

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

FILED  
SEP 24 2013  
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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**EAST KENTUCKY POWER COOPERATIVE, INC.'S  
OBJECTION TO PETITIONER'S NOTICE OF AMENDMENT**

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Comes now East Kentucky Power Cooperative, Inc. ("EKPC"), by counsel, and, tenders its Objection to the Notice of Amendment filed by the Petitioner, Grayson Rural Electric Cooperative Corporation ("Grayson"),<sup>1</sup> respectfully stating as follows:

**I. Summary of Facts**

Grayson tendered its Petition in this proceeding on November 19, 2012 and requested the Commission to: (1) grant authority to Grayson to purchase power from Magnum Drilling of

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<sup>1</sup> Grayson's Notice of Amendment is itself improper under the Commission's Rules of Procedure, 807 KAR 5:001, Section 4(5), which state:

Upon motion of a party and for good cause shown, the commission shall allow a complaint, application, answer, or other paper to be amended or corrected or an omission supplied. Unless the commission orders otherwise, the amendment shall not relate back to the date of the original paper.

Should Grayson seek to cure this deficiency by filing a proper motion, EKPC reserves the right to file a response.

Ohio, Inc. (“Magnum”); (2) declare that Grayson could purchase power from Magnum pursuant to Amendment 3 of the Wholesale Power Contract in existence between Grayson and EKPC (the “WPC”); (3) require EKPC to comply with the terms and conditions of Amendment 3 of the WPC by providing transmission, substation and ancillary services to facilitate the Magnum contract’s performance; and (4) prohibit EKPC from otherwise preventing or interfering with Grayson’s purchase of power from Magnum. EKPC filed an Answer and Motion to Dismiss on January 11, 2013 (“Answer”), alleging that several portions of the Petition were either outside the scope of the Commission’s jurisdiction or otherwise failed to state a claim. In an Order entered on July 17, 2013 (the “Order”), the Commission granted portions of EKPC’s motion and denied other portions. The Commission then articulated the issues that remained to be adjudicated in this proceeding:

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 source 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.<sup>2</sup>

In further articulating the nature of the investigation into the meaning of Amendment 3, the Commission invited EKPC’s other fifteen Members to seek intervention in the case and to respond to two specific questions:

(a) whether Amendment 3 expressly requires a methodology for Members to share the allocation of alternative power, and if not expressly required, should the Commission nevertheless impute such a methodology for the Members to share the allocation of

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<sup>2</sup> *Id.* Order, pp. 16-17.

alternative power under Amendment 3; and (b) the proper form of advance notice to EKPC for an alternative sourced power purchase.<sup>3</sup>

Thirteen of the remaining fifteen Members of EKPC subsequently sought intervention in this case and uniformly took the position that a Memorandum of Understanding (“MOU”) that had been negotiated by and between EKPC’s Members would fairly and equitably resolve the questions regarding how non-EKPC sources of power should be allocated under Amendment 3 as well as questions as to the form of the requisite notice of an election to purchase such non-EKPC power. In adopting the MOU, Grayson itself applauded the work that had been done to negotiate the MOU and encouraged EKPC’s Board to ratify the MOU.<sup>4</sup>

An informal conference was held on August 8, 2013 for the purpose of determining a procedural schedule to explore and address the issues identified by the Commission. However, Grayson’s counsel informed Commission Staff and counsel for the parties to this proceeding that Grayson’s Board was considering the option of repudiating its prior approval of the MOU and, as a result of this, it would be necessary for Grayson to take multiple depositions of EKPC’s officers and managers. On August 30, 2013 Grayson notified EKPC that it had rescinded its earlier adoption of the MOU in the course of a Board meeting held on August 23, 2013.<sup>5</sup> Grayson’s counsel failed to inform the Commission Staff and counsel for the parties that Grayson was apparently then in the midst of contractual negotiations to purchase power from someone other than Magnum. Thus, EKPC and its Members first learned of the new long-term power purchase agreement on or about September 11, 2013, when Grayson filed the Notice of

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<sup>3</sup> *Id.*, pp. 22-23.

<sup>4</sup> See Letter from Carol Fraley to Tony Campbell (July 3, 2013). A copy of this letter is attached as Exhibit 1.

<sup>5</sup> See Letter from Carol Fraley to Tony Campbell (Aug. 30, 2013). A copy of this letter is attached as Exhibit 2. The letter indicates that the repudiation of the MOU was due in part to certain statements contained in the Commission’s July 17<sup>th</sup> Order.

Amendment for the purpose of attempting to substitute an entirely separate agreement with a new counterparty in place of the Magnum long-term power purchase agreement. Grayson did not disclose in its Notice of Amendment, however, that the EnerVision proposal is for a quantity of power that exceeds that which Grayson is allowed to procure from a non-EKPC resource even under Amendment 3.

Because the MOU has not been adopted by Grayson and Salt River, EKPC must act in a manner consistent with Amendment 3's express terms and in accordance with EKPC Board Policy 305, a policy adopted in 2004 by EKPC's Board to establish allocation procedures for non-EKPC sourced power acquisitions under Amendment 3.<sup>6</sup>

In summary, since the issuance of the Commission's July 17<sup>th</sup> Order, Grayson has abandoned its prior agreement to purchase power from Magnum and foiled a complete resolution of the Amendment 3 issues by repudiating its prior assent to the MOU.<sup>7</sup> Grayson still requires the Commission's approval and authorization to purchase power under its EnerVision proposal pursuant to KRS 278.300.<sup>8</sup> EKPC supports the Commission's continued review of Amendment 3 and, in the absence of unanimous consent to the MOU, the Commission's imposition of a fair and equitable allocation methodology for the power available to EKPC's Members under Amendment 3. Nevertheless, that inquiry is now completely separated from the question of whether Grayson's new long-term power purchase proposal should be approved and EKPC objects to any further effort by Grayson to muddy the waters by injecting superfluous issues into the Commission's investigation of Amendment 3.

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<sup>6</sup> EKPC Board Policy 305, attached as Exhibit 3.

<sup>7</sup> Following Grayson's repudiation of the MOU, Salt River Rural Electric Cooperative Corporation considered the MOU, but took no action upon it.

<sup>8</sup> Additional approvals would be required by EKPC's Board (as set forth below), the Rural Utilities Services ("RUS") and, very likely, PJM Interconnection, LLC.

## II. Argument

Grayson's Notice of Amendment makes three things perfectly clear. First, the viability of Grayson's deal with Magnum was always doubtful and is further evidence that Grayson is acting in bad faith. Second, the quantity of power involved in Grayson's newest proposal takes it outside of the context of Amendment 3, which makes the relief sought by Grayson in its original Petition irrelevant. Third, even if Grayson's newest proposal was subject to Amendment 3, Grayson's own action in rejecting the MOU has effectively prevented it from accomplishing the very thing which it now seeks to do.

### A. Grayson's "Amended Petition" Seeks Approval of a Draft, Non-Binding Term Sheet

Grayson's Notice of Amendment is in fact a request for substitution of an entirely new long-term power purchase agreement instead of an amendment of the agreement it previously filed. Yet Grayson has not even provided the Commission or the parties with an executed copy of the new agreement. Instead, among other glaring deficiencies, all that was filed is a term sheet that: (1) is labeled as a "draft"; (2) does not adequately specify the product being purchased, including the source of capacity; (3) does not designate the load or loads that will be served by the non-EKPC resource; (4) does not include firm pricing provisions; (5) has not been reduced to a definitive agreement; and (6) does not even designate Grayson as the buyer. The term sheet itself states, "[t]his letter is not to be construed as a complete integration of any agreement and does not constitute a binding agreement by either party. This letter simply expresses a good faith intention to proceed with discussion and investigation of possible business arrangements between both parties." Based upon these facts alone, what remains of Grayson's Amended Petition would be materially deficient and likely rejected for filing as an application under KRS 278.300.

As pointed out in EKPC's January 11, 2013 Answer to Grayson's Petition, Grayson's conduct evidences a continued effort to embroil EKPC in a controversy which serves no particular purpose other than to perhaps establish a defense to the claims of bad faith and abuse of process asserted against Grayson in related litigation in the Mason Circuit Court case. It bears repeating that although Grayson purportedly entered into the Magnum contract on August 24, 2012, it did not seek approval of that long-term power purchase agreement until November 19, 2012, almost two weeks after EKPC asserted its Counterclaim in the Mason Circuit Court action and nearly three months after executing the Magnum contract.<sup>9</sup> Likewise, whether the Magnum contract was ever viable is seriously in doubt in light of the fact that: (1) Magnum never contacted EKPC about establishing an interconnection as it was contractually obligated to do;<sup>10</sup> (2) Grayson admittedly never undertook any serious analysis of the economic value (or lack thereof) of the Magnum contract prior to entering into it;<sup>11</sup> (3) Grayson has yet to tender any evidence to refute the significant concerns about the Magnum contract raised by EKPC in its Answer;<sup>12</sup> (4) Grayson failed to provide any documentary evidence that it had extended the Magnum contract beyond its early termination date of February 28, 2013;<sup>13</sup> (5) Grayson repeatedly requested and consented to EKPC's Board taking no formal action on the various

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<sup>9</sup> A copy of EKPC's Counterclaim in the Mason Circuit Court action is attached hereto as Exhibit 4.

<sup>10</sup> See EKPC's Motion to Dismiss as Moot, Affidavit of Darrin Adams (filed Apr. 29, 2013).

<sup>11</sup> See Deposition Transcript of Carol Fraley, *Grayson RECC v. East Kentucky Power Cooperative, Inc., et al.*, Mason Circuit Court, Case No. 12-CI-00270, p. 250, lines 4-11 (Jan. 8, 2013). A copy of this transcript is attached hereto as Exhibit 5.

<sup>12</sup> See EKPC's Answer and Motion to Dismiss, pp. 20-23 (filed Jan. 11, 2013).

<sup>13</sup> See Grayson's Petition and Complaint, Exh. 5, ¶ 17 (filed Nov. 19, 2012); Grayson's Response to EKPC's Motion to Dismiss as Moot, p. 1 (filed May 17, 2013) ("[Grayson] and Magnum entered into a verbal understanding for the extension for a period of time beyond the date of February 28, 2011.").

“notices” tendered in relation to the Magnum contract;<sup>14</sup> (6) the inconsistency of various key terms of said notices as well as the repeated omission of material facts required to be included in such elections under Amendment 3 of the WPC;<sup>15</sup> and (7) Grayson’s responses to data requests in its last rate case confirmed its inability to provide more than a rough estimate of the claimed economic benefit of the Magnum Drilling contract.<sup>16</sup>

EKPC has never told Grayson that it cannot purchase power from a non-EKPC resource under Amendment 3. Grayson also has yet to identify the exact statute, regulation, Commission order, company tariff or contractual obligation that EKPC has purportedly failed to follow. Yet, Grayson continues to use this proceeding as a forum for unfairly attacking and vilifying EKPC as if EKPC was responsible for the obvious financial woes that have recently afflicted Grayson. Grayson should not be allowed to continue to throw stones at EKPC when it cannot even provide the Commission with the most basic documentation necessary to adjudicate a case under KRS 278.300. While Grayson’s ability to articulate a controversy between it and EKPC with regard to the Magnum contract was tenuous at best, there is no rational basis for Grayson to continue to assert that it has been aggrieved by EKPC’s action or inactions with regard to a draft term sheet pertaining to a potential agreement with a wholly distinct buyer of which EKPC was unaware until September 11, 2013.

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<sup>14</sup> See Exhibit 5, pp. 195, 198-199 and 202.

<sup>15</sup> See Grayson’s Petition and Complaint, Exh. 3 (which is unsigned) and Exh. 4 (filed Nov. 19, 2012). A copy of Grayson’s January 18, 2013 “notice” does not appear to have been filed in the record of the case as of yet. Accordingly, a copy is attached hereto as Exhibit 6.

<sup>16</sup> See *In the Matter of the Application of Grayson Rural Electric Cooperative Corporation for an Adjustment of Rates*, Response to Commission Staff’s Third Set of Data Requests, Response No. 8, Case No. 2012-00426 (filed Mar. 8, 2013) (providing a “rough estimate” of the anticipated benefits).

## B. Grayson's EnerVision Proposal is Not Subject to Amendment 3

Grayson also fundamentally misunderstands the application of the individual and aggregate allowances for non-EKPC power that are plainly set forth in Amendment 3 of the WPC, which states:

*Notwithstanding the foregoing, the Member shall have the option, from time to time, with notice to the Seller, to receive electric power and energy, from persons other than the Seller, or from facilities owned or leased by the Member, provided that the aggregate amount of all members' elections...so obtained under this paragraph shall not exceed five percent (5%) of the rolling average of Seller's coincident peak demand for the single calendar month with the highest peak demand occurring during each of the 3 twelve month periods immediately preceding any election by the Member from time to time, as provided herein and further provided that no Member shall receive more than fifteen percent (15%) of the rolling average of its coincident peak demand for the single calendar month with the highest average peak demand occurring during each of the 3 twelve month periods immediately preceding any election by the Member... (emphasis added).<sup>17</sup>*

Amendment 3 does not, as Grayson has suggested in deposition testimony in the related Mason Circuit Court case, give every Member the unqualified right to receive fifteen percent from a non-EKPC source.<sup>18</sup> If Grayson's interpretation was correct, then the five percent aggregate cap on alternative power under Amendment 3 would quickly be exceeded and rendered meaningless.

Yet even if Grayson's interpretation of Amendment 3 was correct – which EKPC disputes – its EnerVision proposal still exceeds the scope of Amendment 3. As of August 31, 2013, Grayson's load ratio share of EKPC's coincident peak over the preceding thirty-six months

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<sup>17</sup> See Petition, Exh. 2, pp. 1-2 (filed Nov. 19, 2012).

<sup>18</sup> See Exhibit 5, p. 241, lines 3-7.



equaled 61.8 MW.<sup>19</sup> Thus, if Grayson elected to convert 15% of its load ratio share to an alternative source of supply, it would only be entitled to purchase 9.3 MW of energy from a non-EKPC supplier.<sup>20</sup> However, Grayson's new long-term PPA contemplates purchasing 10 MW of "firm block energy," and is "solely for Energy and Seller is not selling capacity," from a non-EKPC supplier that settles at the AEP/Dayton (AD) hub. Grayson's load is served at the EKPC LMP node. Based on the term sheet submitted with the Notice of Amendment, Grayson, in order to serve the load taken off the EKPC system, would need to participate in PJM energy and capacity markets. The AD settled PPA would then hedge that portion of the Grayson load from day ahead and balancing market volatility. Because Grayson's latest proposal is for the purchase of power in excess of even its 15% load ratio share, does not specify the capacity source, or deliver energy to a designated Grayson load or loads, the proposal is not within the scope of what is contemplated by Amendment 3 and falls outside the permissive bounds of that contractual arrangement. By its clear terms, Amendment 3 does not apply to a contemplated transaction of this magnitude.<sup>21</sup> While two of the three "notices" tendered by Grayson with regard to the Magnum contract were under this threshold, clearly the EnerVision agreement exceeds Grayson's maximum potential allotment of non-EKPC power under Amendment 3. Therefore, it cannot substitute the EnerVision project for the Magnum contract as if they were freely interchangeable. They are not.

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<sup>19</sup> See Affidavit of David Crews, attached as Exhibit 7.

<sup>20</sup> See *id.*

<sup>21</sup> Because Amendment 3 does not apply to the deal described in the EnerVision term sheet, that portion of Grayson's cover letter to EKPC's counsel suggesting that this latest election should somehow relate back to prior "notices" given by Grayson with regard to the Magnum contract is irrelevant. In any event, the Commission's July 17<sup>th</sup> Order in this proceeding correctly notes that there is a substantial question as to whether the Magnum contract "notices" were deficient. See Order, p. 16.

Grayson has also failed to follow the procedures necessary for seeking to purchase an excess amount of power from someone other than EKPC. EKPC's Board Policy 305 contemplates that a Member may desire to purchase power in excess of its 15% load ratio share. Section III, Paragraph G of Policy 305 therefore states:

A member may exceed the 15% Option only upon approval of the Board and RUS. Any request by a member system to so exceed its 15% Option shall be made in writing to the Allocation Committee and shall include all relevant information and justifications for such request. The Committee shall have the authority to request any additional information or documentation it feels is necessary or advisable. The Committee shall review and consider the request and make a recommendation to the full Board for action.<sup>22</sup>

Thus, while Amendment 3 does not apply to Grayson's EnerVision proposal, Grayson has the means to request the approval of EKPC and RUS for such a power purchase agreement. Such a request would, if granted, in essence form a new amendment to the WPC – EKPC could relinquish its existing contractual right to prevent a single Member from purchasing more than 15% of that Member's load ratio share. Grayson has not availed itself of this opportunity, but has instead sought the Commission's assistance in forcing EKPC to accept Grayson's purchase of non-EKPC power in an amount not even countenanced in Amendment 3. In effect, Grayson requests the Commission to force EKPC to amend the WPC in order to accommodate Grayson's request. The odiousness of the request underscores the stark insufficiency of Grayson's proffered Notice of Amendment. EKPC believes that Grayson's Notice of Amendment asks the Commission to do something without disclosing the ramifications of what is being requested. In its latest iteration, Grayson's proposal is simply not governed by Amendment 3 and any request

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<sup>22</sup> See Exhibit 3. As with any other amendment to the WPC, EKPC's Board must exercise its discretion and business judgment in determining whether such an amendment would be advisable. This particular issue has not been presented to EKPC's Board because Grayson has not submitted a written request to the Allocation Committee as required by EKPC Board Policy 305.

for the Commission to mandate EKPC's approval of Grayson's proposal is both premature and improper.

**C. Grayson's Repudiation of the Memorandum of Understanding ("MOU") Prevents Grayson from Entering into Large Block Power Agreements Under Amendment 3**

Even if Grayson was to again amend its "notice" to an amount less than or equal to its 15% load ratio share,<sup>23</sup> the plain language of Amendment 3 still requires load designation and load following. The phrase "load or loads" is used in subparagraphs (a) and (b) of the amended Section 1 of the WPC to inextricably link the notice requirements to the load being served by the non-EKPC resource, inclusive of its capacity and not just energy demand. If the impacted "load or loads" is 5 MW or less in the annual aggregate, then ninety (90) days notice is sufficient. If, however, the impacted "load or loads" is 5 MW or more in the annual aggregate, then eighteen (18) months advance notice is required. Also, when a Member cancels its election to procure power from a non-EKPC resource, the affected "load or loads" must thereafter be serviced under the WPC. Subparagraph (b) goes on to state, "[s]uch loads which are transferred...shall not thereafter be switched by member to a different power supplier." In light of this language, Amendment 3 plainly imposes a requirement to designate the "load or loads" that are subject to either a Member's election to purchase energy from someone other than EKPC or a Member's cancellation of such an election. Otherwise, it would be impossible to: (1) ascertain what load is being served by EKPC or the non-EKPC resource; (2) determine whether such load will be transferred back to EKPC upon the cancellation of an Amendment 3 election; or (3) confirm that such load is not subsequently transferred to another power supplier by the Member in violation

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<sup>23</sup> Grayson's Notice of Amendment was accompanied by a letter to EKPC's counsel stating that the Notice of Amendment was "the basis for [Grayson] to assert that it has met all requirements under Amendment #3, the notice for the outside power having been sent in June 2012, August 2012 and January 2013...." The Commission's July 17<sup>th</sup> Order correctly notes that there is a substantial question as to whether the three prior notices were compliant with Amendment 3. EKPC asserts that they were not. Nevertheless, the Notice of Amendment clearly cannot serve as proper notice to EKPC under Amendment 3 or Board Policy 305.

of Amendment 3. Grayson's disregard for the requirement to designate and follow load is frankly explained by the fact that Grayson's chief executive officer and chief financial officer were unfamiliar with the term "load following" at the time Grayson entered into the Magnum contract and did not understand the concept.<sup>24</sup>

It is the epitome of irony, however, that designating load and following load would be unnecessary if Grayson's Board had not repudiated its prior approval of the MOU. In contrast to the load designation and following requirement of Amendment 3, the MOU included a provision in which EKPC effectively agreed to waive the requirement for all future Amendment 3 transactions, thereby opening the door for the type of block power purchases now contemplated by Grayson. In repudiating the MOU, Grayson has reinserted the necessity of applying the load designation and load following requirements of Amendment 3 to these types of transactions.

### **III. Conclusion**

Grayson's Notice of Amendment is not appropriate. It requests the Commission to consider and approve a non-binding contract proposal that is not subject to Amendment 3 without disclosing the ramifications of that request. Accordingly, EKPC objects to the filing of the Notice of Amendment.

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<sup>24</sup> See Exhibit 5, p. 244, lines 14-24; Deposition Transcript of Don Combs, *Grayson RECC v. East Kentucky Power Cooperative, Inc., et al.*, Mason Circuit Court, Case No. 12-CI-00270, pp. 43-45 (Jan. 17, 2013). A copy of this transcript is attached hereto as Exhibit 8.

This 24<sup>th</sup> day of September, 2013.

Respectfully submitted,



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*Counsel for East Kentucky Power Cooperative, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing filing was served on the following via depositing same in the custody and care of the U.S. Mail, postage prepaid, this 24<sup>th</sup> day of September, 2013:

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

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

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*Counsel for East Kentucky Power Cooperative, Inc.*



# Grayson Rural Electric Cooperative Corporation

109 Bagby Park • Grayson, KY 41143-1292  
Telephone 606-474-5136 • 1-800-562-3532 • Fax 606-474-5862

July 3, 2013

East Kentucky Power Cooperative  
Mr. Tony Campbell, President  
P.O. Box 707  
Winchester, KY 40392

Dear Tony:

The Grayson RECC Board met June 28, 2013 and discussed the proposed version of the Memorandum of Understanding for Amendment 3 regarding Member System's right to engage in alternate power sources. After lengthy discussion, the Board voted unanimously to approve the MOU as presented, conditional upon approval by the EKPC Board and all other member systems.

After all the hard work and thought put into the Memorandum of Understanding, we urge EKPC's Board of Directors to approve the MOU.

Should you have any questions, please call me.

Sincerely,



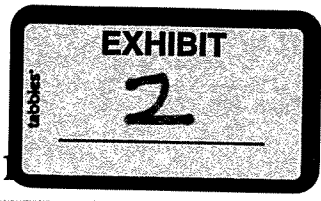
Carol Hall Fraley  
President and CEO

GRAYSON RURAL ELECTRIC  
COOPERATIVE CORPORATION

CHF/pfs







# Grayson Rural Electric Cooperative Corporation

109 Bagby Park • Grayson, KY 41143-1292  
Telephone 606-474-5136 • 1-800-562-3532 • Fax 606-474-5862

August 30, 2013

Mr. Anthony "Tony" Campbell  
President and CEO  
East Kentucky Power Cooperative  
P.O. Box 707  
Winchester, KY 40391

CEOs of Member Systems

RE: MOU

Dear Folks:

On August 23, 2013, at a regular meeting of the Board of Directors of Grayson Rural Electric Cooperative Corporation, the Board of Directors voted unanimously to rescind a prior resolution that had consented to the Memorandum of Understanding regarding Amendment #3 to the Wholesale Power Contract. In light of the July 2013 decision of the Kentucky Public Service Commission, questions concerning the 18 month time period that may or may not be provided for in the existing version of the MOU, and some other factors that could affect the best interest of the Members of Grayson Rural Electric Cooperative Corporation and other member systems, the Board felt this action was appropriate.

We wanted to communicate this to everyone so that there would be no misunderstanding nor any assumption about the current position of Grayson Rural Electric Cooperative Corporation with respect to the latest existing version of the Memorandum of Understanding.

Sincerely,

A handwritten signature in cursive script that reads "Carol Ann Fraley".

Carol Ann Fraley  
President and CEO  
Grayson Rural Electric Cooperative Corporation

CAF/knc



## EAST KENTUCKY POWER COOPERATIVE

Policy No. 305

March 9, 2004

ALLOCATION PROCEDURES FOR NON-EKPC-SOURCED  
POWER ACQUISITIONS UNDER WHOLESALE POWER  
CONTRACT AMENDMENT NUMBER 3

## I. BACKGROUND

Amendment Number 3 to the Wholesale Power Contract between East Kentucky Power Cooperative ("EKPC") and its member systems allows each member system executing the Amendment to purchase or otherwise acquire power and energy from non-EKPC sources up to a maximum of 15% of the member system's 3-year rolling average peak load (the "15% Option"), provided that the total of all such non-EKPC acquisitions by all member systems does not exceed 5% of EKPC's 3-year rolling average peak load (the "5% Cap").

## II. OBJECTIVE

The objective of this Board Policy is to provide a reasonable mechanism to allocate the 5% Cap among the member systems so that those member systems with specific, identifiable projects that would be facilitated by the use of the 15% Option can proceed in a timely manner.

## III. CONTENT

- A. An Allocation Pool is hereby created which will be made up of the combined total of the unused portions of each member system's load ratio share of the 5% Cap, as hereinafter set out.
- B. An Allocation Committee is hereby created as hereinafter set out which will administer the allocation of the unused portions of the member systems' load ratio share of the 5% Cap in the Allocation Pool to requesting eligible member systems.
- C. (1) As soon as is reasonably possible, but no later than 90 days after either the adoption of this Board Policy or the execution of Amendment Number 3 of the Wholesale Power Contract, whichever is later, each member system shall submit to the Allocation Committee a detailed, written plan of its intended use of its 15% Option (the "Plan"). Each Plan shall include the following:

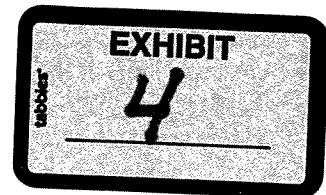
- a) Whether or not the member system intends to use all or any portion of its load ratio share of the 5% Cap within 6 months of the date of submittal of the Plan;
  - b) How much of its load ratio share of the 5% Cap the member system intends to use;
  - c) A detailed description of the specific use to which it will be put;
  - d) The anticipated time frame within which the use will occur;
  - e) Any contracts or other agreements executed with respect to such use, and if none, the status of negotiations for such contracts or agreements and the anticipated date of execution thereof; and
  - f) Any other information that may be requested by the Allocation Committee.
- (2) A member system may immediately proceed to utilize that portion of its load ratio share of the 5% cap identified in its Plan.
  - (3) If a member system's Plan reveals that the member system does not intend to use any or all of its load ratio share of the 5% Cap, then the unused portion will be placed in the Allocation Pool.
  - (4) If, within 6 months from the submittal of its Plan, a member system does not use the portion of its load ratio share of the 5% Cap as stated in the Plan, or, if reasonable progress, in the determination of the Allocation Committee, has not been made by the member system toward such use, then that portion of the 5% Cap will be placed in the Allocation Pool.
  - (5) The Allocation Committee may require periodic progress reports with respect to such use at intervals of the Committee's determination.
- D. (1) At any time after submittal of its Plan, a member system who desires an initial allocation or an allocation of more than its load ratio share of the 5% Cap, shall submit a written request to the Allocation Committee, which request shall contain the same type of information as required by Paragraphs III(C)(1)(a-f) hereof.

- (2) The Committee shall determine whether to grant such a request by majority vote.
  - (3) If, within 6 months from the granting of any such request by the Committee, a member system has not used the allocation, or if reasonable progress, in the determination of the Committee, has not been made toward such use, then the allocation shall be returned to the Allocation Pool.
- E. Any new member of EKPC admitted by the EKPC Board of Directors ("Board") shall have the same rights as existing members with respect to the 15% Option and 5% Cap upon execution by the new member of the Wholesale Power Contract including Amendment Number 3. The new member shall submit a Plan within 90 days of its execution of the Wholesale Power Contract.
- F. The use of 15% Option shall be limited to the following:
- 1) Service of new load acquired by a member system and which was not part of the member's traditionally recognized service territory as certified by the Kentucky Public Service Commission pursuant to KRS 278.017.
  - 2) Distributed Generation projects owned by a member system.
  - 3) Other uses as established by the Board.
- G. A member may exceed the 15% Option only upon approval of the Board and RUS. Any request by a member system to so exceed its 15% Option shall be made in writing to the Allocation Committee and shall include all relevant information and justifications for such request. The Committee shall have the authority to request any additional information or documentation it feels is necessary or advisable. The Committee shall review and consider the request and make a recommendation to the full Board for action.
- H. Any determination or decision of the Allocation Committee may be reviewed by the Board at the request and upon the motion of any director and the Board may affirm, overturn or modify such determination or decision in its discretion.

## IV. ORGANIZATIONAL RELATIONSHIPS

- A. The Allocation Committee shall report directly to the Board.
- B. The Allocation Committee shall have 5 members, 3 of which shall be managers of member systems, 1 of which shall be a regular director of the Board, and 1 of which shall be an employee or other representative of EKPC. The members shall be appointed by the Chairman of the Board with the advice and consent of the other officers of the Board and in consultation with the President and CEO in accordance with Board Policy 105 and shall serve at the pleasure of the Board.
- C. The Committee is a continuing one, except for the EKPC representative, and the term of each member shall run for one year, coincident with the term of the Chairman of the Board, or until his successor is appointed. Appointments of committee members shall be staggered so that no more than two members leave the Committee each year. No member shall serve more than 4 consecutive years except that the term of the EKPC representative shall be indefinite.
- D. The Committee shall annually elect a Chairman, Vice-Chairman and Secretary. Minutes of each meeting shall be kept. The Chairmen of other Board Committees or any Board officer shall not be Chairman of the Allocation Committee.
- E. Meetings of the Committee shall be held at the call of the Committee Chairman, the Chairman of the Board, or at the call of three members of the Committee when there are items or other issues for consideration by the Committee. The time, location and agenda of the meeting shall be set in the notice.





COMMONWEALTH OF KENTUCKY  
MASON CIRCUIT COURT  
CIVIL ACTION NO. 12-CI-00270

GRAYSON RURAL ELECTRIC  
COOPERATIVE CORPORATION

PLAINTIFF

vs.

ANSWER

EAST KENTUCKY POWER COOPERATIVE, INC.,  
CHARLESTON BOTTOMS RURAL ELECTRIC  
COOPERATIVE CORPORATION, BIG SANDY  
RURAL ELECTRIC COOPERATIVE CORPORATION,  
BLUEGRASS ENERGY COOPERATIVE CORPORATION,  
CLARK ENERGY COOPERATIVE CORPORATION,  
CUMBERLAND VALLEY ELECTRIC COOPERATIVE  
CORPORATION, FARMERS RURALE ELECTRIC  
COOPERATIVE CORPORATION, FLEMING-MASON ENERGY  
COOPERATIVE CORPORATION, INTER-COUNTY ENERGY  
COOPERATIVE CORPORATION, JACKSON ENERGY  
COOPERATIVE CORPORATION, LICKING VALLEY RURAL  
ELECTRIC COOPERATIVE CORPORATION, NOLIN  
RURAL ELECTRIC COOPERATIVE CORPORATION,  
OWEN ELECTRIC COOPERATIVE CORPORATION,  
SALE RIVER ELECTRIC COOPERATIVE CORPORATION,  
SHELBY ENERGY COOPERATIVE CORPORATION,  
SOUTH KENTUCKY RURAL ELECTRIC COOPERATIVE  
CORPORATION, and TAYLOR COUNTY RURAL  
COOPERATIVE CORPORATION

DEFENDANTS

AND

EAST KENTUCKY POWER COOPERATIVE, INC.

COUNTERCLAIM  
PLAINTIFF

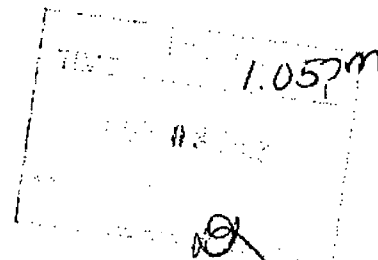
vs.

COUNTERCLAIM

GRAYSON RURAL ELECTRIC  
COOPERATIVE CORPORATION

COUNTERCLAIM  
DEFENDANT

\* \* \* \* \*





Come now the Defendants, East Kentucky Power Cooperative Inc. ("EKPC") and Charleston Bottoms Rural Electric Cooperative Corporation ("Charleston Bottoms") (collectively, "the Defendants"), by and through counsel, to present their Answer to the Complaint and Amended Complaint filed by Plaintiff, Grayson Rural Electric Cooperative Corporation ("Grayson"),<sup>1</sup> and comes the Counterclaim-Plaintiff, EKPC, by and through counsel, and presents its Counterclaim against the Counterclaim-Defendant, Grayson. The parties above state and aver as follows:

**ANSWER TO COMPLAINT**

1. The Defendants admit the allegations contained in paragraph 1 of the Complaint;
2. With regard to paragraph 2 of the Complaint, the Defendants admit that EKPC is a corporation authorized and existing under the laws of the Commonwealth of Kentucky, but state that the corporation's principal place of business is located at 4775 Lexington Road, Winchester, Kentucky;
3. The Defendants deny the allegations contained in paragraph 3 of the Complaint inasmuch as Charleston Bottoms was legally dissolved as a Kentucky corporation on October 10, 2012, and its corporate affairs wound up;
4. The Defendants admit that portion of the allegations contained in paragraph 4 of the Complaint which states that EKPC is owned by the Plaintiff and 15 other separate rural electric cooperative corporations. However, the Defendants deny that portion of the allegations contained in paragraph 4 of the Complaint which alleges that the Defendant, Charleston Bottoms, is owned by the Plaintiff and 15 other separate corporations;

---

<sup>1</sup> Grayson filed its Complaint on October 11, 2012 and its Amended Complaint on October 24, 2012. The Amended Complaint "adopts, reiterates and re-alleges each and every allegation of the Complaint, the same as if set forth herein verbatim except as inconsistent with the statements asserted herein." Accordingly, the Answer filed by EKPC and Charleston Bottoms must address the allegations of both the Complaint and the Amended Complaint.

5. The Defendants deny the allegations contained in paragraph 5 of the Complaint;

6. The Defendants deny the allegations contained in paragraph 6 of the Complaint;

7. The Defendants deny the allegations contained in paragraph 7 of the Complaint;

8. The Defendants deny the allegations contained in paragraph 8 of the Complaint;

9. The Defendants deny the allegations contained in paragraph 9 of the Complaint inasmuch as it states that the assets of Charleston Bottoms consists of real estate in Mason County, Kentucky. At the time of the filing of the Complaint, Charleston Bottoms had been legally dissolved and its corporate affairs wound up. It did not own any real estate nor did it have an interest in any other asset;

10. With regard to the allegations contained in paragraph 10 of the Complaint, the records of the Mason County Clerk's Office speak for themselves and no response is necessary. However, the Defendants deny the remainder of the allegations contained in paragraph 10 of the Complaint inasmuch as it is alleged that the referenced real estate and power plant are the "subject" of and have any relationship to this litigation;

11. With regard to the allegations contained in paragraph 11 of the Complaint, the records of the Mason County Clerk's Office speak for themselves and no response is necessary. However, the Defendants deny the remainder of the allegations contained in paragraph 11 of the Complaint inasmuch as it is alleged that the referenced excepted out conveyances and/or the real estate and power plant are the "subject" of and have any relationship to this litigation; and,

12. The Defendants admit that portion of the allegations contained in paragraph 12 of the Complaint which alleges that Charleston Bottoms made a conveyance of real estate to EKPC. However, the Defendants deny the remainder of the allegations contained in paragraph 12 of the

Complaint which allege that the referenced real estate and power plant are the "subject" of and have any relationship to this litigation.

13. Each and every allegation in the Complaint which is not expressly admitted above is hereby expressly denied.

**ANSWER TO AMENDED COMPLAINT**

1. The Defendants adopt, reaffirm and reallege each and every admission and/or denial made to the allegations contained in paragraphs 1-12 of the Complaint.

2. The Defendants admit that portion of the allegations contained in paragraph 2 of the Amended Complaint which states that EKPC currently exists and functions as a Cooperative Corporation under the laws of the Commonwealth of Kentucky. However, the Defendants deny the remainder of the allegations contained in paragraph 2 of the Amended Complaint inasmuch as Charleston Bottoms was legally dissolved as a Kentucky corporation on October 10, 2012, and its corporate affairs wound up.

3. The Defendants admit the allegations contained in paragraph 3 of the Amended Complaint.

4. The Defendants deny the allegations contained in paragraph 4 of the Amended Complaint.

5. The Defendants admit that portion of the allegations contained in paragraph 5 of the Amended Complaint which states that the named Defendant "distribution co-ops" are all members of EKPC. However, the Defendants deny the remainder of the allegations contained in paragraph 5 of the Amended Complaint inasmuch as it is alleges that the named Defendant "distribution co-ops" are all members of Charleston Bottoms. The Defendants assert that, other

than the original individual incorporators who ceased to be members of Charleston Bottoms in June 1972, the only member of Charleston Bottoms was EKPC.

6. The Defendants deny the allegations contained in paragraph 6 of the Amended Complaint.

7. With regard to the allegations in paragraph 7 of the Amended Complaint, the Bylaws of Charleston Bottoms speak for themselves and no response is required. The Defendants state that the requisite notice was given under the Bylaws and deny the Plaintiff's allegations to the contrary. The Defendants deny that the Plaintiff was a member of Charleston Bottoms.

8. The Defendants deny the allegations contained in paragraph 8 of the Amended Complaint.

9. The Defendants deny the allegations contained in paragraph 9 of the Amended Complaint.

10. The Defendants deny the allegations contained in paragraph 10 of the Amended Complaint.

11. With regard to the allegations contained in paragraph 11 of the Amended Complaint, the Bylaws of Charleston Bottoms speak for themselves and no response is required. The Defendants deny that Plaintiff was a member of Charleston Bottoms. The Defendants state that the requisite notice was given under the Bylaws and deny the Plaintiff's allegations to the contrary. Any appraisal of Charleston Bottoms' assets speaks for itself and no response is required.

12. The Defendants admit that portion of the allegations contained in paragraph 12 of the Amended Complaint which states that Grayson has not been paid any sum of money

following the dissolution of Charleston Bottoms. The Defendants deny the allegation contained in paragraph 12 of the Amended Complaint which implies that Grayson has any entitlement whatsoever to any share of the assets of the dissolved Charleston Bottoms. Since the assets of Charleston Bottoms were transferred exclusively to EKPC upon the dissolution, and since Grayson is a member of EKPC, it has not been harmed in any respect.

13. With regard to the allegations contained in paragraph 13 of the Amended Complaint, the documents establishing the financing plan for Charleston Bottoms speak for themselves and no response is required. The Defendants deny the remainder of the allegations contained in paragraph 13 of the Amended Complaint.

14. The Defendants deny the allegations contained in paragraph 14 of the Amended Complaint.

15. The Defendants deny the allegations contained in paragraph 15 of the Amended Complaint.

16. The Defendants admit that portion of the allegations contained in paragraph 16 of the Amended Complaint which states that Grayson's EKPC Board Member was not permitted to attend the Executive Session portion of the October 22, 2012 EKPC Board meeting in which this litigation was discussed in order to protect communications that were subject to the attorney-client privilege. The individual was not barred from participating in other portions of the Board meeting. The Defendants deny the remainder of the allegations contained in paragraph 16 of the Amended Complaint.

17. The Defendants deny the allegations contained in paragraph 17 of the Amended Complaint.

18. The Defendants deny the allegations contained in paragraph 18 of the Amended Complaint.

19. With regard to the allegations contained in paragraph 19 of the Amended Complaint, the Defendants admit that Grayson serves its members in the enumerated counties. The obligations of a distribution cooperative are established by law, and in particular KRS Chapter 278 and KRS Chapter 279. To the extent that allegations call for legal conclusions, no response is necessary. The Defendants are without information sufficient to allow them to admit or deny whether Grayson provides electric power at the lowest possible cost.

20. With regard to the allegations contained in paragraph 20 of the Amended Complaint, the Defendants are aware of Grayson's obligation under Kentucky law, and in particular KRS Chapter 278 and KRS Chapter 279.

21. The Defendants deny the allegations contained in paragraph 21 of the Amended Complaint.

22. Each and every allegation in the Amended Complaint which is not expressly admitted above is hereby expressly denied.

#### **AFFIRMATIVE DEFENSES**

For their affirmative defenses, pursuant to CR 8.03 and other applicable law, the Defendants affirmatively plead the following which, individually or together, constitute a complete bar to the relief sought by Grayson in its Complaint and Amended Complaint: failure to state a claim for which relief may be granted; estoppel, failure of consideration, waiver, laches, license, release, legal dissolution of corporate existence, lack of legal standing to initiate and prosecute claims, failure to join appropriate parties and consent.

## COUNTERCLAIM

Comes the Counterclaim-Plaintiff, EKPC, by and through counsel, and for its Counterclaim against the Counterclaim-Defendant, Grayson, hereby states and avers as follows:

1. EKPC adopts, reaffirms and realleges each of the statements contained hereinabove in its Answer and affirmative defenses to the Complaint and Amended Complaint and hereby incorporates same into this Counterclaim;

2. Grayson is an electric cooperative corporation formed under Chapter 279 of the Kentucky Revised Statutes, with its principal place of business at 109 Bagby Park in Grayson, Kentucky.

3. EKPC is an electric cooperative formed under Chapter 279 of the Kentucky Revised Statutes. Based in Winchester, Kentucky, it currently has approximately \$3.1 billion in assets and serves approximately 521,000 customers in 87 Kentucky counties through its sixteen member distribution cooperatives (owners), of which Grayson is one.

4. Charleston Bottoms was an electric cooperative that was incorporated by seven individuals on December 30, 1971 pursuant to KRS Chapter 279 of the Kentucky Revised Statutes.

5. EKPC became a member of Charleston Bottoms on January 11, 1972.

6. By operation of its Articles of Incorporation, Charleston Bottoms' original seven individual incorporators were members of Charleston Bottoms until the first annual meeting of members which was held on June 13, 1972, at which point they ceased to be members and EKPC became the sole member of Charleston Bottoms.

7. Charleston Bottoms was dissolved on October 10, 2012, pursuant to KRS Chapter 279.

8. From June 13, 1972 through October 10, 2012, EKPC was the sole member of Charleston Bottoms.

9. Grayson had knowledge of the corporate relationship between EKPC and Charleston Bottoms throughout the corporation's forty year existence as evidenced by the agreements to which it is a signatory and the actions which have been taken by its Directors, corporate officers, employees and representatives.

10. Grayson did not assert any ownership interest in Charleston Bottoms until October 11, 2012.

11. Grayson's lawsuit is intended to disrupt and interfere with EKPC's relationship with creditors, credit rating agencies, regulators and the other fifteen distribution cooperatives formed under KRS Chapter 279, which are members of EKPC.

12. Grayson's lawsuit is intended by Grayson to give it leverage in negotiations on other matters not related to the ownership of Charleston Bottoms in which it has not been able to gain a consensus among EKPC's Board of Directors and is an abuse of process.

13. Grayson's lawsuit is counterproductive. Grayson requests the Court to prevent EKPC from establishing and entering into a Trust Indenture, which, once established, would have the effect of reducing EKPC's debt expenses to the benefit of EKPC's distribution cooperative members – including Grayson – and ultimately to the 521,000 retail customers served by EKPC's distribution cooperative members – including Grayson's. If Grayson was successful in its claims, EKPC would be forced by existing credit agreements to seek a corresponding rate increase to compensate it for the amount of any distribution to Grayson (or other distribution cooperatives) and, under certain circumstances, may be compelled to issue a call for capital contributions from its member distribution cooperatives – including Grayson.



14. Grayson's claim is futile. The assets of Charleston Bottoms have been distributed and transferred exclusively to EKPC. Since Grayson is a member of EKPC and has a genuine and legitimate ownership interest in EKPC, it is proportionately credited with the decrease in EKPC's assets as a result of the dissolution of Charleston Bottoms, and simultaneously credited with the increase in EKPC's assets as a result of the transfer of Charleston Bottoms assets to EKPC. Grayson has not been harmed in any respect.

15. The actions of Grayson in unjustifiably bringing this action against EKPC (and involving the other distribution cooperatives in the EKPC system) are unreasonably causing EKPC to incur costs which are otherwise unnecessary and risk imposing significantly higher costs upon EKPC's member distribution cooperatives (including Grayson) and their retail customers (including Grayson's) as a result of any credit rating downgrades, credit renegotiations, reduced access to long-term debt markets, capital calls, rate increases and failure to achieve requisite equity and margin ratios, all in an amount exceeding the minimum threshold for imposition of this Court's jurisdiction.

16. Grayson should be made to respond in damages to compensate EKPC for any injury, damage or loss which EKPC has suffered, continues to suffer, or will in the future suffer, resulting from Grayson's instigation of this action.

WHEREFORE, EKPC respectfully requests a judgment as follows:

1. That Grayson's Complaint and Amended Complaint, and each and every prayer for relief contained therein, be dismissed and held for naught and that a Judgment of this Court be entered so holding;

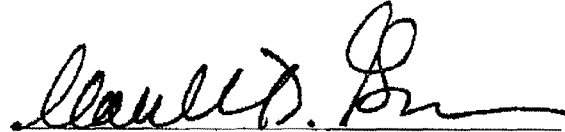
2. That EKPC's Counterclaim against Grayson be sustained in all respects and that a Judgment of this Court be entered entitling EKPC to monetary damages against Grayson in an amount exceeding the minimum threshold for imposition of this Court's jurisdiction;

3. That the Defendants recover all allowable court costs, expenses and attorneys' fees, and that a Judgment of this Court be entered so holding; and,

4. For all other due and proper relief available in law or in equity to which EKPC and Charleston Bottoms are entitled.

This 8<sup>th</sup> day of November, 2012.

Respectfully submitted,



Mark David Goss  
David S. Samford  
GOSS SAMFORD, PLLC  
2365 Harrodsburg Road  
Suite B130  
Lexington, KY 40504  
(859) 368-7740

*Counsel for Defendants and  
Counterclaim-Plaintiff*

**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 November, 2012, addressed to the following individual:

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

Big Sandy RECC  
504 Eleventh Street  
Paintsville, KY 41240-1422

Blue Grass Energy Cooperative Corp.  
1201 Lexington Road  
P. O. Box 990  
Nicholasville, KY 40356

Clark Energy Cooperative, Inc.  
2640 Iron Works Road  
P. O. Box 748  
Winchester, KY 40392-0748

Cumberland Valley Electric  
Highway 25 E  
Gray, KY 40734

Farmers RECC  
504 South Broadway  
P. O. Box 1298  
Glasgow, KY 42142-1298

Fleming-Mason Energy Cooperative  
1449 Elizaville Road  
P. O. Drawer 328  
Flemingsburg, KY 41041

Inter-County Energy Cooperative  
Corporation  
1009 Hustonville Road  
P. O. Box 87  
Danville, KY 40423-0087

Jackson Energy Cooperative  
115 Jackson Energy Lane  
McKee, KY 40447

Licking Valley RECC  
271 Main Street  
P. O. Box 605  
West Liberty, KY 41472

Nolin RECC  
411 Ring Road  
Elizabethtown, KY 42701-6767

Owen Electric Cooperative  
8205 Highway 127 N  
P. O. Box 400  
Owenton, KY 40359-0400

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

Shelby Energy Cooperative, Inc.  
620 Old Finchville Road  
Shelbyville, KY 40065-1714

South Kentucky RECC  
925-929 North Main Street  
P. O. Box 910  
Somerset, KY 42502

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



*Counsel for Defendants and  
Counterclaim-Plaintiff*



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COMMONWEALTH OF KENTUCKY  
MASON CIRCUIT COURT  
CIVIL ACTION NO. 12-CI-00270

GRAYSON RURAL ELECTRIC  
COOPERATIVE CORPORATION,

PLAINTIFF

VS.

EAST KENTUCKY POWER COOPERATIVE, INC.,  
CHARLESTON BOTTOMS RURAL ELECTRIC, ET AL,

DEFENDANTS

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**WITNESS: CAROL FRALEY**

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The Deposition of CAROL FRALEY was taken before Jolinda S. Todd, Registered Professional Reporter, CCR(KY) and Notary Public in and for the State of Kentucky at Large, at the offices of Grayson Rural Electric Cooperative Corporation, 109 Bagby Park, Grayson, Kentucky on Tuesday, January 8, 2013, commencing at the approximate hour of 1:00 p.m. Said deposition was taken pursuant to Notice, for all purposes as permitted by the Kentucky Rules of Civil Procedure.

