projects identified in Case No. 2019-00146 for regulatory asset treatment,[80] the primary thrust of the application was clearly to establish a

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[77] *See* Commission Staff Hearing Exhibit, 6.

[78] *See* Statement by Chairman Kent Chandler, HVR 9:18:55 (Aug. 4, 2021); *see also In the Matter of Application of East Kentucky Power Cooperative, Inc. for an Order Approving the Establishment of Regulatory Assets for Present and Future Maintenance Expenses*, Order, Case No. 2019-00146 (Ky. P.S.C. Dec. 20, 2019).

[79] *See* Application, Case No. 2019-00146, ¶ 1 (filed May 13, 2019).

[80] EKPC explained that the expenses would qualify for regulatory deferral treatment because they were "non-routine" and "not anticipated in EKPC's base rates." Application, Case No. 2019-00146, ¶ 10; citing *In the Matter of the*

mechanism that would apply to all such large major maintenance and minor items of property expenses as well.[81] In the December 20, 2019 Order, the Commission held:

> EKPC's request for authorization to establish regulatory assets for present and future major maintenance expenses, including the replacement of high-cost, nonroutine minor items of property, without the need to first obtain Commission approval and to amortize those regulatory assets is denied.[82]

However, this conclusion was juxtaposed against a lengthier statement earlier in the Order that appeared to disclaim Commission jurisdiction over such a regulatory asset:

> While the Commission may authorize regulatory asset treatment for the future recovery of current expenses, RUS is the more appropriate regulatory authority to petition for departures of standard accounting practices. EKPC essentially requests modified regulatory asset treatment to effectuate a departure from the requirements of 7 CFR §1767.16U)(3)(iii) and to expense recurring but long-lived maintenance costs over multiple accounting periods. RUS has established procedures to request departures from accounting methods and principles.[83]

The Commission's use of the permissive "may" in lieu of the mandatory "shall" was understood by EKPC to be a departure from the Commission's prior rigid practice with regard to the creation of regulatory assets, but it was not viewed as being inconsistent with the Commission's precedent in Case No. 2008-00436 which affirmed that "in exercising discretion to allow the creation of a regulatory asset, the Commission's overarching consideration is the context in which

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Application of East Kentucky Power Cooperative, Inc. for an Order Approving the Accounting Practices to Establish a Regulatory Asset Related to Certain Replacement Power Costs Resulting from Generation Forced Outages, Order, Case No. 2008-00436 (Ky. P.S.C. Dec.23, 2008). Also, the lengthy interval between such repairs and the fact that nearly a decade had passed since EKPC's prior rate case in 2010 is what made such maintenance expense non-routine and unrecovered in EKPC's base rates. However, as EKPC's generation assets aged, it anticipated "the need for regulatory asset treatment of maintenance related expense to be more frequent than previously experienced…." Application, Case No. 2019-00146, ¶ 13.

[81] *See* Examination of Michelle Carpenter, HVR 13:45:20 (Aug. 3, 2021).

[82] *See* Order, Case No. 2019-00146, p. 11 (Dec. 20, 2019).

[83] *See id*. p. 10.

the regulatory asset is sought to be established and not necessarily the specific nature of the costs incurred."[84] Indeed, the Commission recognized in Case No. 2008-00436 that "[t]he authority for establishing regulatory assets arises under the Commission's plenary authority to regulate utilities under KRS 278.040 and the Commission's authority to establish a system of accounts under KRS 278.220."[85]

EKPC clearly understood that the Commission did not approve the proposal to establish a *mechanism* to henceforth record and amortize regulatory expenses for major maintenance and minor items of property expense, but the plain language of the Order strongly suggested that the Commission was relaxing its approach to regulatory assets for maintenance expense – particularly since such a relaxation was consistent with prior precedent, quoted above, on the subject. The supposition that RUS's role is to approve changes in regulatory accounting standards rather than approve the creation of a particular regulatory deferral,[86] is simply not how EKPC interpreted or understood the Commission's Order in Case No. 2019-00146, but it is at odds with RUS regulations that establish a formal process for obtaining approval from the agency to establish and amortize a deferral asset.[87] EKPC understood the Order to represent the Commission's tacit acknowledgement of RUS's authority to approve the recording and amortization of a regulatory asset under the Uniform System of Accounts that RUS established and periodically updates.[88]

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[84] *See* Order, Case No. 2008-00436, p. 5 (Ky. P.S.C. Dec. 20, 2008).

[85] *See id.*, p. 4.

[86] *See* Examination of Isaac Scott, HVR 12:21:14 (Aug. 3, 2021).

[87] *See* 7 C.F.R. § 1767.13(d).

[88] *See* Examination of Isaac Scott, HVR 12:22:25 (Aug. 3, 2021).

