COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In The Matter Of:	:	
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The Electronic Application of East Kentucky Power Cooperative, Inc. for a General Adjustment of Rates, Approval of Depreciation Study, Amortization of Certain Regulatory Assets, and Other Relief.	: : :	Case No. 2021-00103

POST-HEARING BRIEF OF
ATTORNEY GENERAL AND
NUCOR STEEL GALLATIN, LLC

The Attorney General, through his Office of Rate Invention, and Nucor Steel Gallatin, LLC (collectively, "AG/Nucor"), submit this Post-Hearing Brief in support of the Joint Stipulation, Settlement Agreement, and Recommendation filed at the Kentucky Public Service Commission ("Commission") on July 29, 2021 ("Stipulation").

The Commission has an independent statutory obligation to ensure that rates are fair, just and reasonable, and a settlement, even a unanimous one, cannot simply be approved without critical inquiry.[1] However, it is also important that the Commission encourage settlements, in part by considering the reasonableness of a settlement as a comprehensive package. Every party to the settlement made concessions. If the settlement produces rates that are within the zone of reasonableness, then it should be approved. As discussed below, the Stipulation satisfies this standard.

[1] *In the Matter of the Electronic Application of Louisville Gas and Electric Company…*, Case Nos. 2020-00350, Order (June 30, 2021) at 13.

I. The Revenue Requirement Agreed Upon In The Stipulation Is Fair, Just, and Reasonable, Particularly In Light Of The Recommended Earnings Mechanism.

The stipulated rate increase represents a significant reduction from the amount initially supported by East Kentucky Power Cooperative, Inc. ("EKPC" or "Company") in this proceeding. Considering the $48.984 million rate increase that EKPC says is needed, customer savings resulting from the Stipulation exceed $17 million. Approximately $6 million of those savings would result from cost containment measures that EKPC intends to undertake,[2] $4.657 million would result from three revenue requirement adjustments agreed upon by the Signatory Parties (normalization of generation maintenance expense over the five most recent years, five-year amortization of general plant reserve surplus, reduction of interest expense on Spurlock environmental surcharge construction work in progress ("CWIP") balances), and the remaining $7.1 million would result from changes to the environmental surcharge (lower TIER and change in interest expense applied to CWIP).[3]

The generation maintenance expense provision warrants specific discussion. If EKPC's actual annual generation maintenance expense exceeds the normalized amount, then it is authorized to record 75% of the difference as a regulatory asset for future recovery. However, if the actual expense is less than the normalized amount, then 75% of the difference will be refunded to consumers through the creation of a regulatory liability. EKPC will absorb 25% of the difference to incentivize it to control costs. Requiring the utility to have "*skin in the game*" is a sound regulatory policy.

Another important customer benefit embedded in the Stipulation, which may ultimately reduce the total rate impacts of this case, is EKPC's agreement to establish an Earnings

[2] Direct Testimony of Ann Bridges (April 1, 2021) at 7-8.
[3] Stipulation at 2-3 and Exhibit A.

Mechanism by which the Company will flow back to customers 100% of any margins it earns in excess of a per books 1.40 TIER in any calendar year.[4] Thus, in the event that any rate increase ultimately approved in this proceeding leads to EKPC earnings exceeding that 1.40 TIER threshold in future years, all of those excess earnings will flow back to customers. As AG/Nucor witness Kollen explained, the Earnings Mechanism, *"caps out and requires a rate refund for over-collections, but it's asymmetrical in the sense that it doesn't allow a rate increase. So it's very different than typical formula rate plans. It's basically a pure consumer protection."*[5]

The proposed EKPC Earnings Mechanism is similar in concept to Big Rivers Electric Corporation's ("Big Rivers") Member Rate Stability Mechanism ("MRSM"). However, the EKPC Earnings Mechanism is even more customer-friendly than the MRSM. Unlike Big Rivers, which has an almost guaranteed TIER floor of 1.30 through the ability to draw down on a regulatory liability account, EKPC has no TIER guarantee via the proposed Earnings Mechanism.[6] Moreover, whereas Big Rivers will utilize 60% of the margins exceeding those necessary to achieve a 1.30 TIER to write down its generation regulatory assets,[7] EKPC would flow back 100% of the margins to customers. The recommended EKPC Earnings Mechanism therefore has the potential to produce significant rate credits for customers.

II. The Cost Allocation Agreed Upon In the Stipulation Is Fair, Just, Reasonable, And Consistent With Cost Causation Principles.

As the record reflects, the cost allocation unanimously agreed upon in the Stipulation, under which Rate E receives a 5.2% increase and all other classes outside of Rate TGP receive a 2.6% increase, reasonably aligns with cost of service.[8] In his rebuttal testimony, EKPC witness

[4] Stipulation at 4.
[5] Hearing Tr. (August 3, 2021) at 17:12:07.
[6] *In the Matter of Electronic Application of Big Rivers Electric Corporation for Approval to Modify Its MRSM Tariff…*, Case No. 2020-00064, Order (June 25, 2020) at 17-18.
[7] Id.
[8] Stipulation, Ex. C at 1.

