

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

In the Matter of:

ELECTRONIC 2022 INTEGRATED RESOURCE	)	CASE NO.
PLAN OF EAST KENTUCKY POWER	)	2022-00098
COOPERATIVE, INC.	)	

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**RESPONSE OF EAST KENTUCKY POWER COOPERATIVE, INC.**

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Comes now East Kentucky Power Cooperative, Inc. (“EKPC”), by and through counsel, pursuant to the Commission’s December 16, 2022 Order, for its written response to the Joint Intervenors’ Supplemental Post-Hearing Comments filed on February 3, 2023.

**A. INFLATION REDUCTION ACT OF 2022**

In the first section of its February 3, 2023 Supplemental Post-Hearing Comments on EKPC’s IRP (“Post-Hearing Comments”), the Joint Intervenors expand on their criticism of EKPC’s supposed failure to be more proactive to access the full potential of certain benefits contained in the Inflation Reduction Act of 2022 (“IRA”). The Joint Intervenors cite several examples of ways in their opinion the IRA “is immediately actionable and more certain that EKPC represents”.

The first example cited by the Joint Intervenors is IRA Section 13801, the direct pay provisions. The Joint Intervenors state that “on the face of the IRA, direct pay provisions newly allow EKPC to benefit from tax credits for renewable energy projects that were previously limited to taxable entities”<sup>1</sup> and proceed to criticize EKPC for not immediately recognizing how direct

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<sup>1</sup> Post-Hearing Comments at 2. The text includes a citation to a blog post by the Government Affairs Coordinator, Center for Policy Advocacy, with the Natural Resources Defense Council. While the Coordinator is certainly entitled

pay changes the appropriate capital cost assumptions for clean energy resources in resource modeling. IRA Section 13801 directs the Secretary of the Treasury (“Treasury”) to issue regulations or other guidance as necessary to carry out the purposes of the legislation. While the Treasury along with the Internal Revenue Service (“IRS”) released notices in October 2022 requesting comments on multiple IRA topics, including the direct pay provisions, to date no implementing regulations or guidance have been issued by Treasury or the IRS. The Treasury and the IRS have indicated that when issuing proposed regulations, they will solicit public comments and consider the received feedback before finalizing a rule. The October requests for comment were designed to solicit extra input early to help accelerate the process. Without knowing what the Treasury’s implementing regulations or guidance provide, it would be little more than speculation of what the impacts would be to the capital cost assumptions for clean energy resources. The Joint Intervenors continue to fail to grasp the fact the impacts of the far-reaching IRA cannot be reasonably or accurately determined from a simple read of the legislation. EKPC does agree that once the implementing regulations or guidance are available, then the effect of the direct pay provisions should be incorporated into any resource acquisition evaluations and decisions. But any attempt to model the effects of the direct pay provisions prior to the release of implementing regulations or guidance would not constitute a reasonable basis upon which to make resource acquisition decisions.

The Joint Intervenors take EKPC to task for not yet determining how potential increased federal funding for weatherization, efficiency improvements, and home energy retrofits may impact EKPC’s long-term load forecast. The Joint Intervenors observe “The IRA has been final for several months; EKPC has now had more than sufficient time to analyze the legislation’s

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to his opinions, his views do not constitute the final implementation regulations or guidelines for the direct pay provisions.

