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July 28, 2017

**VIA HAND DELIVERY**

Mr. John Lyons  
Acting Executive Director  
Kentucky Public Service Commission  
P.O. Box 615  
211 Sower Boulevard  
Frankfort, Kentucky 40602

**RECEIVED**

JUL 28 2017

PUBLIC SERVICE  
COMMISSION

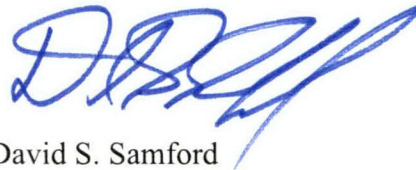
Re: PSC Case No. 2017-00212

Dear Mr. Lyons:

Please find enclosed and accept for filing in the above-styled matter on behalf of East Kentucky Power Cooperative, Inc. ("EKPC"), an original and ten (10) copies of EKPC's Response to two Motions to Intervene. Please return file-stamped copies to my office.

I appreciate your assistance with this matter, and please do not hesitate to contact me with any questions or concerns.

Respectfully,



David S. Samford

Enclosures

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

JUL 28 2017

PUBLIC SERVICE  
COMMISSION

IN THE MATTER OF:

TARIFF FILING OF EAST KENTUCKY POWER )  
COOPERATIVE, INC. AND ITS MEMBER )  
DISTRIBUTION COOPERATIVES FOR APPROVAL )  
OF PROPOSED CHANGES TO THEIR )  
QUALIFIED COGENERATION AND SMALL ) Case No. 2017-00212  
POWER PRODUCTION FACILITIES TARIFFS )  
AND THE IMPLEMENTATION OF SEPARATE )  
TARIFFS FOR POWER PURCHASES FROM )  
SOLAR GENERATION QUALIFYING FACILITIES )

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EAST KENTUCKY POWER COOPERATIVE, INC.'S  
RESPONSE TO MOTION FOR INTERVENTION OF BLUEBIRD SOLAR, LLC  
AND MOTION FOR INTERVENTION OF GREAT BLUE HERON SOLAR, LLC

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Comes now East Kentucky Power Cooperative, Inc. ("EKPC"), by counsel, pursuant to 807 KAR 5:001 Section 1(11), Section 5(2) and other applicable law, and, in response to the motions to intervene filed by Bluebird Solar, LLC ("Bluebird") and Great Blue Heron Solar, LLC ("Great Blue") (collectively, "Movants")<sup>1</sup> in the above-captioned matter, respectfully states as follows:

**I. INTRODUCTION**

The Movants' proposed projects are solar arrays in search of a subsidy from utility ratepayers. Without such a subsidy, the Movants have characterized their own projects as being unviable. Thus, in order to move forward with approximately 100 MW of new solar facilities in Harrison County, Kentucky, the Movants ask this Commission to allow them to intervene in this

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<sup>1</sup> Neither of the Movants is currently a retail customer of EKPC.

proceeding, not for the purpose of assuring that EKPC's proposed Co-Generation Tariff ("CoGen Tariff") is consistent with the requirements of Kentucky law, but rather for the improper purposes of: (1) complaining about the alleged discriminatory nature of Kentucky law in general; (2) seeking a declaration of rights regarding their legal standing in relation to EKPC; (3) disrupting the fair and efficient administration of EKPC CoGen Tariff; and (4) pursuing a position of leverage in any negotiations between EKPC and the Movants. The Movants' intervention would unduly complicate and disrupt the proceeding. For any and all of these reasons, the Movants have failed to sustain their burden of proof,<sup>2</sup> and their motions should be denied.

