

# Goss ◻ Samford PLLC



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April 8, 2014

***Via Hand Delivery***

Mr. Jeffrey Derouen  
Executive Director  
Kentucky Public Service Commission  
P.O. Box 615  
211 Sower Boulevard  
Frankfort, KY 40602

RECEIVED

APR 8 2014

PUBLIC SERVICE  
COMMISSION

Re: In the Matter of: Petition and Complaint of Grayson RECC for an Order Authorizing Purchase of Electric Power at the Rate of Six Cents Per Kilowatts of Power vs. a Rate in Excess of Seven Cents Per Killowatt Hour Purchased From East Kentucky Power Cooperative Under a Wholesale Power Contract as Amended Between Grayson RECC and East Kentucky Power Cooperative, Inc.  
PSC Case No. 2012-00503

Dear Mr. Derouen:

Enclosed please find for filing with the Commission in the above-referenced case an original and ten (10) copies of the Motion to Compel of East Kentucky Power Cooperative, Inc., South Kentucky Rural Electric Cooperative Corporation, Cumberland Valley Electric, Inc., Farmers Rural Electric Cooperative Corporation, Blue Grass Energy Corporation, Big Sandy Rural Electric Cooperative Corporation, Licking Valley Rural Electric Cooperative Corporation, Inter-County Energy Cooperative Corporation, Nolin Rural Electric Cooperative Corporation and Clark Energy Cooperative, Inc. to Grayson Rural Electric Cooperative Corporation. Please return a file-stamped copy to me.

Do not hesitate to contact me if you have any questions.

Sincerely,

David S. Samford

Enclosures

M:\Clients\4000 - East Kentucky Power\1800 - Grayson Litigation\  
Correspondence\Ltr. to Jeff Derouen (2012-00503) - 140408

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

**RECEIVED**

APR 8 2014

PUBLIC SERVICE  
COMMISSION

In the Matter of:

PETITION AND COMPLAINT OF GRAYSON  
RURAL ELECTRIC COOPERATIVE )  
CORPORATION FOR AN ORDER )  
AUTHORIZING PURCHASE OF ELECTRIC )  
POWER AT THE RATE OF SIX CENTS PER )  
KILOWATTS OF POWER VS A RATE IN ) CASE NO. 2012-00503  
EXCESS OF SEVEN CENTS PER KILOWATT )  
HOUR PURCHASED FROM EAST KENTUCKY )  
POWER COOPERATIVE UNDER A )  
WHOLESALE POWER CONTRACT AS )  
AMENDED BETWEEN GRAYSON RURAL )  
ELECTRIC COOPERATIVE CORPORATION )  
AND EAST KENTUCKY POWER COOPERATIVE INC. )

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**MOTION TO COMPEL**

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Come now the Respondent and Intervenors, East Kentucky Power Cooperative, Inc. ("EKPC"), South Kentucky Rural Electric Cooperative Corporation, Cumberland Valley Electric, Inc., Farmers Rural Electric Cooperative Corporation, Blue Grass Energy Corporation, Big Sandy Rural Electric Cooperative Corporation, Licking Valley Rural Electric Cooperative Corporation, Inter-County Energy Cooperative Corporation, Nolin Rural Electric Cooperative Corporation and Clark Energy Cooperative, Inc. (collectively, the "Joint Movants"), by and through counsel, and hereby move the Kentucky Public Service Commission ("Commission") to enter an Order compelling the Petitioner, Grayson Rural Electric Cooperative Corporation ("Grayson"), to: (i) provide complete and accurate supplemental responses to Joint Movants' First Request for Information; and (ii) make available, at its cost and EKPC's convenience,

certain witnesses who were instructed by Grayson's counsel not to answer questions posed during depositions conducted in this matter. In support of this motion, Joint Movants state as follows:

**I. Joint Movants' First Request for Information**

On or about November 1, 2013, Joint Movants served upon Grayson their First Request for Information. As stated in the First Request for Information, the deadline by which Grayson was to provide its responses to Joint Movants' requests was November 15, 2013. On or about November 26, 2013, Grayson provided its responses to Joint Movants' First Request for Information. However, Grayson's responses were incomplete and insufficient, particularly with respect to its responses to Request Nos. 1(a), 1(c), 1(e), 3, 5, and 10. By letter dated January 21, 2014 (the "January 21<sup>st</sup> Letter"), Joint Movants requested that Grayson supplement its responses to the First Request for Information and fully provide the information/documentation sought by the above-enumerated Requests.<sup>1</sup> In an attempt to avoid confusion and limit additional delay, the January 21<sup>st</sup> Letter included a detailed list of the specific responses that required supplementation, as follows:

**Request for Information No. 1(a):** The Answer provided by Grayson to this item is nonresponsive, as it fails to describe the activities performed by Grayson to analyze the viability of the Magnum project for Grayson and its members. Moreover, Grayson's Answer is devoid of any chronological account and contains woefully insufficient detail. Please provide a detailed chronological description, as requested.

**Request for Information No. 1(c):** This item requested that Grayson provide "a detailed description of all activities performed and opinions rendered" by the outside consultants or individuals identified in response to Request No. 1(b). Though Grayson's Answer to this item lists numerous individuals with which it consulted, it

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<sup>1</sup> A true and accurate copy of the January 21<sup>st</sup> Letter is attached hereto and incorporated herein as **Exhibit A**. As the Commission is aware, Grayson, Joint Movants, and certain other related distribution cooperatives are concurrently involved in a matter initiated by Grayson before the Mason Circuit Court, Mason County, Kentucky, styled *Grayson Rural Electric Cooperative Corporation v. East Kentucky Power Cooperative, Inc., et al.*, Civil Action No. 12-CI-00270. The January 21<sup>st</sup> Letter includes requests for supplementation related to discovery in both this matter before the Commission and the civil action. Of course, only the discovery related to this matter before the Commission is relevant for purposes of the present Motion.

does not contain any description of the activities these individuals performed nor the opinions they rendered. Please provide a detailed description, as requested.

**Request for Information No. 1(e):** This item requested that Grayson provide “all documents and electronic media of any kind in Grayson’s possession, or the possession of any consultant or individual assisting or providing advice to Grayson, which were used in the [viability] analysis or which were generated as a result of such analysis.” Grayson’s Answer simply states that “[t]here are no written opinions or written consultative reports given by any of those individuals.” Even assuming, *arguendo*, that no outside consultants provided any written opinions or reports, it appears highly unlikely that no documents or electronic media (including emails) (i) were utilized by either Grayson or its consultants in performing viability analyses or (ii) resulted from viability analyses. Please reevaluate Grayson’s Answer to this item and provide responsive documents and electronic media, as requested.

Additionally, the concluding paragraph of Grayson’s Answer to this Request states as follows: “[i]t is believed that Jeff Brandt, as well as Mr. Linxwiler, forwarded to Grayson a written document concerning wheeling charges. Copies of those documents are attached.” However, no such documents were attached to Grayson’s Response or otherwise provided by Grayson. Please produce these documents.

**Request for Information No. 3:** Grayson’s Answer to this Request references an exchange of letters between Carol Hall Fraley and Tom Crisp, and copies of both letters were produced. However, the letter sent by Mr. Crisp to Ms. Fraley dated October 29, 2013, references an enclosure that was not produced. The enclosure appears to be “a copy of the contract between Magnum and Grayson Rural Electric” that was highlighted by Mr. Crisp prior to mailing. Please produce this highlighted document.

**Request for Information No. 5:** This item requested that Grayson describe in detail the working mechanics of its apparent arrangement with Duke Commercial. Grayson’s Answer provides scant and unsatisfactory detail and is largely unresponsive. Please provide a detailed description, as requested.

**Request for Information No. 10:** This item requested various information concerning the apparent arrangement between Grayson and Duke Commercial, including (but not limited to) information related to the particular load or loads within Grayson’s service territory to be served by Duke Commercial and the hourly measurement of demand for each such load or loads during EKPC’s annual peak hour during the thirty-six calendar months preceding the election. The Answer provided by Grayson is incomplete and insufficient. Please provide all information requested.

The January 21<sup>st</sup> Letter requested that Grayson provide the supplemental information and documentation on or before February 4, 2014. By letter dated January 27, 2014 (the “January

27<sup>th</sup> Letter”), counsel for Grayson stated that he and his client would be unable to meet the February 4<sup>th</sup> deadline and that he “suspect[ed] that it would be the latter part of February before [Grayson] can provide appropriate responses to [Joint Movants’] requests.”<sup>2</sup> Now – two full months after the original deadline – Grayson still has not provided the supplemental information/documentation nor contacted the undersigned with respect thereto.

Joint Movants seek an Order compelling Grayson to immediately provide full and accurate responses to their First Request for Information, the same having been served upon Grayson over five (5) months ago. The information sought by Joint Movants is entirely relevant to the issues in this matter, as Grayson’s analysis and proposed implementation of its purported alternative wholesale power arrangements are inextricably linked to the Commission’s investigation of Amendment 3 to the Wholesale Power Contract (“Amendment 3” and the “WPC,” respectively) between Grayson, EKPC, and the Rural Utilities Service (“RUS”). As is evident, Joint Movants attempted to resolve these issues without the Commission’s intervention, but Grayson has not performed as it indicated in the January 27<sup>th</sup> Letter. Pursuant to 807 KAR 5:001, Section 4(12)(e), an order compelling Grayson to fully and accurately respond to Joint Movants’ First Request for Information is both prudent and necessary.

## **II. Depositions of Carol Hall Fraley and Bryon Poling**

The various parties involved in this case agreed at an Informal Conference held August 8, 2013, that discovery in this matter would preliminarily consist of written requests for information and documents and the taking of depositions.<sup>3</sup> During the period of November 2013 through January 2014, Grayson and EKPC each deposed numerous individuals, including members of

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<sup>2</sup> A true and accurate copy of the January 27<sup>th</sup> Letter is attached hereto and incorporated herein as **Exhibit B**.

<sup>3</sup> See Intra-Agency Memorandum prepared by Richard Raff, General Counsel for the Commission, dated September 10, 2013, and filed of record September 12, 2013.

Grayson's Board of Directors and certain officers and executive personnel of the respective cooperatives. On January 6, 2014, EKPC deposed Grayson's President and Chief Executive Officer, Carol Hall Fraley ("Ms. Fraley"); on January 7, 2014, EKPC deposed Grayson's Manager of Technical Services, Bryon Poling ("Mr. Poling") (Ms. Fraley and Ms. Poling may be referred to herein collectively as the "Deponents"). At issue in this motion is certain testimony sought from Deponents concerning a document oft-referenced in this matter and entitled "Memorandum of Understanding and Agreement Regarding Alternative Power Sources" (the "MOU").

As explained by EKPC in previous filings in this case,<sup>4</sup> the MOU is a document negotiated by and among EKPC's member distribution cooperatives which focuses on the off-system power supply option contained within Amendment 3 and, more specifically, the allocation and notice procedures which should be employed in relation to off-system power purchases made under Amendment 3. Grayson approved the MOU (conditioned upon approval by EKPC and the other member distribution cooperatives) on or about June 28, 2013, but then repudiated its approval on or about August 23, 2013.<sup>5</sup> Importantly, Grayson stated in its Response to Joint Movant's First Request for Information that its decision to rescind its prior approval of the MOU was based, at least in part, on the Commission's Order entered herein on July 17, 2013.<sup>6</sup>

At Ms. Fraley's deposition, counsel for EKPC questioned Ms. Fraley concerning her opinion of the MOU and the actions of Grayson's Board of Directors with respect thereto.<sup>7</sup> Initially,

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<sup>4</sup> See EKPC's Answer and Motion to Dismiss (filed January 11, 2013); EKPC's Objection to Grayson's Notice of Amendment (filed September 25, 2013).

<sup>5</sup> See Exhibits 1 and 2 to EKPC's Objection to Grayson's Notice of Amendment (filed September 25, 2013).

<sup>6</sup> See Grayson's Response to Joint Movants' First Request for Information, and particularly its response to Request No. 16 (filed November 26, 2013).

counsel for Grayson did not object to EKPC counsel's line of questioning; however, counsel for Grayson soon lodged lengthy objections and eventually instructed Ms. Fraley not to answer any questions regarding the MOU. The deposition proceeded as follows:

Q Can you give me an idea in what ways the MOU clarifies -- I think that's the term you used, clarifies -- the Amendment 3?

MR. SCOTT: Note my objection. That goes to the question of compromise and settlement of an issue, and it also mischaracterizes what she said the purpose of discussion of the MOU was. Counsel used the term "clarify Amendment 3." She said specifically more than once in response to questions that it was to define Amendment 3. So I think that that question has an improper foundation and is not relevant to the proceeding and issues before the Commission.

MR. SAMFORD: I don't think it's a settlement, because it was negotiated as a business deal well before any litigation was commenced. But I will rephrase my question.

Q What were some of the -- what were some of the things that the negotiating team was trying to accomplish with this -- with this agreement?

MR. SCOTT: Note my objection, again, for the reason that this MOU proposal is a - - is nothing more than a proposal. It is not a contract. There is not even every co-op that is signatory to it. So it is of no relevance.

...

Q So what I'm trying to understand is which of those issues the MOU was intended to bring a consensus to, and I would like to be able to get an answer to that, but if your counsel is not going to let you answer it, then I have to resort --

MR. SCOTT: I didn't tell her not to answer. I just objected to it. But I will say this, that if it is East Kentucky's position, and it sounds like from the way these questions are that it is its position, and on other things that East Kentucky has filed in this case, that the resolution to this case is a uniform adoption of the MOU, then we certainly object to that because there has not been a uniform adoption to it.

And, gee, if Grayson would just acquiesce in signing the MOU, then the world would be great. That's not a relevant, appropriately legal presentation to decide an issue.

It is in fact an offer of a compromise or an offer of a settlement, which is not relevant to deciding an issue. It is not something that the Commission could mandate that everyone agree to, just because they sat down and talked about trying to do something that they were unsuccessful in doing.

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<sup>7</sup> Relevant portions of Ms. Fraley's deposition, the same having been conducted on January 6, 2014, are attached hereto and incorporated herein as Exhibit C.

MR. SAMFORD: Again, I come back to it's not an offer of settlement. It's a business -- it's a document, it's a contract that was negotiated by business people, not by lawyers, the best I can tell, and it predates any litigation.

So, I mean, I think clearly we're able to inquire as to the business considerations that were in the mind of the executives who negotiated it.

And I wouldn't infer anything from my questions as to what East Kentucky's position is. We'll make that known at the appropriate time. I'm just trying to gain information, which is the purpose of the discovery deposition.

MR. SCOTT: Well, the exhibit itself says, "EKPC Draft: 3/14/2013," and this case was filed in 2012. So obviously this document does not predate litigation.

MR. SAMFORD: Jeff, you're not hearing me. I said that the negotiation of the MOU predates. I didn't say this draft predates. The whole -- the whole concept of the MOU.

MR. SCOTT: And it is not -- Mr. Samford, with all due respect, it is the firm belief of Grayson Rural Electric that East Kentucky Power wants this MOU to be adopted by everyone as a settlement of the issues before the Commission, and that Grayson, having agreed to it once, therefore should be bound by that, and that is what was advanced by East Kentucky Power and its attorneys, including you, in August of 2013 at the informal conference, when I said that it was probably going to be rescinded. And it was. And you all chastised me for that as if I had said something that was a lie. And I told you exactly what was going to happen and it did happen.

So this MOU attempt has failed and I am now at this point instructing my client's president and CEO not to answer any more questions on the MOU. This attempt at an agreement failed, and it must be thrown to the wayside and this matter presented to the Commission to see if Grayson Rural Electric can buy power under the terms of an existing contract that might save its members money. That is the sole issue. I have said that from day one. Carol Ann Fraley has said it from day one. Every director that's been deposed has said that. That is the sole issue.

...

Q So, Ms. Fraley, I come back to my question. I mean, what were the -- what were the substantive issues that you were involved in trying to negotiate the MOU?

A Can I answer that?

MR. SCOTT: I instruct her not to answer for the reasons already indicated.

A Okay.

Q Did you agree with the terms of the Memorandum of Understanding when it was negotiated?



MR. SCOTT: Objection. Instruct her not to answer.

Q Did you agree with -- did you make the recommendation to your Board to approve the MOU in June of this year?

MR. SCOTT: Objection. Instruct her not to answer.

MR. SAMFORD: Jeff, that makes no sense.

MR. SCOTT: You already have this information. You already have that from the Board meeting minutes.

MR. SAMFORD: So why are you objecting?

MR. SCOTT: Because it's there, and the argument you want to advance, even if it's not the one I suggested, whatever argument you want to advance is available to you with the documents that you already have. The Board minutes, they speak for themselves. So what Board action was taken you have, and you can make the argument from that.

MR. SAMFORD: I am entitled to ask her anything about the MOU that I want that is not privileged, and I've not asked her a single question that relates to privileged information. And a lot of these questions I asked directors and Mr. Combs previously, and you did not object. I don't understand why you think that you need to object to a legal argument that I'm not even making in the course of the discovery deposition. That makes no sense.

MR. SCOTT: Because the issue in this case is, may Grayson Rural Electric, under the provisions of a written contract, purchase power at a price from another entity besides East Kentucky Power that would save its members money. Is that something that is appropriate, may Grayson Rural Electric do that under existing contracts. That is the sole issue.

MR. SAMFORD: That may be the sole issue from your perspective, but you don't get to define what I think are the issues and you don't get to define what the PSC thinks are the issues. I can ask about any issue I want, and you can object as to privilege, but you can't instruct your witness not to answer factual questions. You can't do it.

MR. SCOTT: Well, I did it, and I did it more than once and I did it before this deposition. And if it goes on on this MOU, I'm going to do it again. So you can ask any question you want, and if it has in it MOU or Memorandum of Understanding and Agreement, I will object and I will instruct her not to answer. The issues that I have just said are the only issues before the Commission. And if East Kentucky wants to try to define them as something else and to say that the real thing is, gee, can Grayson really do this without incurring costs that it should not incur, has Grayson looked into the risk

factors, is this really the best thing for Grayson, well, that's not up to East Kentucky to determine. It is none of East Kentucky's business.

So if it fails, it fails. Everybody has the right to enter into something that will fail, but they have a right to do that which they think is appropriate for the concerns about which they have responsibility. And low cost power is the concern about which Grayson Rural Electric has responsibility.

MR. SAMFORD: And the ironic thing about this is that you're the party that asked for discovery depositions to take place, which the Commission granted, and you're also the party that's now refusing to answer questions.

MR. SCOTT: Only -- we want discovery on the issues before the Commission, and we will give discovery on the issues before the Commission.

MR. SAMFORD: And you don't get to decide what the issues are before the Commission.

