



## ARGUMENT

### **I. The Order Violates The Commission’s Long-Standing Policy Regarding Gradualism In Ratemaking.**

While both the Order and long-standing Commission precedent emphasize the importance of gradualism in ratemaking,<sup>1</sup> the Commission acted directly contrary to that principle when allocating costs to Nucor in this case.

As its prior decisions reflect, *“the Commission has long stated that ratemaking should be based upon principles of ‘rate continuity, stability and gradualism.’”*<sup>2</sup> The Commission has found that *“when a conflict between the principles of cost-based rates and a gradual adjustment of rates, the principle of cost-based rates will not always control”* and that *“moving to cost-of-service based rates for all classes is a goal to be achieved gradually, in incremental steps.”*<sup>3</sup>

Indeed, the Commission *“has never required all rates to be set exactly at the level necessary to recover full cost, no more or no less. If such a principle were adopted, the residential rates for Kentucky Power and almost every other utility would have to be increased.*

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<sup>1</sup> Order at 76 (*“the Commission favors the principle of gradualism when determining fair, just and reasonable rates”*); Order Case No. 8800 (September 23, 1983) at 16 (*“the Commission is also committed to the principles of gradualism in rate adjustment”*); Order, Case No. 9567 (July 11, 1986) at 9 (*“It is the practice of the Commission to promote gradualism...”*); Order, Case No. 10201 (October 21, 1988) at 97 (*“This would further reduce the rate shock felt by the affected customers and, at the same time, would conform with the Commission’s objective of maintaining rate continuity and gradualism in setting rates.”*); Order, Case No. 91-066 (October 31, 1991); Order, Case No. 95-554 (September 11, 1996); Order, Case No. 2012-00152 (March 8, 2013) at 5; Order, Case No. 2025-00107 (January 29, 2026) at 25-26 (*“the Commission has also found it reasonable to embrace the principle of gradualism in ratemaking, which mitigates the financial impact of rate increases on customers while providing reasonable rates.”*); Order, Case No. 2025-00085 (April 9, 2025) at 12-13 (*“Such a significant increase is also inconsistent with the Commission’s interpretation of the principle of gradualism, which seeks to mitigate the financial impact of rate increases on customers and benefit the utility by maintaining the financial stability of its ratepayers.”*); Order, Case No. 2024-00287 (June 20, 2025) at 32; Order, Case No. 2023-00147 (April 5, 2024) at 22-23; Order, Case No. 2021-00407 (June 30, 2022) at 24; Order, Case No. 2025-00122 (December 15, 2025) at 71 (*“The Commission gives substantial weight to the evidence from the COSS and acknowledges the importance of gradually moving towards the cost-based rates. The Commission must weigh these factors and strike a balance between the customers’ financial interest and the utility’s ability to provide adequate, reliable service.”*);

<sup>2</sup> Order, Case No. 2012-00152 (March 8, 2013) at 5 (citing Order, Case No. 10064, *Adjustment of the Gas and Electric Rates of the Louisville Gas and Electric Company* (August 10, 1988) at 12).

<sup>3</sup> Order, Case No. 2012-00152 (March 8, 2013) at 5 (citing Case No. 8800, *Notice of Bronston Water Association, Inc., to Increase Its Water Rates*).

*Setting rates equal to cost-of-service is the Commission's goal, but this goal must be tempered by the equally important principles of rate continuity and gradualism.”<sup>4</sup>*

Gradualism is necessary because cost of service is not an exact science. The National Association of Regulatory Commissioners (“NARUC”) Electric Utility Cost Allocation Manual recognizes almost a dozen cost-of-service methods which each yield different results – Single Coincident Peak (“1 CP”), Summer and Winter Peak, 12 CP, Multiple CP Method, All Peak Hours, Average and Excess, Equivalent Peaker, Base and Peak, Base-Intermediate-Peak, Loss of Load Probability, and Probability of Dispatch. And when non-weather normalized historic test year data is used (as it was here), even the same cost of service method can yield radically different results depending on whether the test year was hot, cold, or mild.

Despite this decades-long precedent espousing the importance of gradualism, the Order adopted a “*flash cut*” revenue allocation approach for Nucor under which Nucor was immediately shifted from below cost of service rates to rates well *above* its full cost of service.