## II. ARGUMENT

### A. There is No Law That Requires EKPC and its Owner-Members to Subsidize a Qualifying Facility

The Movants' motions correctly note that EKPC filed a petition with the Federal Energy Regulatory Commission ("FERC") on November 4, 2016 to invoke the regulatory presumption that a Qualifying Facility ("QF") greater than 20 MW and located within the territory of a transmission-owning member of PJM Interconnection, LLC ("PJM") has sufficient access to the wholesale power market and does not require a mandatory purchase obligation on the part of the utility to whom the QF interconnects. The balance of the Movants' characterization of the FERC proceeding and the underlying law are incorrect, however. EKPC disputes the implication in Bluebird's motion that the FERC petition was filed in response to Bluebird's initiation of an interconnection request through PJM.<sup>3</sup> EKPC abides by the FERC Code of Conduct which requires the segregation of the transmission and commercial business units of EKPC. EKPC's

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<sup>2</sup> See *In the Matter of the Adjustment of the Rates of Kentucky-American Water Company*, Order, Case No. 2000-00120 (Ky. P.S.C. May 30, 2000) (Movant bears the burden of proof to demonstrate that he satisfies the elements of the intervention regulation).

<sup>3</sup> See Bluebird Motion, p. 2.

commercial unit, which is responsible for negotiating power purchase agreements with all outside suppliers, would have no knowledge of the Movants' interconnection requests until such information was revealed by the Movants themselves. Likewise, EKPC challenges the Movants' suggestion that FERC has issued an adverse ruling on the substance of EKPC's petition.<sup>4</sup> The simple fact is that FERC has not had a quorum and has been unable to issue any substantive decisions as a result.<sup>5</sup>

What the Movants' motions conspicuously omit is the unambiguous admission in Bluebird's most recent FERC filing that its project "will not be viable" if it is given the same pricing terms that apply to EKPC's community solar tariff.<sup>6</sup> The Movants' present motions confirm that economic viability through a non-market based rate structure remains their principal "special interest".<sup>7</sup> There is *nothing* in PURPA or Kentucky law that requires EKPC or its Owner-Member Cooperatives ("Owner-Members") to subsidize a QF. We already know that FERC agrees with this important point. In Order 688, it stated that there is nothing in PURPA to suggest that "Congress intended to ensure a QF's commercial viability."<sup>8</sup> Thus, the starting point for

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<sup>4</sup> See Bluebird Motion, p. 4; Great Blue Motion, p. 3.

<sup>5</sup> FERC's Secretary has issued notices stating the EKPC's first two petitions to terminate the QF purchase obligation were deemed denied, but the Secretary has clarified that the Commission has not issued an order or final decision in the proceedings. See *East Kentucky Power Cooperative, Inc.*, Docket No. QM17-2-001, Notice Dismissing Pleading (May 17, 2017).

<sup>6</sup> See *In the Matter of East Kentucky Power Cooperative, Inc.*, Docket No. QM17-5-000, Motion to Intervene and Protest of Bluebird Solar, LLC in Opposition to Application of East Kentucky Power Cooperative to Terminate Mandatory QF Purchase Obligation ("Bluebird Protest"), p. 28. It is worth noting that another affiliated entity, Blue Jay Solar, LLC ("Blue Jay") (which proposes to construct a 60 MW solar facility in Harrison County, Kentucky), made the same argument to FERC. Blue Jay is not seeking to intervene in this case. Meanwhile, Great Blue, who is seeking to intervene in this case, did not file a Protest at FERC but presumably has the same concerns as its affiliates.

<sup>7</sup> See Bluebird Motion, p. 7 ("The Solar Tariff's subjection of QF power to PJM market rates would mean that there would be little practical difference between a power purchase agreement with EKPC and direct participation in the PJM markets.... A separate Solar Tariff is unjustified; like other QF generation, solar power should also have definite, tariffed purchase rates.").

