

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

APR 20 2015

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 FILING STYLED "AMENDED PETITION"

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Comes now East Kentucky Power Cooperative, Inc. ("EKPC"), by counsel, and for its Objection to the filing styled "Amended Petition" made herein by the Petitioner, Grayson Rural Electric Cooperative Corporation ("Grayson"), on January 6, 2015,<sup>1</sup> respectfully states as follows:

**I. BACKGROUND**

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

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<sup>1</sup> Because Grayson did not file a Motion, the seven day response period set forth in 807 KAR 5:001 Section 5(2) was not triggered.

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. With its Petition, Grayson filed an un-redacted copy of an executed Agreement dated August 24, 2012, by and between Grayson and Magnum which provided for Grayson's purchase from Magnum of up to 9.4 megawatts ("MW") of power on a continuous 24/7 basis at the rate of six cents (\$0.06) per kilowatt hour.

On January 11, 2013, EKPC filed an Answer and Motion to Dismiss Grayson's Petition ("First Motion to Dismiss") wherein EKPC alleged that several portions of the Petition were either outside the scope of the Commission's jurisdiction or otherwise failed to state a valid claim. On April 29, 2013, EKPC filed a second Motion to Dismiss Grayson's Petition ("Second Motion to Dismiss") in which EKPC argued that Grayson's Petition was moot due to the expiration of the Magnum contract by virtue of the contract's own terms. Although Grayson did not file a response to EKPC's First Motion to Dismiss, it did file a motion for a procedural/scheduling order on February 11, 2013, and a materially false response to EKPC's Second Motion to Dismiss on May 17, 2013.<sup>2</sup>

In an Order entered July 17, 2013 (the "Order"), the Commission granted-in-part and denied-in-part EKPC's First Motion to Dismiss and denied EKPC's Second Motion to Dismiss.

The Commission then articulated the issues that remained to be adjudicated in this proceeding:

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<sup>2</sup> Among other things, Grayson argued in its response to EKPC's Second Motion to Dismiss that its Petition was not moot because Grayson and Magnum had "entered into a verbal understanding for the extension" of the Magnum contract beyond the contract's stated date of expiration. However, when numerous senior Grayson representatives were subsequently asked under oath about this supposed extension, each either had no knowledge of it or expressly denied it ever existed. *See* Deposition Transcript of Chief Financial Officer Don Combs, p. 14 (Jan. 6, 2014) (not familiar with any extension); Deposition Transcript of Director Donald Crum, pp. 39-40 (Dec. 12, 2013) (knows of no agreement to extend Magnum contract); Deposition Transcript of Director Eddie Martin, p. 12 (Dec. 12, 2013) (knows of no extension to Magnum contract); Deposition Transcript of Director Kenneth Arrington, p.14 (Jan. 6, 2014) ("There were no extensions."); Deposition Transcript of Director Harold Dupuy, p. 8 (Jan. 7, 2014) (to his knowledge, Magnum was unwilling to enter into any extensions); Deposition Transcript of President and Chief Executive Officer Carol Fraley, pp. 63-64 (Jan. 6, 2014) (expressly denying that there was ever any written or verbal extension of the Magnum contract). Copies of each of the referenced deposition transcript pages are attached hereto and incorporated herein as collective Exhibit 1.



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>3</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 alternative power under Amendment 3; and (b) the proper form of advance notice to EKPC for an alternative sourced power purchase.<sup>4</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 same.<sup>5</sup> At that point in time, and in

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<sup>3</sup> Order, pp. 16-17.

<sup>4</sup> *Id.*, pp. 22-23.

<sup>5</sup> See Letter from Carol Fraley to Tony Campbell (dated July 3, 2013). A copy of this letter is attached as Exhibit 1 to EKPC's Objection to Grayson's Notice of Amendment (filed Sept. 24, 2013).

light of the MOU, a complete resolution to the issues that plague Amendment 3 appeared within reach.

However, on August 30, 2013, Grayson abruptly notified EKPC that it had rescinded its earlier adoption of the MOU.<sup>6</sup> Less than two weeks thereafter, Grayson filed in the record of this case a Notice of Amendment in an attempt to substitute an entirely separate arrangement with a new counterparty, namely Duke Energy Commercial Asset Management, Inc. (“Duke”), in place of the long-expired Magnum long-term power purchase agreement.<sup>7</sup> EKPC filed an objection to Grayson’s Notice of Amendment on September 24, 2013, noting, *inter alia*, that: (1) an application cannot be amended via the filing of a notice under 807 KAR 5:001, Section 4(5); (2) Grayson’s Notice of Amendment was materially deficient because it included only a draft, non-binding term sheet for the new arrangement, not a mutually-binding contract as was filed with Grayson’s Petition; (3) the Duke power purchase proposal was: (a) entirely different from the agreement proposed in 2012; and (b) in light of the larger amount of power at issue, did not appear to even be subject to Amendment 3 of the WPC; and (4) Grayson’s repudiation of the MOU had the effect of preventing Grayson from acquiring the very power product it sought. Grayson subsequently filed a brief Motion to Amend its Petition, to which EKPC responded at length.<sup>8</sup>

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<sup>6</sup> See Letter from Carol Fraley to Tony Campbell (Aug. 30, 2013). A copy of this letter is attached as Exhibit 2 to EKPC’s Objection to Grayson’s Notice of Amendment (filed Sept. 24, 2013). Grayson representatives would later reveal through deposition testimony that Grayson rescinded its prior approval of the MOU because: (1) it felt it could obtain a more favorable outcome from the Commission through this proceeding; and (2) the MOU did not allow distribution cooperatives to enter into power purchase contracts that lasted in perpetuity. See Deposition Transcript of Director Harold Dupuy, pp. 19-20 (Jan. 7, 2014); Deposition Transcript of Chief Financial Officer Don Combs, pp. 19-21 (Jan. 6, 2014). Copies of each of the referenced deposition transcript pages are attached hereto and incorporated herein as collective Exhibit 2.