MR. SCOTT: We got an informal conference on Thursday. You can tell the Commission however ridiculous you think I have been, because you all are very, very good at doing that, and you will say how Mr. Scott has been totally wrong, he's a terrible person, and you say all of those things any time you have the opportunity to do it. And you're like, I don't know the truth if it slaps me in the face, that I stand up and say things that are a lie. You can repeat that again Thursday. You will have the opportunity to do that Thursday. Or you can yell it out the road as you go back to Lexington. And the Commission will make a decision on that, I guess. I guess they will make a decision. But right now, today, there are not going to be any answers given about the MOU.

BY MR. SAMFORD:

Q Ms. Fraley, why did the Board approval [sic] the MOU in June?

MR. SCOTT: Object. Instruct her not to answer.

BY MR. SAMFORD:

Q Why did the Board decide to repudiate the MOU in August of -- of last year?

MR. SCOTT: Object. Instruct her not to answer.

BY MR. SAMFORD:

Q What were the substance of the Board's discussions of the MOU?

MR. SCOTT: Objection. Instruct her not to answer.

Q How did the Commission's July 17th, 2013 order affect the decision of Grayson's Board to repudiate?

MR. SCOTT: Same objection.

MR. SAMFORD: So I believe that was in your responses to data requests. It's now your position that I can't ask her about --

MR. SCOTT: I think I objected to that in the responses, when I said without waiving the objection, then I went ahead and we put it in there and she signed off on those responses.

BY MR. SAMFORD:

Q What was the conduct of East Kentucky personnel that you allege caused Grayson to repudiate the MOU?

MR. SCOTT: Same objection.

The day following Ms. Fraley's deposition, EKPC deposed Mr. Poling; perhaps unsurprisingly, Grayson's counsel employed the same unfounded, obstructionist tactics as done the day prior.<sup>8</sup>

Q What's your understanding of the purpose of the Memorandum of Understanding?

A To --

MR. SCOTT: Note my objection to any questions regarding the Memorandum of Understanding.

BY MR. SAMFORD:

Q You can still go ahead and answer.

A Memorandum of Understanding to me is a way of facilitating Amendment 3 to allow us to buy 15 percent of our system peak from an alternative source.

Q Okay. From a technical point of view, is it your opinion that the MOU would assist in allowing Grayson to procure sources of power from other alternative resources or is it -- is it really indifferent?

MR. SCOTT: Let me note an objection again. This is -- this case is not a complaint to enforce an MOU nor -- this case is not a complaint to enforce an MOU. There is no MOU that has been signed by any entity, so I really don't believe that it has any relevance, and whatever questions there are regarding this witness' opinion as to whether it would assist in implementing Amendment 3, he has not been demonstrated to

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<sup>8</sup> Relevant portions of Mr. Poling's deposition, the same having been conducted on January 7, 2014, are attached hereto and incorporated herein as **Exhibit D**.

have the expertise or knowledge to give that opinion. His expertise is in technical matters, not contractual, nor Public Service Commission jurisdictional matters, and therefore I believe that his answers would not be appropriate nor would they lead to any discoverable information.

BY MR. SAMFORD:

Q So let me ask this question -- and I'm only asking from a technical perspective. I'm not asking about financial outcomes or legal conclusions or anything like that. Based upon your reading of the Memorandum of Understanding, was there anything in that document that would prevent Grayson from pursuing the Magnum contract?

MR. SCOTT: Note my objection. I instruct him not to answer for the reason that that is not a matter that is within the framework of the issues that have been set forth in the complaint, or as set forth by the Commission's order. A Memorandum of Understanding was attempted to have been signed by parties to resolve a dispute. It is an offer of settlement or compromise of a disputed matter, and therefore is inadmissible in any adversarial proceeding and therefore it is not relevant.

MR. SAMFORD: Okay. I'll reiterate what I said yesterday. It's not a settlement document because it preceded litigation. It was negotiated for commercial purpose by business executives. You're not asserting any sort of privilege, so -- this is a discovery deposition, so whether it's ultimately admissible or not isn't a question for today; it's a question for the PSC to decide later. So unless it's privileged, I think he does need to answer the question. We can argue --

MR. SCOTT: It's a document that hasn't been signed by anyone.

MR. SAMFORD: Well, I can still ask him what he thinks about it. I mean, your contract with Duke Energy hasn't been signed with anyone and yet you've asked the Public Service Commission to approve it.

MR. SCOTT: Uh-huh (affirmative). That's right. We're asking the Public Service Commission to approve an arrangement that every witness has testified to as being a verbal arrangement to buy power cheaper than they pay -- than Grayson pays for it with East Kentucky Power. The Memorandum of Understanding, as I understand it, is a document that's not been signed by anybody, but is a proposal to modify a contract. And I object and instruct him not to answer. We're not going to argue about whether the MOU should be adopted as a means to resolve this lawsuit.

MR. SAMFORD: And so your instruction for him to not answer is based upon your belief that it would be inadmissible as non-relevant. There's no privilege involved.

MR. SCOTT: And that it is definitely an inappropriate scope of inquiry outside the rules of the -- of appropriate discovery, as this case is not a question of whether the Memorandum of Understanding should be adopted. That's not the issue in this case.

MR. SAMFORD: Well, the –

MR. SCOTT: Would be no different than, you know, if you ask him, you know, about a Stromboli sandwich or ask him about the weather. Has nothing to do with this case. There's no point in wasting time on it.

MR. SAMFORD: Well, I'm the one that gets to decide what I think is relevant and what questions I ask. You can object to the admissibility of those answers when the time comes for a hearing, but, I mean, again, short of assertion of a privilege, there's no basis to argue that he shouldn't be able to answer a factual question that's clearly within the realm of his professional knowledge, expertise and background.

MR. SCOTT: I disagree with your position.

MR. SAMFORD: Okay. So, again, you're instructing the witness not to answer, but there's no privilege involved.

MR. SCOTT: I don't -- I'm not under oath so I'm not -- it's not appropriate to ask me a question, because my answer would not amount to anything anyway.

MR. SAMFORD: Well, I got to ask you a question to figure out what you're doing. Because you're telling him not to answer, but now you're not even going to tell me why you're not going to –

MR. SCOTT: With all due respect, you can ask me a question on whether today is Tuesday, but I don't have to answer it.

MR. SAMFORD: Okay. Well, I understand if that's the approach that you want to take with this litigation, it would be consistent.

MR. SCOTT: The approach that I want to take with this litigation is to represent Grayson Rural Electric zealously within the confines of the rules of the Kentucky Bar Association, within the rules of the Public Service Commission, within the bylaws of Grayson Rural Electric Cooperative Corporation and bylaws of East Kentucky Power Cooperative, and within the framework of the Wholesale Power Contract and Amendment 3 thereof, in order to appropriately assist the members of this co-op in obtaining cheaper power and reliable power. That is the sole purpose that I or anybody else of Grayson Rural Electric has, involved in this case.

BY MR. SAMFORD:

Q Mr. Poling, in your professional opinion, is there anything within the Memorandum of Understanding that would have prevented Grayson from pursuing the Magnum contract?

MR. SCOTT: I object and instruct him not to answer.

Pursuant to KRS 278.340, depositions conducted in this matter are governed by Kentucky's Rules of Civil Procedure ("CR" or the "Civil Rules"). With respect to discovery obtained through deposition testimony, the Civil Rules permit broad inquiry by the deposing party and specifically state that "[e]vidence objected to shall be taken subject to the objections."<sup>9</sup> There exist only three (3) situations when an attorney may instruct his or her client not to answer a question posed at a deposition: (1) when necessary to preserve a privilege; (2) to enforce a limitation on evidence directed by the court (or, in this case, the Commission); or (3) to present a motion under CR 30.04.<sup>10</sup>

Counsel for Grayson's instructions to Deponents not to answer questions concerning the MOU are clearly contrary to the Civil Rules. None of the information sought by EKPC's counsel is privileged, and Grayson's counsel did not assert (nor even suggest) that a privilege is applicable. Moreover, the Commission has not ordered any limitation on evidence, and Grayson's counsel did not and has not moved to limit the examination of Deponents under CR 34.04. Because none of the three (3) express situations delineated in CR 33.03 is present, the instructions not to answer by Grayson's counsel are patently inappropriate.

Grayson's counsel apparently believes that the evidence sought by EKPC concerning the MOU is irrelevant to the instant action and/or otherwise incompetent due to its alleged status as a compromise/offer to compromise under Kentucky Rule of Evidence ("KRE") 408. Neither of these contentions serves as grounds under CR 30.03 for instructing a client not to answer questions posed at a deposition, and both are erroneous characterizations of the information sought, in any event.

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<sup>9</sup> CR 30.03(2).

<sup>10</sup> CR 30.03(3).

First, the MOU, and particularly Grayson's thoughts and actions with respect to the MOU, are highly relevant to issues involved in this action. The MOU pertains to off-system power purchases under Amendment 3, and Grayson has made the provisions and interpretation of Amendment 3 foremost issues in this case. Ms. Fraley — Grayson's President and Chief Executive Officer — was one of the lead negotiators of the MOU and her knowledge, understanding and opinions as to those negotiations are highly relevant to what real or perceived deficiencies in Amendment 3 led to the negotiation of the MOU by EKPC's Members. Additionally, and as heretofore mentioned, Grayson's decision to rescind its prior approval of the MOU was based in part on the Commission's Order entered herein on July 17, 2013.<sup>11</sup> Clearly, if Grayson's thoughts and actions with respect to the MOU were materially impacted by an order entered in this case, then the MOU must be sufficiently relevant to the case to render appropriate discovery thereon.

Pursuant to the Civil Rules, evidence may be relevant "whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party..."<sup>12</sup> Notably, "[t]he question of relevancy is more loosely construed upon pre-trial examination than at the trial, and [CR 26.02] requires only relevancy to the subject matter involved in the action."<sup>13</sup> The law allows for discovery on a topic "if there is a reasonable possibility that the information sought may provide a lead to other evidence that will be admissible."<sup>14</sup> Thus, while Grayson's counsel may note his objection as to the ultimate admissibility of evidence concerning

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<sup>11</sup> See n. 6, *supra*. Notably, Grayson did not object to Joint Movants' First Request for Information despite the fact that the request explicitly sought information related solely to the MOU.

<sup>12</sup> CR 26.02.

<sup>13</sup> *Maddox v. Grauman*, 265 S.W.2d 939, 941 (Ky. 1954) (citation omitted).

<sup>14</sup> *Ewing v. May*, 705 S.W.2d 910, 912 (Ky. 1986).

the MOU, he may not forbid discovery on a matter that is clearly relevant to the claims and defenses of this action.

Counsel for Grayson's assertion that the MOU and related evidence is a compromise/offer to compromise under KRE 408 is also without merit. It must first be noted that dialogue among EKPC and its Member cooperatives concerning the allocation procedures to be employed with respect to off-system power purchases under Amendment 3 began at least as early as 2011.<sup>15</sup> These discussions initially led to the development of a proposed Amendment 5 to the WPC, and eventually to negotiations of the contemplated MOU in the summer of 2012 and thereafter. The parties' attempts to resolve certain ambiguities within Amendment 3 to the WPC clearly predate the present action, and Grayson's filing of its Complaint and Petition in November, 2012, does not render the business considerations of Grayson's Board members and executives relative to the MOU — or the MOU itself — evidence of a compromise or offer to compromise under KRE 408.

Even assuming, *arguendo*, the accuracy of counsel for Grayson's contention that the MOU and related evidence manifest a compromise or offer to compromise, the limitations contained within KRE 408 are still inapplicable and do not control. Pursuant to KRS 278.310, the Commission is not "bound by the technical rules of legal evidence," and thus it may consider evidence that may otherwise be incompetent under the Kentucky Rules of Evidence. Further, KRE 408 is an evidentiary limitation that concerns *admissibility*, not discoverability. For this reason, even if the Kentucky Rules of Evidence did strictly apply, the result under the terms of the relevant rule would be exclusion of the evidence at hearing, not the outright denial of obtaining it. This conclusion is supported by the fact that the limitations on admissibility under KRE 408 are triggered only when the evidence is offered "to prove liability for or invalidity of

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<sup>15</sup> See EKPC's Answer and Motion to Dismiss, pp. 7-9 (filed January 11, 2013).



the claim or its amount,” and not when offered “for another purpose.”<sup>16</sup> Counsel for Grayson’s objections are premature because he simply cannot know if or how EKPC may eventually utilize evidence concerning the MOU. In any event, evidence must be obtained before it may be offered, and thus KRE 408 does not provide grounds for instructing a deponent not to answer a question.

To be clear, the present motion does not seek a ruling as to the admissibility of any evidence; it is simply unnecessary for the Commission to conclude that the information sought by EKPC is admissible in order to grant EKPC the relief it requests herein.<sup>17</sup> As stated, counsel for Grayson may note his objection to certain lines of questioning, but he cannot impede the discovery of relevant evidence.

By instructing Ms. Fraley and Mr. Poling not to answer questions about the MOU, Grayson’s counsel is not only wrong, he is remarkably inconsistent. During numerous other depositions conducted in this matter, including those of Harold Dupuy,<sup>18</sup> William Rice,<sup>19</sup> Jimmy Whitt,<sup>20</sup> Don Combs,<sup>21</sup> Kenneth Arrington,<sup>22</sup> Donald Crum,<sup>23</sup> Eddie Martin,<sup>24</sup> and Roger Trent,<sup>25</sup> counsel

---

<sup>16</sup> KRE 408(2).

<sup>17</sup> See *Ewing, supra* (“It is not necessary that the information sought [through discovery] be admissible as competent evidence at trial.”).

<sup>18</sup> Mr. Dupuy serves on Grayson’s Board of Directors. Relevant portions of his deposition, the same having been conducted on January 7, 2014, are attached hereto and incorporated herein as **Exhibit E**.

<sup>19</sup> Mr. Rice serves on Grayson’s Board of Directors. Relevant portions of his deposition, the same having been conducted on January 7, 2014, are attached hereto and incorporated herein as **Exhibit F**.

<sup>20</sup> Mr. Whitt serves on Grayson’s Board of Directors. Relevant portions of his deposition, the same having been conducted on January 7, 2014, are attached hereto and incorporated herein as **Exhibit G**.

<sup>21</sup> Mr. Combs serves as Grayson’s Manager of Finance and Accounting. Relevant portions of his deposition, the same having been conducted on January 6, 2014, are attached hereto and incorporated herein as **Exhibit H**.

<sup>22</sup> Mr. Arrington serves on Grayson’s Board of Directors. Relevant portions of his deposition, the same having been conducted on January 6, 2014, are attached hereto and incorporated herein as **Exhibit I**.

for Grayson often objected to questions posed concerning the MOU *but not once* instructed the subject witness to refrain from answering. It is unclear why counsel for Grayson would allow Grayson's Directors to answer questions concerning MOU-related information, but would then absolutely prohibit Ms. Fraley and Mr. Poling from answering certain questions on the same subject. Such contradiction further underscores the unreasonableness of, and lack of basis for, Grayson's counsel's actions.

Pursuant to CR 30.03(4), if the Commission finds that a person's "...conduct has frustrated the fair examination of the deponent, it may impose upon the person[] responsible an appropriate sanction, including the reasonable costs and attorney's fees incurred by any parties as a result thereof." At this juncture, EKPC merely requests that Ms. Hall and Mr. Poling be required to appear at a time, date, and location convenient to EKPC in order to conclude their depositions, and that Grayson be responsible for the court reporter fees associated therewith. Based on the facts and law described herein, EKPC's requested relief is warranted and it prays that such relief be granted without delay.

WHEREFORE, Joint Movants respectfully requests that the Court enter an Order compelling Grayson to: (i) provide complete and accurate supplemental responses to Joint Movants' First Request for Information; and (ii) make available, at its cost and EKPC's convenience, Ms. Fraley and Mr. Poling in order for EKPC to complete its questioning of those witnesses.

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<sup>23</sup> Mr. Crum serves as Vice Chairman of Grayson's Board of Directors. Relevant portions of his deposition, the same having been conducted on December 12, 2013, are attached hereto and incorporated herein as **Exhibit J**.

<sup>24</sup> Mr. Martin serves as Secretary/Treasurer of Grayson's Board of Directors. Relevant portions of his deposition, the same having been conducted on December 12, 2013, are attached hereto and incorporated herein as **Exhibit K**.

<sup>25</sup> Mr. Trent serves as Chairman of Grayson's Board of Directors. Relevant portions of his deposition, the same having been conducted on December 12, 2013, are attached hereto and incorporated herein as **Exhibit L**.

This 8<sup>th</sup> day of April, 2014.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'MDG', written over a horizontal line.

Mark David Goss  
David S. Samford  
GOSS SAMFORD, PLLC  
2365 Harrodsburg Road, Suite B325  
Lexington, KY 40504  
(859) 368-7740  
mdgoss@gosssamfordlaw.com  
david@gosssamfordlaw.com

*Counsel for Joint Movants*

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the foregoing was served by depositing same into the custody and care of the U.S. Postal Service, postage pre-paid, on this the 8<sup>th</sup> day of April, 2014, addressed to the following individuals:

W. Jeffrey Scott, Esq.  
W. Jeffrey Scott, P.S.C.  
P. O. Box 608  
Grayson, Kentucky 41143

Don Prather  
Mathis, Riggs & Prather, P.S.C.  
500 Main Street, Suite 5  
Shelbyville, KY 40065

Clayton O. Oswald  
Taylor, Keller & Oswald, PLLC  
P.O. Box 3440  
1306 West Fifth Street, Suite 100  
London, KY 40743-003440

Taylor County RECC  
625 West Main Street  
P. O. Box 100  
Campbellsville, KY 42719

James M. Crawford  
Crawford & Baxter, PSC  
523 Highland Avenue  
P. O. Box 353  
Carrollton, KY 41008

Salt River Electric Cooperative Corp.  
111 West Brashear Avenue  
P. O. Box 609  
Bardstown, KY 40004-0609

  
\_\_\_\_\_  
*Counsel for Joint Movants*

January 21, 2014

W. Jeffrey Scott  
W. Jeffrey Scott, PSC  
311 W. Main Street  
P.O. Box 608  
Grayson, KY 41143

Re: *In the Matter of the Petition and Complaint of Grayson Rural Electric Cooperative Corporation*, PSC Case No. 2012-00503;  
*Grayson RECC v. East Kentucky Power Cooperative, Inc., et al.*  
Mason Circuit Court, Civil Action No. 12-CI-00270

Dear Mr. Scott:

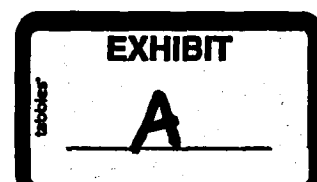
This letter pertains to the Responses provided by your client, Grayson Rural Electric Cooperative Corporation (“Grayson”), to certain written discovery propounded in each of the above-referenced matters (the “PSC Matter” and the “Civil Action,” respectively). Based upon our review of the answers and materials provided, Grayson’s Responses are incomplete and require further attention.

In an attempt to avoid confusion and limit additional delay, I have included below a detailed list of the specific responses that require supplementation. Please provide the information/documentation requested on or before February 4, 2014. If complete, detailed responses are not received in a timely fashion, we will seek appropriate redress in accordance with applicable law.