<sup>8</sup> See *New PURPA Section 210(m) Regulations Applicable to Small Power Production and Cogeneration Facilities*, Order 688, FERC Stats & Regs. ¶ 31,233, p. 37.

properly understanding the Movants' motions is that their projects, despite being financed by one or more large multinational entities, rely solely upon the credit of EKPC and its Owner-Members to be economically viable. EKPC has no obligation to subsidize the Movants and the proprietary, competitive nature of their claimed special interest is itself sufficient grounds to deny the motions to intervene.<sup>9</sup>

**B. The Movants' "Special Interests" for Intervention are Irrelevant and/or Improper**

**1. The Movants' "Special Interests" Concern Perceived Discrimination Embedded in Kentucky Law, Which is Not Relevant to this Proceeding**

The Movants allege that Kentucky law itself is discriminatory towards QFs. The Commission is not the appropriate forum to challenge the validity of the Commission's enabling statutes and this proceeding is not the appropriate procedural context in which to challenge the policies and administrative precedent applying those statutes. Transforming a case which concerns the review of EKPC's proposed CoGen Tariff revisions into a referendum on Kentucky law in general would be a colossal waste of administrative resources, particularly when other appropriate procedures are available to the Movants.

Moreover, the only evidences of alleged endemic discrimination cited by the Movants are demonstrably false. For instance, the Movants allege that a five-year term is unreasonable for a QF contract and that EKPC should be compelled to offer a longer contractual term.<sup>10</sup> The critical point ignored by the Movants, however, is that there is no defined minimum contractual term set forth in either PURPA or FERC's regulations. The Commission's PURPA regulation, 807 KAR

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<sup>9</sup> See *In the Matter of A Formal Review of Western Kentucky Gas Company's Decision to Terminate a Natural Gas Sales, Transportation and Storage Agreement with Noram Energy Services, Inc. and Enter into a Natural Gas Sales, Transportation and Storage Agreement with Woodward Marketing, LLC*, Order, Case No. 1999-00447, (Ky. P.S.C. Mar. 2, 2000).

<sup>10</sup> See Bluebird Motion, pp. 8-9; Great Blue Motion, p. 7.

5:054, requires a utility to provide a five-year estimate of its avoided costs,<sup>11</sup> which gives rise to EKPC's minimum five-year term that is set forth in its existing CoGen Tariff. While EKPC has the option and discretion to agree to a longer term, there is no legal obligation in federal or state law that it must do so.

Similarly, Bluebird's comparison of siting requirements for a utility under KRS 278.216 and a merchant generator under KRS 278.704 is incomplete and, therefore, inaccurate.<sup>12</sup> For example, KRS 278.216 is not the only statute that applies to a jurisdictional utility seeking to construct a generation facility. In addition to obtaining a Site Compatibility Certificate, the utility must also apply for and obtain a Certificate of Public Convenience and Necessity ("CPCN") from the Commission. A CPCN, of course, requires a showing that the proposed construction is needed and will not result in wasteful duplication.<sup>13</sup> These stringent standards are simply not applicable to a QF merchant generator who need only show compliance with what are largely land use setback requirements. Moreover, merchant generators such as the Movants enjoy the statutory privilege of being guaranteed a siting decision within a defined time period. Utilities do not have such a privilege under KRS 278.020 or KRS 278.216. To claim that QF merchant generators are somehow disadvantaged in siting cases is not a fair characterization of Kentucky law.

The Movants' third argument is even more bizarre. At one point, the Movants' argue that it is improper to have a CoGen Tariff that applies only to solar QFs.<sup>14</sup> Later the Movants' cite a federal regulation which unequivocally demonstrates that PURPA anticipates different QF rates

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<sup>11</sup> See 807 KAR 5:054, Section 5(2)(a).

<sup>12</sup> See Bluebird Motion, p. 4.

<sup>13</sup> See *Kentucky Utilities Co. v. Public Service Comm'n*, 252 S.W.2d 885, 890 (Ky. 1952).

<sup>14</sup> See Bluebird Motion, p. 7; Great Blue Motion, p. 5.

for different types of generation technologies.<sup>15</sup> The illogical nature of the Movants' argument further evidences the extent to which their participation would be disruptive in this proceeding.