<sup>7</sup> See Grayson’s Notice of Amendment (filed Sept. 11, 2013).

<sup>8</sup> Grayson’s Motion to Amend its Petition was filed on September 30, 2013, and EKPC’s response was filed on October 4, 2013. In its response, EKPC observed, *inter alia*, that: (1) Grayson had still failed to produce any semblance of a complete agreement between it and Duke; (2) the Magnum proposal and the Duke proposal were so



Following Grayson's first attempt to amend its Petition, the parties exchanged extensive written discovery and conducted numerous depositions. On January 6, 2015, Grayson filed a document styled "Amended Petition" wherein it describes a "tentative understanding" it has purportedly entered into with Morgan Stanley Capital Group, Inc. ("Morgan Stanley"), for the purchase of 9.3 MW of power. Although it does not say so explicitly, one may fairly presume that Grayson's "tentative understanding" with Morgan Stanley supersedes Grayson's proposed arrangement with Duke (which itself allegedly superseded Grayson's proposed arrangement with Magnum). Grayson attached to its most-recent Amended Petition a draft power purchase agreement dated October 16, 2014,<sup>9</sup> the entirety for which Grayson seeks confidential protection.

Grayson's recent filing concerning its tentative arrangement with Morgan Stanley is also both procedurally and substantively deficient. EKPC tenders this Objection to elucidate the numerous and significant shortcomings of Grayson's filing, as well as to underscore the continuing absurdity of Grayson's actions in this case.

## II. ARGUMENT

Grayson's most-recent filing is deeply flawed, both in terms of its substance and the manner in which it was made. Procedurally speaking, Grayson's filing totally disregards multiple relevant Commission regulations, including those related to the amendment of pleadings and to requests for confidential treatment. From a substantive standpoint, Grayson's filing (and

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unique and separate as to bear no reasonable relationship to one another, and thus the Duke proposal should not be deemed an amendment of Grayson's originally-filed Petition; and (3) Grayson failed to offer any substantive reason why the so-called "Amended Petition" should relate back to Grayson's original Petition. On October 17, 2013, Shelby Energy Cooperative, Inc. ("Shelby"), also filed a response in opposition to Grayson's Notice of Amendment and Motion to Amend Petition, as well as a motion requesting that the Commission "issue an Order narrowing the scope of this case to solely a review of the issues presented by Amendment 3 and dismissing all aspects of the case relating to Grayson's now-abandoned contract with Magnum and its attempted contract with Duke Energy." The Commission has not yet ruled on Grayson's September 30, 2013 Motion to Amend its Petition (which is now moot) or on Shelby's October 17, 2013 motion for partial dismissal of Grayson's Petition.

<sup>9</sup> It is unclear why Grayson did not inform either the Commission or EKPC of its abandonment of the proposed Duke arrangement sooner, especially considering that it had a draft agreement with Morgan Stanley nearly three (3) months prior to filing its most-recent Amended Petition.

particularly the draft agreement attached thereto) is woefully inadequate, so lacking in necessary information as to render impossible any complete analysis thereof. For the reasons discussed herein, EKPC objects to Grayson's filing of its second Amended Petition.

**A. Grayson's Most-Recent Filing is Inconsistent with Commission Regulations**

The record of this matter reveals that Grayson does not understand – or, worse yet, does not care to observe – the regulations promulgated by the Commission. Pursuant to 807 KAR 5:001, Section 4(5):

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.

When Grayson first attempted to amend its Petition on September 11, 2013 (in order to substitute its expired agreement with Magnum with its proposed arrangement with Duke), it attempted to do so by notice, rather than motion. Yet again, Grayson's filing on January 6, 2015, attempts to amend its Petition by notice, and yet again, Grayson disregards the applicable Commission regulation.

It is important to note that Grayson's inattention to the directive expressed in 807 KAR 5:001, Section 4(5), amounts to more than a simple styling concern. Under the regulation, the ability of a party to file an amended application is determined at the discretion of the Commission and may only be granted "for good cause shown." By filing a notice of amendment (or, in this instance, simply an "Amended Petition"), rather than a motion, Grayson endeavors to strip the Commission of its right and duty to determine whether a proposed amendment is appropriate. As with its first attempt to amend its Petition, Grayson has not offered any cause for why its new long-term power purchase proposal should be deemed to be an amendment of its



previously-filed petition(s). To the contrary, the facts strongly suggest that the expired Magnum contract, the abandoned Duke arrangement, and the new Morgan Stanley proposal are so dissimilar as to bear no reasonable relationship to one another. Not only are the parties and pricing different, but each proposed arrangement has unique commercial terms that impose upon Grayson and the relevant counterparty varying obligations. This is not a situation, as Grayson suggests, where the name of the counterparty and the price term can be freely substituted; instead, the investigation of the proposed purchase power arrangement must begin anew at the expense of both the time and resources of the Commission, as well as those of EKPC and its Members.<sup>10</sup> In sum, Grayson's attempt to file yet another Amended Petition without adhering to the Commission's rules should be rejected.