Thus, Mr. Scott correctly testified that EKPC's request in its Application in this docket is for approval of recovery of the RUS regulatory asset as opposed to approval to record it in the first instance,[89] however, the Application was obviously based upon EKPC's interpretation of the December 20, 2019 Order in Case No. 2019-00146 that RUS approval of recording and amortizing a specific regulatory asset (as opposed to a mechanism that would apply to future year expenses as well) was sufficient to record and amortize the specific regulatory asset for 2019 major maintenance expense.[90]

To the extent that EKPC misconstrued the Commission's Order in Case No. 2019-00146 and Commission approval is in fact necessary to record and amortize the regulatory asset for the specific major maintenance expense underlying the RUS regulatory asset, such approval is hereby respectfully requested. EKPC continues to believe the expense would still qualify under the "non-recurring and unforeseen" element of the Commission's historical review of such requests as stated in EKPC's application in Case No. 2019-00146 and, now, also under the "administrative mandate" element in light of RUS's approval of EKPC's request.[91] Though EKPC acknowledges that this is an atypical situation, it also notes that the Commission has previously approved after-the-fact establishment of regulatory assets where the circumstances warrant.[92]

EKPC sincerely regrets the confusion that this issue has created, but asserts that is has acted in good faith and without any intent to violate a Commission Order. EKPC's intent with the filing

[89] *See id.*, HVR 12:08:30.

[90] *See id*., HVR 12:08:45; Examination of Michelle Carpenter, HVR 13:42:40 (Aug. 3, 2021).

[91] *See* Examination of Isaac Scott, HVR 12:39:20 (Aug. 3, 2021).

[92] *See, e.g., In the Matter of An Adjustment of the Gas and Electric Rates, Terms, and Conditions of Louisville Gas and Electric Company,* Order, Case No. 2003-00433, p. 18-22 (Ky. P.S.C., June 30, 2004) (approving reverse accounting entries for minimum pension liabilities from a prior year and recording regulatory assets to correspond to the reversal); *In the Matter of An Adjustment of the Electric Rates, Terms, and Conditions of Kentucky Utilities Company,* Order, Case No. 2003-00434, p. 16-20 (Ky. P.S.C., Jun 30, 2004).

in Case No. 2019-00146 was to seek to remove the volatility in EKPC's maintenance expenses. In any event, because the test year in this case corresponds to the period in which the RUS regulatory asset was recorded, the outcome may be inconsequential. Under the Joint Stipulation, the expense accounts used to calculate the maintenance tracker include the accounts to which the RUS regulatory asset was matched.[93] Apart from the Joint Stipulation, disallowing recovery of the RUS regulatory asset would require EKPC to expense the amount of the regulatory asset in 2019 for ratemaking purposes, which would increase the normalized maintenance expense by approximately $1.4 million and, for accounting purposes, the unamortized balance of $5.7 million (as of September 30, 2021) million would be expensed in 2021. However, the Joint Stipulation resolves this problem from both a ratemaking and accounting point of view. Under the Joint Stipulation, the same items of expense going forward are normalized.[94] By tracking the amount of all maintenance expenses, the Joint Stipulation assures that there will be no problems with this subject in the future.[95] Though it has taken a circuitous and somewhat unfortunate journey to do so, the exact harm which EKPC originally sought in good faith to mitigate in Case No. 2019-00146 is mitigated in the Joint Stipulation.[96]

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[93] *See* Examination of Michelle Carpenter, HVR 13:49:50 (Aug. 3, 2021).

[94] *See id*., HVR 13:46:25.

[95] *See id*., HVR 13:51:35.

[96] EKPC described this risk as follows:

> The project types noted above are not currently included in base rates. Including these maintenance costs in rates could result in significant rate swings (up and down), depending on the timing of when these costs are incurred in correlation to a rate case. If these costs were not incurred in a historic test year, EKPC would lose the opportunity for recovery. However, if the costs had been incurred and included in the historic test year, base rates could be set too high for future years when such maintenance costs are not incurred.

Application, Case No. 2019-00146, ¶ 16.

IV. CONCLUSION

EKPC acknowledges the challenges facing the Commission that are attributable to constrained resources and a large caseload. EKPC and the intervenors entered into the Joint Stipulation in good faith and in the belief that it represents a fair, just and reasonable solution to each and all of the issues presented in this case. The Joint Stipulation was created out of bargained-for give-and-take between sophisticated parties and counsel with many decades of combined experience in practicing before the Commission. While the Commission is by no means bound to accept and approve the Joint Stipulation, it is a good resolution that should be approved. While any person may take issue with a particular term of the Joint Stipulation, viewed as a whole, the balances it strikes and the compromises which it documents are self-evident. While other outcomes are certainly possible, the Joint Stipulation falls safely within the proverbial "zone of reasonableness" and should be accepted and approved without modification.

The case also presents a unique issue in which EKPC may have misinterpreted a prior Commission Order. If the Commission concludes that EKPC acted inconsistently with the Commission's intentions, EKPC apologizes. EKPC sought and received permission from RUS to establish a regulatory asset in good faith and based upon what it understood at the time to be the Commission's stated objective. From EKPC's perspective, the future regulatory asset mechanism proposed in Case No. 2019-00146 and the specific regulatory asset approval sought from RUS were different in scope and nature. To the extent that Commission approval is needed for the 2019 RUS regulatory asset, EKPC respectfully requests it.

Finally, EKPC wishes to express its thanks to the Commission Staff and each of the intervenors and their counsel. The discovery process and hearing were a very constructive exercise in narrowing and refining issues for which a resolution is required. Each issue raised in this proceeding has been thoroughly examined in a thoughtful and coherent manner, which lends credence to the value and appropriateness of the Joint Stipulation.

WHEREFORE, EKPC respectfully requests the Commission to accept and approve the Joint Stipulation in its entirety and without modification, to effectuate same and to grant EKPC any other relief to which it may be entitled.

This 23rd day of August, 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; that the electronic filing was transmitted to the Commission on August 23, 2021 and that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding.

Counsel for East Kentucky Power Cooperative, Inc.