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**APPEARANCES:**

David S. Samford, Esq.  
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Lexington, Kentucky 40504

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EAST KENTUCKY POWER COOPERATIVE, INC.  
AND CHARLESTON BOTTOMS RURAL  
ELECTRIC COOPERATIVE CORPORATION

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Grayson, Kentucky 41143

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GRAYSON RURAL ELECTRIC COOPERATIVE  
CORPORATION

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1306 West 5th Street, Suite 100  
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ATTORNEYS FOR DEFENDANT,  
JACKSON ENERGY COOPERATIVE CORPORATION

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**APPEARANCES (continued):**

Chris Tucker, Esq.  
SHEEHAN, BARNETT, DEAN, PENNINGTON,  
LITTLE & DEXTER, PSC  
116 North Third Street  
Danville, Kentucky 40423-1517

ATTORNEYS FOR DEFENDANT,  
INTER-COUNTY COOPERATIVE CORPORATION

**ALSO APPEARING:**

Sherman Goodpaster, Esq.

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**WITNESS: CAROL FRALEY**

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1                   The witness, **CAROL FRALEY**, after first  
2 being duly sworn, was examined and testified as  
3 follows:

4                                   EXAMINATION

5 BY MR. SAMFORD:

6                   Q           Ms. Fraley, do you mind to just  
7 go ahead and state your name for the record?

8                   A           My name is Carol Hall Fraley.

9                   Q           My name is David Samford. I'm an  
10 attorney for East Kentucky Power Cooperative and  
11 Charleston Bottoms. With me is Sherman Goodpaster,  
12 who is the senior corporate counsel for East  
13 Kentucky Power and also here on behalf of  
14 Charleston Bottoms.

15                                 And what we want to do today is just kind of  
16 ask you some questions about the lawsuit that you  
17 filed in the Mason Circuit Court, or Grayson has  
18 filed in the Mason Circuit Court, and try to get a  
19 better understanding of the claims that you've made  
20 and some of the issues that are raised in our  
21 counterclaim.

22                                 So have you given your deposition before?

23                   A           I have given a deposition before.

24                   Q           So you're generally familiar with  
25 how this process works?

1 A Yes.

2 Q If there's any question that I  
3 ask that you don't understand, just feel free to  
4 ask me to rephrase it. I'd be happy to do so. I'm  
5 not trying to trick you or anything. I'm just  
6 trying to understand the issues and understand  
7 facts.

8 Let's see, let me just start out by asking  
9 you, what is your current title and position here at  
10 Grayson?

11 A I'm president and CEO.

12 Q Okay. And how long have you been  
13 in that position?

14 A Since 1994.

15 Q And what did you do before  
16 assuming that role?

17 A I was manager of member services.

18 Q Here at Grayson?

19 A Here at Grayson.

20 Q And how long were you in that  
21 capacity?

22 A Seventeen years.

23 Q Okay. And then what did you do  
24 before that?

25 A Went to college.

1 Q What is really your  
2 responsibility as the president and CEO of Grayson?  
3 A To oversee the day-to-day  
4 activities and carry out the direction of the board  
5 and the governance of the co-op.  
6 Q So do all of the employees of the  
7 co-op report to you --  
8 A Yes.  
9 Q -- either directly or indirectly?  
10 A Yes.  
11 Q And then you report to the board?  
12 A Yes.  
13 Q Okay. Are there any other  
14 employees who would report directly to the board or  
15 would it all be through you?  
16 A All the employees would be  
17 through me.  
18 Q I want to just kind of jump to  
19 it, and let's talk about some of the issues that  
20 are in the complaint. I should have a copy of all  
21 of the documents. If you'd like to have a copy of  
22 the complaint, I can provide that for you, but  
23 that's kind of where I want to start, just talking  
24 about some of the allegations in that. Would you  
25 like to have a copy of that, to see or reference?

1           A           Do I need one? Let's start and  
2 then we'll see.

3           Q           Okay. Well, and I think it's  
4 Paragraph 4 of your complaint, you make the  
5 allegation that each of the Defendants -- and the  
6 defendants in this case at the time of the filing  
7 of the complaint are East Kentucky Power  
8 Cooperative, Inc. and Charleston Bottoms Rural  
9 Electric Cooperative Corporation -- that each of  
10 those two companies are owned by the Plaintiff.  
11 And there's no dispute that East Kentucky is owned  
12 by Grayson, it's one of the 16 owners, but is it  
13 your opinion that Charleston Bottoms is also owned  
14 by Grayson?

15           A           Yes.

16           Q           And what is the basis for that  
17 opinion?

18           A           The participation of Grayson's  
19 director as a Charleston Bottoms director, the  
20 financial reports, the responsibility for the debt  
21 at the creation of Charleston Bottoms, and a number  
22 of other things along those lines.

23           Q           Okay. I wrote down participation  
24 there of the director and then participation of  
25 financing. Was there a third one that you

1 mentioned?

2 A No. I think that pretty well  
3 sums it up.

4 Q And prior to the filing of your  
5 complaint and Grayson's complaint in the Mason  
6 Circuit Court, did you undertake any sort of  
7 personal investigation as to the ownership of  
8 Charleston Bottoms RECC?

9 A No.

10 Q Who did you rely upon to -- well,  
11 let me first ask, did anybody tell you that  
12 Charleston Bottoms is owned by Grayson?

13 A Yes.

14 Q Okay. And who was it that told  
15 you that?

16 A Our previous managers and  
17 previous directors who served on the East Kentucky  
18 board.

19 Q And do you mind to tell me what  
20 their names are?

21 A One was Harold Haight,  
22 H-A-I-G-H-T, and John L. Burton.

23 Q And was there anyone else that  
24 had told you that?

25 A Not that served in either of

1 those capacities, no.

2 Q Well, was there anybody else who  
3 had told you that Grayson was an owner of  
4 Charleston Bottoms?

5 A John Clevinger, who was a  
6 director, but not an East Kentucky director.

7 Q And what is he a director of?

8 A He was a former director of  
9 Grayson.

10 Q And when did you have -- was  
11 there anybody else? I'm sorry.

12 A Not that I could think of, no.  
13 Just general knowledge.

14 Q Okay. And when did you have  
15 those conversations, approximately?

16 A Well, I've been here 34 years, so  
17 off and on during my tenure here.

18 Q Have you had any of those  
19 conversations in, say, the last six months?

20 A No, I don't think so.

21 Well, Mr. Clevinger called me just a week or  
22 so ago, but that's an ongoing thing.

23 Q It was after the lawsuit had been  
24 filed?

25 A Uh-huh (affirmative).



1 Q Okay. So apart from talking to  
2 these three gentlemen, is there any other one who  
3 told you that Grayson was an owner of Charleston  
4 Bottoms?

5 A Not that I can think of directly,  
6 no.

7 Q Okay. So other than the  
8 conversations with these three gentlemen, is there  
9 anything that you relied on to conclude in your  
10 mind that Grayson is an owner of Charleston  
11 Bottoms?

12 A Well, like I said, the financing,  
13 the liability for the debt, the annual meetings  
14 that we had where one of our directors served as a  
15 Charleston Bottoms director, a number of business  
16 activities.

17 Q Okay. So business activities,  
18 then, and these conversations.

19 Do you happen to know if anybody under your  
20 supervision, directly or indirectly, tried to  
21 examine whether or not Grayson was an owner of  
22 Charleston Bottoms?

23 A Not that I'm aware of, other than  
24 just researching things for Mr. Scott.

25 Q And I don't want to ask anything

1 that would be a privilege thing, but can you kind  
2 of elaborate on that statement a little bit in  
3 terms of -- I assume by Mr. Scott you mean your  
4 counsel?

5 A Uh-huh (affirmative).

6 Q So you're saying that people who  
7 work for you would have done some due diligence on  
8 the ownership issue at Mr. Scott's behest?

9 A Yes.

10 Q Okay. Did you look at any  
11 documents that suggest that Grayson is an owner of  
12 Charleston Bottoms?

13 A Yes.

14 Q And what documents did you look  
15 at?

16 A Various pieces of information  
17 that have accumulated over the years, financial  
18 reports, mortgage documents, excerpts from the  
19 board minutes, those types of things.

20 Q Okay. Did you come across  
21 anything that you recall that said very directly  
22 that Grayson is an owner of Charleston Bottoms?

23 MR. SCOTT: Note my objection to the form  
24 of the question as to the term "directly."  
25 I don't know if that's, for purposes of

1           this question, capable of specific  
2           determination sufficient to answer, but if  
3           she can, then go ahead and answer.

4       BY MR. SAMFORD:

5           Q           It wasn't asked very well. Let  
6       me try again.

7           Were you aware of anything that -- more in  
8       the nature of like a membership certificate or  
9       anything that specifically said that Grayson is an  
10      owner of Charleston Bottoms?

11           A           No.

12           Q           Did you come across any documents  
13      that would tend to suggest that Grayson is not an  
14      owner of Charleston Bottoms?

15           A           No.

16           Q           Approximately how many documents  
17      do you think you would have looked at?

18           A           Oh, I can't imagine. I don't  
19      know.

20           Q           Was it more than ten?

21           A           I would think.

22           Q           More than a hundred?

23           A           No.

24           Q           And, again, just kind of give me  
25      a general time frame for when you might have looked

1 at some of these documents.

2 A I've been looking at these  
3 documents probably for the last two or three years.

4 Q Okay. With this issue  
5 specifically in mind?

6 A I don't -- I'm not sure I  
7 understand what you're asking me.

8 Q Sorry. Another poorly-worded  
9 question. Thanks for stopping me.

10 When you were looking at these documents, I  
11 mean, was it for the purpose of determining whether  
12 Grayson was an owner of Charleston Bottoms or was  
13 there some other purpose that you were looking --

14 A I think it was more along the  
15 lines of what is Charleston Bottoms and exactly  
16 what does it do, you know, how it functions, what  
17 its major purposes are, because it's always been a  
18 little bit of a gray area, other than the fact that  
19 we owned it and used it to finance and, you know,  
20 helped East Kentucky.

21 Q Okay.

22 A So not with the intention of any  
23 litigation or anything like that. Just for  
24 informational purposes.

25 Q And when you use the pronoun

1 "we," "we owned it," you're referring to Grayson?

2 A Yes, and member systems.

3 Q Have you talked to anybody at  
4 East Kentucky Power about Charleston Bottoms?

5 A Intermittently.

6 Q Do you remember who you might  
7 have talked to?

8 A Not specifically, no.

9 Q And you don't -- if you don't  
10 remember who, then you probably don't remember  
11 when?

12 A No.

13 Q Okay. Do you remember any  
14 statements that anybody at East Kentucky might have  
15 made about the ownership of Charleston Bottoms to  
16 you?

17 A Just what was said in the board  
18 meeting. Just general information.

19 Q Okay. Is it your position that  
20 Grayson has had an ownership interest in Charleston  
21 Bottoms since Charleston Bottoms was created in  
22 1971?

23 A Yes.

24 Q Let me go through a series of  
25 documents just to kind of walk through these, and

1 these were all provided to you in the course of  
2 discovery. Just put these over here for ease of  
3 convenience.

4 A Uh-huh (affirmative).

5 Q That's Volume 1.

6 THE WITNESS: Sherman, how much stuff did  
7 you all bring?

8 MR. GOODPASTER: Brought that.

9 BY MR. SAMFORD:

10 Q This is Volume 2. And so have  
11 you seen these two binders before?

12 A No.

13 Q Okay. If I told you that they  
14 were the documents that East Kentucky and  
15 Charleston Bottoms had produced to Grayson in  
16 response to Grayson's data request, would you have  
17 any reason to doubt that?

18 A No, I don't think so. I've not  
19 seen them, but I can't imagine.

20 Q Okay.

21 MR. SCOTT: Can't imagine that any  
22 representative of East Kentucky would  
23 represent something as a fact that wouldn't  
24 be a fact.

25

1 BY MR. SAMFORD:

2 Q Sure. Well, what we've got here  
3 is the -- I think about 1,800 pages of documents  
4 that have been produced. I think they were  
5 produced December 14th, and so I guess we're about  
6 a month later. You haven't seen these?

7 A No.

8 Q Do you know if anybody under your  
9 supervision has seen them?

10 A No.

11 Q Do you know if they've been  
12 shared with your board?

13 A No.

14 Q What I would like to do is start  
15 out -- if you would look at Volume 1, and you'll  
16 notice there that on the bottom of each page I  
17 think it should have a -- well, the first -- the  
18 first few pages there are actually the actual  
19 answers themselves. So if you'd flip over to the  
20 first tab --

21 A Okay.

22 Q -- and you'll see there in the  
23 lower right-hand corner that each of those  
24 documents has essentially what amounts to a page  
25 number.

1 A Uh-huh (affirmative).

2 Q Says EKPC, I think, starting out  
3 with 0001. If you don't mind to flip over to  
4 Page 3 and Page 4.

5 A (Witness complies.)

6 Q For the sake of simplicity, so  
7 that we don't have to attach both of these volumes  
8 which have almost 2,000 pages, what I've done is  
9 I've made a few copies of the documents as we go  
10 forward. I think I've got enough there for  
11 everybody.

12 A I have this in my file, if you  
13 want to keep that.

14 MR. SAMFORD: Okay. And this one we'll  
15 make as Exhibit 1.

16 (Exhibit No. 1 was marked.)

17 BY MR. SAMFORD:

18 Q So if you don't mind to tell me,  
19 what is that document that's labeled EKPC-0003?

20 A It looks like the organizational  
21 meeting minutes.

22 Q And if you don't mind, go down to  
23 the next to last item on that first page.

24 A On 03?

25 Q Yes, Page 3.



1           A           Okay.

2           Q           And take a moment to read that.

3           If you don't mind to, go ahead and just read that

4           out loud.

5           A           All right.

6           Q           Do you mind to go ahead and just

7           read that out loud?

8           A           Read it out loud?

9           Q           Please.

10          A           "The Chairman reported that East

11          Kentucky RECC, by resolution of Board of Directors,

12          has officially applied for membership in Charleston

13          Bottoms Rural Electric Cooperative Corporation.

14          Upon motion by Charles Foley, seconded by James

15          Patterson and passed by all the Incorporators that

16          East Kentucky be accepted as a member of Charleston

17          Bottoms Rural Electric Cooperative Cooperation."

18          Q           And so would you agree with me

19          that this document reflects that East Kentucky

20          Power was voted upon by the board of Charleston

21          Bottoms to become a member of Charleston Bottoms?

22          A           To become -- yes.

23          Q           Okay. Are you aware of any such

24          document that evidences the board of Charleston

25          Bottoms making a similar motion and passing it with

1 regard to Grayson?

2 A No.

3 Q Okay. So would you agree with  
4 me, then, that Grayson is not a member of  
5 Charleston Bottoms?

6 A No.

7 Q Help me understand that.

8 A Because the members of Charleston  
9 Bottoms voted to allow East Kentucky to become a  
10 member.

11 Q Okay. But that's not how I  
12 understand this document. I mean, I understand  
13 this to say that it's the board of directors of  
14 Charleston Bottoms that's voted to accept East  
15 Kentucky's application.

16 MR. SCOTT: Let me know the -- is that a  
17 question or are you just stating what your  
18 understanding is?

19 MR. SAMFORD: Yeah, I'm asking if she  
20 disagrees with that, and if so, why.

21 A I do disagree with that, because  
22 this was the advisory council of the incorporated  
23 members acting on behalf of those incorporated  
24 members to allow East Kentucky to become a member.  
25 And I believe it says that.

1 Q Okay. Now, say that again, I'm  
2 sorry.

3 A I said this is the advisory  
4 committee of the incorporated members who voted to  
5 allow East Kentucky to become a member.

6 Q Okay. I'm not familiar with the  
7 term "advisory committee."

8 A Well, it's right above it. It  
9 says that Mr. Ardery, attorney, acted as temporary  
10 chairman and called the meeting to order and  
11 announced that all incorporators (composed of East  
12 Kentucky RECC Board of Directors' Advisory  
13 Committee) were in attendance as follows, and they  
14 are the ones who voted to allow East Kentucky to  
15 become a member, if I read that correctly.

16 Q Okay. So is it your  
17 understanding, then, that the incorporators are not  
18 the members of Grayson -- or are not the members of  
19 Charleston Bottoms at the time --

20 A No.

21 Q -- of January 11, 1971?

22 A It is my understanding that all  
23 those incorporators are members of Charleston  
24 Bottoms, and this is the advisory committee acting  
25 on their behalf.

1 Q Okay. I'm still not sure I  
2 understand the concept of an advisory committee.

3 A Well, it's simply like our board  
4 at East Kentucky, who has an executive committee  
5 who makes certain decisions for the board. I think  
6 it follows suit along the same lines. And I'm sure  
7 Sherman's familiar with that.

8 Q So that those who are in  
9 attendance who make up this advisory committee  
10 are -- there are seven individual names that are  
11 mentioned there.

12 A Yes.

13 Q And it's your position that they  
14 are not incorporators?

15 A It's my position that they were  
16 selected from the full board to represent that full  
17 board in making these decisions.

18 Q Okay.

19 A They were empowered to make  
20 certain decisions.

21 Q They were selected by the full  
22 board?

23 A Right, they are members of the  
24 full board and --

25 Q The full board of who, first of

1 all?

2 A The full board of East Kentucky  
3 and of Charleston Bottoms.

4 Q And they were selected to --

5 A Represent that full board, those  
6 seven.

7 Q So -- but at the same time it's  
8 your -- I want to make sure I'm clear on this.  
9 It's your position that they were not the  
10 incorporators of Charleston Bottoms?

11 A I think the whole board was the  
12 incorporators and these seven were their  
13 representatives.

14 Q Have you looked at the Articles  
15 of Incorporation of Charleston Bottoms?

16 A Yes.

17 MR. SAMFORD: Okay. Let me hand you this  
18 document. We'll mark this as Exhibit B --  
19 or, I'm sorry, Exhibit 2. And this would  
20 be Pages 823 through 828 of the information  
21 you have there.

22 (Exhibit No. 2 was marked.)

23 BY MR. SAMFORD:

24 Q Can you take a minute and  
25 identify that document for me?

1           A           It looks like the Articles of  
2 Incorporation of Charleston Bottoms Rural Electric.

3           Q           And since you've looked at  
4 Charleston Bottoms' Articles before, then I presume  
5 you've seen this document before?

6           A           I believe so.

7           Q           Okay. Who are the individuals  
8 who have subscribed their names to the Articles  
9 that were filed on December 23rd, 1971?

10          A           It looks like -- I can't hardly  
11 see the first one. I am assuming it's Albert  
12 Dickens, James Patterson, Phil Depp, Elvin  
13 Langford, Bill Wells, Charles Foley and Thomas  
14 Barker.

15          Q           And so is that not the same list  
16 of people who are identified as the incorporators  
17 on the January 11th, 1972 organizational meeting  
18 minutes?

19          A           Acting on behalf of the rest of  
20 the -- of all the co-ops.

21          Q           Okay. That was not my question.  
22 My question was whether they're the same  
23 individuals.

24          A           I believe it is the same list of  
25 names.

1 Q Okay. So just to make sure I  
2 understand, it's your position that these  
3 individuals who are the incorporators of Charleston  
4 Bottoms did not have the authority to accept East  
5 Kentucky as a member of Charleston Bottoms?

6 A I believe it says that these  
7 directors who -- are to manage the affairs of the  
8 corporation until the first annual meeting of the  
9 members or until their successors shall have been  
10 selected and shall have been qualified. So that  
11 tells me that they were acting on behalf of the  
12 rest of the members.

13 Q So it's your position that these  
14 incorporators were acting on behalf of the members  
15 of East Kentucky?

16 A Of the member systems of East  
17 Kentucky, yes.

18 Q Okay. And so is it your  
19 position, then, that when it refers to members in  
20 these organizational meeting minutes for Charleston  
21 Bottoms, that that is in fact a reference to the  
22 members of East Kentucky and not the members of  
23 Charleston Bottoms?

24 A I think they're one and the same.

25 Q Okay. Are you familiar with

1 the -- well, let me back up.

2 What are the requirements for becoming a  
3 member of Charleston Bottoms?

4 A I don't know. Are they listed  
5 here in the Articles of Incorporation?

6 Q Well, I'm just trying to  
7 understand what your understanding is.

8 A I understand that as a member of  
9 East Kentucky Power that Grayson had the right  
10 to -- or the obligation, or chose to be a part of  
11 that obligation, to help form and finance  
12 Charleston Bottoms to build a plant so we would  
13 have our own power supply. And I understand that  
14 Grayson had the rights as a member to help govern  
15 Charleston Bottoms.

16 Q But there's a little bit  
17 difference, there's a little bit of a nuance,  
18 perhaps, between having the ability to participate  
19 in the governance of Charleston Bottoms and being  
20 an actual member of Charleston Bottoms.

21 A And I think that's a matter of  
22 interpretation.

23 Q Okay. So if I told you that  
24 Charleston Bottoms -- or that Grayson is not a  
25 member of Charleston Bottoms, you would just



1 disagree with that?

2 A I disagree with it, yes.

3 MR. SAMFORD: Okay. Let me come back to a  
4 different document. Hand you this one.  
5 This will be Exhibit 3.

6 (Exhibit No. 3 was marked.)

7 MR. SAMFORD: Exhibit 1 is the January 11th  
8 organizational minutes and No. 2 is the  
9 Articles of Incorporation.

10 MR. SCOTT: So we're going numbers instead  
11 of letters now?

12 MR. SAMFORD: Yes.

13 Q Can you identify that document  
14 for me?

15 A It looks like the minutes of the  
16 regular meeting of directors on January 11th, 1972.

17 Q Okay. And that was the directors  
18 of what corporation?

19 A It says the board of directors of  
20 East Kentucky Rural Electric Cooperative  
21 Corporation.

22 Q And so East Kentucky Rural  
23 Electric is now East Kentucky Power?

24 A Yes.

25 Q And so if you don't mind, flip

1 over to -- I think it's Page 3 of that document.  
2 A Uh-huh (affirmative).  
3 Q And then the next to last item  
4 there starts out, "The manager reported."  
5 A Uh-huh (affirmative).  
6 Q Do you happen to know who the  
7 manager was in 1973 -- or '72?  
8 A I don't know. I'm not sure.  
9 Q Okay.  
10 A Little before my time.  
11 Q I think it's actually answered  
12 maybe in the third line of that same page.  
13 A The third line of that page?  
14 Q Yes, I'm sorry.  
15 A Okay.  
16 Q And would that be H.L. Spurlock?  
17 A Yes.  
18 Q In fact, the Charleston Bottoms  
19 power plant, that became the Spurlock station;  
20 correct?  
21 A Yes, I believe so.  
22 Q Named after him. So do you mind  
23 to read that paragraph that is the next to last  
24 item on the third page of this minutes?  
25 A The whole paragraph?

1 Q Please.

2 A "The Manager reported that in  
3 accordance with the previously approved Financing  
4 Plan that a new Rural Electric Cooperative  
5 Corporation had been organized as outlined in the  
6 plan. This new cooperative had been organized and  
7 issued a charter by the Kentucky Secretary of State  
8 on December the 30th, 1971, under the name of  
9 Charleston Bottoms Rural Electric Cooperative  
10 Corporation. Under the plan, East Kentucky RECC  
11 would be the sole member of Charleston Bottoms  
12 RECC. A motion was made by Rudolph Rogers,  
13 seconded by Roy Gray and passed to authorize East  
14 Kentucky RECC to become a member of Charleston  
15 Bottoms RECC."

16 Q Okay. And so would you agree  
17 with me that Mr. Spurlock would have a pretty good  
18 idea of what the plan for Charleston Bottoms was?

19 A I would think so.

20 Q And so would you agree with me  
21 here that he states that East Kentucky would be the  
22 sole member of Charleston Bottoms?

23 A The sole member, yes.

24 Q And the East Kentucky board  
25 passed the motion to authorize East Kentucky to

1           become a member of Charleston Bottoms?

2           A           Yes, but I think you and I  
3           disagree on the context of "member" in this  
4           paragraph.

5           Q           Okay. Help me understand.

6           A           Well, that's just like Grayson  
7           has members who use the service provided by  
8           Grayson, and East Kentucky would be the sole member  
9           using the service provided by the Charleston  
10          Bottoms Corporation, and that the member owners  
11          were the member systems, but they would be the  
12          consumer in this situation.

13          Q           Okay. So let me use the context  
14          of Grayson. Is it your position that the members  
15          of Grayson are also the owners of Grayson?

16          A           Yes.

17          Q           And so the members of East  
18          Kentucky would also be the owners of East Kentucky?

19          A           The members of East Kentucky  
20          would also be -- yes.

21          Q           But it's your position that  
22          people who are not members of Charleston Bottoms  
23          would be the owners of Charleston Bottoms?

24          A           I don't think that's the case.  
25          They were all member owners.

1 Q Okay. So it seems like we come  
2 back to this issue of whether in fact Grayson is a  
3 member of Charleston Bottoms.

4 A (Witness nods head.)

5 Q If Grayson is a member of  
6 Charleston Bottoms, then it would also be an owner  
7 of Charleston Bottoms?

8 A It's an owner by virtue of our  
9 participation with financing, making -- liability,  
10 and those types of issues. East Kentucky would be  
11 the user of the product of Charleston Bottoms.

12 Q Okay. And I think -- I think  
13 this is a very important distinction, because you  
14 seem to be drawing a distinction between a member  
15 who uses the power produced by a co-op and a member  
16 who owns the co-op?

17 A Uh-huh (affirmative).

18 Q And what I understand you to be  
19 saying is that you can be a member for ownership  
20 purposes, but not necessarily for purchasing the  
21 power?

22 A I think there's a difference  
23 between the liability for the debt and the actions  
24 of a corporation, and in using the product provided  
25 by -- or produced by a corporation.

1 Q So coming back to the East  
2 Kentucky board meeting minutes from January 11th,  
3 1972, you would agree with me that only East  
4 Kentucky became a member of Charleston Bottoms on  
5 that day?

6 A That corporation was not going to  
7 sell power to anyone besides East Kentucky Power.

8 Q Okay. So you think that this is  
9 just membership for the purposes of purchasing  
10 power?

11 A Yes, and building the plants.

12 Q Does Grayson have any members who  
13 purchase power from Grayson, but are not owners of  
14 Grayson?

15 A No.

16 Q Does East Kentucky have any  
17 members who purchase power from East Kentucky, but  
18 who are not owners of East Kentucky?

19 A I don't know.

20 Q Do you think that there are any  
21 such -- are you aware of any such?

22 A We have all systems sales. So I  
23 would say, yes, there are probably people who  
24 buy -- or corporations who buy power from East  
25 Kentucky Power who are not members, but that is

1 with the blessing of the board for off-system  
2 sales.

3 Q And that wasn't exactly what I  
4 was asking. Are you aware of any members of East  
5 Kentucky who would purchase power from East  
6 Kentucky, but would not be considered to be an  
7 owner of East Kentucky?

8 A Not that I'm aware of, no.

9 Q In other words, the ownership of  
10 East Kentucky is strictly among its 16 members?

11 A Uh-huh (affirmative).

12 Q And ownership of Grayson is  
13 strictly among its 15,000 some members?

14 A Yes.

15 Q Okay. Let me ask you to flip  
16 over to Page 842 of Volume 1.

17 A In here?

18 Q Yes.

19 A Don't have it in this one. I  
20 have 822.

21 Q Okay. It looks like we're into  
22 Volume 2, so we're half done.

23 A Good. 842?

24 MR. SAMFORD: Yes. And this will be  
25 labeled as Exhibit 4.

1 (Exhibit No. 4 was marked.)  
2 BY MR. SAMFORD:  
3 Q Can you tell me what that  
4 document is, what type of an agreement that is?  
5 A It says, "Loan Contract  
6 Amendment."  
7 Q Okay. I think this is commonly  
8 referred to as the REA Participation Agreement.  
9 A Uh-huh (affirmative).  
10 Q It's part of the Big Rivers --  
11 sorry, the Charleston Bottoms financing plan.  
12 A Uh-huh (affirmative).  
13 Q And this particular copy is --  
14 who are the parties to that?  
15 A This one says Big Sandy.  
16 Q Okay. And then who is the  
17 counterparty?  
18 A United States government, is that  
19 what you're asking?  
20 Q Correct.  
21 A Okay.  
22 Q And so that would be the United  
23 States of America acting through the  
24 administrator --  
25 A Rural Electrification.



1 Q -- Administration?

2 Would you mind to go down to Section 3 of  
3 that agreement?

4 A I'm going to get it out. I can't  
5 see it. Okay.

6 Q And it's, I believe, starting  
7 with the second line.

8 A Let's see, "Hereinafter  
9 collectively called the 'Project'", is that Section  
10 3?

11 Q Section 3, yeah, the second --  
12 the second sentence.

13 A Okay. Second sentence. "It is  
14 contemplated that the project will be owned by  
15 Charleston Bottoms Rural Electric Cooperative  
16 Corporation (Charleston Bottoms, a subsidiary of  
17 East Kentucky Rural Electric Cooperative  
18 Corporation, and that the capacity of the Project  
19 will be purchased by East Kentucky from Charleston  
20 Bottoms."

21 Q Okay. And do you mind to read  
22 the first part of the next sentence as well?

23 A "Currently with this agreement,  
24 the Government is entering into similar agreements  
25 with 15 other distribution cooperatives, which

1 together with the Borrower are served through East  
2 Kentucky's resources under contracts with East  
3 Kentucky (the Borrower and such other distribution  
4 cooperatives hereinafter -- being hereinafter  
5 collectively called the 'Participating Distribution  
6 Cooperatives')."

7 Is that enough?

8 Q Sure, that's enough.

9 A Okay.

10 Q Thank you. And so what is the  
11 project that's being talked about in this  
12 agreement, do you know?

13 A Not -- no, I don't.

14 Q I'll represent to you that it's  
15 the financing of what would become the Spurlock  
16 unit.

17 A The first one?

18 Q Correct. And that was the unit  
19 for which the Charleston Bottoms was created --

20 A Okay.

21 Q -- to finance the vehicle.

22 The last sentence that you said, said that  
23 concurrently with this agreement, the Government is  
24 entering into 15 similar agreements with other  
25 borrowers, or with other distribution cooperatives.

1 Do you happen to know if Grayson entered into a loan  
2 participation agreement with REA?

3 A At that time, I don't know for  
4 sure, no.

5 Q Okay.

6 A I don't know.

7 Q Would that -- if Grayson had in  
8 fact done that, would that document still be in  
9 existence?

10 A I would think.

11 Q Where do you think it might be  
12 located?

13 A I would hope here.

14 Q Okay. Who would have access to  
15 it?

16 A Well, it would be in our lock  
17 box, or Mr. Scott would have it, or it would be  
18 attached to board minutes at that particular point  
19 in time.

20 Q And the sentence immediately  
21 before that, when it was talking about what the  
22 contemplation would be for the project, how was  
23 Charleston Bottoms characterized in its  
24 relationship to East Kentucky Power?

25 A I should have left this out. I

1 can't see it. It says, "A subsidiary of East  
2 Kentucky Rural Electric Cooperative Corporation."

3 Q And in your experience as a  
4 manager, what is the nature of a subsidiary  
5 relationship?

6 A Someone who contracts to.

7 Q Someone who contracts. Please  
8 elaborate on that.

9 A Someone who has some connection  
10 at a lower level, or another level of production or  
11 management, or what have you.

12 Q Okay. So does Grayson have any  
13 subsidiaries?

14 A No.

15 Q If Grayson did have a subsidiary,  
16 would Grayson be the owner of that subsidiary?

17 A At least part owner. I mean, we  
18 could be in partnership with someone.

19 Q But it would have an ownership  
20 interest?

21 A I would think it would have some  
22 contractual arrangement.

23 Q You can't really have a  
24 subsidiary that you don't own?

25 A Right.

1 Q If you don't mind to flip over to  
2 Page 848 now.

3 A All right.

4 Q Take a moment to look at that  
5 document.

6 A (Witness reviews document.)

7 MR. SAMFORD: And this will be Exhibit 5.

8 (Exhibit No. 5 was marked.)

9 BY MR. SAMFORD:

10 Q This is another loan agreement  
11 and Big Sandy Rural Electric Cooperative  
12 Corporation is one of the signatories to that, but  
13 do you mind to tell me who the other signatory is?

14 A On this page or the --

15 Q Well, yeah, the -- or you can  
16 just look at the front page, the beginning there,  
17 who the counterparty is?

18 A The National Rural Utilities CFC.

19 Q Correct. And what is CFC?

20 A CFC is the National Rural  
21 Utilities Cooperative Finance Corporation. Someone  
22 that we borrow money through.

23 Q Okay. The document that we just  
24 previously looked at was commonly referred to as  
25 the REA Participation Agreement. This document is

1 known as the CFC Participation Agreement?

2 A Uh-huh (affirmative).

3 Q If you don't mind to look in the  
4 second paragraph, the second "Whereas" paragraph,  
5 if you could just read that paragraph out loud.

6 A "Whereas, the Borrower and 15  
7 other electric distribution co-ops" --

8 Q I'm sorry, the paragraph after  
9 that, the second "Whereas."

10 A "Whereas East Kentucky"; right?

11 Q Correct?

12 A "Whereas, East Kentucky, in order  
13 to meet the increasing wholesale power requirements  
14 of the Distribution Cooperatives, has proposed the  
15 construction of electric generating and  
16 transmission facilities (herein called the  
17 'Project') consisting of a 300-megawatt generating  
18 unit, to be located near Maysville, Kentucky, and  
19 approximately 110 miles of transmission line and  
20 related facilities estimated to cost \$125,000,000;  
21 and has further proposed that the Project be owned  
22 by Charleston Bottoms Rural Electric Cooperative  
23 Corporation (herein called 'Charleston Bottoms')  
24 which is owned -- which is owned a controlled" --  
25 I'm sure it meant "and" -- "controlled by East

1 Kentucky, and that the capacity of the Project be  
2 purchased by East Kentucky from Charleston Bottoms;  
3 and."

4 Q So a little bit earlier you were  
5 drawing a distinction between the purchase of  
6 electricity from Charleston Bottoms and the  
7 ownership of Charleston Bottoms, but this document  
8 indicates to me that Charleston Bottoms is both  
9 owned and controlled by East Kentucky. Do you  
10 disagree with what that says?

11 A I disagree with that, because  
12 East Kentucky is the member systems. It's owned by  
13 the member systems.

14 Q Okay. But let me back up. That  
15 wasn't what I asked. Do you agree that that is  
16 what this document says, even if it's not --  
17 doesn't reflect your personal opinion?

18 MR. SCOTT: Note my objection. Document  
19 speaks for itself. Plus it's just a  
20 recitation. It's not a certificate of  
21 title, it's not a certificate of ownership.  
22 It's a recitation in an agreement that has  
23 only that meaning.

24 BY MR. SAMFORD:

25 Q Okay. You can still answer,





1 A Yes.

2 Q Okay. Would you agree to produce  
3 those documents if we requested them?

4 A Yes, if they --

5 MR. SCOTT: We would take that under  
6 submission under a document request, in  
7 accordance with the civil rules.

8 BY MR. SAMFORD:

9 Q Okay. Let me ask you to flip now  
10 to Page 1050.

11 A All right.

12 MR. SAMFORD: What I've got here are 1050  
13 and 1051, which we'll actually make  
14 exhibits to this, for the interest of  
15 saving paper, but the full and complete  
16 copies are there in the documents that have  
17 been produced in front of you.

18 (Exhibit No. 6 was marked.)

19 BY MR. SAMFORD:

20 Q Do you mind to tell me what that  
21 document purports to be?

22 A It says, "REA Borrower  
23 Designation."

24 Q Okay. And the next line, what's  
25 typed in?

1           A           This one says, "Kentucky 59," and  
2           in parentheses, "(Kentucky 63), the -- within  
3           Construction, Operation and Maintenance and Power  
4           Sales Agreement dated June 12th, 1973, between the  
5           two borrowers."

6           Q           And this agreement is frequently  
7           referred to as the Power Sales Agreement?

8           A           (Witness nods head.)

9           Q           And flipping over the page to  
10          Page 1051 --

11          A           Uh-huh (affirmative).

12          Q           -- who is this agreement between?

13          A           This is East Kentucky Rural  
14          Electric Cooperative Corporation (hereinafter  
15          called "East Kentucky") and Charleston Bottoms  
16          Rural Electric Cooperative Corporation (hereinafter  
17          called "CB").

18          Q           Okay. And so I would represent  
19          to you that this is, again, part of the financing  
20          transaction for Charleston Bottoms, and this is the  
21          agreement between Charleston Bottoms and East  
22          Kentucky whereby East Kentucky agrees to construct,  
23          maintain and operate the Charleston Bottoms power  
24          station, and then also to purchase power from it,  
25          which was a key part of that.

1           Look at the paragraph below what you just  
2 read. It's the first "Whereas" clause. I'd like  
3 you to read that, please.

4           A           It says, "Whereas, East Kentucky  
5 is responsible for supplying substantially all the  
6 power and energy requirements of its eighteen  
7 member electric distribution cooperatives and is  
8 the only member of CB."

9           Q           Okay. And so this document, too,  
10 supports the proposition that East Kentucky is the  
11 only member of Charleston Bottoms?

12           MR. SCOTT: Note my objection. That's not  
13 a question. That's an assertion.

14           MR. SAMFORD: Okay.

15           MR. SCOTT: And, again, that's a recitation  
16 in a document. That is not indicia of  
17 ownership of anything.

18 BY MR. SAMFORD:

19           Q           Okay. But you'll agree that the  
20 document says what it says?

21           A           I will agree that the document  
22 says what it says, but if East Kentucky is the sole  
23 owner of Charleston Bottoms, why would they need a  
24 contract?

25           Q           Because it's part of the

1 overall -- would you agree that it would be because  
2 it's part of the overall financial transaction?

3 A Not unless there's somebody else  
4 involved.

5 Q Okay. Do you have any experience  
6 in project finance?

7 A Just what we've done here at  
8 Grayson with our lending from RUS.

9 Q And if you are a lender on a  
10 project to construct a power station, is it an  
11 important consideration to know that there will be  
12 a purchaser for that power?

13 A I would hope so.

14 Q And so if you were a lender,  
15 would you require the developer of the project to  
16 have a contract for someone to purchase the power  
17 that you're going to be producing --

18 MR. SCOTT: Note my objection.

19 BY MR. SAMFORD:

20 Q -- before you would make that --

21 MR. SCOTT: This witness hasn't been  
22 qualified as an expert on lending practices  
23 for the construction of power plants. But  
24 if she can answer, go ahead.

25 A I really don't know.

1 Q Okay. And I'm not asking you to  
2 speculate.

3 A Okay.

4 Q If you don't know, that's fine.  
5 Let me ask you to flip back now a few pages  
6 to Page 1031.

7 A Okay.

8 (Exhibit No. 7 was marked.)

9 BY MR. SAMFORD:

10 Q This will be labeled as Exhibit  
11 7. Do you mind to read the -- what's typed there  
12 on that cover page?

13 A "U.S. Department of Agriculture  
14 Rural Electrification Administration, REA Borrower  
15 Designation Kentucky 59 (Kentucky 63). The within  
16 System Agreement dated June the 12th, 1973, with  
17 Bankers Trust Company (Trustee under Deed of Trust  
18 from Kentucky 63)."

19 You want me to read the rest of it,  
20 "Submitted by the above designated borrower"?

21 Q No. That's fine.

22 A Okay.

23 Q This agreement is known commonly  
24 as the System Agreement; it's all part of the same  
25 financing transaction for Charleston Bottoms?

1 A Uh-huh (affirmative).

2 Q If you would look at Page 1033,  
3 four pages over.

4 A Okay.

5 Q Coming down to the fourth  
6 para- -- or I'm sorry, the fifth paragraph, but the  
7 fourth "Whereas" paragraph --

8 A Uh-huh (affirmative).

9 Q -- would you mind to read that  
10 out loud, please?

11 A ,Whereas East Kentucky is the  
12 sole member of and controls CB, and the  
13 Participating Members and two other rural electric  
14 distribution cooperatives constitute the entire  
15 membership of East Kentucky and the Participating  
16 Members often -- obtain substantially all of their  
17 electric power and energy requirements from East  
18 Kentucky and, in order to obtain for East Kentucky  
19 the source of power and energy to be made available  
20 to East Kentucky by CB pursuant to the Power Sales  
21 Agreement and in order to induce the Purchasers to  
22 make available a substantial portion of the  
23 necessary financing, East Kentucky and the  
24 Participating Members desire to agree to and accept  
25 the obligations hereinafter imposed upon them."

1 Q Okay. And I think that paragraph  
2 just answers a little bit the question I had asked  
3 earlier about what the purpose of the Power Sales  
4 Agreement is, but the first line of that says East  
5 Kentucky is the sole member of and controls CB, CB  
6 there referring to Charleston Bottoms.

7 Who is this agreement entered into with?  
8 Who are the signatories to this agreement?

9 A The actual signers?

10 Q Yes, just the entities.

11 A Well --

12 Q I think it's Page 1046, maybe,  
13 1045, perhaps.

14 A Looks like Big Sandy, Clark,  
15 Farmers, Fox Creek, Harrison, Jackson, Nolan,  
16 Shelby, Blue Grass, Cumberland, Fleming Mason,  
17 Grayson, Inter-County, Licking Valley, Owen, South  
18 Kentucky. I believe that's all.

19 Q Okay. And I believe you  
20 indicated that Grayson was a signatory to this  
21 agreement as well?

22 A Yes.

23 Q Have you seen a copy of this  
24 agreement before?

25 A I don't -- no.

1 Q Do you know if it exists in the  
2 building?

3 A Here?

4 Q Yes.

5 A I don't know.

6 Q Do you happen to know who the two  
7 signatures there are? Are those names familiar to  
8 you, for Grayson?

9 A Let's see. Get back on the right  
10 page.

11 MR. SCOTT: Let me object to pages  
12 surrounding this exhibit, because it  
13 appears that this is -- this is three pages  
14 that's part of a larger contract, and I  
15 don't know that the totality of the meaning  
16 from it can be gleaned from three pages,  
17 although it does refer to the entities that  
18 signed as members, but...

19 MR. SAMFORD: Yeah, and just a point of  
20 clarification, I gave you the three pages  
21 that were relevant, but the full agreement  
22 is in the binder that she's reading.

23 Q So if you need to take more time  
24 to look at that, you're certainly welcome to.

25 A What did you ask me again?



1 Q Did you recognize the names of  
2 the two signatories on behalf of Grayson?

3 A Yes.

4 Q Who are those two signatories?

5 A L.C. White and J.E. Lewis.

6 Q What's their relationship?

7 A Mr. White was chairman of the  
8 board, I believe, and J.E. Lewis was the secretary  
9 of the board.

10 Q Do you have any reason to believe  
11 that either of those gentlemen would sign something  
12 that they didn't believe to be accurate?

13 A No, I did not.

14 Q And flip back over to the cover  
15 page, which is Page 1031. There's two signatures  
16 on that page. One's dated November 30th, 1973, and  
17 that's George P. Herzog, the acting administration  
18 of the Rural Electrification Administration, but do  
19 you happen to recognize the signature underneath  
20 that?

21 A Yes.

22 Q Who is that?

23 A J.K. Smith.

24 Q Okay. And who is Mr. Smith?

25 A Mr. Smith was one of the

1 organizers of CFC and he was a former co-op  
2 manager, and numerous positions through the rural  
3 electric program.

4 Q And isn't it true that the Smith  
5 station that is part of East Kentucky's generating  
6 portfolio is named in his honor?

7 A Such as it is.

8 Q And he there signs as governor of  
9 the National Rural Utilities Cooperative Finance  
10 Corporation. I think I asked you this before, but  
11 I mean, Mr. Smith wouldn't sign a document that he  
12 didn't believe to be accurate?

13 A No. No, he would not.

14 MR. SAMFORD: Let me ask you to flip over  
15 to Page 898. Label this as Exhibit 8.

16 (Exhibit No. 8 was marked.)

17 BY MR. SAMFORD:

18 Q Can you tell from the face of  
19 that document what it purports to be?

20 A It looks like the cover of  
21 another borrower designation or loan agreement.

22 Q Okay. And I think that this is  
23 referred to commonly as the Indenture of Mortgage  
24 and Deed of Trust, dated July 1st, 1973. And so  
25 this was, I think, the last major piece of the

1 financing package for Charleston Bottoms.

2 Would you flip over to Page 912 of that  
3 agreement. And for purposes of the record, this  
4 agreement was produced in its entirety, beginning at  
5 Page 898 through Page 1028. But on Page 912 would  
6 you mind reading the first complete sentence on that  
7 page?

8 A "The Company's sole member, East  
9 Kentucky Rural Electric Cooperative Corporation, is  
10 obligated to pay amounts due but unpaid on the  
11 Series A Bonds, within 5 days after demand upon  
12 East Kentucky therefor, and 16 of the 18 electric  
13 cooperative corporations constituting the  
14 membership of East Kentucky Rural Electric  
15 Cooperative Corporation are obligated to pay Debt  
16 Service Obligations due but unpaid on the Series A  
17 Bonds, within 10 days after demand upon such 16  
18 cooperative corporations, all as provided in the  
19 System Agreement pledged under the Indenture."

20 Q Okay. And so the operative  
21 phrase there, again, it says, "The Company," which  
22 was referring to Charleston Bottoms, sole member is  
23 East Kentucky Rural Electric Cooperative  
24 Corporation. I would point you back to Page 898,  
25 which is the cover page, and is that Mr. Smith's

1 signature again?

2 A Yes, sir. Well, I'm not a  
3 signature expert, but I assume that's his  
4 signature.

5 Q Purports to be signed --

6 A Yes.

7 Q -- signed contemporaneously?

8 Let me ask you to pick -- turn over to Page  
9 1221.

10 A (Witness complies.)

11 MR. SAMFORD: This will be identified as  
12 Exhibit 9.

13 (Exhibit No. 9 was marked.)

14 BY MR. SAMFORD:

15 Q What is this document called?

16 A It says, "Second Supplemental  
17 Indenture."

18 Q Okay. And what is the date for  
19 that?

20 A The 14th of September 1978.

21 Q And come down to the fourth  
22 paragraph, but it's the third "Whereas" paragraph,  
23 and would you mind to read that for me, please?

24 A Says, "Whereas the Company has  
25 found it difficult, expensive and impractical to

1 maintain wholly separate and independent accounting  
2 systems for the Company and East Kentucky Power  
3 Cooperative, Inc. (formerly named East Kentucky  
4 Rural Electric Cooperative Corporation), organized  
5 under the laws of the Commonwealth of Kentucky and  
6 the Company's sole member (herein after called  
7 'East Kentucky') and proposes to file consolidated  
8 financial statements for the Company and East  
9 Kentucky, as set forth hereinafter."

10 Q So between 1973 and 1978 East  
11 Kentucky RECC had changed its name, and was now  
12 East Kentucky Power Cooperative?

13 A Evidently.

14 Q Okay. And in the upper  
15 right-hand corner of that document there's some  
16 wording there. What does that say?

17 A "Recorded in Mortgage Book 166,  
18 Page 252."

19 Q And so based upon your business  
20 experience, when you see wording such as that, what  
21 does that tell you about this document?

22 A It tells me that there was a  
23 mortgage -- a mortgage recorded in the -- probably  
24 the county where the transaction took place.

25 Q So that would be a publicly

1 available record?

2 A I would think so, yes, if it's  
3 still in existence.

4 Q Should be, unless the records  
5 have been destroyed --

6 A Destroyed, yes.

7 Q In the normal course it should  
8 still be in existence. Do you happen to know where  
9 Charleston Bottoms -- what county Charleston  
10 Bottoms' operations are in?

