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April 20, 2015

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APR 20 2015

PUBLIC SERVICE
COMMISSION

Via Hand Delivery

Mr. Jeffrey Derouen
Executive Director
Kentucky Public Service Commission
P.O. Box 615
211 Sower Boulevard
Frankfort, KY 40602

Re: In the Matter of: Petition and Complaint of Grayson RECC for an Order Authorizing Purchase of Electric Power at the Rate of Six Cents Per Kilowatts of Power vs. a Rate in Excess of Seven Cents Per Killowatt Hour Purchased From East Kentucky Power Cooperative Under a Wholesale Power Contract as Amended Between Grayson RECC and East Kentucky Power Cooperative, Inc.
PSC Case No. 2012-00503

Dear Mr. Derouen:

Enclosed please find for filing with the Commission in the above-referenced case an original and ten (10) copies each of East Kentucky Power Cooperative, Inc.'s Response to Motion for Hearing (which includes a CD containing 13 deposition transcripts) and Objection to Petitioner's Filing Styled "Amended Petition". Although Grayson Rural Electric Cooperative Corporation did not file a Motion for Confidential Treatment with regard to its "Amended Petition", EKPC is nevertheless tendering its Objection in redacted format with one copy with references to allegedly confidential information filed under seal herewith. Please return a file-stamped copy of each to me.

Do not hesitate to contact me if you have any questions.

Sincerely,

David S. Samford

Enclosures

M:\Clients\4000 - East Kentucky Power\1800 - Grayson Litigation\
Correspondence\Ltr. to Jeff Derouen (2012-00503) - 150420

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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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)
EXCESS OF SEVEN CENTS PER KILOWATT)
HOUR PURCHASED FROM EAST KENTUCKY)
POWER COOPERATIVE UNDER A)
WHOLESALE POWER CONTRACT AS)
AMENDED BETWEEN GRAYSON RURAL)
ELECTRIC COOPERATIVE CORPORATION)
AND EAST KENTUCKY POWER)
COOPERATIVE, INC.)

Case No.
2012-00503

EAST KENTUCKY POWER COOPERATIVE, INC.'S
RESPONSE TO MOTION FOR HEARING

Comes now the Respondent, East Kentucky Power Cooperative, Inc. ("EKPC"), by counsel, in compliance with the Commission's April 14, 2015 Order, 807 KAR 5:001 Section 5(2) and other applicable law, and in response to the Motion for a Hearing filed by Grayson Rural Electric Cooperative Corporation ("Grayson") on April 3, 2015, respectfully states as follows:

I. INTRODUCTION

After sitting on its claims for well over a year, Grayson now desires to have a hearing on a Petition which the Commission has already found to have failed to state a *prima facie* case of any violation of a Commission Order, a statute or a regulation. EKPC welcomes any progress towards resolving this case, but respectfully suggests that Grayson's Motion is unsupported or, at

minimum, premature. In order to assist the Commission in determining whether Grayson's Motion should be granted, EKPC is tendering an updated summary of the facts and circumstances giving rise to this dispute as well as a summary of actions that have taken place since the Commission's July 17, 2013 Order, which significantly narrowed the scope of the issues in contention. Upon review of this information, EKPC believes the Commission will be able to make a more fully-informed decision as to what additional process may be necessary.

II. STATEMENT OF FACTS AND PROCEDURAL HISTORY

The Rural Utilities Service (formerly the Rural Electrification Administration) ("RUS") requires its borrowers to enter into contracts for the purchase and sale of power as a precondition to lending funds. On or about October 1, 1964, EKPC entered into separate Wholesale Power Contracts with each of its Members. Each of the Wholesale Power Contracts contained identical provisions and was subject to the approval of the RUS Administrator in accordance with various terms of the loan agreements in place between RUS and EKPC and RUS and the Member distribution cooperatives. The RUS Administrator approved the Wholesale Power Contract entered into by EKPC and Grayson on December 24, 1964. Between 1964 and 2003, there were two amendments to the Wholesale Power Contract, neither of which is germane to the issues raised in Grayson's Petition or Motion for a Hearing.

The present controversy traces its roots to at least the Spring of 2003 when EKPC's Board discussed at its April meeting the advisability of establishing off-system power supply contracts for the distribution cooperative Members. At EKPC's May 2003 Board meeting, the need to extend the term of the Wholesale Power Contract was also discussed in the context of RUS's unwillingness to fund a long-term loan to finance the planned Gilbert Unit (Spurlock #3) without such an amendment. EKPC's management agreed to facilitate a meeting whereby

several representatives of the Member distribution cooperatives could meet with RUS officials to discuss these issues. In subsequent meetings, RUS refined its requirements for funding the Gilbert loan and settled upon four major points – each of which was discussed at length by EKPC’s Board. One of these points is particularly relevant to Grayson’s Petition and was characterized in the September 2003 EKPC Board meeting as follows: “If member systems want to get off-system supply power from a non-EKPC source, that is a combination of two factors – each member’s system cannot exceed 15% of its peak over a three-year period, nor can those 15%, collectively for all the Members, exceed 5% of EKPC’s peak during the same period.”¹ The minutes to that meeting suggest that the purpose of including an off-system power supply option in the Wholesale Power Contract was to give each of EKPC’s Members the opportunity to procure economic power for the purpose of attracting new load to their system and retaining existing load. In other words, the off-system power supply provision was originally intended to be an economic development tool in areas where EKPC’s rates were higher than neighboring investor-owned utilities. In discussing RUS’s position, Mr. Roy Palk (EKPC’s President and Chief Executive Officer at the time), explained that a mechanism would need to be devised in order that all Members could participate in the off-system power supply option if they so chose without forcing other Members to pay for resulting stranded investment costs. Fairness in the operation of the allocation methodology was a primary point of discussion during this period.

At the October 2003 meeting, EKPC’s Board adopted a resolution accepting the language of the proposed Amendment 3 to the Wholesale Power Contract. Amendment 3, in relevant part, replaced Section 1 of the Wholesale Power Contract with new language which reads:

¹ Minutes of September 9, 2003 EKPC Board Meeting summarizing RUS requirements for amendment of the Wholesale Power Contract. A copy of this document was attached as Exhibit 1 to EKPC’s Answer and Motion to Dismiss that was filed on January 11, 2013.

1. General – The Seller shall sell and deliver to the Member and the Members shall purchase and receive from the Seller all electric power and energy which shall be required to serve the Member's load, including all electric power and energy required for the operation of the Member's system. 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 person other than the Seller, or from facilities owned or leased by the Member, provided that the aggregate amount of all members' elections (measured in megawatts in 15-minute intervals) 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 from time to time, as provided herein.