Finally, the Movants complain that they are further disadvantaged in EKPC's proposed Co-Gen Tariff by the use of the PJM hourly real-time location marginal price for energy and the PJM capacity auction price for capacity as opposed to a fixed price.<sup>16</sup> The proposition squarely contradicts the argument that Bluebird has previously made to FERC where it complained that the pricing made available to EKPC's End-Use Retail Members under EKPC's Cooperative Solar tariff unfavorably advantaged EKPC-owned solar generation over solar generation owned by QF merchant generators.<sup>17</sup> Ironically, the pricing for solar generation under EKPC's proposed CoGen Tariff is identical to the pricing offered under EKPC's approved Cooperative Solar tariff – and all the pricing complaints lodged by Bluebird at FERC in January are actually *supportive* of EKPC's proposed CoGen Tariff that is pending before the Commission. Despite the blatant inconsistency, the text of EKPC's response to Bluebird's argument at FERC is entirely applicable in this context as well:

In the community solar program of which the Protestors complain, EKPC facilitates an end-use customer's interaction with the market through a rate mechanism which the KPSC has thoroughly reviewed and approved. In essence, a customer choosing to participate in the community solar program pays a one-time license fee to EKPC which covers the initial capital costs of the licensed capacity. Due to the size of the project and the customized orientation of the solar panels, the license fee is considerably less expensive to the customer than purchasing and installing an equivalent rooftop solar array. Having licensed a solar panel, the customer – not EKPC – receives the net capacity and energy payments attributable to the panel,

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<sup>15</sup> See Bluebird Motion, p. 10 (citing 18 C.F.R. 292.304); Great Blue Motion, p. 7 (citing 18 C.F.R. 292.304).

<sup>16</sup> See Bluebird Motion, p. 5; Great Blue Motion, pp. 3-4.

<sup>17</sup> See Bluebird Protest, p. 10 (“The rates at which EKPC is reimbursed for its 8.5 megawatt solar facility stand in stark contrast to the avoided cost rates in the Blue Grass Energy tariff recently offered by EKPC at the request of Bluebird. A review of this tariff indicates some significantly different difference in calculating revenue for a utility owned solar plant compared to a qualifying facility.”).

without any mark-up or discount, using the pricing mechanisms established by PJM. The customer also has the option to either retire or sell the solar renewable energy credits associated with the licensed panel. The only additional payment to EKPC comes in the form of a monthly minimal operations-and-maintenance charge. Thus, when the Protestors characterize the EKPC 8.5-MW community solar installation as an attractive deal for EKPC, they are missing the point of the program entirely. The community solar project is a good deal for end-use customers served by EKPC's Owners-Members, giving them the buying power of a utility, the economic stability of participation in well-established markets, and the flexibility to take the benefits of a licensed solar panel with them across multiple physical points of service. There is nothing untoward about these types of consumer-oriented community solar programs, and certainly no feature of them impedes the Protestors' access to the PJM markets.<sup>18</sup>

It also bears emphasis that Kentucky law defines "rate" broadly.<sup>19</sup> The Commission has recognized that a rate need not be static – a formulaic rate is just as lawful and valid as a static numerical rate.<sup>20</sup> In the context of 807 KAR 5:054, Section 2, the requirement is that the utility offer a rate that is "based on avoided costs...." It is also well-established that so long as EKPC is in PJM, its avoided cost is the cost that it pays (or avoids paying) to PJM for the purchase of capacity and energy.<sup>21</sup> Accordingly, the Movants arguments' regarding the need to have a static fixed rate,<sup>22</sup> is inconsistent with Kentucky law and contradicts the positions they have taken at FERC.

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<sup>18</sup> See *In the Matter of East Kentucky Power Cooperative, Inc.*, F.E.R.C. Docket No. QM17-5-000, Motion for Leave to Answer, and Answer of East Kentucky Power Cooperative, Inc. ("EKPC FERC Answer") p. 27, n. 93.

