

# Goss ■ Samford PLLC



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June 22, 2015

**RECEIVED**

**JUN 22 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 of East Kentucky Power Cooperative, Inc.'s Notice of Filing of Memorandum of Understanding Between Grayson Rural Electric Cooperative Corporation and East Kentucky Power Cooperative, Inc. dated May 15, 2015. Please return a file-stamped copy 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) - 150622

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

JUN 22 2015

In the Matter of:

PUBLIC SERVICE  
COMMISSION

PETITION AND COMPLAINT OF GRAYSON )  
RURAL ELECTRIC COOPERATIVE )  
CORPORATION FOR AN ORDER )  
AUTHORIZING PURCHASE OF ELECTRIC )  
POWER AT THE RATE OF SIX CENTS PER )  
KILOWATTS OF POWER VS A RATE IN ) 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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NOTICE OF FILING

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Comes now East Kentucky Power Cooperative, Inc. ("EKPC"), by and through counsel, and in conformity with the Order entered herein on June 19, 2015, does hereby tender the Memorandum of Understanding Between Grayson Rural Electric Cooperative Corporation and East Kentucky Power Cooperative, Inc., entered into by and between the Boards of EKPC and Grayson Rural Electric Cooperative Corporation dated May 15, 2015 (the "Settlement Agreement"). With respect to the Commission's directive to file "any other document addressing the allocation of alternatively sourced power under Amendment 3," EKPC respectfully states that the Amendment 3 Memorandum of Understanding (as referenced in numerical paragraph 3 of the Settlement Agreement) was previously filed under seal in the record of this matter.<sup>1</sup>

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<sup>1</sup> See, e.g., *Motion for Full Intervention of Owen Electric Cooperative, Inc.*, at Exhibit B (filed July 26, 2013).

This 22<sup>nd</sup> day of June, 2015.

Respectfully submitted,

A handwritten signature in blue ink, appearing to be "D.S. Samford", written over a horizontal line.

Hon. Mark David Goss  
Hon. David S. Samford  
Goss Samford, PLLC  
2365 Harrodsburg Road, Suite B-325  
Lexington, KY 40504  
(859) 368-7740

*Counsel for East Kentucky Power Cooperative, Inc.*

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the foregoing was served by depositing same into the custody and care of the U.S. Postal Service, postage pre-paid, on this the 22<sup>nd</sup> day of June, 2015, addressed to the following individuals:

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

Don Prather  
Mathis, Riggs & Prather, P.S.C.  
500 Main Street, Suite 5  
Shelbyville, KY 40065

Clayton O. Oswald  
Taylor, Keller & Oswald, PLLC  
P.O. Box 3440  
1306 West Fifth Street, Suite 100  
London, KY 40743-003440

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

James M. Crawford  
Crawford & Baxter, PSC  
523 Highland Avenue  
P. O. Box 353  
Carrollton, KY 41008

Hon. W. Jeffrey Scott  
W. Jeffrey Scott, P.S.C.  
311 W. Main Street  
P.O. Box 608  
Grayson, Kentucky 41143



*Counsel for East Kentucky Power Cooperative, Inc.*

**MEMORANDUM OF UNDERSTANDING**  
**BETWEEN**  
**GRAYSON RURAL ELECTRIC COOPERATIVE CORPORATION and**  
**EAST KENTUCKY POWER COOPERATIVE INC.**

This Memorandum of Understanding serves to document the understanding reached during the meeting between EKPC's Executive Committee Board Members and Grayson Board Members held on the 23rd day of April 2015. The following summarizes the key terms agreed upon between Grayson Rural Electric Cooperative Corporation ("Grayson") and East Kentucky Power Cooperative, Inc. ("EKPC"):

1. Grayson and EKPC will file appropriate motions to dismiss any and all litigation, PSC cases, pending claims and actions against one another within ten days of Grayson's and EKPC's acceptance of this offer, including: the Mason Circuit Court litigation; the Public Service Commission ("PSC") Amendment 3 Investigation; Grayson's Motion to Reopen the last EKPC rate case before the PSC; and EKPC's PSC Fuel Adjustment Clause Case. Grayson, EKPC and all other Owner-Members will be responsible for paying its own respective costs, expenses and professional fees.
2. Upon receipt of the last Order dismissing the final pending claim against either party, EKPC will agree to provide up to 100 hours of professional services annually to each of the 16 member systems, for a total of 1,600 hours for a period not to exceed 10 years upon acceptance of this agreement. The types of services to be provided will be at the discretion of the members, provided the services are customary and reasonable. On no less than a semi-annual basis, EKPC will provide a summary of any services provided to the Owner-Member's respective Boards.
3. EKPC will use good faith efforts to re-secure adoption of the Amendment 3 Memorandum of Understanding (MOU) that was previously approved by virtually all of EKPC's Members in 2013. Grayson will approve, adopt and execute the MOU – as written at the time of adoption by other Members, and without further amendment – within thirty days of acceptance of this offer.
4. EKPC will host annual meetings for the Chief Financial Officers of its sixteen Owner-Members so that any Owner-Member might seek additional information or clarification regarding EKPC's long-term financial strategy and plans. In addition, EKPC will follow through on Mr. Anthony Campbell's offer to have annual meetings with the leadership of each Owner-Member of EKPC to discuss the company's plans and to answer any questions.
5. Grayson and EKPC agree that: a) none of the terms of this agreement may be deemed an admission, actually or implicitly, of any wrongdoing or error on the part of either party;

and b) any and all claims that either company may have against each other as of the date of Grayson's acceptance, would be forever waived and released.

