

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

In the Matter of:

**RECEIVED**

PETITION AND COMPLAINT OF GRAYSON )  
RURAL ELECTRIC COOPERATIVE CORPORATION )  
FOR AN ORDER AUTHORIZING PURCHASE OF )  
ELECTRIC POWER AT THE RATE OF SIX )  
CENTS PER KILOWATT HOUR UP TO 9.4 )  
MEGAWATTS 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. )

JUN 29 2015  
PUBLIC SERVICE  
COMMISSION

**CASE NO.  
2012-00503**

**RESPONSE OF GRAYSON RURAL ELECTRIC PER COMMISSION ORDER OF  
JUNE 19, 2015**

Comes now, Grayson Rural Electric Cooperative Corporation (Grayson) and for its Response to the Order of the Commission entered June 19, 2015 states as follows:

1. The Order directs that East Kentucky Power and Grayson file a copy of the Settlement Agreement referenced in the Joint Motion. Attached hereto is a copy of the "Settlement Agreement" dated May 15, 2015. This document is signed by the Chairmen of the Boards of both Grayson and EKPC.
2. With respect to the Commission's remaining concern relative to its reference in the July 17, 2013 Order to the following:

"Whether its advanced 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 ambiguous, the Commission should nonetheless impose an allocation sharing requirement, and whether any additional relief is warranted."

Grayson can only state that there is no written agreement that has ever been executed by all of the member systems of EKPC that address those particular matters. Certain of the Boards of the distribution cooperatives agreed to the adoption of such an

agreement known as a “Memorandum of Understanding”; however, none was entered into. Moreover, it is believed that two distribution cooperatives, Salt River and Taylor County never had any Board approval for such an agreement. Therefore, Grayson cannot supply the Commission with the information requested in the June 19, 2015 Order nor can it give the Commission any assurance that the issues raised by the Commission in the July 17, 2013 Order will be resolved. Grayson can only supply a copy of a proposed MOU that addresses the issues. That is attached hereto.

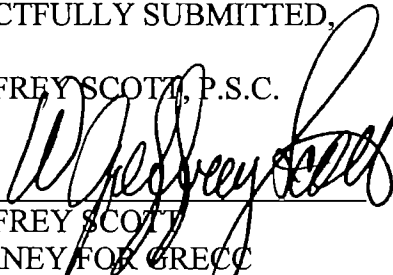
3. The “Settlement Agreement” simply provides in essence, that Grayson agrees to agree. It is impossible, however, based upon all of the foregoing, to set forth that to which Grayson will ultimately agree to as an amendment to a contract because it would require unanimity and no unanimity now exists among all of the distribution cooperatives.
4. Grayson has not been provided, by EKPC with an executed Amendment 3 (MOU) by all the other member systems.
5. The “Settlement Agreement” attached hereto was prepared in April of 2015 following meetings between the Board Executive Committee of EKPC and the Board of Grayson. The April 2015 “Settlement Agreement” preparation, was done presumably with the assistance of, and input of, legal counsel for EKPC, but without the knowledge of the undersigned counsel who was not invited to attend the meetings. Therefore, the undersigned is without any more knowledge to offer the Commission as to whether any further assistance can be given to the Commission to answer the Commission’s question raised in its June 19, 2015 Order i.e. “the Commission is unable to determine whether or not the issue of allocating alternative sourced power under Amendment 3 has been resolved.” All of the foregoing would tend to indicate that the resolution has not been made.

**WHEREFORE**, Grayson respectfully submits that the Commission may, as far as Grayson is concerned, proceed with deciding the issues set forth in its July 17, 2013 Order based upon the record as it now exists or on any other information or evidence that the Commission may by subsequent order deem relevant.