For any election made or cancelled under this Section, the following provisions shall apply:

a. During any calendar year, the Member may make or cancel any such election or elections by giving at least 90 days' notice to the Seller with respect to any load or loads with an average coincident peak demand (calculated in the same manner as provided in the preceding paragraph of 5.0 Megawatts or less, in the annual aggregate.

b. During any calendar year, the Member may make or cancel any such election or elections by giving at least 18 months or greater notice to the Seller with respect to any load or loads with an average coincident peak demand (calculated in the same manner as provided in the preceding paragraph) of 5.0 Megawatts or more, in the annual aggregate.

Upon the effective date of the Member's cancellation of any such election under this Agreement, the load or loads shall be governed by the all requirements obligations of the Seller and the Member in this Section, and notice of same shall be provided to the Rural Utilities Service ("RUS") by the member. Such loads which are transferred to Seller's all-requirements obligations shall not thereafter be switched by Member to a different power supplier.

c. Should any such election by Member involve the acquisition of new service territory currently served by another power supplier or municipal utility, Member shall provide evidence to Seller and RUS in the new Load Purchase Agreement

that the acquired territory must be served by the current power supplier as a condition of the acquisition of the new load.

Seller will provide transmission, substation, and ancillary services without discrimination or adverse distinction with regard to rates, terms of service or availability of such service as between power supplies under paragraphs above and Member will pay charges therefore to Seller. Seller also agrees to allow, at Member's sole cost and expense, such additional interconnection as may be reasonably required to provide such capacity and energy as contemplated in the above paragraphs.

Member will be solely responsible for all additional cost associated with the exercise of elections under the above paragraphs including but not limited to administrative, scheduling, transmission tariff and any penalties, charges and costs, imposed by the Midwest Independent System Operator ("MISO") or other authorities.

While Amendment 3 does allow a Member to procure up to 15% of its coincident peak demand from an off-system resource, it does not expressly guarantee that a Member may do so in its sole discretion. For instance, if every Member of EKPC chose to procure 15% of its coincident peak demand from an off-system resource, the sum of these procurements would quickly exceed the overall limitation that such purchases could never exceed 5% of EKPC's rolling average coincident peak demand for the single calendar month with the highest peak demand occurring during each of the preceding three (3) years. The resulting ambiguity inherent in Amendment 3's allocation methodology is likely the product of the fact that it was principally drafted by RUS for the primary purpose of extending the existing term of the Wholesale Power Contract. In fact, since the Wholesale Power Contract is one of the primary collateral assets relied upon by RUS to secure repayment of loans made to EKPC, the allowance of any portion of a distribution cooperative's power needs to be purchased off-system was a major concession by RUS. Perhaps for that reason, the language of Amendment 3 is unclear with regard to the circumstances by which allocations of such off-system resources shall be apportioned.

Moreover, the fact that Amendment 3 was aimed at economic development – and not a carte blanche grant of authority to purchase power from non-EKPC resources – is confirmed by the fact that any off-system power purchases are required to be load-following. Due to the long lead times associated with resource planning, Amendment 3 includes strict notice requirements that include eighteen months of advance notice for any load greater than 5 MW that a distribution cooperative intends to leave or return to the EKPC system. Thus, in exchange for having the option to purchase energy from a non-EKPC resource, electing distribution cooperatives expressly assumed the risk for meeting the energy needs of the designated load(s).

At the October 2003 meeting of EKPC's Board, discussion was had regarding the fact that not all of the Member distribution cooperatives were willing to sign Amendment 3 and there was still no clear methodology for how each Member's share of the available off-system power supply option would be apportioned. Mr. Palk outlined a plan whereby each cooperative would have a prescribed period of time in which to submit a plan for use of its initially allocated 5% of the off-system power supply option. If a Member's plan was not presented or enacted upon as presented, then that Member's allocation would be returned to the pool. Any other Member desiring more than its initial allocation could then make a request for an additional allocation. Mr. Palk proposed that the pool would be managed by a group comprised of a mix of Member system managers, EKPC Directors and EKPC staff, which would rotate. Mr. Palk opined that the advantages to having a trading mechanism like the one he proposed would be that: 1) everyone has an opportunity to participate; 2) such a pool is intended to be used the way RUS wanted it established; and 3) it prescribed an orderly system of administration. On November 21, 2003, EKPC and Grayson entered into and made Amendment 3 to the Wholesale Power Contract. Amendment 3 was approved by the RUS Administrator on May 6, 2004. EKPC's

Board adopted Board Policy 305, which essentially followed Mr. Palk's recommended allocation procedure, on March 9, 2004.

Amendment 3 was first formally invoked by Jackson Energy Cooperative Corporation ("Jackson Energy"), when EKPC's Board approved a resolution on July 13, 2010 authorizing Jackson Energy to purchase 375 kW from Wellhead Energy, in accordance with Board Policy 305. Two months later, Jackson Energy filed a second application to purchase 40 MW of capacity and energy from Owensboro Municipal Utilities ("OMU") under Amendment 3.² In December 2011, EKPC's Board approved a resolution authorizing Owen Electric Cooperative, Inc. ("Owen Electric") to purchase 1 MW of solar-powered electricity from NuFranc, Inc. These applications spurred considerable discussion about the purpose and impact of Amendment 3 on EKPC's Members. Throughout 2011, the topic was included as an agenda item in various meetings involving Board Committees and by EKPC's full Board. These discussions, which centered around the off-system power supply option in Amendment 3 and the need to firmly determine an allocation procedure, led to the preparation of a proposed Amendment 5, which took various forms. The minutes of meetings including discussions involving Amendment 3/Amendment 5 demonstrate a desire to maximize the economic development opportunities of EKPC's Members while avoiding the cost-shifting inequities imposed upon other Members as a result of removing load from EKPC's system.

A scheduled vote on Amendment 5 in November 2011 was delayed at the request of three Members who desired to independently evaluate the advantages and disadvantages of procuring off-system power supplies. The independent analysis stretched into May of 2012 and was presented to EKPC's management in June 2012. In response to the efforts of the three Members,

² Jackson Energy's planned power purchase equaled approximately 15% of its average coincidental peak demand for the previous 3 twelve month periods – making its application similar in scope to Grayson's request for 9.4 MW. Jackson Energy subsequently withdrew its notice.

EKPC agreed to give its Members sixty days to develop a Memorandum of Understanding (“MOU”) to govern the allocation of off-system power supply allocations as an alternative to Amendment 5. At the same time, EKPC’s Board approved a resolution pursuant to Board Policy 305 authorizing Jackson Energy to procure an additional 2.6 MW of energy from a distributed generation project and a landfill gas project. Owen’s authority to purchase 1 MW of solar power was simultaneously rescinded when the developer was unable to proceed with the project.