11 A I would think Mason.

12 Q And so you would assume that this  
13 document --

14 A I would.

15 Q -- would have been filed in the  
16 office of the Mason County Clerk?

17 A Either there or Clark, where the  
18 business of the corporations takes place.

19 Q And perhaps others --

20 A I really don't know.

21 Q Let me ask you to flip over to  
22 Page 1265.

23 A Uh-huh (affirmative).

24 Q And what is that document?

25 A It is the cover of the Annual

1 Report of East Kentucky Power for 1973.

2 Q Okay. And so 1973 being the year  
3 that the financing plan was completed for  
4 Charleston Bottoms?

5 A Uh-huh (affirmative).

6 MR. SAMFORD: For purposes of, again,  
7 conserving paper, I'm going to attach Page  
8 1265, 1275 and 1295 collectively, and make  
9 that Exhibit 10.

10 (Exhibit No. 10 was marked.)

11 Q Please flip over to Page 1275.

12 A Okay.

13 Q And I assume you've probably not  
14 seen this document before?

15 A Not that I'm aware of, no.

16 Q You've not looked at our  
17 discovery responses. Have you seen East Kentucky's  
18 financial or annual reports previously for other  
19 years?

20 A Yes.

21 Q And so, generally speaking, is  
22 there a kind of narrative from the chairman of the  
23 board?

24 A Yes.

25 Q And a narrative from the general

1 manager --

2 A Uh-huh (affirmative).

3 Q -- and the president? There's  
4 a -- on page -- what purports to be Page 9 of this,  
5 which is identified as Page 1275, there's a section  
6 there that has a heading of "Financing." Do you  
7 see that?

8 A Uh-huh (affirmative).

9 Q Do you mind to read the second  
10 paragraph of that?

11 A "In order to provide the most  
12 feasible and effective plan for financing this  
13 station, a new cooperative entity was organized.  
14 This new cooperative, Charleston Bottoms RECC, an  
15 affiliate of East Kentucky, will maintain ownership  
16 and financing obligation of \$125 million Charleston  
17 Bottoms Power Station and directly related  
18 transmission facilities. When complete, the  
19 facilities will be fully utilized as an integral  
20 part of the East Kentucky System. The  
21 consolidation -- consolidated financial statements  
22 contained in this report reflect this  
23 relationship."

24 Q Okay. Now, earlier you were  
25 making a distinction between a member that uses the



1 services and the member that owns the cooperative.  
2 This document says that East Kentucky will maintain  
3 ownership. So is it still your position that East  
4 Kentucky does not own Charleston Bottoms?

5 A What are you referring to? Is  
6 there a sentence in here you're referring to?

7 Q Yeah, the second sentence says,  
8 "This new cooperative, Charleston Bottoms RECC, an  
9 affiliate of East Kentucky" -- I'm sorry, "An  
10 affiliate of East Kentucky will maintain ownership  
11 and continuing obligations of the \$125 million  
12 Charleston Bottoms Power Station and directly  
13 related transmission facilities." So Charleston  
14 Bottoms is the owner of the power plant; correct?

15 A No. East Kentucky Power made up  
16 of the member systems is the owner of the power  
17 plant. And Charleston Bottoms has always been  
18 represented to us as the financing mechanism.

19 Q Okay. So -- all right. So I've  
20 been operating under the assumption that it was  
21 your belief that the -- what became the Spurlock  
22 No. 1 unit --

23 A Uh-huh (affirmative).

24 Q -- was actually owned by  
25 Charleston Bottoms, but that's not your

1 understanding?

2 A No. It was financed by  
3 Charleston Bottoms -- financed through Charleston  
4 Bottoms.

5 Q Okay. Well, then do you disagree  
6 with this statement that's in the 1973 Annual  
7 Report?

8 A That it's owned by East Kentucky?

9 Q No. That it says, "This new  
10 cooperative," referring to Charleston Bottoms,  
11 "will maintain ownership and financing obligation  
12 of the \$125 million Charleston Bottoms Power  
13 Station."

14 A I believe that's how the power  
15 station was financed.

16 Q Okay. And so Charleston Bottoms  
17 was in fact the owner of the, at that point, the  
18 Charleston Bottoms Power Station, which then became  
19 the Spurlock Station?

20 A No. I think it is owned by the  
21 member systems and financed through Charleston  
22 Bottoms.

23 Q So it's your position, then, that  
24 Grayson is in fact the owner of what became the  
25 Spurlock No. 1 unit?

1 A One of. One of.  
2 Q One of the 16?  
3 A (Witness nods head.)  
4 Q And I think at this point there  
5 were actually 18 --  
6 A Yeah.  
7 Q -- cooperatives?  
8 Okay. Let me ask you to flip over to Page  
9 1,295 as well.  
10 A All right.  
11 Q These are the "Notes to the  
12 Consolidated Financial Statements" for this same  
13 annual report that we've been looking at?  
14 A Uh-huh (affirmative).  
15 Q Look at note 1(a) --  
16 A Uh-huh (affirmative).  
17 Q -- which has the heading of  
18 "Principles of Consolidation." Would you mind to  
19 read that for me, please?  
20 A "The consolidated financial  
21 statements include the accounts of East Kentucky  
22 Rural Electric Cooperative Corporation ('East  
23 Kentucky') and its affiliate Charleston Bottoms  
24 Rural Electric Cooperative Corporation ('Charleston  
25 Bottoms'), and Charleston Bottoms was formed to

1 have ownership of a generating station being  
2 constructed near Maysville, Kentucky, and has East  
3 Kentucky as its only member."

4 Q So based upon your understanding  
5 of the ownership of that generating station, you  
6 think this statement in the financial notes is  
7 incorrect?

8 A I think that the power generated  
9 by the Spurlock Station was consumed only by East  
10 Kentucky at that point in time and delivered to the  
11 members of the member systems.

12 Q Okay. But I'm not talking about  
13 power consumption. I'm talking about ownership of  
14 the generating station.

15 A I believe it belonged to the East  
16 Kentucky member systems.

17 Q And so they were not -- so  
18 Charleston Bottoms did not have an ownership -- was  
19 not the owner of the actual power generator?

20 A Charleston Bottoms was the actual  
21 mechanism.

22 Q And not the owner?

23 A I think the member systems were  
24 the owners.

25 MR. SAMFORD: Okay. Let me ask you to flip

1 over to Page 1263. We're up to Exhibit  
2 No. 11 now.

3 (Exhibit No. 11 was marked.)

4 A All right.

5 Q I believe we looked earlier at  
6 the second indenture, the supplemental mortgage  
7 indenture, and there was some language there about  
8 consolidating the reporting and the accounting for  
9 East Kentucky and Charleston Bottoms. But this is  
10 a balance sheet from November 30th. Can you tell  
11 from looking at it what year that would be?

12 A It says down in the column '78  
13 and '77.

14 Q So based upon your experience you  
15 would expect this to be for November 30th of what  
16 year?

17 A '78.

18 Q Okay. Which I believe would have  
19 been the last year that Charleston Bottoms wouldn't  
20 have had a consolidated balance sheet with East  
21 Kentucky?

22 A (Witness nods head.)

23 Q On the right-hand side under  
24 the -- there's a line -- a heading that says  
25 "Members' Equity and Liabilities," and can you tell

1 me how much members equity Charleston Bottoms has  
2 for 1978?

3 A On the right-hand side?

4 Q Correct.

5 A This is the Charleston Bottoms  
6 sheet, isn't it? So the members equity, is that  
7 just a hundred dollars or is that in the thousands,  
8 or --

9 Q No. It's just \$100.

10 A \$100, all right.

11 Q Okay. And it's cut off a little  
12 bit here on my copy, but for 1977 -- you've got  
13 maybe a cleaner copy. Can you see the number  
14 there?

15 A It looks like 10, but I'm sure  
16 it's 100.

17 Q 100. Do you happen to know what  
18 the membership fee for becoming a member of  
19 Charleston Bottoms is?

20 A No.

21 Q If I told you it was \$100, what  
22 would that indicate to you how many members  
23 Charleston Bottoms had on November 30th of 1978?

24 A Well, if this is East Kentucky's  
25 report, I would think it was the membership of East

1 Kentucky.

2 Q But at the top of the document  
3 what does it say, what corporation?

4 A Says "Charleston Bottoms Rural  
5 Electric Cooperative Corporation."

6 Q So this would be Charleston  
7 Bottoms' financial balance sheet?

8 A Yes.

9 Q And I think this is the last year  
10 that they were not consolidated with East Kentucky?

11 A Uh-huh (affirmative).

12 Q And so the members' equity is  
13 \$100 for both 1977 and '78. And so if the  
14 membership fee for becoming a member of Charleston  
15 Bottoms, then can you deduce from this how many  
16 members Charleston Bottoms would have in 1977 and  
17 '78?

18 MR. SCOTT: Note my objection to that  
19 question because it assumes a lot of facts  
20 that are not in evidence and others that  
21 cannot be in evidence, and also it assumes  
22 that this can be gleaned from this one  
23 document, and a balance sheet is more  
24 than -- even an East Kentucky balance sheet  
25 would be more than one page. So I don't

1 think it's a complete characterization of  
2 the report upon which she can make a valid  
3 answer. But with that, go ahead, if you  
4 can give an answer.

5 A I don't know. I've never seen  
6 this before.

7 BY MR. SAMFORD:

8 Q All right. Okay. Let me ask you  
9 to turn over to Page 1302.

10 A Okay.

11 Q And can you tell me what this  
12 document is?

13 A It looks like the cover page of  
14 the 2011 Annual Report.

15 MR. SAMFORD: Okay. And I think we're up  
16 to Exhibit No. 12 now, so we'll label this  
17 as Exhibit 12.

18 (Exhibit No. 12 was marked.)

19 BY MR. SAMFORD:

20 Q This one's more recent. Have you  
21 seen this document before?

22 A Yes, uh-huh (affirmative).

23 Q And for purposes of this exhibit  
24 I'm also attaching Page 1304. Do you mind to look  
25 over there on Page 1304? There's a heading that



1 says, "Summary of Significant Accounting Policies."  
2 Do you see where I am?

3 A Uh-huh (affirmative).

4 Q And then could you read the  
5 second paragraph?

6 A "The consolidated financial  
7 statements include the accounts of East Kentucky  
8 Power Cooperative, Inc. and its subsidiary,  
9 Charleston Bottoms Rural Electric Cooperative  
10 Corporation (CBRECC). All significant intercompany  
11 accounts and transactions have been eliminated."

12 Q Okay. So what is an intercompany  
13 account in your experience?

14 A I don't know.

15 Q What is an intercompany  
16 transaction in your experience?

17 A I don't know. An intercompany --  
18 I don't know.

19 Q I think we discussed this  
20 earlier, but we agreed -- I think we agreed that if  
21 you have a subsidiary, then you would have an  
22 ownership interest. You put a caveat on that by  
23 saying it may not be exclusive --

24 A Yes.

25 Q -- but you agree a subsidiary you

1 would own? Okay.

2 MR. SAMFORD: Let me hand you -- this is a  
3 rather large volume of documents. This  
4 will be Exhibit 13.

5 (Exhibit No. 13 was marked.)

6 BY MR. SAMFORD:

7 Q And can you tell me on the face  
8 of that what this document is?

9 A It looks like copies of  
10 documentation which you requested with respect to  
11 Eddie Martin, the secretary of Grayson Rural  
12 Electric Cooperative Corporation.

13 Q Are you familiar with the  
14 documents that we requested from Grayson?

15 A I believe so.

16 Q You knew that we had requested  
17 documents?

18 A Yes.

19 Q Did you review those documents  
20 before they had been sent out?

21 A I did not sit down with Mr. Scott  
22 and go over them one at a time, no.

23 Q I think what we had requested was  
24 any document that evidenced Grayson's ownership in  
25 Charleston Bottoms. Can you point me to any

1 particular documents in here which demonstrate that  
2 ownership interest?

3 A Well, not knowing what all is in  
4 here, no, I cannot.

5 Q Okay. Do you want to just take a  
6 moment to -- I'll tell you what, if you want we can  
7 take a break -- we've been going for about an  
8 hour -- if you want to look through it.

9 A That will be fine.

10 MR. SAMFORD: Okay. We'll go off the  
11 record so she can examine it.

12 (THEREUPON, A BREAK WAS TAKEN.)

13 MR. GOODPASTER: I should have stated this  
14 right upfront. I'm not appearing as  
15 counsel for East Kentucky. I am not  
16 counsel of record. I do not intend to be  
17 counsel of record. I'm strictly a  
18 corporate representative. Just to get that  
19 out of the way.

20 BY MR. SAMFORD:

21 Q So you've had a few minutes to  
22 kind of go through some of these documents, and I  
23 guess my question is, what are the documents in  
24 your mind which most directly support your claim  
25 that Grayson is the owner of Charleston Bottoms?

1           A           Well, I think that -- all of  
2 these, but these are the ones that my secretary and  
3 I were able to gather up in the length of time when  
4 you all made the request to Mr. Scott. There's  
5 probably other things that we have not included,  
6 but I would think all of this would indicate  
7 ownership.

8           Q           Okay. Would you agree to  
9 supplement that with whatever additional --

10          A           Whatever we can find, yes.

11          MR. SAMFORD: And I don't think for that we  
12 would really need to make an additional  
13 request. So, I mean, how long do you think  
14 it would take?

15          MR. SCOTT: I know that what is in addition  
16 to that is notices of annual meetings sent  
17 to Grayson for member meetings, notices of  
18 director meetings that I don't think are in  
19 there, and other -- it's just not complete,  
20 tell you the truth, because there are other  
21 minutes, I believe, of East Kentucky  
22 referencing matters concerning Charleston  
23 Bottoms. Quite frankly, this was mailed to  
24 you fellows while I was out of town and we  
25 meant to get another certification. I

1 don't know if Brandon got it down here to  
2 you or not, but anyway, there's other  
3 things to be sent.

4 MR. SAMFORD: Could you do that in two  
5 weeks, do you think?

6 MR. SCOTT: Sure.

7 THE WITNESS: We'll do our best, uh-huh  
8 (affirmative).

9 BY MR. SAMFORD:

10 Q Okay. So we'll just -- so who  
11 was -- you were the one, and then your secretary --

12 A Yes.

13 Q -- who principally gathered this?

14 A Uh-huh (affirmative).

15 Q Would there be anyone else  
16 that -- I mean, is Mr. Combs, for instance, is he  
17 familiar with it?

18 A If he could help us, uh-huh  
19 (affirmative).

20 Q Do you know if he's familiar with  
21 this, has he seen it?

22 A I don't think so.

23 Q I assume none of the directors  
24 have?

25 A No, I'm sure they haven't.

1 Q So we'll save that for later.

2 Let me come back to a little more recent,  
3 and we actually might have to go back to Volume 1  
4 for this, but this will be Document No. 669.

5 MR. SAMFORD: If you want to just hand her  
6 the whole binder, that would be the easiest  
7 thing.

8 A Thank you. Is that Page 669?

9 Q Yes, and I think it actually  
10 starts on Page 668 --

11 A Okay.

12 Q -- but we'll be jumping to 669.

13 MR. SAMFORD: This will be identified as  
14 Exhibit 14.

15 THE WITNESS: 669?

16 MR. SAMFORD: Yes, and actually 668 is when  
17 it begins.

18 THE WITNESS: All right.

19 (Exhibit No. 14 was marked.)

20 BY MR. SAMFORD:

21 Q Can you tell me what that  
22 document is?

23 A It looks like the board minutes  
24 of the regular meeting on April the 10th, 2001.

25 Q Okay. And you'll have to forgive

1 me. Were you the president and CEO of Grayson at  
2 that time?

3 A Yes.

4 Q So the director for Grayson is  
5 Mr. Ralph Hall?

6 A Yes.

7 Q And he's no longer on your board?

8 A No, he isn't.

9 Q Look over on Page 2, if you don't  
10 mind, under the heading -- this is Page 669 --  
11 under the heading of "Other Business." There's a  
12 subheading that says, "Dissolution of Charleston  
13 Bottoms RECC." Are you familiar with the events  
14 that transpired in 2001 with regard to Charleston  
15 Bottoms?

16 A I believe so.

17 Q Okay. Do you mind to just  
18 generally tell me what your memory is of those  
19 events?

20 A As well as I remember, Charleston  
21 Bottoms was determined to no longer be necessary  
22 due to an alternate method of financing, and that  
23 there was a movement afoot to just simply do away  
24 with Charleston Bottoms.

25 Q And do these minutes of this

1 meeting of Charleston Bottoms reflect that movement  
2 to dissolve the corporation?

3 A Yes.

4 Q Okay. And the last -- the next  
5 to last paragraph, but the last paragraph that  
6 begins with "Whereas" on Page 669, would you read  
7 that, please?

8 A On 669, the next to the last?

9 Q Yes, the paragraph that starts  
10 "Whereas, Pursuant to."

11 A "Section 11.04 of the Charleston  
12 Bottoms Bylaws, the Board of Directors ('Board')  
13 has determined that the dissolution of the  
14 cooperative will have no detrimental societal and  
15 economic effects on the cooperative's employees,  
16 the community or service territories and is in the  
17 long-term and short-term interests of the  
18 cooperative and its sole member, East Kentucky  
19 Power; now therefore, be it."

20 Q Okay. And so we've looked at  
21 several documents from the 1970s that talk about  
22 East Kentucky being the sole member of Charleston  
23 Bottoms, and this resolution which is a Charleston  
24 Bottoms board resolution says the same thing.

25 Flip over -- well, actually just go ahead



1 and keep reading the next paragraph, the actual  
2 resolution, which continues on to the next page.

3 A "Resolve, That the Charleston  
4 Bottoms Board hereby calls a special meeting of the  
5 members on July the 10th, 2001, recommends that the  
6 dissolution of the cooperative be approved at said  
7 meeting, and authorizes Management to seek  
8 necessary regulatory and lender approvals for such  
9 dissolution, for the transfer of all assets to  
10 EKPC, and for any other actions necessary to wrap  
11 up the business affairs of the cooperative."

12 Q Okay. Why do you think that the  
13 resolution would have had all the assets of  
14 Charleston Bottoms go to East Kentucky Power?

15 A Pardon me?

16 Q Why do you think that the  
17 resolution would have called for all of the assets  
18 of Charleston Bottoms to be transferred to East  
19 Kentucky upon its dissolution?

20 A Let me read a minute. (Witness  
21 reads document.)

22 MR. SCOTT: Let me note an objection.  
23 That's part of our lawsuit in this case, is  
24 that they shouldn't have.

25 MR. SAMFORD: Okay. Well, so noted.

1 A But just exactly which paragraph  
2 are you referring to?

3 Q The one that you just read, the  
4 paragraph that begins "Resolved."

5 A I guess that's where we differ,  
6 because for the transfer of all assets to East  
7 Kentucky Power that is owned by the member systems,  
8 it would be the -- you know, like owned -- it would  
9 be, like, being divided up among the member  
10 systems. It would go back to the body of the  
11 corporation. You know, it says right there above  
12 it that it requires a vote of the members to do it,  
13 so if East Kentucky is the only member, what's the  
14 point?

15 Q I hear what you're saying, so --  
16 but the actual resolution says that the Charleston  
17 Bottom Board is recommending that the dissolution  
18 of Charleston Bottoms be approved, and authorizing  
19 management to seek the necessary regulatory and  
20 lender approvals for the dissolution, and for the  
21 transfer of all assets to East Kentucky.

22 So my question is, why wouldn't all of the  
23 assets be going to East Kentucky?

24 A Because East Kentucky Power is  
25 owned by the member systems.

1 Q Okay. But it's also the owner of  
2 Charleston Bottoms?

3 A Through the member systems, yes.  
4 East Kentucky is the member systems.

5 Q So you say that East Kentucky is  
6 the owner of Charleston Bottoms through the member  
7 systems, and so I'm trying to visualize this as  
8 sort of a corporate hierarchy, if you will. I  
9 mean, my understanding is that the distribution  
10 co-ops are the owners of East Kentucky?

11 A Right.

12 Q And East Kentucky is the owner of  
13 Charleston Bottoms. So I think that may be where  
14 we're disagreeing, because what I'm hearing you say  
15 is that Charleston Bottoms is actually owned by the  
16 members, and so any ownership interest East  
17 Kentucky has in Charleston Bottoms is by virtue of  
18 its relationship to its members.

19 A It's been said over and over in  
20 the East Kentucky boardroom that Charleston Bottoms  
21 was the financing mechanism for the power plants.

22 Q Okay. And I don't think that  
23 that's an inaccurate statement.

24 A Okay.

25 Q But that statement doesn't speak

1 to the ownership. Being the financing vehicle  
2 didn't preclude Charleston Bottoms from actually  
3 owning the actual generating station.

4 A Okay.

5 Q And the fact that it's the  
6 financing vehicle also doesn't preclude the fact  
7 that Charleston Bottoms RECC has one member, that's  
8 East Kentucky.

9 A Right.

10 Q Okay.

11 A They have a -- they have an  
12 electric consuming member, who is East Kentucky.

13 Q And so --

14 A And by virtue of that, the member  
15 systems.

16 Q And so you're still drawing a  
17 distinction between a member which owns the  
18 cooperative and a member which consumes its power?

19 A Right.

20 Q Which is unique to Charleston  
21 Bottoms, because that doesn't exist in relation to  
22 Charleston -- or in relation to Grayson and its  
23 members, or in relation to East Kentucky and its  
24 members?

25 A I'm not sure I follow that line

1 of thought.

2 Q Let me come back to it. In the  
3 context of Grayson and its members, the members of  
4 Grayson have both the use of the energy provided by  
5 Grayson, but also the ownership interest in  
6 Grayson?

7 A They have to be an owner, a  
8 member owner to purchase power.

9 Q And East Kentucky's 16 members  
10 receive power from it, but also are owners of East  
11 Kentucky?

12 A Yes.

13 Q But in the case of Charleston  
14 Bottoms, you think it's different?

15 A I think that Charleston Bottoms  
16 was created to finance the power -- the creation of  
17 the power plants, the building of the power plants.

18 Q Okay.

19 A That was the way that RUS and CFC  
20 helped them devise a way to borrow money to build  
21 the power plants.

22 Q We're still -- we're just talking  
23 past each other a little bit here, because I'm not  
24 focusing so much on the financing as the ownership.

25 A Okay. All right.

1 Q That's what I'm trying to  
2 understand, is -- what I hear you to be saying is  
3 that East Kentucky is not the owner of Charleston  
4 Bottoms, even though it is purchasing all of the  
5 power produced by Charleston Bottoms?

6 A Well, they were accepted as a  
7 member, so would they not therefore be a member  
8 owner?

9 Q Yeah, I mean, that's our  
10 position, but --

11 A But not -- not by themselves.  
12 They're not the only one.

13 Q Okay. And that's -- and that's  
14 why we've kind of walked through all of these  
15 documents --

16 A Uh-huh (affirmative).

17 Q -- because all of the documents  
18 that we've looked at so far have talked about  
19 Charleston Bottoms either being an affiliate or a  
20 subsidiary of East Kentucky Power, or that they've  
21 just said that East Kentucky is the sole member of  
22 Charleston Bottoms.

23 A Okay.

24 Q And so far we've not seen a  
25 single document, correct me if I'm wrong, that has

1 said that any of the other members of East Kentucky  
2 are members of Charleston Bottoms.

3 A But my -- my thought is that the  
4 member systems own East Kentucky. So therefore  
5 they're responsible for whatever -- what other  
6 endeavors that East Kentucky undertakes. There  
7 could be no business undertaken, any subsidiaries  
8 or what have you, without the approval of the  
9 member systems.

10 Q And so we're kind of getting into  
11 a little bit of just corporate governance at this  
12 point. I mean, East Kentucky acts as directed by  
13 its board; correct?

14 A Uh-huh (affirmative).

15 Q And the board is selected by the  
16 members --

17 A That's right.

18 Q -- of East Kentucky?

19 A Uh-huh (affirmative).

20 Q So when we say that the members  
21 of East Kentucky tell East Kentucky what to do,  
22 that's not technically correct. The members of  
23 East Kentucky elect board -- or select board  
24 members to sit on East Kentucky's board, and then  
25 that board makes decisions on behalf of East

1 Kentucky; correct?

2 A That board sets the governance  
3 for East Kentucky. They do not make the day-to-day  
4 decisions.

5 Q Okay. So when we're talking  
6 about the role and the corporate governance of East  
7 Kentucky and the members, it's not a direct  
8 day-to-day?

9 A No.

10 Q It's by virtue of the fact that  
11 they have the right to appoint one member to East  
12 Kentucky's board?

13 A Right.

14 Q So coming back to my original  
15 question. In 2001 the Charleston Bottoms board  
16 passed a resolution to have all of the assets of  
17 Charleston Bottoms transferred to East Kentucky  
18 Power. I mean, that's what this document says.

19 Do you -- you are the president and CEO of  
20 Grayson at the time. Do you remember why that's  
21 what the resolution said?

22 A No.

23 Q Do you remember objecting to the  
24 resolution?

25 A No. I wouldn't have had the



1 right to do that.

2 Q Would Mr. Hall have had the  
3 opportunity to do that?

4 A I'm sure he would have as a  
5 director.

6 Q Do you remember -- do you  
7 remember if he did object?

8 A No. I can't speak for Mr. Hall.

9 Q If he had raised an objection,  
10 would it have been reflected in the minutes?

11 A I would think so.

12 Q Okay. And, generally speaking,  
13 based on your experience with the East Kentucky  
14 board, whenever there is a vote, if there are any  
15 dissenting votes, is that usually recorded in the  
16 minutes?

17 A If requested.

18 Q So in a situation here where  
19 there's no dissenting votes listed, then either  
20 there were no dissenting votes, or if there were,  
21 they weren't requested to be recorded?

22 A That's right.

23 Q But you would agree with me that  
24 the minutes don't reflect that there were any  
25 objections made to this resolution?

1 A I agree, yes.

2 MR. SAMFORD: Let me ask you to flip a few  
3 pages over to Page 684. I believe this  
4 will be Exhibit 15.

5 (Exhibit No. 15 was marked.)

6 BY MR. SAMFORD:

7 Q Can you tell me what this  
8 document is?

9 A It looks like minutes of a  
10 special membership meeting July the 10th, 2001, for  
11 the Charleston Bottoms.

12 Q Okay. Thank you. And so as I  
13 look through that, did Grayson have a  
14 representative?

15 A Yes.

16 Q Who is that?

17 A Harold Dupuy.

18 Q And he is -- if I understand, he  
19 is still a director?

20 A Yes, he is, uh-huh (affirmative).

21 Q What is the action item for the  
22 membership meeting?

23 A Dissolution of Charleston Bottoms  
24 Rural Electric Cooperative Corporation.

25 Q Okay. And so flipping over the

1 page to Page 685 --

2 A Uh-huh (affirmative).

3 Q -- there's two paragraphs there  
4 where we actually have the resolution, after we  
5 have what's resolved, after we have all of the  
6 Whereas recitals. Can you go ahead and read the  
7 last one for me, the last resolved paragraph?

8 A "That Charleston Bottoms Rural  
9 Electric Cooperative Corporation be and hereby is  
10 dissolved upon the receipt of all such approvals  
11 and rulings and the favorable resolution of all  
12 other legal or other issues with all business  
13 affairs of the cooperative to be wound up and all  
14 assets and liabilities transferred, assigned and  
15 conveyed to the sole member, East Kentucky Power  
16 Cooperative, Inc."

17 Q Okay. And so this resolution  
18 passed and, again, it transfers all of the assets  
19 and liabilities to East Kentucky Power Cooperative,  
20 Inc. as the sole member of Charleston Bottoms. Do  
21 you remember -- did you attend that special  
22 membership meeting?

23 A I can't say.

24 Q Do you know if -- is it  
25 Mr. Dupuy, is that how you say it?

1           A           Evidently, because it's reflected  
2 here that he attended.

3           Q           Do you remember discussing it  
4 with him?

5           A           No, I do not.

6           Q           If you had objected to it in  
7 2001, would you recall that?

8           A           I'm sure I would.

9           Q           Okay. So the fact that you don't  
10 remember objecting to this transaction in 2001  
11 would indicate to you that you probably didn't have  
12 an objection at that time?

13          A           I probably did not have an  
14 objection to the dissolution of Charleston Bottoms.

15          Q           And so as part of that --

16          MR. SCOTT: Would you state that again?

17          THE WITNESS: I said I do not remember  
18 having an objection to the dissolution of  
19 Charleston Bottoms.

20 BY MR. SAMFORD:

21          Q           Okay. And do you remember  
22 Mr. Dupuy having any concerns or objections that he  
23 discussed with you about it?

24          A           No, but I do not remember  
25 anything about the assets being transferred solely

1 to East Kentucky as a separate entity from the  
2 member systems.

3 Q Would you have been aware of that  
4 at the time?

5 A Well, I would think that if that  
6 was the case we would have. In my mind, I would  
7 have thought that it went back to the owners,  
8 member owners, which make up East Kentucky.

9 Q Okay. And I mean, I think that  
10 that's what it reflects, is it says all assets and  
11 liabilities are transferred, assigned and conveyed  
12 to the sole member East Kentucky Power Cooperative.

13 A Uh-huh (affirmative). Of which  
14 Grayson is a member owner.

15 Q Let me ask you -- I think we're  
16 going back to Volume 2 now, Page 1324.

17 A Move this one over. 1000 what?

18 Q 1324.

19 A All right.

20 MR. SAMFORD: This will be Exhibit 16.

21 (Exhibit No. 16 was marked.)

22 BY MR. SAMFORD:

23 Q Can you tell me what this  
24 document is?

25 A It looks like an application of

1 East Kentucky for approval of dissolution of  
2 Charleston Bottoms Rural Electric Cooperative  
3 Corporation before the Public Service Commission of  
4 Kentucky.

5 Q Okay. Is this the application or  
6 is it an order?

7 A It says, "Order" underneath it.

8 Q And please read the second  
9 sentence of the first paragraph.

10 A "East Kentucky states that upon  
11 approval of dissolution by Charleston Bottoms'  
12 Board of Directors, all the assets of Charleston  
13 Bottoms will be transferred to East Kentucky."

14 Q Okay. And then flip over to the  
15 second page of that order, right before you get to  
16 the ordering paragraphs, there's a paragraph that  
17 starts out, "After review."

18 A Uh-huh (affirmative).

19 Q Would you read that, please?

20 A "After review of the record and  
21 being otherwise sufficiently advised, the  
22 Commission finds that the dissolution of Charleston  
23 Bottoms is reasonable and should be approved."

24 Q And so would you agree with me  
25 that the Public Service Commission was aware in

1 2001 that upon the dissolution of Charleston  
2 Bottoms that its assets were going to be  
3 transferred to East Kentucky Power?

4 A I can't say that they thought it  
5 would be strictly to East Kentucky or to East  
6 Kentucky as the member systems owners, as the  
7 owners -- you know, to the whole corporation.

8 Q And we keep getting kind of hung  
9 up on this point, but I mean, you know, you can --  
10 you can only transfer an asset to one person. You  
11 can't really transfer a power plant to more than  
12 one.

13 A All right.

14 Q So the -- on the --  
15 MR. SCOTT: Note my objection to that  
16 assertion. I mean, the power plant could  
17 be transferred to whoever owns the power  
18 plant and transfer it to whoever they want  
19 to.

20 BY MR. SAMFORD:

21 Q Okay. So on Page 1324, who are  
22 the assets of Charleston Bottoms going to be  
23 transferred to?

24 A On 1324 it says East Kentucky.

25 Q And it doesn't say any of the

1 members of East Kentucky?

2 A Well, that begs the question  
3 then, who is East Kentucky? You know, it could be  
4 Eastern Kentucky Foothills Goat Association, for  
5 all I know. It says, "East Kentucky." It doesn't  
6 say power cooperatives, it doesn't say anything.  
7 But in my mind, when I say East Kentucky, East  
8 Kentucky is the member systems. They own it and  
9 they're supposed to operate it. Sometimes I  
10 question that, too, but --

11 Q Okay.

12 A -- in my book East Kentucky Power  
13 is the member systems. I guess that's our  
14 difference of opinion.

15 Q So we're maybe getting a little  
16 finer point on it, which is helpful.

17 A Okay.

18 Q I mean, what I hear you telling  
19 me --

20 A Okay.

21 Q -- and tell me if I'm  
22 misunderstanding, is that East Kentucky really  
23 doesn't have its own separate corporate existence.  
24 It really is its members.

25 A It does have its own corporate



1 existence, but it's governed by its member owners.

2 Q But not directly.

3 A No.

4 Q It's governed --

5 A We set policy, set procedures,  
6 set governance just like they do here at Grayson,  
7 but they carry out the day-to-day operations. I  
8 would not purport to go down there and tell them  
9 how to run a power plant.

10 Q Okay.

11 A That's not my role or any of my  
12 directors.

13 Q And so for purposes of this  
14 sentence, there was a question about who East  
15 Kentucky is referring to, but if you look at the  
16 sentence before that, it says East Kentucky Power  
17 Cooperative, Inc., and then in parentheses and  
18 quotation marks --

19 A East Kentucky.

20 Q -- it has ("East Kentucky"). So  
21 when it says that the assets are going to be  
22 transferred to East Kentucky, in the second  
23 sentence, it means that they will in fact be  
24 transferred to East Kentucky Power Cooperative,  
25 Inc.?

1           A           Uh-huh (affirmative).  
2           Q           Okay. And so the Commission  
3 makes the finding on Page 2 that the dissolution is  
4 reasonable and should be approved?  
5           A           Yes.  
6           Q           Do you recall if Grayson  
7 intervened in this case?  
8           A           No. I'm sure we did not.  
9           Q           Would you have been aware that  
10 this case was filed with the PSC?  
11          A           I don't remember knowing that it  
12 was filed until we started looking through these  
13 documents.  
14          Q           Okay. So you don't know  
15 whether -- so you don't -- let me make sure I  
16 understand. You don't recall whether you knew that  
17 it was filed or --  
18          A           I did not know it was filed --  
19          Q           You didn't know.  
20          A           -- until we saw the document and  
21 we started checking to see why we did not get  
22 notification.  
23          Q           Okay. But this is the 2001 case?  
24          A           No.  
25          Q           This is 2001, not 2012?

1 A Right. Right.

2 Q So as of 2012, you're telling me  
3 you didn't know that a case had been filed in 2001?

4 A And I don't know why it went from  
5 2001 to 2012 with nothing being done about it.

6 Q And, I mean, we can talk about  
7 that later, but come back to my question. When did  
8 you find out that this application had been filed  
9 by East Kentucky in 2001?

10 A I am not sure of exactly when I  
11 knew that.

12 Q If you knew about it before 2012,  
13 you had forgotten about it?

14 A Probably, uh-huh (affirmative).

15 Q But you didn't --

16 A And if the board voted to do  
17 this, then I would have seen no reason that East  
18 Kentucky shouldn't have done it.

19 Q But Grayson did not object in  
20 2001 to the proposed transfer of all of the assets  
21 of Charleston Bottoms to East Kentucky?

22 A Grayson did not oppose the  
23 dissolution of Charleston Bottoms.

24 Q So you did object to the transfer  
25 of assets to East Kentucky?

1 A I don't believe we were aware of  
2 that as it states here. I don't think we  
3 understood that. We thought that the -- that it  
4 was transferred back to the corporation, the  
5 incorporated East Kentucky Power, made up of the  
6 member systems.

7 Q Okay. And, I mean, it was  
8 transferred back to East Kentucky, the corporation,  
9 East Kentucky Power Cooperative, Inc.

10 A But not in the sense that I'm  
11 trying to say, that member owners, everybody, share  
12 and share alike.

13 Q So if there had been a -- if  
14 there had been a transfer in the sense that you're  
15 talking about, then there would have been some sort  
16 of a distribution of the Charleston Bottoms assets  
17 to the --

18 A Not necessarily.

19 Q -- Cooperative?

20 A It would have been according to  
21 the course of business that we were facing, you  
22 know, whether to build another power plant or, you  
23 know, whatever. But there would have been some  
24 sort of, you know, assignment, I think.

25 Q So you don't have any reason to

1 dispute the PSC's conclusion that the transfer and  
2 dissolution were reasonable?

3 A No.

4 Q No, you don't agree, or no, you  
5 don't have reason to?

6 A I don't have any reason to think  
7 that the Commission would have thought that the  
8 dissolution of Charleston Bottoms was unreasonable.

9 Q Okay.

10 A The dissolution.

11 Q But part of the dissolution  
12 application included the transfer of the assets?

13 A And that's where we differ,  
14 because I think it should have been -- or it was  
15 intended to be the dissolution back to the member  
16 systems, East Kentucky, Inc. as a whole, not simply  
17 to the business of East Kentucky Power.

18 Q So you don't -- you may hold a  
19 different opinion personally, but you understand  
20 that the Commission said it was reasonable?

21 A I don't agree with it, no.

22 Q Okay.

23 A I do not think that was the  
24 intent of the Commission at that point in time, no.  
25 And I can't read their mind. I can't speak for

1       them, but I do not believe that -- I believe that  
2       East Kentucky is made up of the member systems, and  
3       like I said, what's theirs is ours and what's ours  
4       is theirs, so, you know, as far as that goes.  
5       Well, no, not Grayson, but if there -- if we have  
6       to borrow money and be responsible for it to get  
7       this thing started, I think certainly we should be  
8       just as entitled to the assets as we are to the  
9       liabilities -- or were, not strictly to the  
10      business, incorporated business of East Kentucky  
11      Power.

12                Q            Okay. I think we're -- are we in  
13      Volume 1 or Volume 2?

14                A            I've got Volume 2.

15                Q            Okay, good. Go to Page 1377,  
16      please.

17                A            Okay.

18                MR. SAMFORD: This will be labeled as  
19      Exhibit 17.

20                (Exhibit No. 17 was marked.)

21      BY MR. SAMFORD:

22                Q            Can you tell me what this  
23      document is?

24                A            It says, "Agreement Regarding  
25      Recording of Indenture."

1 Q Okay. And what's the indenture,  
2 do you know?

3 A It's -- indenture is the new form  
4 of financing, I believe.

5 Q And so who were the parties to  
6 this agreement?

7 A According to this, it's East  
8 Kentucky Power, the United States of America and  
9 the Rural Utilities Service and the National Rural  
10 Utilities Finance Corporation.

11 Q Okay. So it's essentially the  
12 same parties we've seen --

13 A Same.

14 Q -- RUS, CFC and East Kentucky?

15 A Uh-huh (affirmative).

16 Q And so we saw one of the prior  
17 documents where the mortgage had been recorded, so  
18 this is an agreement between these three parties as  
19 to how the new indenture will be recorded as well.

20 A Okay.

21 Q Given the complexity of it, it's  
22 customary to have this type of agreement. Look at  
23 the last full paragraph of the bottom of that page,  
24 please, if you don't mind to read that.

25 A "Whereas, in connection with the

1 substitution of the Indenture for the Existing  
2 Mortgage, EKPC has dissolved its wholly-owned  
3 subsidiary Charleston Bottoms Rural Electric  
4 Cooperative Corporation ('Charleston Bottoms') and  
5 has acquired the Charleston Bottoms Property (as  
6 defined in the Indenture)."

7 Q Okay. And so, again, this refers  
8 to Charleston Bottoms as being a wholly-owned  
9 subsidiary of East Kentucky, and having acquired  
10 the assets of Charleston Bottoms. This agreement  
11 is dated what date?

12 A October the 11th of 2012.

13 Q And that is the same date that  
14 Grayson filed its complaint in the Mason Circuit  
15 Court; correct?

16 A I don't know exactly what the  
17 date was.

18 Q If I told you it was --

19 A I know it was in October.

20 Q If I told you it was filed  
21 October 11th, you wouldn't have any reason to  
22 disagree?

23 A No, I would not.

24 Q Your counsel might be able to  
25 stipulate to that.



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A I know that's probably --  
MR. SCOTT: Yes, October 11, 3:01 p.m.  
THE WITNESS: Okay.

BY MR. SAMFORD:

Q So let's go back to kind of some questions we asked earlier. I mean, in your experience, RUS and CFC are both pretty particular in --

A Yes.

Q -- in writing their agreements?

A Uh-huh (affirmative).

Q They wouldn't include any factual assertion on an agreement which they didn't believe to be true. And so based upon this -- this document would reflect RUS's and CFC's understanding of the relationship between East Kentucky and Charleston Bottoms as of the date of the agreement?

A Uh-huh (affirmative).

MR. SCOTT: Let me note an objection, because what the belief of RUS or CFC is is unknown to this witness, and this is only one page of a larger document and the quoted language is a portion of a recital and is of no material probative indication

1 of issues in this case.

2 BY MR. SAMFORD:

3 Q Okay. And, again, I think the  
4 entire agreement is Pages 1377 through 1401. If  
5 you think that you need to look at additional  
6 portions of the agreement, you're welcome to.

7 A Okay.

8 Q But I mean that -- would you  
9 agree that the recitals for an agreement are, in  
10 fact, fairly material in setting forth the  
11 underlying factual basis for such agreements?

12 MR. SCOTT: Note my objection. Go ahead  
13 and answer if you know.

14 A I don't know.

15 Q When you look at a contract, is  
16 it important to you what's in the Whereas clauses?

17 A Yes.

18 Q Okay. Why is that important?

19 A Because it lays out the way that  
20 the contract should be interpreted.

21 Q And it should be accurate?

22 A I hope so.

23 Q In any contract that you signed  
24 on behalf of Grayson you would want the Whereas  
25 clauses to be accurate?

1           A           Uh-huh (affirmative). But with  
2 Grayson I would be signing on behalf of one, and  
3 with East Kentucky Power I think that they're  
4 signing on behalf of 16 member systems.

5           Q           And I think your theory of the  
6 case is becoming more clear to me. I mean, it  
7 seems like you're sort of looking beyond East  
8 Kentucky to say that as Grayson, we own the assets  
9 that East Kentucky owns?

10          A           (Witness nods head.)

11          Q           But do those assets actually show  
12 up on your balance sheet?

13          A           I would have to ask Dawn -- or  
14 our finance person, okay?

15          Q           So the answer is you don't know?

16          A           No, I don't know. I do know that  
17 not so very long ago there was a liability  
18 attributed to Charleston Bottoms on our balance  
19 sheet.

20          Q           Okay. And you're referring to  
21 the contingent liability?

22          A           I believe so.

23          Q           And I think that's reflected in  
24 some of the documents. Let me go back, actually.  
25 Well, first let me ask you, I mean, if the assets

1 of Charleston Bottoms are owned by its -- by the  
2 members of East Kentucky -- you with me -- the  
3 assets of Charleston Bottoms are owned by the  
4 members of East Kentucky, then do the members of  
5 East Kentucky also own the liabilities of  
6 Charleston Bottoms?

7 A I believe we did from the  
8 beginning when we borrowed money to help finance  
9 it.

10 Q And so is that a direct or is it  
11 a contingent liability, do you know?

12 A I do not know. I am not an  
13 accountant.

14 Q Okay.

15 A I don't know the terminology.

16 Q Okay. Let me go back to  
17 Exhibit 13, which is this. These are the  
18 responses --

19 A Uh-huh (affirmative).

20 Q -- that you --

21 A Yes.

22 Q You'll need that. Towards the  
23 back -- these pages aren't labeled, so it's kind of  
24 hard to tell, but look at the February 25th, 2011  
25 minutes.

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A 2011.

MR. TUCKER: What's it look like?

MR. SAMFORD: It's toward the very back.  
It just says --

THE WITNESS: All right.

MR. SAMFORD: Give these gentlemen a chance  
to find it.

THE WITNESS: Okay.

Q Okay. Are these your minutes?

A Yes.

Q So this would be the meeting held  
on February 25th, 2011?

A Yes.

Q Please flip over to the next  
page, the second page.

A Uh-huh (affirmative).

Q And there is an item there that  
has the heading "Charleston Bottoms."

A Yes.

Q Can you read that for me?

A Says, "Charleston Bottoms was  
established as a wholly-owned subsidiary of East  
Kentucky Power (EKPC). It was set up as a  
financing vehicle for Spurlock Unit No. 1. The set  
up cost was \$125 million. Currently they owe CFC

1       \$2.6 million and everything else has been paid  
2       off."

3                   Q           And so there's a couple of things  
4       about that. First of all, can you tell me who  
5       would have presented this information in the  
6       boardroom?

7                   A           I believe -- isn't that after you  
8       talked to Sherman, or Dawn talked to Sherman and we  
9       were trying to explain? Some of our board members  
10      haven't been on very long and we were trying to  
11      explain to them what Charleston Bottoms was.

12                  Q           Okay.

13                  A           Trying to get a definition.

14                  Q           I was trying to figure out if you  
15      could tell from looking at this page, or the one  
16      before that, who it would have actually been that  
17      made this agreement.

18                  A           No, not in this -- the way it's  
19      presented, no.

20                  Q           It looked to me like it was  
21      Mr. Combs' report?

22                  A           It may have been. It may very  
23      well have been, because he would have given the CRC  
24      analysis and the work order training report. So  
25      probably somewhere along in there, either he was

1 talking to Sherman or to -- oh -- I don't remember.  
2 Trying to give our directors -- like I said, a lot  
3 of them haven't been on that many years -- an  
4 understanding of what was the reason for Charleston  
5 Bottoms.

6 Q Okay. Did you -- do you know, by  
7 chance, if your directors were given any  
8 information about Charleston Bottoms or was it just  
9 a verbal presentation?

10 A It was just verbal. No, we  
11 didn't hand out anything. No.

12 Q So this says that Charleston  
13 Bottoms was established as a wholly owned  
14 subsidiary of East Kentucky Power, EKPC. But then  
15 to the point that we've just been talking about, it  
16 says, "Currently they owe CFC 2.6 million."

17 A There again, that's terminology.  
18 I think when we wrote this, and I was the one who  
19 proofed it, and Jeffrey proofed it, East Kentucky  
20 as a whole, owned by the member systems. Not East  
21 Kentucky separate from us. They should not be  
22 separate from us. That is -- they are owned and  
23 operated by the member systems. So it's just --  
24 just the way that we choose to phrase -- it's  
25 phrasing.

1                   And, yeah, they owe that kind of money. All  
2 right, if they're bankrupt and they don't pay it  
3 off, then, you know, where does it come from?  
4                   Q                So --  
5                   A                Or where do we go for power?  
6                   Q                So when -- the pronoun "they" is  
7 referring to who?  
8                   A                Referring to the corporate entity  
9 East Kentucky Power owned by the member systems.  
10                  Q                Okay. And so Grayson doesn't owe  
11 \$2.6 million?  
12                  A                No, but we own -- we owe a  
13 proportional share of it, I would think, if it came  
14 right down to it.  
15                  Q                Has Grayson ever made any  
16 payments on behalf --  
17                  A                No.  
18                  Q                -- to pay the Charleston Bottoms  
19 debt?  
20                  A                No.  
21                  Q                I think we're done with that one  
22 for a while.  
23                  A                All right.  
24                  Q                Okay. So come back to where we  
25 started. We started out talking about the



1 complaint and your amended complaint, Paragraph 4.  
2 A What page are you on?  
3 Q This is actually not in the  
4 production because this is what you filed, but I do  
5 have a copy.  
6 A Okay.  
7 MR. SAMFORD: We'll go ahead and make this  
8 an exhibit as well, so give you that one.  
9 (Exhibit No. 18 was marked.)  
10 BY MR. SAMFORD:  
11 Q I think we're up to 18.  
12 A Okay.  
13 Q Paragraph 4 of the amended  
14 complaint says that the Plaintiff is a member of  
15 CBREC. And so Grayson is the Plaintiff?  
16 A Uh-huh (affirmative).  
17 Q And CBREC is the reference to  
18 Charleston Bottoms --  
19 A Yes.  
20 Q -- Rural Electric Cooperative?  
21 So I mean, here's my dilemma. I mean, we've looked  
22 at all of these documents and not one of them said  
23 that Grayson is a member of Charleston Bottoms.  
24 And so what I'm trying to understand is, what is  
25 your factual basis for making the assertion in

1 Paragraph 4?

2 A Well, I think I've stated this  
3 two or three times at least. East -- Grayson was a  
4 part of the creation of Charleston Bottoms as a  
5 financing mechanism to build the Spurlock plants.  
6 We went to RUS, or REA at that time, and to CFC,  
7 and we borrowed our part, just like the other  
8 member systems, to get the money to get that plant  
9 built and get it up and going.