impact.”<sup>2</sup> The Joint Intervenors further criticize EKPC’s supposed failure to act on the IRA provisions by noting a recent action by Duke Energy Florida of providing a \$56 million refund to customers related to the treatment for solar production tax credits. EKPC would point out that the IRA is over 270 pages in length and extensively amends a variety of existing federal statutes. Multiple federal agencies will be involved in developing implementation regulations or guidance, including Treasury, the Department of Energy, and the Department of Agriculture. The IRA became law in August 2022; six months is hardly enough time to digest the ramifications of this far-reaching legislation. Any valid and reasonable analysis of the legislation’s impact requires knowing what will be required in the implementation regulations or guidance. Concerning the Duke Energy Florida action, EKPC determined from a review of news releases on the Duke Energy Corporation website that this action was part of an application submitted to the Florida Public Service Commission (“Florida PSC”). EKPC has found the December 14, 2022 Order in Docket No. 20220172-EI, where the Florida PSC approved the Duke Energy Florida request of a refund and rate reduction resulting from the IRA. Duke Energy Florida’s application was made pursuant to a provision in a 2021 settlement agreement in a previous base rate case before the Florida PSC. The applicable provision in the settlement agreement required that the impacts of any tax reform on base revenue requirements be adjusted for retail customers within 120 days of the latter of the enactment date or effective date of the change in tax law.<sup>3</sup> Duke Energy Florida was obligated by a previous settlement agreement to reflect an impact of the IRA prior to the issuance of implementation regulations or guidance. It would be reasonable to expect that if the final

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<sup>2</sup> Post-Hearing Comments at 3.

<sup>3</sup> Please see <https://www.floridapsc.com/pscfiles/library/filings/2022/12007-2022/12007-2022.pdf> for a copy of the December 14, 2022 Order from the Florida PSC.

implementation regulations or guidance impacts the calculation of this tax benefit, Duke Energy Florida will seek further regulatory relief. But the action by Duke Energy Florida was the result of compliance with previous settlement agreement obligations, rather than the utility moving on its own quickly to share possible benefits of the IRA with customers.

Another example cited by the Joint Intervenors concerns the identification of energy communities in the service territories of EKPC's owner-members. The Joint Intervenors contend that the potential to site new resources in energy communities can be analyzed on the face of the IRA using public data sources and criticizes EKPC for not having already identified these energy communities. The Joint Intervenors proceed to claim they have undertaken this task and imply the determination was relatively easy to perform, again claiming the ready availability of public data sources needed to make the identification.<sup>4</sup> The Joint Intervenors provide the results of their work in a series of maps incorporated into the Post-Hearing Comments.<sup>5</sup> The Joint Intervenor's analysis relies extensively on a report issued by Resources for the Future ("RFF"), an independent, non-profit research institution in Washington, D.C.<sup>6</sup>

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<sup>4</sup> Post-Hearing Comments at 4-5.

<sup>5</sup> *Id.*, at 5 through 8.

<sup>6</sup> Report 22-12, November 2022, *What Is An "Energy Community"? Alternative Approaches for Geographically Targeted Energy Policy*, authors Daniel Raimi and Sophie Pesek. While the Report is readily accessible from the RFF website, it carries the following restrictions:

Our work is available for sharing and adaptation under an AttributionNonCommercial-NoDerivatives 4.0 International (CC BY-NC-ND 4.0) license. You can copy and redistribute our material in any medium or format; you must give appropriate credit, provide a link to the license, and indicate if changes were made, and you may not apply additional restrictions. You may do so in any reasonable manner, but not in any way that suggests the licensor endorses you or your use. You may not use the material for commercial purposes. If you remix, transform, or build upon the material, you may not distribute the modified material. For more information, visit <https://creativecommons.org/licenses/by-nc-nd/4.0/>.

In footnote 16 of the Post-Hearing Comments, the Joint Intervenors provided a website link to the RFF Report 22-12, but did not reference any license. Since the RFF Report 22-12 is readily available on the website, EKPC will only be quoting statements contained in the Report.

The energy community provision of the IRA is found in Section 13101, subpart (g). The IRA states the definition of energy community as:

ENERGY COMMUNITY.—For purposes of this paragraph, the term ‘energy community’ means—

“(i) a brownfield site (as defined in subparagraphs (A), (B), and (D)(ii)(III) of section 101(39) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(39))),

“(ii) a metropolitan statistical area or non-metropolitan statistical area which—

“(I) has (or, at any time during the period beginning after December 31, 2009, had) 0.17 percent or greater direct employment or 25 percent or greater local tax revenues related to the extraction, processing, transport, or storage of coal, oil, or natural gas (as determined by the Secretary), and

“(II) has an unemployment rate at or above the national average unemployment rate for the previous year (as determined by the Secretary), or

“(iii) a census tract—

“(I) in which— “(aa) after December 31, 1999, a coal mine has closed, or “(bb) after December 31, 2009, a coal-fired electric generating unit has been retired, or

“(II) which is directly adjoining to any census tract described in subclause (I).”.