<sup>19</sup> See KRS 278.010(12).

<sup>20</sup> See *Kentucky Public Service Comm'n v. Commonwealth of Kentucky, ex. rel Jack Conway*, 324 S.W.3d 373, 376 (Ky. 2010) (approving use of formulaic rate for utility's accelerated mains replacement program).

<sup>21</sup> See e.g. *In the Matter of An Examination of the Application of the Fuel Adjustment Clause of East Kentucky Power Cooperative, Inc. from November 1, 2015 Through April 30, 2016*, Order, Case No. 2016-00231, p. 3 (Ky. P.S.C. Feb. 20, 2017) ("Thus, in the event of a forced outage, East Kentucky's cost of power is at all times a function of, and equivalent to, the PJM market price, not the incremental cost of East Kentucky's next available generating unit.").

<sup>22</sup> See Bluebird Motion, pp. 9-10; Great Blue Motion, pp. 6-7.



## **2. The Movants' Repeated Invitation for the Commission to Affirm that a Legally Enforceable Obligation Exists for EKPC to Purchase Power from the Movants' Solar Projects is Irrelevant to the Terms of the Proposed CoGen Tariff**

A great irony of the Movants' motions is that the affiliated QF companies have cited the Commission's Orders to FERC and FERC's regulations to the Commission as grounds for claiming that a legally enforceable obligation exists for EKPC to purchase power from the Movants. In other words, FERC should accept that a legally enforceable obligation exists simply because of a prior Commission Order and the Commission should accept that a legally enforceable obligation exists because the Movants cite a FERC regulation. The situation calls to mind the old jurist's adage that, "appellants will not be permitted to feed one can of worms to the trial judge and another to the appellate court."<sup>23</sup>

In point of fact, neither of the alternative arguments advanced by the Movants demonstrate that a legally enforceable obligation exists. For purposes of this response, the Movants simply make the broad assertion that December 5, 2016 and March 8, 2017 emails from Bluebird to EKPC and a March 8, 2017 letter from Great Blue to EKPC, along with prior interconnection activity, created a legally enforceable obligation under 18 C.F.R. § 292.304.<sup>24</sup> Again, EKPC's response to the FERC Protest of Bluebird and its affiliate is worth repeating here:

The Protestors do not dispute that state law defines whether and when a legally enforceable obligation is created. EKPC is not aware of anything in Kentucky law that would recognize a QF self-certification filing, or an interconnection request, or a letter expressing only an intent to sell power to an electric utility, or any combination of those actions, as establishing a legally enforceable obligation for the electric utility to purchase the QF's electrical output. While the Protestors spend several pages discussing Kentucky statutes and KPSC precedent, nothing cited by the Protestors is relevant to the determination of whether a legally enforceable obligation has been created. For example, the

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<sup>23</sup> *Kennedy v. Commonwealth*, 544 S.W.2d 219, 222 (Ky.1977).

<sup>24</sup> *See* Bluebird Motion, p. 3; Great Blue Motion, p. 2.

Protestors assert that “Kentucky has adopted a nearly verbatim version of the Commission’s PURPA regulations, including those governing the creation of the [legally enforceable obligation],” they quote and cite Kentucky administrative regulations indicating that QFs have the option of providing energy either on an “as available” basis or pursuant to a legally enforceable obligation, and they quote and cite Kentucky cases on the determination of avoided cost rates. But none of this is relevant to whether a legally enforceable obligation has in fact been created. The Protestors do not provide any indication of how they have sought to create a legally enforceable obligation under Kentucky law; rather, their lengthy recitation of Kentucky law is an indication only that a legally enforceable obligation can be created, which EKPC does not dispute here. On that point, they rely only on the letters that they have sent to EKPC – which were sent at a time when EKPC’s obligation to enter into new contracts with QFs was suspended – but do not explain how, under state law, those letters actually create a legally enforceable obligation for EKPC to purchase the QF output. As a result, no legally enforceable obligation has been created.<sup>25</sup>