In addition to Grayson's utter failure to follow Commission rules concerning the amendment of pleadings, it also makes little effort to comply with the Commission's rules regarding requests for confidential treatment. Pursuant to 807 KAR 5:001, Section 13(2)(a):

A request for confidential treatment of material shall be made by motion that:

- (1) Establishes specific grounds pursuant to KRS 61.878, upon which the commission should classify that material as confidential;
- (2) States the time period in which the material should be treated as confidential and the reasons for this time period; ...

A cursory comparison of Grayson's "Amended Petition" to the foregoing regulation reveals that Grayson lacks even a modicum of respect for the Commission's express procedural rules. Grayson does not make its request for confidential treatment by motion, makes no mention of the time period for which it believes confidential treatment is appropriate, and does

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<sup>10</sup> As aforementioned, EKPC and Grayson exchanged extensive written discovery and conducted numerous depositions after Grayson introduced its proposed arrangement with Duke. Now that Grayson has ostensibly abandoned the Duke arrangement in favor of an arrangement with Morgan Stanley, the taking of additional discovery and deposition testimony covering this most-recent proposal will be necessary.

nothing to “[e]stablish[] specific grounds pursuant to KRS 61.878” to support a grant of confidential protection. With respect to this last-mentioned regulatory requirement, Kentucky Open Records law provides that confidential protection is appropriate for documents “generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage *to competitors of the entity that disclosed the records.*”<sup>11</sup> This clearly contrasts with Grayson’s “Amended Petition” wherein Grayson opines that open disclosure of its proposed agreement with Morgan Stanley “would permit an unfair commercial advantage *to competitors of the entity with whom Grayson proposes to contract.*” KRS 61.878(1)(c)(1) does not afford protection to third parties that are not disclosing documents, and thus Grayson’s request for confidential treatment is fundamentally flawed.<sup>12</sup> Put simply, Grayson has disregarded applicable law and failed to meet its burden of proof.<sup>13</sup>

### **B. Grayson’s Most-Recent Filing is Incomplete and Problematic**

As Grayson is aware, Commission approval and authorization is required in order for Grayson to purchase power under its Morgan Stanley proposal pursuant to KRS 278.300.<sup>14</sup> To

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<sup>11</sup> See KRS 61.878(1)(c)(1) (emphasis added). Importantly, the Commission has held that “[b]lanket statements are not sufficient” to show that confidential treatment is warranted under KRS 68.878(1)(c)(1). See *In the Matter of 2014 Integrated Resource Plan of Big Rivers Electric Corporation*, Case No. 2014-00166 (Order entered Aug. 26, 2014, at p. 13).

<sup>12</sup> See, e.g., *In the Matter of Rate Adjustment of Western Kentucky Gas Company*, Case No. 90-013 (Order entered Aug. 14, 1990). It should also be noted that Grayson makes no attempt to identify “only those portions [of the subject document] which unless redacted would disclose confidential information,” but instead seeks confidential treatment for the entire proposed agreement with Morgan Stanley. See 807 KAR 5:001, Section 13(2)(a)(3). This tactic is suspect considering that: (1) Grayson did not seek confidential treatment for any part of its now-abandoned agreement with Magnum or its proposed arrangement with Duke; and (2) [REDACTED]

<sup>13</sup> See 807 KAR 5:001, Section 13(2)(b).

<sup>14</sup> See *In the Matter of the Consideration and Determination of the Appropriateness of Implementing a Ratemaking Standard Pertaining to the Purchase of Long-Term Wholesale Power by Electric Utilities as Required in Section 712 of the Energy Policy Act of 1992*, Admin. Case No. 350, pp. 8-9 (Ky. P.S.C. October 25, 1993) (“[Power purchase] contracts may well require prior approval under KRS 278.300 if they constitute evidences of indebtedness. In particular, the inclusion in such contracts of minimum payment obligations or take/pay provisions



that end, Grayson attached to its most-recent filing a draft contract – or, as Grayson describes it, a “tentative arrangement” – that sets forth various terms by which the purchase of power may take place. Perhaps unsurprisingly, however, Grayson filed no additional documentation, analysis, correspondence, testimony, or similar information to support the proposed agreement, and the document it did file is both incomplete and problematic.

At the outset, it may be most advantageous to examine Grayson’s proposed agreement with Morgan Stanley for what it lacks. Among other glaring deficiencies, the draft agreement does not define the [REDACTED] or include any [REDACTED]. In fact, even if the draft agreement is later supplemented to include [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. Although

some speculation may be unavoidable, Grayson’s complete failure to provide any type of financial analysis only compounds the uncertainty that accompanies its proposed agreement with

Morgan Stanley. Moreover, the lack of [REDACTED] renders suspect the [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Undoubtedly, more information is necessary if the Commission is to adjudicate this case under KRS 278.300.

Turning next to what is actually contained within the proposed agreement, several problematic issues are quickly apparent. First, the proposed agreement provides for the delivery

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may necessitate prior approval.”). According to its terms, the Morgan Stanley proposal also requires [REDACTED] as a condition precedent.

by Morgan Stanley of [REDACTED], which clearly and inexplicably conflicts with the [REDACTED] [REDACTED] contained within Grayson's most-recent Amended Petition. Additionally, the proposed agreement calls upon Grayson to [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Again, the proposed agreement is simply in no shape for the Commission to conduct a proper, substantive examination thereof.

