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PUBLIC SERVICE
COMMISSION

Via Overnight Mail

December 22, 2008

Stephanie Stumbo, Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, Kentucky 40602

Re: **Case No. 2008-00409**

Dear Ms. Stumbo:

Please find enclosed the original and twelve (12) copies of the COMMENTS OF KENTUCKY INDUSTRIAL UTILITY CUSTOMERS, INC. filed in the above-referenced matter. By copy of this letter, all parties listed on the Certificate of Service have been served.

Please place this document of file.

Very Truly Yours,

Michael L. Kurtz, Esq.
Kurt J. Boehm, Esq.
BOEHM, KURTZ & LOWRY

MLKkew
Attachment
cc: Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by mailing a true and correct copy, by electronic mail (when available) and by first-class postage prepaid mail, to all parties on the 22ND day of December, 2008.

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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In The Matter Of: General Adjustment of Electric Rates of East Kentucky Power Cooperative, Inc.	: : :	Case No. 2008-00409

COMMENTS OF KENTUCKY INDUSTRIAL UTILITY CUSTOMERS

The Commission should reject the Company's request for an accounting order for the period April 1, 2009 through May 31, 2009 for the Spurlock 4 operating costs, or in the alternative, request to grant interim rate relief on April 1, 2009. The Company's request for an accounting order and the alternative of interim rate relief are functionally equivalent and are both subject to the same legal standard and burden of proof.

The Company has failed to demonstrate that if the Commission does not grant the Company's request that its credit or operations will be materially impaired or damaged. The Company has failed to demonstrate that it will be in default under any of its loan agreements if the Commission adheres to the statutory suspension period and normal ratemaking timeline and procedures are applied. The Company has failed to demonstrate that it will not be able to finance its construction program or that it will be unable to access its Credit Facility and RUS financing. The Company has failed to demonstrate that its requested rate increase is reasonable, including its request for an unprecedented TIER of 1.45.

In addition, the Company could request and obtain recovery of the reasonable Spurlock 4 environmental costs through its environmental surcharge tariff commencing on April 1, 2009.

Finally, if the Company later determines that it will be in imminent danger of default and that its credit or operations will be materially impaired or damaged without an accounting order or an interim rate increase, then it can file another petition prior to June 1, 2009.

<u>EKPC Has Failed To Meet The Difficult Legal Standard</u>
<u>To Waive The Statutory Suspension Period</u>

EKPC has failed to meet the difficult legal standard for changing the normal rate case rules by waiving the statutory suspension period. The legal standard under KRS 278.190(2) for waiving the suspension period for a rate case based on a forecasted test year is as follows:

> **"if the Commission, at any time, during the suspension period, finds that the company's credit or operations will be materially impaired or damaged by the failure to permit the rates to become effective during the period, the commission may, after any hearing or hearings, permit all or a portion of the rates to become effective under terms and conditions as the commission may, by order, prescribe."**

In accordance with this requirement, the Commission cannot raise rates on consumers prior to the expiration of the suspension period unless the failure to do so will cause the Company's credit or operations to be materially impaired or damaged. This is a difficult and high hurdle. The extraordinary remedy of raising rates on consumers before a hearing should be applied only if the utility has met its burden of proof with clear and convincing evidence.

The Company failed to address this legal standard in either its Petition for the Creation of a Regulatory asset Relating to Unrecovered Revenues or in the Testimony of William Stephen Seelye filed in support of its Petition.

In addition to its failure to address the legal standard, the Company failed to provide any demonstration that its credit or operations actually will be materially impaired or damaged. Thus, the Commission has no basis to make the assessment required by the statute.

Finally, the Company made no attempt to quantify the minimum amount of rate increase necessary on April 1 to meet the requirements of the Credit Facility and RUS loan agreements in the event the Commission waives the normal suspension period. Its request for the increase on April 1 was for the entire amount requested, subject to adjustment based on the Commission's order on the amount of the permanent increase, which the

Commission normally would have six months to review and consider based on the merits of the Company's filing.

If the Commission finds that not raising rates during the suspension period will cause the Company's credit or operations to be materially impaired, then it may permit all or a portion of the rates to become effective under terms and conditions that the Commission may prescribe. The Commission has the discretion to raise rates by some amount less than the full amount requested. Also, this issue may be revisited at any time during the suspension period.

EKPC Has Not Claimed That It Is Or Will Be In Default Under Its Credit Facility And RUS Loan Agreements And Covenants

EKPC is not presently in default under its Credit Facility Agreement or under its RUS loan agreements and does not expect to be in default either in 2008 or in 2009 even without the requested accounting order or interim rate increase. The Credit Facility requires that the Company maintain a TIER of at least 1.05 and a DSC of at least 1.0 based on the average of the best two out of three years. The RUS loan covenants require that the Company maintain a TIER of at least 1.05 and a DSC of 1.0 each year. The Company expects to meet these requirements in 2008 if it is granted its request for accounting order for the forced outage costs, according to the Direct Testimony of Mr. Eames in this case: "EKPC expects to meet the covenants for RUS/CFC purposes but does not believe it will meet the covenants for the Credit Facility Agreement without the relief requested in PSC Case No. 2008-00436." (Eames Direct at 5).

In addition, the Company projects that it will meet the loan agreement requirements in 2009 even without the requested accounting order or interim rate increase, according to its response to Commission Staff Request No. 2 made at the informal conference on November 13, 2008. In that response, the Company provided a projected TIER of 1.304 and DSC of 1.141 for 2009 without the requested accounting order or interim rate increase and a TIER of 1.385 and DSC of 1.192 for 2009 with the requested accounting order or interim rate increase.

EKPC Has Not Sought Recovery Of Its Spurlock 4 Environmental Costs Through The Environmental Surcharge

EKPC has not sought recovery of its Spurlock 4 environmental investment through the environmental surcharge. The Company has the option of filing for recovery through the environmental surcharge, which will enable it to improve its financial metrics on April 1, 2009.

EKPC Has The Option Of Filing For An Accounting Order Or Interim Rate Increase At A Later Date

The Company has not met the legal standard for an accounting order or interim relief in this proceeding. However, if the Company's actual or projected financial condition and metrics deteriorate further, then the Company has the option of again filing for an accounting order or interim rate increase.

Respectfully submitted,

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December 22, 2008