### PSC Matter

**Request for Information No. 1(a):** The Answer provided by Grayson to this item is nonresponsive, as it fails to describe the activities performed by Grayson to analyze the viability of the Magnum project for Grayson and its members. Moreover, Grayson’s Answer is devoid of any chronological account and contains woefully insufficient detail. Please provide a detailed chronological description, as requested.

**Request for Information No. 1(c):** This item requested that Grayson provide “a detailed description of all activities performed and opinions rendered” by the outside consultants or individuals identified in response to Request No. 1(b). Though Grayson’s Answer to this item lists numerous individuals with which it consulted, it does not contain any description of the activities these individuals performed nor the opinions they rendered. Please provide a detailed description, as requested.



**Request for Information No. 1(e):** This item requested that Grayson provide “all documents and electronic media of any kind in Grayson’s possession, or the possession of any consultant or individual assisting or providing advice to Grayson, which were used in the [viability] analysis or which were generated as a result of such analysis.” Grayson’s Answer simply states that “[t]here are no written opinions or written consultative reports given by any of those individuals.” Even assuming, *arguendo*, that no outside consultants provided any written opinions or reports, it appears highly unlikely that no documents or electronic media (including emails) (i) were utilized by either Grayson or its consultants in performing viability analyses or (ii) resulted from viability analyses. Please reevaluate Grayson’s Answer to this item and provide responsive documents and electronic media, as requested.

Additionally, the concluding paragraph of Grayson’s Answer to this Request states as follows: “[i]t is believed that Jeff Brandt, as well as Mr. Linxwiler, forwarded to Grayson a written document concerning wheeling charges. Copies of those documents are attached.” However, no such documents were attached to Grayson’s Response or otherwise provided by Grayson. Please produce these documents.

**Request for Information No. 3:** Grayson’s Answer to this Request references an exchange of letters between Carol Hall Fraley and Tom Crisp, and copies of both letters were produced. However, the letter sent by Mr. Crisp to Ms. Fraley dated October 29, 2013, references an enclosure that was not produced. The enclosure appears to be “a copy of the contract between Magnum and Grayson Rural Electric” that was highlighted by Mr. Crisp prior to mailing. Please produce this highlighted document.

**Request for Information No. 5:** This item requested that Grayson describe in detail the working mechanics of its apparent arrangement with Duke Commercial. Grayson’s Answer provides scant and unsatisfactory detail and is largely unresponsive. Please provide a detailed description, as requested.

**Request for Information No. 10:** This item requested various information concerning the apparent arrangement between Grayson and Duke Commercial, including (but not limited to) information related to the particular load or loads within Grayson’s service territory to be served by Duke Commercial and the hourly measurement of demand for each such load or loads during EKPC’s annual peak hour during the thirty-six calendar months preceding the election. The Answer provided by Grayson is incomplete and insufficient. Please provide all information requested.

### **Civil Action**

**Interrogatory No. 2:** This interrogatory requested that Grayson “[i]dentify all persons and their relationship to Plaintiff who have knowledge of the facts...” related to certain allegations contained in Grayson’s Complaint and Amended Complaint. The Answer provided by Grayson is nonresponsive, as it does not identify any such persons. Please provide an Answer

that is responsive to the interrogatory, and please remain mindful of the Definitions and Instructions (including, but not limited to, subparts "F." and "I." thereof) that accompanied Defendants' First Set of Interrogatories, Requests for Production of Documents and Requests for Admissions.

**Interrogatory No. 5:** This interrogatory requested that Grayson provide information concerning any borrowing/financing arrangement(s) related to any activity of Charleston Bottoms. Grayson provided a general response, but failed to provide the detail that the interrogatory requires (including, but not limited to, information related to date(s), amount(s), term(s), and activities for which borrowing/financing was needed). Please supplement this Answer with additional detail, as requested.

**Interrogatory No. 9:** This interrogatory requested that Grayson state, *with specificity*, the provisions of Charleston Bottoms' Articles of Incorporation and Bylaws and the provisions of KRS Chapter 279 that it believes were violated, why it believes said provisions were violated, and what steps should have been taken during the dissolution process of Charleston Bottoms. Grayson's Answer failed to state the specific provisions allegedly violated or why it believes the provisions were violated. Moreover, Grayson's Answer is wholly unresponsive to subsection (c) of the interrogatory. Please supplement this Answer with additional information and detail, as requested.

**Interrogatory No. 11:** This interrogatory requested that Grayson describe with specificity the basis of its claims for exemplary and punitive damages. Grayson's Answer refers generally to its other responses to interrogatories and does not attempt to state which action(s) of EKPC and/or Charleston Bottoms allegedly constitute(s) "oppressive, unfair, malicious and retaliatory acts so as to shock the conscience of a civilized community." Please supplement this Answer to ensure that it is directly responsive to the issue presented.

**Interrogatory No. 15:** This interrogatory requested that Grayson state with specificity each and every item of relief which it will seek at the trial of this matter. Grayson's Answer refers generally to its other responses to interrogatories and is simply insufficient. Please provide an answer that is responsive and contains the specificity requested.

**Interrogatory No. 17:** This interrogatory requested that Grayson identify each and every person not employed by Grayson with whom Grayson's officers or counsel have discussed the reason for Grayson's filing of the Complaint and/or Amended Complaint, and further requested a summary of any such discussions. Grayson's Answer is nonresponsive, as it does not identify any such persons (despite noting that "Plaintiff has stated to a number of persons through its President and CEO and other Directors that the reason for filing the within action is ..."). Please provide the name, work address and telephone number of the individuals involved in the relevant discussions, and please provide a summary of the discussions that took place, as requested.

**Request for Production No. 3:** This item requested that Grayson produce any and all financial records which evidence its membership/ownership in Charleston Bottoms. Grayson responded by generally referring to documents previously produced and does not identify particular documents that it believes are responsive to the request. Because a main purpose of document production is to not only obtain possession of relevant materials, but also to ascertain the materials the responding party deems relevant, please produce and/or specifically describe the documents that are responsive to this request.

**Request for Production No. 8:** This item requested that Grayson produce any and all agreements of any kind between it and the Rural Utilities Service and/or EKPC for the years 1971 through 1974. Grayson responded by generally referring to financial documents and loan agreements to which it previously referred. For the same reason as set forth in the preceding paragraph, please produce and/or specifically describe the documents that are responsive to this request.

**Request for Production No. 11:** This item requested that Grayson produce copies of both its current corporate Bylaws and its Board Policies. Grayson produced its Bylaws, but objected to the request with respect to its Board Policies on the grounds that the request was allegedly overbroad, unduly burdensome, and not capable of lending itself to other discoverable information. This objection is untenable in light of the broad scope of discovery authorized by CR 26.02 and the undoubtedly-relevant nature of the requested documentation. Please produce the documents requested.

**Request for Production No. 12:** This item requested that Grayson produce copies of all minutes from monthly Board of Directors and Board of Directors Committee meetings for certain years, and specifically included a request for all regular session and executive session minutes from Regular and Special board meetings, as well as any attachments or exhibits that are part of such minutes. Grayson responded by producing some of the requested documentation, but its production was incomplete. Please provide the following: (1) minutes for the January and February 2010 Board meetings; (2) minutes of the Special Board meeting held on or about March 19, 2012, as referred to in the April 20, 2012 Board meeting minutes; (3) analysis of the Magnum Drilling contract prepared by RW Beck, as referenced in the July 20, 2012 Board minutes; (4) notes/details from meeting(s) with Owen Electric, Jackson Energy Cooperative, and Salt River Electric on or about July 23, 2012, April 23, 2013, and May 1, 2013; (5) notes/details from meeting with Mark Stallons on or about December 10, 2012, as referenced in the minutes of the Board meeting held November 16, 2012; and (6) the letter from Jeff Scott to Magnum Drilling, as referenced in the minutes of the Board meeting held November 16, 2012. Much of this documentation is also appropriate for production in the PSC Matter, as it is relevant and responsive to, *inter alia*, Request for Information Nos. 1 and 2.

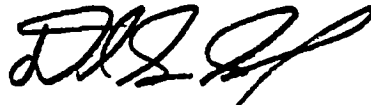


W. Jeffrey Scott  
January 21, 2014  
Page 5

**Request for Production No. 13:** This item requested that Grayson produce any and all documents that support any of Grayson's responses to Interrogatory No. 2. The response provided by Grayson suggests that responsive documentation does exist and that it has either already been provided or "will be provided at a later date." Please supplement this response now by producing and/or specifically describing the previously-provided documents that are responsive to this request and by producing the requested documents that have not heretofore been provided.

Thank you for your prompt attention to this matter. It is my hope that these issues may be resolved without further escalation, and to that end I invite you to contact me should you have any questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "D. S. Samford", written in a cursive style.

David S. Samford

# W. JEFFREY SCOTT, PSC

W. Jeffrey Scott  
Brandon Michael Music  
Will Jared Matthews\*  
\*Admitted in Ohio

Attorneys at Law  
311 W. Main Street  
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Grayson, Kentucky 41143

Phone - (606) 474-5194  
FAX - (606) 474-5196  
e-mail - wjscott@windstream.net

January 27, 2014

RECEIVED

JAN 29 2013

GS, PLLC

Hon. David S. Samford  
Goss, Samford, PLLC  
2365 Harrodsburg Road, Suite B-325  
Lexington, KY 40504

Re: GRECC v. EKPC  
PSC Action No. 2012-00503

Dear Mr. Samford:

I have your recent letter concerning a request for more information, your formal request for more information, and have reviewed that briefly.

After receiving the request I forwarded it to Grayson Rural Electric. I received it on Thursday, January 23, and faxed it to the Co-op late the afternoon of January 23. The Board meeting was held January 24 and there was little time that day to review the requests.

We will continue to review your requests and try to respond appropriately as soon as possible. However, we cannot meet your demand that we provide this information by February 4 nor February 7.

I have some time that I have committed the first part of February to other matters of a longstanding commitment which will take me away from addressing these matters and others during that time period.

I suspect that it would be the latter part of February before we can provide appropriate responses to your requests.

With respect to the deposition request of Greg Sheplar made by your partner in his letter of January 20, I can tell you that we will contact him and try to make him available or it may be that we will have to travel to his office to take his deposition. In any event, I will try to get dates in the latter part of February from which we can choose to take his deposition.

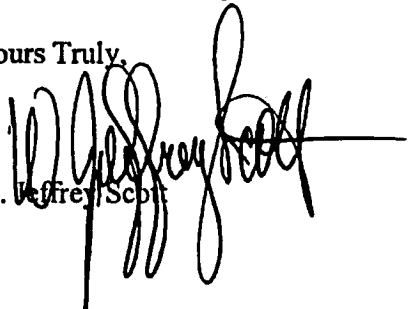
EXHIBIT

B

Hon. David S. Samford  
Goss, Samford, PLLC  
January 27, 2014  
Page - 2 -

Again, I will get this information to you as soon as practicable and we look forward to receipt of the information that we have requested as well. Thank you.

Yours Truly,



W. Jeffrey Scott

WJS/knc  
CC: Carol Ann Fraley, GRECC  
Don Combs, GRECC

Witness: Carol Hall Fraley

1 COMMONWEALTH OF KENTUCKY  
2 BEFORE THE PUBLIC SERVICE COMMISSION  
3 CASE NO. 2012-00503

4 IN THE MATTER OF:

5 PETITION AND COMPLAINT OF GRAYSON RURAL  
6 ELECTRIC COOPERATIVE CORPORATION FOR AN  
7 ORDER AUTHORIZING PURCHASE OF ELECTRIC  
8 POWER AT THE RATE OF SIX CENTS PER  
9 KILOWATTS OF POWER VS A RATE IN EXCESS  
10 OF SEVEN CENTS PER KILOWATT HOUR PURCHASED  
11 FROM EAST KENTUCKY POWER COOPERATIVE UNDER  
12 A WHOLESALE POWER CONTRACT AS AMENDED BETWEEN  
13 GRAYSON RURAL ELECTRIC COOPERATIVE CORPORATION  
14 AND EAST KENTUCKY POWER COOPERATIVE, INC.

---

15 **WITNESS: CAROL HALL FRALEY**

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16 The deposition of CAROL HALL FRALEY was  
17 taken before Jolinda S. Todd, Registered  
18 Professional Reporter, CCR(KY) and Notary Public in  
19 and for the State of Kentucky at Large, at the  
20 offices of Grayson Rural Electric Cooperative  
21 Corporation, 109 Bagby Park, Grayson, Kentucky on  
22 Monday, January 6, 2014, commencing at the  
23 approximate hour of 12:30 p.m. Said deposition was  
24 taken pursuant to Notice, for all purposes as  
25 permitted by the applicable rules.

1 for the East Kentucky Board. Do you happen to  
2 recall any of his discussions with the Board about  
3 this policy?

4 A Not specifically, no.

5 Q Have you had any conversations  
6 with Mr. Palk about Amendment 3?

7 A No, I haven't. I may have at  
8 that time, but I didn't --

9 Q Not in the last couple of years?

10 A No, huh-uh (negative).

11 Q Have you had any conversations  
12 with Dale Henley about Amendment 3 --

13 A No, huh-uh (negative).

14 Q -- in the last three years?

15 MR. SCOTT: Who?

16 MR. SAMFORD: Dale Henley.

17 MR. SCOTT: Dale Henley, no.

18 MR. SAMFORD: Good news is my pile of  
19 documents is getting shorter.

20 THE WITNESS: Going down? Good. Good.

21 MR. SAMFORD: Let me hand you this one,  
22 which will be Exhibit No. 14.

23 (Exhibit No. 14 was marked.)

24 BY MR. SAMFORD:

25 Q And when you have had a chance to

1 look at that document --

2 A "Memorandum of Understanding and  
3 Agreement Regarding Alternate Power Sources."

4 Q And is this the -- this draft is  
5 dated March 14, 2013.

6 A Uh-huh (affirmative).

7 Q As far as you know that's the  
8 most recent copy?

9 A As far as I know, yes.

10 Q If you know, what was the purpose  
11 of the distribution cooperatives coming together to  
12 negotiate this document?

13 A To define Amendment 3.

14 Q Okay. And who principally led  
15 those negotiations?

16 A David Crews.

17 Q Was he the only one? Who else  
18 was participating in it?

19 A There was a group of managers,  
20 more or less, selected by the other managers,  
21 myself, Larry Hicks, Mark Stallons, Carol Wright,  
22 Bill Prather, about five or six of us trying to  
23 hash this out in a manner that could be taken back  
24 to the rest of the member systems and agreed on.

25 Q And do you know when you started

1 work on the MOU?

2 A Gosh, I don't know. It was quite  
3 some time ago.

4 Q Was it 2000 -- let me just ask.  
5 I mean, was it prior to signing the Magnum  
6 contract, you think?

7 A I don't know.

8 Q It was really -- it was after  
9 Amendment 5 just kind of lost its steam; right?

10 A Right. Amendment 5 was just  
11 rescinded, so I don't remember exactly how that fit  
12 in that time frame.

13 Q Okay. So what was your role in  
14 the negotiations?

15 A Well, I was one of the managers  
16 trying to satisfy everybody, and that's impossible.

17 Q How often did you meet to talk  
18 about that with the other managers?

19 A I'd say we met at least every  
20 other month, or several months. At least that  
21 often.

22 Q And you mentioned it was  
23 impossible to keep everybody happy. What were some  
24 of the major issues in the negotiations?

25 A Some of them wanted to write a

1 letter to retain their percentage even though  
2 someone else might have an active project that  
3 could use it. Some of them said, take mine, I  
4 don't want it, I don't care. Some of them said,  
5 well, I don't want to use mine, but if you use it,  
6 you need to pay me for it. You know, just a whole  
7 array of concerns.

8 Q Fair to say that there were a lot  
9 of opinions about it?

10 A Sure, uh-huh (affirmative).

11 Q Can you give me an idea in what  
12 ways the MOU clarifies -- I think that's the term  
13 you used, clarifies -- the Amendment 3?

14 MR. SCOTT: Note my objection. That goes  
15 to the question of compromise and  
16 settlement of an issue, and it also  
17 mischaracterizes what she said the purpose  
18 of discussion of the MOU was. Counsel used  
19 the term "clarify Amendment 3." She said  
20 specifically more than once in response to  
21 questions that it was to define  
22 Amendment 3. So I think that that question  
23 has an improper foundation and is not  
24 relevant to the proceeding and issues  
25 before the Commission.



1 MR. SAMFORD: I don't think it's a  
2 settlement, because it was negotiated as a  
3 business deal well before any litigation  
4 was commenced. But I will rephrase my  
5 question.

6 Q What were some of the -- what  
7 were some of the things that the negotiating team  
8 was trying to accomplish with this -- with this  
9 agreement?

10 MR. SCOTT: Note my objection, again, for  
11 the reason that this MOU proposal is a --  
12 is nothing more than a proposal. It is not  
13 a contract. There is not even every co-op  
14 that is signatory to it. So it is of no  
15 relevance.

16 MR. SAMFORD: Well, by that standard, then,  
17 this entire case should be dismissed  
18 because you're asking the Commission to  
19 approve an agreement that had not been set  
20 forth in writing with Duke Energy, which  
21 the Board is not authorized.

22 MR. SCOTT: We're just asking the  
23 Commission to direct that Grayson Rural  
24 Electric and East Kentucky Power have the  
25 authority to purchase power for Grayson

1 outside the wholesale power contract in  
2 accordance with Amendment 3, which East  
3 Kentucky Power specifically, on more than  
4 one occasion, says you do not have the  
5 authority to do that, and Grayson thinks  
6 that it does.

7 MR. SAMFORD: Which is not what was said at  
8 the beginning of the deposition, but that  
9 notwithstanding.

10 Q Your counsel apparently doesn't  
11 want you to tell me what the purpose of the MOU is,  
12 because it is either irrelevant or has to do with  
13 some sort of a legal issue, but would you not agree  
14 with me that the MOU is important to the business  
15 strategy of Grayson Rural Electric?

16 Let me rephrase. Would you not agree that  
17 the interpretation and implementation of Amendment 3  
18 is important to Grayson's business strategy?

19 A The interpretation of Amendment 3  
20 is the problem. East Kentucky has an  
21 interpretation. They refuse to budge. I have an  
22 interpretation that I believe is relevant,  
23 especially to the smaller co-ops, and I'm not  
24 willing to change that either.

25 Q And I think what I heard you say

1 is that there is even possibly interpretations  
2 above and beyond that. On some of these issues  
3 there's a wide divergence of opinions as to how  
4 Amendment 3 should be implemented?