The foregoing notwithstanding, EKPC reiterates that it has never told Grayson that it cannot purchase power from a non-EKPC resource under Amendment 3. Since Grayson initiated this proceeding over two (2) years ago, EKPC's overarching goal has been and continues to be the realization of a fair and equitable allocation methodology for the power available to EKPC's Members under Amendment 3. Although the MOU would have resolved that issue, Grayson's decision to repudiate its prior approval of the MOU, as well as Grayson's continuing desire to stir controversy and act unreasonably toward EKPC, has resulted in protracted litigation that has yielded absolutely no benefit. While Grayson's ability to articulate a controversy between it and EKPC with regard to the Magnum contract or Duke arrangement was tenuous at best, there is no rational basis for Grayson to continue to assert that it has been aggrieved by EKPC's actions or inactions with regard to an incomplete, draft agreement with a wholly distinct buyer of which EKPC was unaware until January 6, 2015.

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<sup>15</sup> See, e.g., [REDACTED] which is largely indecipherable.



### C. Grayson Remains in Non-compliance with Amendment 3

EKPC must act in a manner consistent with Amendment 3's 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>16</sup> As the Commission is aware, Amendment 3 contains requirements with respect to notice and load designation/load following, among other things. Grayson remains non-compliant with these facets of Amendment 3, despite EKPC's 2013 attempt to assist Grayson in preparing a proper notice.<sup>17</sup>

In conjunction with its most-recent Amended Petition, counsel for Grayson sent a letter to EKPC's President and CEO, Mr. Anthony Campbell, advising EKPC that Grayson "intends to pursue purchase of 9.3 megawatts of power" from Morgan Stanley.<sup>18</sup> The letter went on to state that "[a]ll of the previous notices and information with which you have been advised by [Grayson] are applicable to [Morgan Stanley]," and that "[t]his notice is simply done to supplement the previous notices and should be deemed to relate back to the date of the original notice sent East Kentucky Power with respect to the Magnum Drilling Contract." Of course, EKPC disagrees that this most-recent "notice" should relate back to Grayson's previous "notices," if for no other reason than the proposed power purchases relevant to each notice are so dissimilar as to render each proposed transaction distinct and unrelated. This fact notwithstanding, the Commission's July 17<sup>th</sup> Order correctly notes that there is a substantial question as to whether any of Grayson's prior notices were in conformity with Amendment 3,

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<sup>16</sup> EKPC Board Policy 305, a copy of which is attached as Exhibit 3 to EKPC's Objection to Grayson's Notice of Amendment (filed September 24, 2013).

<sup>17</sup> See Letter from David Crews to Carol Fraley (Oct. 2, 2013). A copy of this letter is attached hereto and incorporated herein as Exhibit 3.

<sup>18</sup> A copy of this letter, the same being dated January 2, 2015, is attached hereto and incorporated herein as Exhibit 4.

and EKPC maintains that both Grayson's previous notices and its most-recent notice are non-compliant.

Related to the issue of proper notice, and as discussed at length in EKPC's Objection to Grayson's September 11, 2013 Notice of Amendment, 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 a non-EKPC source 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 of Amendment 3. As with each of its previous proposed power purchase arrangements, Grayson has failed to designate and follow load as required with respect to its proposed agreement with Morgan Stanley.

Although redundant, EKPC must again point out 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 most-recent filing styled "Amended Petition" is not appropriate. Beyond Grayson's total disregard for the procedural rules of this Commission, Grayson has proffered an



incomplete and problematic draft power purchase agreement that simply cannot withstand scrutiny under applicable law or Amendment 3. Accordingly, EKPC objects to the filing of Grayson's most-recent Amended Petition.

This 20<sup>th</sup> day of April, 2015.

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 20<sup>th</sup> day of April, 2015:

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*Counsel for East Kentucky Power Cooperative, Inc.*



Witness: Don Combs

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

4 IN THE MATTER OF:

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11 FROM EAST KENTUCKY POWER COOPERATIVE UNDER  
12 A WHOLESALE POWER CONTRACT AS AMENDED BETWEEN  
13 GRAYSON RURAL ELECTRIC COOPERATIVE CORPORATION  
14 AND EAST KENTUCKY POWER COOPERATIVE, INC.

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15 **WITNESS: DON COMBS**

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

1 contract terminated?

2 A No, I do not.

3 Q Do you know whether it was ever  
4 extended beyond the stated termination dates in the  
5 contract itself?

6 A I know there's some discussion  
7 about that, but I'm -- I am not familiar with any  
8 particulars about that end of it. Kind of seemed  
9 to be in limbo, but...

10 Q Do you know why the contract did  
11 not come to fruition?

12 A Not specifically, no.

13 Q You referenced Amendment 3  
14 earlier in your deposition. Have you reviewed the  
15 terms of Amendment 3?

16 A I have over a period of the last  
17 few years.

18 Q And what's your understanding of  
19 the requirements of Amendment 3?

20 A My understanding is that a  
21 cooperative has the ability to purchase from  
22 outside sources up to a maximum of 15 percent of a  
23 formula, whatever the demand, average demand or  
24 whatever, some convoluted formula that sets the  
25 limits.



Witness: Donald Crum

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

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12 A WHOLESALE POWER CONTRACT AS AMENDED BETWEEN  
13 GRAYSON RURAL ELECTRIC COOPERATIVE CORPORATION  
14 AND EAST KENTUCKY POWER COOPERATIVE, INC.