EKPC notes the following observations and comments in the RFF Report 22-12.

Concerning the text in the IRA:

To summarize, this text provides for the additional credit in three types of geographies, which we identify for the remainder of this report as (i) brownfields; (ii) high fossil fuel-employment areas; and (iii) coal communities. In the following section, we first provide analysis of (i) and (iii) because their interpretation is relatively straightforward. We then offer multiple options for interpreting (ii), followed by our own definition of an “energy community.”

Our interpretations, estimates, and analysis are based on our best judgments. The U.S. Department of the Treasury is ultimately responsible for interpreting and implementing this provision.<sup>7</sup>

Concerning part (ii), high fossil fuel-employment areas:

We now turn to the most complex portion of the IRA definition of energy communities: high fossil fuel-employment areas. In this provision, the law refers to a “*metropolitan statistical area or non-metropolitan statistical area*” (MSAs and non-MSAs). . . .

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<sup>7</sup> RFF Report 22-12 at 5.

To assess which MSAs and non-MSAs will be eligible, we must answer three critical questions: (1) how to measure “*direct employment...related to the extraction, processing, transport, or storage of coal, oil, or natural gas*”; (2) how to measure “*local tax revenues related to the extraction, processing, transport, or storage of coal, oil, or natural gas*”; and (3) how to interpret “*has an unemployment rate at or above the national average unemployment rate for the previous year.*”

For question (1), the key issues are which data source to use and which categories of employment to include. . . .

For question (2), the answer is simple: it is not currently possible to measure how much tax revenue local governments collect from fossil fuel extraction, processing, transportation, and storage. . . .

For question (3), the key issues are determining the appropriate time periods to measure the current unemployment rate (“*has an unemployment rate*”) and the “*national unemployment rate for the previous year.*” . . .<sup>8</sup>

From the Conclusion:

However, defining an energy community is not straightforward, and the IRA definition could be interpreted in multiple ways. In this analysis, we offer three interpretations, describe their implications, and identify key clauses where the Department of Treasury’s interpretation will substantially affect eligibility outcomes. . . .<sup>9</sup>

After reviewing the RFF Report 22-12, EKPC believes it is abundantly clear that the determination of an energy community is far from being as simple and straightforward as claimed by the Joint Intervenors. The RFF Report 22-12 clearly states the report reflects the authors’ own interpretations, estimates, and analysis based on their own best judgments and acknowledges that the Treasury is responsible for any implementation regulations or guidance. Those regulations or guidance have not been issued to date. EKPC also notes that the Joint Intervenors have included information concerning “low-income communities” into their maps. The IRA Section 13101, subpart (g) makes no mention of low-income communities being part of the definition of energy

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<sup>8</sup> *Id.*, at 10.

<sup>9</sup> *Id.*, at 30.

community.<sup>10</sup> The RFF Report 22-12 does not mention or include low-income communities in its determination of energy community. The Joint Intervenors failed to explain the connection between the determination of an energy community and the low-income communities. Contrary to the assertion of the Joint Intervenors on page 8 of the Post-Hearing Comments, the determination of energy community is neither “more certain” nor “actionable” based on the RFF Report 22-12.

Noting the “listening sessions” the Department of Agriculture held concerning the implementation of the IRA, the Joint Intervenors proceed to criticize EKPC by stating it was not clear that EKPC staff had been participating in those sessions and it appeared that EKPC had not submitted written comments in conjunction with those sessions. A review of the 57 comments submitted to the Department of Agriculture in Docket RBS-22-NONE-0025 reveals that only one generation and transmission cooperative and one distribution cooperative filed comments in conjunction with the November 2022 listening sessions. However, the National Rural Electric Cooperative Association (“NRECA”) did file comments on behalf of its nearly 900 cooperatives, which includes EKPC and its 16 owner-members.<sup>11</sup> EKPC also notes that none of the three entities comprising the Joint Intervenors filed individual comments in response to the Department of Agriculture’s November 2022 listening sessions, but instead joined in with two sets of comments filed by the Rural Power Coalition.