RESPECTFULLY SUBMITTED,

W. JEFFREY SCOTT, P.S.C.

BY: \_\_\_\_\_

  
W. JEFFREY SCOTT  
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GRAYSON, KY 41143  
(606) 474-5194

This is to certify that the foregoing document has been served upon the parties by mailing a true and correct copy of same to:

Hon. Mark David Goss  
Hon. David S. Samford  
GOSS SAMFORD, PLLC  
2365 Harrodsburg Road, Suite B 325  
Lexington, KY 40504

Hon. Clayton O. Oswald  
Taylor, Keller & Oswald, PLLC  
P.O. Box 3440  
1306 West Fifth Street – Suite 100  
London, KY 40743-03440

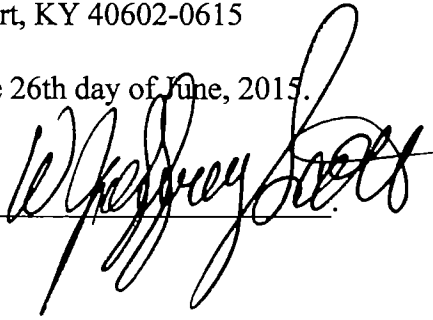
Hon. James M. Crawford  
Crawford & Baxter  
523 Highland Avenue  
P.O. Box 353  
Carrollton, KY 41008

Hon. Donald T. Prather  
Mathis, Riggs & Prather, P.S.C.  
500 Main Street - Suite 5  
Shelbyville, KY 40065

This is to further certify that the original plus  
10 copies of this document has been forwarded  
to the Kentucky Service Commission as follows:

Kentucky Public Service Commission  
211 Sower Blvd.  
Frankfort, KY 40602-0615

This the 26th day of June, 2015.

  
\_\_\_\_\_

**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 BKPC 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.

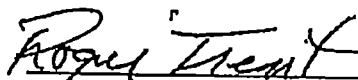
Fourth, EKPC assisted its Members in 2012 and 2013 in the negotiation of a MOU that would successfully resolve lingering uncertainties regarding the operation of Amendment 3 to EKPC's Wholesale Power Agreement. EKPC believes that the MOU would have greatly aided Grayson's efforts to acquire power from 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.

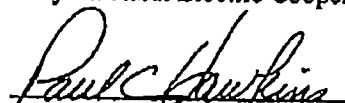
EKPC and Grayson share a common responsibility to act in the best interests of the customers at the end of the line, our Members. To do what is best for them, we need to end this litigation, bring unity and harmony back to the entire EKPC system and begin the process of restoring relationships that have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



**MEMORANDUM OF UNDERSTANDING AND AGREEMENT  
REGARDING ALTERNATE POWER SOURCES**

This Memorandum of Understanding and Agreement (“MOU&A”) is entered into and effective as of this [ ] day of [\_\_\_\_\_], 2013, by and between East Kentucky Power Cooperative, Inc. (“EKPC”), and each of the following Member Distribution Cooperatives (also referred to herein as “Owner Member”):

**Member Distribution Cooperatives**

Big Sandy Rural Electric Cooperative Corporation  
Blue Grass Energy Cooperative Corporation  
Clark Energy Cooperative, Inc.  
Cumberland Valley Electric  
Farmers Rural Electric Cooperative Corporation  
Fleming-Mason Energy Cooperative  
Grayson Rural Electric Cooperative Corporation  
Inter-County Energy Cooperative Corporation  
Jackson Energy Cooperative Corporation  
Licking Valley Rural Electric Cooperative Corporation  
Nolin Rural Electric Cooperative Corporation  
Owen Electric Cooperative, Inc.  
Salt River Electric Cooperative Corporation  
Shelby Energy Cooperative, Inc.  
South Kentucky Rural Electric Cooperative Corporation  
Taylor County Rural Electric Cooperative Corporation

**Factual Recitals**

0.1 Each Owner Member is an electric cooperative, organized under the laws of the State of Kentucky, engaged in the business of supplying and distributing electric power and energy to its members within a certain service area, for which business the Owner Member operates an electric distribution system, among other operations.

0.2 EKPC is a generation and transmission cooperative corporation, organized under the laws of the State of Kentucky, that is owned by its Owner Members, which are certain electric cooperatives operating in the State of Kentucky (“Owner Members”).

0.3 EKPC and each Owner Member are parties to a Wholesale Power Contract, dated October 1, 1964, as amended, pursuant to which (among other things) EKPC sells and delivers to that Owner Member, and that Owner Member purchases and receives, electric power and energy

required for the operation of the Owner Member's electric system. Such Wholesale Power Contracts are identical in all material respects, except for the identification of the respective Owner Member that is a party to each such agreement. A reference herein to "Wholesale Power Contract" refers to each and every such agreement.