10 Now, the proceeds evidently from the plant  
11 made the payments and Grayson did not make a  
12 payment. But as a borrower I would have thought we  
13 would have been certainly liable for that, had it  
14 not been repaid. So as a member owner of East  
15 Kentucky, and East Kentucky building the power  
16 plants, you know, it looks like to me that Grayson  
17 is a member owner, or member, whatever you want to  
18 call it, of Charleston Bottoms, the financing  
19 mechanism that built those plants.

20 Q Okay. But, I mean, all of these  
21 documents that we've looked at have specifically  
22 said East Kentucky is a member of Charleston  
23 Bottoms.

24 A And I --

25 Q Several of them have said East

1 Kentucky is the sole member of Charleston Bottoms.

2 A Uh-huh (affirmative).

3 Q And we've not seen any document,  
4 either in what we've produced based on our review  
5 of Charleston Bottoms' corporate records --

6 A Uh-huh (affirmative).

7 Q -- or the documents that you've  
8 produced --

9 A Uh-huh (affirmative).

10 Q -- that say Grayson is a member  
11 of Charleston Bottoms.

12 A Have you -- my question is, are  
13 there any documents that show East Kentucky would  
14 be a corporation or an entity without the  
15 involvement of the member systems? East Kentucky  
16 is a viable business because of the creation of the  
17 16 member -- or however many member systems at that  
18 time that created and own and operate East Kentucky  
19 Power, and without those there would be no East  
20 Kentucky Power. So there would be no -- no one to  
21 have conducted these borrowings and buildings and  
22 all -- all the things that go along with the  
23 business.

24 East Kentucky -- that's I think where we  
25 differ. East Kentucky is the member systems, and

1 when it says "East Kentucky" it means the member  
2 owners who created East Kentucky. It doesn't mean  
3 East Kentucky a building sitting out in Winchester.

4 Q Okay. So, I mean, when you say  
5 that Grayson is a member of Charleston Bottoms  
6 you're really disregarding the separate corporate  
7 existence of East Kentucky Power?

8 A Well, again, isn't Grayson an  
9 owner of East Kentucky? So, you know, therefore,  
10 if it wasn't for that incorporation of those  
11 members there would not be an East Kentucky. And I  
12 think that's where we're losing sight of the whole  
13 ballgame here.

14 Q Okay. The -- Paragraph 5 of your  
15 amended complaint says, "Each of the other  
16 Defendants named herein, i.e. all Defendants named  
17 with the exception of East Kentucky and Charleston  
18 Bottoms, are members of East Kentucky and  
19 Charleston Bottoms, and are hereinafter referred to  
20 as the distribution co-ops."

21 A Yes.

22 Q So are you familiar with the  
23 answers that were filed by the other distribution  
24 co-ops?

25 A No, I have not seen them.

1 Q Has anybody told you what is in  
2 those?

3 A No.

4 Q Would you surprised if I told you  
5 that not a single distribution cooperative asserted  
6 the same ownership interest that Grayson did?

7 A Yes, I would be surprised.

8 Q Okay. What's your reaction to  
9 that?

10 A Well, I believe they're wrong,  
11 and that's simply my opinion.

12 Q Do you know if any of the other  
13 distribution cooperatives deny having an ownership  
14 interest in Charleston Bottoms?

15 A I have not asked them.

16 MR. SAMFORD: Okay. Go off the record for  
17 just a second.

18 (OFF THE RECORD)

19 BY MR. SAMFORD:

20 Q Let's look at -- let's go back, I  
21 guess, to your complaint.

22 A Okay.

23 Q In Paragraphs 5, 6 and 7 of your  
24 complaint, and then in Paragraph -- Paragraph 8 of  
25 your amended complaint, those paragraphs as I read



1 did not vote to authorize him to do that, and he  
2 called me and he said, "What is this?" I said, "I  
3 don't know," because I didn't get a copy of it. The  
4 managers don't get anything anymore, since we're no  
5 longer on the board there.

6 And when I called to see what it was, then  
7 the page that had been left off was sent to me, and  
8 I called Jeffrey and he advised us not to sign it,  
9 because my board did not authorize Mr. Trent to take  
10 that action. He was authorized to go down there and  
11 nominate our new board member. And so it was just  
12 all -- nothing was done in a concise, legal manner,  
13 I guess. And, like I said, it had been since 2001.  
14 What was the big rush then?

15 Q Do you know if the dissolution  
16 was in any way tied with the establishment of the  
17 indenture?

18 A I believe that was the reason  
19 that we did not need the Charleston Bottoms  
20 mechanism anymore, that we would be using the  
21 indenture and that there was no purpose in keeping  
22 Charleston Bottoms.

23 Q Okay. And so you have no reason  
24 to dispute that the timing of the dissolution was  
25 largely driven by the timing of entering into the

1 indenture?

2 A I don't believe that. I believe  
3 that the Charleston Bottoms dissolution could have  
4 happened at any time in the last few years because  
5 obviously we hadn't needed it, we hadn't used it,  
6 and it had been filed by the Commission in 2001 and  
7 they never did follow up on it, so obviously it  
8 wasn't too critical either way.

9 Q Okay. In Paragraph 8 of your  
10 amended complaint you make the action that the  
11 actions taken by the Charleston Bottoms board, the  
12 June 12th -- or the June of 2012 meeting, I think  
13 this is his quote, "were done at the behest of the  
14 defendant EKPC"?

15 A Yes.

16 Q What does that mean?

17 A That means that they -- just what  
18 I said. It was brought up in April. We waived the  
19 90 days notice, and that was the director, my East  
20 Kentucky director from the Grayson board. And then  
21 this was to be voted on by my voting delegate to  
22 the East Kentucky annual meeting, who had no prior  
23 knowledge of this action.

24 Q Okay. So what -- I'm still not  
25 sure if I understand what it means to be done at



1 the behest of EKPC.

2 A They're the ones that brought it  
3 up and want it voted on suddenly.

4 Q Okay.

5 A It did not come back to the local  
6 board for any type of action.

7 Q So it was the board here that  
8 we're talking about, the Charleston Bottoms board;  
9 correct?

10 A Yes.

11 Q Okay.

12 A Well, both of those -- the voting  
13 delegate serves as the delegate to both of those,  
14 the East Kentucky annual meeting and to Charleston  
15 Bottoms' annual meeting.

16 Q Let me make sure I understand,  
17 because I think we're talking about two things.  
18 The Grayson director who is a board member of East  
19 Kentucky is also a board member of Charleston  
20 Bottoms; correct?

21 A Yes.

22 Q But that's different than the  
23 annual representative?

24 A Yes.

25 Q That it's two different people?

1 A Yes.

2 Q Okay. So wouldn't you agree with  
3 me, though, that the duty of the Charleston  
4 board -- Charleston Bottoms directors is to the  
5 best interest of Charleston Bottoms?

6 A Well, of course.

7 Q And so if they are acting at the  
8 behest of EKPC, are you saying that they somehow  
9 failed to fulfill their duty to act as directors of  
10 Charleston Bottoms?

11 A No. I'm saying that they were  
12 not adequately prepared to -- they did not have  
13 adequate information to make an intelligent vote at  
14 the annual meeting. They got this just a day or  
15 two before. They had no idea what it was about or  
16 what it was for, and they were asked to vote on  
17 behalf of their board, their local board, and their  
18 local board had no knowledge of this.

19 Q Okay. And so you're saying that  
20 when they were called to vote upon the dissolution  
21 in June, that the board members of Charleston  
22 Bottoms did not have adequate information?

23 A That's right.

24 Q Okay.

25 A Normally all they vote on is --

1 all they do is nominate the new director or whoever  
2 is going to be returning to the East Kentucky  
3 board.

4 Q Okay. So let me ask you this. I  
5 mean, ultimately, if somebody walks into your  
6 boardroom and tells your directors to do something  
7 and they do it, whose responsibility is it?

8 A Well, first of all, there  
9 wouldn't be anybody just walking into my boardroom.

10 Q And nobody walked into this --

11 A No.

12 Q -- is my example. But my point  
13 is, you know, ultimately, who has the control over  
14 how directors vote?

15 A If my board has an issue and they  
16 charge Mr. Arrington with conveying that  
17 information to the East Kentucky board, it's his  
18 responsibility to go down there and convey that  
19 message from my board.

20 Q Okay. So it is the  
21 responsibility of the director, then, to vote in  
22 accordance with their conscience unless they've  
23 been directed to vote by their --

24 A That's right.

25 Q Does that include the duty to

1 make sure they are adequately informed before they  
2 cast a vote?

3 A I would think that any director  
4 should be adequately informed so he can make a good  
5 choice before he votes.

6 Q Okay. And in the context of  
7 Mr. Trent appearing as the corporate representative  
8 at the annual meeting, he acted upon your advice to  
9 just not vote on the dissolution?

10 A He voted no.

11 Q Did he vote no or did he abstain?

12 A I believe he voted no. I think  
13 he voted no, he and another director.

14 Q From Salt River?

15 A Yes.

16 Q So I guess I'm coming back to  
17 this language, Paragraph 8 of your complaint, where  
18 you say they acted at the behest of East Kentucky.  
19 I mean, that intuitively doesn't sound right,  
20 because a director's ultimately responsible for  
21 their own actions.

22 A But East Kentucky wanted to get  
23 this finished so they could make a filing with the  
24 Commission. I assume they had some sort of  
25 deadline. I understood that they had a deadline

1 and they had to have this done by the -- finished  
2 at the June board meeting.

3 Q Okay. And so -- but it still  
4 comes -- falls back to the director as to whether  
5 or not they're going to -- in which case they make  
6 an accommodation and go ahead and vote for  
7 dissolution if they're requested to do so?

8 A Not in this case. My board would  
9 have had to have said, yes, we agree with this, you  
10 go ahead and vote yes, or you go ahead and vote no.  
11 They even had outside counsel there who called my  
12 counsel trying to explain this to him and was  
13 unable to do so, and was unable to explain it to  
14 Mr. Trent why this had to be in such a hurry that  
15 it couldn't have gone back to the full board with a  
16 little more explanation. And I believe -- I don't  
17 know what his name was.

18 Q Was it Mr. Jefferson?

19 A Probably, yes.

20 Q So, I mean, is it your opinion  
21 that the directors of Charleston Bottoms acted  
22 inappropriately in voting to dissolve Charleston  
23 Bottoms in 2000 --

24 A I believe East Kentucky acted  
25 inappropriately in asking them to without adequate

1 preparation.

2 Q But I come back to, you know,  
3 without conceding the point, even if the request  
4 was inappropriate, it still falls back to the  
5 director's responsibility --

6 A Yes.

7 Q -- to either grant it or not.

8 A Yes.

9 Q And so if you think it was an  
10 inappropriate request, do you think it was  
11 inappropriate for the directors --

12 A Yes.

13 Q -- to act upon it?

14 A Yes, I do.

15 Q So does that mean that you  
16 believe that the directors violated any of the  
17 duties that they owed to Charleston Bottoms?

18 A No. I think it was inadequate  
19 preparation, and they thought, shoot, we've been  
20 going to do this for ten years, let's just do it  
21 and get it over with.

22 Q Okay. So -- so I mean, that  
23 seems a little contradictory to me, because on the  
24 one hand you're saying it was an inappropriate  
25 request and it was inappropriately acted upon, but

1 then you're saying it was okay that they did it?

2 A Well, let me put it to you this  
3 way. I think a lot of times there are votes taken  
4 there that people go ahead and vote yes because  
5 they do not believe that East Kentucky would ask  
6 them to do anything inappropriate.

7 Q But it's your opinion that it was  
8 inappropriate?

9 A I think it was poorly thought  
10 out, I think it was poorly presented, and I think  
11 there was not adequate information given to them to  
12 make a good, sound decision.

13 MR. SCOTT: Just let me note, the complaint  
14 further -- or amended complaint further  
15 refers to that vote not being done in  
16 accordance with the bylaws.

17 BY MR. SAMFORD:

18 Q And that's procedural, so we can  
19 talk about that as well. But I'm trying to  
20 understand the substance of the decision.

21 So I mean, the decision, as I understand  
22 your complaint, I mean, it's the dissolution of  
23 Charleston Bottoms, which you believe has caused  
24 harm to Grayson; correct?

25 A I think that the dissolution of

1 Charleston Bottoms without adequately -- every  
2 local board adequately understanding the impact of  
3 that, and just exactly what would happen as a  
4 result of that, was wrong.

5 Q Okay. But I'm trying to  
6 understand. I mean, what is the -- is this part of  
7 that chain of events that has caused harm to  
8 Grayson in your opinion, the vote to dissolve?

9 A I'm not sure I'm following you.  
10 Caused harm to Grayson?

11 Q Well, yeah. Let me -- thanks for  
12 stopping me. Let me try to rephrase it.

13 If the Charleston Bottoms board had not  
14 voted to dissolve Charleston Bottoms in June of  
15 2012, we wouldn't be here; right?

16 A So are you referring to my  
17 representative down there as one of the Charleston  
18 Bottoms board?

19 Q No. I'm just asking -- I'm not  
20 singling out any member. I'm just saying the  
21 action of the board.

22 A That's what I'm saying. Are you  
23 saying that the -- that the directors there, they  
24 were the voting delegate for East Kentucky Power,  
25 but in their capacity as the Charleston Bottoms



1 board?

2 Q Correct.

3 A Do you want to know if they what?

4 Q I guess I'm trying to figure out,  
5 you know, if the Charleston Bottoms board had  
6 rejected the request to dissolve Charleston Bottoms  
7 in June of 2012, I mean, would there have been any  
8 need for you to file your complaint?

9 A I think if Grayson had been given  
10 adequate time to ask the questions, like I've been  
11 saying over and over again, who is East Kentucky,  
12 is that solely the corporation there or is that the  
13 member systems as a whole, and those types of  
14 things would have been resolved before the vote was  
15 taken, and that we would not be in this situation.

16 Q Okay. But, I mean, can't put the  
17 horse back in the barn.

18 A No, you can't.

19 Q And so I'm trying to figure out,  
20 if the board had voted not to dissolve in June of  
21 2012, there would have been no reason for Grayson  
22 to file its complaint; correct?

23 A I believe that is correct.  
24 Grayson would have had time to ask the pertinent  
25 questions and gotten results --

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Q Okay. So --

A -- gotten answers.

Q So one of the things that has transpired over the last few months, which has led to the filing of your complaint, was the vote to dissolve Charleston Bottoms --

A Yes.

Q -- by the board?

Okay. And you've already said that you thought it was inappropriate for East Kentucky to ask them to do that?

A (Witness nods head.)

Q And you thought it was inappropriate for them to do it?

A Uh-huh (affirmative).

Q So is it your intention to sue any of the directors of Charleston Bottoms in their capacity as directors of Charleston Bottoms for a breach of some type of duty?

A I don't believe so. I'd have to leave that up to my board and counsel. But I can't imagine that we would hold any -- try to hold any individual responsible for this.

Q And I'm not saying individual. I mean, it's in their capacity as a director of

1 Charleston Bottoms.

2 A I would have to refer that to  
3 counsel. I don't know.

4 Q So have you considered it?

5 A No. We've not talked about  
6 anything, especially against -- it was never  
7 Grayson's intention to harm anybody.

8 Q Sure. And so your focus is upon,  
9 you know, the problem was the inappropriate  
10 request, as you characterize it, of East Kentucky?

11 A Our focus is on the inappropriate  
12 business order, the violation of the bylaws and  
13 just the lack of information provided to the  
14 directors to make a good decision to bring back to  
15 the local board, you know, to help them. There are  
16 certain things that you don't want to decide on as  
17 an individual, even though you have on your East  
18 Kentucky hat, as we've been told over and over and  
19 over again.

20 You know, there are certain things that you  
21 have to think about how they will affect your local  
22 co-op and your local members, and you don't want to  
23 be the soul responsible for that decision. You have  
24 to talk it over with your fellow board members.  
25 Just like I think we should talk things over with

1 fellow board members at East Kentucky.

2 Q Okay. And so what made the  
3 request inappropriate in your mind, I mean, I  
4 guess, at the end of the day, was just the lack of  
5 notice, is that what I'm hearing you say; people  
6 didn't have adequate time to consider it?

7 A I didn't have an issue with the  
8 90 days. Like I said, we've been talking about  
9 this since 2001. I do believe that if this was the  
10 way that it was going to be done that it would have  
11 been appropriate then for East Kentucky to come up  
12 with a one-paragraph resolution to be presented to  
13 the local boards for them to talk about, decide on,  
14 and then adopt or reject, as the case may be, and  
15 then either authorize that delegate to vote in  
16 accordance with how they had accepted or rejected  
17 that resolution.

18 There shouldn't have been anything to hide.  
19 It shouldn't have been hurried up; it shouldn't have  
20 been hush-hush it. It should have been wide open  
21 and everybody knew what the left hand was doing with  
22 the right hand.

23 Q So when did you first become  
24 aware that Charleston Bottoms might be dissolved?

25 A Oh, what, 2001, 2000? We've been

1 talking dissolving Charleston Bottoms for years.

2 Q Okay. Okay. I apologize.

3 You're going to have to help me. Because you say,  
4 "We've been talking about it for years," but then  
5 you turn around and say we didn't have enough  
6 notice, we didn't have enough time to talk to our  
7 local boards about what we're trying to do in June  
8 of 2012.

9 A I agree with you. It was talked  
10 off and on from at least 2001, because that was the  
11 first Commission filing. There was nothing ever  
12 done after that. Occasionally it would be brought  
13 up in a board meeting, or, oh, we need to do  
14 something with Charleston Bottoms, oh, we're going  
15 to do that, we'll get to that, and all of a sudden  
16 it's April and it's got to be done now and we got  
17 to have it in June.

18 And, you know, there's no big -- like I  
19 said, with my board I've got a lot of new directors.  
20 They don't know much about Charleston Bottoms. I  
21 can't think -- I'd have to go back and count how  
22 many directors I've been through at East Kentucky  
23 since 2001. So I can't tell you every time we've  
24 talked about Charleston Bottoms.

25 It's been talked about if it wasn't needed,

1 if the accountant said it wasn't needed, Sherman  
2 said it wasn't needed, everybody's okay with that,  
3 I'm fine with that. But how it was done, and from  
4 2001 to 2011 or 2012, and then all of a sudden we  
5 got to do it now, we got to do it right this minute,  
6 let's get it done. Obviously, the thing that the  
7 board of directors signed waiving the 90 days was  
8 not appropriate or not enough. They had to come  
9 back to the voting delegates for some reason. I  
10 still don't know why that was. So what was the big  
11 rush? What would another month have mattered?

12 Q Okay. And, again, we talked  
13 about are you aware if it was timed -- the timing  
14 was driven in any way by the closing of the  
15 indenture?

16 A I have no idea. I would assume  
17 it was because it had to be done in June. So I'm  
18 assuming there was some reason for that particular  
19 timing.

20 Q Is it possible that that's really  
21 an event beyond the control of East Kentucky Power?

22 A It may have been. See, that  
23 explanation wasn't given. I don't know.

24 Q Okay. Let's -- let me hand you  
25 this document.

1           A           Okay.

2           MR. SAMFORD: I believe we're up to 19.

3           (Exhibit No. 19 was marked.)

4           BY MR. SAMFORD:

5           Q           Can you tell me what this

6           document is?

7           A           It looks like the annual

8           membership meeting notice and agenda. For 2012.

9           Q           And do you know if -- do you know

10          if Grayson received a copy of this?

11          A           Yes.

12          Q           And what is number -- Item No. 8?

13          A           Item No. 8 is "Approval of the

14          Dissolution of Charleston Bottoms."

15          Q           Okay. And do you happen to

16          recall when the actual vote -- or when the actual

17          meeting was held?

18          A           It says June the 12th.

19          Q           So that's more than three weeks,

20          but just under a month in advance?

21          A           (Witness nods head.)

22          Q           Do you know if Grayson had any

23          board meetings between May 18th and June 12th?

24          A           Oh, let's see. Our annual

25          meeting was May the 10th, Jeffrey, and our board

1 meeting was -- I don't know. A lot of times in May  
2 whenever -- I could look, but a lot of times in May  
3 whenever our board meeting is -- annual meeting is  
4 early we have our organizational meeting and our  
5 board meeting right after that. So it could have  
6 been early that month. I don't know for sure.

7 Q Okay. Did you have any -- I  
8 mean, clearly by the day you received this notice  
9 you would have known that the dissolution of  
10 Charleston Bottoms would be on the agenda --

11 A Uh-huh (affirmative).

12 Q -- for the annual meeting. Did  
13 you have any concerns about the dissolution at that  
14 point?

15 A Evidently not. I probably would  
16 have opened it, looked at it and said okay, and put  
17 in a folder and...

18 Q So we don't know whether or not  
19 you had any annual -- or whether you had any  
20 regular board meetings?

21 A No, I don't remember for sure.

22 Q Okay.

23 A But it being on the 10th, which  
24 would have been, like, Thursday, I'm thinking that  
25 we may have had board meetings next -- that's this



1 year's, but I'm thinking we may have had a board  
2 meeting the next Monday. I don't know for sure. I  
3 really don't remember.

4 Q I mean, presumably there would be  
5 minutes of the meeting, if you had them, at that  
6 time?

7 A Yes, of course. I can look it  
8 up. If that's the case, then, see, we would not  
9 have had a board meeting before the East Kentucky  
10 annual meeting. But I don't know. I don't know  
11 that for sure.

12 Q Would you be willing to make  
13 those minutes --

14 A Sure.

15 Q -- available?

16 Okay. If by chance there was not a regular  
17 board meeting that month for whatever reason, I  
18 mean, you certainly would have had an opportunity to  
19 call a special board meeting if you thought it was  
20 necessary?

21 A If I -- yes, right.

22 Q But you didn't do that?

23 A No.

24 MR. SAMFORD: Let me hand you this  
25 document. This will be Exhibit 20.

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(Exhibit No. 20 was marked.)

BY MR. SAMFORD:

Q Can you tell me what that document is?

A This is the Charleston Bottoms annual meeting agenda for 2012.

Q Is it the Charleston Bottoms annual meeting or is it the board of directors meeting?

A Let's see, this is the regular meeting of the Charleston Bottoms Rural Electric Cooperative Corporation Board of Directors.

Q Okay. In Item 4 there's one action item. Can you tell me what that is?

A It's a request for approval of the dissolution of Charleston Bottoms.

Q Okay. And so this notice is dated June 1st, 2012?

A Uh-huh (affirmative).

Q And that's the -- that is the period of time required by the bylaws for giving notice, I think, for meetings?

A But I think the dissolution notice was 90 days, which is why they had the East Kentucky board vote to do that -- to waive that in

1 April, I believe.

2 Q Okay. But I was just asking --

3 A I believe you're right.

4 Q -- if it was between June 1st and  
5 June 11th.

6 A I believe you're right.

7 Q Ten days. So the notice was  
8 timely given?

9 A Uh-huh (affirmative).

10 Q Okay.

11 MR. SCOTT: Note my objection to this  
12 document for the reason we don't know to  
13 whom this was sent.

14 BY MR. SAMFORD:

15 Q Do you have -- from your  
16 experience, who do you think this document would  
17 normally be sent to?

18 A I would think it certainly --

19 MR. SCOTT: Let me note an objection for  
20 the reason that the witness couldn't  
21 possibly know to whom A.L. Rosenberger  
22 would normally send a document.

23 BY MR. SAMFORD:

24 Q Is it reasonable to assume that  
25 he would send it to the addressees?

1 A Well, I --

2 MR. SCOTT: Again, note my objection,  
3 because there are no addressees.

4 A As far as I know, me and the East  
5 Kentucky director would have received this.

6 Q Do you know if you received it?

7 A I'm sure I did, yes.

8 Q And then who was the director at  
9 that point?

10 A Kenneth Arrington.

11 Q And he's still the director?

12 A Yes.

13 MR. SAMFORD: So that's 20. Now let me  
14 hand you this one. And label this as  
15 Exhibit 21.

16 (Exhibit No. 21 was marked.)

17 BY MR. SAMFORD:

18 Q Can you tell me what this  
19 document is?

20 A It looks like the board minutes  
21 of the East Kentucky Power Board of April the 10th,  
22 2012.

23 Q Okay. And can you tell from that  
24 document if you were in attendance for that  
25 meeting?

1 A Yes, I was.

2 Q And then who else on behalf of  
3 Grayson?

4 A Mr. Arrington.

5 Q If you will, turn over to Page 12  
6 of that document.

7 A Okay.

8 Q And there's a item there under  
9 the heading of "Strategic Issues Committee --  
10 A Uh-huh (affirmative).  
11 Q -- Information Items." From your  
12 experience on the board, what is an information  
13 item?

14 A Just an -- notice to the full  
15 board.

16 Q It's more just something that's  
17 being discussed, it's not for a particular action  
18 on that day?

19 A Right.

20 Q Okay. And an action item would  
21 be something that's going to be -- some sort of  
22 decision would be requested upon at that point, but  
23 an information item is just more for discussion  
24 purposes; correct?

25 A Say that again?

1 Q If it was a board action item,  
2 then it would be something that the board would be  
3 asked to make a decision on, but if it's an  
4 informational item, it would be more just for  
5 discussion of the board?

6 A If it was a board action, there  
7 would probably be an actual resolution drafted for  
8 them.

9 Q Okay.

10 A Okay?

11 Q There would be an expectation  
12 that the board would act on something?

13 A Yes, would vote.

14 Q Take as much time as you need to  
15 look at this, but when you're ready there's a few  
16 parts I want you to read in particular.

17 A Okay. (Witness reads document.)  
18 Okay.

19 Q Can you read the next to last  
20 sentence of the first paragraph under that  
21 discussion of information items?

22 A The next -- under the strategic  
23 issues?

24 Q Correct.

25 A "The process is to deposit," is

1 that it?

2 Q Yes.

3 A "The process is to deposit in  
4 East Kentucky's asset base the value of Charleston  
5 Bottoms to facilitate the indenture. The loans  
6 secured by CB have since been retired."

7 Q Okay. So this is a discussion I  
8 believe by Mr. Oliva, who I think is the finance  
9 director --

10 A Uh-huh (affirmative).

11 Q -- for East Kentucky, and so he  
12 is informing the East Kentucky directors who are  
13 also the Charleston Bottoms directors that as part  
14 of the indenture transaction that the assets of  
15 Charleston Bottoms are going to be deposited into  
16 East Kentucky?

17 A (Witness nod head.)

18 Q Do you remember -- do you  
19 remember that discussion?

20 A I remember -- let's see, did  
21 Mr. Smart report to the full board or did he report  
22 to the SI committee? I was not on the SI committee  
23 at that point in time. I don't remember that.

24 Q Yeah, and I believe that this is  
25 the minutes of the board meeting where the SI

1 committee is making its report to the full board.

2 A Mr. Smart reported on the trust  
3 indenture that was discussed earlier in  
4 committee --

5 Q Correct.

6 A -- by Frank Oliva. I don't  
7 remember Frank ever discussing this in the full  
8 board meeting, no.

9 Q Okay. But you would agree with  
10 me that the minutes of a board of directors meeting  
11 would reflect the discussion that was had in the  
12 course of the board of directors meeting?

13 A Are you asking me if Mr. Oliva  
14 reported to the full board?

15 Q No. I'm just asking you, I mean,  
16 generally speaking, when you're keeping minutes for  
17 a board meeting you reflect the discussion that's  
18 had in that board meeting?

19 A Yes.

20 Q And so then, coming down to the  
21 -- skip down I guess to the third paragraph below  
22 that, the -- beginning with "The second step," do  
23 you mind to read that?

24 A "Mr. Goodpaster" --

25 Q The next one.



1           A           The next one. "The second step  
2           is the vote to dissolve CB, which will be presented  
3           for a vote at the annual meeting on June 11, 2012."  
4           Q           Do you remember that?  
5           A           Yes.  
6           Q           Okay. Do you remember that being  
7           stated at this meeting?  
8           A           Not that it would be done June  
9           the 11th, but evidently it was, because it's in the  
10          board minutes.  
11          Q           So you don't remember that  
12          statement being made?  
13          A           Not that --  
14          Q           Not particularly?  
15          A           -- that date.  
16          Q           Might not have seemed  
17          consequential at the time?  
18          A           Right.  
19          Q           So when the minutes for a board  
20          meeting are prepared, then are they not sent out in  
21          a copy of the following month's board book for  
22          approval? That's the normal practice?  
23          A           Normal practice, yes.  
24          Q           So in addition to perhaps hearing  
25          this information live in the boardroom, then you

1 would have also had the opportunity to review these  
2 minutes at some point in, presumably, early May?

3 A Well, it's according to when I  
4 get them. I mean, you know, people go on vacation  
5 and different things. Now, some days I get them a  
6 week ahead of time of our board meeting. Some  
7 months I get them the morning of, you know, or the  
8 morning after. I don't know exactly what I did  
9 receive.

10 Q Okay, but --

11 A I don't know when these were  
12 prepared or who did them. You know, it's just  
13 according. Sometimes I get them just within a few  
14 days after the board meeting, but it varies. So I  
15 could not say --

16 Q What day you received these?

17 A -- that I got these in time for  
18 my board meeting.

19 Q Fair enough. So nevertheless,  
20 the meeting itself was held on April 10th?

21 A Exactly.

22 Q And they announced that there was  
23 an intention to present a vote to dissolve  
24 Charleston Bottoms at the annual meeting on  
25 June 11th?

1 A Uh-huh (affirmative).

2 Q Which would be more than 60 days?

3 A Uh-huh (affirmative).

4 Q And so presumably Grayson's board  
5 would have met at least once and perhaps twice?

6 A Perhaps twice, yes.

7 Q Do you know if the information  
8 contained or presented in the April 10th, 2012 East  
9 Kentucky board meeting was shared with Grayson's  
10 board?

11 A If it was, it would have been in  
12 our board minutes.

13 Q And I think I had already asked  
14 for a copy of your May minutes, but would you be  
15 willing to share your May minutes as well so we can  
16 verify that for any other --

17 A Let's see -- yes.

18 Q Okay. Let me go back to the  
19 amended complaint. We're kind of working our way  
20 through this. I appreciate your patience.

21 Amended complaint, Paragraph 9 says that  
22 East Kentucky's filing of the application in PSC  
23 Case 2012-249 was *ultra vires*?

24 A Pardon me?

25 Q Was *ultra vires* in amended

1 complaint Paragraph 9?  
2 A In ours?  
3 Q Yeah.  
4 A Is this --  
5 MR. SCOTT: Paragraph 9, yeah.  
6 BY MR. SAMFORD:  
7 Q Are you with me, your amended  
8 complaint?  
9 A Uh-huh (affirmative).  
10 Q Paragraph 9?  
11 A Uh-huh (affirmative). Right  
12 here.  
13 Q Yeah. What's your understanding  
14 if you make the allegation that a corporation acts  
15 *ultra vires*?  
16 A I have no idea what that means.  
17 MR. SAMFORD: Do you want to offer a  
18 definition or do you want me to ask her?  
19 MR. SCOTT: Well, I'm not under oath.  
20 MR. SAMFORD: Well, I'm trying to get you  
21 to help your witness if you want.  
22 MR. SCOTT: No. I mean, she's answered  
23 your question.  
24 BY MR. SAMFORD:  
25 Q Okay. So what you're telling me

1 is you've alleged things in your complaint that you  
2 don't know what they mean?

3 MR. SCOTT: Well, this --

4 MR. SAMFORD: How would you like to help  
5 her?

6 MR. SCOTT: This witness didn't allege  
7 anything.

8 MR. SAMFORD: Grayson did?

9 MR. SCOTT: Yeah.

10 BY MR. SAMFORD:

11 Q You're responsible for filing  
12 complaints. I mean, did you review the complaint  
13 before it was filed?

14 A No. I believe I left that to  
15 counsel, my board left that to counsel.

16 Q So did your board review what was  
17 in your complaint before it was filed?

18 A I don't know.

19 Q How would they know if it was  
20 accurate?

21 A Well, I would think that they  
22 would certainly rely on counsel, make sure it was  
23 accurate.

24 MR. SAMFORD: Okay. Do you want to help  
25 her or do you want me to keep asking?

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MR. SCOTT: Pardon?

MR. SAMFORD: Do you want to help her with the definition of *ultra vires* or do you want me to just keep --

MR. SCOTT: Not really.

BY MR. SAMFORD:

Q Okay. So you don't know what it means when you allege that East Kentucky acted in an *ultra vires* manner?

A No.

MR. SCOTT: Objection to the question. This complaint drafted by an attorney, and that attorney is me. And that attorney was authorized by the corporation to file a lawsuit to assert the things that are set forth in that. This witness is not the corporation. This witness is not the person who speaks for the corporation in filing the lawsuits. You know, this person is the person who has the duties that she outlined in the first two or three questions of her deposition. So this contains language of counsel. It contains legal conclusions that she would not be expected to know. "*Ultra vires*" is a term

1 of art that she wouldn't be expected to  
2 know.  
3 MR. SAMFORD: Yeah, and you'll -- all I'm  
4 trying to do is make sure that we're  
5 talking about the same thing. But you  
6 know, if the witness doesn't understand  
7 what the allegations in the complaint are,  
8 then, I mean, I think that's a problem.  
9 Don't you?

10 MR. SCOTT: Well, if it was Carol Ann  
11 Fraley versus East Kentucky Power  
12 Corporation, then, yeah, maybe, but it's  
13 not Carol Ann Fraley versus East Kentucky  
14 Power Corporation.

15 MR. SAMFORD: But I think what she just  
16 said is she nor any of the directors --

17 THE WITNESS: And I can't speak for the  
18 directors. They may know what that means.  
19 I don't.

20 BY MR. SAMFORD:

21 Q Well, but my question was whether  
22 you or any of the directors reviewed the complaint  
23 before it was filed, and I think the answer to that  
24 was no?

25 A No.

1 MR. SAMFORD: So, I mean, are you the  
2 person who speaks on behalf of Grayson?  
3 MR. SCOTT: Sir, I'm not under oath here.  
4 I don't have to answer your questions.  
5 MR. SAMFORD: No, but you might end up  
6 having to answer my questions if you end up  
7 being a fact witness. I mean, are you  
8 the -- I'm trying to figure out --  
9 MR. SCOTT: I'm not Sherman Goodpaster, who  
10 is a fact witness, about which we've  
11 already heard testimony. But, you know, I  
12 prepared a complaint and I object to the  
13 question to the witness, asking her to make  
14 a legal conclusion regarding a legal term.  
15 MR. SAMFORD: Yeah, and what you alleged is  
16 that the corporation acted *ultra vires*, and  
17 I'm entitled to ask the basis for that  
18 allegation. And so far nobody understands  
19 what it means, so I can't ask --  
20 MR. SCOTT: You've only asked one person.  
21 MR. SAMFORD: Well, and if nobody else has  
22 seen it, then who else is there to ask?  
23 That's my question.  
24 MR. SCOTT: Well, it doesn't really matter  
25 what it means in the mind of this witness.



1           What it means, or what it matters is to the  
2           court based upon the evidence that will be  
3           presented in this case, by way of  
4           discovery, by way of exhibits, by way of  
5           sworn testimony, and then inferences drawn  
6           from that to conclude whether the acts  
7           complained of are *ultra vires* or not based  
8           upon the long-standing definition of "*ultra*  
9           *vires*."  
10          MR. SAMFORD: Yes, but Grayson RECC has to  
11          have somebody who can speak to the  
12          substance of the allegation as to whether  
13          or not East Kentucky acted *ultra vires*.  
14          MR. SCOTT: They can speak to the facts of  
15          the case, sir, only the facts.  
16          MR. SAMFORD: And that's what I'm asking,  
17          is who is the person who can substantiate  
18          the factual basis for the claim that East  
19          Kentucky acted *ultra vires*.  
20          MR. SCOTT: Whether a fact has as its  
21          conclusion that it is determined to be  
22          *ultra vires* is not within the scope of this  
23          witness' knowledge, obviously. A fact or  
24          series of facts can have a meaning that is  
25          a legal determination. Only factual things

1           are things about which she can give  
2           testimony.

3 BY MR. SAMFORD:

4           Q           And so my question is, who is the  
5 person who can speak on behalf of Grayson to be  
6 able to substantiate factually the allegations in  
7 this paragraph of the amended complaint?

8           MR. SCOTT: You can ask her about facts of  
9 which she may or may not be aware. You can  
10 ask all the other persons that you have  
11 scheduled for deposition facts about which  
12 they may or may not be aware. Whether the  
13 existence of those facts amount to an *ultra*  
14 *vires* act is something to be determined by  
15 the court. Whether they know that those  
16 facts constitutes an *ultra vires* act is not  
17 the question.

18                   Whether someone crossed the center  
19 line and engaged in an ordinarily prudent  
20 manner in operating their vehicle along a  
21 highway is not something that they're going  
22 to testify to. They're going to testify to  
23 whether they stayed within their side of the  
24 road, whether they were within the speed  
25 limit, whether they kept proper lookout,

1           whether they operated a vehicle in the same  
2           manner as an ordinarily prudent person would  
3           in the same or similar circumstances.

4           The inferences drawn from those facts  
5           are what would constitute negligence, not  
6           whether that person was negligent or not is  
7           not a fact -- statement that the witness can  
8           give. Only facts of the circumstances in  
9           the occurrence, not the resultant legal  
10          conclusion.

11          MR. SAMFORD: So what we've established is  
12          that nobody that you're aware of in  
13          Grayson's management or Grayson's board  
14          reviewed the complaint before it was filed?

15          MR. SCOTT: I don't think she said that.

16          BY MR. SAMFORD:

17           Q           Well, that's what I'm asking.

18           A           We discussed the scope of the  
19           situation and what we wanted Mr. Scott to do for us  
20           on behalf of Grayson and the matter of the  
21           Charleston Bottoms issue with East Kentucky Power.  
22           Now, whether anyone sat down and read word for word  
23           the document that was filed, I cannot say. I did  
24           not.

25           Q           I mean, do you think that's

1 important?

2 A Well, I would think at a certain  
3 point you have to rely on the advice of counsel.  
4 If I were going to file for divorce, I probably  
5 wouldn't understand all the terms that he was going  
6 to throw out there, but I would hope that he would.  
7 That's what I'd be paying him for.

8 Q Wouldn't you want to -- you know,  
9 I'm sure you're aware that there are penalties for  
10 filing things that lack merit --

11 A Absolutely.

12 Q -- are not appropriate?

13 A I feel sure.

14 Q That applies to every plaintiff  
15 in every case?

16 A Uh-huh (affirmative).

17 Q So as a plaintiff in a case,  
18 don't you think it would be reasonable or incumbent  
19 upon somebody within the Grayson organization to  
20 review a legal document before it's filed with the  
21 court?

22 A Well, let me explain it to you  
23 this way. If I don't know what that means now, I  
24 would not have known what it meant when I read it.  
25 Now, of course, I would have had the opportunity to

1 ask Mr. Scott, but as far as just reading the  
2 document word for word, I would not have known what  
3 that meant any more than I do right now.

4 Q That's fine. I accept that.

5 A Okay.

6 Q But we've kind of moved beyond  
7 that now to the fact that what I hear you saying is  
8 the complaint was filed without anybody from  
9 Grayson having reviewed it.

10 A But after rigorous and long and  
11 tenacious discussion. I mean, we went over this  
12 and over this and over this. We read documents, we  
13 looked at minutes and, you know, we did not go into  
14 this blinded.

15 Q So when did you see the complaint  
16 for the first time?

17 A Oh, I don't -- I don't know.

18 Q I mean, was it recent?

19 A I don't know. There's been --  
20 I've got a file on my desk. I've been going  
21 through documents and looking up things, and I  
22 could not say that for sure. I don't know. You  
23 know, I could not give you a date. I don't know.

24 Q So paragraph says -- Paragraph 9,  
25 coming back to this, says that, "The actions of the

1 Defendant, East Kentucky Power Cooperative in  
2 filing an application with the Public Service  
3 Commission (PSC) Commonwealth of Kentucky in Action  
4 No. 2012-00249, to seek and gain approval from the  
5 PSC for dissolution of CBREC" -- which is  
6 Charleston Bottoms -- "and to seek and gain  
7 approval from the PSC to transfer the assets of  
8 Charleston Bottoms to EKPC exceeded the authority  
9 of EKPC, is an *ultra vires* act" -- which we'll  
10 leave alone -- "and was not based upon appropriate  
11 corporate action."

12 So let me ask you, taking out "*ultra vires*,"  
13 what is your understanding of the factual bases that  
14 support those allegations?

15 MR. SCOTT: Let me note an objection.

16 She's already answered that on a series of  
17 many questions about the inappropriateness  
18 of the dissolution of Charleston Bottoms on  
19 procedurally how it was done.

20 Inferentially, what follows is therefore  
21 corporate action by East Kentucky to have  
22 done that, which it did in the PSC case,  
23 would also have been inappropriate.

24 BY MR. SAMFORD:

25 Q And you're the one who pled the

1 complaint like you did, so I'm entitled to go  
2 paragraph by paragraph. So to the extent it's  
3 duplicative, it's going to be duplicative question  
4 and answer.

5 MR. SCOTT: Okay.

6 BY MR. SAMFORD:

7 Q So what's your factual  
8 understanding for --

9 A State your question again,  
10 please.

11 Q All right. You've read amended  
12 complaint Paragraph 9?

13 A Uh-huh (affirmative).

14 Q What is the factual basis for  
15 your understanding of that paragraph?

16 A That there was not adequate  
17 notice and adequate information given to the local  
18 board to make a decision to empower that director  
19 to vote on the question of the dissolution of  
20 Charleston Bottoms.

21 Q Okay. But let me stop for a  
22 second and maybe draw a distinction. Paragraph 9  
23 doesn't really speak about the decision to  
24 dissolve --

25 A Okay.

1           Q           -- Charleston Bottoms. It talks  
2 about the actions of East Kentucky in filing an  
3 application. So it's saying, as I read it, that  
4 East Kentucky did not have the authority, or  
5 exceeded its authority, and didn't have appropriate  
6 corporate action to file -- or to file the  
7 application with the PSC?

8           A           Well, it follows if corporate  
9 action was not correct, then certainly the filing  
10 would not have been appropriate or correct.

11          Q           Okay. And how does that  
12 necessarily follow?

13          A           Well, if -- if they did not have  
14 the authority to take the action on dissolution,  
15 then they certainly wouldn't have had the authority  
16 to file it with the Commission.

17          Q           And so we can go back to one of  
18 our prior exhibits, Exhibit 16. Do you have that  
19 in front of you?

20          A           I don't have mine numbered, no.

21          Q           That's this order, from Case  
22 No. 2001-108.

23          A           Let's see, that's not it. I've  
24 got too many papers over there. You got yours?  
25 Okay.



1 Q So what I heard you just say is  
2 that East Kentucky -- it was inappropriate for East  
3 Kentucky to seek approval for the PSC, based upon  
4 the fact that the board should not have voted to  
5 dissolve Charleston Bottoms?

6 A Uh-huh (affirmative).

7 Q Should have waited until it was  
8 done appropriately. But if you look over on Page 2  
9 of the Commission's order from the 2001 case, then  
10 Paragraph 3 there, what does that say?

11 A "East Kentucky shall file a copy  
12 of the minutes of the special meeting of the Board  
13 of Directors of Charleston Bottoms reflecting the  
14 results of the vote on the dissolution."

15 Q Okay. So in 2001 the application  
16 for Commission approval had been filed and approved  
17 before the vote actually took place by the board?

18 A Well, then, that tells me it  
19 didn't have to be done the second time, did it?

20 Q Well, maybe it didn't. But back  
21 to our point, I mean, your point was that the  
22 Commission here, in your paragraph you said it  
23 didn't have the authority to do that because the  
24 board hadn't acted appropriately?

25 A Right.

1 Q But in 2001 it had sought  
2 Commission approval and received Commission  
3 approval before the board acted?

4 A Before the board acted?

5 Q Yeah. I mean, look back at the  
6 order in Paragraph No. 3.

7 A Let's see that again. Does this  
8 mean that East Kentucky had not taken a vote before  
9 this was filed?

10 Q I believe in 2000 --

11 A Well, I did not know that.

12 Q And so --

13 A Why would East Kentucky have  
14 filed anything with the Commission before a vote  
15 from the full board was taken? Isn't that putting  
16 the cart before the horse? Then they've done it  
17 twice, in my book.

18 Q So -- so you didn't object,  
19 though, in 2001?

20 A We never received notice in 2001  
21 from the Commission. We went back and looked.

22 Q But you knew that the case had  
23 been filed?

24 A Maybe so.

25 Q So if in 2001, in fact, the

1 Commission --

2 A I don't know that I did know that  
3 because, like I said, we didn't receive notice of  
4 the filing, so how would I have known?

5 Q Okay. In 2001 the Commission  
6 approved the dissolution before the board had made  
7 its final vote, and so that would tend to undercut  
8 the accuracy of your allegation in Paragraph 9 that  
9 the Commission -- that East Kentucky exceeded its  
10 authority in seeking Commission approval to enter  
11 into the trust indenture.

12 A That makes me question why the  
13 PSC would have given any credence to that request  
14 without -- before board approval. Why would they  
15 do that?

16 Q Well, let's go to the next one,  
17 which I think I handed you already.

18 A Okay.

19 MR. SAMFORD: It's Exhibit 22, which is the  
20 Commission's Order in Case No. 2012-249.

21 (Exhibit No. 22 was marked.)

22 THE WITNESS: Yeah, uh-huh (affirmative).

23 MR. SCOTT: Are the April 10 minutes  
24 numbered?

25 MR. SAMFORD: I think they were 21. Yeah,

1 the April 10 minutes were Exhibit 21.

2 MR. SCOTT: Okay.

3 BY MR. SAMFORD:

4 Q Okay. So we have here the order  
5 from the Commission. This is approving the  
6 indenture. Let me go back to your allegation in  
7 Paragraph 9 of your amended complaint.

8 Okay. You say in Paragraph 9 that, "The  
9 actions of the Defendant, East Kentucky, in filing  
10 an application with the PSC to seek and gain  
11 approval from the PSC for dissolution of Charleston  
12 Bottoms," and then it goes on from there.

13 I mean, did in fact East Kentucky seek  
14 approval for the dissolution of Charleston Bottoms  
15 in Case No. 2012-249?

16 A Looks like they were seeking  
17 approval for a trust indenture to replace the  
18 existing mortgage, so I'm assuming that they're  
19 going to replace it, that they are going to do away  
20 with it.

21 Q But do you know that?

22 A Let's see.

23 Well, it says that it's in East Kentucky's  
24 best interest to dissolve Charleston Bottoms and  
25 transfer the assets to East Kentucky prior to or at

1           A           I'm not going to sit here and do  
2 a "he said, she said." I'm not going to go into  
3 the things that have happened because it's not --  
4 I'm not going to do that.

5           Q           Would you like to take a few  
6 minutes?

7           A           No, I don't. I'm fine. I get --  
8 when I get mad, I cry. So there you go. Ask  
9 Sherman. But the things that have been done down  
10 there are less than gentlemanly, let's put it that  
11 way --

12          Q           Okay.

13          A           -- from actions inside the  
14 boardroom and out.

15          Q           So I want to understand, and if  
16 you want to take a break --

17          A           No. I'm fine. I'm just mad.

18          Q           When we're talking about  
19 Charleston Bottoms and the financing --

20          A           Yes.

21          Q           -- of Charleston Bottoms, the  
22 distribution cooperatives are commonly referred to  
23 in the documents as "participating members" or  
24 "participants."

25          A           Uh-huh (affirmative).

1 Q And so they don't have a direct  
2 liability?

3 A They would if the money wasn't  
4 paid back.

5 Q Yeah, it's contingent --

6 A Yeah.

7 Q -- in the event that East  
8 Kentucky failed to make good --

9 A Sure.

10 Q -- on its debt obligations, then  
11 they would be responsible for making the debt  
12 payments?

13 A Uh-huh (affirmative).

14 Q So is that not -- I mean, is that  
15 not the classic definition of a guarantor of a  
16 debt?

17 A Again, if it had not been for the  
18 member systems creating East Kentucky and  
19 Charleston Bottoms, and building Spurlock and the  
20 other plants, and owning and operating Dale and  
21 Cooper, there would be no East Kentucky or  
22 Charleston Bottoms. That's the whole thing in a  
23 nutshell.