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15 **WITNESS: DONALD CRUM**

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

1 Q And do you know where those wells  
2 were located?

3 A Blaine and Martha area.

4 Q Do you know who the -- the  
5 mineral owners would have been, who would have  
6 owned the gas that was going to be used to  
7 purchase?

8 A No, I do not.

9 Q Do you know if there was anybody  
10 affiliated with Grayson who would have been one of  
11 the well owners?

12 A Not that I'm aware of.

13 Q When did the Magnum contract  
14 terminate?

15 A Earlier. Well, I guess it was a  
16 termination. It was earlier this year because of  
17 time.

18 Q Okay. I think in the document  
19 itself there was a termination provision for end of  
20 February, first of March. Does that square with  
21 your recollection of it?

22 A Yeah, that sounds right. Yes.

23 Q And do you happen to know if  
24 there were any subsequent extensions of that  
25 agreement?



1           A           I think there was talk to be  
2 possible extensions, but due to cooperation,  
3 et cetera, never was followed -- was anything  
4 agreed to then.

5           Q           Any documentation of those  
6 extensions?

7           A           Not that I'm aware of. Just  
8 sounds familiar to me that extensions were possibly  
9 available, but they didn't work out.

10          Q           So it's your understanding that  
11 Magnum didn't want to extend the contract?

12          A           I don't know their reasoning.

13          Q           Okay. Well, I wasn't asking what  
14 the reasoning. I'm just asking more as a matter of  
15 fact, did they extended the contract. Was there an  
16 agreement to extend the contract, to your  
17 knowledge?

18          A           Not that I know of.

19          Q           So it's your understanding that  
20 that would have expired back in March or February?

21          A           I think I can say yes to that.  
22 Not real clear what was said.

23          Q           Is there any distinction in your  
24 mind between what Magnum proposed to do and what  
25 Duke proposed to do?

Witness: Eddie Martin

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

4 IN THE MATTER OF:

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

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15 **WITNESS: EDDIE MARTIN**

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

Witness: Eddie Martin

1           A           It was earlier this year, I  
2 believe.

3           Q           I think, by its terms, it was set  
4 to expire end of February, first of March. Is that  
5 consistent with your recollection?

6           A           It was sometime earlier in the  
7 year. I couldn't say the specific date.

8           Q           But you wouldn't have any reason  
9 to dispute the date that's in the agreement?

10          A           If that's what you say.

11          Q           Do you know whether or not any  
12 extensions of those dates were entered into?

13          A           Not that I'm aware of.

14          Q           Are you aware of any  
15 documentation of any extension?

16          A           Not that I recall.

17          Q           Let me ask you about Amendment 3.  
18 You're familiar with Amendment 3 to a wholesale  
19 power contract?

20          A           Somewhat.

21          Q           Just tell me, generally, what's  
22 your understanding of it?

23          A           Just the basic understanding is  
24 we have a right under our wholesale power contract  
25 to go outside of East Kentucky to buy up to



Witness: Kenneth Arrington

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

4 IN THE MATTER OF:

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

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15 **WITNESS: KENNETH ARRINGTON**

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

1           Q           When did it cease to be in  
2 existence?

3           A           The date from the time he signed  
4 it in '12 till whatever date that it run out in  
5 '13.

6           Q           Do you happen to recall what that  
7 date was?

8           A           No, sir, I don't.

9           Q           Do you know whether there were  
10 any extensions of the date set forth in the  
11 contract?

12          A           There were no extensions.

13          Q           Do you know why the contract  
14 failed?

15          A           Have no idea. I don't know as  
16 they ever give Grayson any excuse, other than you  
17 know how contracts are, they're dated and that's  
18 when the end comes up. They -- they don't have to  
19 give you an excuse, I don't guess.

20          Q           Do you happen to know any of the  
21 individuals who are officers or directors or  
22 employees of Magnum Drilling?

23          A           Do I know?

24          Q           Yes.

25          A           Yes, I do.

Witness: Harold Dupuy

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

4 IN THE MATTER OF:

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

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15 **WITNESS: HAROLD DUPUY**

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



1           A           I don't remember the exact date,  
2           but I remember we was apprised of the fact that it  
3           had expired.

4           Q           Do you remember approximately  
5           when that would have occurred?

6           A           I'm thinking it was last May, but  
7           I'm not for sure.

8           Q           Okay. And do you recall if  
9           Magnum was ever willing to enter into any extension  
10          of its agreement with Grayson?

11          A           Not to my knowledge, they  
12          weren't.

13          Q           Are you aware of any contacts or  
14          communications by Grayson with the Public Service  
15          Commission prior to the filing of Grayson's  
16          complaint on November 19th, 2012?

17          A           I know there's been several  
18          different discussions back and forth, but, you  
19          know, specifics, no.

20          Q           Okay. Those discussions that you  
21          have in mind, those were prior to filing the  
22          petition?

23          A           Yes.

24          Q           Do you remember the substance of  
25          any of those discussions?

Witness: Carol Hall Fraley

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

4 IN THE MATTER OF:

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

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15 **WITNESS: CAROL HALL FRALEY**

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

Witness: Carol Hall Fraley

1 draw your attention to. There's a date in  
2 Paragraph 17, and then there's another date --  
3 there's another date in Paragraph 8, and I think  
4 those are one day apart. One's March 1st and the  
5 other is February 28.