Mr. Macke corrected three errors in his Average and Excess cost-of-service study that were identified by Mr. Baron. Those three errors were: 1) using 15-minute billing demands rather than hourly demands in determining the 12 CP allocation factor for all rate classes; 2) double counting the average demand (energy) component of the Average and Excess production demand allocation factor; and 3) including all of the costs of the 15.2 MW increase in Nucor's new galvanizing line load which occurred in December 2019, but failing to include a full year of associated revenue.[9]

For example, under the revised Average and Excess study filed by EKPC witness Macke, at the stipulated rate increase the Contract class would pay approximately $1.25 million at full cost of service.[10] Under the Stipulation cost allocation, that class will pay approximately $1.1 million, falling closely in line with EKPC's revised cost of service study results. Similarly, when witness Macke's revised cost of service study is adjusted for the Stipulation revenue requirement, it reflects that Rate E should pay approximately $36.4 million at full cost of service.[11] Under the Stipulation, Rate E would pay $34.3 million. The Stipulation therefore produces rates consistent with EKPC's cost of service findings.

Notably, EKPC witness Macke's revised cost of service study contains a significant issue left uncorrected. As Nucor witness Baron explained, EKPC failed to adjust for the fact that the actual fuel and purchased energy cost to serve each rate class differs depending upon each class' mix of on and off-peak energy usage.[12] High load factor classes, such as the Contract class, have a proportionally greater share of total usage in off-peak hours when the cost of fuel and purchased energy is lower. Hence, the cost to serve those customers is lower than for classes that predominantly use on-peak energy.[13] During the 2019 test year, 48% of EKPC's energy used

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[9] Direct Testimony of Steven J. Baron (June 29, 2021) at 5-6..
[10] Macke Rebuttal at 8, Table 2.
[11] Macke Rebuttal at 8, Table 2.
[12] Direct Testimony of Stephen J. Baron (June 28, 2021) ("Baron Testimony") at 29:2-30:2.
[13] Id.

to serve native load was purchased through PJM,[14] which distinguishes between on-peak and off-peak for purposes of energy pricing. Therefore, this fuel and purchased power cost disparity figures significantly in the cost to serve differing rate classes.

Adjusting Nucor witness Baron's cost of service study (which correctly addresses this fuel and purchased power cost disparity) to reflect the Stipulation revenue requirement, demonstrates that the Contract class should receive a $331,667 increase and that Rate E should be allocated $37.7 million.[15] However, while the Stipulation allocation does not align perfectly with these results, it reasonably moves toward cost of service and should be approved. Below is a Table showing the cost of service results scaled back to the stipulated revenue requirement under three scenarios: 1) EKPC's revised cost of service study; 2) Mr. Baron's cost of service results incorporating the on-peak/off-peak fuel and purchase power adjustment; and 3) the Settlement. This Table demonstrates that the Settlement rates are cost based and reasonable.

Total Revenues by Rate	EKPC Revised COS	Baron COS	Settlement
Rate B		($149,751)	$1,548,673
Rate C		($415,976)	$452,238
Rate E	$36,348,391	$37,694,540	$34,314,065
Rate G	$501,200	$644,645	$663,320
Contract	$1,253,144	$331,667	$1,086,030
Steam	$236,466	$237,878	$278,674
Rate TGP	-	-	-
Total	$38,339,201	$38,343,003	$38,343,000

To the extent that the Commission reduces the total revenue requirement, any reduction should be flowed-through proportionally to the rate classes using the cost allocation unanimously agreed upon in the Stipulation.

III. Maintaining The Interruptible Credit At Current Levels Is Fair, Just, And Reasonable.

[14] EKPC Application, Exhibit 35, Attachment 1 (EKPC 2019 Annual Report) at 2.
[15] Baron Testimony at 34, Table 6.

The Stipulation makes no changes to the EKPC's current interruptible rate offerings, which provide for differing credits to interruptible customers depending upon whether their load is subject to 10-minute, 30-minute, or 90-minute notice.[16] This outcome is reasonable despite evidence demonstrating that the current 10-minute interruptible credit should be increased.[17]

EKPC witness Scott provided support for the Company's current interruptible credits,[18] detailing how they were developed based upon the carrying cost of a combustion turbine ("CT") since the interruptible load dispatches similarly to a peaking unit. Mr. Scott's analysis shows that the value associated with interruptible load for EKPC's tariffed 30-minute notice interruptible credit is $5.26/kW-month, which is close to the Company's current 30-minute notice credit, at $5.60/kW-month. Because 90-minute notice has a lower value than 30-minute notice, the current credit available to load with 90-minute notice is lower, at $4.20/kW-month. And because 10-minute notice has a higher value than 30-minute notice, the current credit available to load with 10-minute notice is higher, at $6.22/kW-month.

EKPC's CT analysis, while sound in concept, understates the value of the 10-minute interruptible credit. If the Commission chooses to use the applicable PJM Net CONE as the basis for determining the cost of a CT, as it did in a recent Kentucky Power proceeding,[19] then the value of the 10-minute interruptible would be $6.60/kW-month. That is the PJM 2022/23 Delivery Year Net CONE value for EKPC on an ICAP (installed capacity MW) basis.[20] However, while use of Net CONE to value interruptible load would support an increase to the current 10-minute interruptible credit, the Stipulated outcome - maintaining the Company's interruptible

[16] Baron Testimony at 43; Nucor Response to Staff's First Requests for Information, Item No. 4.
[17] Baron Testimony at 40-43.
[18] Staff Ex. 1 (EKPC Ex. ISS-3.)
[19] Case No. 2020-00174 (May 14, 2021) at 29.
[20] Nucor Response to Staff's First Requests for Information, Item No. 4.

credits at current levels - is a reasonable compromise within the larger settlement package and should be approved.

WHEREFORE, the Commission should approve the Stipulation without modification.

Respectfully submitted,

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