On June 22, 2012, Grayson sent a notice to EKPC stating its intent to purchase 10.7 MW of electricity from Magnum.³ Grayson’s notice stated that it expected to realize savings of \$800,000 per year by entering into the power supply agreement with Magnum, however, it did not provide a date upon which it proposed to actually begin taking such power or a description of the load that would be served by Magnum – as expressly required by Amendment 3. With the exception of Jackson Energy’s proposed power purchase, which was withdrawn, Grayson’s request was substantially greater than any prior request received under Amendment 3 and, if granted, would have allowed it to take the full 15% of its coincident peak demand.

At the EKPC Board’s Strategic Issues Committee meeting held on July 16, 2012, EKPC President and Chief Executive Officer, Mr. Tony Campbell, summarized Grayson’s request as well as EKPC’s interpretation of Amendment 3. Mr. Campbell explained that: 1) Amendment 3 is intended to allow every member to benefit from its 5% self-supply option; 2) electing Members taking greater than a 5% allocation should pay the stranded investment cost based on cost-shifting to remaining Members for that portion of its load(s) no longer served by EKPC; and 3) no Member should exceed 5% without the consent of another Member who agrees to forfeit a portion of its 5% allocation. Mr. Campbell provided two options for responding to Grayson’s

³ See Petition, Exhibit 3. Grayson’s proposed purchase of 10.7 MW clearly exceeded its maximum available capacity under Amendment 3.

notice in a manner consistent with EKPC's interpretation of Amendment 3 and Board Policy 305, including: 1) other Members may assist Grayson by voluntarily relinquishing a portion of their 5% allocation;⁴ or 2) EKPC would be willing to purchase the amount of electricity available to Grayson over and above its 5% (thereby allowing the entire EKPC system to benefit) if it was economical to do so and the Public Service Commission would approve it.

On August 9, 2012, Grayson sent an amended notice to EKPC informing that it now intended to only purchase 5 MW of electricity from Magnum in 2012. Again, however, no firm date for the purchases to commence was provided and no particular load to be served by Magnum was identified. On August 24, 2012, Grayson and Magnum entered into the power supply agreement that allowed Grayson to purchase "up to 9.4 megawatts" (the "Magnum Contract").⁵ Grayson did not file the Petition seeking approval of the Magnum Contract until November 19, 2012 – nearly three months later – which was the first time EKPC had an opportunity to review the agreement.

When the initial deadline for developing a MOU between EKPC's Members approached in August 2012, EKPC agreed to the Members' request to delay a vote on the proposed Amendment 5 for an additional sixty days to allow for more work on the contemplated MOU. That effort continued through mid-December when the draft of a tentative MOU was presented to EKPC and its Members for review. While the Members were working on the MOU, the EKPC Board's Strategic Issues Committee also decided to take no action on the Magnum Contract under Board Policy 305. Grayson's President and Chief Executive Officer was a

⁴ On information and belief, two of EKPC's Members offered to share a portion of their 5% allocation with Grayson in order to help diffuse the controversy, but Grayson rejected the offers.

⁵ See Petition, Exhibit 5.

member of the EKPC Board's Strategic Issues Committee, was present at the August 13th meeting and agreed with the Committee's decision.

In the meantime, Grayson filed a notice of intent to file a base rate case with the Commission as well as a lawsuit against EKPC, Charleston Bottoms RECC ("Charleston Bottoms") and EKPC's other fifteen Members in the Mason Circuit Court on October 11, 2012.⁶ Grayson asserted that it had an ownership interest in Charleston Bottoms and that it had been denied its rightful share of the distributed assets of Charleston Bottoms. As a result, Grayson claimed that it was being forced to seek an increase in its base rates. Not one of the other fifteen Members of EKPC has joined Grayson in asserting an ownership interest. In a Counterclaim asserting that Grayson's Complaint was an abuse of process, EKPC alleged that Grayson filed the action in the Mason Circuit Court with the intent "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" and "to give [Grayson] 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."

At the November meeting of the EKPC Board's Strategic Issues Committee, it was pointed out that sixty days had elapsed since action on the Magnum Contract was first tabled. Grayson's President and Chief Executive Officer then requested that the matter be tabled once again, until the Committee's next meeting in December. A motion adopting this request was passed by the Committee.

Shortly thereafter, Grayson filed its Petition against EKPC on November 19, 2012, asking the Commission to: (1) grant authority to Grayson to purchase power from Magnum

⁶ The Members were not named as defendants until the filing of an Amended Complaint on October 24, 2012.

Drilling of Ohio, Inc. (“Magnum”); (2) declare that Grayson could purchase power from Magnum pursuant to Amendment 3 of the Wholesale Power Contract; (3) require EKPC to comply with the terms and conditions of Amendment 3 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.⁷ Grayson also asked the Commission to impose a “civil penalty” against EKPC for allegedly failing to comply with its obligations under Amendment 3,⁸ and find that EKPC has engaged in “an unfair and illegal restraint of trade.”⁹

EKPC filed its Answer and Motion to Dismiss on January 11, 2013, pointing out that, *inter alia*: (1) much of Grayson’s Petition pertained to claims that were beyond the scope of the Commission’s jurisdiction over “rates” and “service”;¹⁰ (2) Grayson’s claim was unripe in light of its own requests that EKPC’s Board not act upon its notice attempting to invoke Amendment 3;¹¹ (3) each of Grayson’s purported “notices” relating to the Magnum contract was deficient and non-compliant with Amendment 3;¹² (4) Grayson improperly failed to join the other fifteen Members of EKPC who were indispensable parties;¹³ and (5) it was unclear whether Grayson’s contemplated contract with Magnum was in fact a reasonable alternative power supply option.¹⁴

⁷ See Petition, p. 1.

⁸ See *id.*, ¶¶ 14-17.

⁹ See *id.*, ¶ 17.

¹⁰ See Answer and Motion to Dismiss, pp. 15-16.

¹¹ See *id.*, pp. 16-17.

¹² See *id.*, p. 14.

¹³ See *id.*, pp. 17-18.

¹⁴ See *id.*, pp. 20-23.