24 The East Kentucky Power is the member  
25 systems, as far as I'm concerned. And I thought

1 that that was the way that most other co-ops felt,  
2 that we were the member owners.

3 And I have broached that subject different  
4 times with Mr. Campbell and different ones, and it  
5 seems that somewhere along the way this has gotten  
6 turned around. We work at the direction of East  
7 Kentucky.

8 Q Okay. Paragraph 15 of your  
9 amended complaint alleges that East Kentucky has  
10 taken the assets of Charleston Bottoms for its own  
11 use and benefit to the detriment of Grayson.

12 A Okay.

13 Q What do you mean by that?

14 A Well, certainly if there's  
15 \$97 million worth of assets down there, and they  
16 were assigned to or divided up, even a portion of  
17 them among the member systems, probably a number of  
18 us who were in for a rate increase right now  
19 wouldn't have to be in for a rate increase.

20 Q Okay. But I guess the -- in my  
21 mind the word "taken" sort of has an implication  
22 that goes along with that. I mean, where did the  
23 assets of Charleston Bottoms go?

24 A They went to East Kentucky. We  
25 have a letter that says it will increase their

1 ability to borrow money, and I'm fine with that, if  
2 that would translate into lower rate for Grayson  
3 and help my members. They don't have to write me a  
4 check. But if there was some way that there was  
5 some division of those assets to the member systems  
6 that would help us help our members, then I -- you  
7 know, I think we would all be satisfied with that.

8 But the fact that East Kentucky is using  
9 this to increase equity on the backs of the member  
10 systems and to improve their financial position,  
11 when the majority of the member systems' financial  
12 position continues to deteriorate, and there is  
13 absolutely no opportunity for -- or no offer of help  
14 from East Kentucky, is wrong.

15 Q Okay. But, I mean, the asset of  
16 Charleston Bottoms was the power plant --

17 A Right.

18 Q -- and the land upon which it  
19 sat.

20 A Okay.

21 Q That hasn't gone anywhere?

22 A No.

23 Q It's not like it's been sold.

24 A No.

25 MR. SCOTT: There's a deed made from



1 Charleston Bottoms to East Kentucky Power.

2 A To East Kentucky Power.

3 BY MR. SAMFORD:

4 Q But you would agree the land is  
5 still there?

6 MR. SCOTT: Sure.

7 Q And the power plant is still  
8 sitting on the land.

9 A Sure.

10 Q So, I mean, the asset -- I mean,  
11 it's not like it was liquidated and turned into  
12 cash.

13 A Oh, no. We've never said that.

14 Q Okay. So I guess my -- this is  
15 what I'm having trouble understanding. The  
16 complaint is -- the assets haven't really gone  
17 anywhere. It's still the same power plant; it just  
18 has a different owner on the deed.

19 A True, but why did we get a letter  
20 from East Kentucky saying it will increase their  
21 ability to borrow, it will increase their financial  
22 position, it may actually gain them a higher rating  
23 than they already have, which evidently is fairly  
24 adequate at this point in time. You know, we had a  
25 good subscription to the last package. So, you

1 know, what's the deal with that?

2 Q Okay. And, I mean, those are all  
3 fair questions, but they go to the business  
4 judgment and the reasonableness of the indenture  
5 really more so than the dissolution of Charleston  
6 Bottoms.

7 A No. I think -- I think that it  
8 goes to the financial picture of East Kentucky  
9 Power and the relative financial conditions of the  
10 member owners and they're not -- they're not  
11 balancing. They are not -- nobody -- one's not  
12 helping the other.

13 Q So do you know how East  
14 Kentucky's balance sheet would have changed from  
15 the day before the dissolution could have occurred?

16 A Well, I would say it would have  
17 increased by 97 million.

18 Q Because it's a consolidated  
19 balance sheet, do you still think that?

20 A I don't know.

21 Q Okay.

22 A I do not know. But if the deed  
23 was in Charleston Bottoms and then it transferred  
24 to East Kentucky Power, does that not change the  
25 assets? It didn't belong to Charleston Bottoms

1 the ones entitled to the Charleston Bottoms'  
2 assets?

3 A Aren't we the member owners?  
4 That's my whole point. Yes, they should belong to  
5 the member owners.

6 Q And that's where we're just  
7 completely not syncing.

8 A Absolutely not, no.

9 Q Because I've shown you a lot of  
10 documents saying that East Kentucky is the sole  
11 member of Charleston Bottoms.

12 A And I say East --

13 Q I've not seen one that says  
14 Grayson is a member.

15 A And I say that East Kentucky is  
16 Grayson and Inter-County and Cumberland Valley and  
17 whoever else.

18 Q But to do that you're really  
19 disregarding the separate corporate nature of East  
20 Kentucky?

21 A No. I think that you all are  
22 ignoring the fact that we are the member owners.

23 Q So you say that East Kentucky has  
24 taken the assets of Charleston Bottoms for its own  
25 benefit to the detriment of Grayson. Is Grayson

1 being denied the use of the Spurlock 1 unit?

2 A No, but I'm being -- I am being  
3 charged a rate that I believe that with, you know,  
4 with some consideration could be lowered, and when  
5 you got members out here who can't pay a 65-dollar  
6 bill, you have to be aware of that.

7 Q Just to make sure, when you're  
8 talking about a lower rate, you're talking about  
9 Amendment 3 and those issues?

10 A I don't want to get into that.

11 Q Well, for our purposes it's  
12 important.

13 A I'm talking about Charleston  
14 Bottoms. That's all we're talking about today.

15 Q Okay. So Charleston -- so East  
16 Kentucky's rate has not changed before or after the  
17 dissolution, I mean, you're still being charged the  
18 same --

19 A It changed before the  
20 dissolution.

21 Q But the dissolution --

22 A It changed during the Liberty --  
23 the management on it.

24 Q In the context of the base rate  
25 case?

1 A Right.

2 Q But since the dissolution of  
3 Charleston Bottoms, there's not been --

4 A No.

5 Q -- a change in East Kentucky's  
6 rate?

7 A No.

8 Q And you've not been denied access  
9 to power from any of East Kentucky's generating --

10 A No.

11 Q In amended complaint Paragraph 16  
12 and 17, those are the paragraphs that talk about  
13 East Kentucky denying Grayson's representative from  
14 participating in -- I believe it was the  
15 October 22nd special board meeting?

16 A And subsequent board meetings.

17 Q Okay. Do you know -- well, let  
18 me just ask. I mean, what's your factual  
19 understanding of that?

20 A Well, he just went to the board  
21 meeting, and when this item came up he was asked to  
22 leave.

23 Q You weren't personally in the  
24 room for any of those?

25 A I'm not allowed in the room. I'm

1 not a director.

2 Q And so you're -- so anything I  
3 ask you is just what you've been told?

4 A That's right.

5 Q Okay. In Paragraph 21 of your  
6 amended complaint you say that "East Kentucky and  
7 Charleston Bottoms have prevented Grayson from  
8 entering into the furtherance of its business  
9 relationship with its members." What does that  
10 mean?

11 A We have some opportunities for  
12 some off-system purchase power and we have not been  
13 able to get any satisfaction from East Kentucky  
14 with -- it would require their participation, and  
15 so we have not been able to get that anywhere else.

16 MR. SCOTT: Well, that also refers to  
17 members.

18 THE WITNESS: Pardon me?

19 MR. SCOTT: Members. Affects our ability  
20 to provide a low cost power. Had we had a  
21 ratable distribution, then we would not  
22 have had to have sought the rate increase.

23 THE WITNESS: Right.

24 MR. SCOTT: And that -- when it refers to  
25 our members, that's what it's --

1 BY MR. SAMFORD:  
2 Q So there's kind of two aspects to  
3 that paragraph?  
4 A Right.  
5 Q It's -- one, the not getting the  
6 pro rata distribution of the assets of Charleston  
7 Bottoms you think forced you to seek a rate  
8 increase sooner --  
9 A No, no.  
10 Q -- than you otherwise --  
11 A No, no.  
12 Q I'm not trying to put words in  
13 your mouth. I'm just trying to understand.  
14 A No. The Charleston Bottoms issue  
15 did not cause our rate increase, but it could have  
16 prevented it.  
17 Q It could have delayed it?  
18 A Yes, or prevented it.  
19 Q And then the second part is your  
20 not having the opportunity to procure power from --  
21 is it Magnum, and that would have --  
22 A Uh-huh (affirmative).  
23 Q -- that would lower your --  
24 A Again --  
25 Q -- rates by some amount?

1 A Uh-huh (affirmative).

2 Q So, I mean -- I mean, can East  
3 Kentucky write you a check for pro rata share? I  
4 mean, they can't do that; right?

5 A I understand that East Kentucky  
6 Power cannot pay capital credits, which is a  
7 different issue, as far as that goes.

8 Q Put capital credits aside, I  
9 mean, it --

10 A But even if there were an  
11 assignment that I understand -- and I'm not a -- I  
12 am not an accountant. I don't know, but I would  
13 think that if Grayson's assigned portion of the  
14 assets of the 97 million, then even bookwise would  
15 help us with our financials, you understand what  
16 I'm saying? If we indeed owned on a prorated basis  
17 that much of Spurlock, then, you know, would that  
18 not increase the assets of Grayson and would change  
19 our financial picture? And, like I said, I'm not  
20 an accountant by any stretch of the imagination.

21 Q Okay.

22 A But I would certainly think  
23 that -- you know, we pro rate a lot of different  
24 things, you know, with -- based on participation or  
25 purchase of power, or what have you.



1 Q Okay.

2 A I would think that that would  
3 certainly change our financial position.

4 Q Let me follow up, because again,  
5 I'm just trying to understand.

6 A Uh-huh (affirmative).

7 Q If there's -- if East Kentucky  
8 were to in some way assign a portion, you know, a  
9 value amount of the Spurlock station, I mean, that  
10 would certainly increase your assets on your  
11 balance sheet?

12 A Right.

13 Q And it would have corresponding  
14 increase in your equity?

15 A Right.

16 Q But, I mean, it wouldn't help you  
17 from a revenue perspective?

18 A It wouldn't help us from a cash  
19 perspective --

20 Q Right.

21 A -- which that's not an issue with  
22 us.

23 Q Okay. So in terms of the damages  
24 that you're seeking, you know, I mean, there's been  
25 some correspondence about, you know, writing a

1 check to each member, but what I hear you saying  
2 is, you know, it may not need to be a check, it may  
3 just need to be an assignment?

4 A It needs to be a reasonable,  
5 adult, sit down and work this out solution.

6 Q Okay.

7 A We don't intend to damage any  
8 other co-op.

9 Q So you're not necessarily  
10 limiting the relief that you're looking for?

11 A No.

12 Q With regard to the -- so let me  
13 go back. So I mean, to his point, I mean, the only  
14 way that you would be able to have delay in your  
15 rate case would be if East Kentucky had written a  
16 check?

17 A No.

18 Q Okay. I'm sorry, I'm not  
19 following.

20 A The Magnum case would have helped  
21 us, the demand charges, the way the rate  
22 structure -- the rate designed that we've been  
23 talking -- we and other co-ops, almost all the  
24 other co-ops, have been talking to East Kentucky  
25 about for over a year would have delayed it.

1           There are a number of actions that East  
2           Kentucky could have taken that would have helped us.  
3           I mean, it may not have prevented it. You know as  
4           well as I do, fuel is up, insurance is up. There's  
5           a number of things that's up. But, you know, there  
6           are certain issues that East Kentucky could look at  
7           the member systems and say, you know, guys, we're so  
8           far -- we're this much ahead of budget. You know,  
9           we maybe ought to rethink our rate structure, you  
10          know.

11                 But all we get is no. No, I'm not going to  
12          look at that. No, I'm not going to look at Magnum.  
13          No, I'm not going to look at Charleston Bottoms. I  
14          mean, there is no -- there is no -- nobody's paying  
15          attention, now, to the member systems. When you've  
16          got 10 or 12 out of 16 member systems going in for a  
17          rate increase and there is some opportunity for East  
18          Kentucky to at least help mitigate that, then I  
19          think they should step up and do that.

20                 Q           And if I'm thinking correctly,  
21          the amount of your rate increase is just a little  
22          bit over \$2 million?

23                 A           It's about 8 percent.

24                 Q           Okay, 7.9?

25                 A           Which doesn't sound like much,

1 but when you -- for instance, Elliott County is the  
2 only county that we serve entirely. I think they  
3 have 6100 people up there. 3900 of them are on  
4 some type of assistance. You know, that's a big  
5 deal for them.

6 And the other counties, but you know,  
7 particularly Elliott County. They don't have any  
8 industry or anything like that, you know. And it  
9 makes it hard. And, plus, we just went in for a  
10 rate increase, what, three or four years ago,  
11 that -- you know, we shouldn't have had to have gone  
12 in for a rate increase this soon. And I know a lot  
13 of it is --

14 Q When you say "we", are you  
15 referring to East Kentucky or Grayson?

16 A Grayson. Grayson. Yeah. And I  
17 know a lot of it is lower usage, and I know that,  
18 and I realize with the economy the way it is, but  
19 it's certainly not all attributed to East Kentucky,  
20 but there should be some -- some help coming from  
21 them.

22 MR. SAMFORD: Okay. We just have a few  
23 more documents to go through. I'll hand  
24 you this one next. And let me see, what  
25 are we up to, 23?

1 (Exhibit No. 23 was marked.)

2 BY MR. SAMFORD:

3 Q So can you tell me what this  
4 document is?

5 A First of all, will you tell me  
6 what this has to do with Charleston Bottoms?

7 Q Well, it goes back to what you  
8 were saying earlier about the ways in which East  
9 Kentucky has prevented Grayson from entering into  
10 the furtherance of its business relationship.

11 A We have an opportunity to buy  
12 some pipeline gas at a substantially reduced rate  
13 from East Kentucky's that would save Grayson and  
14 its members somewhere between 800,000 and a million  
15 dollar a year, but it would have to be under  
16 Amendment 3 through East Kentucky Power to  
17 accomplish that.

18 Q And so as I understand it, your  
19 notice was sent in June and late -- mid to late  
20 June --

21 A (Witness nods head.)

22 Q -- Mr. Campbell gave a  
23 presentation, I think, at the July meeting of the  
24 strategic issues?

25 A I don't remember. I'm assuming

1 that's right.

2 Q Okay. And so on Page 3 --

3 A Uh-huh (affirmative).

4 Q -- of this -- well, I guess maybe

5 it was at this meeting when he gave his

6 presentation. But there in the middle it says --

7 see where I am here on the page? It says, "At that

8 time, this matter was tabled for further discussion

9 and review." And then it goes on to talk about

10 the -- is it MOU, I think that --

11 A Uh-huh (affirmative).

12 Q -- Mr. Stallons was working on?

13 A Uh-huh (affirmative).

14 Q And so both of those items were

15 tabled on the committee's agenda for 60 days, is my

16 understanding.

17 A Uh-huh (affirmative).

18 Q And you were -- were you at that

19 meeting?

20 A Yes.

21 Q And that was okay with you?

22 A Yes.

23 Q Okay. And then let me hand you

24 this one.

25 A Okay.

1 Q This is from the November  
2 meeting?

3 A Uh-huh (affirmative).

4 MR. SAMFORD: This will be No. 24. This is  
5 the Strategic Issues Committee Meeting for  
6 November 5th, 2012.

7 (Exhibit No. 24 was marked.)

8 BY MR. SAMFORD:

9 Q This is one that you were  
10 participating in via the phone?

11 A On the phone, uh-huh  
12 (affirmative).

13 Q And I was trying to do the math  
14 in my head, which is always dangerous, but I think  
15 August 13th, 60 days from then would have kicked  
16 over into mid October. And I think just the way  
17 the calendar fell in board meetings for October and  
18 all the committee meetings would have been like Day  
19 57, 58, or something like that. So it didn't --  
20 nothing came up until the November meeting?

21 A Uh-huh (affirmative).

22 Q Does that sound right?

23 A Uh-huh (affirmative).

24 Q Okay. Let's see, I think it goes  
25 over from Page 4 over to Page 5, middle of Page 5

1 there, the first paragraph -- well, at the  
2 beginning there it recites the Chairman Vice had  
3 advised that the 60 days had expired, and so there  
4 was some discussion about reaching an agreement on  
5 the MOU with regard to Amendment 3. And then the  
6 next sentence says you requested that the issue be  
7 tabled until the next committee meeting. And the  
8 issue there is referring to your application;  
9 correct?

10 A Yes. Yes. Oh, no. No. No.  
11 The issue is the -- where we were able to reach the  
12 agreement on the MOU, and at that time we had met  
13 just prior to, I believe, the strategic issues  
14 committee and we were close. And so the -- and  
15 matter of fact, I think Chairman Hawkins was there,  
16 and -- oh, gosh, some other -- some others of the  
17 executive committee, and they thought that we were  
18 close enough that they talked to Mr. Vice before  
19 strategic issues convened and said, you know, we're  
20 close, why don't you table this for another 30 days  
21 or 60 days, or whatever, and see if we can't come  
22 to a good resolution on this. So it was not on  
23 Grayson's issue; it was on the MOU that was tabled.

24 Q So when have the -- so the 60  
25 days that your application had been tabled had



1 expired?

2 A No. It was actually, my  
3 application was made, and word was sent back to me  
4 that Tony said he wasn't going to recommend it.  
5 And I asked him why, and he said, well, he just  
6 couldn't do that. And one thing led to another,  
7 and finally it went to strategic issues, and  
8 strategic issues said, if you -- if the managers  
9 can get together and come up with a good  
10 interpretation or a Memorandum of Understanding,  
11 we'll hold this until you all can agree.

12 So we met, and then we were working with a  
13 consultant. It took more time than we thought. So  
14 at this point we were really close and they agreed  
15 to table the issue while awaiting the Memorandum of  
16 Understanding, until that could be done.

17 Q Okay. And so when you say "the  
18 issue," you're referring to Grayson's application?

19 A Right. Right. They weren't  
20 going to move it to allocation or the full board  
21 until we could get that resolved.

22 Q And this says you requested that  
23 it be tabled?

24 A Yes.

25 Q And then the last one -- where

1 did I put it -- from the December meeting.

2 A Okay.

3 MR. SAMFORD: It's No. 25.

4 (Exhibit No. 25 was marked.)

5 BY MR. SAMFORD:

6 Q I think these are unsigned  
7 because I think this is just a draft, presumably.  
8 The committee might have met yesterday.

9 A Okay.

10 Q So I stipulate that this is a  
11 draft.

12 A It probably wouldn't have been  
13 signed till yesterday. Yesterday was the meeting.

14 Q I assume it wouldn't have been  
15 done until yesterday, but I don't know that for a  
16 fact.

17 A Uh-huh (affirmative).

18 Q But this meeting, you were  
19 actually there in person for that one?

20 A Yes.

21 Q And, again, on Page 3 the issue  
22 came up, and what I see there is it says that you  
23 requested an additional 30 days to continue  
24 settlement efforts, presumably on the MOU?

25 A Uh-huh (affirmative). It was

1 discussed again. We were so close that we asked  
2 them to wait one more month. We met again.  
3 Yesterday they brought in another outside counsel  
4 of East Kentucky's, Dorothy Franconi, is that her  
5 name, Franconi? Dorothy Franconi?

6 MR. GOODPASTER: Franzoni.

7 A Franzoni -- yesterday, and we are  
8 just right -- I mean, we're just that close. I  
9 asked Mr. Vice -- I didn't get to go. I  
10 participated with telephone conference. I asked  
11 him if they would go ahead and send this to the  
12 allocation committee, which up to this point has  
13 been nonexistent, nonactive, and he said that they  
14 would prefer to wait until the MOU was finished,  
15 and that they would hold it 30 more days. So  
16 hopefully by that time the MOU can be polished and  
17 then it would be sent to the strategic issues  
18 committee for them to examine and do what they need  
19 to do with.

20 And then at that point they would decide  
21 whether to send it to the full board to have it,  
22 what, ratified, Sherman, or adopted or --

23 MR. GOODPASTER: The board policy as it  
24 exists now, the allocation committee has  
25 the authority to make the determination.

1                   A                   And I believe that it would --  
2                   the MOU would eliminate the two board policies, the  
3                   304, 305, whatever. So anyway we're very, very  
4                   close, and I'm hopeful that this will happen.

5                   BY MR. SAMFORD:

6                   Q                   And, I mean, everything -- I'm  
7                   not directly involved, but it sounds optimistic.

8                   A                   I am tentatively optimistic.

9                   Q                   And so, I mean, if the MOU worked  
10                  out, then presumably that would take care of the  
11                  issue of the Magnum contract?

12                  A                   Right.

13                  Q                   In terms of dealing with the --

14                  A                   I've told them different times  
15                  this is -- these are two separate issues. Magnum  
16                  is a board policy issue and an amendment issue, and  
17                  the Charleston Bottoms issue is a procedural issue,  
18                  and they're two different things. Grayson does not  
19                  hinge one on the other. But, you know, the  
20                  indication that I'm getting is that East Kentucky  
21                  does. It's almost like a carrot on a stick. I'll  
22                  help you with this if you'll forget about this, and  
23                  they're two separate issues.

24                  Q                   Okay. So your application was  
25                  tendered -- well, I guess your -- I guess it was

1 actually a notice was tendered in June and amended  
2 in July?

3 A Uh-huh (affirmative).

4 Q But you've consented really to  
5 all the delays --

6 A Yes.

7 Q -- in the hopes that the MOU  
8 would work out?

9 A Yes, we've tried to be patient  
10 because we want to work this out in a --

11 MR. SCOTT: Note an objection. I think  
12 these -- the term "consented to the  
13 delays," the only consent there's been is  
14 to work toward an MOU. There is no delay  
15 that's ever been consented to with respect  
16 to East Kentucky complying with what  
17 Grayson believes its obligations are under  
18 Amendment 3, which really is not this  
19 lawsuit, but to the extent that the  
20 question presupposed that, I felt compelled  
21 to say that.

22 BY MR. SAMFORD:

23 Q Okay. But you've requested that  
24 the strategic issues committee not take action?

25 A Like I said, we want to resolve

1 this in a manner that's -- if not a hundred percent  
2 satisfactory, at least acceptable to all the  
3 co-ops, because let's face it, Grayson is not going  
4 to be one of the first, and somebody else is going  
5 to come along behind us and need it next time. So  
6 we'd like for them not to have to go through what  
7 we've gone through with this.

8 Q And, really, Amendment 3 is a  
9 member-to-member issue more so than  
10 member-to-member EKPC issue, because EKPC's total  
11 capacity is capped?

12 A Well, we think it's an  
13 administrative issue with East Kentucky how they  
14 choose to interpret it, just like this. They  
15 want -- they want it to be fair, and we do, too,  
16 but we want to be fair and reasonable. There's no  
17 point in it sitting there with nobody using it, and  
18 nobody's going to use it in the next 15 or 20  
19 years.

20 So why not go ahead and get one in place,  
21 like our landfill gas projects, get one in place,  
22 let's see how it works. Maybe we'll keep somebody  
23 else from falling into the pits that we've fallen  
24 into. And, you know, if it didn't work, then  
25 somebody else will say, well, I'm glad they did

1 that. I won't get into it, you know, I won't fool  
2 with it.

3 Q Okay. Just got a couple of more  
4 things, I think.

5 This kind of goes back under the category of  
6 the extent to which you believe that East Kentucky  
7 and Charleston Bottoms had entered a relationship  
8 with your members, and I think there was a -- became  
9 aware that there was an insert in the most recent  
10 edition of *Kentucky Living* that had a letter from  
11 you sent to all the other distribution cooperative  
12 members?

13 A Uh-huh (affirmative).

14 Q Can you kind of give me the  
15 background on why you decided to publish that  
16 letter in *Kentucky Living*?

17 A Because we think that it may take  
18 a grass-roots effort, as NRECA so often refers to,  
19 to get something done, because obviously we're not  
20 getting any response or any sit-down type of adult  
21 conversation on this thing, and it may simply come  
22 down to the fact that our members have to help us.

23 Q Okay.

24 A And that is not the first time  
25 East Kentucky has seen that letter.

1 Q Let me just pass -- hand you both  
2 of these at the same time. And I apologize, this  
3 letter didn't get stapled, so the pages are  
4 separate.

5 A Well, how convenient. They took  
6 the --

7 MR. SCOTT: Are these one or -- are you  
8 going to make these one or two separate --

9 MR. SAMFORD: Yeah, I'm going to make them  
10 together. We'll just combine them as 26.

11 (Exhibit No. 26 was marked.)

12 BY MR. SAMFORD:

13 Q So there's two documents, but  
14 it's actually three pieces of paper that I've  
15 handed you. Can you just tell me what those are?

16 A Well, one is a letter that I  
17 wrote to all the members just from the CEOs, and  
18 the other is an insert to my membership in our  
19 local magazine.

20 Q And just looking through them  
21 they appear to me to be the same.

22 A They are, with the exception of  
23 the introductory paragraph in the magazine.

24 Q Let me just kind of walk through  
25 this. It's written to the fellow managers, but the



1 first thing you say and the first sentence is, "I  
2 do not believe that many of you understand the  
3 actions taken by Grayson RECC concerning Charleston  
4 Bottoms."

5 A Uh-huh (affirmative).

6 Q What was your reason for thinking  
7 that they don't understand your actions?

8 A Because I think all the  
9 information they were getting was from East  
10 Kentucky, and that they did not hear my side -- my  
11 board's side of that, and we wanted to make sure  
12 that they did.

13 Q Okay. So maybe a couple of  
14 procedural questions, just to lay the foundation a  
15 little bit better. Did you write this letter?

16 A Yes, I did.

17 Q And was it -- did your board  
18 approve it --

19 A Yes, they did.

20 Q -- before you sent it?

21 A Matter of fact, they were the  
22 ones that said, I think you should put that in the  
23 magazine.

24 Q So you were concerned that some  
25 of the other -- or maybe all of the other general

1 managers didn't understand Grayson's point of  
2 view --

3 A Yes.

4 Q -- because they were only hearing  
5 East Kentucky's side?

6 A (Witness nods head.)

7 Q Was there anything specific that  
8 caused you to have that belief or was it just kind  
9 of a general concern?

10 A Yes, there were things that  
11 caused me to believe that.

12 Q Okay. Such as?

13 A Well, a nasty letter from one of  
14 the other co-ops, comments made to me, comments  
15 made to my director, comments made to Jeffrey,  
16 those types of things.

17 Q And do you remember any of those  
18 communications specifically?

19 A Well, and like I said, I hate to  
20 get into this. This is so childish. Kenneth  
21 Arrington said, "How are you doing, Buddy," to  
22 Mr. Devine down at one of the meetings. He said,  
23 "You ain't my buddy. You sued me." I mean, it's  
24 stupid, it's childish, and I don't want to go  
25 there. That's an example.

1 Q But --

2 A Okay.

3 Q -- unfortunately we have to go  
4 here, because you have sent it out to 15,000  
5 people.

6 A Well, and I got a nasty letter  
7 from Big Sandy chastising us for our decisions.  
8 That's not their place. They might not agree with  
9 us, but that's not their place. And just, you  
10 know, like I said, comments made to Jeffrey,  
11 questions asked of us that -- well, I didn't know  
12 that, so I just decided to lay our cards face up  
13 and let them all decide how they wanted to go.  
14 They could compare the two.

15 And then this letter in the December board  
16 meeting was presented to the board kind of through  
17 the back door. There was a table set up with three  
18 microphones on it, and Tony was going to give his  
19 year-end report or something. And as he started  
20 down through the issues, I realized that it was  
21 point for point my letter.

22 Someone had shared with him, someone --  
23 someone gracious, and so I asked for a copy of the  
24 slides, and I said, "You know, I'd just like a copy  
25 of the slides." "Yeah, I'll send them to you." I

1 said, "Okay," which, you know, I've asked McNalley,  
2 I've asked different ones, send me a copy of your  
3 slides. Usually they give us a copy. Well, I  
4 didn't get them. I thought, it's Christmas, you  
5 know, it's no big deal.

6 Well, I called and I talked to Terry. Told  
7 he was out. I said, "Can I have a copy of the  
8 slides?" "Yeah, okay, I'll get them to you." Okay.  
9 Didn't get them. I called back to one of the other  
10 girls, I said, "Remind Terry to tell Tony to send me  
11 a copy of the slides." "Okay."

12 Then I get them from you all. I've already  
13 signed a confidentiality agreement with East  
14 Kentucky. That was completely unwarranted. All I  
15 wanted to do was see if I was right in my suspicion  
16 that it point for point matched my letter right down  
17 to the IOU mind set. So it was a retaliatory strike  
18 as far as I'm concerned, and I did not appreciate  
19 it. He should have come to me.

20 Q So --

21 A And I did talk to him about every  
22 single one of these issues, I believe, in the  
23 presence of Mr. Scott and Mark David.

24 Q Okay. So did you send a copy of  
25 this?

1 THE WITNESS: Sherman, you might have been  
2 in there, and David Smart. I don't  
3 remember. But we went over every one of  
4 these issues on the phone.

5 BY MR. SAMFORD:

6 Q Did you send a copy of this  
7 letter to Tony?

8 A No, I did not. Obviously,  
9 somebody did that for me.

10 Q Okay. Why didn't you copy him on  
11 it?

12 A Because I sent it to my fellow  
13 managers.

14 Q Okay.

15 A And, like I said, we already had  
16 this conversation on the phone, point by point from  
17 this letter.

18 Q So it was a conscientious  
19 decision not to send it to him; it wasn't an  
20 oversight?

21 A That's right. We already talked  
22 about it.

23 Q So, I mean, did you find that the  
24 slides were a point by point --

25 A The language even matches.

1 Q Okay. And you think that that's  
2 inappropriate?

3 A I think that it might have been  
4 better had he said, "I got a letter from Carol Ann  
5 and I think we all need open discussion about this.  
6 Let's just all sit down and talk about it."

7 Q But, in fact, he didn't get a  
8 letter from you?

9 A No, but somebody gave it to him.  
10 "Carol Ann, I've got your letter. Do you want to  
11 talk about it in a board meeting?" "Sure, let's  
12 talk about it. Let's be grown-ups."

13 Q Okay. So he should have called  
14 you to say, "I want to discuss the letter that  
15 you -- with my board that you didn't send to me"?

16 A I didn't know he had the letter.  
17 You know, I didn't know he had the letter.

18 Q Okay.

19 A You know, if he said, "Carol Ann,  
20 this has come to my attention," or, you know, but  
21 it was almost like an ambush, which I wouldn't have  
22 cared to send it to him if he'd called and said,  
23 but like I said, we already went over every single  
24 point on the phone, and every single point was no,  
25 no, no, no, and no. So what's the point?

1 Q And then coming down a couple of  
2 sentences, you say that, "We truly believe the  
3 Charleston Bottoms was formed by the member owners  
4 of East Kentucky Power." And I mean, technically,  
5 we've established that that's not accurate,  
6 because --

7 A I still don't believe that's not  
8 accurate. I believe it is an accurate statement.

9 Q Okay. But we can go back and  
10 look at the Articles of Incorporation again, but, I  
11 mean, the actual incorporators of East Kentucky  
12 were seven individuals.

13 A No. You can say East Kentucky as  
14 East Kentucky business, and I say East Kentucky as  
15 East Kentucky 16 members.

16 Q Okay.

17 A And those seven incorporators  
18 were acting on behalf of those member owners.  
19 That's my interpretation and that's your  
20 interpretation. You know, it's just difference of  
21 opinion. But I believe that East Kentucky was  
22 formed by the member owners. I believe that  
23 Charleston Bottoms was formed by the member owners  
24 to accomplish a means to an end, like to build the  
25 power plant and have our own power instead of

1 having to be out here on the market buying it.

2 Q And do you know what date this  
3 letter was sent to the managers?

4 A I don't know, but I can find it  
5 for you.

6 Q I'm trying to read up there. It  
7 looks like whoever received it received it  
8 November 15th, is what that kind of looks like to  
9 me.

10 A So I'm going to say -- whatever  
11 our November board meeting was, and I don't know,  
12 because -- I don't know what date it was. But,  
13 anyway, I read it -- I read it -- presented it to  
14 the board at the November board meeting, and then I  
15 mailed it that afternoon.

16 Q Okay. And so coming down another  
17 couple of sentences, says, "We've seen no  
18 documentation that would cause us to believe  
19 otherwise," which I think is referring, again, back  
20 to the ownership. And, I mean, again, I don't mean  
21 to beat a dead horse, but all of the documents that  
22 we've looked at today describe East Kentucky as  
23 being the member of Charleston Bottoms, and to date  
24 we've still not seen a document that says Grayson  
25 is a member of Charleston Bottoms.



1 I believe on November 2nd there was a  
2 telephone call with you and Mr. Scott and  
3 Mr. Campbell and some other, I think. I'm not sure  
4 who all was on that.

5 A And I think that's when these  
6 points were discussed.

7 Q My understanding is that a copy  
8 of the January 11, 1972 minutes for East Kentucky  
9 in Charleston Bottoms organizational meeting were  
10 sent to Mr. Scott on that date?

11 A Uh-huh (affirmative).

12 Q And so, I mean, certainly by  
13 November 2nd you would have, you know, had the  
14 document to demonstrate that Charleston Bottoms'  
15 board voted to accept East Kentucky as a member?

16 A There, again, that's where we  
17 differ, our opinions differ of what that means.

18 Q But we can agree that that day is  
19 when you received that document, not -- agreeing to  
20 disagree as to what that document may or may not --

21 A Probably. Yeah, I'd say that's  
22 right. We may even have a copy of that. I don't  
23 know. We were still accumulating all this  
24 information and trying to put it in some semblance  
25 of order.

1 Q And then coming down the next  
2 paragraph, it says, "Our attorney, Jeffrey Scott,  
3 began to ask questions of EKPC concerning  
4 Charleston Bottoms prior to June's annual meeting."  
5 Is that -- when is Grayson's annual meeting?

6 A Ours was May the 10th, I believe.

7 Q So this is a reference to the  
8 East Kentucky, Charleston Bottoms annual meeting?

9 A Right.

10 Q And when -- do you happen to know  
11 when he began to ask questions of East Kentucky?

12 A Well, no, but I know it was after  
13 the April meeting we started asking questions.

14 Q Okay. I mean, was it --

15 A And Dawn started asking  
16 questions. Like I said before, we were trying to  
17 educate some of our directors on just exactly what  
18 Charleston Bottoms was, what its purpose was, what  
19 it did. It's always been kind of like the black  
20 hole. It's always there, but you did not know  
21 really what it did.

22 Q Okay. So was there -- do you  
23 know who he might have had contact with --

24 A No, I could not say.

25 Q -- at East Kentucky? I mean, did

1 he correspond by letter, did he have phone calls,  
2 e-mails? Do you know how --

3 A I don't know.

4 MR. SAMFORD: Let me take a second and look  
5 at the documents here.

6 And I don't think I actually have  
7 copies of this, but let me just -- let me  
8 ask you to identify, this is, I think,  
9 Document 803. I apologize, guys, I didn't  
10 make any copies for this one. I'm going to  
11 go ahead and mark that one as Exhibit 27.

12 A Do you need some copies of this?

13 Q Yeah, we can make them after the  
14 fact, but can you tell me what that is?

15 A It is a letter to Mr. Scott from  
16 David Smart.

17 (Exhibit No. 27 was marked.)

18 BY MR. SAMFORD:

19 Q And what's the date of  
20 Mr. Smart's letter?

21 A July the 24th.

22 Q And what is it providing?

23 A It's a written action by the  
24 board of directors of Charleston Bottoms dated  
25 April 10th, 2012, draft minutes of the regular

1 board meeting of the board of directors of  
2 Charleston Bottoms held on June the 11th, 2012, and  
3 draft minutes of the annual meeting of members of  
4 Charleston Bottoms held on June the 12th, 2012.

5 Q Okay. And so that's referring to  
6 a letter that was written by Mr. Scott on what  
7 date?

8 A Uh-huh (affirmative). June 29th.

9 Q So you would agree with me that  
10 June 29th is after June 2nd?

11 A Oh, yes.

12 Q So tangibly that's -- June 29th  
13 is the earliest that we have any record of  
14 Mr. Scott contacting East Kentucky about Charleston  
15 Bottoms?

16 MR. SCOTT: Note my objection. There's no  
17 way -- she already said she doesn't know  
18 when that happened.

19 A I don't know. And what's  
20 June 2nd?

21 Q June -- June -- I think you said  
22 June 22nd, is that the day --

23 A June the 29th.

24 Q June 29th, okay. My apologies.

25 A Okay.

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Q June 29th --

MR. SCOTT: She's probably, frankly, referring to the phone conversation I had with Mr. Jefferson.

MR. SAMFORD: Okay.

A And that was on June 12th.

MR. SCOTT: Or the 8th, something like that.

A It was the date of the annual meeting. But we had called different times for information before that.

BY MR. SAMFORD:

Q Okay. Well, that's what I was trying to understand.

A Like I said, I don't know when. You know, I can look back and see if Priscilla has it. Normally, outgoing she does not have a record of, but, you know, we had checked with different ones just, you know, what -- give us a definition, help us understand this, you know, what is the deal with this, and our directors are saying, you know, what -- what exactly is Charleston Bottoms? What does it do, you know? And that's a hard question to answer because we just don't deal with it that much, especially in the last few years.

1 MR. SAMFORD: Okay. You want us to wait,  
2 Jeff?

3 (Mr. Scott exits the deposition.)

4 (OFF THE RECORD)

5 BY MR. SAMFORD:

6 Q Okay. So the next sentence says,  
7 "We found East Kentucky unwilling to satisfy our  
8 inquiries." Was it that they were unwilling or  
9 they were unable? Because there's a difference.

10 MR. SCOTT: I'm sorry, I wasn't --

11 MR. SAMFORD: We're back to the letter.

12 A Where are we?

13 Q It's the second paragraph, the  
14 second line.

15 A Second paragraph. Well, we  
16 didn't get clear answers. I think if we had gotten  
17 clear answers and we would have gotten the  
18 information that we asked for within reason, that  
19 we might have been able to avoid this.

20 Q Okay. But what I'm asking is,  
21 you say they were unwilling to satisfy your  
22 inquiries, which says that they just refused to  
23 answer you. But, I mean, you had asked a  
24 question --

25 A I think it was kind of brushed

1 off. It was not given any serious consideration.

2 Q So it's really more unable, they  
3 just didn't satisfy it to your satisfaction?

4 A It's just like, "You don't need  
5 to know. It's nothing to you. It's done now."

6 Q Okay. So the sentence before  
7 says that he was asking questions before the  
8 dissolution, before the annual meeting.

9 A Uh-huh (affirmative).

10 Q So I guess what I'm trying to  
11 figure out, is there anybody who said, "I'm just  
12 not going to talk to you about it"?

13 A No.

14 Q So whoever you talked to, they  
15 would at least talk to you about it, but whether  
16 they explained it to your satisfaction is a  
17 different matter?

18 A Or maybe not in full, or what  
19 have you, or maybe not in a manner that we felt we  
20 could understand and bring back to the board.

21 Q And then coming down towards the  
22 end of that paragraph, it says, "Therefore, based  
23 on other actions by EKPC," and I assume that that's  
24 referring to these items at the bottom?

25 A Uh-huh (affirmative).

1 Q -- "he felt" -- and "he" would be  
2 Mr. Scott -- "felt he must take the step to file  
3 legal action against East Kentucky."

4 So, I mean, did the -- we talked about  
5 whether or not you or the board or anybody in the  
6 building saw the complaint before it was filed, but  
7 did the board specifically authorize the filing --

8 A Yes.

9 Q -- of the complaint --

10 A (Witness nods head.)

11 Q -- before it was filed?

12 A Yes.

13 Q Okay. Do you know what meeting  
14 that was, by chance?

15 A I'm going to say September. I'm  
16 going to say September. I believe that's correct.

17 Q Okay. And then it said, "We were  
18 contacted by Mark David Goss in a meeting with  
19 Mr. Scott and myself. We discussed the Charleston  
20 Bottoms issue, along with several other concerns."  
21 I assume that that's these other items here?

22 A That's right.

23 Q I mean, how did that come up in  
24 the conversation?

25 A Well, he asked us if there were



1 other issues, and I said, yes, there are other  
2 issues, but they're not -- they are not Charleston  
3 Bottoms issues, but, yeah, there are other issues.  
4 And he asked us if there was any way to maybe kind  
5 of resolve some of those issues. And I told him, I  
6 said, "You know, Mark David, everything that we do  
7 is -- relates back to our membership." And we have  
8 a poor membership and they have -- we have to be  
9 concerned about everything that we do here.

10 And, you know, it's almost like there is no  
11 compassion or consideration from East Kentucky to  
12 the member at the end of the line. They have  
13 completely lost sight of that. And used to be that  
14 was the whole point of the cooperative system, and  
15 now we wear our East Kentucky hat or we wear our  
16 Grayson hat, and never the twain shall meet.

17 We don't do that. We don't talk about the  
18 impact on your individual system back home when we  
19 make decisions at East Kentucky. And I think it has  
20 been a real detriment to the way we conduct  
21 business.

22 MR. SAMFORD: Okay. Let's go off the  
23 record for just a second.

24 (OFF THE RECORD)  
25

1 BY MR. SAMFORD:

2 Q So then the next statement says,  
3 "We agreed that if East Kentucky would meet with us  
4 and the other cooperatives, we would hold our legal  
5 action in abeyance until after the meeting."

6 Whose idea was that? What was the genesis  
7 for that?

8 A Well, the board said if you can  
9 sit down and talk to them and maybe come to some  
10 resolution on some of these things, you know, we  
11 would not do that. But I believe the day that  
12 Mr. Scott was down there, there wasn't anybody  
13 available to talk to, and Sherman and Roger didn't  
14 feel like they had the authority to make those  
15 calls. And so, you know, we felt like we were  
16 facing a deadline, especially with the filing of  
17 the deed and things there in Mason County, that we  
18 had to take some kind of action.

19 Q But this is after the complaint  
20 has been filed. I mean, you've already filed your  
21 complaint, and so Mark David had come over to meet  
22 with you, and so --

23 A We offered to -- to hold our  
24 complaint in abeyance if they would do away with  
25 the special board meeting that they had called, and

1 sat down, all of us, all the member systems and  
2 their attorneys and their managers and whoever they  
3 wanted to come, and sit down and discuss these  
4 issues and see if we can reach some reasonable  
5 resolution. They said no.

6 Q Okay.

7 A He called us that evening and  
8 said, "Tony said no, that you either drop the suit  
9 or nothing."

10 Q But your idea was to try to come  
11 up with some sort of global resolution?

12 A We were trying to come up with  
13 something that could help us all out.

14 Q On all the issues?

15 A On all the issues. And not all  
16 of them are going to be resolved overnight. We  
17 knew that.

18 Q Okay.

19 A He said he was not going to be  
20 held hostage, and either we drop the suit or he  
21 would not talk to us at all.

22 Q Well, I mean, would you -- would  
23 you take that same position if you were in his  
24 shoes, or what would you have done? I assume you  
25 would have --

1 MR. SCOTT: Let me note an objection that  
2 part of that arrangement was we would waive  
3 any 20-day period within which that East  
4 Kentucky would have to answer, and that was  
5 specifically said to Mark David.

6 BY MR. SAMFORD:

7 Q So at the next paragraph it says,  
8 "At the October board meeting, it was decided to  
9 pursue legal action." And so when was your October  
10 board meeting?

11 A I don't know. I'd have to look.

12 Q Was it before or after -- what  
13 day does it usually fall on?

14 A Normally would have been on the  
15 fourth Friday, but it was not because I was gone.

16 Q So it probably would have been  
17 the week before or something?

18 A Probably. I can look those  
19 things up for you. But I don't know. It bounces  
20 around, you know, according to what's going on.

21 Q Okay. Well -- and here's why I'm  
22 asking, because I mean, we know for a fact that the  
23 complaint was filed on October 11th.

24 A Uh-huh (affirmative).

25 Q And I was thinking that your

1 board meeting was later in the month --

2 A It is.

3 Q -- because we tried to schedule  
4 depositions in December.

5 A So I would say that came from  
6 September.

7 Q So if you're -- the decision to  
8 pursue legal action was decided at the October  
9 board meeting, would that not have been in fact  
10 after the complaint had been filed?

11 THE WITNESS: Did we file a complaint in  
12 October or a suit in October?

13 MR. SCOTT: The complaint was filed  
14 October 11th.

15 MR. SAMFORD: Correct.

16 THE WITNESS: The complaint.

17 MR. SCOTT: The lawsuit was filed  
18 October 11th. What is your question?

19 BY MR. SAMFORD:

20 Q So it says, "At our October board  
21 meeting, it was decided to pursue legal action."

22 A And that may have been a mistake  
23 on my part. I'd have to go back to the minutes and  
24 look.

25 Q Okay.

1           A           But I know that we filed a  
2 complaint, but we didn't file legal action until  
3 the board voted to do that.

4           MR. SCOTT: That was in September.

5           THE WITNESS: In September, okay. We  
6 didn't catch it then.

7 BY MR. SAMFORD:

8           Q           So either the letter is wrong --

9           A           Right.

10          Q           -- or it was filed before the  
11 board authorized it, but you don't think it was?

12          A           I'm sure the board authorized  
13 before we did that.

14          Q           And then the next sentence says,  
15 "Subsequently, I called Mr. Campbell to see if  
16 there was some way we could work this out." That,  
17 I assume, is referencing the November 2nd telephone  
18 call, telephone conference?

19          A           I don't know what day it was. I  
20 told him, I said, "Tony, can we be adults and sit  
21 down and talk about this? Can we not work this out  
22 some way without going through a lawsuit and, you  
23 know, big public issue with this? Is there not  
24 some way that we can sit down like big people and  
25 do something about some of these things? Give and

1 take a little bit on your all's part and give and  
2 take a little bit on mine."

3 And he said, "Well, let me get my bunch  
4 together." And they all talked to us and they just  
5 said no, no, no, no. I mean, it was no to  
6 everything. No compromise, no offer of compromise  
7 on anything. I said, "Well, thank you. I've wasted  
8 my time and yours."

9 Q Okay. And then it says, "This  
10 was the third time we had offered a chance to  
11 compromise." And, again, we're kind of talking  
12 about this just to make sure I understand, the  
13 first time was when Mr. Scott went to Winchester  
14 and the second time was when Mark David came over  
15 here?

16 A Right.

17 Q Then the third time was --

18 A Yes.

19 Q So then if we get to these other  
20 issues, the rate design, 20 percent equity,  
21 Amendment 3, and the cancelled Smith plant  
22 assets -- I mean, this letter sets forth, you know,  
23 Grayson's position on all of these issues, but  
24 obviously there's other positions as well,  
25 otherwise there wouldn't be a disagreement. Why

1 didn't you, for lack of a better term, think that  
2 the members should have equal time, your members?

3 A My members?

4 Q Yeah. I mean, the letter is  
5 written sort of to two audiences. It's first  
6 written to general managers.

7 A Uh-huh (affirmative).

8 Q Of course, general managers are  
9 more in touch with what's going on with East  
10 Kentucky.

11 A Uh-huh (affirmative).

12 Q And their board members are  
13 certainly. And so I think you said the purpose of  
14 this letter was, you know, in your mind, to respond  
15 to some of the issues --

16 A Uh-huh (affirmative).

17 Q -- that, you know, you thought  
18 hadn't been addressed, and that they might have  
19 been only hearing one side. So, in essence, this  
20 is sort of, you know, your quest to have -- "quest"  
21 isn't the right word, but it's your desire to have  
22 equal time with whatever you feared the other  
23 general managers might be hearing; correct?

24 A Uh-huh (affirmative).

25 Q Is that fair? That's kind of



1 rambling. I apologize.