0.4 As of October 23, 2003, each Wholesale Power Contract was amended by the execution of that certain amendment designated and known as "Amendment No. 3" thereto, to provide, among other things, for the obtaining by the subject Owner Member of electric power and energy from sources other than EKPC for use in operating the Owner Member's electric system, subject to certain limitation and required procedures set forth therein. Except for the identification of the respective Owner Member that is a party to each such Amendment No. 3, all of such amendments are identical. A reference herein to "Amendment No. 3" refers to each and every such amendment.

0.5 EKPC and certain Owner Members have, in the past, disagreed on the interpretation of some provisions of Amendment No. 3 and, therefore, to the Wholesale Power Contract as amended thereby.

0.6 The Owner Members each have a keen interest in pursuing or investigating opportunities to develop or otherwise obtain and use sources of electric power and energy other than EKPC. Such non-EKPC sources are hereinafter referred to as "Alternate Sources" and further defined in Section 2(A) below.

0.7 EKPC and each Owner Member each desire to avoid litigation over the provisions of the Wholesale Power Contract that pertain to Alternate Sources, and thereby avoid the costs and uncertainty of such litigation.

NOW THEREFORE, in consideration of the mutual covenants, understandings, and undertakings set forth herein, each of the Owner Members and EKPC, agree as follows:

### Understandings, Stipulations, and Agreements

#### 1. Term

(A) This MOU&A shall become effective on the date first written above and shall continue in effect until the termination of the Wholesale Power Contract. If the Wholesale Power Contract between EKPC and one of the Owner Members terminates before the other Wholesale Power Contracts, then this MOU&A shall terminate with respect to that Owner Member, but shall remain in effect with respect to the other Owner Members.

#### 2. Scope

(A) The purpose of this MOU&A is to memorialize EKPC's and the Owner Members' mutually agreed interpretation of Amendment No. 3 with respect to Alternate Sources. Except as provided in Section 2(B), an "Alternate Source" is any generating resource that is owned (directly or indirectly, in whole or in part) or controlled (directly or indirectly, in whole or

in part) by an Owner Member, regardless of whether the resource is connected to the Owner Member's distribution system, or any power purchase arrangement under which an Owner Member purchases capacity or energy (or both), if such generating resource or power purchase arrangement is used to serve any portion of the Owner Member's load.

(B) A generating resource that meets the definition of a "Behind the Meter Source" as set forth in Section 4(A)(v)(a) that is used by a Member solely to provide energy to serve interruptible retail load during times when service for such load through PJM has been interrupted pursuant to the load's participation in PJM's demand response program will not be considered an "Alternate Source" subject to the requirements of this MOU&A. If an Owner Member desires to use such a generating resource at any other time, the Owner Member must comply with the requirements of this MOU&A with respect to that generating resource.

(C) Nothing in this MOU&A is intended to modify any of the express provisions of Amendment No. 3. During the term of this MOU&A, neither EKPC nor any Owner Member shall assert that this MOU&A is invalid for the reason that it is contrary to or inconsistent with the Wholesale Power Contract. In the event of an actual conflict between the Wholesale Power Contract, as amended, including by Amendment No. 3, and this MOU&A, the Wholesale Power Contract, as amended, including by Amendment No. 3, shall control.

### 3. Maximum Permissible Demand Reduction.

(A) The maximum demand reduction that an Owner Member can obtain through the use of Alternate Sources shall be determined as follows:

- (i) All demand measurements, whether of EKPC aggregate demand or an Owner Member's demand, called for in this Section 3 shall be measured in megawatts in 15-minute intervals and shall be adjusted to include any interruptible load that was interrupted at the time of measurement.
- (ii) If in connection with its acquisition of new service territory the Owner Member provides evidence to EKPC and the RUS in the related acquisition agreement that the acquired service territory must continue to be served by the current power supplier as a condition of the acquisition, the acquired service territory may be supplied by such current power supplier for so long as is required under the terms of such acquisition agreement. Until such supply from the current power supplier is terminated, the load of such acquired service territory shall not be included in the calculations of the 5% and 15% limitations set forth below in this Section 3 applicable to the Owner Member that acquired the service territory or any other Owner Member. From and after the termination of such supply from the current power supplier, the load of such acquired service territory (including such load during the three (3) twelve-month (12-month) periods immediately preceding the date of termination of such supply from the current power supplier) shall be included in calculations

of the 5% and 15% limitations set forth below in this Section 3 applicable to the Owner Member or any Other Member.