Grayson and EKPC further agree as follows:

First, the focus of Grayson's Mason Circuit Court case is upon the ownership and dissolution of Charleston Bottoms RECC (Charleston Bottoms). The only significant asset of Charleston Bottoms was the Spurlock No. 1 electric generating unit. Upon Charleston Bottoms' dissolution, Spurlock No. 1 continues to be owned directly by EKPC. While EKPC's Board sincerely regrets that Grayson feels it did not have adequate time to understand the reasons for, and the timing of, the dissolution of Charleston Bottoms, there should be no disagreement that Spurlock No. 1 has continued to provide a very affordable source of power to Grayson and EKPC's other 15 Members since the dissolution of Charleston Bottoms. Moreover, the associated creation of the Trust Indenture has been recognized by the PSC as a positive sign that EKPC has, and will continue to, overcome its previous financial challenges.

Second, Grayson's perspective that EKPC's current equity target is too high is welcomed as part of the ongoing discussion of EKPC's long-term financial direction. EKPC accepted the recommendations of the PSC's management audit, by improving its financial strength and EKPC is on pace to reach the Board approved Strategic Plan's target of a 15% equity ratio this year. As Mr. Kenneth Arrington will attest, no decision has been made by EKPC's Board regarding what additional equity ratio EKPC should seek to achieve. At the 2014 Strategic Retreat, EKPC's Board adopted a more flexible approach towards future equity goals and decided to lower the minimum equity ratio in its Bylaws at which point it would be able to pay capital credits to Members to be consistent with the terms and conditions in its RUS loans. That percentage has now moved from 40% equity to 20% equity. EKPC's Board will continue to discuss and, ultimately, to decide the next steps for the company's equity plan at its 2015 Strategic Retreat for any movement above 15%. Mr. Arrington will have the opportunity to present Grayson's position as part of this discussion and EKPC will look for opportunities to have all of its Members provide input prior to the next Strategic Retreat.

Third, EKPC is continuing to seek the best path forward for mitigating the cost of the abandoned Smith No. 1 assets. To date, EKPC has not made any decision regarding the disposition of those assets, nor has it sought to recover the principal costs of the assets. EKPC

understands that it is Grayson's position, in hindsight, that the Smith No. 1 assets should not have been procured in the first place. However, taking that position requires a person to ignore the information that was available to EKPC's Board at the time and forgets that Grayson, via its Director, was supportive of the assets' acquisition at the time. Regardless, any proposal for the final disposition of the Smith No. 1 assets must be approved by EKPC's Board and, ultimately, the PSC.

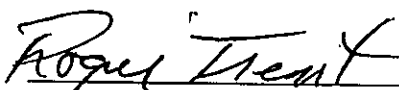
Fourth, EKPC assisted its Members in 2012 and 2013 in the negotiation of a MOU that would successfully resolve lingering uncertainties regarding the operation of Amendment 3 to EKPC's Wholesale Power Agreement. EKPC believes that the MOU would have greatly aided Grayson's efforts to acquire power from a non-EKPC source. As stated above, EKPC is willing, as part of this settlement, to seek new approvals of the MOU. However, no changes to the previously agreed upon draft will be permitted.

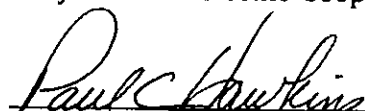
EKPC and Grayson share a common responsibility to act in the best interests of the customers at the end of the line, our Members. To do what is best for them, we need to end this litigation, bring unity and harmony back to the entire EKPC system and begin the process of restoring relationships that have been tested and broken by needless litigation.

Grayson and EKPC agree that litigation and negative PSC filings are not good for our end use members. Consequently, both parties agree to make good faith efforts in solving future issues/challenges outside of litigation and PSC filings.

This MOU is contingent upon all the remaining EKPC Owner-Members dismissing with prejudice the Mason County litigation.

On behalf of Grayson Rural Electric Cooperative Corporation and East Kentucky Power Cooperative Incorporated and after having been duly authorized, the foregoing Memorandum of Understanding is accepted.

 DATE 5/15/2015  
Roger Trent, Chairman  
Grayson Rural Electric Cooperative Corp.

 DATE 5-15-2015  
Paul Hawkins, Chairman

East Kentucky Power Cooperative Inc.