Lastly, the Joint Intervenors provide excerpts from five comments out of the 38 comments submitted to the Commission in conjunction with this proceeding. The first public comment excerpt was quoted in the Post-Hearing Comments on page 10 as stating:

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<sup>10</sup> Low-income community is referenced in the IRA in Section 13103 – “Increase in Energy Credit for Solar and Wind Facilities Placed in Service in Connection with Low-Income Communities” and Section 13702 – “Clean Electricity Investment Credit.”

<sup>11</sup> Please see <https://www.regulations.gov/comment/RBS-22-NONE-0025-0035> for the NRECA comments filed on November 28, 2022.

Weekly, we read innovations that promise to improve renewables and energy storage, while the IRP is still depending on a fifty-year-old coal plant in a world approaching climate disaster. EKPC needs to be in the front of the line for the Inflation Reduction funds so they can retire debts, lower costs, and innovate.

Footnote 26 in the Post-Hearing Comments indicate this excerpt was from a public comment filed on December 6, 2022. However, the actual text of this portion of the December 6, 2022 comment reads:

Weekly we read innovations that promise to improve energy storage, and yet the IRP is still depending on a fifty-year-old coal plant. Almost daily we hear of a new climate disaster. EKPC should be taking a leadership role in moving us toward renewables and capitalizing on new technology.

After checking the video transcript of the December 13, 2022 public hearing, EKPC was able to determine the reason for this discrepancy. The individual providing the December 6, 2022 written comments also provided public comments at the beginning of the December 13, 2022 public hearing. In those public comments, the individual provided the statements that the Joint Intervenors quoted in the Post-Hearing Comments.<sup>12</sup> When quoting from the case record, the Joint Intervenors have the obligation to accurately present the filed written and public hearing comments.

The Joint Intervenors also failed to acknowledge connections between the commenters and their organizations. The second quoted excerpt commenter is the Director of the Kentucky Heartwood Council, a group which supports the Kentuckians for the Commonwealth.<sup>13</sup> The third quoted excerpt commenter is a Chapter Organizer for the Kentuckians for the Commonwealth.<sup>14</sup> Finally, the Joint Intervenors failed to note that the fourth quoted excerpt was from a gentleman who states “as an energy efficiency professional that has made a living delivering clean energy

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<sup>12</sup> Hearing Video Record at 09:08:55 through 09:12:40 (12/13/2022).

<sup>13</sup> Please see <https://www.kyheartwood.org/links.html> .

<sup>14</sup> Please see <https://archive.kftc.org/about/staff> .



and efficiency retrofits that quite literally pay for themselves out of the savings they create. . . .”<sup>15</sup> EKPC recognizes that these members of its 16 owner-members have every right to file comments with the Commission and it does not object to them. However, in the interest of being transparent, the Joint Intervenors had the obligation to disclose as part of the citation any affiliation between themselves and the individuals.

As EKPC has previously indicated, it will consider the impacts of the IRA in future requests for proposals for resources and future IRP filings, as applicable. However, those impacts cannot be reasonably determined until a host of federal, and in some cases state, agencies issue implementation regulations or guidance. EKPC has been and continues to engage with those agencies on the development of implementation regulations or guidance. It has only been a mere six months since the IRA became law and the process of implementation is only beginning.

## **B. TRANSPARENCY**

The Joint Intervenors make no reference to EKPC’s plan in the IRP that includes several 100 MW of additional solar generation. They do not acknowledge that EKPC has issued multiple Requests for Proposals for solar generation. They do not acknowledge that EKPC has been prepared to move forward with solar projects, even to the extent that it had received EKPC Board approval to contract for the output from a large solar project. The hold up on being able to implement that contract and the plan in general has been delayed due to transmission interconnections issues and U.S. government holds on panel delivery / availability. Neither of which EKPC has any control or leverage to fix. EKPC has demonstrated that it is attempting to

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<sup>15</sup> Please see [https://psc.ky.gov/pscscf/2022%20cases/2022-00098/Public%20Comments//20221215\\_PSC%20Response%20E-Mails%20to%20Multiple%20Comments.pdf](https://psc.ky.gov/pscscf/2022%20cases/2022-00098/Public%20Comments//20221215_PSC%20Response%20E-Mails%20to%20Multiple%20Comments.pdf) , page 11 of 22.

move forward with solar generation in good faith but the Joint Intervenors refuse to acknowledge that fact.