6 A Yes.

7 Q But there's a couple different  
8 ways that that contract could terminate on either  
9 of those dates. Is that in fact the date that the  
10 contract terminated?

11 A I believe it was the end of  
12 February.

13 Q So there was, I think, a effort,  
14 maybe, to verbally -- or to extend the agreement,  
15 and I think the board had even authorized a 90-day  
16 extension, perhaps.

17 A Yes.

18 Q But I assume some documentation  
19 to that effect was sent over to Mr. Crisp of  
20 Magnum?

21 A I believe that Mr. Scott talked  
22 to their attorney, and that was to be forthcoming  
23 and then we never did receive it.

24 Q Okay. And so there never was any  
25 written extension?



1           A           Not that -- no, not that I'm  
2           aware.

3           Q           Was there any verbal extension  
4           that you're aware of on that February date?

5           A           No. No.

6           Q           Let me refer you to a document  
7           that was used at our last set of depositions. It  
8           was Exhibit 4.

9                        Would you just look at that and tell me what  
10          that document is?

11          A           It looks like a letter from  
12          Mr. Crisp that I -- this may have been a response  
13          to the letter where I attempted to bill him for the  
14          moneys that we had spent trying to get this put  
15          together.

16          Q           Okay. And so the first paragraph  
17          there, it says, "Please find enclosed a copy of the  
18          contract" --

19          A           Uh-huh (affirmative).

20          Q           -- "between Magnum and Grayson  
21          Rural Electric. You will find that I have  
22          highlighted the expiration date."

23                        And the contract was not attached to the  
24          documents. This was a document that we received  
25          from Grayson in response to our data request --

Witness: Harold Dupuy

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

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  
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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.

---

**WITNESS: HAROLD DUPUY**

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The deposition of HAROLD DUPUY 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  
7, 2014, commencing at the approximate hour of  
11:00 a.m. Said deposition was taken pursuant to  
Notice, for all purposes as permitted by the  
applicable rules.

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

3 A Yes, they are.

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

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

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

17 A Yes.

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

20 A Yes, I did.

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

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



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

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

6 A Yes.

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

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

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

15 A You talking about from the  
16 director?

17 Q Or from anyone?

18 A No.

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

23 A No.

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

Witness: Don Combs

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

4 IN THE MATTER OF:

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

---

15 **WITNESS: DON COMBS**

---

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

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

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

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

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

17 A I think that was the intent.

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

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

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



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

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

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

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

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

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

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

3 A Yeah.

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

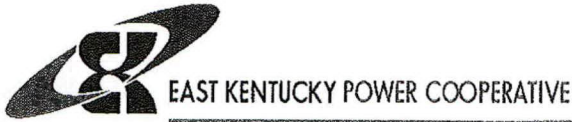
8 A Well, if -- if a large load  
9 locates, and, say, Gallatin Steel container, those  
10 type of loads that locate on a particular service  
11 territory, then we're helping to pay for that load  
12 through East Kentucky, through rates and so forth,  
13 and it goes on forever. So, you know, there's,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

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

20 A Yes.

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





October 2, 2013

Ms. Carol Ann Fraley  
President and Chief Executive Officer  
Grayson Rural Electric Cooperative Corporation  
106 Bagby Park  
Grayson, KY 41143-1292

RE: Amendment 3 "Notice" Dated September 26, 2013

Dear Ms. Fraley:

Please accept this in response to your letter dated September 26, 2013, purporting to give notice on behalf of Grayson Rural Electric Cooperative Corporation ("Grayson") to East Kentucky Power Cooperative, Inc. ("EKPC") regarding Grayson's intent to procure power from a non-EKPC resource. EKPC continues to be willing to work with you to assure that Amendment 3 is complied with, so that you may move forward in securing the regulatory approvals and operational commitments necessary to achieve your goal. However, for the reasons set forth herein, EKPC does not accept your September 26, 2013 correspondence as meeting the minimum notice requirements of Amendment 3 to the 1964 Wholesale Power Contract ("WPC"). EKPC also does not agree with your statement that the September 26<sup>th</sup> correspondence can somehow be given retroactive effect.

### Amendment 3 Notice Requirements

The notice requirements of Amendment 3 are relatively simple, but they are purposefully inflexible. This is because the removal or addition of significant load(s) to a utility system requires a degree of planning and preparation that enables the transition to be seamless and transparent to retail customers. In order to remove load from the Wholesale Power Contract through an election under Amendment 3, Grayson must: (1) identify the amount of load being served from a non-EKPC resource; (2) identify the load(s) to be served by the non-EKPC resource (including the hourly measurement of demand for each such load(s) during EKPC's annual peak hour during the thirty-six calendar months preceding the election); (3) state the date and time when the designated load(s) will commence being served by the non-EKPC resource; and (4) indicate whether the load(s) to be served by the non-EKPC resource involve the acquisition of new territory currently served by another power supplier or municipal utility.