5 A That's right.

6 Q So what I'm trying to understand  
7 is which of those issues the MOU was intended to  
8 bring a consensus to, and I would like to be able  
9 to get an answer to that, but if your counsel is  
10 not going to let you answer it, then I have to  
11 resort --

12 MR. SCOTT: I didn't tell her not to  
13 answer. I just objected to it. But I will  
14 say this, that if it is East Kentucky's  
15 position, and it sounds like from the way  
16 these questions are that it is its  
17 position, and on other things that East  
18 Kentucky has filed in this case, that the  
19 resolution to this case is a uniform  
20 adoption of the MOU, then we certainly  
21 object to that because there has not been a  
22 uniform adoption to it.

23 And, gee, if Grayson would just  
24 acquiesce in signing the MOU, then the world  
25 would be great. That's not a relevant,

1 appropriately legal presentation to decide  
2 an issue.

3 It is in fact an offer of a compromise  
4 or an offer of a settlement, which is not  
5 relevant to deciding an issue. It is not  
6 something that the Commission could mandate  
7 that everyone agree to, just because they  
8 sat down and talked about trying to do  
9 something that they were unsuccessful in  
10 doing.

11 MR. SAMFORD: Again, I come back to it's  
12 not an offer of settlement. It's a  
13 business -- it's a document, it's a  
14 contract that was negotiated by business  
15 people, not by lawyers, the best I can  
16 tell, and it predates any litigation.

17 So, I mean, I think clearly we're able  
18 to inquire as to the business considerations  
19 that were in the mind of the executives who  
20 negotiated it.

21 And I wouldn't infer anything from my  
22 questions as to what East Kentucky's  
23 position is. We'll make that known at the  
24 appropriate time. I'm just trying to gain  
25 information, which is the purpose of the

1 discovery deposition.  
2 MR. SCOTT: Well, the exhibit itself says,  
3 "EKPC Draft: 3/14/2013," and this case was  
4 filed in 2012. So obviously this document  
5 does not predate litigation.  
6 MR. SAMFORD: Jeff, you're not hearing me.  
7 I said that the negotiation of the MOU  
8 predates. I didn't say this draft  
9 predates. The whole -- the whole concept  
10 of the MOU.  
11 MR. SCOTT: And it is not -- Mr. Samford,  
12 with all due respect, it is the firm belief  
13 of Grayson Rural Electric that East  
14 Kentucky Power wants this MOU to be adopted  
15 by everyone as a settlement of the issues  
16 before the Commission, and that Grayson,  
17 having agreed to it once, therefore should  
18 be bound by that, and that is what was  
19 advanced by East Kentucky Power and its  
20 attorneys, including you, in August of 2013  
21 at the informal conference, when I said  
22 that it was probably going to be rescinded.  
23 And it was. And you all chastised me for  
24 that as if I had said something that was a  
25 lie. And I told you exactly what was going

Witness: Carol Hall Fraley

1 to happen and it did happen.

2 So this MOU attempt has failed and I  
3 am now at this point instructing my client's  
4 president and CEO not to answer any more  
5 questions on the MOU. This attempt at an  
6 agreement failed, and it must be thrown to  
7 the wayside and this matter presented to the  
8 Commission to see if Grayson Rural Electric  
9 can buy power under the terms of an existing  
10 contract that might save its members money.  
11 That is the sole issue. I have said that  
12 from day one. Carol Ann Fraley has said it  
13 from day one. Every director that's been  
14 deposed has said that. That is the sole  
15 issue.

16 And it's cold enough to hang meat in  
17 here.

18 THE WITNESS: Turn it up. It's on 70.

19 Turn it up to 72.

20 BY MR. SAMFORD:

21 Q So, Ms. Fraley, I come back to my  
22 question. I mean, what were the -- what were the  
23 substantive issues that you were involved in trying  
24 to negotiate the MOU?

25 A Can I answer that?

1 MR. SCOTT: I instruct her not to answer  
2 for the reasons already indicated.

3 A Okay.

4 BY MR. SAMFORD:

5 Q Did you agree with the terms of  
6 the Memorandum of Understanding when it was  
7 negotiated?

8 MR. SCOTT: Objection. Instruct her not to  
9 answer.

10 Q Did you agree with -- did you  
11 make the recommendation to your Board to approve  
12 the MOU in June of this year?

13 MR. SCOTT: Objection. Instruct her not to  
14 answer.

15 MR. SAMFORD: Jeff, that makes no sense.

16 MR. SCOTT: You already have this  
17 information. You already have that from  
18 the Board meeting minutes.

19 MR. SAMFORD: So why are you objecting?

20 MR. SCOTT: Because it's there, and the  
21 argument you want to advance, even if it's  
22 not the one I suggested, whatever argument  
23 you want to advance is available to you  
24 with the documents that you already have.  
25 The Board minutes, they speak for

1 themselves. So what Board action was taken  
2 you have, and you can make the argument  
3 from that.

4 MR. SAMFORD: I am entitled to ask her  
5 anything about the MOU that I want that is  
6 not privileged, and I've not asked her a  
7 single question that relates to privileged  
8 information. And a lot of these questions  
9 I asked directors and Mr. Combs previously,  
10 and you did not object. I don't understand  
11 why you think that you need to object to a  
12 legal argument that I'm not even making in  
13 the course of the discovery deposition.  
14 That makes no sense.

15 MR. SCOTT: Because the issue in this case  
16 is, may Grayson Rural Electric, under the  
17 provisions of a written contract, purchase  
18 power at a price from another entity  
19 besides East Kentucky Power that would save  
20 its members money. Is that something that  
21 is appropriate, may Grayson Rural Electric  
22 do that under existing contracts. That is  
23 the sole issue.

24 MR. SAMFORD: That may be the sole issue  
25 from your perspective, but you don't get to



Witness: Carol Hall Fraley

1 define what I think are the issues and you  
2 don't get to define what the PSC thinks are  
3 the issues. I can ask about any issue I  
4 want, and you can object as to privilege,  
5 but you can't instruct your witness not to  
6 answer factual questions. You can't do it.  
7 MR. SCOTT: Well, I did it, and I did it  
8 more than once and I did it before this  
9 deposition. And if it goes on on this MOU,  
10 I'm going to do it again.

11 So you can ask any question you want,  
12 and if it has in it MOU or Memorandum of  
13 Understanding and Agreement, I will object  
14 and I will instruct her not to answer.

15 The issues that I have just said are  
16 the only issues before the Commission. And  
17 if East Kentucky wants to try to define them  
18 as something else and to say that the real  
19 thing is, gee, can Grayson really do this  
20 without incurring costs that it should not  
21 incur, has Grayson looked into the risk  
22 factors, is this really the best thing for  
23 Grayson, well, that's not up to East  
24 Kentucky to determine. It is none of East  
25 Kentucky's business.

Witness: Carol Hall Fraley

1                   So if it fails, it fails. Everybody  
2                   has the right to enter into something that  
3                   will fail, but they have a right to do that  
4                   which they think is appropriate for the  
5                   concerns about which they have  
6                   responsibility. And low cost power is the  
7                   concern about which Grayson Rural Electric  
8                   has responsibility.

9                   MR. SAMFORD: And the ironic thing about  
10                  this is that you're the party that asked  
11                  for discovery depositions to take place,  
12                  which the Commission granted, and you're  
13                  also the party that's now refusing to  
14                  answer questions.

15                  MR. SCOTT: Only -- we want discovery on  
16                  the issues before the Commission, and we  
17                  will give discovery on the issues before  
18                  the Commission.

19                  MR. SAMFORD: And you don't get to decide  
20                  what the issues are before the Commission.

21                  MR. SCOTT: We got an informal conference  
22                  on Thursday. You can tell the Commission  
23                  however ridiculous you think I have been,  
24                  because you all are very, very good at  
25                  doing that, and you will say how Mr. Scott

Witness: Carol Hall Fraley

1 has been totally wrong, he's a terrible  
2 person, and you say all of those things any  
3 time you have the opportunity to do it.  
4 And you're like, I don't know the truth if  
5 it slaps me in the face, that I stand up  
6 and say things that are a lie. You can  
7 repeat that again Thursday. You will have  
8 the opportunity to do that Thursday.

9 Or you can yell it out the road as you  
10 go back to Lexington. And the Commission  
11 will make a decision on that, I guess. I  
12 guess they will make a decision. But right  
13 now, today, there are not going to be any  
14 answers given about the MOU.

15 BY MR. SAMFORD:

16 Q Ms. Fraley, why did the Board  
17 approval the MOU in June?

18 MR. SCOTT: Object. Instruct her not to  
19 answer.

20 BY MR. SAMFORD:

21 Q Why did the Board decide to  
22 repudiate the MOU in August of -- of last year?

23 MR. SCOTT: Object. Instruct her not to  
24 answer.

25

1 BY MR. SAMFORD:

2 Q What were the substance of the  
3 Board's discussions of the MOU?

4 MR. SCOTT: Objection. Instruct her not to  
5 answer.

6 Q How did the Commission's  
7 July 17th, 2013 order affect the decision of  
8 Grayson's Board to repudiate?

9 MR. SCOTT: Same objection.

10 MR. SAMFORD: So I believe that was in your  
11 responses to data requests. It's now your  
12 position that I can't ask her about --

13 MR. SCOTT: I think I objected to that in  
14 the responses, when I said without waiving  
15 the objection, then I went ahead and we put  
16 it in there and she signed off on those  
17 responses.

18 BY MR. SAMFORD:

19 Q What was the conduct of East  
20 Kentucky personnel that you allege caused Grayson  
21 to repudiate the MOU?

22 MR. SCOTT: Same objection.

23 Q You're rolling your eyes.

24 A Well, I think you two could act  
25 like big people. Ask me something I can answer

1 and -- you know, if my attorney tells me not to  
2 answer, I'm not going to. I'm sorry. But I would  
3 certainly answer any questions that you all can  
4 agree on, and that would move us along with this.

5 Q Well, I mean, I think we're at a  
6 bit of an impasse because I've got a whole line of  
7 questions here. I mean, those are sort of the  
8 basic questions, the easy ones --

9 A Uh-huh (affirmative).

10 Q -- and your attorney doesn't want  
11 you to answer any of them.

12 A Well, I'm sure he has a legal  
13 reason for that, and I would have -- not being an  
14 attorney myself, I would have to do as he said, do  
15 as he asked me to do.

16 Q Okay. Let me go on to the  
17 contract with Duke -- Duke Energy's commercial  
18 asset division. How did that contract come about?

19 A One of my director's sons works  
20 for Duke, and he was telling his dad about some  
21 projects that they had or some -- some contracts  
22 that they had, and he said, you know, that might  
23 work for you all, Dad, and Mr. Dupuy asked me, and  
24 I said, Mr. Dupuy, I think it's something we should  
25 certainly take a look at.

Witness: Bryon Poling

1 COMMONWEALTH OF KENTUCKY  
2 BEFORE THE PUBLIC SERVICE COMMISSION  
3 CASE NO. 2012-00503

4 IN THE MATTER OF:

5 PETITION AND COMPLAINT OF GRAYSON RURAL  
6 ELECTRIC COOPERATIVE CORPORATION FOR AN  
7 ORDER AUTHORIZING PURCHASE OF ELECTRIC  
8 POWER AT THE RATE OF SIX CENTS PER  
9 KILOWATTS OF POWER VS A RATE IN EXCESS  
10 OF SEVEN CENTS PER KILOWATT HOUR PURCHASED  
11 FROM EAST KENTUCKY POWER COOPERATIVE UNDER  
12 A WHOLESALE POWER CONTRACT AS AMENDED BETWEEN  
13 GRAYSON RURAL ELECTRIC COOPERATIVE CORPORATION  
14 AND EAST KENTUCKY POWER COOPERATIVE, INC.

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15 **WITNESS: BRYON POLING**

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16 The deposition of BRYON POLING was taken  
17 before Jolinda S. Todd, Registered Professional  
18 Reporter, CCR(KY) and Notary Public in and for the  
19 State of Kentucky at Large, at the offices of  
20 Grayson Rural Electric Cooperative Corporation, 109  
21 Bagby Park, Grayson, Kentucky on Tuesday, January  
22 7, 2014, commencing at the approximate hour of  
23 12:00 p.m. Said deposition was taken pursuant to  
24 Notice, for all purposes as permitted by the  
25 applicable rules.

EXHIBIT

D

1 the meter"?

2 A Yes.

3 Q What does that term mean to you?

4 A That the meter is a location  
5 point that -- behind the meter is the -- just  
6 depends on where the meter is located, but behind  
7 the meter in our case, that would be our system.

8 Q Okay. So let me ask you this:  
9 Are you familiar with a document called Memorandum  
10 of Understanding?

11 A Yes.

12 Q Have you looked at that document?

13 A It's been a while, but yes.

14 Q And I assume you're familiar with  
15 Amendment 3 to the Wholesale Power Contract?

16 A Yes.

17 Q You've looked at that document as  
18 well?

19 A Yes.

20 Q What's your understanding of the  
21 purpose of the Memorandum of Understanding?

22 A To --

23 MR. SCOTT: Note my objection to any  
24 questions regarding the Memorandum of  
25 Understanding.

1 BY MR. SAMFORD:

2 Q You can still go ahead and  
3 answer.

4 A Memorandum of Understanding to me  
5 is a way of facilitating Amendment 3 to allow us to  
6 buy 15 percent of our system peak from an  
7 alternative source.

8 Q Okay. From a technical point of  
9 view, is it your opinion that the MOU would assist  
10 in allowing Grayson to procure sources of power  
11 from other alternative resources or is it -- is it  
12 really indifferent?

13 MR. SCOTT: Let me note an objection again.  
14 This is -- this case is not a complaint to  
15 enforce an MOU nor -- this case is not a  
16 complaint to enforce an MOU. There is no  
17 MOU that has been signed by any entity, so  
18 I really don't believe that it has any  
19 relevance, and whatever questions there are  
20 regarding this witness' opinion as to  
21 whether it would assist in implementing  
22 Amendment 3, he has not been demonstrated  
23 to have the expertise or knowledge to give  
24 that opinion. His expertise is in  
25 technical matters, not contractual, nor



Witness: Bryon Poling

1 Public Service Commission jurisdictional  
2 matters, and therefore I believe that his  
3 answers would not be appropriate nor would  
4 they lead to any discoverable information.

5 BY MR. SAMFORD:

6 Q So let me ask this question --  
7 and I'm only asking from a technical perspective.  
8 I'm not asking about financial outcomes or legal  
9 conclusions or anything like that.

10 Based upon your reading of the Memorandum of  
11 Understanding, was there anything in that document  
12 that would prevent Grayson from pursuing the Magnum  
13 contract?

14 MR. SCOTT: Note my objection. I instruct  
15 him not to answer for the reason that that  
16 is not a matter that is within the  
17 framework of the issues that have been set  
18 forth in the complaint, or as set forth by  
19 the Commission's order. A Memorandum of  
20 Understanding was attempted to have been  
21 signed by parties to resolve a dispute. It  
22 is an offer of settlement or compromise of  
23 a disputed matter, and therefore is  
24 inadmissible in any adversarial proceeding  
25 and therefore it is not relevant.

Witness: Bryon Poling

1 MR. SAMFORD: Okay. I'll reiterate what I  
2 said yesterday. It's not a settlement  
3 document because it preceded litigation.  
4 It was negotiated for commercial purpose by  
5 business executives. You're not asserting  
6 any sort of privilege, so -- this is a  
7 discovery deposition, so whether it's  
8 ultimately admissible or not isn't a  
9 question for today; it's a question for the  
10 PSC to decide later. So unless it's  
11 privileged, I think he does need to answer  
12 the question. We can argue --

13 MR. SCOTT: It's a document that hasn't  
14 been signed by anyone.

15 MR. SAMFORD: Well, I can still ask him  
16 what he thinks about it. I mean, your  
17 contract with Duke Energy hasn't been  
18 signed with anyone and yet you've asked the  
19 Public Service Commission to approve it.

20 MR. SCOTT: Uh-huh (affirmative). That's  
21 right. We're asking the Public Service  
22 Commission to approve an arrangement that  
23 every witness has testified to as being a  
24 verbal arrangement to buy power cheaper  
25 than they pay -- than Grayson pays for it

1 with East Kentucky Power.

2 The Memorandum of Understanding, as I  
3 understand it, is a document that's not been  
4 signed by anybody, but is a proposal to  
5 modify a contract. And I object and  
6 instruct him not to answer. We're not going  
7 to argue about whether the MOU should be  
8 adopted as a means to resolve this lawsuit.

9 MR. SAMFORD: And so your instruction for  
10 him to not answer is based upon your belief  
11 that it would be inadmissible as  
12 non-relevant. There's no privilege  
13 involved.

14 MR. SCOTT: And that it is definitely an  
15 inappropriate scope of inquiry outside the  
16 rules of the -- of appropriate discovery,  
17 as this case is not a question of whether  
18 the Memorandum of Understanding should be  
19 adopted. That's not the issue in this  
20 case.

21 MR. SAMFORD: Well, the --

22 MR. SCOTT: Would be no different than, you  
23 know, if you ask him, you know, about a  
24 Stromboli sandwich or ask him about the  
25 weather. Has nothing to do with this case.

Witness: Bryon Poling

1           There's no point in wasting time on it.  
2           MR. SAMFORD: Well, I'm the one that gets  
3           to decide what I think is relevant and what  
4           questions I ask. You can object to the  
5           admissibility of those answers when the  
6           time comes for a hearing, but, I mean,  
7           again, short of assertion of a privilege,  
8           there's no basis to argue that he shouldn't  
9           be able to answer a factual question that's  
10          clearly within the realm of his  
11          professional knowledge, expertise and  
12          background.  
13          MR. SCOTT: I disagree with your position.  
14          MR. SAMFORD: Okay. So, again, you're  
15          instructing the witness not to answer, but  
16          there's no privilege involved.  
17          MR. SCOTT: I don't -- I'm not under oath  
18          so I'm not -- it's not appropriate to ask  
19          me a question, because my answer would not  
20          amount to anything anyway.  
21          MR. SAMFORD: Well, I got to ask you a  
22          question to figure out what you're doing.  
23          Because you're telling him not to answer,  
24          but now you're not even going to tell me  
25          why you're not going to --

1 MR. SCOTT: With all due respect, you can  
2 ask me a question on whether today is  
3 Tuesday, but I don't have to answer it.

4 MR. SAMFORD: Okay. Well, I understand if  
5 that's the approach that you want to take  
6 with this litigation, it would be  
7 consistent.

8 MR. SCOTT: The approach that I want to  
9 take with this litigation is to represent  
10 Grayson Rural Electric zealously within the  
11 confines of the rules of the Kentucky Bar  
12 Association, within the rules of the Public  
13 Service Commission, within the bylaws of  
14 Grayson Rural Electric Cooperative  
15 Corporation and bylaws of East Kentucky  
16 Power Cooperative, and within the framework  
17 of the Wholesale Power Contract and  
18 Amendment 3 thereof, in order to  
19 appropriately assist the members of this  
20 co-op in obtaining cheaper power and  
21 reliable power. That is the sole purpose  
22 that I or anybody else of Grayson Rural  
23 Electric has, involved in this case.