This approach resulted in a 18.59% revenue increase for Nucor (the only customer on the Large Special Contract rate)– significantly higher than the revenue increase approved for any other EKPC rate class, as shown in Table 1 below.<sup>5</sup>

<b>Table 1</b>		
<b>Customer Class</b>	<b>Approved Revenue Increase (\$)</b>	<b>Approved Revenue Increase %</b>
<b>Rate E</b>	\$34,989,502	4.36%
<b>Rate B</b>	\$5,673,790	7.40%
<b>Rate C</b>	\$2,243,948	7.42%
<b>Rate G</b>	\$5,114,290	11.20%
<b>Large Special Contract</b>	\$15,314,761	18.59%
<b>Special Contract - Pumping Station</b>	\$0	0.00%
<b>Steam Service</b>	\$348,497	2.50%
<b>System Average</b>		<b>6.00%</b>

<sup>4</sup> Order, Case No. 91-066 (October 31, 1991) at 12-13; *See also* Order, Case No. 95-554 (September 11, 1996) at 63 (“*the results of a cost-of-service study must often be tempered by principles of gradualism and rate continuity*”).

<sup>5</sup> Order at 73.

That 18.59% increase was *more than three times* the system average increase of 6.0%.<sup>6</sup> It was also much greater than the revenue increase initially proposed in EKPC’s application *at a significantly higher revenue requirement*. Table 2 below compares the various allocation proposals advanced in this case to the Order.<sup>7</sup>

<b>Table 2</b>			
	<b>EKPC Application</b>	<b>Joint Settlement</b>	<b>Commission Order</b>
<b>Revenue Requirement</b>	\$79,757,474	\$63,693,031	\$63,670,273
<b>Nucor Increase</b>	\$9,063,888	\$7,942,786	\$15,314,761
<b>% Increase</b>	11.00%	9.64%	18.59%

The Order attempts to offset the impacts of this above cost of service increase to Nucor by offering an analysis “*netting*” that increase against the approved \$2/kW-month increase in the interruptible credit to all of EKPC’s 28 interruptible customers, including Nucor (as shown in Table 3). Yet even under that “*netting*” approach, which is improper as discussed in greater detail below, Nucor still receives the highest revenue increase of any rate class. That increase – \$9,228,015 or 11.20% – is again larger than the increase initially proposed by EKPC at a significantly higher revenue requirement.

<b>Table 3</b>		
<b>Customer Class</b>	<b>Approved Revenue Increase Including Interruptible Credit (\$)</b>	<b>Approved Revenue Increase Including Interruptible Credit (%)</b>
<b>Rate E</b>	\$34,972,154	4.36%
<b>Rate B</b>	\$4,965,286	6.48%
<b>Rate C</b>	\$1,730,157	5.72%
<b>Rate G</b>	\$4,346,698	9.51%
<b>Large Special Contract</b>	\$9,228,015	11.20%
<b>Special Contract - Pumping Station</b>	\$0	0.00%
<b>Steam Service</b>	\$348,497	2.50%

Base rates are separate from interruptible credits. The two should not be conflated. But even if it were proper to examine the net impact, the Commission grossly overcorrected.

<sup>6</sup> Order at 52 and Appendix B.

<sup>7</sup> Direct Testimony of Stephen J. Baron at 28, Table 10; Joint Settlement Agreement Ex. C; Order at 73.

## II. The Order's Revenue Allocation Is Based Upon A Flawed Cost Of Service Study Containing Two Admitted Errors That Were Not Corrected.

If the revenue allocation adopted in the Order was intended to shift Nucor to full cost of service, then it erred in doing so by relying on a flawed cost of service study without first correcting two acknowledged errors in that study.

The Order states that:

*"...the Commission finds EKPC's proposed COSS, **with the agreed upon modifications, to be reasonable.**"*<sup>8</sup>

But the Commission then inexplicably relies upon the *uncorrected* initial version of EKPC's cost of service study in establishing the base rate revenue allocation, stating that "[b]ased upon the results of the EKPC's COSS, the Commission finds that the proposed revenue requirement increase allocation **found in the application** better reflects the result of the COSS."<sup>9</sup>

As the Order acknowledges, EKPC's initial cost of service study contained two significant errors that EKPC expressly admitted must be corrected: 1) the calculation of Rate G's non-coincident peak demand allocation; and 2) the calculation of the 12 coincident peak allocator to assign transmission costs to rate classes.<sup>10</sup> The Order failed to reflect those two necessary corrections.

The quantification of the two admitted errors is shown in AG/Nucor witness Baron's Direct Testimony at p. 28, Table 10. When those errors are corrected, the results of EKPC's cost of service study change as set forth in Table 4 below.

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<sup>8</sup> Order at 71.

<sup>9</sup> Order at 73 (emphasis added).

<sup>10</sup> Order at 70 (citing Wernert Rebuttal Testimony at 2 and 7-8). AG/Nucor witness Baron identified other major errors in EKPC's cost-of-service study that were not contested or rebutted by EKPC. However, for purposes of this rehearing, Nucor is only asking that the two errors expressly admitted by EKPC be addressed.

