

COMMONWEALTH OF KENTUCKY
BEFORE THE 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)
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.)

CASE NO.
2012-00503

ORDER

Pending before the Commission are two motions to dismiss this case with prejudice: one filed jointly by Grayson Rural Electric Cooperative Corporation ("Grayson") and East Kentucky Power Cooperative, Inc. ("EKPC") on May 26, 2015; and the other filed by one of the intervenors, Shelby Energy Cooperative, Inc. ("Shelby Energy"), on May 28, 2015.

BACKGROUND

On November 19, 2012, Grayson filed a complaint against its wholesale power supplier, EKPC, and a petition requesting the issuance of eight declarations arising under: (1) a contract for Grayson to purchase up to 9.4 MW of power from Magnum Drilling of Ohio, Inc. ("Magnum"); and (2) Amendment 3 of Grayson's wholesale power contract with EKPC. Grayson's complaint and petition were filed pursuant to KRS

278.260, which confers upon the Commission “original jurisdiction over complaints as to rates or service of any utility. . . .” EKPC filed an answer and motion to dismiss on January 11, 2013, to which Grayson responded.

Following a review of Grayson’s complaint and petition, as well as EKPC’s answer and motion to dismiss, the Commission issued an Order on July 17, 2013 setting forth findings including the following:

Thus, while Grayson’s complaint and petition does not set forth sufficient allegations to support a prima facie case that it is entitled to the relief requested, it does set forth sufficient allegations to support an investigation of whether its contract with Magnum is reasonable, whether its advance notice was proper under Amendment 3, whether there is an actual ambiguity under Amendment 3 relating to how the allocation of alternative sourced power is to be shared by Members, whether if Amendment 3 is not ambiguous, the Commission should nonetheless impose an allocation sharing requirement, and whether any additional relief is warranted.¹

The Commission partially granted EKPC’s motion to dismiss “to the extent that Grayson’s claims of unfair and illegal restraints of trade and imposition of civil penalties” were dismissed, and the Commission denied EKPC’s motion to dismiss “with respect to all other claims and issues.”²

The July 17, 2013 Order includes the following directive:

An investigation shall be conducted on the issues raised in Grayson’s complaint and petition relating to Amendment 3 and the Magnum contract, except for the claims of unfair and illegal restraints of trade and imposition of civil penalties.³

¹ Order (Ky. PSC July 17, 2013) at 16-17.

² *Id.* at 23.

³ *Id.*

PENDING MOTIONS TO DISMISS

The Grayson/EKPC joint motion states that they and all other parties to this case have executed a settlement agreement resolving many of the issues in this case and other proceedings involving Grayson and EKPC, and that Grayson has agreed to not seek any relief in this case. Further, the joint motion requests that the Commission dismiss Grayson's complaint and deny as moot any outstanding motions. Similarly, Shelby Energy's motion joins in the joint motion and states that a dismissal now will render moot Shelby Energy's outstanding motions.

DISCUSSION

Based on the motions to dismiss and a review of the record, the Commission finds that this case was initiated as an investigation, not strictly as a complaint case. In our July 17, 2013 Order, we stated that the issues in this proceeding include "whether there is an actual ambiguity under Amendment 3 [of EKPC's wholesale power contract] relating to how the allocation of alternative sourced power is to be shared by Members" and whether the Commission should "impose an allocation sharing requirement."⁴ In ordering notice to the other 15 members of EKPC that may be impacted by a Commission decision on these issues, the Commission stated:

[T]he rights of all other Members of EKPC may be impacted by a Commission decision regarding whether Amendment 3 requires or a need exists for a methodology for sharing among all Members the allocation of alternative sourced power authorized under Amendment 3. But Grayson's failure to name all other EKPC Members does not support dismissal of the complaint and petition as requested by EKPC. Rather, this procedural issue can and should be remedied by the Commission's providing notice of this case

⁴*Id.* at 16-17 and 22-23.

to the other 15 Members of EKPC and affording them an opportunity to individually or jointly intervene and participate on the issue of whether Amendment 3 requires or a need exists for a Commission imposed methodology to share the allocation of alternative sourced power authorized under Amendment 3. Based on the EKPC allegation that EKPC's Members have been debating this issue for some time and have been unable to reach consensus, and the substantial likelihood that this issue will arise again if not resolved in this case, administrative efficiency will be achieved by addressing the allocation issue now among all interested Members, rather than either dismissing this issue or addressing it piecemeal, one Member at a time.⁵

Neither the motion to dismiss filed jointly by Grayson and EKPC, nor the one filed by Shelby Energy, included a copy of the settlement agreement executed by the parties to this case. Absent a review of that document or, alternatively, some other document executed by the parties addressing Amendment 3 to EKPC's wholesale power contract, the Commission is unable to determine whether or not the issue of allocating alternative sourced power under Amendment 3 has been resolved.

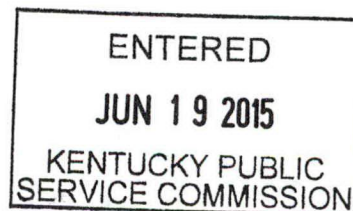
IT IS THEREFORE ORDERED that within 10 days from the date of this Order Grayson and EKPC shall file a copy of the settlement agreement referenced in their joint motion to dismiss and any other document addressing the allocation of alternatively sourced power under Amendment 3.

By the Commission

ATTEST:



Executive Director



⁵ *Id.* at 20.

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