24 BY MR. SAMFORD:

25 Q Mr. Poling, in your professional

1 opinion, is there anything within the Memorandum of  
2 Understanding that would have prevented Grayson  
3 from pursuing the Magnum contract?

4 MR. SCOTT: I object and instruct him not  
5 to answer.

6 Q Do you know why the Magnum  
7 contract was not performed?

8 A No.

9 Q With regard to the Duke -- the  
10 contemplated Duke power purchase agreement, how  
11 many megawatts is Grayson intending to purchase?

12 A My understanding is ten.

13 Q Okay. Do you know whether that  
14 exceeds the Amendment 3 threshold for Grayson or  
15 not?

16 A I guess it depends on which  
17 numbers hold true.

18 Q So over the past three years --  
19 and I mean, I think we would use the last three  
20 years' average coincident peak, do you -- using  
21 those numbers, would you know whether or not 10  
22 megawatts would exceed the Amendment 3 threshold?

23 A I think it would be slightly  
24 over.

25 Q Okay. Have you been involved in

Witness: Harold Dupuy

1 COMMONWEALTH OF KENTUCKY  
2 BEFORE THE PUBLIC SERVICE COMMISSION  
3 CASE NO. 2012-00503

4 IN THE MATTER OF:

5 PETITION AND COMPLAINT OF GRAYSON RURAL  
6 ELECTRIC COOPERATIVE CORPORATION FOR AN  
7 ORDER AUTHORIZING PURCHASE OF ELECTRIC  
8 POWER AT THE RATE OF SIX CENTS PER  
9 KILOWATTS OF POWER VS A RATE IN EXCESS  
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11 FROM EAST KENTUCKY POWER COOPERATIVE UNDER  
12 A WHOLESALE POWER CONTRACT AS AMENDED BETWEEN  
13 GRAYSON RURAL ELECTRIC COOPERATIVE CORPORATION  
14 AND EAST KENTUCKY POWER COOPERATIVE, INC.

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15 **WITNESS: HAROLD DUPUY**

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16 The deposition of HAROLD DUPUY was taken  
17 before Jolinda S. Todd, Registered Professional  
18 Reporter, CCR(KY) and Notary Public in and for the  
19 State of Kentucky at Large, at the offices of  
20 Grayson Rural Electric Cooperative Corporation, 109  
21 Bagby Park, Grayson, Kentucky on Tuesday, January  
22 7, 2014, commencing at the approximate hour of  
23 11:00 a.m. Said deposition was taken pursuant to  
24 Notice, for all purposes as permitted by the  
25 applicable rules.

1 A No, sir.

2 Q Have you ever heard of East  
3 Kentucky's Board Policy 305?

4 A Yeah, but I can't explain it to  
5 you.

6 Q What do you know about it? What  
7 is Board Policy 305, that you understand?

8 A It has to do with the amendments  
9 and that sort of thing.

10 Q But you don't know really any of  
11 the particulars of the policy?

12 A No.

13 Q Okay. Have you had any  
14 conversations with anybody at East Kentucky Power  
15 or any of the other distribution cooperatives about  
16 the terms of Amendment 3?

17 A No.

18 Q Are you familiar with a document  
19 that is designated as a Memorandum of  
20 Understanding?

21 A Yes.

22 Q What's your knowledge or  
23 understanding of that document?

24 MR. SCOTT: Note any objection -- or an  
25 objection to any questions concerning



1 Memorandum of Understanding. But go ahead  
2 and answer.

3 A As far as I'm concerned,  
4 Memorandum of Understanding was a way to block  
5 Amendment 3, for us to get power.

6 BY MR. SAMFORD:

7 Q Why do you say that? Explain  
8 that to me.

9 A Well, I understand Amendment 3 to  
10 be that it's 15 percent -- we can buy 15 percent  
11 from some other entity, unless the total of all  
12 folks that bought 15 percent got to be 5 percent of  
13 East Kentucky's power. And my understanding of  
14 Amendment -- or the Memorandum of Understanding was  
15 an alternate method to Amendment 3.

16 And what I don't understand, if we got a  
17 contract, why do we have to put something on top of  
18 it? To me it's just a way of muddying the water.

19 Q Okay. So let me maybe dig a  
20 little deeper into that. It's your position or  
21 your opinion that the Memorandum of Understanding  
22 would have made it more difficult for Grayson to  
23 purchase power from a non-East Kentucky resource?

24 A Yes.

25 Q Is there a particular provision

1 of the MOU that comes to mind that makes you think  
2 that?

3 A Well, no, not in particular.  
4 I've heard it and -- but I just -- what I can't  
5 comprehend is why that we have an agreement and  
6 then we have to make another agreement. Makes no  
7 sense to me.

8 Q Okay. So have you read the  
9 Memorandum of Understanding?

10 A Some time ago, yes.

11 Q So your belief that the  
12 Memorandum of Understanding would make it more  
13 difficult for Grayson to purchase power from a  
14 non-EKPC resource, is that based upon your reading  
15 of the Memorandum of Understanding or is it based  
16 upon what you've been told about the memorandum?

17 A It's what we discussed here in  
18 this boardroom.

19 Q Okay. Are you familiar with the  
20 term "block power purchases"?

21 A Well, I know what -- I'm not  
22 familiar how it applies to us, but I know what  
23 block power would be.

24 Q Okay. And just for my benefit  
25 tell me what your understanding of that term is.

1           A           Well, my understanding is that  
2           you could buy a certain amount, and that's what you  
3           call block power.

4           Q           And do you know whether what the  
5           Magnum -- do you know whether the Magnum contract  
6           was a block power purchase?

7           A           No, I don't know that.

8           Q           And we'll talk about the Duke  
9           Energy commercial asset proposal in more detail,  
10          but for now do you know whether that proposal is  
11          structured as a block power purchase?

12          A           I don't know that.

13          Q           Are you aware of whether  
14          Ms. Fraley had any role in helping to negotiate the  
15          terms of the Memorandum of Understanding?

16          A           No, I don't know.

17          Q           Were you kept informed as to the  
18          negotiations of the Memorandum of Understanding  
19          during your board meetings?

20          A           Yes.

21          Q           Did the Board provide any input  
22          or direction to Ms. Fraley regarding the Memorandum  
23          of Understanding during its negotiation?

24          A           Yes, we did.

25          Q           Can you give me just a general

1 sense of what that general direction might have  
2 been?

3 A Well, at one time we was going to  
4 agree with it because we thought that was all we  
5 could get.

6 Q Okay. So that's a good segue, I  
7 think. From my review of the records it appears  
8 that Grayson's Board approved the MOU in June of  
9 2013. Does that sound correct?

10 A Yeah.

11 Q And did you vote for the MOU in  
12 June?

13 A I did.

14 Q I think you alluded to this  
15 earlier, but what was your basis for voting to  
16 support the MOU in June of 2013?

17 A Well, I think our -- it was  
18 simply the fact that it was just like every other  
19 thing that goes on with East Kentucky; we was being  
20 browbeat and we was trying to get the best we could  
21 get.

22 Q At the time that you voted to  
23 approve it, did you have concerns and reservations  
24 about the MOU?

25 A Yes, I did.

1 Q And are those concerns the same  
2 ones that you described earlier in your testimony?

3 A Yes, they are.

4 Q Were there any additional  
5 concerns or reservations that you had that you can  
6 recall?

7 A Well, you know, I'll reiterate  
8 the same thing that I said a while ago. This whole  
9 thing amounted to one simple fact that we was  
10 trying to do what was best for our consumers, and  
11 every direction we turned we were blocked by East  
12 Kentucky.

13 Q So let me fast forward a couple  
14 of months. I think the Board voted to rescind its  
15 approval of the MOU in August of 2013. Does that  
16 sound correct?

17 A Yes.

18 Q And did you vote to rescind the  
19 approval at that meeting?

20 A Yes, I did.

21 Q Tell me what changed in your mind  
22 over that intervening two-month period.

23 A Well, we were going to be heard  
24 by the Commission, and we felt like we needed to  
25 change the way we thought because we thought maybe

1 that East -- that Public Service Commission was  
2 going to help us.

3 Q So was it your thinking that you  
4 would perhaps get a more favorable outcome from the  
5 PSC proceeding?

6 A Yes.

7 Q And what would a more favorable  
8 outcome look like from your perspective?

9 A Well, it would get us back to  
10 where we would have the agreement that we first set  
11 out to get, and that was the provisions that is set  
12 forth in Amendment 3.

13 Q Have you reviewed any of the  
14 other testimony that's been taken in this case?

15 A You talking about from the  
16 director?

17 Q Or from anyone?

18 A No.

19 Q Okay. Have you been -- have you  
20 been informed or advised as to the testimony  
21 provided by any personnel of East Kentucky within  
22 this proceeding?

23 A No.

24 Q I believe in his deposition  
25 Mr. David Crews from East Kentucky had testified

1 that he believed it would have been easier for  
2 Grayson to do a project such as Magnum or this Duke  
3 deal under the MOU than it would be without it.

4 Would you disagree with that statement?

5 MR. SCOTT: Let me note an objection. I  
6 think that does not fully characterize the  
7 entirety of the deposition testimony of  
8 Mr. Crews, and also omits references to his  
9 testimony where he told Carol Fraley that  
10 the 18-month notice provision would have to  
11 start anew under the MOU, which obviously  
12 makes a difference in the application of  
13 Grayson's position in this case. But go  
14 ahead and answer if you can.

15 BY MR. SAMFORD:

16 Q Would you like me to restate  
17 that?

18 A Well, that was Mr. Crews'  
19 opinion.

20 Q Okay. And I'm just asking if you  
21 would disagree with that opinion.

22 A Yes.

23 Q So let me come back to the  
24 Commission's order that was entered after the  
25 Board -- Grayson's Board had approved the MOU but

1 before the Board had voted to rescind that  
2 approval. Did you personally read that order?

3 A No.

4 Q What within that order was  
5 explained to you that made you believe that Grayson  
6 would be able to get a better deal than the MOU?

7 A Well, I was under -- I was under  
8 the impression that there would be information  
9 shared by all the other co-ops, which I feel like  
10 would have been beneficial.

11 Q And have you -- are you aware of  
12 how many other cooperatives have successfully  
13 intervened in that proceeding?

14 A No, I'm not.

15 Q Are you personally familiar with  
16 any of the positions that any of those cooperatives  
17 have taken with regard to Amendment 3?

18 A No.

19 Q Are you personally aware of any  
20 of the positions that any of those cooperatives  
21 have taken with regard to the Memorandum of  
22 Understanding?

23 A No.

24 Q Has that topic been discussed at  
25 all by Grayson's Board that you're aware of?



1           A           There's been some discussion, but  
2           I don't remember if positions was even talked  
3           about.

4           Q           Okay. So to make sure I  
5           understand what you're saying, there's been  
6           discussion of the case, but you don't recall the  
7           positions of individual parties being discussed?

8           A           No, huh-uh (negative).

9           Q           Was there any conduct or  
10          statements by anybody at East Kentucky or any of  
11          the other distribution cooperatives during that  
12          intervening two-month period that caused you to no  
13          longer support the MOU?

14          A           No.

15          Q           Let me switch to a different  
16          topic and ask you about a contract with -- or  
17          proposed contract with Duke Energy's commercial  
18          assets business unit. Are you familiar with that  
19          proposal?

20          A           Yes.

21          Q           How did that proposal -- how was  
22          that proposal presented to Grayson?

23          A           Best of my knowledge, it came  
24          from a sales representative from Duke Energy.

25          Q           Okay. And how did Duke Energy's

Witness: William T. Rice

1 COMMONWEALTH OF KENTUCKY  
2 BEFORE THE PUBLIC SERVICE COMMISSION  
3 CASE NO. 2012-00503

4 IN THE MATTER OF:

5 PETITION AND COMPLAINT OF GRAYSON RURAL  
6 ELECTRIC COOPERATIVE CORPORATION FOR AN  
7 ORDER AUTHORIZING PURCHASE OF ELECTRIC  
8 POWER AT THE RATE OF SIX CENTS PER  
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10 OF SEVEN CENTS PER KILOWATT HOUR PURCHASED  
11 FROM EAST KENTUCKY POWER COOPERATIVE UNDER  
12 A WHOLESALE POWER CONTRACT AS AMENDED BETWEEN  
13 GRAYSON RURAL ELECTRIC COOPERATIVE CORPORATION  
14 AND EAST KENTUCKY POWER COOPERATIVE, INC.

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15 **WITNESS: WILLIAM T. RICE**

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16 The deposition of WILLIAM T. RICE was taken  
17 before Jolinda S. Todd, Registered Professional  
18 Reporter, CCR(KY) and Notary Public in and for the  
19 State of Kentucky at Large, at the offices of  
20 Grayson Rural Electric Cooperative Corporation, 109  
21 Bagby Park, Grayson, Kentucky on Tuesday, January  
22 7, 2014, commencing at the approximate hour of 9:45  
23 a.m. Said deposition was taken pursuant to Notice,  
24 for all purposes as permitted by the applicable  
25 rules.

EXHIBIT

F

1 Q Are you familiar with a document  
2 that is called the Memorandum of Understanding?

3 A I'm not familiar with it. I've  
4 heard about it.

5 Q Just tell me what you do know  
6 about that.

7 A Very little.

8 MR. SCOTT: Let me note my objection to any  
9 questions concerning Memorandum of  
10 Understanding, and especially since he said  
11 he's not familiar with it.

12 BY MR. SAMFORD:

13 Q Do you recall whether or not  
14 Grayson's Board approved the Memorandum of  
15 Understanding in June of 2013?

16 A At this time I don't remember  
17 what -- what we decided on, but it was brought up,  
18 I think the best I can remember.

19 Q Okay. So do you -- but you do  
20 not recall whether or not the Board approved it?

21 A No, not right now, without going  
22 back and looking at the records.

23 Q Do you recall whether the Board  
24 might have subsequently rescinded its approval of  
25 the MOU?

1 MR. SCOTT: Again note my objection. He  
2 just said he doesn't remember if he  
3 approved it. Plus the other objections  
4 raised about relevancy before I continue to  
5 restate.

6 BY MR. SAMFORD:

7 Q Do you recall the Board taking  
8 any action with regard to the Memorandum of  
9 Understanding?

10 A No. I know that the records will  
11 show what we done, but I don't remember what it was  
12 now.

13 Q I can't remember what you told me  
14 when I asked you this question, but have you read  
15 the Memorandum of Understanding?

16 A I've read everything that's been  
17 presented here to the Board.

18 Q And do you recall whether that  
19 document was provided to the Board?

20 A Right off, no, I don't.

21 Q Do you recall reading Amendment 3  
22 to the Wholesale Power Contract?

23 A I'm sure I did, but I don't  
24 remember what it said.

25 Q Do you recall when you might have

1 read it last?

2 A Whenever it was brought up to the  
3 Board, whenever that was.

4 Q Are you familiar with a proposal  
5 to purchase electric energy from Duke Energy?

6 A I'm not familiar with it, but I  
7 think the Board discussed it a few times.

8 Q Okay. And tell me about what you  
9 recall about those Board discussions.

10 A The best I remember, we have a  
11 right to purchase some kilowatts, or however you  
12 put it, from someone else.

13 Q Do you know approximately how  
14 much power Grayson intends to purchase from Duke?

15 A No, I don't.

16 Q Do you know where that power is  
17 going to be delivered to?

18 A I imagine it will be delivered to  
19 our consumers.

20 Q Do you know when Grayson intends  
21 to start purchasing power from Duke?

22 A No.

23 Q To your knowledge, has the Board  
24 authorized Grayson's management to enter into a  
25 contract with Duke Energy?

Witness: Jimmy Whitt

1 COMMONWEALTH OF KENTUCKY  
2 BEFORE THE PUBLIC SERVICE COMMISSION  
3 CASE NO. 2012-00503

4 IN THE MATTER OF:

5 PETITION AND COMPLAINT OF GRAYSON RURAL  
6 ELECTRIC COOPERATIVE CORPORATION FOR AN  
7 ORDER AUTHORIZING PURCHASE OF ELECTRIC  
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12 A WHOLESALE POWER CONTRACT AS AMENDED BETWEEN  
13 GRAYSON RURAL ELECTRIC COOPERATIVE CORPORATION  
14 AND EAST KENTUCKY POWER COOPERATIVE, INC.

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15 **WITNESS: JIMMY WHITT**

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16 The deposition of JIMMY WHITT was taken  
17 before Jolinda S. Todd, Registered Professional  
18 Reporter, CCR(KY) and Notary Public in and for the  
19 State of Kentucky at Large, at the offices of  
20 Grayson Rural Electric Cooperative Corporation, 109  
21 Bagby Park, Grayson, Kentucky on Tuesday, January  
22 7, 2014, commencing at the approximate hour of 9:00  
23 a.m. Said deposition was taken pursuant to Notice,  
24 for all purposes as permitted by the applicable  
25 rules.

1           A           Not really. Just -- like, I  
2           mean, from my understanding, you know, they're just  
3           buying off-site power at a cheaper -- cheaper  
4           price. I'm sure that -- but that would be  
5           speculation, so that's my answer.

6           Q           Okay. Do you know the amounts of  
7           power that involve -- are involved in those  
8           transactions?

9           A           No, I don't. I'm sure if they  
10          abide by the contract, it would be within the realm  
11          of what we talked about.

12          Q           Are you familiar with the term  
13          "load designation" or "load following"?

14          A           Not really.

15          Q           Are you familiar with the term  
16          "stranded costs"?

17          A           No, I'm not.

18          Q           Are you familiar with a  
19          memorandum of understanding that was negotiated by  
20          the 16 members of East Kentucky Power?

21          A           Somewhat.

22          Q           What's your understanding of that  
23          document?

24          A           It was somewhat different than  
25          the wholesale power contract. I think it's my

1 recollection it extended -- we would have to  
2 notify -- give a longer period of time that we  
3 would have to notify, you know, buying power from  
4 another source.

5 Q And so did Grayson's Board  
6 approve the MOU in June of 2013?

7 A I think so, but I think if --  
8 what you're looking at, we rescinded that.

9 Q I was going to ask you about that  
10 first, but let me ask you about the June meeting.  
11 In June 2013, Grayson's Board did approve the MOU;  
12 correct?

13 A I'm pretty sure of that, yeah.

14 Q Do you recall how you voted?

15 A Not really. Probably for it, I  
16 guess.

17 Q Okay. It would be reflected in  
18 the minutes?

19 A Yes.

20 Q Do you -- do you recall why you  
21 voted for the MOU in June?

22 MR. SCOTT: Note my objection to any  
23 questions about the MOU.

24 BY MR. SAMFORD:

25 Q You can still answer.



1           A           It didn't come to my recollection  
2 why I did, you know.

3           Q           I assume that you read it before  
4 it was voted upon?

5           A           The whole thing, no, I did not.

6           Q           You certainly would have had an  
7 opportunity to ask any questions of Ms. Fraley or  
8 someone else if you had questions about it?

