

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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**PUBLIC SERVICE
COMMISSION**

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

RESPONDENT’S MOTION TO DISMISS AS MOOT

Comes now the Respondent, East Kentucky Power Cooperative, Inc. (“EKPC”), by counsel, and moves to dismiss the Petition and Complaint filed by Grayson Rural Electric Cooperative Corporation (“Grayson”) on November 19, 2012 (the “Petition”) on the basis that it is now moot, respectfully stating as follows:

Grayson’s Petition asks the Commission to determine whether it may economically enter into a power supply contract with Magnum Drilling of Ohio, Inc. (“Magnum”) to purchase up to 9.4 MW of electricity over a twenty year term (the “Magnum Contract” or “Agreement”). The Magnum Contract was entered into on August 24, 2012, but Grayson’s request for approval to

assume the evidence of indebtedness was not filed until November 19, 2012 – nearly three months later.

The Magnum Contract includes two early termination clauses which – based upon the Respondent’s understanding of the facts – have now caused the Magnum Contract to expire according to its own terms; thereby causing Grayson’s Petition to be moot. Specifically, Paragraph 8 of the Magnum Contract states, “[t]he parties agree that should no authorization, nor any other accord, be reached between East Kentucky Power and Magnum by March 1, 2013, then either party may be relieved of any obligation set forth herein.” Paragraph 17 of the Magnum Contract states, “[s]hould Magnum be unable to obtain any accord necessary to proceed from East Kentucky Power Cooperative for a period of time following the execution of this agreement and up to and including February 28, 2013, then this agreement will be of no force and effect.” The obligation of Magnum referred to in Paragraph 8 and Paragraph 17 is identified in Paragraph 5(a) of the Agreement where Magnum agrees “to make proper application to and seek all appropriate written approval from EKPC to deliver power to [Grayson] through the above mentioned Skaggs Switching Station to the metering point.”

Magnum did not tender an application to deliver power to Grayson. *See* Affidavit of Darrin Adams, attached as Exhibit A. Thus, the termination clauses of Paragraph 8 and Paragraph 17 appear to have been triggered by the inaction of Magnum; thereby causing the Magnum Contract to “be of no force and effect.” While Paragraph 17 of the Magnum Contract contemplates that Grayson and Magnum will attempt to renegotiate a new agreement upon the termination of the Magnum Contract pursuant to that term, Grayson has not filed a new agreement with the Commission, nor has it referenced a new agreement in its currently pending rate case. It is a waste of the Commission’s time and the parties’ resources to pursue a Petition

that is based upon an expired contract. Based upon these new developments, Grayson's Petition and Complaint is moot and should be dismissed.¹

WHEREFORE, on the basis of the foregoing, EKPC respectfully requests the Commission to:

- 1) Dismiss the Petition and Complaint as moot; and
- 2) Grant any and all other relief to which EKPC may be entitled.

Respectfully submitted,



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*Counsel for East Kentucky Power
Cooperative, Inc.*

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. Mail, postage prepaid on this 29th day of April 2013, addressed to the following:

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



*Counsel for East Kentucky Power
Cooperative, Inc.*

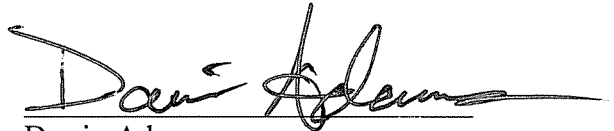
¹ EKPC expressly reaffirms its Answer and Motion to Dismiss filed on January 11, 2013 and nothing herein should be considered as a waiver of any of the arguments set forth in the earlier filing.

AFFIDAVIT

Comes now the Affiant, Darrin Adams, Manager, Transmission Planning, for Kentucky Power Cooperative, Inc. ("EKPC") and, after being duly sworn, does hereby state as follows:

1. My name is Darrin Adams. I am the Manager of the Transmission Planning Department for EKPC.
2. In the course of my ordinary and regular duties, I receive and review all requests for interconnections and transmission service with respect to EKPC's electric transmission system.
3. I have not received any request for an interconnection and/or for transmission service from Magnum Drilling of Ohio, Inc. ("Magnum") to deliver power to Grayson Rural Electric Cooperative Corporation and, to the best of my knowledge and belief, Magnum has never tendered such a request to EKPC.

Further, the Affiant sayeth naught.




Darrin Adams
Manager, Transmission Planning
East Kentucky Power Cooperative, Inc.

COMMONWEALTH OF KENTUCKY

COUNTY OF CLARK

The foregoing Affidavit was subscribed and sworn to before me, the NOTARY PUBLIC, by the Affiant, in my presence, on this 23RD day of April, 2013.



NOTARY PUBLIC, STATE AT LARGE, KY
Commission # 429262

My Commission Expires: 10/28/14