The Magnum Contract contained two clauses which caused the agreement to automatically terminate in the event that Magnum failed to reach an agreement with EKPC regarding interconnection on or before February 28, 2013.¹⁵ However, Grayson specifically instructed Magnum not to have any contact with EKPC, and the Magnum Contract expired according to its own terms on February 28, 2013. EKPC filed a second motion to dismiss Grayson's Petition on April 29, 2013, asserting that the termination of the Magnum Contract rendered the case moot. Grayson filed an untimely response on May 17, 2013, which said that Grayson and Magnum had entered into "a verbal understanding for the extension [of the Magnum Contract] for a period of time beyond the date of February 28, 2013."¹⁶ However, this representation was simply untrue.¹⁷

On July 17, 2013, the Commission entered an Order that granted in part and denied in part EKPC's first Motion to Dismiss and, based upon Grayson's misrepresentation as to the status of the Magnum Contract, denied EKPC's second Motion to Dismiss. The Commission stated that EKPC Board approval is not necessary under Amendment 3.¹⁸ The Commission went on to state:

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

¹⁵ See Petition, Exhibit 5, ¶¶ 8, 17.

¹⁶ Grayson Response to EKPC's Motion to Dismiss, p. 1 (May 17, 2013).

¹⁷ See Notes 77-78, *infra*, and accompanying text.

¹⁸ See Order, p. 16 (July 17, 2013). The Commission did not address the significance or importance of EKPC Board Policy 305, which is binding upon EKPC's Board and Management, even if it has not been adopted by EKPC's Members.

ambiguous, the Commission should nonetheless impose an allocation sharing requirement, and whether any additional relief is warranted.¹⁹

Thus, the issues that are properly before the Commission are as follows: (1) whether the (expired) Magnum Contract was reasonable; (2) whether Grayson had delivered proper notice under Amendment 3; (3) whether Amendment 3 is ambiguous with regard to the allocation methodology; (4) whether the Commission should impose an allocation methodology in the event Amendment 3 is not ambiguous; and (5) whether any additional relief is warranted. The Commission also agreed with EKPC that the interests of EKPC's other Members were implicated and allowed them to seek intervention and address the question of what allocation methodology should be adopted.

Meanwhile, EKPC and its Members had continued negotiations on the MOU to resolve the allocation issue under Amendment 3 and reached a formal agreement on March 14, 2013.²⁰ Thus, when thirteen of EKPC's remaining fifteen Members sought intervention in this proceeding, they consistently supported the adoption of the MOU as an appropriate resolution to the decade old dispute. For instance, Shelby Energy Cooperative, Inc., Owen Electric Cooperative, Inc. and Fleming-Mason Energy Cooperative took the position that Amendment 3 was silent regarding the methodology to be used by the Members and urged the Commission to "strongly encourage EKPC and its Members to agree on a methodology that is fair and equitable to all members."²¹ In stating that the MOU was fair and equitable to all of EKPC's Members,

¹⁹ *Id.*, pp. 16-17.

²⁰ A copy of the MOU was attached as Exhibit 1 to Jackson Energy Cooperative Corporation's Motion to Intervene (July 29, 2013).

²¹ See Shelby Energy Cooperative Inc.'s Motion to Intervene, Exhibit 1 (July 29, 2013); Owen Electric Cooperative, Inc.'s Motion to Intervene, Exhibit A (July 26, 2013); Fleming-Mason Energy Cooperative's Motion to Intervene, Exhibit 1 (July 29, 2013).

Owen noted that the CEOs of all sixteen Members, including Grayson's, had approved the document.²² Blue Grass Energy Corporation, Big Sandy Rural Electric Cooperative Corporation, Cumberland Valley Rural Electric Cooperative Corporation, Licking Valley Rural Electric Cooperative Corporation, Inter-County Energy Cooperative Corporation; Nolin Rural Electric Cooperative Corporation, Clark Energy Cooperative and South Kentucky Rural Electric Cooperative Corporation all urged the Commission to find that "the MOU provides a reasonable and adequate methodology for the allocation of alternative sources of power under Amendment 3...."²³ Jackson Energy Cooperative Corporation agreed, stating, "Since the MOU addresses all issues raised by Grayson pertaining to Amendment 3, and specifically the methodology for allocation...the issue is moot and no longer needs Commission action or interpretation."²⁴ The case appeared to be nearly resolved when Grayson's Board approved the MOU on June 28, 2013.²⁵

Then, in the course of an informal conference held on August 8, 2013, Grayson informed Commission Staff, EKPC and the other intervening Members that it was considering rescinding its prior approval of the MOU. Although no reason was given for this turn of events, Grayson requested, and was given authority by Commission Staff to take depositions and conduct discovery.²⁶

²² See Owen Electric Corporation Motion to Intervene, Exhibit A (July 26, 2013).

²³ Joint Movants' Motion to Intervene, p. 3 (July 30, 2013).

²⁴ Jackson Energy Cooperative Corporation's Motion to Intervene, Exhibit 1 (July 29, 2013).

²⁵ See Staff Informal Conference Memorandum, p. 2 (Sept. 10, 2013).

²⁶ In response to Grayson's request, EKPC asked for and was granted similar authority. Though no formal procedural Order was entered, the timeframe for discovery was spelled out in the Commission Staff's September 10, 2013 Informal Conference Memorandum.

Following the Informal Conference, Grayson's Board voted to rescind its prior approval of the MOU, and, on September 11, 2013, Grayson filed a "Notice" that it was amending its Petition to substitute a power purchase agreement negotiated with Duke Energy Commercial Asset Management, Inc. ("Duke"), which Grayson had evaluated by EnerVision, in place of the expired Magnum Contract. EKPC responded by pointing out numerous procedural and substantive problems with Grayson's purported amendment, including *inter alia*: (1) there was no actual agreement with Duke, but merely a non-binding term sheet; (2) the term sheet was itself incomplete and failed to satisfy the minimum notice requirements of Amendment 3; (3) the proposed power purchase exceeded Grayson's Amendment 3 cap; (4) the proposed power purchase was not for a load-following product as required by Amendment 3; and (5) Grayson's own repudiation of the MOU prevented it from doing the very thing which it then sought to do.²⁷

Discovery was conducted by the parties throughout the remainder of 2013 and into early 2014. In all, EKPC took eleven depositions and issued two sets of data requests to Grayson. Grayson took five depositions and issued one set of data requests to EKPC and the intervening distribution cooperatives. On April 8, 2014, EKPC filed a motion to compel responses to certain data requests and deposition questions, which Grayson's counsel instructed his clients not to answer.

No further actions took place in the case until January 6, 2015, when Grayson filed an "Amended Petition" which this time purported to swap an unsigned power purchase agreement with Morgan Stanley Capital Group, Inc. in place of the non-binding term sheet negotiated through EnerVision. Grayson did not file any motion for leave to file the "Amended Petition" and, contemporaneous with this filing, EKPC is filing an Objection to Grayson's unauthorized

²⁷ See EKPC's Objection to Petitioner's Notice of Amendment (Sept. 24, 2013).

filing. Three months after filing its “Amended Petition” Grayson filed a Motion for a Hearing, which is the subject of this Response.