9           A           I'm sure.

10          Q           Do you recall if you did ask any  
11 questions?

12          A           I think I did.

13          Q           And then fast forward a couple of  
14 months. I believe the Board's approval of the MOU  
15 was rescinded in August of 2013. Do you remember  
16 that?

17          A           Yes, I do.

18          Q           And did you vote to rescind the  
19 MOU?

20          A           Yes, I did.

21          Q           Can you tell me what your  
22 personal thinking was in voting to rescind it?

23          A           My --

24          MR. SCOTT: Note my objection on what his  
25 personal opinion is on that.

1 A It was --

2 MR. SCOTT: It would really not be  
3 relevant. It was a Board action, so...

4 BY MR. SAMFORD:

5 Q You can still answer the  
6 question, though.

7 A I'll use the attorney's advice.

8 Q Well, I mean, he made an  
9 objection, but you still get to answer the  
10 question.

11 A Well, I mean, my main thing was  
12 the lengthening of the time element, thinking our  
13 wholesale power contract is 90 days, and now that I  
14 think the MOU, if I understand it correct, went to  
15 18 months.

16 Q Okay. So it's your understanding  
17 that the MOU extended the notice requirements of  
18 Amendment 3?

19 A Yeah, that's my understanding.

20 Q Are you familiar with an order  
21 that the Commission entered in July of 2013 in the  
22 complaint case?

23 A Different things, but that  
24 specific one, no.

25 Q Okay. I assume you haven't read

1 the order then?

2 A I'm not saying -- I've read  
3 different things, but I'm not sure of the specific.

4 Q Okay. This was about a --  
5 probably a 20-page order that dismissed portions of  
6 Grayson's complaint and then clarified some -- some  
7 of the other issues that were still to be decided.  
8 Do you recall reading that?

9 A Probably some of it, but word for  
10 word and different things, no.

11 Q Was there anything in the  
12 Commission's order that you recall disagreeing with  
13 or finding objectionable?

14 A I'm not sure. I just have to go  
15 through and look at that again. I mean, I'm not --  
16 it's not right there, you know, some things --

17 Q As we sit here today, you can't  
18 think of anything?

19 A Not really, you know.

20 Q Did the Commission's order in any  
21 way play a role in your decision to rescind the  
22 MOU?

23 A Well, I'm not sure of that. It  
24 would just be kind of spec- -- there's probably  
25 different things, but dealing with that I'd have to

1 go back and look and make myself familiar with  
2 different things.

3 Q Okay. Have you personally had  
4 any contact with anybody at East Kentucky or any of  
5 the other member distribution cooperatives about  
6 the MOU?

7 A No, I haven't.

8 Q Have you had any personal contact  
9 or communication with anybody at East Kentucky or  
10 the other distribution cooperatives about Amendment  
11 3?

12 A No, I haven't.

13 Q Have you personally had any  
14 contact or communication with anybody at East  
15 Kentucky or the other distribution co-ops about the  
16 Magnum contract?

17 A No, I haven't.

18 Q We'll talk about this one in a  
19 few minutes, but have you personally had any  
20 contact with anybody at East Kentucky Power or the  
21 distribution cooperatives regarding the proposed  
22 Duke contract?

23 A No, I haven't.

24 Q Are you aware of any conduct or  
25 actions or statements by anybody at East Kentucky

1 that personally caused you to vote against the MOU?

2 A No.

3 Q So let me just kind of ask, I  
4 mean, what changed between June and August that  
5 caused you first to vote for the MOU and then to  
6 vote against?

7 A Well, one of the things is, as I  
8 look more -- you know, as I understood, you know,  
9 we had a -- we had a wholesale power contract, and  
10 I -- you know, as you look for more change in it,  
11 it didn't seem to be the ideal thing, especially  
12 with that time element. That was just, you know --  
13 and that's my answer.

14 Q Do you recall when Grayson began  
15 considering entering into a power purchase  
16 arrangement with Duke Energy?

17 A Not the specific date, no, I  
18 don't.

19 Q Do you recall if it was before or  
20 after Duke had -- or, I'm sorry, before or after  
21 Grayson had rescinded its approval of the MOU?

22 A No, I don't. You know, we  
23 discuss all the time just how to get cheaper power,  
24 so dates I cannot, you know...

25 Q Do you recall -- the decision to

1 rescind your approval of the MOU, do you recall,  
2 was that Ms. Fraley's recommendation to the Board?

3 A You know, I don't -- probably  
4 not. I mean, we just discuss -- I'm not sure. I  
5 mean, the board minutes reflect, but, you know, I  
6 keep reverberating that, but I mean, every meeting  
7 we discuss ways to get somebody relief and, you  
8 know, there's just discussions, and I think all of  
9 us have input into how to reach that goal.

10 Q Okay. And so do you remember  
11 what Ms. Fraley's recommendation was with regard --

12 A No, I don't. I don't.

13 Q Was there any particular term in  
14 the MOU to which you personally objected that you  
15 can recall?

16 A Term? I'm not sure.

17 Q Did the Board ever direct  
18 Ms. Fraley to go back to the other managers at East  
19 Kentucky or the managers of the co-ops and say,  
20 here are the changes that we would like to see made  
21 to the MOU?

22 A I'm not sure of that.

23 Q Are you aware of whether any  
24 discussions along those lines have taken place by  
25 the Board?

1 A I'm not sure.

2 Q Let me kind of switch topics and  
3 ask you about the project with Duke Energy's  
4 commercial assets business unit. Are you familiar  
5 with that project?

6 A Yeah, I mean, not a hundred  
7 percent, but it's something I'm sure we've been  
8 discussing.

9 Q In your own words just explain  
10 that project or that proposal to you.

11 A I mean, in my own words, it's  
12 my -- under that wholesale amendment, Wholesale  
13 Power Contract, we can buy so much power, you know,  
14 with all -- with all they're charging the company  
15 and, you know, that's what -- you know, it's  
16 cheaper.

17 Q Do you know how much power  
18 Grayson intends to purchase from Duke?

19 A No, I don't.

20 Q Do you know where that power is  
21 going to be delivered?

22 A (Witness shakes head.)

23 Q Do you know what the estimated  
24 savings for the Duke proposal would be?

25 A Not off the top of my head, but,

Witness: Don Combs

1 COMMONWEALTH OF KENTUCKY  
2 BEFORE THE PUBLIC SERVICE COMMISSION  
3 CASE NO. 2012-00503

4 IN THE MATTER OF:

5 PETITION AND COMPLAINT OF GRAYSON RURAL  
6 ELECTRIC COOPERATIVE CORPORATION FOR AN  
7 ORDER AUTHORIZING PURCHASE OF ELECTRIC  
8 POWER AT THE RATE OF SIX CENTS PER  
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12 A WHOLESALE POWER CONTRACT AS AMENDED BETWEEN  
13 GRAYSON RURAL ELECTRIC COOPERATIVE CORPORATION  
14 AND EAST KENTUCKY POWER COOPERATIVE, INC.

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15 **WITNESS: DON COMBS**

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16 The deposition of DON COMBS was taken  
17 before Jolinda S. Todd, Registered Professional  
18 Reporter, CCR(KY) and Notary Public in and for the  
19 State of Kentucky at Large, at the offices of  
20 Grayson Rural Electric Cooperative Corporation, 109  
21 Bagby Park, Grayson, Kentucky on Monday, January 6,  
22 2014, commencing at the approximate hour of 10:50  
23 a.m. Said deposition was taken pursuant to Notice,  
24 for all purposes as permitted by the applicable  
25 rules.



1 Q Are you aware of any limitations  
2 on the right to take power from a non-EKPC  
3 resource?

4 A No.

5 Q Do you believe that there are any  
6 fairness issues that could arise from allocating  
7 the amount of power that is available to EKPC's  
8 members by and between those members under  
9 Amendment 3?

10 A Fairness issues, there's fairness  
11 issues involved in the whole aspect of the  
12 cooperative's relationship with East Kentucky Power  
13 and how they operate, so I'm sure there could be  
14 some in some folks' eyes.

15 Q Do you personally have any belief  
16 as to whether there are any fairness issues that  
17 are attendant to Amendment 3?

18 A No. As I interpret the  
19 amendment, I did not see any fairness issues.

20 Q Are you familiar with a  
21 Memorandum of Understanding that was negotiated by  
22 and between the 16 members of East Kentucky Power?

23 A Somewhat.

24 Q What is your familiarity with  
25 that document?



1 Q And would those be pursuant to  
2 Amendment 3?

3 A Yes, I would think so.

4 Q So help me reconcile that with  
5 your statement that you don't think the MOU was  
6 necessary.

7 A They were on a small scale and  
8 they would not affect, I do not believe, you know,  
9 anything. I don't think you would have more  
10 than -- not that many people were interested in  
11 purchasing power, so I don't consider it would be a  
12 problem for anybody.

13 Q Are you familiar with the term  
14 "behind the meter"?

15 A No.

16 Q Do you know -- well, let me first  
17 ask, what other situations are you aware of where a  
18 member of East Kentucky purchases power from a  
19 source other than East Kentucky Power?

20 A I'm aware of -- I think Jackson  
21 with the facility. Somewhat aware of Salt River,  
22 the hydro project. I'm somewhat aware of Farmers  
23 with generators. And that's -- that's about it.

24 Q Do you know the approximate size  
25 of the generation units in question in each of

1 those situations?

2 A I think all of them are less than  
3 five. I'm really not clear on the exact size of  
4 those facilities.

5 Q Do you know if all of those units  
6 were small enough that the circuit upon which they  
7 were placed could afford the power they produced?

8 A Very likely, without knowing what  
9 the capacity of the circuits that they were on.

10 Q But Grayson's situation's a  
11 little bit different, because relatively speaking,  
12 it's a larger purchase of power?

13 A Yes.

14 Q So when you reviewed the  
15 Memorandum of Understanding did you express to  
16 Ms. Fraley or the board any concerns or  
17 reservations about the terms of the MOU?

18 A I'm sure I did.

19 Q Do you recall what those were?

20 A Well, the terms would limit our  
21 ability to -- for our particular project. It would  
22 limit the size of it, the duration, possibly, of  
23 the contract.

24 Q How would it do that?

25 A If -- if I recall, the latest MOU

1 would limit our ability to contract for the  
2 15 percent for possibly the duration of the  
3 contract. It would not be renewable, I guess.

4 Q Do you -- need a little help in  
5 understanding what you're saying. It was your  
6 understanding that the MOU would not allow Grayson  
7 to enter into a 20-year purchase power agreement?

8 A Well, it would not -- my  
9 understanding was that it would not -- it would  
10 allow us to enter into a 20-year contract, but it  
11 would not allow us to enter into a five-year  
12 contract that would be ultimately renewable.

13 Q And so -- I think I understand  
14 better. So would the renewal term of that contract  
15 you're talking about, it would just renew every  
16 five years in perpetuity?

17 A I think that was the intent.

18 Q And so the MOU would allow you to  
19 enter into a PPA for up to 20 years?

20 A That's my understanding, that  
21 that would be possible.

22 Q But it's your position that the  
23 MOU would not be in Grayson's best interest because  
24 there was in essence a 20-year cap on any initial  
25 approval of a power purchase agreement?

1           A           I don't think it would be in  
2 Grayson's best interest to go beyond five years for  
3 a firm contract.

4           Q           So from your perspective, what  
5 Grayson was trying to accomplish in its contracts  
6 was to have a five-year term, at which point it  
7 could determine whether or not it wanted to renew  
8 the purchase agreement with a non-East Kentucky  
9 supplier, but wanted to have the right to allow  
10 that contract to be renewed, essentially in  
11 perpetuity, if the economics were in Grayson's  
12 favor?

13          A           I think that would be fair to  
14 say.

15          Q           Okay. Do you see that that could  
16 present fairness concerns for other members of East  
17 Kentucky?

18          A           Yes, I could see where some may  
19 look at that. I also look at that pretty much when  
20 large loads locate on certain distribution systems  
21 that get a special contract for -- for power, that  
22 that could be a fairness issue also, so...

23          Q           But you would agree with me that  
24 that is a fairness concern, that under your  
25 preferred outcome Grayson would essentially be able

1 to lock up a portion of the total megawatts  
2 available under Amendment 3 in perpetuity?

3 A Yeah.

4 Q So let me go back to your last  
5 statement, then, about a large load. Help me  
6 understand what you're saying there a little  
7 better.

8 A Well, if -- if a large load  
9 locates, and, say, Gallatin Steel container, those  
10 type of loads that locate on a particular service  
11 territory, then we're helping to pay for that load  
12 through East Kentucky, through rates and so forth,  
13 and it goes on forever. So, you know, there's, I  
14 think, a fairness issue there, too.

15 Q Okay. In that context, though,  
16 if it is the other member of -- well, let me just  
17 use your example. With Gallatin Steel it's all  
18 electric; correct? And with Midland is that  
19 Fleming-Mason -- Inland Container, Fleming-Mason?

20 A Yes.

21 Q So it's your position, then, that  
22 it's unfair for -- or I don't want to put words in  
23 your mouth. It's your position that there could be  
24 a fairness issue with large loads being on the Owen  
25 system for the Fleming-Mason system that Grayson is

1 in fact helping to subsidize?

2 A Yes, I think that's fair.

3 Q Okay. Is there -- who determines  
4 where large industrial loads are located?

5 A I'm sure there's various factors.

6 Q What would some of those factors  
7 be?

8 A Locations, incentives, I don't  
9 know.

10 Q I mean, is that the kind of thing  
11 that Tony Campbell would decide?

12 A No. No.

13 Q Is that even the sort of thing  
14 that Chris Perry or Mark Stallons would decide?

15 A Possibly. You know, there's just  
16 factors, things -- locations is one thing. It's --  
17 it's about, you know, using what resources that a  
18 local distribution cooperative has to make things  
19 advantageous for it.

20 With the Magnum deal, power being here local  
21 was probably an advantage for us, the gas supply.  
22 So that I see that working pretty much to -- you  
23 know, a certain area being more attractive for a  
24 large load. This would work in a similar situation  
25 for just providing power. Although they're not the



1 same thing, they have similar effects on the  
2 economics of -- of...

3 Q And so have you done any sort of  
4 analysis as to the degree to which Grayson  
5 subsidizes the cost of service of other  
6 distribution cooperatives in the EKPC?

7 A Well, there has been some done by  
8 East Kentucky that kind of bear that fact out.  
9 So -- and I think their refusal to do anything  
10 about it kind of comes into play.

11 Q Okay. So let me come back to the  
12 Memorandum of Understanding. Other than the cap on  
13 a 20-year power purchase agreement, was there any  
14 language in the MOU that you personally found  
15 objectionable or had concerns with?

16 A I don't recall right offhand.

17 Q As we sit here today, that's the  
18 only one you can think of?

19 A Yes.

20 Q Did you share your reservation  
21 and concern about the 20-year limit with Ms. Fraley  
22 or anyone else in management?

23 A It was discussed by.

24 Q And what was -- was it a concern  
25 that was identified by you or was it something that

1 was pointed out to you?

2 A I think as a -- we pretty much  
3 worked on this as a group. It wasn't, I don't  
4 think, necessarily anyone in particular that was  
5 taking the lead. We tried to approach this as a  
6 group effort.

7 Q Okay. Was there anyone else that  
8 you can recall who had any other concerns about the  
9 language of the MOU?

10 A I can't recall any.

11 Q What was Ms. Fraley's reaction to  
12 this concern?

13 A Well, I think -- I can't -- can't  
14 speak for her, but I assume she agreed that that  
15 was a limit -- a limiting factor that was not  
16 desirable.

17 Q Do you recall any statements that  
18 she made or anything like that?

19 A No.

20 Q And was that -- was that specific  
21 concern discussed with the Board, that you recall?

22 A I'm sure it was.

23 Q Do you specifically recall  
24 discussing it with the Board?

25 A No, I -- I can't -- I don't

1 recall. I'm sure the Board minutes were --  
2 would -- will reflect anything.

3 Q Was there anything in the Public  
4 Service Commission's order that came out in July of  
5 last year that caused you any concern about whether  
6 or not the MOU should be rescinded?

7 A Well, I think my understanding  
8 was that the decision that the Commission made put  
9 a little more credence on the Amendment 3. I'm not  
10 sure it looked at the MOU as a particular. My  
11 recollection is that it was concerning primarily  
12 with Amendment 3.

13 Q Was there anything in the  
14 Commission's discussion of Amendment 3 that made  
15 you think as an organization, as an entity, Grayson  
16 should not sign on to the MOU?

17 A No, I don't recall anything.

18 Q Was there anything that was said  
19 or done by any employee of East Kentucky Power that  
20 you're aware of that would cause you to say Grayson  
21 should not be a party to the MOU?

22 A No.

23 Q Was there anything said or done  
24 by any of the other 15 members of East Kentucky  
25 Power that would cause you to think that Grayson

1 should not be a party to the MOU?

2 A I don't recall anything.

3 Q When did you become aware of the  
4 proposed purchase of power from Duke Energy's  
5 commercial asset division?

6 A I don't recall the specific date,  
7 but it was somewhere in that time frame of the end  
8 of last summer, maybe. I'm not sure exactly the  
9 date.

10 Q Do you recall the circumstances  
11 by which Grayson became aware of a proposal to  
12 purchase power from Duke Energy?

13 A No, not personally. I heard it  
14 from Ms. Fraley.

15 Q Were you involved in any of the  
16 discussions or conversations with Duke Energy?

17 A I was a part -- I was present  
18 when those -- when those discussions were done.

19 Q Okay. Were they meetings or  
20 telephone calls?

21 A Telephone conferences.

22 Q Approximately how many would  
23 there have been?

24 A I recall at least two or three.

25 Q And do you recall who the point

Witness: Kenneth Arrington

1 COMMONWEALTH OF KENTUCKY  
2 BEFORE THE PUBLIC SERVICE COMMISSION  
3 CASE NO. 2012-00503

4 IN THE MATTER OF:

5 PETITION AND COMPLAINT OF GRAYSON RURAL  
6 ELECTRIC COOPERATIVE CORPORATION FOR AN  
7 ORDER AUTHORIZING PURCHASE OF ELECTRIC  
8 POWER AT THE RATE OF SIX CENTS PER  
9 KILOWATTS OF POWER VS A RATE IN EXCESS  
10 OF SEVEN CENTS PER KILOWATT HOUR PURCHASED  
11 FROM EAST KENTUCKY POWER COOPERATIVE UNDER  
12 A WHOLESALE POWER CONTRACT AS AMENDED BETWEEN  
13 GRAYSON RURAL ELECTRIC COOPERATIVE CORPORATION  
14 AND EAST KENTUCKY POWER COOPERATIVE, INC.