Your September 26<sup>th</sup> letter is not sufficient when measured against these notice requirements. First, Grayson has not identified the amount of power which it intends to procure

4775 Lexington Road 40391  
P.O. Box 707, Winchester,  
Kentucky 40392-0707

Tel. (859) 744-4812  
Fax: (859) 744-6008  
<http://www.ekpc.coop>

A Touchstone





Ms. Carol Ann Fraley

October 2, 2013

Page 2

from the non-EKPC resource. This information is necessary to determine: (1) whether the election is in fact permitted under Amendment 3; and (2) the length of time in which advance notice of the effective date of an election under Amendment 3 must be given. The September 26, 2013 letter is vague and indefinite with regard to the amount of load to be served from the non-EKPC resource and states only that Grayson intends to acquire energy "in an amount *not to exceed* 15% of the rolling average of its coincident peak demand... (emphasis added)." While this cap would appear to make the election appropriate under Amendment 3, it is impossible to determine whether the 90 day notice requirement or the 18 month notice requirement is applicable. This is an important consideration as EKPC must know how much capacity to offer into the PJM Interconnection, LLC ("PJM") market once that capacity is no longer reserved for Grayson's departed load(s). Given the inconsistency in Grayson's prior "notices" with regard to the amount of load to be served by the non-EKPC power supply (discussed below), EKPC would prefer to not speculate as to the amount of non-EKPC power supply which Grayson is seeking to acquire.

Second, Grayson has not designated the load(s) which the non-EKPC power supply will serve. This information is necessary to assure that Grayson receives the appropriate supply of power from EKPC so that a balance is maintained between the demand for power in the portion of Grayson's service territory that continues to be served by EKPC and the supply of that power by EKPC. We also anticipate that this information will be required by PJM as well. The MOU was developed to accommodate standard market products like block energy purchases because attempting to serve load with a standard market product will incur significant expenses and penalties. As a result of Grayson's repudiation of the Memorandum of Understanding ("MOU") that was negotiated by and between the Members of EKPC, Grayson must adhere to the contractual obligation to designate load(s).

Third, Grayson has not indicated the date upon which it intends to take power from the non-EKPC resource, which will have the effect of reducing EKPC's supply of power to Grayson by a corresponding amount. Without this information, it will be impossible for EKPC to fulfill its obligations for operating in the PJM market in order to mitigate any penalties and unnecessary charges. This information is also required to assure that Grayson has complied with the advance notice requirements described above and to allow EKPC to timely sell additional capacity in the PJM market and balance its Financial Transmission Rights portfolio.

The fourth notice requirement would appear to be inapplicable based upon what I understand about your current proposal.

In summary, without knowing the amount of power to be acquired from the non-EKPC resource, the date upon which this will happen, or the load(s) to be served by the non-EKPC resource, it is impossible for EKPC to assure that Grayson's customers are reliably and adequately supplied with power.



Relation of the September 26<sup>th</sup> Letter to Grayson's Prior "Notices"

Another issue raised in your September 26<sup>th</sup> letter is the extent to which it may relate back to the four prior "notices" tendered by Grayson. This is, of course, a legal question which must ultimately be answered by the Public Service Commission ("Commission") and the July 17, 2013 Order entered by the Commission in your complaint case indicates that they are aware of the problems with Grayson's purported "notices." While the Commission proceeding provides an appropriate venue for resolving the issue, EKPC does not believe that your September 26<sup>th</sup> letter can be deemed to be effective as of the date of any of the prior "notices."

First, Amendment 3 contemplates Grayson giving: (1) an "election" to purchase energy and capacity from a non-EKPC resource; or (2) a "cancellation" of such an election. It does not contemplate the giving of an "amended", "supplemental", "replacement" or "superseding" election or cancellation. The reason that only elections and cancellations are permitted under Amendment 3 should be self-evident: taking and returning load(s) to or from a utility or balancing authority requires significant planning and preparation. In the absence of certainty as to whether specific loads must be served, reliability is unnecessarily risked and the ability of utility and grid operators to make critical decisions in a timely manner is compromised. Amendment 3's notice obligations, which I have described above, are necessarily rigid.

Second, even if an amended, supplemented, replacement or superseded election was permissible under Amendment 3, it is by no means clear that any of the four prior notices tendered by Grayson were sufficient to constitute an effective election, for the following reasons.

Grayson's original election was dated June 22, 2012 and appropriately addressed to Tony Campbell, EKPC's President and Chief Executive Officer. However, the June 22<sup>nd</sup> correspondence indicated that Grayson intended to procure 10.7 MW of power from Magnum Drilling of Ohio, Inc. ("Magnum"). This amount of power significantly exceeded the amount of alternative power to which Grayson could be entitled under Amendment 3 and, therefore, could not technically be considered an Amendment 3 proposal. Moreover, the June 22<sup>nd</sup> letter did not designate the load(s) to be served by Magnum or the date upon which the transfer of the service obligation would occur. Thus, the originally proposed Magnum transaction was not an actual Amendment 3 project and, even if it had been, it failed to satisfy two key notice requirements. The June 22<sup>nd</sup> election was plainly defective.

Grayson then tendered an "amended notice" on August 9, 2012 wherein it decreased the amount of power proposed to be procured from Magnum from 10.7 MW to 5.0 MW. However, the August 9<sup>th</sup> "amended notice" again failed to designate the load(s) which would be served by Magnum and failed to identify the date upon which the election would become effective. The August 9<sup>th</sup> letter said only that Grayson would purchase 5 MW of power from Magnum "commencing in the year 2012." The August 9<sup>th</sup> "amended notice" was also defective. It is worth noting that if Grayson is correct that the August 9<sup>th</sup> "amended notice" was proper, then Magnum should have begun delivering power to Grayson on or about November 9, 2012 – ten days before Grayson sought approval for the transaction from the Commission. Obviously, this did not happen.