- (iii) If, at the time the Owner Member submits an election notice pursuant to Section 4, the aggregate amount of all Owner Members' loads being served with Alternate Sources (including the load proposed to be served by the Owner Member's new Alternate Source) would be less than two and one half percent (2.5%) of the rolling average of EKPC's coincident peak demand for the single calendar month with the highest peak demand occurring during each of the three (3) twelve-month (12-month) periods immediately preceding the date the Owner Member delivers such election notice, the Owner Member's aggregate demand reduction from Alternate Sources (including the demand reduction from the proposed new Alternate Source) may not exceed 15% of the rolling average of the Owner Member's coincident peak demand for the single calendar month with the highest average peak demand occurring during each of the three (3) twelve-month (12-month) periods immediately preceding the date the Owner Member delivers such election notice. If this 15% threshold would be exceeded, the Alternate Source shall not be permitted unless the load proposed to be served by it is reduced such that this 15% threshold is not exceeded.
- (iv) If, at the time the Owner Member submits an election notice pursuant to Section 4, the aggregate amount of all Owner Members' loads being served with Alternate Sources (including the load proposed to be served by the Owner Member's new Alternate Source) would be equal to or greater than two and one half percent (2.5%) of the rolling average of EKPC's coincident peak demand for the single calendar month with the highest peak demand occurring during each of the three (3) twelve-month (12-month) periods immediately preceding the date the Owner Member delivers such election notice, the Owner Member's aggregate demand reduction from Alternate Sources (including the demand reduction from the proposed new Alternate Source) may not exceed five percent (5%) of the rolling average of the Owner Member's coincident peak demand for the single calendar month with the highest average peak demand occurring during each of the three (3) twelve-month (12-month) periods immediately preceding the date the Owner Member delivers such election notice. If this five percent (5%) threshold would be exceeded, the Alternate Source shall not be permitted unless the load proposed to be served by it is reduced such that this five percent (5%) threshold is not exceeded.
- (v) If, at the time the Owner Member submits an election notice pursuant to Section 4, the aggregate amount of all Owner Members' loads being served with Alternate Sources (including the load proposed to be served by the Owner Member's new Alternate Source) would be greater than five

percent (5%) of the rolling average of EKPC's coincident peak demand for the single calendar month with the highest peak demand occurring during each of the three (3) twelve-month (12-month) periods immediately preceding the date the Owner Member delivers such election notice, the Alternate Source shall not be permitted unless the load proposed to be served by it is reduced such that this five percent (5%) threshold is not exceeded.

(vi) The term of any Alternate Source (inclusive of any renewal options), whether the Alternate Source is a generating facility owned or controlled by the Owner Member or a contract with a third party, shall not exceed twenty (20) years.

(a) Any Alternate Source that is a contract in effect at the time when the 2.5% threshold defined in Section 3(A)(iii) is reached will be honored for the remaining term of the contract (without exercise of any renewal option). However, if at the end of the existing contract's term that was in effect when the 2.5% threshold was reached, the 2.5% threshold continues to be reached or is exceeded, and the Owner Member's aggregate amount of Alternate Source elections then exceeds the 5% threshold defined in Section 3(A)(iv), then the Alternate Source contract may not be renewed unless the Owner Member reduces the aggregate amount of the Owner Member's load served by Alternate Sources such that the aggregate amount of the Owner Member's load served by Alternate Sources (taking into account the renewal of the contract) does not exceed the 5% threshold set forth in Section 3(A)(iv). The Owner Member may meet this requirement by using demand reduction available to another Owner Member, in accordance with Section 3(B).

(b) Any Alternate Source that is a generating facility owned or controlled by the Owner Member that is in effect when the 2.5% threshold defined in Section 3(A)(iii) is reached will be honored for the remaining term of the Alternate Source as set forth in the notice provided under Section 4(A).