2 A That's all right. I follow you.  
3 I got you.

4 Q My English teacher said run-on  
5 sentences are horrible.

6 So that's that purpose, but then when this  
7 letter, then, gets sent on to your own members in  
8 January, I mean, they don't really have anything to  
9 do with East Kentucky on a day-in, day-out basis  
10 and, you know, some of these are pretty complex  
11 legal issues. And so do you think that it is fair  
12 to portray one side of these issues without putting  
13 the other side in?

14 A If I portray the side that  
15 affects them. Now, listen, you think these members  
16 out here don't know what's going on? Let me tell  
17 you. I had one call me and tell me that there was  
18 a crane sitting there at Spurlock we were paying  
19 millions of dollars for to keep it from being  
20 shipped to China while we were trying to decide  
21 whether to build something or not, and I called Roy  
22 Palk. Guess what, they were right, because they  
23 know.

24 Now, do not think for one minute that they  
25 do not know. All right, I'm having a rate increase

1 right now. It was in the paper this week. Do you  
2 think people don't call me and ask what's the deal  
3 with that rate increase? And I say part of it is  
4 right here. Right here. And you think they can't  
5 read this and understand it? I'm sorry, but they  
6 sure can. And they probably know -- and not only  
7 that, but I'm not just losing, you know -- the  
8 economy where people aren't using as many kilowatts.  
9 You know, we had a lot of people up here that were  
10 boilermakers and pipefitters, that their livelihood  
11 depended on Spurlock Station and on the work that  
12 East Kentucky does. Do not think that they are not  
13 tuned into East Kentucky Power, because they are.

14 Q Okay. So let me ask you then. I  
15 mean, rate design, what we're talking about, rate  
16 design is shifting the way that the revenue  
17 requirement for East Kentucky --

18 A Uh-huh (affirmative).

19 Q -- Power is collected. But rate  
20 design case, the goal of it is not to increase the  
21 rates; right? I mean, it's the same amount of  
22 money, it's just collected in a different way;  
23 correct?

24 A Well, I think part of that issue  
25 is that -- that the amount of money is in question,

1 too.

2 Q But that's not --

3 A From the finances of East  
4 Kentucky, I would think that they could lose a few  
5 dollars. They would be all right.

6 Q But, I mean, that's not -- that's  
7 not what rate design is.

8 A No, it's not. But if you have a  
9 co-op that's like Grayson that's 92 percent  
10 residential versus another co-op that has a lot of  
11 industry and business, and those rates are divided  
12 based on demand on the substation, yeah, I think it  
13 has some impact there.

14 Q So when you're talking about  
15 lowering East Kentucky's revenue requirement,  
16 that's one thing, but what you're talking about  
17 here is changing the design of its rates?

18 A Kind of levelizing some things,  
19 uh-huh (affirmative).

20 Q So when you redesign a rate  
21 you're not really changing up or down the amount of  
22 revenue that comes in, it's just -- it's supposed  
23 to be neutral?

24 A Uh-huh (affirmative).

25 Q And so to the extent that Grayson

1 would benefit from a rate design change, isn't it  
2 true that other members would have increased --

3 A They probably would.

4 Q -- requirements?

5 A But, again, those would be the  
6 ones that are highly industrialized or highly  
7 commercialized versus the residential that I have  
8 here.

9 Q Okay.

10 A The people who can't pay their  
11 bill.

12 Q But, I mean, most of the large  
13 industrial loads are dealt with by special  
14 contract, which are separate and apart; correct?

15 A We've been -- we've been  
16 subsidizing the Gallatin Steel for years. This  
17 won't float.

18 Q I mean, I'm not just talking  
19 about Gallatin Steel.

20 A I'm not either. But I'm saying  
21 that's an example. That won't float.

22 Q But, I mean, even if you do rate  
23 design, that's not going to change the large  
24 industrial customers' special contracts?

25 A No, but it might relieve Grayson

1 of some of it.

2 Q At the expense of one of the  
3 other co-ops?

4 A Well, if they can show me where  
5 Grayson's getting benefit of it, and it's across  
6 the board for everybody, I'm all for it. But if  
7 they cannot, which I've not seen, then they need to  
8 show me.

9 Q Okay. So is it your position,  
10 then, that East Kentucky should redesign its rates  
11 so that Grayson's rates would be lowered, even if  
12 that means our friends at --

13 A No.

14 Q -- Jackson or Inter-County's  
15 rates would go up?

16 A No. I think that that means that  
17 East Kentucky should examine its rates and should  
18 examine the revenue that's needed.

19 Q Which is a separate --

20 A Is their goal to get to  
21 20 percent equity or 25 percent equity or, God  
22 forbid, 40 percent equity? What is their goal?  
23 Let's set a reasonable goal for East Kentucky, then  
24 let's figure out a way to get to it that's fair to  
25 everybody. And if you're making money on a big

1 load and it increases your margins somewhere, then,  
2 you know, maybe you could slack that off a penny or  
3 two and make Grayson's margins a little more  
4 reasonable. I'm talking about fair and equitable.  
5 I don't want somebody to pay my way and I don't  
6 want my members to.

7 Q But the rates that East Kentucky  
8 currently sets have been -- or currently charges  
9 have been set by the Public Service Commission;  
10 correct?

11 A Uh-huh (affirmative).

12 Q The Commission can only approve  
13 rates which it deems to be fair, just and  
14 reasonable?

15 A That's right. Well, maybe the  
16 Commission needs to be educated on how this has  
17 been spread out, because when we talked about these  
18 rates for a year and a half, all of a sudden it was  
19 decided to wait to see what kind of affect PJM was  
20 going to have on all of us, and then they would go  
21 back and look at rate design. Well, you know what,  
22 that could take another year or two. Matter of  
23 fact, I think they went to 2015. That's not  
24 reasonable for here and now.

25 And I think the Commission, regardless what

1 it said in the Liberty report, would go back and  
2 say, yeah, when you -- go back to them and say,  
3 "Look, we've examined this, and this isn't really  
4 working right now. And we want to redo this, you  
5 know, for the good of our members and the good of  
6 East Kentucky." I think the Commission is certainly  
7 intelligent enough to say, "Well, you know, if  
8 you've got a legitimate issue here, we'll consider  
9 it." And if it's legitimate, like I said, then they  
10 would approve it. But if nobody goes to them and  
11 says anything, what are they going to do? They're  
12 not going to know it.

13 Q I mean, have you considered going  
14 to the Public Service Commission and asking -- I  
15 guess it would be a complaint, that East Kentucky's  
16 current rate design is not fair and not just or not  
17 reasonable?

18 MR. SCOTT: Not yet, but we may.

19 A Not yet. But we have talked to  
20 East Kentucky, and we shouldn't have to get to that  
21 point. We shouldn't have to go to the Commission.  
22 East Kentucky should be reasonable enough to sit  
23 down with all of us and figure out a way that  
24 not -- you know, the least harm that could be done.  
25 I shouldn't have to run around them and go to the

1 Commission. I shouldn't have to go to the judicial  
2 system.

3 Q But I just want to make sure that  
4 we're clear. I mean, when you're talking about the  
5 total amount of money that East Kentucky, you know,  
6 is able to charge its members, I mean, that is the  
7 revenue requirement. And that is different than  
8 how that revenue requirement gets allocated among  
9 its various customer classes, which is the rate  
10 design. So when you change the rate design, the  
11 total amount of money that East Kentucky collects  
12 would not change.

13 A If you took --

14 Q It's revenue neutral.

15 A If you took the last two years at  
16 East Kentucky and their margins, and you went to  
17 the Commission and you said, is it reasonable that  
18 East Kentucky's margins could be lowered somewhat  
19 because they're in good shape, and could this be  
20 filtered back down to the member systems; and East  
21 Kentucky says, "We'd like to do this for the member  
22 systems," and the member systems say, "I'd like to  
23 see them do it," I think that the Commission would  
24 say, "Yes, I think that's reasonable. I think that  
25 their margins are too high; I think they are too



1 far ahead, overbudget." And I think that they  
2 could go to the Commission with a reasonable  
3 request and they could support it, and member  
4 systems could support it, and they still have  
5 plenty of margin. They still have plenty of money.

6 Q So you think the Commission would  
7 say East Kentucky's margins are too high right now?

8 A I think if they went to them  
9 right now and said, look, we can help our member  
10 systems, you guys won't have all these rate cases  
11 coming in here, because we're going to be fair and  
12 just and we're going to lower our expectation just  
13 a little bit. We're going to keep our BBB rating,  
14 or whatever it is that they got, but we're going to  
15 be fair with everybody else. And it would be  
16 reasonable and the Commission would recognize it as  
17 that. But they're not going to if we don't ask.

18 Q And I go back to Exhibit 22,  
19 which is the Commission's Order in Case  
20 No. 2012-249, which we've talked about at length  
21 and no need to dwell on it again. But that was the  
22 order on Page 3 where the Commission was  
23 complimentary of East Kentucky's efforts to build  
24 its equity.

25 A Absolutely.

1 Q So that's contradictory to what  
2 you just told me, that you think the Commission --

3 A Listen, I can remember when I  
4 didn't think East Kentucky was going to make  
5 payroll in three months, and now their equity is  
6 good and things are going well. And I'm thrilled  
7 to death for them, but I don't think that it ought  
8 to be excessive. I don't think it ought to be  
9 overboard. And I think it should be fair with the  
10 member systems, period. And that was before the  
11 liberty report.

12 Q Okay. So the issue of rate  
13 design is a little bit more complex than just  
14 saying -- first of all, it's inaccurate to say that  
15 it would lower your rate, because it might lower  
16 one member's rates but at the expense of somebody  
17 else's.

18 A I've never seen that happen at  
19 East Kentucky, except like I said, when a load was  
20 added that didn't turn out the way they thought it  
21 was, in effect, Gallatin and some others.

22 Q You don't think there are any  
23 cost-shifting ramifications?

24 A There's always going to be cost  
25 shifting in rate design. Now, is it fair? Does it

1 cut into somebody else's margin or does it cause  
2 them to have a deficit? You know, I don't want to  
3 cause anybody else to lose money, but it shouldn't  
4 all be one-sided either.

5 Q And then we talked a little bit  
6 about the 20 percent equity.

7 A Uh-huh (affirmative).

8 Q What's Grayson's equity right  
9 now?

10 A Probably around 8 percent.

11 Q Eight (8) percent?

12 A Uh-huh (affirmative). So it  
13 looks like to me equity at home could be a little  
14 better.

15 Q What's the national average, do  
16 you know, for distribution co-ops?

17 A Oh, gosh, no, I don't. I really  
18 don't.

19 Q Do you happen to know what it is  
20 for distribution co-ops in Kentucky?

21 A No, I don't. I'm sure CFC would  
22 have that.

23 Q Okay. And then the next item  
24 here, you've got Amendment 3. "Grayson has signed  
25 a contract with Magnum Drilling under what we

1 believed was acceptable in accordance with  
2 Amendment 3."

3 I mean, would you agree with me that  
4 Amendment 3 -- well, I won't phrase it that way. Do  
5 you think Amendment 3 guarantees a distribution  
6 cooperative the right to take 15 percent?

7 A Yes.

8 Q Okay. If every member of East  
9 Kentucky took 15 percent, then wouldn't that exceed  
10 the 5 percent cap for East Kentucky?

11 A I talked to Victor Vu at RUS. He  
12 told me this was never intended to be for every  
13 single co-op, that they thought there were very few  
14 that would take advantage of Amendment 3, and it  
15 was never created to accommodate each and every  
16 member. But that was set up on a first-come,  
17 first-serve basis, and that there would be members  
18 rotating on and off, and certainly they expected  
19 East Kentucky, at that time, their load to grow, so  
20 that there would be more opportunity for other  
21 people. And I don't think sitting there with  
22 15 percent out there, and nobody using it, is  
23 serving anybody's purpose. Nobody's.

24 Q And when did you talk to Mr. Vu?

25 A I talked to him right after we

1 filed for the -- after we sent our letter to East  
2 Kentucky. I don't know what day it was. I talked  
3 to him -- oh, gosh, we sent it in June, so it was  
4 probably late June, early July.

5 Q So it was after you sent the  
6 notice to East Kentucky --

7 A Yeah. I called him direct.

8 Q -- before you filed the lawsuit?

9 A I said, "Am I missing something  
10 on Amendment 3? Can you explain to me what that  
11 was about?" He said it was never intended for  
12 every co-op to use it at the same time.

13 Q You will have to forgive me. I  
14 don't know him. I've not met him. What is his  
15 position?

16 A I'm not sure what his title is.

17 Q Is he in Washington or Atlanta?

18 A He's in Washington, I believe. I  
19 think so.

20 Q He's not the administrator?

21 A Oh, no. Huh-uh (negative). He's  
22 been with them for a long time. Sherman, you might  
23 know what his title is. I don't know.

24 MR. GOODPASTER: I don't right now off the  
25 top of my head.

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THE WITNESS: I don't.

MR. GOODPASTER: Director of power supply or something like that.

MR. SAMFORD: Okay.

Q So do you believe that Amendment 3 had an original intent, if you will, to serve some sort of economic purpose?

A As well as I remember, there were a couple of co-ops who thought they had a line on some big opportunity and they wanted to make sure that that was out there for them. It never came to fruition. You know, years later, Jackson put in a megawatt with a company that installs the generator boxes, and we are the first to come to East Kentucky with any size of a project, which is almost 10 megawatts, which would be our entire allotment. So nobody has really pushed the button on that and there's never been a controversy over it until ours came along.

Q I was under the impression that Jackson had filed an application, or at least made some inquiries about purchasing 40 megawatts?

A They rescinded that. They may have talked to Tony at one time.

Q So you're technically the second?

1           A           Uh-huh (affirmative). Right.  
2           And there have been a few other co-ops. Owen made  
3           an application, they withdrew that. It was --

4           Q           That was one megawatt?

5           A           Yeah, and it fell through with.  
6           I think Salt River is looking at some hydro, maybe  
7           up to 7 megawatts. All told, everything that we  
8           can scrape together right now is probably less than  
9           10 megawatts, any projected projects out there.

10          Q           Is it your interpretation of  
11          Amendment 3 that it requires load following?

12                   MR. SCOTT: Requires what?

13          BY MR. SAMFORD:

14          Q           Load following. Do you know what  
15          load following is? Do you know -- are you familiar  
16          with that concept?

17          A           Not in this -- no.

18          Q           That you would need to designate  
19          what load from your system will be served by the  
20          power you're going to procure from a non-EKPC  
21          source?

22          A           No.

23          Q           It's not your interpretation?

24          A           No.

25          Q           Okay. Do you know what the

1 notice requirements are under Amendment 3?

2 A The way I understood it, we would  
3 notify East Kentucky, and if it was a certain size  
4 load we would proceed within 90 days. If it was  
5 over a certain size load, they could take up to 180  
6 days to accommodate us, but that, you know, certain  
7 size loads would require the -- the costs incurred  
8 for transmission. Certain size loads would not.  
9 But, you know, we thought that we followed the  
10 letter of the Amendment 3.

11 MR. SAMFORD: Let me hand this out. This  
12 is actually from your PSC complaint, but it  
13 just happens to be the best copy I had.

14 MR. SCOTT: 28.

15 MR. SAMFORD: 28.

16 (Exhibit No. 28 was marked.)

17 BY MR. SAMFORD:

18 Q If you could just tell me what  
19 that document is.

20 A It says, "Amendment to the  
21 Wholesale Power Contract between East Kentucky  
22 Power Cooperative and Grayson Rural Electric  
23 Cooperative."

24 Q So I think it's attached as  
25 Exhibit 2 to your PSC petition, but if you would,



1 flip over to Page 2.

2 A Uh-huh (affirmative).

3 Q And in the middle of the  
4 paragraph there, first of all, these are kind of, I  
5 guess, the conditions, if you will, to the  
6 amendment that's --

7 A Uh-huh (affirmative).

8 Q -- in Paragraph 1. Paragraph (b)  
9 there, if you don't mind to read that for me.

10 A "During any calendar year, the  
11 Member may make or cancel any such election or  
12 elections by giving at least 18 months or greater  
13 notice to the Seller with respect to any load or  
14 loads with an average coincident peak demand  
15 (calculated in the same manner as provided in the  
16 preceding paragraph) of 5.0 Megawatts or more in  
17 the annual aggregate."

18 Q Okay. And so Grayson's notice  
19 was -- I think it bounced around, but I think you  
20 settled on 9.4 megawatts?

21 A It was 9.4, and then we reduced  
22 it to five so that we could go ahead and get  
23 started within the 90 days. And then we planned to  
24 file for the entire amount if we can get this MOU  
25 resolved.

1 Q So your current application is  
2 only for --

3 A Five.

4 Q -- five megawatts?

5 A Right around 5.

6 MR. SCOTT: Let me state an objection. We  
7 have no "application." We sent a notice to  
8 East Kentucky under that provision you just  
9 read, and then we intend to do it probably  
10 tomorrow or the next day for 2013 to make  
11 up the 4.4 to get to the 9.4.

12 A Yeah, we didn't file for the  
13 whole amount.

14 BY MR. SAMFORD:

15 Q And that was kind of just a slang  
16 on my term.

17 A Okay.

18 Q I didn't mean application in a  
19 formal sense.

20 A Okay.

21 Q The notice is what I was  
22 referring to. So I guess back to my question. You  
23 were aware that for anything over 5 megawatts it's  
24 an 18-month notice?

25 A Right.

1 Q Okay.

2 A And we decided to go ahead and  
3 file for part of it and then go ahead and get that  
4 started, and then come back and do the rest of it.  
5 And we could stage it.

6 Q So, again, you know, I mean,  
7 coming back to the equity -- let me ask one more  
8 question about Amendment 3. Whenever you're taking  
9 power from some source other than East Kentucky,  
10 there's obviously some amount of capacity and  
11 how -- that won't be generating power to be sold to  
12 Grayson. And so there is a cost that goes along  
13 with the investment for that capacity. And if  
14 you're not purchasing it, they may be able to sell  
15 it on the market. But they may not, depending upon  
16 what market conditions are doing.

17 A East Kentucky has a proposal out  
18 right now for 300 megawatts that they need. I  
19 don't think my 10 that I'm going to give them back  
20 is going to hurt them.

21 Q So even if they were to take it  
22 in that context, there's still a stranded cost that  
23 Grayson's no longer paying, and so wouldn't you  
24 agree with me that there's some cost shifting that  
25 takes place?

1           A           I would say to you that for 10  
2 megawatts you wouldn't see a ripple, because they  
3 can sell for more than I can -- that I can -- if  
4 they had it to sell, they could make money, and if  
5 they don't, they're going to have to buy it, all  
6 right? If I don't take this 10 megawatts, they're  
7 just going to have to buy 310. So what's the  
8 difference?

9           Q           And from the perspective of East  
10 Kentucky, I think I agree with you, I think. But  
11 what I'm saying is, to the extent that Grayson is  
12 not paying for that portion of the capacity they're  
13 no longer using, some other member of East Kentucky  
14 does?

15           A           No, I don't buy that.

16           Q           Why not?

17           A           Because where this would be, it  
18 would be the length of this building, for one  
19 thing, and that power that they obviously need,  
20 that they're going to have to buy somewhere else,  
21 they wouldn't have to buy. Even if five or six of  
22 us went together and there was 50 megawatts, that's  
23 just 50 megawatts that East Kentucky doesn't have  
24 to go to the market for; they don't have to pay  
25 wheeling charge or anything else. So, you know, I

1 think it all pretty well balances out. I've never  
2 seen pencil put to it, but I'd say it was pretty  
3 close.

4 Q That was my next question. Have  
5 you done an analysis of it?

6 A We talked to Jeff at East  
7 Kentucky, he's looked at it, but until we know what  
8 we can and cannot do, it's pretty hard to pin down  
9 on the numbers, because if you base it on five or  
10 if you base it on 9.4, it makes a big difference.  
11 So, you know, it's hard to -- to calculate.

12 Q Okay. And then on the next page  
13 you say, second line, "With all of EKPC's talk of  
14 the DSM and green power, we would think that they,"  
15 meaning East Kentucky, "would take a lead role in a  
16 project like this."

17 I mean, as I understand it, what Magnum --  
18 the Magnum contract is, is essentially wellhead gas;  
19 correct?

20 A It's gas wells pumping into a  
21 pipeline.

22 Q But it's natural gas?

23 A Uh-huh (affirmative).

24 Q So that's not really DSM?

25 A Well, we talked to East Kentucky

1 about taking it themselves and selling it back to  
2 all the systems, you know. The Public Service  
3 Commission seems to think that it's a good DSM  
4 project. They call it DSM, so I'm assuming that  
5 they would agree with us on that.

6 Q When did the Public Service  
7 Commission call the Magnum contract a DSM project?

8 A We talked to them about it and  
9 they said that it was -- that it looked really good  
10 to them and they would like to see us pursue it,  
11 and why wasn't East Kentucky getting in on this?  
12 And I said, well, I can't really answer for them.

13 But, you know, this not only provides  
14 revenue -- a break for us, because we're going to  
15 save 800,000 to a million dollars a year, it  
16 provides tax base to the county, it provides an  
17 income stream to the owners of the wells, you know,  
18 and Lawrence County is losing the Big Sandy power  
19 plant. So, you know, that's much-needed revenue up  
20 there. You know, there's more considerations than  
21 just the price of the kilowatt hour.

22 Q Okay.

23 A And we asked East Kentucky Power,  
24 because this could potentially -- it's big enough  
25 to not only benefit us, but it could go to Owen, it

1 could go to Inter-County, it could go to anybody,  
2 the way that it's -- that it could be transferred,  
3 you know. So it could be a benefit to the whole  
4 East Kentucky system, if East Kentucky would take  
5 the lead in this, and we wouldn't have to, and  
6 everybody wins.

7 Q Let me come back, though. I  
8 mean, demand side of management, that's actually  
9 limiting the amount of power that's procured.  
10 They're demanded. It's on the consumer side.

11 A Uh-huh (affirmative).

12 Q But this really isn't demand side  
13 management, because you're still going to be --  
14 your customers are going to use the same -- the  
15 same load; it's just going to be coming from two  
16 sources as opposed to just East Kentucky.

17 A A cheaper source.

18 Q But that's still not demand side  
19 management, that's just diversifying your  
20 generation portfolio, your supply?

21 A Compare it to landfill gas.

22 Q Same thing. I mean, landfill gas  
23 is not demand side management.

24 A Is that not what East Kentucky  
25 considers demand side?

1 Q I don't believe so. I mean,  
2 demand side management is when you reduce the  
3 amount of load by taking some affirmative step on  
4 the customer side.

5 A But I'm reducing East Kentucky  
6 load.

7 Q Yeah, but you're correspondingly  
8 increasing it with your Magnum load. So, I mean,  
9 you're not going to -- your customers aren't going  
10 to use less kilowatt hours. It's now going to be  
11 allocated from two generation sources.

12 A But I am increasing East Kentucky  
13 load.

14 Q By increasing what you're  
15 purchasing from Magnum?

16 A Right. So it takes it off of  
17 East Kentucky's system, so does that not decrease  
18 their demand?

19 MR. SCOTT: How much do we want to go into  
20 something that's not even an issue in this  
21 case?

22 MR. SAMFORD: Well, it --

23 A I don't know.

24 MR. SAMFORD: I mean, you know, she felt it  
25 important enough to communicate it to





1 wrote it.

2 Q Okay.

3 A I thought it made all kinds of  
4 sense.

5 Q Then you go on to say you think  
6 that "they," East Kentucky, should take a lead role  
7 in this project like this. And, you know, from my  
8 review of some of the documents, I mean, I think  
9 Tony Campbell had specifically told the SI  
10 Committee that one of the options would be for East  
11 Kentucky to purchase everything over and above the  
12 5 megawatts --

13 A After he --

14 Q -- 5 percent?

15 A -- told me plainly that he was  
16 not going to recommend it. He could not recommend  
17 it and would not recommend it.

18 Q So you're saying that he told the  
19 strategic issues committee that that was an option  
20 that East Kentucky would consider?

21 A I think he was asked if that was  
22 an option. Well, yeah, yeah, that's an option.

23 Q I think it was actually in a  
24 presentation that he made.

25 THE WITNESS: Weren't we there?

1 MR. SCOTT: I don't know which time you're  
2 talking about.

3 THE WITNESS: I don't either.

4 BY MR. SAMFORD:

5 Q It's a strategic issues committee  
6 from either July or August maybe.

7 A I don't know.

8 Q Okay. So but he told -- when did  
9 he tell you that he wouldn't consider that option?

10 A He told a whole bunch -- I don't  
11 remember when it was. But he said, "I can't  
12 recommend it."

13 Q Who else --

14 A "I'm not going to."

15 Q Who else was there when he said  
16 that?

17 A I don't know. I don't remember.  
18 He said, "It's not fair to everybody and I cannot  
19 recommend it and I can't" --

20 MR. SCOTT: November 2 phone conference he  
21 said on the phone, or David Smart said on  
22 the phone that every distribution co-op  
23 would file suit against East Kentucky.

24 BY MR. SAMFORD:

25 Q If they purchase that additional

1 increment, it would, I guess, be equal to 10  
2 percent of your load, that amount over 5 percent?

3 A What now?

4 Q Let me back up. That wasn't  
5 stated very clearly.

6 My understanding was that Mr. Campbell had  
7 said that one of the options would be for East  
8 Kentucky to purchase on behalf of all of its members  
9 the amount of power that Magnum could produce that  
10 was over Grayson's 5 percent allocation. And I  
11 understood you to say that he then said he was not  
12 willing to do that and wouldn't recommend it?

13 A He was not willing to recommend  
14 that Grayson be given approval for the 9.4.

15 Q For the full amount?

16 A Right.

17 Q But my question was, did he not  
18 offer to allow East Kentucky to purchase the amount  
19 over what your 5 percent allocation would be --

20 A No.

21 Q -- so all of the members of  
22 Charleston --

23 A No.

24 Q -- or all of the members of East  
25 Kentucky should share?

1           A           I've never heard him offer to do  
2 that, no.

3           Q           Okay. I mean, if he made that  
4 offer, would that be palatable?

5           A           Looks like he would have done it  
6 before now.

7           Q           Well, I'm just asking.

8           A           We said, "Why don't you take the  
9 lead in this? Why don't you check into it and see  
10 what you could do with it?" You know, if it  
11 benefited everybody and benefited Grayson as well,  
12 we'd be fine with that, because I think there's  
13 going to be other opportunities that we can all  
14 benefit from.

15                    You know, we're not going to "root hog or  
16 die" here. If we thought that it could benefit  
17 everyone, then I think that we would certainly go  
18 along with that.

19           Q           Okay. And then we already  
20 established -- you say, "It may be a first for a  
21 project of the size," and I think it was Jackson  
22 that beat you to the punch of 40 megawatts. You  
23 say, "Surely, we won't be the last." I mean, I  
24 think that's kind of his concern, is if Grayson  
25 takes 15 percent, then that's eating into some

1 other cooperative --

2 A Amendment 3 says I can take 15  
3 percent.

4 Q Does it guarantee you the right  
5 to take 15?

6 A No. It says I can.

7 Q Okay. Well, can is -- does it  
8 say you may or you --

9 A I don't know. I'd have to go  
10 back and read.

11 Q I don't mean to be hyper --

12 A It says Grayson's allotment is  
13 15 percent of the preceding 36 months on a rolling  
14 average.

15 Q But then again, I mean, if  
16 everybody took 15 percent, then that would be  
17 15 percent of East Kentucky's goal --

18 A And there's nobody else jumping  
19 in here but us.

20 Q Okay. But I'm trying --

21 A If they were jumping in here, I'd  
22 help them. I told him, I said, "You let me do this  
23 one. I promise you I'll never ask again." It  
24 ain't going to happen. I'm done.

25 Q And then the next point is the

1 "Pass through of the cost of the cancelled Smith  
2 Plant." The question is, "When are we going to see  
3 the Smith Plant issue finally resolve?"

4 I mean, that's kind of a rhetorical  
5 question. I mean, is there anybody at East Kentucky  
6 that can give you a date certain --

7 A No.

8 Q -- as to when the purchase --

9 A But you know what, if I weren't  
10 going to have to pay for it, I wouldn't be too  
11 worried about it either. The Liberty report says  
12 they can divide it up among the membership and they  
13 can bill my people for it over a ten-year period  
14 and East Kentucky is not out a dime. So I wouldn't  
15 get too excited either way, would you? If it  
16 wasn't going to cost you anything? So, you know,  
17 hey, they don't care.

18 Q But, I mean, are you paying for  
19 the Smith assets currently in your rates?

20 A Not yet, but I will be.

21 Q Okay. So I mean --

22 A So will Inter-County and so will  
23 everybody else.

24 Q I'm trying to understand, though.  
25 I mean, are you looking for East Kentucky to say

1 we're going to make a decision on what's going to  
2 happen to the Smith assets by this date and circle  
3 it on the calendar?

4 A During our budgeting meeting,  
5 which they had one here at Grayson, we hosted one,  
6 subject of PJM was brought up, and the projection  
7 is, with PJM, even with the outstanding debt on the  
8 Smith plant, that we would still be in the black.

9 I said, "Okay, then does that mean that  
10 you're going to just write off the Smith plant and  
11 you're not going to pass it through the members?"

12 "Oh, no, the Liberty report says we can go  
13 ahead and pass it through the members."

14 I'm like, "If you're in the black why would  
15 you do that?"

16 "The Liberty report says we can."

17 I said, "I don't care what it says you can  
18 do. What's right and what's wrong? If you're still  
19 in the black and you still have the margin and  
20 you're still making money, why put the Smith plant  
21 on my members' back when it -- you could write it  
22 off and still be in the black. Now, come on."

23 And that was said right here in this  
24 building in front of a whole bunch of people that  
25 they would -- because the Liberty report said they



1 could. Well, you know what? The Liberty report  
2 might say I could jump off the roof. Does that mean  
3 I'm going to go do it? No.

4 Q So did East Kentucky incur the  
5 cost of purchasing the Smith assets without the  
6 consent of its members?

7 A The way I understood it, and  
8 Sherman can answer this better than I can, but he's  
9 not under interrogation here, this was money spent  
10 prior to the Commission's approval to get ready for  
11 the Smith plant before the permit was granted, so  
12 we would be ready to go on it.

13 Q Okay.

14 A And then when we cancelled, there  
15 we were. We had that much money invested in the  
16 site presentation.

17 Q So is it your position, then,  
18 that East Kentucky incurred the cost for the Smith  
19 assets without authority from its board to do so?

20 A No, no, I do not. I do not say  
21 that. I know the board said to go ahead and do it.

22 Q And the board is made up of its  
23 members?

24 A That's right. But if that board  
25 is also in the black and everything is good, why

1 should they? Why shouldn't that come back to the  
2 board to say, do you really want to pass that along  
3 to your members or could we go to the Commission  
4 and say, hey, we're flush enough to go ahead and  
5 write this off without passing it through to our  
6 members.

7 Now, the Liberty report said we would, but  
8 if you guys don't care, we're not going to put that  
9 out here to our members. What would be wrong with  
10 that?

11 Q And the Commission actually  
12 approved the establishment of a regulatory asset  
13 for those assets?

14 A I don't know what the procedure  
15 is for that, but what I'm saying is should that not  
16 be brought back -- you know, after we get into PJM,  
17 if we do experience what they think we're going to,  
18 should that board not take a look at that and say,  
19 hey, it was a bad decision, you know, it didn't  
20 work out, we're going just to write it off, and  
21 we're still flush. And we're not going to pass  
22 that through to our members every month for ten  
23 years. We're not going to do that. We're just  
24 going to eat it and go on.

25 Q Okay. The next paragraph says,

1 "If the Charleston Bottoms issue and the Magnum  
2 Drilling issue were resolved, Grayson RECC would  
3 certainly rethink our rate increase and would  
4 probably be in a position to forego a rate increase  
5 for a long period of time -- for a longer period of  
6 time."

7 So, I mean, again, if you -- the Magnum  
8 contract, help me understand, is that a 800,000 to  
9 million-dollar annual savings?

10 A Uh-huh (affirmative).

11 Q All right. So then the next one  
12 here, "We are tired of the IOU mindset of East  
13 Kentucky Power."

14 A Very much so.

15 Q Can you tell me what that mindset  
16 is?

17 A I think you have to ask  
18 Mr. Campbell. He alluded to it in his end of the  
19 year report. The IOU mindset is it's all about  
20 East Kentucky, only about East Kentucky, and no  
21 consideration is given to the local co-ops.

22 Q And then you say that you asked  
23 each of the members or the general managers to  
24 "insist that we return to cooperative values, where  
25 the good of all is considered our highest goal."

1 What does that mean?

2 A That means just exactly what it  
3 says, that every consideration should be given to  
4 the members at the end of the line when there are  
5 decisions made in that boardroom.

6 Q Okay. So when we're talking  
7 about rate design, when we're talking about  
8 Amendment 3, I mean, those are issues that  
9 definitely involve risk shifting -- cost shifting  
10 among members.

11 A Uh-huh (affirmative).

12 Q And so, I mean, giving Grayson  
13 what it would want on those issues would  
14 necessarily involve that somebody else is going to  
15 have to pay more, so --

16 A Well, like I said, I dispute  
17 that, because I think it would simply divide how  
18 the revenue is produced.

19 Q Okay. So --

20 A And that maybe -- maybe a very  
21 industrial or commercial co-op wouldn't make as  
22 much, but they would certainly maintain a healthy  
23 margin. But it would allow Grayson to not be in  
24 such a deficit situation.

25 You know, I don't know how familiar you are

1 with my territory, but we probably got five, maybe  
2 six houses per mile of line, and the right-of-way  
3 costs are tremendous. Jeffrey doesn't like for us  
4 to cut or spray anything, but we have to. You know,  
5 there are a lot of -- there's a lot of difference in  
6 this co-op and, say, Licking Valley, than there is  
7 in some of the -- maybe Nolin or some of the other  
8 co-ops.

9 And, you know, there's more than one way to  
10 skin a cat. And I just think that we could rethink  
11 this and we could be fair to everyone and not be so  
12 lopsided in a lot of these situations. And I'm not  
13 asking all of the co-ops to send me a pity check  
14 once a month. It would be nice, but, you know, I  
15 told Chris I'd give him Lewis County down in  
16 Flemingsburg; he could just have it. That would  
17 really be a help to him, wouldn't it, Sherman?

18 Q All right. So the next to last  
19 thing on this letter is you say, "If any of you  
20 would like to talk about this, please feel free to  
21 give me a call." Did you get any takers on that?

22 A I don't know the names of people  
23 I've talked to, and there were comments that would  
24 not be gentlemanly.

25 Q Well, I mean, I think I'm

1 entitled to ask.

2 A I have talked to different  
3 general managers and different directors who say,  
4 you know, "We agree with you." Maybe they don't  
5 agree with the method that we've chosen to drive  
6 our point home, but, you know, "We understand where  
7 you're coming from with this, you know, we think  
8 there should be more conversation and more give and  
9 take with East Kentucky." But, you know, a lot of  
10 them are saying, "We're just going to sit back and  
11 watch, see how this unfolds, and then we'll go from  
12 there." Okay.

13 Q Have you told any other general  
14 managers that the Mason Circuit lawsuit is really  
15 not about Charleston Bottoms?

16 A No. I've told them, and I've  
17 told them in committees, Charleston Bottoms,  
18 Magnum, and all those other things are two entirely  
19 separate matters. They're different. You know,  
20 I'm not going to be leveraged from one thing to get  
21 the other. I'm not going to do that. They're  
22 separate issues.

23 If you all -- if they would walk in tomorrow  
24 and say, "Hey, we're going to do Magnum and you can  
25 have whatever you want, and we're ready to roll on

1 it," I would say yippee, but that wouldn't change my  
2 stand on Charleston Bottoms. That wouldn't change  
3 my stand on whether we need rate redesign or not.  
4 It wouldn't have anything -- one does not weigh  
5 the -- sway the other one, let's put it that way.  
6 Okay? No, I have not.

7 Q Okay. Do you know if your  
8 counsel has told counsel for other cooperatives  
9 that the lawsuit is not about Charleston Bottoms?

10 A I am not privileged to  
11 Mr. Scott's conversations with other attorneys. We  
12 sat up there that day with Mark David and we went  
13 over all these points, because he said, "Do you  
14 have other issues?" And we said, yes, but I think  
15 we made it clear that day that those issues were  
16 separate.

17 Q Let me hand you this. Again, I  
18 apologize it's not stapled.

19 A Okay.

20 MR. SCOTT: This is Amendment 3 to No. 28?

21 MR. SAMFORD: Correct.

22 BY MR. SAMFORD:

23 Q Can you identify this document  
24 for me which we'll label as Exhibit 29.

25 (Exhibit No. 29 was marked.)

1           A           It says that it is a Memorandum  
2 from Mr. Scott to the President and General  
3 Managers of East Kentucky Member Systems and  
4 Attorneys for East Kentucky Member Systems.

5           Q           Okay. I think we've talked about  
6 a lot of these issues before, but let me just draw  
7 your attention to Page 3 and the first paragraph.

8           A           Okay.

9           Q           There's mention there that some  
10 discussion be held to determine the equitable --

11           MR. SCOTT: Where are you? Where are you?

12           MR. SAMFORD: Page 3, the third line.

13           Q           "Some discussion be held to  
14 determine the equitable handling of the assets of  
15 Charleston Bottoms."

16                   In your words, what does equitable handling  
17 of Charleston Bottoms' assets mean?

18           MR. SCOTT: Note my objection to a question  
19 of this witness about language used on a  
20 memorandum that was sent by someone other  
21 than her.

22 BY MR. SAMFORD:

23           Q           Did you --

24           A           I really don't know.

25           Q           Did you see this memo before it



1 was sent?

2 A Let's see, I don't know whether I  
3 saw it before it was sent or not, but I do have a  
4 copy of it.

5 Q Okay. Do you agree with what  
6 that says, that some discussion should be held to  
7 determine the handling of the assets?

8 A Yes, I think I've said that  
9 several times today.

10 Q Nevermind what Mr. Scott means.  
11 What in your mind does that mean?

12 A I believe that means that we  
13 believe that the method of the dissolution of  
14 Charleston Bottoms was handled incorrectly, and  
15 that the dissolution of those assets therefore were  
16 handled incorrectly, and that they should be  
17 reviewed, and whatever action was taken should be  
18 corrected and done in compliance with the way  
19 things should have been done.

20 Q Okay. And then do you agree with  
21 his statement, going on in that sentence, that "the  
22 method and manner of cooperatively dealing with the  
23 corporate governance of EKPC as it affects the  
24 costs of power paid by individual members of each  
25 of the Distribution Cooperatives -- Co-ops"?

1           A           Let me read that. Speaking of  
2 run-on sentences. Yes.

3           Q           You talked about it several  
4 times, but I mean, the Liberty audit had a pretty  
5 significant impact upon corporate governance of  
6 East Kentucky. You would agree with that?

7           A           Yes.

8           Q           Do you think that has been an  
9 improvement in East Kentucky's corporate  
10 governance?

11          A           Yes, I do.

12          Q           So then I assume that you -- what  
13 may be meant by this is it's some sort of  
14 refinement of the corporate governance?

15          A           I think that Mr. Campbell and  
16 Mr. Smart would both have to say that I was very  
17 active in the resolution of the required action for  
18 the Liberty report and in reporting those actions  
19 and finds to the Commission itself, to the  
20 representatives of the Commission who came  
21 periodically to review those, and that I personally  
22 think that the Liberty report has done a great deal  
23 to -- in a positive way for East Kentucky, but I  
24 think that it has also been used somewhat in the  
25 last year as a method of avoiding certain issues

1 that have changed.

2 When Tony came to East Kentucky, there were  
3 financial issues, there were all kinds of things  
4 going on. Certainly those issues have improved.  
5 And the necessity for what the Liberty report said  
6 has changed, and therefore those should be refined  
7 or redone as those issues change.

8 And it's almost like if they want to do  
9 something, they drag out the Liberty report, and if  
10 they don't want to do something they hold up the  
11 Liberty report. When -- the circumstances at East  
12 Kentucky have changed enough so the Liberty report  
13 and the actions therein need to be refined to meet  
14 current standards and current conditions.

15 Q So are there any specific changes  
16 to the current corporate governance that you have  
17 in mind?

18 A Well, for instance, the  
19 resolution of the Smith plant, you know, the  
20 Liberty report says we can take that over ten years  
21 and we can divide it up. But if we don't have to,  
22 I think we should say to the Commission, you know,  
23 we really don't have to do this. Our assets are  
24 good enough, our margins are good enough, you know,  
25 we would like to, in effect, have a little rate

1 decrease. We would not pass that through to the  
2 membership. That's one prime example.

3 Q And the best option there would  
4 be there was a buyer for the Smith assets?

5 A It would be wonderful. I would  
6 be thrilled. And let's say there was 59 million  
7 left and we agreed to eat that or write it off.  
8 I'd be thrilled to death for East Kentucky if that  
9 happened.

10 But if it doesn't and we don't have to have  
11 it, why pass it through to the members just because  
12 the Liberty report said you could? And at that time  
13 we really needed it. Financially, we really needed  
14 it. But now things have changed and East Kentucky's  
15 margin and their financial condition and their  
16 rating of things is such that we really don't have  
17 to do that the way I -- the information I get from  
18 East Kentucky. So why burden our members with that  
19 if we don't have to?

20 Q Okay. But, I mean, that will  
21 come -- to a certain extent it's not a ripe  
22 question yet, because there's a regulatory asset  
23 out there, but there won't be any cost recovery  
24 until East Kentucky has a base rate case. And so,  
25 I mean, as part of the preparation for that, that's

1 when the board will -- the board, not management,  
2 will determine whether or not those costs are  
3 actually sought to be passed on; correct?

4 A Uh-huh (affirmative).

5 Q Were there any other governance  
6 things that you could think of?

7 A Well, I could probably make a  
8 list, but that's the one that springs to mind.

9 Q Okay. And then let me come down  
10 to this intriguing statement in the middle of the  
11 next paragraph, beginning with, "We believe." The  
12 statement there is, "We believe, that the cash  
13 position of EKPC and its equity position is such  
14 that a monetary contribution can be made to each of  
15 the member systems without impairing its financial  
16 stability in exchange for which it would be  
17 appropriate for each of the member systems to  
18 release any claim it would have in and to the real  
19 estate on which the Spurlock Station sits."

20 A I believe that is what is called  
21 a starting point in the art of negotiations. You  
22 have to start somewhere. Now, do you really  
23 believe that East Kentucky is going to write us a  
24 check for the assets of the station? No, I don't  
25 believe that. But do I believe that there's an

1 opportunity for some asset growth for Grayson due  
2 to this situation, yes, I do.

3 So you know what, you throw something out,  
4 you see what they say, and they come back with an  
5 offer and we say, well, that's pretty good, but  
6 let's do this. And I call that the art of  
7 negotiation.

8 Q So this was more in the nature of  
9 what you'd say is a settlement offer?

10 A That's more in the nature of a  
11 conversation starter.

12 MR. SCOTT: Solicitation of an offer.

13 BY MR. SAMFORD:

14 Q So in the normal course of  
15 negotiating, isn't it customary to make the  
16 solicitation of the offer for a settlement with the  
17 party to whom you're actually trying to settle?

18 MR. SCOTT: Let me note an objection again.  
19 This is asking her questions about  
20 something that I sent that she and I talked  
21 about sending, that she looked at and  
22 reviewed a couple times before it went out  
23 on a Friday afternoon, I think it was,  
24 maybe Thursday.

25 And I sent it because of the threat

1           that Kenneth Arrington was not going to be  
2           able to sit in a board meeting because Mark  
3           David Goss said that Mr. Campbell would not  
4           agree to sit down and talk to us in exchange  
5           for holding this case in abeyance and  
6           indefinitely extending the time for East  
7           Kentucky to answer.

8                         It is the solicitation of an offer,  
9           that position is, and if you want to say  
10          it's not the appropriate way to do it, then  
11          fine. But she doesn't know if it is or  
12          isn't, and it doesn't matter to me if you  
13          think it's the appropriate way or not. It  
14          is what it is. It's a letter that was sent  
15          that I authored.

16          MR. SAMFORD: So there was about three  
17          levels of hearsay in that objection.

18          Q                 But that aside, you would agree  
19          with me that this letter does not purport to have  
20          been sent to East Kentucky or its counsel?

21          A                 I don't think so.

22          Q                 So the solicitation of an offer  
23          of settlement was sent to the members of East  
24          Kentucky for a dispute that was with East Kentucky?

25          MR. SCOTT: And there were -- sir, those

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entities to whom that letter was sent were parties to this lawsuit, and I sent it to their legal counsel.

MR. SAMFORD: Were they parties to the lawsuit as of October 18th? I believe what the letter says is --

MR. SCOTT: They were going to be, because I had to make them parties in the amended complaint.

THE WITNESS: And, you know, it's hard to make an offer to somebody who's sitting there just saying, no, no, no, no, no.

MR. SCOTT: Again, this is not an appropriate inquiry to her. If you got a problem with my letter, you know, engage it with me in the appropriate setting --

MR. SAMFORD: I'm just trying to understand --

MR. SCOTT: -- like Mr. Goodpaster does.

MR. SAMFORD: -- trying to understand the quid pro quo here, if East Kentucky agrees to make a payment to each of the member systems, the member systems should release any claim that they would have in and to the real estate on which the Spurlock Power



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Station sits.

MR. SCOTT: That's a suggestion of an opinion that I hold.

BY MR. SAMFORD:

Q Okay. "An appropriate number would be \$3,000,000 to each distribution co-op." Do you know how that number was arrived at?

A I do not.

Q Was it discussed with you beforehand?

A We talked about this and that and 15 other things and, of course, like I said a while ago, we pro rate everything. I don't think for one minute if a settlement like this were entertained, that each co-op would get the same amount.

Q So you think if --

A I think this is just throwing it out there to see what response we'll get.

Q So would you say it's sort of unreasonable on its face to expect everybody would get the same?

A I think that's probably reasonable that they would not get the same amount, because we all don't pay the same power bill, we don't use all the same kilowatt hours. That's

1 always the way things have been done on a pro rated  
2 basis.

3 Q So if this had come from you, you  
4 wouldn't have necessarily said each co-op should  
5 get the same amount, whatever it is?

6 A I might have thrown out a number  
7 to start at.

8 Q But would it have been the same  
9 number for everybody?

10 A I didn't write the letter.

11 Q I'm just asking hypothetically if  
12 you had.

13 A Probably not, no.

14 Q So if you didn't write the letter  
15 and you didn't see it before it went out, then was  
16 the settlement --

17 A Oh, I saw it.

18 Q So it had been authorized?

19 A I read it.

20 Q Okay. So if East Kentucky had  
21 said, yeah, we'll write you a check for  
22 \$3 million --

23 A I'd have fainted and fell over.

24 Q -- that would have satisfied and  
25 everything would have been over?

1           A           Everything what?

2           Q           Well, I mean, all the disputes.

3           A           No. I told you they're all

4           separate.

5           Q           Okay.

6           A           They're all separate. Besides

7           that, I knew that East Kentucky was not going to

8           write anybody a check. I mean, come on. I've been

9           in this business 34 years. I know better than

10          that.

11          Q           So then the next sentence says,

12          "This would go a long way toward resolving the

13          financial issues now affecting each distribution

14          co-op and EKPC of course would need to agree to

15          withhold any request for a rate increase for a

16          period of at least three (3) years."

17          Do you know the basis for that?

18          A           No.

19          Q           Was it discussed with you

20          beforehand?

21          A           Well, I read it.

22          Q           So you agreed with it?

23          A           I don't think you can put words

24          in my mouth.

25          MR. SCOTT: This -- this statement you just

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said is an expression of an opinion from the author of that letter, which is not the person whose deposition you're taking.

MR. SAMFORD: Well, I'm just trying to understand if the opinion of the author of this letter is the opinion of the co-op on whose behalf it was purported to have been sent. That's what I'm trying to understand. I think you said yes.

MR. SCOTT: Note my objection --

A No.

MR. SCOTT: -- to any further questions about this letter. It has nothing to do with the lawsuit as far as intending to prove or disprove the issues alleged in the lawsuit. It is, however, a discussion about terms of settlement, which of course, is inadmissible in and of itself.