II. ARGUMENT

A. Grayson’s Motion for a Hearing on its Petition Should be Denied

Grayson’s one sentence Motion for a Hearing is characteristically imprecise. To the extent that Grayson is requesting a hearing on the claims asserted in its Petition, the Commission has already correctly pointed out, “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.”²⁸ Since Grayson’s two subsequent attempts to amend its Petition, if allowed, would only serve to change the power purchase agreement that is under consideration and contain no new substantive allegations, then Grayson’s Petition continues to fail to state a *prima facie* case against EKPC and no hearing is necessary on Grayson’s allegations. Grayson’s Petition should be dismissed and its Motion for a Hearing should be denied.²⁹

B. Grayson’s Motion for a Hearing on Issues Raised in the Commission’s July 17, 2013 Order is Premature

To the extent that Grayson is requesting a hearing on the issues identified by the Commission in its July 17, 2013 Order, Grayson’s motion is premature. To date, the Commission has not had an opportunity to review all the deposition transcripts that have been produced and compiled. Upon reviewing these records, the Commission will be better-positioned to determine on its own motion the extent to which any factual issues remain in

²⁸ See Order, p. 16 (July 17, 2013).

²⁹ If any hearing is held on Grayson’s Petition, then it is the party who will bear the burden of proof. See *In the Matter of Atmos Energy Corporation*, Order, Case No. 2005-00057 (Ky. P.S.C. Feb. 9, 2007) (“The Court of Appeals of Kentucky clearly stated...that ‘[a]pplicants before an administrative agency have the burden of proof.’ While the term ‘applicant’ is not defined in KRS Chapter 278, it is generally held to mean ‘[o]ne who requests something; a petitioner....’ The Commission finds that the AG is the applicant in this proceeding and that, contrary to his arguments, nothing in the language of KRS 278.260 relieves him from his burden of proof.”) citing *Energy Regulatory Comm. v. Kentucky Power Company*, 605 S.W.2d 46, 50 (Ky. App. 1980).

dispute and whether any hearing is actually required. If a hearing is deemed advisable by the Commission, then additional consideration should be given as to whether any further pre-hearing process is necessary. For instance, no discovery has been taken on the reasonableness of Grayson's newest unsigned, draft power purchase agreement with Morgan Stanley. Likewise, the Commission has yet to formally ask any questions regarding the issues it identified in its July 17, 2013 Order. For this reason, Grayson's Motion for a Hearing should be denied as premature.

**C. Discovery has Revealed Substantial Inconsistencies, Errors
and Mistakes in Grayson's Claims and Allegations**

EKPC is tendering herewith a CD containing transcripts of the depositions of the witnesses that EKPC has thus far deposed in this matter as well as the transcripts of two EKPC witnesses whom Grayson deposed but has not yet filed the transcript of said depositions. While it would take a complete review of the voluminous discovery gathered so far to completely determine whether a hearing is necessary to address the issues identified by the Commission, a sampling of some of the topics covered in these depositions might assist the Commission in this determination. Accordingly, EKPC offers the following highlights, as follows:

Amendment 3 to the Wholesale Power Contract and EKPC Board Policy 305

- Grayson's President acknowledged that there were concerns about how Amendment 3 might be used to the advantage of certain EKPC Members at the expense of other Members,³⁰ and that there were several interpretations of what Amendment 3 meant and how it should be implemented.³¹
- Grayson's Chief Financial Officer believed that the Amendment 3 cap is based upon "some convoluted formula."³²

³⁰ See Deposition Transcript of Carol Fraley, pp. 78-81.

³¹ See *id.*, p. 93.

³² See Deposition Transcript of Don Combs, p. 14. On information and belief, Mr. Combs has since retired from Grayson. All subsequent references to Grayson's Chief Financial Officer are nevertheless references to him.

- Grayson's Chief Financial Officer was unaware of any notice requirements under Amendment 3.³³
- EKPC offered to assist Grayson with drafting proper notice under Amendment 3 in 2013, but the offer was never acted upon.³⁴ Grayson's Directors were not informed of EKPC's offer of assistance.³⁵
- The majority of Grayson's Directors, as well as its President and Chief Financial Officer, are all unfamiliar with the concept of "load following,"³⁶ which arises under the Amendment 3 requirement to designate the load to be served by the non-EKPC resource.
- Grayson's energy consultant at EnerVision was familiar with the concept of load following, but could not tell whether load following was part of Amendment 3.³⁷
- Grayson's President testified that she was a participant in EKPC's Board meetings when Board Policy 305 was adopted and that she could not point to a particular provision of Board Policy 305 that was objectionable.³⁸

The MOU

- Although Grayson's Board rescinded its prior approval of the MOU, two of its Directors, its President and its Chief Financial Officer agreed that the MOU was intended to clarify lingering questions regarding how Amendment 3 should be implemented.³⁹ However, another Director also thought the MOU was "just a way of muddying the water."⁴⁰

³³ See Deposition Transcript of Don Combs, p. 34.

³⁴ See Deposition Transcript of David Crews, p. 73.

³⁵ See Deposition Transcript of Eddie Martin, p. 7.

³⁶ See Deposition Transcript of Donne Crum, p. 13; Deposition Transcript of Eddie Martin, p. 14; Deposition Transcript of Harold Dupuy, p. 12; Deposition Transcript of Jimmy Whitt, p. 14; Deposition Transcript of Carol Fraley, p. 68 (unfamiliar with load following requirements in Amendment 3); Deposition Transcript of Don Combs, p. 32.

³⁷ See Deposition Transcript of Greg Shepler, p. 21.

³⁸ See Deposition Transcript of Carol Fraley, pp. 85-86.

³⁹ See Deposition Transcript of Donald Crum, p. 14; Deposition Transcript of Eddie Martin, pp. 16-17; Deposition Transcript of Carol Fraley, pp. 81-82; Deposition Transcript of Don Combs, pp. 15-16; *see also* Deposition Transcript of David Crews, pp. 43, 51.

⁴⁰ See Deposition Transcript of Harold Dupuy, p. 15.