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15 **WITNESS: KENNETH ARRINGTON**

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16 The deposition of KENNETH ARRINGTON was  
17 taken before Jolinda S. Todd, Registered  
18 Professional Reporter, CCR(KY) and Notary Public in  
19 and for the State of Kentucky at Large, at the  
20 offices of Grayson Rural Electric Cooperative  
21 Corporation, 109 Bagby Park, Grayson, Kentucky on  
22 Monday, January 6, 2014, commencing at the  
23 approximate hour of 10:00 a.m. Said deposition was  
24 taken pursuant to Notice, for all purposes as  
25 permitted by the applicable rules.

EXHIBIT

I

1 the distribution co-ops.

2 Q Are you familiar with a  
3 memorandum of understanding that was negotiated by  
4 the 16 members of East Kentucky Power?

5 A Yes.

6 Q Tell me what you know about that  
7 memorandum of understanding.

8 A I -- I'm not familiar enough to  
9 tell you -- I don't feel comfortable in trying to  
10 give you an answer to what the full extent of  
11 the -- that it is.

12 Q Okay. What's your understanding  
13 of the purpose of the MOU?

14 A I don't know.

15 Q Are you familiar with any of its  
16 terms?

17 A No.

18 Q Did you participate in the  
19 Grayson Board's discussions as to whether or not to  
20 approve the MOU?

21 A Yes.

22 Q Do you recall whether you voted  
23 to adopt the MOU?

24 A We voted not to adopt it.

25 Q Okay. Was there ever a point

1 when Grayson voted to adopt it before rescinding  
2 that approval?

3 A Yes, we did.

4 Q Okay. And so --

5 MR. SCOTT: Like John Kerry, we were for it  
6 before we were against it.

7 MR. SAMFORD: It turned out real well for  
8 him.

9 Q So going back to the approval  
10 before the rescission, do you recall if you voted  
11 to approve the MOU the first time?

12 A Yeah, we did, yes.

13 Q You personally -- do you recall  
14 how you voted?

15 A I voted yes.

16 Q Why did you vote yes to approve  
17 it, I believe in June of 2013?

18 A Well, due to the staff and CEO  
19 and our attorney, it was explained to me that  
20 that's what we should do. So that's what brought  
21 my vote to be a yes vote.

22 Q And so fast forwarding to, I  
23 think it was August of 2013 when Grayson's Board  
24 rescinded its approval of the MOU, did you vote to  
25 rescind approval?

1 A Yes, I did.

2 Q And tell me why you voted that  
3 way.

4 A It would -- I'm not sure.

5 Q You're not sure as in you don't  
6 recall?

7 A I remember voting for it, but  
8 maybe it was explained to me that -- that it  
9 didn't -- it didn't have the meaning that I  
10 understood it had the first vote for the yes vote.

11 Q So is it your position that you  
12 had been given incorrect information when you voted  
13 for it -- in favor of it the first time?

14 A Well, there was more information  
15 come later after the vote when we rescinded the  
16 motion.

17 Q Do you recall what that  
18 information -- what that new information was?

19 A That it wasn't the benefit that  
20 we had thought it was going to be.

21 Q Can you elaborate on that? Why  
22 was it not going to be the benefit you thought it  
23 would be?

24 A No, I can't.

25 Q Do you recall if anyone



Witness: Kenneth Arrington

1 specifically explained that or whether it was just  
2 a general statement that this is no longer in our  
3 best interest?

4 A More of a general statement.

5 Q Do you recall whether any of the  
6 Board members questioned that assertion?

7 A Not that I recall.

8 Q So when the Board voted to  
9 rescind its approval of the MOU in August, it was,  
10 in essence, accepting the recommendation of  
11 management?

12 A Yes.

13 Q And other than just the general  
14 statement about it not being in Grayson's benefit,  
15 you're not certain why management made that  
16 recommendation?

17 A No.

18 Q Do you believe it had anything to  
19 do with the pending litigation in the Mason Circuit  
20 Court?

21 A No.

22 Q When did Grayson start  
23 considering -- consider entering into a power  
24 purchase agreement with Duke Commercial Assets?

25 A The dates I guess that we talked

Witness: Donald Crum

1 COMMONWEALTH OF KENTUCKY  
2 BEFORE THE PUBLIC SERVICE COMMISSION  
3 CASE NO. 2012-00503

4 IN THE MATTER OF:

5 PETITION AND COMPLAINT OF GRAYSON RURAL  
6 ELECTRIC COOPERATIVE CORPORATION FOR AN  
7 ORDER AUTHORIZING PURCHASE OF ELECTRIC  
8 POWER AT THE RATE OF SIX CENTS PER  
9 KILOWATTS OF POWER VS A RATE IN EXCESS  
10 OF SEVEN CENTS PER KILOWATT HOUR PURCHASED  
11 FROM EAST KENTUCKY POWER COOPERATIVE UNDER  
12 A WHOLESALE POWER CONTRACT AS AMENDED BETWEEN  
13 GRAYSON RURAL ELECTRIC COOPERATIVE CORPORATION  
14 AND EAST KENTUCKY POWER COOPERATIVE, INC.

---

15 **WITNESS: DONALD CRUM**

---

16 The deposition of DONALD CRUM was taken  
17 before Jolinda S. Todd, Registered Professional  
18 Reporter, CCR(KY) and Notary Public in and for the  
19 State of Kentucky at Large, at the offices of  
20 Grayson Rural Electric Cooperative Corporation, 109  
21 Bagby Park, Grayson, Kentucky on Thursday, December  
22 12, 2013, commencing at the approximate hour of  
23 10:15 a.m. Said deposition was taken pursuant to  
24 Notice, for all purposes as permitted by the  
25 applicable rules.

EXHIBIT

J

1 A Yes.

2 Q Were there any answers that  
3 Mr. Trent gave that you disagreed with?

4 A No, not disagree.

5 Q Were there any answers that he  
6 gave that you thought were incomplete?

7 A That wouldn't be up to my  
8 opinion.

9 Q I'm just asking --

10 A Yeah.

11 Q -- in your opinion. Not what  
12 his --

13 A Yeah.

14 Q Not what his thinking is, but  
15 just from your perspective is there anything that  
16 you would have added to it?

17 A Yes, I would have some  
18 different --

19 MS. FRALEY: Excuse me.

20 A Yes, I would have different  
21 answers.

22 Q Let me -- just kind of in the  
23 interest of time, let me kind of cut to those  
24 questions. What were some of the things that  
25 Mr. Trent said that you may have disagreed with or

1 you would have said something different?

2 A Reference to Amendment 3, some  
3 knowledge as far as 15 percent, I guess --

4 Q Okay.

5 A -- disagreement, you know.

6 Q So we'll talk about that.

7 A Okay.

8 Q Are there any other matters that  
9 you can think of?

10 A The MOU, from what I remember,  
11 was rescinded because of the time factor that it  
12 enveloped additional time totally unnecessary  
13 because -- go ahead and evaluate Amendment 3 and  
14 the PSC to get an answer for it.

15 Q And is there anything else?  
16 We'll come back to all these topics. I'm just  
17 trying to get --

18 A Yeah.

19 Q -- a sense of it.

20 A Hard to review something like  
21 what you're asking me. Duke -- I remembered that  
22 Duke -- the consultant was hard to review the  
23 numbers for Duke.

24 Q EnerVision?

25 A EnerVision, yeah.

1 Mr. Campbell said that.

2 Q Do you have any personal  
3 knowledge?

4 A Not other than what I read.

5 Q Do you recall what it was that  
6 you had read?

7 A Been through so many papers in  
8 the last year, I couldn't tell -- I couldn't say.

9 Q Are you familiar with the  
10 Memorandum of Understanding?

11 A Somewhat.

12 Q In your own words, describe to me  
13 what that is.

14 MR. SCOTT: State the same objection I did  
15 a while ago, but go ahead and answer.

16 A It was intended, I think, to  
17 clarify the supposedly confusing language of  
18 Amendment 3, was the purpose of it.

19 BY MR. SAMFORD:

20 Q And do you know who principally  
21 negotiated the terms of the amendment or the MOU?

22 A No, I don't.

23 Q Do you know if Ms. Fraley was  
24 involved in the negotiations?

25 A Yes, I'm relatively sure she was.

1 Q What's your understanding of what  
2 the MOU does? What does it accomplish?

3 A The negative accomplishment would  
4 be restarting the time all over again. And I guess  
5 the positive would be the attempt at an explanation  
6 of the language of Amendment 3, but I don't know  
7 that either has happened.

8 Q Do you know what a block power  
9 purchase is?

10 A Somewhat.

11 Q What's your understanding of that  
12 term?

13 A Be a -- just a certain amount of  
14 power designated in a contract, maybe.

15 Q Do you know if block power  
16 purchases are authorized under Amendment 3?

17 A No, I do not.

18 Q Do you know if block power  
19 purchases are authorized under the MOU?

20 A No, I don't.

21 Q Do you know if the Duke proposal  
22 is for the purpose of block power?

23 A Purchase of power. I'm not sure  
24 about the block.

25 Q Has Grayson's Board had any

1 discussions about the MOU?

2 A Yes.

3 Q Has Grayson's Board approved the  
4 MOU?

5 A Yes.

6 Q Do you remember approximately  
7 when that occurred?

8 A No. Earlier in the year, I  
9 think. Estimate.

10 Q Approximately June, perhaps?

11 A It's possible.

12 Q And after the Board approved the  
13 MOU, did the Board rescind its approval of the MOU?

14 A Yes.

15 Q Do you know when that happened?

16 A I think later -- late summer,  
17 maybe.

18 Q August, approximately?

19 A Approximate, yeah, could have  
20 been.

21 Q Can you explain to me why the  
22 Board would approve the MOU and then rescind its  
23 approval of the MOU?

24 A Just discussion that -- the time  
25 frame that would restart everything all over again,

1 which we already had -- thought we had already  
2 ongoing to get a lot of months closer to buying  
3 cheaper power; that it'd be better to go get a  
4 clarification or a final understanding from PSC on  
5 Amendment 3 first, and that way we would retain our  
6 time frames.

7 Q Okay. So let me make sure I  
8 understand what you're saying. The Board rescinded  
9 the MOU because it believed that the clock had been  
10 reset for when it would be able to purchase power  
11 from a non-EKPC resource?

12 A Through the -- if -- yeah, if we  
13 stayed with the MOU, we believed that it would lead  
14 to that; would make it a longer time frame.

15 Q Was there a particular provision  
16 of the MOU that you thought would lead to that  
17 result?

18 A I can't say.

19 Q Based on your recollection, what  
20 was your basis for coming to that conclusion?

21 A Just through a general discussion  
22 in the Board meeting.

23 Q All right. So what you're  
24 telling me is there was a provision in the MOU that  
25 you believed would reset the clock and that's what



1 led the Board to repudiate the MOU in August?

2 A That's my summary memory at the  
3 time.

4 Q Would you agree with me, however,  
5 that the MOU didn't change from June to August?

6 A No -- oh, no. Yes, I agree with  
7 you. Yeah.

8 Q So the terms that were in the MOU  
9 in August would have been the same terms that were  
10 in the MOU in June?

11 A Should have been.

12 Q And so if the Board had a concern  
13 with some term in the MOU in August, why would it  
14 approve the MOU in June?

15 A Just in discussion, is the only  
16 thing I can tell you. I can't think of anything in  
17 particular.

18 Q Can you point me to the  
19 particular provision in the MOU that had caused the  
20 concern?

21 A No.

22 Q Do you recall in your discussions  
23 whether a particular section was identified?

24 A No, I don't know.

25 Q Was there anything else about the

1 MOU that's objectionable to you?

2 A At this point, it's just  
3 unnecessary with Amendment 3 still not being  
4 addressed as final decision on it.

5 Q Do you have any idea when the PSC  
6 may enter its Final Order resolving or interpreting  
7 Amendment 3?

8 A No, I do not.

9 Q Do you have any estimate as to  
10 how long that may be?

11 A No, I do not.

12 Q Would you agree with me that if  
13 any of the 17 parties to that case are dissatisfied  
14 with the Commission's Order, they would have a  
15 right of appeal to the Franklin Circuit Court?

16 A I would assume so. I don't know.

17 Q And would you have any reason to  
18 dispute that if any of those same 17 parties  
19 were --

20 MR. SCOTT: Note my objection. Who are the  
21 17? I thought there was just --

22 MR. SAMFORD: Correct. Salt River and  
23 Taylor have not, so I guess there's 15  
24 parties.

25 Q If any of the 15 parties would

1 not be satisfied with the judgment of the Franklin  
2 Circuit Court, they would have an automatic right  
3 of appeal to the Court of Appeals?

4 A I would think they would have.

5 Q And if any party from that Order  
6 was not satisfied, they would have the right to  
7 seek further review from the Kentucky Supreme  
8 Court?

9 A You're getting above my head. I  
10 do not know.

11 Q Okay. Is it possible that even  
12 if the Commission rules upon an interpretation and  
13 implements Amendment 3 sometime next year, that it  
14 could still be two or three years before that Order  
15 would become final and not appealable?

16 A I do not know. There's so much  
17 language. I couldn't say.

18 Q How does that delay help Grayson  
19 or its members?

20 A I don't understand what you're  
21 asking.

22 Q My question is, if -- you know,  
23 it's going to take a while before the Commission  
24 has a final order if we're still in the discovery  
25 phase. And, you know, it could take several years

1 for any appeals from that order to be finalized.  
2 What I hear you saying is, Grayson's waiting until  
3 the Commission has the final word on what  
4 Amendment 3 means; correct?

5 A That's my understanding, yeah.

6 Q And what I'm suggesting is that  
7 could be a multi-year process to achieve finality.  
8 How does that delay benefit Grayson or its members?

9 MR. SCOTT: Let me note an objection. That  
10 question assumes facts which are not in  
11 evidence and which are, in no way, likely  
12 to be in evidence and, therefore, making it  
13 irrelevant. We would not believe --  
14 Grayson would not believe that East  
15 Kentucky Power would take an appeal just  
16 for purposes of delay; that if the  
17 Commission ruled the way Grayson wants it  
18 to rule, that East Kentucky would go along  
19 with that because that would obviously be  
20 in the best interest of the members. So we  
21 would not think that East Kentucky would  
22 unduly appeal the decision of the Public  
23 Service Commission, so I really don't think  
24 the question has a foundation that makes it  
25 in any way meaningful for the Commission to

1 be in a better position to decide the  
2 issues that are before it.

3 MR. SAMFORD: And in response to the  
4 objection, I would say it's not just East  
5 Kentucky. There's 14 other distribution  
6 cooperatives that have also intervened and  
7 any right -- any one of them would have the  
8 right to pursue an appeal. And there are  
9 issues in the PSC case about fairness and  
10 stranded cost, which, frankly, affect  
11 member to member more than member to East  
12 Kentucky. So it may not be East Kentucky  
13 that would take an appeal, but it's  
14 entirely possible that one of the other  
15 members might.

16 My question is just trying to get  
17 at -- well, let me just rephrase my  
18 question.

19 Q Has Grayson's Board taken into  
20 account the potential for delays due to appellate  
21 procedures as a risk factor in evaluating its  
22 options?

23 A I couldn't answer that. Don't  
24 know.

25 Q With the exception of Salt River,

1 is it your understanding that all of the other  
2 members in the EKPC system have approved the MOU?

3 A Yes, I believe that to be true.

4 Q And that East Kentucky's Board  
5 has approved it as well, subject to the other  
6 members doing so?

7 A Best of my recollection, yes.

8 Q Do you happen to have any idea  
9 why Salt River hasn't approved the MOU?

10 A No.

11 Q Have you looked at any of the  
12 orders of the PSC in this case?

13 A I believe I have.

14 Q Are you familiar with the Order  
15 they entered on July 23rd of this year?

16 A I'm not sure of the date.  
17 Possible.

18 Q That's -- it's a rather lengthy  
19 order.

20 A Okay.

21 Q It dismissed portions of  
22 Grayson's complaint --

23 A Yes.

24 Q -- and then set forth the issues  
25 that they were going to consider. You're familiar

1 with that order?

2 A Yeah. I remember one where they  
3 threw out the -- the money, the financial  
4 obligations from East Kentucky Power, threw out  
5 two and hit one or something.

6 Q Correct. That's the same Order  
7 I'm talking about.

8 A Okay.

9 Q You did read that Order?

10 A Yes.

11 Q Was there anything about that  
12 Order that caused you to change your mind as to  
13 whether or not to repudiate the MOU?

14 A Yes. Yeah.

15 Q What about --

16 A Or, well, I'm not sure what  
17 repudiate means.

18 Q Well, to revoke the authority to  
19 enter into the MOU for Grayson?

20 A I'm not sure how to answer that.  
21 I'm not following.

22 Q You want me to try to ask it  
23 again?

24 A Yeah, try it again. I'm not  
25 following you.

1                   Q           Excuse me. Was there any part of  
2 the Commission's Order that made you not want to  
3 enter into the MOU?

4                   A           Yes.

5                   Q           What portions of the Commission's  
6 Order caused that?

7                   A           It's the language that the  
8 Commission used. It sounded favorably that they  
9 would make a quick decision on the Amendment 3.  
10 And that, to me, the way I read it, sounded  
11 favorable that we should get an answer soon and  
12 address Amendment 3 or either throw it out or go on  
13 with it.

14                  Q           So were there any other reasons,  
15 in your mind, to rescind the MOU other than the  
16 clock would restart?

17                  A           Nothing I recall.

18                  Q           And is there a connection between  
19 of the PSC's Order and the clock restarting? Was  
20 there something in the Commission's order that made  
21 you think that that's what would cause the clock to  
22 restart? Or was it some provision that you all had  
23 missed earlier prior to your approval of the MOU?

24                  A           The only thing outstanding in my  
25 mind is just the language of the PSC response. It



1 sounded favorable, you know, to -- to address it  
2 pretty quickly. I don't know --

3 Q So there's no --

4 A -- how to answer it.

5 Q -- there's no term in the MOU  
6 itself which is objectionable?

7 A Not that I remember.

8 Q I mean, as we sit here today, is  
9 there anything that you --

10 A Yeah.

11 Q -- think of that is objectionable  
12 in the MOU?

13 A Just like I said, the general  
14 summary in my mind was that it'd start the clock  
15 all over again. I don't know what else to tell you  
16 on that.

17 Q Has Ms. Fraley pointed to any  
18 sections of the MOU and said, we shouldn't sign it  
19 because of this language?

20 A Not that I recall.

21 Q Has anyone else, any other  
22 officers of -- any officer said that to you?

23 A Not that I remember.

24 Q Was there any conduct or anything  
25 that anybody at East Kentucky said that caused you

1 to want to rescind your approval of the MOU?

2 A No.

3 Q Was the decision to approve the  
4 MOU unanimous, do you recall?

5 A I believe it was, but I can't say  
6 for sure.

7 Q Was the decision to rescind the  
8 approval, was that unanimous?

9 A Same. I believe it was, but I'm  
10 not totally sure.

11 Q Do you believe that Grayson would  
12 be able to enter into -- let me back up.

13 Mr. Trent testified that there's no contract  
14 currently between Grayson and Duke. Is that your  
15 understanding as well?