MR. SAMFORD: Well, it doesn't purport to say that it's a settlement. I mean, it's not a settlement offer. I think you said it was a solicitation of settlement. So we might quibble about that.

MR. SCOTT: One can glean from --

MR. SAMFORD: And it is related to the



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A No, sir, I have not.

Q Okay.

A Matter of fact, we tried to keep this here with us.

Q And so then why would you publish a letter that, frankly, has to do with a lot of inside East Kentucky type issues of varying of degrees of complexity with 15,000 members of the public?

A Because they're paying the bills. Because they're member owners, they're paying the bills, and a large number of them are really struggling to pay those bills, and it's not right.

MR. SAMFORD: Let's take a break.

(THEREUPON, A BREAK WAS TAKEN.)

MR. SAMFORD: No further questions.

\* \* \* \* \*

THEREUPON, the taking of the deposition of **CAROL FRALEY** was concluded at 6:36 p.m.

\* \* \* \* \*

1 STATE OF KENTUCKY )  
2 COUNTY OF FAYETTE )

3  
4 I, JOLINDA S. TODD, Registered  
5 Professional Reporter and Notary Public in and for  
6 the State of Kentucky at Large, certify that the  
7 facts stated in the caption hereto are true; that  
8 at the time and place stated in said caption the  
9 witness named in the caption hereto personally  
10 appeared before me, and that, after being by me  
11 duly sworn, was examined by counsel for the  
12 parties; that said testimony was taken in stenotype  
13 by me and later reduced to computer-aided  
14 transcription and the foregoing is a true record of  
15 the testimony given by said witness.

16 No party to said action nor counsel for  
17 said parties requested in writing that said  
18 deposition be signed by the testifying witness.

19 My commission expires: August 24, 2015.

20 IN TESTIMONY WHEREOF, I have hereunto set  
21 my hand and seal of office on this the 22nd day of  
22 January 2013.

23 JOLINDA S. TODD, RPR, CCR(KY)  
24 NOTARY PUBLIC, STATE AT LARGE  
25 ID# 449787





# Grayson Rural Electric Cooperative Corporation

EXHIBIT

6

109 Bagby Park • Grayson, KY 41143-1292  
Telephone 606-474-5136 • 1-800-562-3532 • Fax 606-474-5862

January 18, 2013

Mr. Anthony "Tony" Campbell  
President & CEO of East Kentucky Power Cooperative  
4775 Lexington Road  
P.O. Box 707  
Winchester, KY 40392-0707

NOTICE PURSUANT TO AMENDMENT #3 TO WHOLESALE POWER CONTRACT  
BETWEEN EAST KENTUCKY POWER COOPERATIVE, INC. AND  
GRAYSON RURAL ELECTRIC COOPERATIVE CORPORATION

Dear Mr. Campbell:

Please be advised that Grayson Rural Electric Cooperative Corporation herewith notifies East Kentucky Power Cooperative, Inc., pursuant to the provisions of Amendment #3 of the Wholesale Power Contract between East Kentucky Power Cooperative and Grayson Rural Electric Cooperative Corporation that Grayson Rural Electric Cooperative Corporation intends to purchase from Magnum Drilling of Ohio, Inc., an additional 4.4 megawatts of electrical power to be commenced in the year 2013.

This 4.4 megawatts of electrical power will be in addition to the 5 megawatts of electric power about which you were sent notice as President of East Kentucky Power Cooperative, Inc., on August 9, 2012.

The total of 9.4 megawatts of electric power does not exceed 15% of the rolling average coincident peak demand of Grayson Rural Electric Cooperative Corporation for the previous three 12 month periods.

Grayson Rural Electric Cooperative Corporation anticipates that East Kentucky Power Cooperative will act in accordance with all appropriate terms of Amendment #3 to the Wholesale Power Contract so as to provide this benefit to the members of Grayson Rural Electric Cooperative Corporation. Thank you.

Yours Truly,



Carol Hall Fraley  
President & CEO  
Grayson Rural Electric Cooperative Corporation

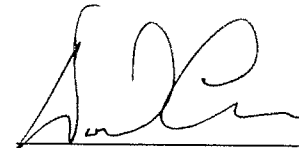


AFFIDAVIT

Comes now the Affiant, David Crews, Senior Vice-President Power Supply, for East Kentucky Power Cooperative, Inc. ("EKPC") and, after being duly sworn, does hereby state as follows:

1. My name is David Crews. I am the Senior Vice-President Power Supply, for EKPC.
2. The attached calculations of EKPC's Exposure to Amendment 3 and Owner-Member Cooperative Amendment 3 Limits were calculated by me or by EKPC staff working under my supervision and direction.
3. These calculations are true and correct to the best of my professional knowledge and belief.

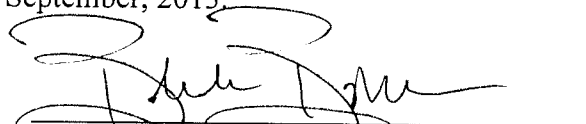
Further, the Affiant sayeth naught.



\_\_\_\_\_  
DAVID CREWS  
Senior Vice-President Power Supply

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 20<sup>th</sup> day of September, 2013.



\_\_\_\_\_  
NOTARY PUBLIC  
Commission # # 409668

My Commission Expires: 1/27/14

**EKPC Exposure to Amendment 3, Based on Data Through Aug. 2013, in MW**

Owner-Member Cooperative	CP for Month of			Average	Load Ratio Share of the 5% Cap
	Dec. 2010	Jan. 2012	Jan. 2013		
Big Sandy	75.2	53.5	61.3	63.3	3.2
Blue Grass	327.9	273.9	295.3	299.0	15.0
Clark	126.8	102.7	110.0	113.2	5.7
Cumberland Valley	139.8	105.4	114.7	120.0	6.0
Farmers	102.0	93.2	105.2	100.1	5.0
Fleming Mason	145.6	149.1	159.4	151.4	7.6
Grayson	69.2	54.0	59.8	61.0	3.0
Inter-County	135.7	111.8	118.2	121.9	6.1
Jackson	278.8	208.1	229.5	238.8	11.9
Licking Valley	74.0	53.8	61.3	63.0	3.2
Nolin	173.0	156.6	171.6	167.1	8.4
Owen	264.1	238.6	254.7	252.4	12.6
Salt River	254.5	215.6	231.8	234.0	11.7
Shelby	103.6	89.1	93.8	95.5	4.8
South Kentucky	366.8	293.0	320.9	326.9	16.3
Taylor	125.4	101.1	111.7	112.7	5.6
<b>Total</b>	<b>2762.5</b>	<b>2299.4</b>	<b>2499.0</b>	<b>2520.3</b>	<b>126.0</b>

**Owner-Member Cooperative Amendment 3 Limits, Based on Data Through Aug. 2013, in MW**

Owner-Member Cooperative	Highest CP in 12 Months Ending			Average	5% Election	15% Election
	Aug. 2011	Aug. 2012	Aug. 2013			
Big Sandy	75.2	61.8	61.3	66.1	3.3	9.9
Blue Grass	327.9	273.9	295.3	299.0	15.0	44.9
Clark	126.8	102.7	110.0	113.2	5.7	17.0
Cumberland Valley	139.8	118.1	114.7	124.2	6.2	18.6
Farmers	119.2	103.1	107.5	110.0	5.5	16.5
Fleming Mason	162.3	150.0	159.4	157.2	7.9	23.6
Grayson	69.2	56.3	59.8	61.8	3.1	9.3
Inter-County	135.7	111.8	118.2	121.9	6.1	18.3
Jackson	278.8	219.8	229.5	242.7	12.1	36.4
Licking Valley	74.0	59.4	61.3	64.9	3.2	9.7
Nolin	182.9	156.6	175.2	171.6	8.6	25.7
Owen	270.1	270.1	255.5	265.3	13.3	39.8
Salt River	254.5	241.0	231.8	242.4	12.1	36.4
Shelby	103.6	89.1	93.8	95.5	4.8	14.3
South Kentucky	366.8	304.3	320.9	330.7	16.5	49.6
Taylor	127.2	105.0	112.9	115.0	5.8	17.3
<b>Total</b>	<b>2814.2</b>	<b>2422.9</b>	<b>2507.1</b>	<b>2581.4</b>	<b>129.1</b>	

Note: The total of the owner-member cooperatives' 5% elections is nominally greater than the total EKPC exposure to Amendment 3, because the month in which they each individually contribute the most to an EKPC coincident peak is not necessarily the same month in which EKPC's greatest coincident peak occurs.



Witness: Don Combs

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COMMONWEALTH OF KENTUCKY  
MASON CIRCUIT COURT  
CIVIL ACTION NO. 12-CI-00270

GRAYSON RURAL ELECTRIC  
COOPERATIVE CORPORATION,

PLAINTIFF

VS.

EAST KENTUCKY POWER COOPERATIVE, INC.,  
CHARLESTON BOTTOMS RURAL ELECTRIC, ET AL,

DEFENDANTS

---

**WITNESS: DON COMBS**

---

The Deposition of DON COMBS was taken before Jolinda S. Todd, Registered Professional Reporter, CCR(KY) and Notary Public in and for the State of Kentucky at Large, at the offices of Grayson Rural Electric Cooperative Corporation, 109 Bagby Park, Grayson, Kentucky on Thursday, January 17, 2013, commencing at the approximate hour of 9:10 a.m. Said deposition was taken pursuant to Notice, for all purposes as permitted by the Kentucky Rules of Civil Procedure.

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**APPEARANCES:**

David S. Samford, Esq.  
GOSS SAMFORD, PLLC  
2365 Harrodsburg Road, Suite B130  
Lexington, Kentucky 40504

ATTORNEYS FOR DEFENDANT,  
EAST KENTUCKY POWER COOPERATIVE, INC.  
AND CHARLESTON BOTTOMS RURAL  
ELECTRIC COOPERATIVE CORPORATION

W. Jeffrey Scott, Esq.  
W. JEFFREY SCOTT, PSC  
P.O. Box 608  
Grayson, Kentucky 41143

ATTORNEYS FOR PLAINTIFF,  
GRAYSON RURAL ELECTRIC COOPERATIVE  
CORPORATION

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**APPEARANCES (continued):**

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ATTORNEYS FOR DEFENDANT,  
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**ALSO APPEARING:**

Carol Fraley  
Sherman Goodpaster, Esq.  
Frank Oliva



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**WITNESS: DON COMBS**

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EXHIBIT 35

RUS FORM 7

65

1                   The witness, **DON COMBS**, after first  
2 being duly sworn, was examined and testified as  
3 follows:

4                                   EXAMINATION

5 BY MR. SAMFORD:

6                   Q           Mr. Combs, my name is David  
7 Samford. I'm an attorney for East Kentucky Power  
8 Cooperative, Inc. and Charleston Bottoms Rural  
9 Electric Cooperative Corporation; and with me today  
10 is our corporate representative, Mr. Frank Oliva,  
11 who is the director of finance for East Kentucky  
12 Power, and then Sherman Goodpaster is in-house  
13 counsel for East Kentucky Power as well.

14                   Do you mind to begin by just kind of telling  
15 me your full name, please?

16                   A           Don Manley Combs.

17 MR. SCOTT: Let me note something for the  
18 record and state an objection. When we  
19 were taking depositions last week,  
20 Mr. Goodpaster was here and he made it  
21 emphatically clear on the record that  
22 everybody knew for all posterity that he  
23 was not an attorney in this case. He was  
24 not one of the attorneys representing East  
25 Kentucky Power in this case, and that he --

1 or Charleston Bottoms, neither one -- that  
2 he was here solely as a corporate  
3 representative. And so today we have he, I  
4 assume, in that same capacity, and  
5 Mr. Oliva, and I think that one corporate  
6 representative is enough and there ought  
7 not be two corporate representatives here.  
8 We acquiesced in a third corporate  
9 representative being present last week,  
10 namely Mr. Cowden. So I'm sure Tony  
11 Campbell won't ever be here, but, you know,  
12 I think three corporate representatives is  
13 a little much. So I object to there being  
14 two corporate representatives.

15 MR. GOODPASTER: Jeff, for purposes of this  
16 deposition and for the record, I am  
17 appearing as counsel today.

18 MR. SCOTT: Okay.

19 BY MR. SAMFORD:

20 Q Mr. Combs, have you ever given  
21 your deposition before?

22 A Not in this case, no.

23 Q But have you given your  
24 deposition in prior cases?

25 A Yes.

1 Q Okay. So you're generally  
2 familiar with the process?

3 MR. SCOTT: Let me make sure the record is  
4 clear that Sherman Goodpaster has entered  
5 an appearance in this case as legal counsel  
6 for East Kentucky and Charleston Bottoms.

7 BY MR. SAMFORD:

8 Q And so you've given your  
9 deposition in prior cases?

10 A Yes.

11 Q So you're familiar with how this  
12 works?

13 A Somewhat.

14 Q Okay. My purpose today is not to  
15 trick you, is not to ask you any trap questions or  
16 anything like that. I'm just trying to understand  
17 the basis for some of the allegations that are set  
18 forth in a complaint, in an amended complaint that  
19 had been filed by Grayson RECC against my clients  
20 in Mason Circuit Court. And so if there's any  
21 question that I ask you that you don't understand,  
22 or you need me to repeat, just tell me you need me  
23 to repeat it or rephrase it and I'd be happy to do  
24 that.

25 If you want to take a break at any time at

1 any point in the deposition, we can do that. If you  
2 need to check with your counsel for Grayson, who is  
3 seated to your left there, we can do that at any  
4 point as well. So does that sound good enough?

5 A Yes.

6 Q Okay. Let me begin by just  
7 asking you to tell me what your position here is at  
8 Grayson.

9 A I'm manager of finance and  
10 accounting.

11 Q Okay. And what does that  
12 position entail?

13 A It involves the finances of  
14 Grayson Rural Electric, financing, accounting,  
15 reports and so forth.

16 Q And who do you report to?

17 A Carol Ann Fraley, president and  
18 CEO.

19 Q And do you have anybody that  
20 reports to you?

21 A Yes.

22 Q And who would that be?

23 A That would be probably Sherry  
24 Buckler, who is the accounting supervisor.

25 Q Anyone else?

1 A No.

2 Q Okay. On a day-in, day-out  
3 basis, what are some of the job tasks that you do  
4 as the director of accounting and finance?

5 A To make sure the accounting  
6 function is operating, plus any other  
7 administrative type duties that may come down the  
8 road.

9 Q And so you would be familiar with  
10 the financial condition of Grayson?

11 A Yes, I think so.

12 Q We have here in front of you a  
13 stack of documents that we've been using throughout  
14 the course of these depositions, and it's kind of a  
15 common set of exhibits to all of those depositions.  
16 Let me begin by asking you to take a look. You can  
17 go ahead and -- let me go ahead and ask you to  
18 begin to look at Exhibit No. 30.

19 A I don't see 30. Okay.

20 Q And just take a moment there to  
21 kind of look that document over, and then when  
22 you're ready, tell me what that is.

23 A Looks like it's minutes to our  
24 board meeting of February 25th, 2011.

25 Q Okay. And as I look down at

1 the -- towards the bottom of the first page there,  
2 under -- there's a heading off to the left-hand  
3 side, it says, "Office and Member Services Report."  
4 Do you see where I am, sir?

5 A Yes.

6 Q And it says, "Don Combs, Manager  
7 of Finance and Accounting presented the Financial  
8 and Statistical Report for December 2010.  
9 Mr. Combs reported On the following." Do you see  
10 where I am?

11 A Yeah.

12 Q Can you just kind of give me an  
13 idea, looking at that, approximately how many of  
14 those items after that you would have discussed?

15 A Looks like the next -- probably  
16 through the 219 Work Orders section.

17 Q Okay. And so after the 219 Work  
18 Order section there's a couple of more items, and  
19 then we come to an item that's designated as  
20 Charleston Bottoms. Do you see that, sir?

21 A Yes.

22 Q Can you read that short paragraph  
23 for me, please?

24 A "Charleston Bottoms was  
25 established as a wholly-owned subsidiary of EKPC.



1 It was set up as a financing vehicle for Spurlock  
2 Unit No. 1. The set-up cost was \$125 million.  
3 Currently they owe CFC \$2.6 million and everything  
4 else has been paid off."

5 Q Okay. Do you happen to recall if  
6 you were the person who presented that information  
7 to the board?

8 A I could have presented some  
9 information that led to that.

10 Q Do you believe that that  
11 description there is an accurate representation of  
12 the information that was presented to the board?

13 A As I understood it.

14 Q Is it?

15 A Possibly. I don't know exactly  
16 what I presented to the board.

17 Q Is it your opinion that that is  
18 an accurate statement?

19 A I am not sure.

20 Q Okay. What are you not certain  
21 about?

22 A I'm not certain about the  
23 numbers, the particular numbers.

24 Q With regard to whether or not the  
25 set-up cost --

1           A           Correct.

2           Q           -- was 125 million?

3           A           Correct.

4           Q           And you're not certain whether

5           CFC was owed 2.6 million?

6           A           No, I'm not certain about those

7           numbers.

8           Q           Are you uncertain as to the

9           accurateness of the first sentence, where it says,

10          "Charleston Bottoms was established as a

11          wholly-owned subsidiary of EKPC"?

12          A           That was my understanding.

13          Q           Okay. Is that still your

14          understanding?

15          A           Yes.

16          Q           Is it your understanding that

17          Charleston Bottoms ever had any other members than

18          EKPC?

19          A           I'm not aware of that.

20          Q           Not aware of any other members?

21          A           My understanding was all the

22          distribution co-ops were members of Charleston

23          Bottoms.

24          Q           Okay. And what's the basis for

25          that understanding?

1           A           Just my observations of annual  
2 meetings of Charleston Bottoms and just general  
3 discussions throughout the years on how it -- what  
4 it was.

5           Q           Do you recall who any of those  
6 general discussions might have been with?

7           A           Nobody in particular, no.

8           Q           You can't -- you can't recall a  
9 specific conversation?

10          A           No, no, no.

11          Q           The last sentence of that entry  
12 for the minutes for February 25th, 2011, sir --  
13 2011, say, "Currently they owe CFC \$2.6 million."  
14 Do you know who the pronoun "they" refers to?

15          A           I would assume Charleston Bottoms  
16 organization.

17          Q           Okay. Let me go back to the  
18 statement you just made a minute ago. It's -- it's  
19 your opinion that each of the distribution  
20 cooperatives within the EKPC system are members of  
21 East -- or are members of Charleston Bottoms; is  
22 that correct, sir?

23          A           Yes.

24          Q           Have you conducted any sort of  
25 personal investigation to verify that assumption?

1 A No.

2 Q Let me ask you to look at the  
3 document that's right on top there that's labeled  
4 as Exhibit No. 1. If you would take a moment to  
5 look at that document, and if you can identify it  
6 for me, please.

7 A Looks likes the minutes of an  
8 organizational meeting.

9 Q And who --

10 A Charleston --

11 Q For Charleston Bottoms; correct?

12 A For Charleston Bottoms, yes.

13 Q And that document is dated  
14 January 11, 1972; correct?

15 A Yes.

16 Q Would you please read the next to  
17 last paragraph on that page?

18 A "The chairman reported that East  
19 Kentucky RECC, by resolution of the Board of  
20 Directors, has officially applied for membership in  
21 Charleston Bottoms Rural Electric Cooperative  
22 Corporation. Upon motion by Charles Foley,  
23 seconded by James Patterson and passed by all the  
24 Incorporators at East Kentucky be accepted as a  
25 member of Charleston Bottoms Rural Electric

1 Cooperative Corporation."

2 Q Okay. Have you seen this  
3 document before?

4 A No.

5 Q Do you know if it was provided to  
6 Grayson in November of 2012?

7 A I'm not aware.

8 Q Okay. Let me ask you to flip  
9 over to Exhibit No. 3. And if you could take a  
10 moment to look at that document and tell me if you  
11 can identify it.

12 A Appears to be the minutes of the  
13 board of directors meeting for East Kentucky Rural  
14 Electric, January 11th, 1972.

15 Q And can you tell me from the face  
16 of that document whether there was anyone  
17 participating on behalf of Grayson RECC?

18 A It appears that John Burton was.

19 Q And do you know Mr. Burton?

20 A I did know him, yes.

21 Q And he was, in fact, a director  
22 of Grayson RECC at one point?

23 A Yes.

24 Q On I believe it's the third page  
25 of that document, the upper left-hand corner,

1 there's a notation, handwritten notation, "1835."  
2 Do you see that?

3 A Yes.

4 Q In the next to last paragraph,  
5 again, it begins with, "The manager reported."  
6 Would you mind to read that paragraph for me,  
7 please?

8 A "The manager reported that in  
9 accordance with the previously approved Financing  
10 Plan that a new rural Electric Cooperative  
11 Corporation had been organized as outlined in the  
12 plan. This new cooperative had been organized and  
13 issued a charter by the Kentucky Secretary of State  
14 on December 30th, 1971, under the name of  
15 Charleston Bottoms Rural Electric Cooperative  
16 Corporation. Under the plan, East Kentucky RECC  
17 would be the sole member of Charleston Bottoms  
18 RECC. A motion was made by a Rudolph Rogers,  
19 seconded by Roy Gray and passed to authorize East  
20 Kentucky RECC to become a member of the Charleston  
21 Bottoms RECC."

22 Q Have you seen that document  
23 before?

24 A No, I haven't.

25 Q Let me ask you to look at the

1 next exhibit, Exhibit No. 4, and ask you if you can  
2 identify that.

3 A It appears to be a loan contract  
4 agreement between Big Sandy RECC, and I don't know  
5 who with.

6 Q Would that be with the United  
7 States of America?

8 A Oh, yeah, okay.

9 Q Acting through the administrator  
10 of the Rural Electrification Administration?

11 A Okay.

12 Q Are you aware if Grayson has  
13 signed an agreement similar to this?

14 A I am not aware of that.

15 Q If in fact Grayson had signed a  
16 document similar to this, where would that contract  
17 be kept?

18 A I assumed it would be in a file  
19 that contains such contracts with East -- probably  
20 with either East Kentucky or Charleston Bottoms.

21 Q Does Grayson have contracts with  
22 the Rural Electrification Administration now known  
23 as Rural Utility Service?

24 A Yes.

25 Q And you keep a record of those

1 contracts here?

2 A Yes.

3 Q If you would -- down at the  
4 beginning of Section 3 of that page, beginning with  
5 the second sentence, it says, "It is contemplated."

6 A Okay.

7 Q Could you read that next sentence  
8 for me, please?

9 A "It is contemplated that the  
10 Project will be owned by Charleston Bottoms Rural  
11 Electric Cooperative Corporation, a subsidiary of  
12 East Kentucky Rural Electric Cooperative  
13 Corporation; and that the capacity -- that the  
14 capacity of the Project will be purchased by East  
15 Kentucky from Charleston Bottoms."

16 Q Okay. And then go ahead and read  
17 the next sentence as well.

18 MR. SCOTT: Note my objection to questions  
19 concerning a document that the witness has  
20 said he has never seen and doesn't know  
21 anything about.

22 BY MR. SAMFORD:

23 Q Okay. You can read it still.

24 A Okay. "Concurrently with this  
25 agreement, the Government is entering into similar



1 agreements with 15 other distribution cooperatives,  
2 which together with the Borrower are served through  
3 East Kentucky's resources under contracts with East  
4 Kentucky (the Borrower and such other distribution  
5 cooperatives being hereinafter collectively called  
6 the 'Participating Distribution Cooperatives.'"

7 Q Okay. So are you aware -- let me  
8 ask you again, are you aware whether or not Grayson  
9 has entered into a similar contract with REA?

10 A I'm not aware. I'm not aware.

11 Q Okay. Let me ask you to look at  
12 the next exhibit, Exhibit No. 5.

13 A Okay.

14 Q If you would care to identify  
15 that document for me?

16 A Appears to be a loan agreement  
17 between Big Sandy Rural Electric and National Rural  
18 Utilities Cooperative Finance Corporation.

19 Q Okay. In the second paragraph --  
20 I guess actually the third paragraph of that  
21 document starts out, "Whereas, East Kentucky, in  
22 order to meet the wholesale power requirements" --  
23 do you see where I am?

24 A Yes.

25 Q Would you mind to read that

1 paragraph for me, please?

2 MR. SCOTT: Note the same objection.

3 A "Whereas, East Kentucky, in order  
4 to meet the increasing wholesale power requirements  
5 of the Distribution Cooperatives, has proposed the  
6 construction of electric generating and  
7 transmission facilities (herein called the  
8 'Project') consisting of a 300 MW generating unit,  
9 to be located near Maysville, Kentucky, and  
10 approximately 110 miles of transmission line and  
11 related facilities estimated to cost \$125 million;  
12 and has further proposed that the Project be owned  
13 by Charleston Bottoms Rural Electric Cooperative  
14 Corporation, which is owned and controlled by East  
15 Kentucky, and that the capacity of the Project be  
16 purchased by East Kentucky from Charleston  
17 Bottoms."

18 Q Have you seen this agreement  
19 before?

20 A No.

21 Q Do you know whether or not  
22 Grayson has entered into an identical agreement?

23 A I am not aware of that.

24 Q If it had, would that agreement  
25 be kept here in the ordinary course of business?

1 A Yes.

2 Q Let me ask you to look at  
3 Exhibit No. 6. This is a document entitled as a  
4 "Power Sales Agreement," dated June 12th, 1973.  
5 Let me ask you to flip over to the second page of  
6 that exhibit, which is labeled at the bottom as  
7 EKPC-1051. Could you read the second paragraph of  
8 that document for me, please?

9 A "Whereas, East Kentucky is  
10 responsible -- responsible for supplying  
11 substantially all the power and energy requirements  
12 of its 18 member electric distribution cooperatives  
13 and is the only member of CB."

14 Q And "CB" is a reference to  
15 Charleston Bottoms in that agreement?

16 A Okay.

17 Q Would you agree with that? I  
18 think you can -- I think it's a defined term in the  
19 previous paragraph.

20 A Okay, okay. Sure.

21 Q Let me ask you to look at Exhibit  
22 No. 7. This is a System Agreement. If you would  
23 look at page -- the second page of that agreement,  
24 the fifth paragraph, beginning "Whereas, East  
25 Kentucky is the sole member." Would you read that

1 for me, please?

2 A "Whereas, East Kentucky is the  
3 sole member of and controls CB, and the  
4 Participating Members and two other rural electric  
5 distribution cooperatives constitute the entire  
6 membership of East Kentucky and the Participating  
7 Members obtain substantially all of their electric  
8 power and energy requirements from East Kentucky  
9 and, in order to obtain for East Kentucky the  
10 source of power and energy to be made available to  
11 East Kentucky by Charleston Bottoms pursuant to the  
12 Power Sales Agreement and in order to induce the  
13 Purchasers to make available a substantial portion  
14 of the necessary financing, East Kentucky and the  
15 Participating Members desire to agree to and accept  
16 the obligations hereinafter imposed upon them."

17 Q Are you familiar with the System  
18 Agreement?

19 A No.

20 Q Have you seen it before?

21 A No.

22 Q Do you know whether Grayson  
23 has -- is a signatory to that agreement?

24 A I am not aware.

25 Q Let me ask you to look at the

1 next page, which is EKPC-0146, and again, this is  
2 part of a -- this is an excerpt from the full  
3 contract which was provided to Grayson previously.  
4 Can you identify for me whether or not there are  
5 any signatures on behalf of Grayson on that page?

6 A There appears to be.

7 Q And who are those gentlemen that  
8 have signed that document?

9 A An L.C. White and a John E. -- or  
10 J.E. Lewis.

11 Q Are you familiar with either of  
12 those names?

13 A Vaguely.

14 Q Is it your belief that they were  
15 former members of Grayson's board?

16 A They could have been, yes.

17 Q Okay. Let me ask you to look  
18 back to the cover page for that exhibit, and you'll  
19 see there that there is a title for the document  
20 and then there are two signature blocks. One is  
21 George P. Herzog, Acting Administrator of the Rural  
22 Electrification Administration. Can you identify  
23 the signature that is below that?

24 A No.

25 Q The -- I think the position there

1 is Governor of the National Rural Utilities  
2 Cooperative Finance Cooperation. Are you familiar  
3 with CFC?

4 A Yes, somewhat.

5 Q What is the purpose of CFC?

6 A Financing mechanism, primarily.

7 Q And who do they provide financing  
8 for?

9 A Primarily rural electric  
10 cooperatives.

11 Q And is that also true for the  
12 Rural Utility Service?

13 A I believe so.

14 Q In your experience is it easy to  
15 obtain loan funds from RUS and CFC?

16 A Yes, relatively, I'm sure.

17 Q Okay. And have you done that  
18 many times?

19 A Yes.

20 Q As part of the preparation for  
21 loan documentation for RUS and CFC, is it your  
22 experience that they conduct their own  
23 investigation of the facts underlying each loan  
24 request?

25 A Yes.

1 Q And do you have any reason to  
2 believe that RUS or CFC would enter into an  
3 agreement that they did not believe to be  
4 accurately documented in the loan paperwork?

5 MR. SCOTT: Note my objection. There's  
6 been no testimony that this witness has  
7 ever worked for CFC or knows what their  
8 requirements are. Go ahead.

9 A I'm not aware of any reason.

10 BY MR. SAMFORD:

11 Q Okay. Let me ask you to look at  
12 the next document, which is Exhibit No. 8. And if  
13 you would look at the second page of that, the  
14 first complete sentence on that page. If you could  
15 read that, please.

16 A "The Company's sole member, East  
17 Kentucky Rural Electric Cooperative Corporation, is  
18 obligated to pay amounts due but unpaid on the  
19 Series A Bonds, within 5 days after demand upon  
20 East Kentucky therefor, and 16 of the 18 electric  
21 cooperative corporations constitute -- constituting  
22 the membership of East Kentucky Rural Electric  
23 Cooperative Corporation are obligated to pay Debt  
24 Service Obligations due but unpaid on the Series A  
25 Bonds, within 10 days after demand upon which --

1 upon such 16 cooperative corporations, all as  
2 provided in the System Agreement pledged under the  
3 Indenture."

4 Q Okay. Have you seen this  
5 indenture previous to today?

6 A No.

7 Q On the signature page, again, the  
8 prior page, let me ask you if you recognize the  
9 signature there, the Governor of CFC?

10 A No.

11 Q If I were to tell you that that's  
12 the signature of J.K. Smith, would that name be  
13 familiar to you?

14 A Yes, it would.

15 Q Who was Mr. Smith?

16 A I understand he was the Governor  
17 of CFC when it was started.

18 Q And do you know if he had any  
19 prior connection to East Kentucky or the East  
20 Kentucky system?

21 A Yes.

22 Q What was that prior connection?

23 A I think he was connected to one  
24 of the other distribution co-ops in Kentucky.

25 Q Okay. Based upon your knowledge



1 and experience, did Mr. Smith have the reputation  
2 of being well versed in the cooperatives of East  
3 Kentucky?

4 A I would assume so.

5 Q Let me ask you to look at the  
6 next exhibit, Exhibit No. 9. If you could take a  
7 moment to look at that document and identify it for  
8 me, please.

9 A Appears to be a Second  
10 Supplemental Indenture between Charleston Bottoms  
11 and Bankers Trust Company.

12 Q Okay. And if you would look at  
13 the fourth paragraph of that document and read it  
14 to me, please.

15 A "Whereas, the Company has found  
16 it difficult, expensive and impractical to maintain  
17 wholly separate and independent accounting systems  
18 for the Company and East Kentucky Power Cooperative  
19 (formerly East Kentucky Rural Electric Cooperative  
20 Corporation), organized under the laws of the  
21 Commonwealth of Kentucky and the Company's sole  
22 member (herein after called 'East Kentucky') and  
23 proposes to file consolidated financial statements  
24 for the Company and East Kentucky, as set forth  
25 hereafter."

1 Q Have you seen that document prior  
2 to today?

3 A No.

4 Q Let me ask you to look at  
5 Exhibit No. 10. If you could identify that for me,  
6 please.

7 A Appears to be the Annual Report  
8 of East Kentucky Power Cooperative for 1973.

9 Q Okay. And so the second page of  
10 that document, which is labeled EKPC-1275, you'll  
11 see that there is a narrative under the heading of  
12 Financing, and in the second paragraph of that it  
13 starts out, "In order to provide the most feasible  
14 and effective plan." Do you see that paragraph,  
15 sir?

16 A Uh-huh (affirmative).

17 Q Could you read the second  
18 sentence of that paragraph for me, please?

19 A "This new cooperative, Charleston  
20 Bottoms RECC, an affiliate of East Kentucky, will  
21 maintain ownership and financing obligation --  
22 obligation of the \$125 million Charleston Bottoms  
23 Power Station and directly relate transmission --  
24 and directly related transmission facilities."

25 Q Do you believe that to be an

1 accurate statement as to the ownership and  
2 financing obligations for the Charleston Bottoms  
3 financing plant?

4 A I can't make that judgment based  
5 upon this, but...

6 Q Well, I'm just asking based on  
7 your knowledge and experience do you believe that's  
8 accurate?

9 A I would think that's reasonable.

10 Q So do you think that it's  
11 accurate or do you disagree with it in any respect?

12 A No, I can't -- there's nothing I  
13 can disagree about its accuracy, so I assume it's  
14 accurate.

15 Q Okay. Let me ask you to look at  
16 the next exhibit, Exhibit No. 11. If you could  
17 tell me what that document is.

18 A It's like a balance sheet of  
19 Charleston Bottoms as of November 30.

20 Q Can you discern what year that  
21 would be, November 30 of what year?

22 A 1978 and 1977, it appears.

23 Q And so on the right-hand column,  
24 or the right-hand side of that, you have under the  
25 heading Members' Equity and Liabilities, the first

1 line for that is Members' Equities. Do you see  
2 where I am, sir?

3 A Yes.

4 Q Can you tell me by looking at  
5 that how many members' equities Charleston Bottoms  
6 had as of November 30th, 1978?

7 A How many or how many dollars?

8 Q How many dollars.

9 A Appears to be \$100.

10 Q And are you familiar with the  
11 membership fee for Charleston Bottoms RECC?

12 A No.

13 Q Have you seen a document, this  
14 document or a similar document prior to today?

15 A No.

16 Q Let me ask you to look at Exhibit  
17 No. 12. And have you seen this document before?

18 A Possibly. I can't recall  
19 exactly.

20 Q Okay. Can you tell me what that  
21 document is?

22 A Appears to be the 2011 Annual  
23 Report of East Kentucky Power Cooperative.

24 Q And in your position with finance  
25 and accounting, is it your practice to review

1 annual reports of East Kentucky when they are  
2 issued?

3 A Usually, yes, to some degree.

4 Q And I should have asked you this  
5 sooner, but how long have you been in your current  
6 position?

7 A I've been at Grayson  
8 approximately 19 years or so.

9 Q Okay. And have you held your  
10 current position that entire time?

11 A Yes.

12 Q So let me ask you to flip over to  
13 the second page of that exhibit, and underneath  
14 paragraph No. 1, which has the heading: "Summary  
15 of Significant Accounting Policies," if you could  
16 read the two paragraphs there beginning with  
17 "Nature of Operations"?

18 MR. SCOTT: Note my objection to this  
19 document and the previous documents as  
20 simply self-serving East Kentucky Power  
21 created documents of which this witness has  
22 already said he has no knowledge and  
23 therefore they would not be relevant.

24 A "East Kentucky Power Cooperative  
25 is a not-for-profit electric generation and

1 transmission power cooperative providing wholesale  
2 electric service to 16 distribution members mainly  
3 for residential consumers in central and eastern  
4 Kentucky.

5 "The consolidated financial statements  
6 include the accounts of East Kentucky Power  
7 Cooperative and its subsidiary, Charleston Bottoms  
8 Rural Electric Cooperative Corporation. All  
9 significant intercompany accounts and transactions  
10 have been eliminated."

11 Q Okay. So I believe you testified  
12 earlier that in the normal course of business you  
13 would most likely have looked at this document  
14 previously?

15 A Probably.

16 Q Do you recall specifically  
17 looking at that financial note?

18 A This one?

19 Q Yes, sir.

20 A No, not specifically.

21 Q Okay. So let me just kind of  
22 come back to a question I asked earlier. You said  
23 it was your opinion that each of the distribution  
24 cooperatives is a member of Charleston Bottoms.  
25 Based upon the documents that you've just looked

1 at, is the opinion that you stated previously still  
2 your opinion?

3 A It was my understanding that  
4 there was still a member relationship between  
5 Grayson and Charleston Bottoms.

6 Q And tell me what you mean by  
7 "member relationship."

8 A Well, it would mean that they  
9 were -- since they were directors of the thing that  
10 they would have a relationship with Charleston  
11 Bottoms --

12 Q Okay.

13 A -- organization.

14 Q And is that a -- is that a  
15 ownership relationship?

16 A That was my understanding.

17 Q Is it a corporate governance  
18 relationship?

19 A Probably.

20 Q Okay. Other than the annual  
21 meetings, which you've observed in the operation of  
22 the board of Charleston Bottoms directors, is there  
23 anything else that you were aware of confirms your  
24 belief that Grayson is a member of Charleston  
25 Bottoms?

1 A No, not really.

2 Q Have you ever seen any documents  
3 that state that Grayson is a member of Charleston  
4 Bottoms?

5 A I'm not aware of any.

6 Q To your right I know that there  
7 are a couple of certificates that are hanging on  
8 the wall which say that Grayson -- they're  
9 membership certificates of Kentucky Rural Electric  
10 Cooperative Corporation, which of course now is  
11 East Kentucky Power, saying specifically that  
12 Grayson is a member of East Kentucky. Do you know  
13 if Grayson has any such certificates pertaining to  
14 Charleston Bottoms?

15 A I'm not aware of any.

16 Q If it did, where would they be  
17 located?

18 A I -- I have no idea specifically.

19 Q Let me ask you just some general  
20 questions about how cooperatives are structured.  
21 Approximately how many members does Grayson RECC  
22 have?

23 A Approximately 12-, 13,000.

24 Q And are those members owners of  
25 Grayson RECC?



1 A Considered that, yes.

2 Q Are they also customers of  
3 Grayson RECC?

4 A Yes.

5 Q Does Grayson have any customers  
6 who are not also members?

7 A I'm not aware of any.

8 Q Does it have any members who are  
9 not also customers?

10 A I'm not aware of any.

11 Q Let me ask you about East  
12 Kentucky Power. Are you aware how many members  
13 there are of East Kentucky Power currently?

14 A I believe so. I think there's  
15 16.

16 Q Are you aware of whether EKPC has  
17 any customers who are not its members?

18 A I'm not aware of any.

19 Q Are you aware of whether it has  
20 any members who are not its customers?

21 A I'm not aware of any.

22 Q Is it your experience in the  
23 cooperative system that membership and ownership  
24 are related?

25 A Yes.

1 Q Is it your opinion or belief that  
2 a rural electric cooperative can be owned by  
3 somebody who is not a member?

4 A What was the question again?

5 Q Is it your opinion or belief that  
6 a rural electric cooperative corporation can be  
7 owned by someone who is not a member?

8 A It's my belief it's possible.

9 Q Okay. And can you describe for  
10 me a situation where that possibility might take  
11 place?

12 A It would be -- the only situation  
13 that I'm aware of is where it is against religious  
14 practices to become a member of anything, and that  
15 would be probably dealt with within the bylaws of  
16 that organization as to how that would be handled.

17 Q Okay. In your many decades of  
18 working within the cooperative system, are you  
19 aware of a specific instance where that has ever  
20 occurred?

21 A That has happened once, to my  
22 knowledge.

23 Q And can you just tell me a little  
24 bit about that situation?

25 A And it was a religious

1 organization.

2 Q And was that involving Grayson  
3 RECC?

4 A No.

5 Q Who was the rural electric  
6 cooperative corporation?

7 A Big Sandy.

8 Q Other than that situation, you're  
9 not aware of any other such instance?

10 A No.

11 Q Did you review the complaint or  
12 the amended complaint prior to them being filed in  
13 the Mason Circuit Court?

14 A Did I review it personally? Not  
15 the complete document, no.

16 Q Do you happen to recall what  
17 portions you did review?

18 A It was -- some of them were  
19 discussed.

20 Q So did you actually see the  
21 document before it was filed in any respect?

22 A I -- I don't recall seeing the  
23 document.

24 Q One of the allegations in, I  
25 believe it's the amended complaint, is that

1 Grayson's financial condition has been impaired or  
2 has been damaged by the actions of East Kentucky  
3 Power. Do you share that opinion or belief?

4 A I think they've been influenced  
5 by those actions.

6 Q Okay. And how have they been  
7 influenced? Let me rephrase that question.

8 How has Grayson's financial condition been  
9 influenced by EKPC?

10 A As far as the complaint, nothing  
11 directly that I can recall.

12 MR. SCOTT: I think he's asking you about  
13 the complaint. He's asking you about East  
14 Kentucky's actions that are complained of  
15 in the complaint. Wasn't that your  
16 question?

17 BY MR. SAMFORD:

18 Q Yeah, let me make sure we're  
19 clear.

20 Are you aware of any way in which East  
21 Kentucky's -- I think "influences" were the word --  
22 or let me start again.

23 Are you aware of any actions by EKPC that  
24 have influenced Grayson's financial condition?

25 A Are you referring to Charleston

1 Bottoms specifically?

2 Q Well, we can start with  
3 Charleston Bottoms.

4 A Oh. Not directly as far as  
5 Charleston Bottoms goes.

6 Q Are you aware of any other ways  
7 in which the actions of East Kentucky have  
8 influenced Grayson's financial condition?

9 A As it relates to ongoing issues  
10 not related to Charleston Bottoms?

11 Q Yes, sir.

12 A There are definitely wholesale  
13 power rate schedule issues that I believe have  
14 influenced Grayson detrimentally.

15 Q Okay. Are there any other  
16 decisions that have influenced Grayson's financial  
17 condition?

18 A I'm not aware of any at this  
19 time.

20 Q Let's talk about the wholesale  
21 power rates. Can you elaborate on what you mean by  
22 your statement?

23 A Well, I -- in my understanding  
24 that the -- based upon recent rate adjustment that  
25 East Kentucky has made, they have affected -- they

1 have not been in concert with the distribution  
2 co-ops' rate schedules, and that there have been  
3 opportunities for East Kentucky to modify their  
4 rate structures to where the rates would not have a  
5 detrimental effect.

6 Q Okay. And when you --

7 A Primarily I'm talking about load  
8 factor and the nature of our loads and the nature  
9 of our wholesale power rate structure.

10 Q So that's the rate adjustment  
11 that you're talking about specifically?

12 A Yes.

13 Q So what I think you're talking  
14 about is a possible rate design?

15 A Yes.

16 Q Or rate redesign, perhaps?

17 A Yes.

18 Q Would you agree with me, however,  
19 that a rate redesign in a classical sense is  
20 revenue neutral?

21 A Should be, yes.

22 Q And so to the extent that a rate  
23 redesign may be beneficial to one of East  
24 Kentucky's members, it would be detrimental to  
25 another of East Kentucky's members?

1 A Possibly.

2 Q Are there any other areas in  
3 which you believe East Kentucky's decisions have  
4 had a detrimental impact to Grayson's financial  
5 condition?

6 A Other than the -- our application  
7 to invoke Amendment 3 of the wholesale power  
8 contract, or the lack of decisions has had a effect  
9 on our financials, we believe, or potential.

10 Q Do you know the procedural status  
11 of that request?

12 A No.

13 Q Are you aware of any reasons why  
14 it may have been delayed at EKPC?

15 A Not really, no.

16 Q Are you familiar -- are you  
17 familiar with Amendment 3 to the wholesale power  
18 contract?

19 A Somewhat.

20 Q And is Grayson a signatory to  
21 Amendment 3?

22 A It's my understanding, yes.

23 Q Let me ask you -- I think that it  
24 is Exhibit No. 28. If you could identify that  
25 document for me.

1           A           Appears to be Amendment No. 3,  
2 Wholesale Power Contract Between East Kentucky  
3 Power and Grayson Rural Electric.

4           Q           And have you personally looked at  
5 this document before?

6           A           Yes.

7           Q           What is your understanding of the  
8 requirements for a distribution cooperative to be  
9 able to invoke Amendment 3?

10          A           My understanding that the -- that  
11 the cooperative would be able to apply to receive a  
12 certain amount of power from other sources.

13          Q           Are you aware of whether there  
14 are any specific notice requirements for such a  
15 request?

16          A           There are some that are stated in  
17 the agreement here.

18          Q           And what's your understanding of  
19 those notice requirements?

20          A           That it has -- if it's 5  
21 megawatts or less that there's 90-day notice; and  
22 if there's more than 5 megawatts, it's 18 months or  
23 greater.

24          Q           Do you know whether or not  
25 Amendment 3 requires load following?



1 A I'm not familiar with that term.

2 Q Do you know whether or not it  
3 requires a distribution cooperative to designate  
4 the load that will be served by a non-EKPC  
5 resource?

6 A I'm not following your question.

7 Q Okay. If a distribution  
8 cooperative were to invoke Amendment 3 in order to  
9 purchase power from a non-EKPC resource, do you  
10 know whether or not the distribution cooperative  
11 would need to designate the load on its system that  
12 will be served by that non-EKPC resource?

13 MR. SCOTT: Let me object to this question  
14 and would ask that we not make an inquiry  
15 into a bunch of Amendment 3 matters which  
16 have nothing to do with the allegations in  
17 the complaint, amended complaint, answer or  
18 counterclaim; and I object to questions  
19 regarding a separate lawsuit -- or not a  
20 lawsuit, but complaint with the Public  
21 Service Commission.

22 MR. SAMFORD: I asked in the context of his  
23 prior response that it was -- the Magnum  
24 contract was responsible or somehow played  
25 into the financial condition of Grayson and

1 East Kentucky's decisions did have an  
2 adverse impact upon Grayson, which I think  
3 is in your amended complaint. So --

4 MR. SCOTT: I just don't think it is --

5 MR. SAMFORD: -- that's the grounds for  
6 asking.

7 A I'm -- no, I'm not aware of that  
8 particular issue.

9 Q Do you know what the purpose for  
10 entering into Amendment 3 was?

11 A No.

12 Q It was entered into on  
13 November 21st, 2003. Do you remember any  
14 discussion by Grayson's board at that time  
15 concerning Amendment 3?

16 MR. SCOTT: Note my objection. This has no  
17 relevance at all.

18 A I'm vaguely familiar with the  
19 contract at that particular time. Probably wasn't  
20 interested personally.

21 Q Let me ask you to look at Exhibit  
22 No. 18. Can you identify that document for me,  
23 please?

24 A Appears to be an amended  
25 complaint, *Grayson Rural Electric versus East*

1        *Kentucky Power and others.*

2                    Q            Have you seen that document  
3        before?

4                    A            Yes, I have.

5                    Q            Okay. Let me ask you to turn  
6        over to page -- well, to Paragraph 21. Could you  
7        read that out loud, please?

8                    A            "The actions of the Defendants,  
9        East Kentucky Power Cooperative and Charleston  
10       Bottoms, being unfair, oppressive, unreasonable,  
11       contrary to their own bylaws and contrary to the  
12       law of the Commonwealth of Kentucky, has all  
13       interfered with, and prevented Plaintiff from  
14       entering into the furtherances of its business  
15       relationship with its members and but for the  
16       actions of the Defendants, East Kentucky Power,  
17       Charleston Bottoms, the Plaintiff would be  
18       conducting its business as intended. However the  
19       Defendant, East Kentucky Power Cooperative's  
20       actions and Defendant, Charleston Bottoms' actions  
21       as complained of hereinabove were done with motives  
22       that were improper and designed to benefit East  
23       Kentucky Power to the detriment of Plaintiff as  
24       aforesaid and as such the Plaintiff has suffered  
25       damage and will continue to suffer damage unless

1 and until the actions complained of are enjoined by  
2 this Court."

3 Q Okay. I want to ask you  
4 specifically about the allegation there that East  
5 Kentucky and Charleston Bottoms have prevented  
6 Grayson from entering into the furtherance of its  
7 business relationship with its members. Are you  
8 aware of any circumstances or facts to substantiate  
9 that claim?