- Grayson's counsel instructed Grayson's President, who was one of the lead negotiators of the MOU, not to answer the question as to what the negotiators of the MOU hoped to accomplish.⁴¹
- Two of Grayson's Directors were unaware that Grayson's President had even been on the MOU negotiating team.⁴²
- Three of Grayson's Directors professed general unfamiliarity with the MOU.⁴³
- Two of Grayson's Directors incorrectly believed that the MOU extended and lengthened the notice requirements of Amendment 3.⁴⁴
- One of Grayson's Directors was uncertain what action Grayson's Board had taken on the MOU.⁴⁵ Grayson's Board Chairman could not recall why Grayson approved the MOU in the first place.⁴⁶ Another Director said he voted to approve the MOU because Grayson's President and Counsel said the Board should approve it.⁴⁷ A fourth Director could not recall why he originally voted to approve the MOU.⁴⁸
- Grayson's counsel instructed Grayson's President not to answer the question of whether she had any knowledge of why Grayson's Board originally approved the MOU.⁴⁹
- Grayson's counsel also instructed Grayson's Manager of Technical Services to not answer the question of whether the MOU would assist Grayson in procuring energy from alternative sources."⁵⁰

⁴¹ See Deposition Transcript of Carol Fraley, pp. 90-103.

⁴² See Deposition Transcript of Harold Dupuy, p. 17; Deposition Transcript of Roger Trent, p. 40.

⁴³ See Deposition Transcript of Roger Trent, pp. 33, 39; Deposition Transcript of Ken Arrington, p. 20; Deposition Transcript of William Rice, p. 11.

⁴⁴ See Deposition Transcript of Jimmy Whitt, pp. 14-15, 17; Deposition Transcript of Donald Crum pp. 17-18.

⁴⁵ See Deposition Transcript of William Rice, pp. 11-12.

⁴⁶ See Deposition Transcript of Roger Trent, p. 41.

⁴⁷ See Deposition Transcript of Ken Arrington, p. 21.

⁴⁸ See Deposition Transcript of Jimmy Whitt, pp. 15-16.

⁴⁹ See Deposition Transcript of Carol Fraley, p. 101.

⁵⁰ See Deposition Transcript of Bryon Poling, pp. 15-21.

- Prior to Grayson's Board repudiating the MOU, Grayson's CEO sent a letter to Tony Campbell, EKPC's President and CEO, congratulating him for helping to facilitate the successful negotiation of the MOU.⁵¹
- Grayson's Board Chairman was unaware that the Board had subsequently voted to rescind its approval of the MOU,⁵² and thought Grayson was still willing to enter into the MOU.⁵³
- One of Grayson's Directors said he did not know why Grayson's management subsequently made the recommendation to rescind the MOU.⁵⁴ However, Grayson's Chief Financial Officer said he did not like that the MOU would have prevented Grayson from purchasing the maximum available Amendment 3 capacity in perpetuity (to the exclusion of other Members).⁵⁵
- Grayson's counsel instructed Grayson's President not to answer the question as to why the Board decided to repudiate the MOU.⁵⁶ However, two of Grayson's Directors said they voted to rescind the prior approval of the MOU because they believed, after reading the Commission's July 17, 2013 Order, that they could get a better outcome than what the MOU offered.⁵⁷
- Despite the rescission, several of Grayson's Directors testified that they were unaware of any problems with the MOU.⁵⁸ EnerVision's lead analyst agreed that the MOU would have facilitated Grayson's purchase of a 24x7 energy product from Duke.⁵⁹
- Grayson's counsel also instructed Grayson's President not to provide the factual basis for Grayson's claim in its November 26, 2013 Response to EKPC's Data Requests that certain conduct of EKPC caused Grayson to repudiate the MOU.⁶⁰

⁵¹ See Letter from Carol Fraley to Tony Campbell re Amendment 3 (July 3, 2013).

⁵² See Deposition Transcript of Roger Trent, p. 41.

⁵³ See *id.*

⁵⁴ See Deposition Transcript of Ken Arrington, p. 23.

⁵⁵ See Deposition Transcript of Don Combs, pp. 19-20, 23.

⁵⁶ See Deposition Transcript of Carol Fraley, p. 101.

⁵⁷ See Deposition Transcript of Donald Crum, p. 25; Deposition Transcript of Eddie Martin, pp. 18-19, 24; Deposition Transcript of Harold Dupuy, pp. 19-20.

⁵⁸ See Deposition Transcript of Roger Trent, p. 41; Deposition Transcript of Donald Crum, p. 26; Deposition Transcript of Eddie Martin, p. 23.

⁵⁹ See Deposition Transcript of Greg Shepler, pp. 39-40.

⁶⁰ See Deposition Transcript of Carol Fraley, p. 102.

However, five of Grayson's Directors and its Chief Financial Officer all said they had no information which would support Grayson's claim that EKPC's conduct somehow motivated the vote to rescind the MOU.⁶¹

Grayson's Contract with Magnum Drilling of Ohio, Inc.

- Prior to the project with Grayson, Magnum had never generated electric power and its initial estimates and conversions were inaccurate.⁶²
- Grayson's President acknowledged that Grayson's Magnum Contract was unlike other Amendment 3 projects in the EKPC system because it was larger than the peak load on the circuit where it would be located.⁶³
- Although several of Grayson's Directors were told that EKPC had rejected or hindered the Magnum Contract, none of them could recall the source of that information.⁶⁴
- One Grayson Director, who is also Grayson's representative on the EKPC Board, stated that he believed Grayson alone should benefit from the Magnum Contract and the benefits should not be shared across the EKPC system.⁶⁵ In the course of one of Grayson's Board Meetings he opined that EKPC should not be involved in the Magnum project at all.⁶⁶
- The same Grayson Director has a son who owned natural gas wells that would sell fuel to Magnum in furtherance of the Magnum Contract,⁶⁷ however, the apparent conflict of interest was not disclosed to Grayson's Board.⁶⁸ According to Grayson's President, Grayson's policy on conflicts of interest does not extend to Directors' family members.⁶⁹

⁶¹ See Deposition Transcript of Roger Trent, p. 42; Deposition Transcript of Donald Crum, pp. 26-27; Deposition Transcript of Eddie Martin, pp. 24-25; Deposition Transcript of Harold Dupuy, p. 23; Deposition Transcript of Jimmy Whitt, pp. 19-20; Deposition Transcript of Don Combs, pp. 25-26.

⁶² See Deposition Transcript of Carol Fraley, pp. 17, 19.

⁶³ See *id.*, p. 75.

⁶⁴ See Deposition Transcript of Donald Crum, pp. 13-14; Deposition Transcript of Eddie Martin, pp. 6-7.

⁶⁵ See Deposition Transcript of Ken Arrington, p. 13.

⁶⁶ See *id.*, pp. 11-12.

⁶⁷ See *id.*, pp. 15-17, 29.

⁶⁸ See Deposition Transcript of Carol Fraley, pp. 13-14.