There is no legally enforceable obligation for EKPC to purchase power from either Bluebird or Great Blue and the Movants’ unsupported assertions to the contrary are not persuasive.<sup>26</sup>

### **3. The Movants’ Motion is Tendered for the Apparent Primary Purpose of Delay, Which is Improper**

The Movants claim that no harm will result from the granting of the motions to intervene at this late point.<sup>27</sup> However, their request for a procedural order, discovery, a hearing and the opportunity to file legal briefs will be prejudicial to EKPC and its Member-Owners. As set forth above, EKPC filed the proposed CoGen Tariff on March 31, 2017, two full months before the

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<sup>25</sup> EKPC FERC Response, pp. 35-36 (citations omitted). In its most recent response in the FERC proceedings, EKPC also explained in detail why, under PURPA and FERC’s precedent, the Protestors’ letters do not constitute “legally enforceable obligations” for EKPC to purchase their QF output. *See* EKPC FERC Answer, at 36-40.

<sup>26</sup> Unless otherwise directed by the Commission, EKPC reserves the right to address the question of what factors and circumstances give rise to a legally enforceable obligation under Kentucky law at such time as the issue might be properly raised and ripe for an adjudication. A procedural motion for leave to intervene is not such an opportunity.

<sup>27</sup> *See* Bluebird Motion, pp. 10-11; Great Blue Motion, p. 8.

tariff was to take effect and is fully consistent with its practice of filing annual CoGen Tariff updates on or before March 31<sup>st</sup> of each year.<sup>28</sup> In essence, EKPC provided twice the amount of notice that is actually required by KRS 278.180. Notwithstanding the abundance of notice, the Movants waited nearly two months before seeking to intervene.

EKPC's request that the CoGen Tariff should take effect on June 1<sup>st</sup> is not arbitrary. That date corresponds to the beginning of the new delivery year in PJM and, had the Commission not suspended the CoGen Tariff, the QFs currently taking power pursuant to the tariff would have the same rate in effect for the entirety of the delivery year. As it now stands, the rates in effect for the 2016-2017 delivery year continue in effect even though EKPC is now in the 2017-2018 delivery year. As the Movants correctly point out, the rates for non-solar QF energy and capacity have decreased from one delivery year to the next due to changes in the PJM market.<sup>29</sup> However, what should be a cost savings to EKPC and its Owner-Members is not being realized because the CoGen Tariff remains suspended. The Movants' objective is to extend the suspension of the new rates for as long as possible – to the detriment of EKPC and its Owner-Members and to the enrichment of existing QFs from whom EKPC is purchasing power. The purpose of an annual filing requirement is for the CoGen Tariff rate to change annually – not in the middle of the delivery year. Authorizing the Movants to commence a fishing expedition and prolong a dispute that has more to do with the structure of Kentucky law is highly prejudicial to EKPC and its Owner-Members. The motions are untimely in a practical sense and should be denied.

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<sup>28</sup> Bluebird incorrectly claim that the March 31, 2017 filing was a “reaction” to Bluebird’s filings at FERC. *See* Bluebird Motion, p. 8. EKPC disputes this, of course. EKPC would have filed the same proposed CoGen Tariff irrespective of whether it had previously filed a Petition at FERC or was even aware of Bluebird, Great Blue or Blue Jay.

<sup>29</sup> *See* Bluebird Motion, p. 5; Great Blue Motion, p. 3.

#### **4. The Movants' Intervention is Intended to Give the Movants Increased Leverage over EKPC in Negotiations**

The Commission has recently criticized the practice of parties who seek to intervene in a case solely for the purpose of seeking preferences and concessions that the applicant utility would otherwise not be inclined to grant but for the desire to resolve the matter in a timely manner.<sup>30</sup> Such prohibited conduct would appear to be the Movants' primary motivation in this case. The Movants are not retail customers of EKPC or its Owner-Members. The Movants' interest is pecuniary in nature as they seek a subsidy to fund their otherwise unviable solar developments at the expense of EKPC and its Owner-Members.