10 A I don't understand the  
11 terminology, so -- I'm not aware of any.

12 Q And are you aware of any actions  
13 taken by EKPC that have been to the detriment of  
14 the Plaintiff, which is Grayson, other than the  
15 wholesale rate design issue that we discussed  
16 earlier?

17 A No.

18 Q One of the allegations that  
19 Grayson makes in its complaint and amended  
20 complaint is that Charleston Bottoms was improperly  
21 dissolved. Are you familiar with the dissolution  
22 of Charleston Bottoms?

23 A Very vaguely.

24 Q Would you have any knowledge or  
25 information relative to the process by which

1 Charleston Bottoms was dissolved?

2 A No direct.

3 Q Do you have any opinion as to  
4 whether it was dissolved improperly?

5 A That was my understanding based  
6 upon discussions that we had had here at Grayson  
7 Rural Electric.

8 Q So let me make sure I'm  
9 understanding. You personally don't have an  
10 opinion, but the opinion that it was improperly  
11 dissolved was told to you?

12 A Yes.

13 Q As we sit here today, do you have  
14 a personal opinion one way or the other?

15 A No, I don't -- don't personally,  
16 no.

17 Q Okay. Let me ask you to look at  
18 Paragraph 13 of the amended complaint. If you  
19 could read that paragraph, please, for me?

20 A "The Plaintiff from the inception  
21 of Charleston Bottoms in the early 1970's was a  
22 Guarantor on loan commitments of Charleston Bottoms  
23 and as such had a continuing business relationship  
24 with said Defendant and the other named Defendants  
25 herein, which business relationship has been known

1 to all of the Defendants herein and which business  
2 relationship has been damaged by the acts of the  
3 Defendants, East Kentucky Power and Charleston  
4 Bottoms as complained hereinabove."

5 Q Okay. Are you aware of any  
6 specific way in which Grayson's business  
7 relationship with Charleston Bottoms has been  
8 damaged?

9 MR. SCOTT: Besides the dissolution of  
10 Charleston Bottoms improperly?

11 MR. SAMFORD: I'm just asking what his  
12 opinion is.

13 A Well, the only thing that's  
14 questionable is the dissolution of Charleston  
15 Bottoms --

16 Q And how --

17 A -- is my -- was my opinion.

18 Q Okay. In your opinion how has  
19 the dissolution of Charleston Bottoms harmed  
20 Grayson?

21 A I don't think it has directly,  
22 but just the fact that it may not have been done  
23 properly creates some suspicion.

24 Q So are you aware of any way in  
25 which the dissolution of Charleston Bottoms has

1 indirectly damaged Grayson?

2 A Well, it's damaged the  
3 credibility of our relationship with East Kentucky  
4 Power.

5 Q Can you give me specific examples  
6 of that?

7 A I mean, just the relationship,  
8 the way we deal with East Kentucky, have always  
9 dealt with them in matters of mutual interest and  
10 into the future.

11 Q Has your relationship with East  
12 Kentucky changed subsequent to the dissolution of  
13 Charleston Bottoms?

14 A It's my understanding, yes.

15 Q Do you have any personal  
16 knowledge or experience about ways in which the  
17 relationship has changed?

18 A Just items that I've heard.

19 Q But as it affects you and the  
20 things that you do, has there been any change in  
21 the relationship?

22 A Not that I'm aware of.

23 Q Okay. What have you been told by  
24 others has changed?

25 A Well, about, you know, Grayson's

1 relationship with East Kentucky on corporate  
2 governance level.

3 Q Okay. What specifically have you  
4 been told?

5 A Of being kind of left out, kind  
6 of thinking that we're not a part of the East  
7 Kentucky. It's damaged just the relationship, the  
8 personal relationships that's happened.

9 Q And who has told you that?

10 A The -- our representative of the  
11 East Kentucky board.

12 Q Mr. Arrington?

13 A Yes.

14 Q Anyone else?

15 A Our president and CEO, affected  
16 that relationship, I do believe.

17 Q Anyone else?

18 A Not to my knowledge.

19 Q Are you aware of the  
20 circumstances -- let me ask a general question  
21 first. Are you aware of the circumstances of the  
22 dissolution of Charleston Bottoms?

23 A Only some of what I've been told  
24 as far as what's happened here. I'm not -- I don't  
25 have a knowledge of that process.



1 Q Are you familiar with the  
2 indenture that EKPC has entered into?

3 A I'm aware of it.

4 Q Do you know what -- do you know  
5 what the trust indenture does?

6 A It's my understanding, based upon  
7 conversations with East Kentucky as to, you know,  
8 the purpose of it.

9 Q What's your understanding of the  
10 purpose of the trust indenture?

11 A It would allow East Kentucky  
12 Power to, in essence, mortgage their assets to a  
13 party that is not our Rural Utility Services or  
14 CFC.

15 Q Are you aware of any relationship  
16 between the dissolution of Charleston Bottoms and  
17 EKPC entering into the trust indenture?

18 A It was my understanding that that  
19 was necessary or desirable for it to take place  
20 before being a part of the trust indenture.

21 Q And do you know specifically how  
22 the dissolution of Charleston Bottoms would figure  
23 into entering into the trust indenture?

24 A Not specifically, no.

25 Q Did you inquire with anyone at

1 EKPC as to the trust indenture?

2 A Yes.

3 Q And were your questions answered  
4 to your satisfaction?

5 A Yes.

6 Q Based upon your knowledge and  
7 experience with working with financial conditions  
8 of rural electric cooperatives, did you have any  
9 concerns about EKPC entering into the trust  
10 indenture?

11 A Not on its face, no.

12 Q As we sit here today, do you have  
13 any concerns about the trust indenture?

14 A Not to my knowledge, no.

15 Q I think you said earlier Grayson  
16 has between 11- and 12,000 members; is that  
17 correct?

18 A Yes.

19 Q Do you know what its annual  
20 revenues are, approximately?

21 A Generally, yes.

22 Q What is that?

23 A At this point?

24 Q Yes, sir.

25 A It's a significant deficit at

1 this particular time.

2 Q So are you telling me that  
3 Grayson's expenses are larger than its revenues?

4 A Yes.

5 Q And can you quantify those two  
6 figures for me, please?

7 A Not off the top of my head, no.

8 Q Do you know approximately what  
9 Grayson's equity ratio is currently?

10 A It's approximately 26 or 27  
11 percent, I believe.

12 Q And do you know what its current  
13 tier ratios are?

14 A Approximately, yes.

15 Q And what would that be?

16 A Be roughly zero.

17 Q Do you know, does it have a debt  
18 service coverage ratio?

19 A Yes.

20 Q And do you know what that is?

21 A I'm not familiar with that right  
22 at this point.

23 Q Has Grayson been in default on  
24 any of its loan agreements with RUS or CFC in the  
25 last five years?

1           A           I guess technically it's  
2           currently in default, currently.

3           Q           And what is the basis for that  
4           default, as you understand it?

5           A           The basis of it is primarily a --  
6           a lack of kilowatt hour sales and also the load  
7           factor issue, that that makes it more expensive to  
8           buy power than normal.

9           Q           Okay. Let me ask you to look at  
10          Exhibit No. 13.

11          A           Okay.

12          Q           These are documents that have  
13          been produced by Grayson to East Kentucky. Are you  
14          familiar with this production?

15          A           No.

16          Q           Did you help in any way put it  
17          together?

18          A           I don't believe so.

19          Q           If you don't mind, just go ahead  
20          and take a few minutes and just kind of scan  
21          through that and see if you recognize what a lot of  
22          those documents are.

23          A           (Witness reviews documents.)

24          Okay.

25          Q           Let me just ask you to look at

1 the -- I think it's the second page of that, it's a  
2 letter on EKPC stationery dated January 29th, 2010.  
3 Do you see that?

4 A Yes.

5 Q Do you know if you've seen that  
6 letter before?

7 A I'm sure I have.

8 Q Okay. Have you seen other  
9 similar letters from prior years as well?

10 A Yes.

11 Q Can you kind of tell me what the  
12 general purpose of that communication is?

13 A My understanding it's the -- it  
14 quantifies the amount of Charleston Bottoms' debt  
15 that we would be responsible for and should be  
16 reported on our annual audit.

17 Q And so that letter is addressed  
18 to the member system managers?

19 A Yes.

20 Q Which would be equivalent to the  
21 president and CEO of Grayson?

22 A Yeah.

23 Q And there's a "c:" there for  
24 member system finance/office managers. That would  
25 be you?

1 A Yes.

2 Q And then on this particular  
3 letter, Ms. Erin Banet from Deloitte & Touche, the  
4 auditor?

5 A (Witness nods head.) Okay.

6 Q Let me ask you to look at the  
7 second page there. Can you identify that document  
8 for me, please?

9 A It appears to be notes from  
10 our -- an annual audit of ours.

11 Q Okay. And Note No. 9 was  
12 circled. Would you mind to read that into the  
13 record, please?

14 A "Grayson is contingently liable  
15 as guarantor for approximately \$58,000 of long-term  
16 obligations of East Kentucky to RUS and CFC.  
17 Substantially all assets of Grayson are pledged as  
18 collateral for this guarantee, in addition to the  
19 pledge in the mortgage agreement referred to in  
20 Note 5. This contingent liability was part of an  
21 overall financing plan for the construction of  
22 generating facilities near Maysville, Kentucky."

23 Q When it talks about the overall  
24 financing plan, do you happen to know if that's  
25 referring to the documents that we've looked at

1 previously?

2 A I would assume so, yes.

3 Q Based upon your experience  
4 working with finance and accounting, are you  
5 familiar with commercial guarantees?

6 A Vaguely.

7 Q Okay. Do you know what a  
8 guarantor is?

9 A It's my understanding that --  
10 that they would pay if the primary signer is not  
11 able to.

12 Q So in the context of Charleston  
13 Bottoms, who is the guarantor of the Charleston  
14 Bottoms debt?

15 A The distribution cooperatives.

16 Q And so let me ask you sort of a  
17 related concept. What is a liability?

18 A It's an obligation.

19 Q What is a -- I'm sorry, didn't  
20 mean to interrupt.

21 A An obligation to pay.

22 Q What is a contingent liability?

23 A It's a conditional liability.

24 Q Do you know, in the context of  
25 Charleston Bottoms, why Grayson has a contingent

1 liability?

2 A No, I do not.

3 Q Do you happen to know whether  
4 Grayson has actually ever paid any money to satisfy  
5 the Charleston Bottoms debt?

6 A I have not -- I'm not aware of  
7 that.

8 Q Have you received any letters  
9 from creditors of Charleston Bottoms demanding  
10 payment for Charleston Bottoms' debt in your 19  
11 years at Grayson?

12 A Not to my knowledge.

13 Q Would you recall if you had?

14 A I think so.

15 Q If you are a guarantor of a debt,  
16 does that make you a owner of the underlying asset  
17 which supports the debt?

18 A It may or may not.

19 Q Okay.

20 A Depending on other documents, I  
21 would assume.

22 Q And what would be -- in the  
23 context of Charleston Bottoms, would you agree with  
24 me that that would be determined by the overall  
25 financing plan?



1           A           If that's what that spells out,  
2           yes.

3           Q           The next page of that exhibit is  
4           titled, "East Kentucky Power Cooperative -  
5           Charleston Bottoms RECC Financing Plan." Do you  
6           see where I am?

7           A           Yes.

8           Q           And have you seen this document  
9           before?

10          A           Yes.

11          Q           Can you kind of walk me through  
12          that document and explain to me what each of those  
13          columns represents, what information is being  
14          conveyed?

15          A           It's my understanding that this  
16          is a current listing of energy purchase by each of  
17          the cooperatives, and the contingent liability is  
18          based on a percentage that's derived from each  
19          distribution cooperative's contribution to that  
20          total energy purchase.

21          Q           And so the column all the way to  
22          the left is a list of participating members?

23          A           Yes.

24          Q           And would you agree with me that  
25          each of those members are the members of East

1 Kentucky Power?

2 A Yes.

3 Q Do you know what the term  
4 "Participating Member" means?

5 A No.

6 Q Have you seen that term used  
7 outside of the context of Charleston Bottoms?

8 A I'm not aware of it.

9 Q And then the next column is "2009  
10 kWh Purchased." Can you tell me what that column  
11 would inform us as to?

12 A The relative -- the relative  
13 amount of energy purchased as a part of the whole  
14 amount that East Kentucky provides.

15 Q So then the next column there,  
16 where it says, "Percent of Total," that would take  
17 the same information from the second column and  
18 essentially convert it into a percentage?

19 A That's my assumption, yes.

20 Q And then the last column there it  
21 says, "2010 Participant's Share." Do you know what  
22 the numbers, the figures in that column represent?

23 A The relative amount that would --  
24 that contingent liability that would belong to each  
25 member.

1 Q Okay. Is it your opinion that  
2 this document -- this letter confirms Grayson's  
3 ownership of Charleston Bottoms in any way?

4 A Confirm its participation or  
5 relationship with Charleston Bottoms.

6 Q And is it your opinion that this  
7 document, though, identifies Grayson as an owner?

8 A That would be my assumption, yes.

9 Q Have you reviewed the bylaws of  
10 Charleston Bottoms?

11 A No, I haven't.

12 Q Are you aware of the term  
13 "Participating Member" as a defined term in those  
14 bylaws?

15 A I'm not -- having not seen the  
16 document, I -- I would not know what that term  
17 means.

18 Q Are you aware if the board of  
19 Charleston Bottoms had voted to dissolve Charleston  
20 Bottoms in 2001?

21 A I had heard that from certain  
22 people, but I have no knowledge that took place.

23 Q You have no first-hand knowledge?

24 A No.

25 Q And similar question, but are you

1 aware of whether the -- whether a vote was taken at  
2 the annual meeting or a special meeting in July of  
3 2001 to dissolve Charleston Bottoms?

4 A I'm not aware of it.

5 Q Let me ask you to look at  
6 Exhibit No. 17. I should have asked you this  
7 earlier, but omitted it. If you could identify  
8 that document for me, when you have a chance.

9 The document is styled, "Agreement Regarding  
10 Recording of Indenture," that was entered into by  
11 East Kentucky Power and the National Rural Utilities  
12 Cooperative Finance Corporation and, again, the RUS.

13 Could you read the last full paragraph of  
14 that document beginning, "Whereas, in connection  
15 with"?

16 A "Whereas, in connection with the  
17 substitution of the Indenture for the Existing  
18 Mortgage, East Kentucky Power has dissolved its  
19 wholly-owned subsidiary Charleston Bottoms Rural  
20 Electric Cooperative Corporation and has acquired  
21 the Charleston Bottoms Property."

22 Q Okay. I had asked you a series  
23 of questions at the beginning of your deposition  
24 about membership in Charleston Bottoms, but now I  
25 want to ask you about ownership. This document

1 states that EKPC has dissolved its wholly-owned  
2 subsidiary of Charleston Bottoms. Do you believe  
3 that that statement is incorrect?

4 A Well, I don't know that the  
5 statement is incorrect. I think the whole point is  
6 that it was supposedly dissolved improperly, so it  
7 states that, yes.

8 Q Okay. So --

9 A But -- so I'm sure that's what  
10 East Kentucky thought it was, correct.

11 Q And as we sit here today, do you  
12 have any personal reason to believe that that  
13 statement is incorrect?

14 A I'm still not sure.

15 Q And can you tell from the first  
16 paragraph of that document what is the date?

17 A October 11th, 2012.

18 Q And do you know if that is, in  
19 fact, the same day that Grayson filed its complaint  
20 in the Mason Circuit Court?

21 A I am not aware.

22 Q Is it your experience that RUS  
23 and CFC enter into agreements which contain  
24 inaccurate factual recitations?

25 A I'm sure not on purpose.

1 Q Are you aware of any time that  
2 they have?

3 A No.

4 MR. SAMFORD: Let me hand you this document  
5 and ask you to look it over. And I think  
6 this is Exhibit 35.

7 (Exhibit No. 35 was marked.)

8 BY MR. SAMFORD:

9 Q Can you identify that document  
10 for me?

11 A It looks like it is our RUS Form  
12 7 for December 2011.

13 Q Okay. And what is the purpose of  
14 the Form 7?

15 A It's financial statements for our  
16 year ending, fiscal year ending.

17 Q You stated earlier that Grayson  
18 is in technical default under its loan agreements.  
19 When did that default occur?

20 A In 2011. Well -- yeah, 2011.

21 Q Okay. I would ask you to look at  
22 the certification there dated March 23rd, 2012, and  
23 can you tell me whether the box is checked that  
24 says there has been a default in fulfillment of the  
25 obligations under the RUS loan documents?

1 A Uh-huh (affirmative).

2 Q Is that box checked?

3 A No.

4 Q Do you know why that --

5 A Let me -- let me possibly  
6 correct. I think at this particular time  
7 technically we weren't in default at that  
8 particular time.

9 Q So let me go back to my previous  
10 question. Do you know when the default would have  
11 occurred?

12 A As of the end of 2012, is I think  
13 when that would...

14 Q So is default measured on an  
15 annual basis or is it a rolling monthly basis?

16 A It's a rolling, a rolling.

17 Q So would it have occurred in  
18 December of 2012 or at some point in 2012?

19 A It would have occurred as of  
20 December 2012.

21 Q So really just last month?

22 A Correct.

23 Q Okay. Can you take a moment and  
24 look through this document and then point me to the  
25 particular references where Grayson's purported

1 ownership interest in Charleston Bottoms is  
2 reflected?

3 A In this document?

4 Q Yes, sir.

5 A It's not reported on this  
6 document.

7 Q If Grayson had in fact had  
8 Charleston Bottoms as an asset, should that be  
9 included in this Form 7?

10 A Based upon the nature of that  
11 asset, I would assume, possibly.

12 Q Are you aware of whether Grayson  
13 has ever reported Charleston Bottoms as an asset on  
14 its --

15 A I'm not aware of that.

16 Q -- Form 7?

17 A I'm not aware of that.

18 Q Are you aware of whether it has  
19 ever reported it as an investment on its Form 7?

20 A Not to my knowledge.

21 Q Does Grayson have any assets or  
22 investments that are not reported on its Form 7?

23 A I'm not aware of any.

24 MR. SAMFORD: Mr. Combs, I may be almost  
25 done, but before I say that definitively



Witness: Don Combs

1 I'd like to take a break and consult with  
2 the corporate representative and  
3 co-counsel.

4 (THEREUPON, A BREAK WAS TAKEN.)

5 BY MR. SAMFORD:

6 Q Mr. Combs, I just have a couple  
7 of more questions for you, I believe.

8 I just asked you a series of questions about  
9 Form 7 that's filed with the RUS. And you indicated  
10 that Charleston Bottoms is not identified as an  
11 asset or an investment of Grayson.

12 Are you aware of any other financial  
13 documents or reports of Grayson where Charleston  
14 Bottoms is listed as an asset or as an investment?

15 A I'm not aware of any.

16 Q Okay. Let me also just ask you  
17 to go back to -- this is Exhibit No. 13 and this is  
18 a rather lengthy exhibit, but if you would find  
19 the -- a document, it's about probably  
20 three-quarters of the way back, it has a  
21 handwritten notation at the bottom, it says,  
22 "6/11/73 Board Meeting," and then at the top it  
23 says, "Waiver of Notice."

24 A Okay.

25 Q You found it quickly. Can you

1 just take a moment and look at that document for  
2 me?

3 A Okay.

4 Q And that Waiver of Notice --  
5 first of all, have you ever seen that before?

6 A No.

7 Q Okay. Are you -- just looking at  
8 it right now, can you tell me what it purports to  
9 do?

10 A It appears to seek approval of a  
11 financing plan of the construction of a generation  
12 and transmission project.

13 Q And is it seeking approval or is  
14 it authorizing approval?

15 A I don't -- I don't know the  
16 difference. I don't understand the difference in  
17 those two terms.

18 Q Well, let me just ask you. There  
19 may be an easier way to do it, but let me just ask  
20 you, if you would, to read that into the record,  
21 just that one page.

22 A Oh --

23 MR. SCOTT: Note my -- wait just a minute.  
24 Let me look at it again. I have no  
25 objection.

1 BY MR. SAMFORD:

2 Q To save a little time, let me  
3 just ask you maybe to read the items that are under  
4 Paragraph 2, so "The authorization of the execution  
5 and delivery of." Could you read --

6 A Okay.

7 Q -- Items (a), (b), (c) and (d)?

8 A "An underlying loan agreement  
9 between the Cooperative and the Government, between  
10 the Cooperative and CFC.

11 "A system agreement among the Cooperative,  
12 the 15 other Participating Members, East Kentucky,  
13 Charleston Bottoms and the Bankers Trust Company  
14 (Trustee under the Indenture which would secure the  
15 Bonds) which, among other things, would impose  
16 certain obligations on the Participating Members  
17 with respect to the Bonds;

18 "A participation agreement among the  
19 Cooperatives -- Cooperative, East Kentucky, and the  
20 Government and CFC which, among other things, would  
21 impose certain secondary obligations on the  
22 Cooperative with respect to the repayment of the  
23 indebtedness created by the Government and CFC  
24 Advances; and

25 "An additional mortgage and security

1 agreement among the Cooperative, the Government and  
2 CFC, securing the secondary obligations referred to  
3 in subparagraph (c) of this Paragraph 2."

4 Q Okay. And who is that document  
5 signed by?

6 A It appears to be former directors  
7 of Grayson Rural Electric.

8 Q And what is the date?

9 A May 11th, 1973.

10 Q And do you believe or do you have  
11 an opinion as to whether or not this Waiver of  
12 Notice describes the -- Grayson's authorization to  
13 participate in the Charleston Bottoms financing  
14 plan?

15 A It appears to be -- as -- excuse  
16 me -- as it relates to the Waiver of Notice? I'm  
17 not --

18 Q And that part I don't think is  
19 relevant to what I'm asking.

20 A Okay.

21 Q But in Paragraph 2(c) there,  
22 which you read, it would impose secondary  
23 obligations on the cooperative. Do you know who  
24 the cooperative is in that paragraph?

25 A I'm assuming it's Grayson Rural

1 Electric.

2 Q And can you tell me what a  
3 secondary obligation is?

4 A I have no knowledge of what it  
5 means in this particular circumstance.

6 Q Do you know whether in fact  
7 Grayson entered into each of these documents that  
8 were authorized to be executed by this?

9 A I have no knowledge of that.

10 MR. SAMFORD: Okay. I think at that point  
11 I'm done with my questions, and I  
12 appreciate your time. Mr. Scott or  
13 somebody else may have some questions and  
14 then I might have some follow-up at the end  
15 of that. We'll just wait and see.

16 Any questions?

17 EXAMINATION

18 BY MR. SCOTT:

19 Q The question counsel just asked  
20 you, Mr. Combs, regarding the document styled,  
21 "Waiver of Notice," dated May 11 of 1973, in  
22 numerical Paragraph 2(b), it does say, does it not,  
23 which among other things would impose certain  
24 obligations on the participating members with  
25 respect to the bonds? Did I read that correctly?

1 Beginning right there in the latter part of  
2 numerical Paragraph 2(b), did I read that  
3 correctly?

4 A I believe so.

5 Q And it goes on to say, "A  
6 participation agreement among the Cooperative, East  
7 Kentucky, Government, CFC, which, among other  
8 things, would impose certain secondary obligations  
9 on the cooperative with respect to the repayment of  
10 the indebtedness created by the Government And CFC  
11 advances." Did I read that correctly?

12 A Yes.

13 Q So based upon the documents that  
14 counsel has asked you to look at and the earlier  
15 numerical sequence of those, and this particular  
16 document about which you've been asked questions,  
17 assuming that those documents have at some location  
18 the entirety of them, not just parts, but assuming  
19 further the accuracy of the content of them for the  
20 purposes of this question, if you assume all that,  
21 could you further assume that there was a financing  
22 mechanism that was entered into in which Grayson at  
23 least had some contingent liability defined as  
24 whatever somebody might want to define a contingent  
25 liability as with respect to the indebtedness of

1 Charleston Bottoms, East Kentucky and the other  
2 distribution co-ops?

3 A Yes.

4 Q And was that related to the  
5 construction of the power plant in Maysville,  
6 Kentucky that bore the name of the person who was  
7 the general manager of East Kentucky at the time,  
8 Spurlock Power Station?

9 A Yes.

10 Q And throughout the years along  
11 the passage of time, along the history of this  
12 great big family of this cooperative program that  
13 some people used to call it, did Grayson get from  
14 East Kentucky Power annually, as was referenced in  
15 one of these exhibits, letters saying what  
16 Grayson's purchase of power was for the previous  
17 year and the amount of its contingent liability  
18 with respect to that indebtedness that we just  
19 talked about?

20 A Yes.

21 Q And did Grayson then get that  
22 yearly?

23 A Yes.

24 Q So would you agree with me that  
25 if there was a joint obligation of East Kentucky

1 Power Cooperative, Charleston Bottoms Rural  
2 Electric Cooperative and the 16 distribution  
3 systems to finance this endeavor, that the  
4 maintenance of the legal structure and the  
5 continuity of the legal structure by and among  
6 those various corporations throughout the existence  
7 of that obligation would be an important thing to  
8 maintain?

9 A Yeah, I would assume so.

10 Q When you -- do you own a home,  
11 sir?

12 A Yes, I do.

13 Q Do you now have or have you ever  
14 given a mortgage to a lender for the -- either the  
15 purchase price or the construction costs or  
16 improvement costs of that home?

17 A Yes.

18 Q And do you -- what kind of  
19 educational background do you have?

20 A I have a BS degree in business  
21 administration.

22 Q Okay. From where?

23 A Georgetown College.

24 Q And how old a man are you?

25 A Sixty (60).



1 Q And have you had more than one  
2 mortgage on a piece of real estate in your  
3 lifetime?

4 A Yes.

5 Q And do you understand that when  
6 you sign that mortgage that there are certain  
7 covenants and agreements that you enter into with  
8 the lender?

9 A Yes.

10 Q And would one of those covenants  
11 be that you agree to maintain ownership of that  
12 real estate that you have given the lender a  
13 mortgage on during the life of the obligation that  
14 you would have that's secured by that mortgage?

15 A I would assume so, yes.

16 Q And do you believe that there are  
17 also covenants generally in mortgages of that type  
18 that would allow the lender to call the note that  
19 that mortgage secures due, and accelerate payment  
20 of that and demand that it be immediately paid if  
21 the lender felt insecure in its security?

22 A I assume that would be possible.

23 Q Okay. Now, do you know if  
24 Grayson Rural Electric ever got any notification  
25 from Charleston Bottoms Rural Electric Cooperative

1 Corporation or East Kentucky Rural Electric  
2 Cooperative Corporation that Grayson Rural Electric  
3 Cooperation had no further contingent liability  
4 with respect to any debt in which it had joined  
5 with Charleston Bottoms, either primarily,  
6 secondarily or contingently?

7 A Not to my knowledge.

8 Q When you all get these letters,  
9 you all being Grayson Rural Electric, get these  
10 letters from East Kentucky Power, one of which was  
11 inquired about by Mr. Samford in his questions to  
12 you, does it say this should be disclosed? "This"  
13 referring to your purchase from East Kentucky, does  
14 it say this should be disclosed in your financial  
15 audit as a contingent liability?

16 A I don't know that it's -- that's  
17 part of the instructions, but that's been the  
18 practice.

19 Q Okay. And do you have -- does  
20 Grayson Rural Electric, rather, have an audit that  
21 is done each year on its finances?

22 A Yes.

23 Q And did you have one recently  
24 presented to you by your auditor?

25 A Yes.

1 Q And was that Dudley Shryock?

2 A Yes, it was.

3 Q Do you know when that was  
4 presented to you?

5 A Sometime in July, August of this  
6 year time frame.

7 Q And would that have been an audit  
8 for the period that would have ended at the end of  
9 May of 2012?

10 A That's correct.

11 Q And did he disclose at that time  
12 some contingent liability that Grayson would have  
13 had with respect to the construction of the power  
14 plant down at Maysville, the Spurlock Power  
15 Station?

16 A Yes, it did.

17 Q And, again, do you know if it's  
18 been paid?

19 A No, I'm not aware.

20 Q Okay. You can't -- as you sit  
21 here right now, do you know if Grayson Rural  
22 Electric has received anything from Charleston  
23 Bottoms or East Kentucky saying you got no more  
24 contingent liability, it's a done deal, you're out?

25 A Not to my knowledge.

1 Q Or words to that effect?

2 A Not to my knowledge.

3 Q Do you believe that this trust  
4 indenture that Mr. Samford asked you about would  
5 have taken care of any contingent liability?

6 A I am not familiar with the  
7 requirements of the trust indenture and how it  
8 relates to any --

9 Q When I say "trust indenture," I'm  
10 talking about the one October of 2012.

11 A Right. I'm not aware of any of  
12 the requirements that were contained in that trust  
13 indenture as it relates to contingent liabilities.

14 Q The document that Mr. Samford  
15 asked you questions about with the contingent  
16 liability of Grayson had a list of all the other  
17 co-ops on there, right, and they all had some  
18 percentage of liability with respect to that  
19 outstanding debt; correct?

20 A Yes.

21 Q So is it your understanding that  
22 all of the distribution co-ops would have had a  
23 percentage of liability --

24 A It's my understanding.

25 Q -- on the Charleston Bottoms

1 debt?

2 A Yes.

3 Q Okay. The questions asked of you  
4 concerning the -- well, let me ask you this. If  
5 you get to go to a meeting of the members of  
6 Charleston Bottoms every year, if you or Grayson  
7 Rural Electric Cooperative Corporation, or if you  
8 are a distribution cooperative of Big Sandy or  
9 Inter-County or Jackson, or whoever it might be,  
10 and you get to attend an annual meeting of the  
11 members of Charleston Bottoms Corporation because  
12 you got a letter saying that you are invited to  
13 attend, then you would at that meeting have the  
14 right to participate in a discussion, wouldn't you  
15 think?

16 A Yes.

17 Q And if you get a letter every  
18 year that says you can attend a meeting of the  
19 directors of Charleston Bottoms Corporation and you  
20 can come down to Winchester, Kentucky and attend  
21 that meeting as a member of the board, wouldn't you  
22 reckon you would have the right to participate in a  
23 discussion at that meeting?

24 A Yes.

25 Q And have you in the course of

1 your duties here at Grayson Rural Electric  
2 regularly attended board meetings of Grayson Rural  
3 Electric?

4 A Yes.

5 Q When you attend board meetings  
6 are there discussions of various matters concerning  
7 the policies of the cooperative, the ongoing  
8 operations of the corporation?

9 A Yes.

10 Q And it is your job to present to  
11 the board each month a financial picture?

12 A Yes.

13 Q And what do you reckon the reason  
14 for you to present a report of the financial  
15 picture to the board would be? Why do you do that?

16 A It's my understanding they have  
17 the overall responsibility for the financial  
18 condition of the cooperative.

19 Q Okay. And frequently are there  
20 times when you give that financial report when  
21 questions are asked of you concerning its content?

22 A Yes.

23 Q You told Mr. Samford that the  
24 owners and members of Grayson Rural Electric were  
25 the users of electricity, the people who are the

1 owners, the 12- to 13,000 people that you all talk  
2 about; is that correct?

3 A Yes.

4 Q And if the board of directors of  
5 Grayson Rural Electric dissolved the corporation of  
6 Grayson Rural Electric Cooperative Corporation,  
7 went through some magic act or a smoke and mirrors  
8 performance in some fashion to dissolve the  
9 corporate existence of Grayson Rural Electric, then  
10 there wouldn't be a board anymore; correct?

11 A I would assume so, yes.

12 Q And there being no board there  
13 wouldn't be anybody to whom you would give a  
14 financial report; correct?

15 A Probably not.

16 Q And, therefore, the owners  
17 wouldn't know what the financial picture of the  
18 board was if they didn't have an annual meeting of  
19 those members; correct?

20 A Correct.

21 MR. SAMFORD: You meant the financial  
22 picture of the corporation, not the board;  
23 right?

24 MR. SCOTT: Yeah.

25 MR. SAMFORD: Okay.

1 BY MR. SCOTT:

2 Q So if there were any contingent  
3 liabilities that the owners had, or contingent  
4 liability that anybody else may have become  
5 contractually bound by, they wouldn't know what the  
6 circumstances were surrounding the extent to which  
7 that contingent liability may become a reality,  
8 would they?

9 A No.

10 Q Nor would they know the strength  
11 of the financial condition of that corporation with  
12 whom they had entered into an agreement long ago  
13 concerning payment of its debts; correct?

14 A Yes.

15 Q Therefore, would you agree with  
16 me that upon the occurrence of that event,  
17 similarly to the occurrence of the event complained  
18 of in this case, i.e., the dissolution of  
19 Charleston Bottoms Corporation, that the ability of  
20 the participating members, Grayson Rural Electric  
21 and the other distribution co-ops, if in fact they  
22 are participating members or if they are members or  
23 if they are contingently liable guarantors or if  
24 they are whatever they may be, as -- as imposed  
25 upon them by these various agreements about which



1 you have been asked questions, then their ability  
2 to see to the obligation that Charleston Bottoms  
3 has is extinguished; correct?

4 MR. SAMFORD: Object to the form of the  
5 question.

6 BY MR. SCOTT:

7 Q Is that accurate?

8 A I believe so.

9 Q Is there any means by which these  
10 participating members, these contingently liable  
11 corporations, can look out and watch for and learn  
12 the financial ability of Charleston Bottoms to do  
13 that which it agreed to do in these earlier  
14 agreements once that corporate existence is  
15 extinguished?

16 A No.

17 Q It's thin air, nobody can find  
18 it; right?

19 A Yeah, I think that's somewhat  
20 accurate.

21 Q And then if East Kentucky Power  
22 asserts that it is the sole owner of this now  
23 defunct entity, then these distribution co-ops,  
24 Grayson Rural Electric being one of them, will be  
25 left to sit and beg at the table of East Kentucky

1 Power for information on whether it's going to pay  
2 this obligation of Charleston Bottoms; wouldn't  
3 that be accurate?

4 MR. SAMFORD: Object to the form.

5 A Yes.

6 BY MR. SCOTT:

7 Q Does that seem like what's  
8 happened here, or do you know enough about the  
9 scenario that's involved here to answer that  
10 question?

11 A I really don't know enough of the  
12 details, but it gives a specter of suspicion, or  
13 not coming wholly forthwith.

14 Q Mr. Samford asked you questions  
15 about Amendment 3 to the Wholesale Power Contract.  
16 Remember that?

17 A Yes.

18 Q And the Wholesale Power Contract  
19 is this big, fine contract that was signed way back  
20 in 1964 between East Kentucky Power and the  
21 distribution systems; right?

22 A It's my understanding.

23 Q And that required East Kentucky  
24 Power to sell all its power to the distribution  
25 co-ops, right, all the power they generated to the

1 distribution co-ops; right?

2 A Yes.

3 Q And did it also require Grayson  
4 and the other distribution co-ops, if they were  
5 going to sell electricity to these poor folks down  
6 the road, that they had to buy it from East  
7 Kentucky Power?

8 A Yes.

9 Q Now, in his questions of you he  
10 asked you about this Amendment 3, and in a document  
11 that has been filed in a Public Service Commission  
12 case by and through the attorney, one of the  
13 several attorneys now that East Kentucky has, this  
14 particular one I'm representing to you was signed  
15 by Mr. Samford, he says that -- and I guess he does  
16 this on behalf of East Kentucky Power Cooperative.  
17 It's not a verified answer. Tony Campbell, of  
18 course, wouldn't sign it and it doesn't look like  
19 anybody else signed it, as I can tell.

20 But there's an assertion in that answer  
21 filed in that Public Service Commission case that  
22 the filing of the petition with the Public Service  
23 Commission was done by Grayson Rural Electric to use  
24 as a defense in this case, this Charleston Bottoms  
25 Mason Circuit Court case, to the counterclaim filed

1 by East Kentucky Power and Charleston Bottoms.

2 Do you know one earthly thing about that PSC  
3 complaint being filed for such a reason?

4 A Never heard of any such reason.

5 Q And do you reckon in your  
6 capacity as the financial director here that --  
7 that you might have heard that if that was  
8 asserted?

9 A I'm sure I would have.

10 Q All right. There's asserted in  
11 that case, that PSC case, that -- by the answer  
12 filed by East Kentucky Power --

13 MR. SAMFORD: I'm just going to make an  
14 observation here. I mean, you're welcome  
15 to ask him these questions, but I would  
16 just point out for the record that you  
17 previously objected to questions that I had  
18 asked about.

19 MR. SCOTT: And you kept asking, so I  
20 thought what's good for the goose is good  
21 for the gander.

22 MR. SAMFORD: So I want to make sure we're  
23 clear in understanding that.

24 MR. SCOTT: And I intend to ask your  
25 representatives when I depose them.

1 MR. SAMFORD: That's why I didn't object.

2 MR. SCOTT: I figured you weren't going to  
3 stop asking.

4 Q So answer me this, Mr. Combs. If  
5 you got that big, fine wholesale power contract and  
6 you got to buy power in accordance with its terms  
7 and you're contingently liable on a debt of one of  
8 the corporations that owns a power plant that  
9 produces that power, and through mechanisms that  
10 you don't think are correct its corporate existence  
11 is dissolved and therefore you cannot monitor its  
12 financial condition to know if it's going to live  
13 up to its end of the bargain, could that negatively  
14 impact Grayson's ability or the other distribution  
15 co-ops' ability to honor its obligations under the  
16 wholesale power contract; such as, if you're -- if  
17 you're found to be on the hook because there's no  
18 financial corporate governance of that corporation  
19 to the extent that it allows itself to become in  
20 default, does that potentially affect your ability  
21 to honor this agreement you got with East Kentucky  
22 Power?

23 A I would suspect so.

24 Q And, likewise, wouldn't that be  
25 true with the other distribution co-ops who are

1 signatory to the same agreements Grayson Rural  
2 Electric is?

3 A I would think so.

4 Q And was it designed, in your  
5 belief, because of how these documents were signed,  
6 that everybody be in this together?

7 A That's typically the way things  
8 are done.

9 Q And that's the way it was done  
10 here, wasn't it?

11 A Appears to be, yes.

12 Q They were all in this as a big,  
13 fine cooperative family; correct?

14 A I -- I would have to agree.

15 Q Our power is our people; right?  
16 Isn't that what they tell you all the time in these  
17 co-op meetings?

18 A Yes.

19 Q Now, was there to be, do you  
20 think, if you know, because of the method of  
21 financing that was originally created, some  
22 separation between East Kentucky Power Cooperative,  
23 Inc. and Charleston Bottoms Cooperative?

24 A Apparently so.

25 Q And why do you say that?

1           A           Because another separate  
2 cooperative was formed for some reason.

3           Q           Did your dad work for East  
4 Kentucky Power?

5           A           Yes, he did.

6           Q           What was his job down there?

7           A           Primarily he was involved with  
8 the finance and accounting of East Kentucky Power.

9           Q           Was he employed there in the late  
10 '60s and early '70s?

11          A           Yes, he was.

12          Q           Would he have been employed there  
13 in 1972?

14          A           I believe he was.

15          Q           And did he aid in the creation,  
16 putting together, working and getting founded  
17 Charleston Bottoms?

18          A           That was my understanding.

19          Q           Why don't you tell us as much  
20 about your understanding of your father's  
21 involvement that you can remember.

22          A           Well, it was my understanding  
23 that this was a new way of financing power plants  
24 for whatever reason. I don't know the details, but  
25 that was, I'm assuming, the best alternative at the

1 time to obtain financing for that particular unit.

2 Q Is it your understanding, if you  
3 know -- do you know if this had ever been done  
4 before?

5 A To my knowledge, no.

6 Q Did you have an understanding  
7 from your dad's involvement that it was basically a  
8 new and innovative way of creating financing for  
9 the construction of such a power plant?

10 A Yes.

11 Q Where did you work before you  
12 worked at Grayson?

13 A Big Sandy Rural Electric in  
14 Paintsville.

15 Q And how long did you work there?

16 A Approximately ten years.

17 Q So did you live -- when your dad  
18 was working at East Kentucky Power, did you live in  
19 Winchester?

20 A No.

21 Q Where did you all live?

22 A Oh, when I was growing up, yes.

23 Q Oh, okay. And your dad was  
24 working there --

25 A Yes.



1 Q -- when you were growing up?

2 A Yes.

3 Q And when did his employment with  
4 East Kentucky Power end?

5 A I believe it was somewhere around  
6 the mid '80s.

7 Q Okay. And had you already begun  
8 your employment with the cooperative family?

9 A Yes.

10 Q So, literally, in the immediate  
11 real family of a cooperative employee and in the  
12 later corporate family, this has pretty much been  
13 your life?

14 A Yes, definitely.

15 Q And throughout that, whatever  
16 terms are used, whatever words are used, member,  
17 participating member, liable, contingently liable,  
18 director, member, whatever words that any, you  
19 know, person wants to assign, has it been your  
20 belief that these distribution co-ops were  
21 supposedly running the show for East Kentucky and  
22 Charleston Bottoms?

23 A Yes.

24 Q And has it been your belief that  
25 that's the way it was set up and was intended to be

1 and had in fact been done lo these many years?

2 A Yes.

3 MR. SCOTT: I believe that's all I have  
4 right now.

5 RE-EXAMINATION

6 BY MR. SAMFORD:

7 Q I've got just a couple more for  
8 you, Mr. Combs. I don't think this will take too  
9 long. But Mr. Scott asked you a series of  
10 questions, I guess, sort of about the documentation  
11 for the dissolution of Charleston Bottoms.

12 Have you ever personally been involved in  
13 the dissolution of a corporation in Kentucky?

14 A No.

15 Q So do you know what process is  
16 involved in that?

17 A Not other than what I've read in  
18 our own bylaws, and I'm assuming most cooperatives  
19 have a -- have a method of doing that.

20 Q Okay. But personally you  
21 don't -- you don't have any experience --

22 A No.

23 Q -- doing it?

24 A No.

25 Q And you're not familiar with

1 Charleston Bottoms' bylaws?

2 A That's correct.

3 Q Okay. All of the documents  
4 that -- or some of the documents that we had looked  
5 at earlier that Grayson had produced relating to  
6 that statement regarding the contingent liability,  
7 were those produced in the context of preparing  
8 the -- each member's annual statement? Or at least  
9 in the context of Grayson was it provided you for  
10 assistance in preparing Grayson's annual  
11 statements?

12 A Not annual statements.

13 Q Or --

14 A Only the audit.

15 Q The audit, the annual --

16 A Yes.

17 Q And I apologize. I wasn't  
18 precise there.

19 A That is correct.

20 Q So would you agree with me that  
21 that -- typically, when you're doing an audit, that  
22 looks at the financial picture that ends at the  
23 corporation's fiscal year?

24 A Yes.

25 Q And in Grayson's case, and I

1 think most -- a lot of other corporations' case,  
2 the fiscal year ends December 31st?

3 A Correct.

4 Q So would you agree with me that  
5 the financial statements for a corporation  
6 generally are produced at the beginning of the next  
7 year for the period ending the prior year?

8 A Yes.

9 Q Have you called anybody at East  
10 Kentucky to determine whether Grayson continues to  
11 have any sort of contingent liability for  
12 Charleston Bottoms?

13 A No.

14 Q Could you have done that if you  
15 had a question?

16 A Yes.

17 Q Mr. Scott asked you if Grayson  
18 could theoretically be put in a position where some  
19 harm could result to Grayson by virtue of it not  
20 being able to fulfill its contractual obligations  
21 to East Kentucky or some other entity. Are you  
22 aware as we sit here of any such possibility today?

23 A I'm not aware of any.

24 MR. SAMFORD: That's all the questions I  
25 have.

RE-EXAMINATION

1  
2 BY MR. SCOTT:

3 Q Would you think that it would be  
4 appropriate in the ordinary course of business for  
5 a co-maker of a note to let you know that you're  
6 off the hook once you become off the hook?

7 A That would seem normal, yes,  
8 prudent.

9 Q You haven't received notice by  
10 East Kentucky or Charleston Bottoms that the final  
11 indebtedness of whatever nature has totally been  
12 paid --

13 A No.

14 Q -- as far as you know?

15 A No --

16 Q As far as you know, the audit you  
17 got is the last word you got on that, which showed  
18 the \$65,000 contingent liability --

19 A That's my understanding.

20 Q -- admittedly through May 3rd,  
21 2012? But whatever occurred after that you don't  
22 know because you haven't been advised of it?

23 A Correct.

24 Q Do you know this person seated to  
25 the right of Mr. Samford today? He's a corporate

1 representative of East Kentucky Power. Do you know  
2 who he is?

3 A Yes, I do.

4 Q What's his name?

5 A Frank Oliva.

6 Q And have you had any  
7 conversations with him about Charleston Bottoms?

8 A Yes, I have.

9 Q And can you recall as best you  
10 can the entirety of those conversations, what it is  
11 that he may have said to you and when he may have  
12 said it?

13 A I suspect it was probably in  
14 early 2011 that -- that I called him to kind of get  
15 an update on Charleston Bottoms and get a better  
16 understanding of the background and to find out  
17 kind of the nature of that -- a little more  
18 information on the nature of that contingent  
19 liability for the purposes of presenting something  
20 to our board.

21 Q Did he, in the course of that  
22 conversation, tell you that there were obligations  
23 at that time that Charleston Bottoms still had?

24 A That was my understanding, yes.

25 Q And I believe that's what you

1 were asked about by Mr. Samford in his question of  
2 you concerning that -- the minutes of that  
3 particular board meeting when you made that report?

4 A Correct.

5 Q Has Mr. Oliva had any discussion  
6 with you following that?

7 A Not substantial to this  
8 particular Charleston Bottoms issue.

9 Q Talked with him, but not on this  
10 subject; is that your answer?

11 A That's right.

12 Q When you -- did you initiate that  
13 initial conversation with him regarding Charleston  
14 Bottoms?

15 A Yes.

16 Q And was that done by phone?

17 A Yes.

18 Q Did he have answers at his  
19 fingertips? I mean, when you got him on the phone,  
20 was he able to just start talking and telling you  
21 things or did he say, "Well, let me check on some  
22 things, I'll get back with you," or how did that  
23 go?

24 A I recall that he pretty much knew  
25 the answers to my questions right away, I recall.

1 I'm positive.

2 Q Do you know if there was any  
3 follow-up, "Hey, Don, what I said, you know, a  
4 while ago, I'll check to make sure," blah, blah,  
5 blah, or was that it?

6 A I don't recall, because I was  
7 looking for mostly information that was more  
8 general in nature.

9 Q And that's what he gave?

10 A Yes.

11 MR. SCOTT: Okay. That's all I have.

12 MR. SAMFORD: I don't have anything.

13 (OFF THE RECORD)

14 MR. SCOTT: I asked Mr. Goodpaster the  
15 address that the pleadings should be sent  
16 to him, since he's now entered an  
17 appearance in the case, and he answered,  
18 "4775 - 4775 Lexington Road, P.O. Box 707,  
19 Winchester, Ky."

20 I said, "40392-0707," and he said,  
21 "yes."

22 \* \* \* \* \*

23 THEREUPON, the taking of the deposition of  
24 **DON COMBS** was concluded.

25 \* \* \* \* \*



1 STATE OF KENTUCKY )  
2 COUNTY OF FAYETTE )

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I, JOLINDA S. TODD, Registered Professional Reporter and Notary Public in and for the State of Kentucky at Large, certify that the facts stated in the caption hereto are true; that at the time and place stated in said caption the witness named in the caption hereto personally appeared before me, and that, after being by me duly sworn, was examined by counsel for the parties; that said testimony was taken in stenotype by me and later reduced to computer-aided transcription and the foregoing is a true record of the testimony given by said witness.

No party to said action nor counsel for said parties requested in writing that said deposition be signed by the testifying witness.

My commission expires: August 24, 2015.

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal of office on this the 22nd day of February 2013.

JOLINDA S. TODD, RPR, CCR(KY)  
NOTARY PUBLIC, STATE AT LARGE  
ID# 449787