⁶⁹ See *id.*, p. 14.

- Grayson never saw any financial model supporting the Magnum Contract and was unaware what return on investment Magnum's owners would receive.⁷⁰ Likewise, Grayson's Chief Financial Officer could not recall any independent financial or technical analysis of the Magnum project being performed on Grayson's behalf.⁷¹
- Grayson's Board Chairman said he was unaware of ever being provided with a written estimate of the cost savings to be derived from the Magnum Contract.⁷²
- One of Grayson's Directors believed that the Magnum project would be a source of new revenue to Grayson.⁷³
- Although the Magnum Contract required Magnum to arrange for the interconnection with EKPC's system, Grayson's President specifically asked Magnum not to contact EKPC directly.⁷⁴
- In the course of his conversations with EKPC personnel regarding Magnum's interconnection with the EKPC system, Grayson's Manager of Technical Services said he found EKPC to be helpful.⁷⁵
- Grayson's President consented to the EKPC Board Strategic Issues Committee's decision to defer consideration of Grayson's Magnum proposal in the fall of 2012.⁷⁶
- In direct contradiction to what Grayson alleged in its untimely May 17, 2013 Response to EKPC's Second Motion to Dismiss, Grayson's Directors and officers consistently testified that the Magnum Contract terminated according to its terms on February 28.⁷⁷ Grayson's representation to the Commission that the Magnum Contract had been extended was not accurate, there was no extension.⁷⁸

⁷⁰ See *id.*, p. 45.

⁷¹ See Deposition Transcript of Don Combs, pp. 13, 35; see also Deposition Transcript of Carol Fraley, p. 40; Deposition Transcript of Roger Trent, p. 22.

⁷² See Deposition Transcript of Roger Trent, p. 15.

⁷³ See Deposition Transcript of Ken Arrington, p. 7.

⁷⁴ See Deposition Transcript of Carol Fraley, pp. 32-33.

⁷⁵ See Deposition Transcript of Bryon Poling, p. 9.

⁷⁶ See Deposition Transcript of Carol Fraley, p. 60.

⁷⁷ See *id.*, pp. 62-63; Deposition Transcript of Eddie Martin, pp. 11-12; Deposition Transcript of Donald Crum, p. 39.

Grayson's Power Purchase Term Sheet with Duke

- Grayson's Duke proposal was unlike other Amendment 3 projects because its generation source was not located within Grayson's service territory.⁷⁹
- Grayson's Directors and officers uniformly agreed that no written power purchase agreement with Duke existed at the time Grayson asked the Commission to consider and approve the Duke transaction instead of the Magnum Contract.⁸⁰
- Grayson's Directors offered conflicting testimony as to whether Grayson's Board had even agreed to the term sheet filed with the Commission.⁸¹
- Three of Grayson's Directors were uncertain whether Grayson had retained EnerVision (or anyone) to evaluate the proposed Duke transaction.⁸²
- Grayson's President and Chief Financial Officer confirmed that no one at Grayson performed an independent review of the economic value of the proposed Duke transaction, but was instead relying exclusively upon EnerVision's analysis.⁸³
- EnerVision's lead analyst confirmed that the Duke transaction was for a block power purchase and not a load following product.⁸⁴ The EnerVision analysis therefore excluded the possibility of there being imbalance charges that would result from a load-following requirement.⁸⁵

⁷⁸ See Deposition Transcript of Carol Fraley, pp. 63-64; Deposition Transcript of Donald Crum, pp. 39-40; Deposition Transcript of Eddie Martin, pp. 11-12; Deposition Transcript of Ken Arrington, p. 14; Deposition Transcript of Harold Dupuy, p. 8.

⁷⁹ See Deposition Transcript of Carol Fraley, p. 75.

⁸⁰ See Deposition Transcript of Roger Trent, pp. 16-17; Deposition Transcript of Donald Crum, p. 28; Deposition Transcript of Eddie Martin, p. 7; Deposition Transcript of Ken Arrington, p. 25; Deposition Transcript of Harold Dupuy, pp. 25-27; Deposition Transcript of Jimmy Whitt, p. 26; Deposition Transcript of Carol Fraley, p. 106; Deposition Transcript of Don Combs, p. 27.

⁸¹ See Deposition Transcript of Roger Trent, pp. 16-17; Deposition Transcript of Jimmy Whitt, p. 27; cf. Deposition Transcript of Donald Crum, p. 27.

⁸² See Deposition Transcript of William Rice, pp. 15-16; Deposition Transcript of Jimmy Whitt, p. 24; Deposition Transcript of Roger Trent, pp. 30-31; Deposition Transcript of Donald Crum, p. 38.

⁸³ See Deposition Transcript of Carol Fraley, p. 114; Deposition Transcript of Don Combs, p. 29.

⁸⁴ See Deposition Transcript of Greg Shepler, p. 40.

⁸⁵ See *id.*, pp. 61-62.

- EnerVision's analyst and Grayson's President confirmed that the Duke transaction was for a quantity of power that exceeded the maximum amount of power available to Grayson under Amendment 3.⁸⁶
- Some of Grayson's Directors testified that they were satisfied with the level of due diligence performed on the proposed EnerVision deal,⁸⁷ but they had trouble explaining what type of energy product Grayson would be buying,⁸⁸ whether transmission rights were included;⁸⁹ where the energy would actually be delivered by Duke;⁹⁰ the amount of the savings to be derived from the transaction;⁹¹ the nominal value of the transaction;⁹² and the length of the term of the agreement.⁹³
- At least two of Grayson's Directors admitted they had not reviewed any analysis provided by EnerVision or Grayson Staff.⁹⁴
- When asked, Grayson's Directors and officers could not identify a single specific risk factor that they had taken into account in relation to the Duke transaction.⁹⁵
- EnerVision's analysis of the Duke proposal was based upon different pricing terms than those set forth in the term sheet filed with the Commission, which Grayson's President was unaware of until her deposition.⁹⁶

⁸⁶ See Deposition Transcript of Greg Shepler, pp. 35-36; Deposition Transcript of Carol Fraley, pp. 115-118.

⁸⁷ See Deposition Transcript of Eddie Martin, p. 30; Deposition Transcript of Harold Dupuy, pp. 31-32.

⁸⁸ See Deposition Transcript of Donald Crum, p. 15; Deposition Transcript of Ken Arrington, p. 5; Deposition Transcript of Jimmy Whitt, p. 23.

⁸⁹ See Deposition Transcript of Donald Crum, p. 30.