16 A I think it's what he said, but  
17 I'm not sure.

18 Q Well, what's your understanding?  
19 Is there a contract currently between Grayson and  
20 Duke?

21 A There is language that I've read  
22 on it, but it's -- the best I recall, it's left up  
23 to a verbal -- a verbal yea and nay, yeah, we will  
24 be doing this. It's on paper, but I don't know if  
25 they call it a contractor or not, no.

Witness: Eddie Martin

1 COMMONWEALTH OF KENTUCKY  
2 BEFORE THE PUBLIC SERVICE COMMISSION  
3 CASE NO. 2012-00503

4 IN THE MATTER OF:

5 PETITION AND COMPLAINT OF GRAYSON RURAL  
6 ELECTRIC COOPERATIVE CORPORATION FOR AN  
7 ORDER AUTHORIZING PURCHASE OF ELECTRIC  
8 POWER AT THE RATE OF SIX CENTS PER  
9 KILOWATTS OF POWER VS A RATE IN EXCESS  
10 OF SEVEN CENTS PER KILOWATT HOUR PURCHASED  
11 FROM EAST KENTUCKY POWER COOPERATIVE UNDER  
12 A WHOLESALE POWER CONTRACT AS AMENDED BETWEEN  
13 GRAYSON RURAL ELECTRIC COOPERATIVE CORPORATION  
14 AND EAST KENTUCKY POWER COOPERATIVE, INC.

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15 **WITNESS: EDDIE MARTIN**

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16 The deposition of EDDIE MARTIN was taken  
17 before Jolinda S. Todd, Registered Professional  
18 Reporter, CCR(KY) and Notary Public in and for the  
19 State of Kentucky at Large, at the offices of  
20 Grayson Rural Electric Cooperative Corporation, 109  
21 Bagby Park, Grayson, Kentucky on Thursday, December  
22 12, 2013, commencing at the approximate hour of  
23 11:15 a.m. Said deposition was taken pursuant to  
24 Notice, for all purposes as permitted by the  
25 applicable rules.

EXHIBIT

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1 Q Are you familiar with the phrase  
2 "load following"?

3 A No.

4 Q What specifically do you think  
5 East Kentucky has failed to do with regard to  
6 implementing Amendment 3 in this context?

7 A I think they failed to recognize  
8 the need for, you know, an area that's impoverished  
9 and the low income per household in this area. I  
10 think they've drug their feet, not stepped forward  
11 and say, look, you know, you all got an opportunity  
12 here to help some people. You know, with the staff  
13 they've got, I'm sure they could have sent somebody  
14 up here to help walked us through this. If we're  
15 not doing it right, they should have been  
16 forthcoming from the beginning and said, look,  
17 here's how you do this.

18 Q Is there, I mean, anything  
19 specific that you can point to?

20 A Not anything specific, but it's  
21 just things that's not been done.

22 Q Are you familiar with the  
23 Memorandum of Understanding?

24 A To a degree.

25 Q Do you understand why is there a

1 need for a Memorandum of Understanding?

2 MR. SCOTT: Note my objection to questions  
3 regarding Memorandum of Understanding, just  
4 to make sure the record is clear. I think  
5 that goes to -- I think that goes to offers  
6 of compromise that are inadmissible to  
7 dissolve the dispute, so I want to make  
8 sure I note an objection with regards to  
9 any questions with Memorandum of  
10 Understanding.

11 MR. SAMFORD: Let me make sure I  
12 understand. Your objection was that the  
13 Memorandum of Understanding is a compromise  
14 and settlement of this claim, of Grayson's  
15 claim?

16 MR. SCOTT: Yeah. I mean, I -- if the  
17 Memorandum of Understanding was adopted by  
18 every distribution co-op and East Kentucky  
19 Power, then it may be that -- that Grayson  
20 and the Commission would have no reason to  
21 be involved and East Kentucky would have no  
22 reason to be involved.

23 MR. SAMFORD: The MOU, though, predates the  
24 filing of your complaint, so I don't see  
25 how it can be an offer of compromise or

1 settlement, but...

2 MR. SCOTT: Because not every distribution  
3 co-op had adopted it -- nor had East  
4 Kentucky. Actually, nobody had adopted it  
5 when the complaint was filed.

6 MR. SAMFORD: Well, your objection is  
7 noted. I don't agree with it, but noted.

8 Q Why do you think the distribution  
9 co-op managers in the East Kentucky system would  
10 spend a considerable amount of time trying to  
11 develop a Memorandum of Understanding?

12 A I think that they -- they  
13 realized that there was a need out there to  
14 exercise our rights under Amendment 3 and was  
15 trying to, maybe, clarify the issue.

16 Q Are you familiar with the terms  
17 of the MOU?

18 A Not completely, no.

19 Q Are you familiar with the concept  
20 of block power purchases?

21 A To a degree.

22 Q What's your understanding of  
23 block power purchase?

24 A It's just a block of power that  
25 might be, you know, like for a 24-hour period or

1 a...

2 Q Is there an aspect of a block  
3 power purchase that relates to the load to be  
4 served?

5 A I couldn't say. That's beyond my  
6 expertise.

7 Q So have you reviewed the  
8 Memorandum of Understanding?

9 A We went over it in the Board  
10 meetings, the best I recall, some -- some time ago.

11 Q If I understand the time frame  
12 correctly, the Board approved the MOU in June of  
13 this year; is that correct?

14 A That could be. I'm not sure it's  
15 an exact date.

16 Q Why would the Board approve the  
17 MOU?

18 A At the time, we -- I guess we  
19 kind of figured that, you know, this might help get  
20 some clarification on the issues.

21 Q What issues in particular?

22 A Well, I think the big -- the big  
23 issues that we faced was our interpretation and  
24 East Kentucky's interpretation of Amendment 3.

25 Q Are you familiar with the concept

1 of "behind the meter"?

2 A No.

3 Q Are you familiar with the concept  
4 of "in front of the meter"?

5 A No.

6 Q Do you know if there's a  
7 distinction between the Magnum and the Duke  
8 contract in that regard?

9 A I have no idea.

10 Q Do you know if there's a  
11 distinction between the Magnum contract and then  
12 other contracts that have been proposed by other  
13 co-ops under Amendment 3?

14 A I have no access to the other  
15 co-ops.

16 Q So the Board approves the MOU in  
17 June. And then, approximately, two months later,  
18 rescinds its approval. What's the basis for the  
19 rescission?

20 A My basis was the fact that I felt  
21 like we needed Public Service to interpret that so  
22 we'd all be -- you know, we'd have something to go  
23 by. Because in the past, our interpretation of  
24 things and East Kentucky's interpretation of things  
25 was not necessarily the same. And if we don't get



1 some clarification --

2 Q So --

3 A -- we'd just be kicking the can  
4 further down the road.

5 Q So help me understand that,  
6 though, because -- you voted to rescind it because  
7 you wanted the PSC to rule on or interpret and  
8 implement Amendment 3; is that fair?

9 A (Witness nods head.)

10 Q Grayson had already filed a  
11 petition to do that very thing in November of 2012.  
12 So if getting PSC interpretation and implementation  
13 was the overriding consideration, why would you  
14 approve it in the first place?

15 A At the time we thought that, you  
16 know, it might be a good thing. But after further  
17 consideration of it and some past dealings with  
18 East Kentucky that -- we felt that it may not be in  
19 our best interest.

20 Q So what changed?

21 A The trust level with East  
22 Kentucky, in my opinion. I don't know about the  
23 other Board members, but in my opinion.

24 Q But, specifically, what caused  
25 your trust in East Kentucky to diminish from June

1 to August?

2 A Some of the dealings we had in  
3 some other issues.

4 Q Such as?

5 A Charleston Bottoms and some other  
6 issues there.

7 Q So the rescission to -- the  
8 decision to rescind the MOU was based in part upon  
9 what was taking place in the Charleston Bottoms  
10 litigation?

11 A That and among other things. I  
12 felt like East Kentucky could have stepped up more  
13 and helped us with the Magnum thing. And there was  
14 just issues there that I don't feel like -- I  
15 didn't feel like they were -- had our best interest  
16 in mind.

17 Q And so if memory serves, it was  
18 after the June -- after your June meeting when the  
19 Board approved the Amendment. Subsequent to that  
20 is when the efforts to settle the Charleston  
21 Bottoms lawsuit came to a stop. And so was that a  
22 factor?

23 A Repeat?

24 Q After Grayson's June Board  
25 meeting when the MOU was approved, subsequent to

1 that was when the negotiations stopped on settling  
2 the Charleston Bottoms litigation, and was that a  
3 factor in your mind in voting in August to rescind  
4 the MOU?

5 A There was a lot of factors.

6 Q Was that one of the factors?

7 A Possibly.

8 Q What were some of the other  
9 factors?

10 A There's just many. I couldn't  
11 really specifically point anything out.

12 Q So none others specifically come  
13 to your mind right now?

14 A Not right at the present.

15 Q Is it your understanding that  
16 other board members shared that view?

17 A I have no idea what their  
18 personal feelings was.

19 Q Was it a unanimous vote to  
20 rescind the MOU?

21 A Yes, best I recall.

22 Q I mean, as we sit here today,  
23 what part of the MOU is objectionable?

24 A That it could still be subject to  
25 interpretation by East Kentucky.

1 Q That the MOU could be or that  
2 Amendment 3 could be subject to interpretation?

3 A The MOU.

4 Q What part of the MOU is subject  
5 to interpretation by East Kentucky?

6 A Pretty much anything they wanted  
7 to -- I mean, without specifically reading and  
8 going over it item by item.

9 Q Well, and isn't that true of any  
10 contract?

11 A Yeah, I -- I suppose.

12 Q So I mean --

13 A But this is the way to end the  
14 interpretation.

15 Q Elaborate on that. What's  
16 "this"?

17 A Well, once have the Public  
18 Service ruling one way or the other, we know where  
19 to proceed from there.

20 Q Okay. I mean -- and I don't want  
21 to put words in your mouth, but I want to make sure  
22 I understand what you're saying. You don't have  
23 confidence that East Kentucky would interpret the  
24 MOU and implement it in the way that it's intended  
25 to be implemented?

1 A It's possible.

2 Q I mean, I'm asking, is that your  
3 opinion?

4 A That's my opinion, that it's  
5 possible they could. I can't tell you what another  
6 man's actions are going to be.

7 Q So there's really nothing wrong  
8 with the MOU itself. Your concern is how East  
9 Kentucky may interpret it and implement it?

10 A Yes.

11 Q Are you aware of any concerns  
12 that Ms. Fraley or anyone else in management at  
13 Grayson has with the terms of an MOU?

14 A No.

15 Q Has anyone ever told you we could  
16 live with the MOU if this provision was changed?

17 A We've talked about so many  
18 different things that, you know, it's possible.

19 Q But you don't recall anything?

20 A I don't recall anything specific.

21 Q Has the Board engaged in sort of  
22 that section-by-section review to say this is fine,  
23 this is fine, this is not acceptable?

24 A Not in -- not in any efficient  
25 capacity that I'm aware of.

1 Q Do you know if management has  
2 done that?

3 A I have no idea.

4 Q There is a -- there's been, I  
5 think, some references to the Public Service  
6 Commission July 23rd, 2013 order as having some  
7 bearing on the decision to rescind approval of the  
8 MOU. Was that a factor in your mind?

9 A Yes, to a degree.

10 Q Help me understand that. I mean,  
11 what was your thinking?

12 A Well, I think just the fact that  
13 they were willing to hear it, you know, that --  
14 that was going to help bring resolve. We've had so  
15 much turmoil and issues over the last several years  
16 here that, you know, we'd like to get some  
17 clarification and just move on down the road one  
18 way or the other. Have a yes or a no and...

19 Q Was there any conduct by anybody  
20 at East Kentucky between June and August that --  
21 anybody say anything, anybody do anything that was  
22 a factor?

23 A I haven't spoke to anybody at  
24 East Kentucky. Or let me put it this way, I  
25 haven't spoke to anybody at East Kentucky that I

1 was aware of.

2 Q Have you been involved in any of  
3 the conversations between Grayson and Duke?

4 A No.

5 Q Been involved in any of the  
6 conversations between Grayson and EnerVision?

7 A No.

8 Q You've personally not had any  
9 contact with Mr. Shepler?

10 A No.

11 Q Are you aware of any parameters  
12 on EnerVision's analysis?

13 A No.

14 Q Are you aware of any assumptions  
15 that underlie that analysis?

16 A No.

17 Q Are you familiar with PJM?

18 A I'm familiar with just the term.

19 As far as --

20 Q Do you know what PJM does on a  
21 day in, day out basis?

22 A I understand that they buy some  
23 power off of East Kentucky and resells it or  
24 transmits it to somebody else or I'm -- I'm not  
25 sure what their capacity is.

Witness: Roger Trent

1 COMMONWEALTH OF KENTUCKY  
2 BEFORE THE PUBLIC SERVICE COMMISSION  
3 CASE NO. 2012-00503

4 IN THE MATTER OF:

5 PETITION AND COMPLAINT OF GRAYSON RURAL  
6 ELECTRIC COOPERATIVE CORPORATION FOR AN  
7 ORDER AUTHORIZING PURCHASE OF ELECTRIC  
8 POWER AT THE RATE OF SIX CENTS PER  
9 KILOWATTS OF POWER VS A RATE IN EXCESS  
10 OF SEVEN CENTS PER KILOWATT HOUR PURCHASED  
11 FROM EAST KENTUCKY POWER COOPERATIVE UNDER  
12 A WHOLESALE POWER CONTRACT AS AMENDED BETWEEN  
13 GRAYSON RURAL ELECTRIC COOPERATIVE CORPORATION  
14 AND EAST KENTUCKY POWER COOPERATIVE, INC.

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15 **WITNESS: ROGER TRENT**

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16 The deposition of ROGER TRENT was taken  
17 before Jolinda S. Todd, Registered Professional  
18 Reporter, CCR(KY) and Notary Public in and for the  
19 State of Kentucky at Large, at the offices of  
20 Grayson Rural Electric Cooperative Corporation, 109  
21 Bagby Park, Grayson, Kentucky on Thursday, December  
22 12, 2013, commencing at the approximate hour of  
23 9:10 a.m. Said deposition was taken pursuant to  
24 Notice, for all purposes as permitted by the  
25 applicable rules.



1 the limit specified in the Agreement, yes.

2 Q And what's the limit that's  
3 specified, if you know?

4 A Well, it allows us supposedly to  
5 pull outside for a percentage of power to both them  
6 and us.

7 Q Do you know what that percentage  
8 of power is?

9 A Not at this time.

10 Q What is the MOU that's referenced  
11 in this description of services?

12 A What is the MOU?

13 Q Yeah. Do you know what that's a  
14 reference to?

15 A No.

16 Q Are you familiar with a  
17 Memorandum of Understanding that's been negotiated  
18 between the members of East Kentucky?

19 A State that again?

20 Q Are you familiar with a  
21 Memorandum of Understanding that's been negotiated  
22 by the members of East Kentucky Power?

23 A No.

24 Q I asked this earlier, sort of,  
25 but I'm not sure if my question was clear. What's

Witness: Roger Trent

1           A           I would hope we could use it at  
2           all. I would hope.

3           Q           But do you know? Do you know how  
4           that will work?

5           A           No, I don't.

6           Q           If it ends up that the power is  
7           only delivered to one or two or maybe three  
8           substations, then will -- will Grayson change its  
9           rates to reflect the price of power that the  
10          customers on those circuits receive power?

11          A           I would hope not.

12          Q           I think I asked you earlier: Are  
13          you familiar with the Memorandum of Understanding  
14          that's been negotiated by various members -- all  
15          the members of East Kentucky Power?

16          A           No.

17          Q           Do you recall Grayson's Board  
18          considering the Memorandum of Understanding and  
19          approving it?

20          A           I think so.

21          Q           Have you seen the Memorandum of  
22          Understanding?

23          A           Yes.

24          Q           When do you recall looking at it  
25          for the first time?

1 A It's been a short time back.

2 Q Was it before the Board  
3 authorized it?

4 A I couldn't say.

5 Q Do you know whether Ms. Fraley  
6 was personally involved in negotiating the MOU?

7 A I don't know if she was  
8 personally.

9 Q Do you know whether Grayson's  
10 Board authorized Ms. Fraley to sign the MOU?

11 A I'd say if she signed it, she was  
12 authorized to sign it.

13 MR. SCOTT: Note my objection to any  
14 further questions related to the Memorandum  
15 of Understanding, just for the purposes of  
16 noting that if that has any meaning at all,  
17 it would be for purposes of compromise and  
18 settlement, which is not an admissible  
19 evidentiary matter, but go ahead and  
20 answer. I just want to make sure I note  
21 that for the record.

22 BY MR. SAMFORD:

23 Q So my -- I think my question was,  
24 do you recall Grayson authorizing Ms. Fraley to  
25 sign the MOU?

1           A           Authorizing her to sign the MOU,  
2           I would think so.

3           Q           And did that happen approximately  
4           June of this year?

5           A           I couldn't say as to the time.

6           Q           As we sit here today, is Grayson  
7           willing to enter into the MOU with the other  
8           members of East Kentucky and East Kentucky?

9           A           I would think so.

10          Q           Are you familiar with the Board's  
11          repudiation of the MOU at its August meeting?

12          A           No.

13          Q           Are you aware of any problems  
14          with the MOU?

15          A           No.

16          Q           If the MOU were to be signed and  
17          put into effect by East Kentucky and all of its  
18          members, do you believe that that would allow  
19          Grayson to purchase power from Duke?

20          A           I couldn't -- I'm not that  
21          familiar.

22          Q           What was the basis for the  
23          Board's decision to approve the MOU in June?

24          A           I couldn't answer at this time.

25          Q           What was the basis for the

1 Board's decision to repudiate the MOU in August?  
2 A I couldn't say.  
3 Q Have you reviewed any of the  
4 orders of the Public Service Commission in this  
5 case?  
6 A No, I haven't.  
7 Q Are you familiar with an Order  
8 entered on July 23rd, 2013?  
9 A No.  
10 Q Are you aware of any contact  
11 between anybody on behalf of Grayson and anybody at  
12 East Kentucky Power about the MOU over the last six  
13 months?  
14 A Should have been. No.  
15 Q Are you aware of any conduct by  
16 anybody at East Kentucky that would cause Grayson  
17 to repudiate the MOU?  
18 A No.  
19 Q Have you had any conversations  
20 with any other directors from other cooperatives  
21 about the MOU?  
22 A Myself?  
23 Q Yes, sir.  
24 A No.  
25 Q Are you aware of anybody at

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Grayson who has had such conversations?

A Not knowing.

MR. SAMFORD: Mr. Trent, I think that's all the questions I have.

THE WITNESS: We went through a lot to try to help the member at the end of the line.

\* \* \* \* \*

THEREUPON, the taking of the deposition of **ROGER TRENT** was concluded.

\* \* \* \* \*