The Joint Intervenors have made a significant issue of not receiving data in an exact format that they requested, of which they have now received. There was nothing within that format specific data set that was received after the hearing that had not been revealed early within the interrogatory process. Modelers with reasonable expertise could have efficiently and effectively translated the data that was provided early on into the specific formatted data. Given that EKPC operates within the PJM Interconnect (“PJM”) market, the most critical information to determine how EKPC’s assets will operate within that market and how much load will cost are the projected PJM market costs and EKPC’s average cost to generate at each of its plants. All of that information was provided very early in the process. The Joint Intervenors want to argue about being able to replicate EKPC’s results from RTSim. They should be able to take a spreadsheet and determine if EKPC’s provided results are reasonable or not. Not at a replicable point, but within a reasonability range. There is no reason that the Joint Intervenors’ consultants or personnel couldn’t have determined if EKPC’s results were reasonable.

The Joint Intervenors also criticize EKPC for not communicating with the Joint Intervenors’ witnesses informally and failing to provide information informally in response to additional data requests. EKPC did not feel it was appropriate to meet with the Joint Intervenors informally. Providing information to the Joint Intervenors without all the other parties, including Commission Staff, being present is not an appropriate course of action. EKPC politely declined the request of the Joint Intervenors to engage in informal communications and their attempt to circumvent the procedural schedule in this proceeding.

### **C. TRANSMISSION PLANNING**

The Joint Intervenors claim that EKPC's transmission analyses were not informed by generating portfolio needs, generating unit economics, or non-wires potential. This claim is not accurate. EKPC plans its transmission system to ensure that existing resources can be dispatched at full output when needed. Also, EKPC conducts our planning process to ensure that the system is adequate and reliable for a planned or unplanned outage of any generating unit within our system, and has expanded that to consider a simultaneous outage of both units at Cooper Station. Additionally, EKPC evaluates the ability of the transmission system to import large quantities of power from the PJM market in order to ensure that no significant limitations exist that would restrict such imports. These analyses are complemented by the generator deliverability and load deliverability studies performed by PJM annually to ensure that all generation in PJM is deliverable to each load-deliverability area, including EKPC.

EKPC Transmission Planning staff members are deeply involved in analysis and support of potential additions of new generating resources to the EKPC system. This analysis helps inform locating generation in areas that are beneficial in addressing existing system issues or that would require minimal transmission-system upgrades.

EKPC does in fact assess the potential for non-wires solutions to address transmission-system issues. As shared in this proceeding, EKPC has considered the potential for installing a synchronous condenser at Cooper Station to provide necessary voltage support to that region. Also, EKPC has recently considered the potential for installing energy-storage systems to address issues on the transmission-system in certain areas. EKPC will continue to look for opportunities to utilize non-wires alternatives to address system issues in its planning processes, where feasible and appropriate.

EKPC's planning process is an integrated process that considers holistic solutions. However, the process has to be orderly and practical. It would be nonsensical for a transmission planner to recommend to retire a generating unit to address a thermal overload on a transmission line in the vicinity of that generating unit. Likewise, a resource planner cannot decide to build a transmission line in order to be able to retire a generating unit. Discussions take place between these two functional areas of the company to decide if and when a generating unit decision could impact the transmission system and vice versa. This is where the opportunity for holistic solutions is vetted.

Also, the Joint Intervenors fail to acknowledge that PJM is EKPC's regional planner responsible for performing analysis for generation additions and de-activations, as well as any non-wires alternatives EKPC is interested in implementing. The Joint Intervenors seem to believe that EKPC has unilateral authority to make decisions that impact both generation and transmission, but this is not the case. EKPC must defer to PJM regarding many transmission-planning decisions.