(B) Demand reduction available to one Owner Member may be used by another Owner Member if those two Owner Members so agree; provided, however, that in no event may a new Alternate Source proposed by an Owner Member in an election notice pursuant to Section 4 be approved if:

(i) the aggregate amount of all Owner Members' loads being served with Alternate Sources (including the load proposed to be served by the Owner Member's new

Alternate Source) would be greater than five percent (5%) of the rolling average of EKPC's coincident peak demand for the single calendar month with the highest peak demand occurring during each of the three (3) twelve-month (12-month) periods immediately preceding the date the Owner Member delivers such election notice; or

(ii) the aggregate amount of the Owner Member's load being served by Alternate Sources (including the load proposed to be served by the Owner Member's new Alternate Source) would be greater than fifteen percent (15%) of the rolling average of the Owner Member's coincident peak demand for the single calendar month with the highest average peak demand occurring during each of the three (3) twelve-month (12-month) periods immediately preceding such notice.

#### 4. Alternate Source Notices

(A) In order for an Owner Member to reduce its purchases from EKPC by using electric power and energy from an Alternate Source, that Owner Member shall have provided EKPC with prior written notice of such reduction in accordance with the procedures and requirements set forth herein. Each such notice hereunder (an "Alternate Source Notice") shall set forth the following information regarding the subject Alternate Source:

- (i) the term during which the Alternate Source will be used to reduce the Owner Member's purchases from EKPC under the Wholesale Power Contract, including the date on which such use will begin, and the length of time during which such use will continue, which length may not exceed 20 years (including any renewal options for an Alternate Source that is a contract with a third party);
- (ii) the maximum electrical capacity, in kW, to be available from the Alternate Source and the corresponding amount of reduction in demands to be served by EKPC as a result of the use of the Alternate Source, appropriately taking into account expected losses, if any;
- (iii) a general description of the nature of the Alternate Source and the primary generating facilities from which the subject electric power and energy will be produced;
- (iv) the approximate, expected pattern of use or dispatching of the Alternate Source and the corresponding pattern of hourly reductions in energy to be purchased by the Owner Member from EKPC; and
- (v) a designation of whether the Alternate Source will be:
  - (a) interconnected to the Owner Member's distribution system (and not to any transmission system) and will not

produce energy in any hour in excess of the Owner Member's load at the Related EKPC Point of Delivery. Such Alternate Sources are referred to in this MOU&A as **"Behind the Meter Sources"**. The **"Related EKPC Point of Delivery"** with respect to any Alternate Source is the point of delivery under the Owner Member's Wholesale Power Contract through which energy purchased from EKPC would be used to serve the load served by the Alternate Source if the Alternate Source did not exist;

(b) interconnected or delivered to EKPC's or another entity's transmission system; or

(c) interconnected to the Owner Member's distribution system and will produce energy that exceeds the Owner Member's load at the Related EKPC Point of Delivery.

(B) Except as provided in Section 4(C) below, each Alternate Source Notice shall be provided to EKPC in writing at least eighteen (18) months prior to the date on which the use of the subject Alternate Source is to begin.

(C) For each Alternate Source having a noticed demand reduction of 5,000 kW or less, the required prior written notice may be provided to EKPC up to, but not later than ninety (90) days prior to the date on which the Owner Member intends to begin using that Alternate Source.

(D) An Owner Member may change or cancel an Alternate Source Notice only by providing to EKPC prior written notice of such change or cancellation, as follows: If after three years of operation an Alternate Source has a three-year rolling average peak capacity less than the maximum capacity set forth in the initial Alternate Source Notice, the Owner Member may reduce the maximum capacity of such Alternate Source by providing written notice to EKPC. Any such reduction shall not change the term or other characteristics of the Alternate Source. Ninety (90) days' prior written notice of any other change or any cancellation shall be required for an Alternate Source having an associated demand reduction of 5,000 kW or less. Otherwise, eighteen (18) months' prior written notice to EKPC of a change or cancellation shall be required. If any change is made to the demand reduction amount of an Alternate Source, the thresholds provided in Section 3 will be re-calculated as of the date the notice of change is submitted.

(E) If the Owner Member does not implement an Alternate Source within six (6) months after the date set forth in its notice for commencement of deliveries from the Alternate Source, the Owner Member may not implement the Alternate Source without re-submitting the notice required under this Section 4 and such notice shall be subject to re-calculation of the thresholds provided in Section 3 as of the date of such re-submitted notice. During the six (6) month period described in this Section (E), EKPC shall continue to serve the load intended to be

served by the Alternate Source through sales of power and energy to the Owner Member under its Wholesale Power Contract.