⁹⁰ See Deposition Transcript of Roger Trent, pp. 37-39; Deposition Transcript of Ken Arrington, pp. 27-28; Deposition Transcript of Harold Dupuy, pp. 34-35; Deposition Transcript of William Rice, p. 13; Deposition Transcript of Jimmy Whitt, p. 22.

⁹¹ See Deposition Transcript of Jimmy Whitt, pp. 22-23.

⁹² See Deposition Transcript of Roger Trent, p. 26; Deposition Transcript of Harold Dupuy, p. 35.

⁹³ See Deposition Transcript of Roger Trent, p. 26.

⁹⁴ See Deposition Transcript of Jimmy Whitt, p. 24; Deposition Transcript of Ken Arrington, p. 27.

⁹⁵ See Deposition Transcript of Eddie Martin, p. 26; Deposition Transcript of Ken Arrington, p. 28; Deposition Transcript of Carol Fraley, p. 119; Deposition Transcript of Don Combs, p. 33.

⁹⁶ See Deposition Transcript of Carol Fraley, pp. 133-135.

- EnerVision’s analysis of the Duke proposal was also based upon EKPC’s 2011 financial forecast, which did not include savings realized through its entry into PJM,⁹⁷ thereby likely overstating the benefit of the proposed transaction.⁹⁸
- EnerVision’s analysis did not include whether there would be any congestion charges associated with the Duke proposal,⁹⁹ nor did it take into account Grayson’s load factor.¹⁰⁰
- Grayson’s President indicated she did not believe that PJM’s locational marginal pricing system would impact the cost to Grayson because Grayson had negotiated for a fixed price to purchase power from Duke.¹⁰¹ EnerVision’s analyst disagreed,¹⁰² and said that, while the energy price was fixed, Grayson would be subject to price risk for costs relating to capacity, transmission, imbalances and ancillary services.¹⁰³ Moreover, Grayson’s President was generally uncertain what additional “pass-through” costs were included in the Duke transaction.¹⁰⁴
- EnerVision’s estimate as to the administrative fees that would be charged to Grayson by ACES Power Marketing were a “total guess.”¹⁰⁵
- Grayson’s Directors and Chief Financial Officer were uncertain whether the Duke transaction was really a power purchase involving the physical delivery of energy or simply a hedging plan.¹⁰⁶ Grayson’s President called the Duke transaction “just a paper transaction,”¹⁰⁷ while EnerVision’s lead analyst insisted it was a contract for the physical delivery of power.¹⁰⁸

⁹⁷ See *id.*, p. 125.

⁹⁸ See Deposition Transcript of Greg Shepler, pp. 48-49.

⁹⁹ See *id.*, pp. 37-38.

¹⁰⁰ See *id.*, p. 47.

¹⁰¹ See Deposition Transcript of Carol Fraley, p. 132.

¹⁰² See Deposition Transcript of Greg Shepler, p. 44.

¹⁰³ See *id.*, pp. 46-47.

¹⁰⁴ See Deposition Transcript of Carol Fraley, p. 123.

¹⁰⁵ See Deposition Transcript of Greg Shepler, pp. 64-65.

¹⁰⁶ See Deposition Transcript of Roger Trent, pp. 20-21; Deposition Transcript of Eddie Martin, p. 26; Deposition Transcript of Ken Arrington, p. 27; Deposition Transcript of Don Combs, p. 29.

¹⁰⁷ See Deposition Transcript of Carol Fraley, p. 113.

¹⁰⁸ See Deposition Transcript of Greg Shepler, p. 46.

- To the extent the Duke transaction was a contract for the purchase of power to be physically delivered to Grayson, Grayson's Directors and President were unfamiliar with whether Grayson would have to interact with PJM or what those interactions would involve.¹⁰⁹ Likewise, EnerVision was uncertain whether point-to-point transmission would be used or whether Grayson would be able to avail itself of EKPC NITS service.¹¹⁰
- Grayson's Directors were unaware as to whether anyone conducted any transmission studies for the proposed Duke transaction.¹¹¹ Grayson's management confirmed that no such studies were undertaken.¹¹²

General Matters

- Grayson never conducted a request-for-proposal or bidding process for any non-EKPC generation.¹¹³
- When asked, Grayson's Directors could not point to any particular instance where EKPC had failed to respond to a question posed by Grayson concerning the purchase of power from a non-EKPC resource.¹¹⁴
- Grayson's Board Chairman is uncertain how this case will help Grayson obtain power more cheaply than that which is purchased from EKPC.¹¹⁵
- Three of Grayson's Directors, including one who is also Grayson's representative on EKPC's Board, are unaware what specific relief Grayson is seeking in this case.¹¹⁶

¹⁰⁹ See Deposition Transcript of Roger Trent, p. 23; Deposition Transcript of Donald Crum, pp. 33-34; Deposition Transcript of Eddie Martin, p. 26; Deposition Transcript of Harold Dupuy, pp. 38-39; Deposition Transcript of Jimmy Whitt, p. 25; Deposition Transcript of Carol Fraley, p. 131.

¹¹⁰ See Deposition Transcript of Greg Shepler, pp. 57-58.

¹¹¹ See Deposition Transcript of Roger Trent, p. 22; Deposition Transcript of Donald Crum, p. 34; Deposition Transcript of Eddie Martin, p. 30; Deposition Transcript of Harold Dupuy, p. 39.

¹¹² See Deposition Transcript of Don Combs, pp. 32, 35.

¹¹³ See Deposition Transcript of Bryon Poling, p. 11.

¹¹⁴ See e.g. Deposition Transcript of Eddie Martin, pp. 7, 14.

¹¹⁵ See Deposition Transcript of Roger Trent, p. 9.

¹¹⁶ See Deposition Transcript of Ken Arrington, p. 6; Deposition Transcript of William Rice, p. 7; Deposition Transcript of Jimmy Whitt, p. 6.

III. CONCLUSION

The depositions of Grayson's Directors and Officers confirm that Grayson's efforts to invoke and utilize Amendment 3 have been flawed from the beginning. EKPC does not oppose the efforts of its Members to purchase power from alternative sources within the parameters set forth in Amendment 3 and believes that the Commission may be helpful in determining what methodology should be employed by EKPC and its sixteen Members in order to assure that Amendment 3 is utilized in a manner that is fair and consistent for all of its Members.

WHEREFORE, on the basis of the foregoing, EKPC respectfully requests the Commission to consider the evidence being filed of record herewith in order to determine what additional information or discovery may be necessary as a prerequisite to scheduling any formal hearing in this matter, if one should be necessary, and to enter a procedural order providing for the appropriate process to accomplish same.

Respectfully submitted,



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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 20th day of April, 2015, addressed to the following:

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