On January 18, 2013, Grayson tendered a third "notice" purporting to elect to purchase an additional 4.4 MW of power from Magnum. However, the January 18<sup>th</sup> correspondence again failed to designate the load(s) to be served by Magnum and did not specify the date when the additional power would be acquired. The omission of an effective date was made more significant in light of the fact that the purchase of any additional power over and above 5 MW would trigger the lengthier 18 month notice requirement in Amendment 3, thereby invalidating the August 9<sup>th</sup> notice which Grayson failed to act upon in any event. Again, Grayson's January 18<sup>th</sup> "notice" was defective in its own right.

As you are aware, the EKPC Board's Strategic Issues Committee did not take any formal position with regard to these three "notices" because the Members of EKPC – including Grayson – were engaged in active negotiations to resolve lingering disputes about Amendment 3 throughout the period in question. In light of these negotiations, the delay in considering these "notices" was, in all cases, either requested or consented to by Grayson.

Grayson's fourth correspondence concerned its current proposal and was dated September 9, 2013. Instead of being sent to Mr. Campbell, however, the letter was sent to EKPC's retained regulatory and litigation counsel. Amendment 3 very clearly specifies that an election is to be made by "notice to the Seller," which is EKPC. Moreover, the substance of the September 9<sup>th</sup> letter was again plainly insufficient to constitute notice under Amendment 3. First, without explanation, it substituted an entirely different counterparty, an entirely different proposal, and an entirely different transactional concept for that which was the subject of the three prior Amendment 3 "notices". Second, the amount of alternative power referenced in the attached draft term sheet was in excess of the amount permitted under Amendment 3. Third, the non-binding, draft term sheet indicated only an "optional start date of January 1, 2014." Fourth, neither the correspondence nor the attachment designated what load(s) would be served by the non-EKPC resource.

With these considerations in mind, EKPC is unable to concur with the statement in your fifth letter, dated September 26, 2013, that Grayson "has complied with the notice provisions set forth in the Amendment to the Wholesale Power Contract between it and [EKPC], dated November 21, 2003." All of Grayson's elections, notices, amended notices and supplemental notices have failed to provide the basic and essential information required by Amendment 3. Moreover, when your counsel contacted EKPC's in-house legal staff on or about September 26, 2013, he was advised that EKPC would provide you with the precise information required by Amendment 3 upon request. Instead, Grayson chose to ignore that offer of assistance and sought to cure the several deficiencies in the September 9, 2013 letter that were pointed out in EKPC's Objection to Grayson's Notice of Amendment in the complaint case before the Commission. Again, however, the September 26<sup>th</sup> correspondence is not appropriate notice under Amendment 3. While it reduces the amount of non-EKPC power supply Grayson plans to utilize under Amendment 3, it still fails to designate the load(s) to be served by the non-EKPC resource as well as the date that this service will become effective. A notice which is itself defective cannot cure the deficiencies in prior notices, nor can a defective notice relate back to a prior notice which was itself defective.



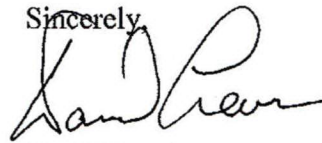
Ms. Carol Ann Fraley  
October 2, 2013  
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**The Path Forward**

It is my hope that the foregoing discussion will provide you with adequate information to tender a full and complete election under Amendment 3. Once EKPC receives a notice that is compliant with Amendment 3, we will bring this to the EKPC Board Strategic Issues Committee's attention. If a full and complete election is received by the close of business on Friday, October 4, 2013, we will be able to present that to the Strategic Issues Committee at their next meeting, which is scheduled for October 7, 2013.

Should you have any questions, please feel free to contact me.

Sincerely



David Crews  
Senior Vice President  
of Power Supply

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January 2, 2015

Mr. Anthony "Tony" Campbell  
President & CEO  
East Kentucky Power Cooperative, Inc.  
4775 Lexington Road  
P.O. Box 707  
Winchester, KY 40392-0707

RE: PSC 2012-00503

Dear Mr. Campbell:

Please be advised that Grayson Rural Electric Cooperative Corporation intends to pursue purchase of 9.3 megawatts of power from Morgan Stanley Capital Group, Inc., all in accordance with Amendment 3 to the Wholesale Power Contract between Grayson Rural Electric and East Kentucky Power.

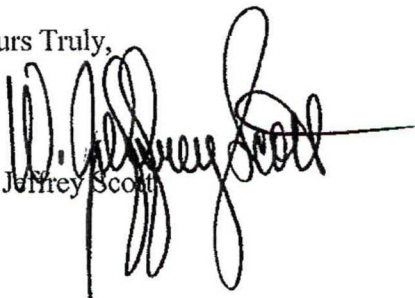
All of the previous notices and information with which you have been advised by Grayson Rural Electric are applicable to the Morgan Stanley Capital Group, Inc.

This notice is simply done to supplement the previous notices and should be deemed to relate back to the date of the original notice sent East Kentucky Power with respect to the Magnum Drilling Contract.

The form of the agreement between Morgan Stanley Capital Group, Inc., and Grayson Rural Electric Cooperative Corporation is as set forth in an Amended Petition that has been served by Grayson Rural Electric Cooperative Corporation, a copy of which having been sent to your attorneys in the Public Service Commission proceeding.

An application for confidential treatment has also been filed and, therefore, you can certainly see a copy of that agreement by contacting your counsel.

Yours Truly,

  
W. Jeffrey Scott

WJS/knc

EXHIBIT

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