EKPC has complied with, and intends to continue to comply with, the obligations of PURPA, the Commission's Orders and regulations implementing same and, of course, its own CoGen Tariff. But EKPC has an equally strong duty to safeguard the investment of its Owner-Members and to shield them from unfair, unjust and unreasonable attempts by any person seeking to manipulate the law to achieve a private economic gain at EKPC's expense. Thus, Bluebird's claim that EKPC would have no obligation to purchase power in excess of 20 MW in the event the proposed CoGen tariff is approved is correct.<sup>31</sup> That outcome is the expressed intent of Congress in amending PURPA and of FERC in implementing Congress's legislation.

The Movants have also mischaracterized the meetings that EKPC had with the principals of Bluebird and Great Blue in May. EKPC met with Great Blue to discuss commercial terms for

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<sup>30</sup> See *In the Matter of the Electronic Application of Kentucky Power Company for (1) a General Adjustment of its Rates for Electric Service; (2) an Order Approving its 2017 Environmental Compliance Plan; (3) an Order Approving its Tariffs and Riders; (4) an Order Approving Accounting Practices to Establish Regulatory Assets and Liabilities; and (5) an Order Granting all Other Required Approvals and Relief*, Case No. 2017-00179, Hearing Video Record, 10:03:40 (Ky. P.S.C. July 24, 2017).

<sup>31</sup> See Bluebird Motion, pp. 5-6; Great Blue Motion, p. 2. EKPC's obligation to purchase power from QFs larger than 20 MW has been suspended while its petitions to terminate the QF purchase obligation are pending. See Order 688, p. 228.

a power purchase agreement covering the 20 MW project. EKPC provided considerable guidance as to what it could agree to, and what it could not agree to, as part of that meeting. As of the date of this filing, Great Blue has not responded to EKPC's proposed terms. With regard to Bluebird, EKPC reiterated its position that it was not under a mandatory obligation to purchase power from Bluebird's 80 MW project. Bluebird disagreed, but requested the opportunity to provide EKPC with an unsolicited offer for the purchase of 80 MWs. In response, EKPC reiterated that it had no actual need for such a large power purchase at this time and, if it did, its standard practice was to conduct a request for proposals process to establish what supply options would qualify as the reasonable, least cost option. Bluebird's assertion that EKPC would never purchase power from Bluebird in the event that the FERC petition is granted or the CoGen Tariff is approved is simply not true.<sup>32</sup> EKPC would purchase power from Bluebird if it had a need for the power being offered and it was the reasonable, least cost option. Any suggestion from Bluebird that EKPC owes it a greater obligation is simply wishful thinking. EKPC has acted in good faith and in accordance with state and federal law in its discussions with Bluebird and Great Blue and intends to continue to do so in the future. The Movants' request to have the Commission direct those discussions in the context of the present rate case is improper and, due to the delays associated with such an outcome, prejudicial to EKPC and its Owner-Members.

### III. CONCLUSION

The Movants have failed to describe a special interest that is not otherwise adequately represented and there is considerable evidence to suggest that their intervention would unduly complicate the case and be disruptive to the timely resolution of same. The Movants have other

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<sup>32</sup> See Bluebird Motion, p. 7.

procedural options available to them to resolve whatever dispute they might have with EKPC. Accordingly, the Movants' motions to intervene should be denied.

WHEREFORE, on the basis of the foregoing, EKPC respectfully requests the Commission to deny the Movants' motions to intervene.

Done this 28<sup>th</sup> day of June 2017.

Respectfully submitted,



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## CERTIFICATE OF SERVICE

This will certify that a true and correct copy of the foregoing was served by depositing same into the custody and care of the U.S. Mails, postage pre-paid on this 28<sup>th</sup> day of June, 2017, addressed to the following:

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