**Table 4**  
**Corrected Cost of Service Study**

	<b>Ordered Increase</b>	<b>% Increase</b>	<b>As Filed</b>	<b>Error 1 Correction Rate G NCP</b>	<b>Error 2 Correction 12CP</b>	<b>Corrected Increase</b>
Schedule E	\$ 34,989,502	4.36%	\$ 35,545,339	\$ 35,150,334	\$ 40,279,964	5.02%
Schedule B	5,673,790	7.40%	5,429,917	5,009,467	4,581,888	5.98%
Schedule C	2,243,948	7.42%	1,949,488	1,944,673	1,295,949	4.28%
Schedule G	5,114,290	11.19%	4,923,772	5,793,393	4,451,500	9.74%
Large SC	15,314,761	18.59%	15,473,260	15,423,909	12,712,475	15.43%
Subtotal	63,336,291		63,321,776	63,321,776	63,321,776	6.11%
SC - TGP	-	0.00%	-	-	-	0.00%
Steam Service	348,497	2.50%	348,497	348,497	348,497	2.50%
Total	\$ 63,684,788	5.98%	\$ 63,670,273	\$ 63,670,273	\$ 63,670,273	5.98%

As the corrected EKPC cost of service study reflects, moving Nucor to full cost of service at the Commission-ordered revenue requirement would produce a revenue increase of \$12.712 million to Nucor, not \$15.314 million as set forth in the Order. The Order's \$15.314 million revenue increase to Nucor is therefore far *above* its full cost of service. By failing to correct EKPC's two expressly admitted errors, the Order set Nucor's base rates at more than \$2.6 million above its full cost of service.

The corrected cost of service study also indicates that the increase to Nucor at full cost of service, after "*netting*" the interruptible credit increase, should be \$6,625,729 or 8.04%. These "*netted*" results are shown in Table 5 below.

**Table 5**  
**Full Cost of Service Increases Net Of Interruptible Credit Increase**

	<b>Full Cost of Service</b>	<b>Increase Net of Int. Credit Incr.</b>	<b>Net % Increase</b>
Schedule E	\$ 40,279,964	\$ 40,262,616	5.02%
Schedule B	4,581,888	3,873,384	5.05%
Schedule C	1,295,949	782,158	2.58%
Schedule G	4,451,500	3,683,908	8.06%
Large SC	12,712,475	6,625,729	8.04%
Subtotal	63,321,776	55,227,795	5.32%
SC - TGP	-	0	0.00%
Steam Service	348,497	348,497	2.50%
Total	\$ 63,670,273	55,576,292	5.22%

As explained below, “*netting*” the base rate increase by the increase in interruptible credits is improper ratemaking. But even on a net basis, the full cost of service increase recommended by Nucor in this Rehearing would be 54% above the system average.

The failure to correct EKPC’s two admitted errors when establishing the approved revenue allocation was unjust and unreasonable and should be corrected on rehearing. Specifically, the Commission should lower Nucor’s base rates by \$2.6 million to reflect full cost of service. This change only reflects the two acknowledged corrections to the cost of service study and makes no adjustments to reflect the Commission’s long-standing principle of gradualism. To protect residential customers who are paying below cost-of-service, Nucor recommends that the \$2.6 million correction be spread among business Rate Schedules B and C, as shown in Table 6 below.

**Table 6**  
**Recommended Revenue Allocation at Full Cost of Service**

	<b>Order Increase</b>	<b>% Increase</b>	<b>Recommended Increase After Corrections</b>	<b>% Increase</b>
Schedule E	\$ 34,989,502	4.36%	\$ 34,989,502	4.36%
Schedule B	5,673,790	7.40%	7,531,941	9.83%
Schedule C	2,243,948	7.42%	2,973,568	9.83%
Schedule G	5,114,290	11.19%	5,114,290	11.19%
Large SC	15,314,761	18.59%	12,712,475	15.43%
Subtotal	63,336,291	6.11%	63,321,776	6.11%
SC - TGP	0	0.00%	-	0.00%
Steam Service	348,497	2.50%	348,497	2.50%
Total	63,684,788	5.98%	\$ 63,670,273	5.98%

Under this corrected allocation, Nucor would still receive the highest base rate increase of any rate class (15.43%).

### **III. The Order Improperly “Nets” Interruptible Credit Increases For Purposes Of The Base Rate Revenue Allocation.**

The Order is unreasonable and unduly discriminatory in its treatment of interruptible credits for purposes of determining the base rate revenue allocation.