The Joint Intervenors seem to infer that EKPC is not considering all potentially cost-effective solutions to address transmission limitations, yet the only example offered is a solution that EKPC is in fact considering – installation of a synchronous condenser at Cooper Station to address system voltage violations in the area when Cooper Station is not online. No examples of “cost-effective solutions” that EKPC has not considered were offered by the Joint Intervenors.

The Joint Intervenors state that EKPC's information responses in the IRP proceeding hint at a transmission problem forcing the perpetual operation of Cooper Station. This conclusion misses the mark. EKPC has indicated that studies that have been conducted both in the past and at present show that Cooper Station provides critical transmission support for the region.

However, EKPC provided information regarding a myriad of possible solutions that are being considered to maintain reliability when Cooper is not operating.

The Joint Intervenors also seem to believe that there should be great urgency on EKPC's part to conclude the ongoing transmission study. EKPC has undertaken this study to understand what transmission limitations might be present if the Cooper Station units are not available during peak-load periods. The study is meant to utilize engineering analysis to better understand and inform future decisions that might need to be made by EKPC leadership related to the future of Cooper Station and infrastructure that might be required to support the possible decisions. EKPC has no specific timeline driving a need for the study to be completed at some particular date. Ensuring that all factors are considered and that relevant information that arises while the study is in process is incorporated is more critical than completing the study hastily. For instance, EKPC learned about future plans for generation retirements by LG&E/KU that will have a significant impact on the transmission study results after the December 13, 2022 hearing. EKPC is incorporating these plans into its studies to assess how it impacts the results. The Joint Intervenors also scold EKPC for not seeming to have an awareness of LG&E/KU's timeline for retirement of E.W. Brown Unit #3 that was announced in November 2020. However, as was explained by Witness Darrin Adams during the December 13, 2022 hearing, EKPC and LG&E/KU annually exchange planning models of their respective transmission systems, and LG&E/KU has continued to provide models to EKPC that represent Brown Unit #3 online at full output beyond 2030, with the latest such models provided to EKPC in April 2022. As part of the annual model exchange, the understanding between the two companies is that the most up-to-date information is being provided, and the utility receiving the data should not make any changes to the data of the utility

sending the data unless notified that a change is warranted. Therefore, EKPC relied on LG&E/KU to provide the most appropriate information regarding plans for its generation fleet in these models.

#### **D. ROLE OF THE STAKEHOLDER**

On page 24 of its Post-Hearing Comments, the Joint Intervenors state their role as a stakeholder in the IRP process “is to raise questions, offer constructive suggestions, and bring the different perspectives of the utility’s customers and the different communities it serves.” EKPC does not disagree with this view of the role of the stakeholder. However, the Joint Intervenors fail to acknowledge that a stakeholder has responsibilities as well. A credible stakeholder has the responsibility to retain knowledgeable experts. While the four authors of the report by Energy Futures Group, Inc. (“EFG”) may have over 35 years of combined experience in reviewing utility IRPs, none of the authors referenced experience with the RTSim model program. A credible stakeholder has the responsibility to accurately present the information relied upon for its suggestions. As previously noted in EKPC’s earlier comments, the EFG report contained misrepresentations of EKPC data responses and the confidential treatment of data by other state regulatory commissions. Further, as noted in these comments, the Joint Intervenors have not been completely accurate with representations they have provided concerning the implementation of the IRA. The Joint Intervenors went as far as to contradict positions taken in the RFF Report 22-12, which they claim was the basis for their determination of energy community. The transparency and good faith obligations that the Joint Intervenors insist should be required of EKPC are required of them as well in order to be credible stakeholders in the IRP process.

This 17<sup>th</sup> day of February 2023.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

This is to certify that the foregoing electronic filing was transmitted to the Commission on February 17, 2023; that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding; and that pursuant to prior Commission Orders, no paper copies of this filing will be made.



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*Counsel for East Kentucky Power Cooperative, Inc.*