EKPC’s current tariffs allow eligible customers, both residential and non-residential, to receive a variety of credits and payments from the Company. For example, the tariffs provide for Qualifying Facility payments,<sup>11</sup> Demand-Side Management program incentives,<sup>12</sup> and electric vehicle charging incentives.<sup>13</sup> Such credits and payments are not examined separately or “netted” for purposes of determining the base rate revenue allocation among the various rate classes. Residential or small business customers do not receive a larger base rate increase because they benefit from energy efficiency programs or EV charging incentives. Nor should rooftop solar customers be penalized in a base rate case because they receive net metering credits. Similarly, interruptible credits should not be examined separately or “netted” for purposes of determining a base rate revenue allocation.<sup>14</sup> Yet here, the Order specifically singled out the \$2/kW-month interruptible credit increase for “netting” in determining the revenue allocation.<sup>15</sup>

This singling out of a particular credit increase for purposes of the base rate revenue allocation is unreasonable and unduly discriminatory since it fails to account for the “net” impact of tariff credits and payments received by other customers. And it fails to take into account the benefits of the interruptible program, including the deferment/delay of costly new generation builds, PJM capacity revenues, and energy savings.<sup>16</sup> The Commission’s own analysis showed that the credit to EKPC’s 28 interruptible customers is below the avoided cost value to the system.<sup>17</sup>

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<sup>11</sup> See EKPC Tariff, P.S.C. No. 35, Sheet Nos. 39-46.

<sup>12</sup> See EKPC Tariff, P.S.C. No. 35, Sheet Nos. 49-54, 57-59, 62-63, 66-67, 69-76, 84-86.

<sup>13</sup> See EKPC Tariff, P.S.C. No. 35, Sheet Nos. 55-56.

<sup>14</sup> See *e.g.*, Case Nos. 2025-00113, 2025-00114, 2025-00257.

<sup>15</sup> Order at 76.

<sup>16</sup> AG/Nucor Initial Brief at 6-10.

<sup>17</sup> Order at 75-76.

This avoided cost analysis is completely independent of how base rates are established. But resetting interruptible credits is relevant in a base rate case in order to account for the revenue effect on the utility. Ironically, the Commission justified paying the 28 interruptible customers below full avoided cost based on “*gradualism*.”<sup>18</sup>

Nucor provides the EKPC system benefits akin to a small power plant and has done so since 1995. But that reliability comes at a cost. Nucor must curtail production during system emergencies (which occurred two times in 2025) and during high-cost energy periods when market buy-throughs are not economic. This is the first time Nucor has been penalized for serving as an interruptible resource for EKPC. On rehearing, and going forward, such discriminatory singling out of interruptible credit increases in a base rate case revenue allocation should be discontinued.

#### **IV. The Order Unduly Discriminates Against Nucor As Compared To EKPC’s 27 Other Interruptible Customers.**

The Order unduly discriminated against Nucor relative to other interruptible customers, in violation of KRS 278.170. EKPC has 28 interruptible customers serving as a PJM generation resource, including Nucor. Each receives an interruptible credit.<sup>19</sup> The \$2/kW-month increase in the interruptible credit will apply to all of them. But the Order specifically examines Nucor’s “*net*” rates (as the only customer in the Large Special Contract class) while not examining the individual “*net*” rates of the 27 other similarly situated interruptible customers.<sup>20</sup> Nucor is not asking the Commission to remedy this undue discrimination by examining each of the 27 individual interruptible customer’s “*net*” rate increases on rehearing and adjusting their rates accordingly. But the Commission should end this improper practice going forward.

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<sup>18</sup> *Id.*

<sup>19</sup> Direct Testimony of Stephen J. Baron, Ex. SJB-10.

<sup>20</sup> Order at 72-73.

Nucor Steel Gallatin is a cornerstone of the EKPC system.<sup>21</sup> It is EKPC's largest consumer of power and largest provider of interruptible capacity, which is a valuable generation resource in PJM. Nucor is also the type of major employer that the Kentucky Cabinet for Economic Development actively recruits and that utilities like Kentucky Power would be thrilled to attract to their territories. But the Order's base revenue allocation and interruptible credit "*netting*" approach unfairly target Nucor as compared to EKPC's 27 other interruptible customers.

### **CONCLUSION**

WHEREFORE, the Commission should reduce the base rate increase to the Large Special Contract customer by \$2.6 million to reflect Nucor's full cost of service and spread the rate impacts of that change among Rates B and C.

Respectfully submitted,

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<sup>21</sup> To the extent applicable, Nucor Steel Gallatin notes that its electric pricing is completely independent of and structured differently than the electric pricing for the Nucor Steel Brandenburg facility located in Big Rivers Electric Corporation's service territory.