5. Development and Use of Alternate Sources

(A) During the noticed term of use of that Alternate Source, it shall be the responsibility of the Owner Member to use commercially reasonable efforts to develop or otherwise acquire the subject Alternate Source so that such source may be used to supply a portion of the Owner Member's requirements beginning on the noticed date. EKPC shall use commercially reasonable efforts to cooperate with and assist the Owner Member in its development or acquisition; provided that EKPC shall not be required to make out-of-pocket expenditures or provide or facilitate financing for any Alternate Source.

(B) Except as otherwise agreed to by EKPC and an Owner Member, the owning Owner Member shall use commercially reasonable efforts to operate, maintain, and dispatch the facilities comprising each of its Alternate Sources (or to cause such operation, maintenance, and dispatching) so as to reduce the maximum electrical demand placed on EKPC's system by the corresponding noticed demand reduction.

(C) With respect to each noticed Alternate Source of an Owner Member, the obligations set forth in the foregoing two paragraphs shall continue until the end of the noticed term of the Alternate Source; provided, however, that such term may be shortened or lengthened at any time by the Owner Member by providing to EKPC prior written notice of such change, as follows: For each such change, ninety (90) days' prior written notice of such change shall be required for an Alternate Source having an associated demand reduction of 5,000 kW or less. Otherwise, eighteen (18) months' prior written notice to EKPC of such change shall be required.

(D) Other requirements for Behind the Meter Sources are as follows:

(i) To the extent that the Alternate Source does not deliver capacity or energy sufficient to serve the actual load of the Owner Member intended to be served by the Alternate Source, EKPC will charge the Owner Member for capacity and energy at the rates for electric service provided under the Wholesale Power Contract.

(ii) The Owner Member must provide to EKPC information regarding the expected generation from the Behind the Meter Source, including planned and unplanned outages, as needed by EKPC so that EKPC can include such information in its schedules of load submitted to PJM and minimize to the extent reasonably practicable any PJM penalties for deviations in load attributable to differences between the estimated and actual generation from the Behind the Meter Source.

(iii) The Alternate Sources will be metered with revenue class meters.

(E) Other requirements for Alternate Sources interconnected or delivered to EKPC's or another entity's transmission system are as follows:



(i) To the extent that the Alternate Source does not deliver capacity or energy sufficient to serve the actual load of the Owner Member intended to be served by the Alternate Source, EKPC will charge the Owner Member for capacity and energy as provided in this MOU&A, and not at the rates for electric service provided under the Wholesale Power Contract. EKPC will purchase amounts of replacement capacity and energy based on the historical amounts of capacity and energy provided by the Alternate Source.

(ii) The Owner Member must provide to EKPC a day-ahead schedule of generation. EKPC will work with the Owner Member to develop the day-ahead schedule.

(iii) The day-ahead schedule of load to be served by the Alternate Source will be deemed to equal the day-ahead generation schedule of the Alternate Source.

(iv) EKPC will pass through to the Owner Member all revenues, credits and charges from PJM associated with the Alternate Source, including without limitation PJM day-ahead and real-time energy market revenues, charges and credits, PJM capacity market revenues, charges and credits, PJM operating reserve revenues, credits and charges, and PJM operating services necessary to serve the load served by the Alternate Source (i.e. capacity, energy, ancillary services (including operating reserves), NITS transmission, RTEP, etc.).

(v) The Alternate Sources will be metered with revenue class meters.

(vi) The Owner Member will pay an administrative fee to EKPC to cover the increased operation and administrative costs.

(vii) PJM market participant activities for the Alternate Source and related load will be managed by EKPC or EKPC's agent. The Owner Member shall pay EKPC a non-discriminatory, cost-based fee for such PJM market participant services, which shall be performed in accordance with good utility practices. Any dispute regarding such fee shall be submitted to the Kentucky Public Service Commission for a determination of the appropriate fee.

(F) Other requirements for Alternate Sources interconnected to an Owner Member's distribution system that produce energy that exceeds the Owner Member's load at the Related EKPC Point of Delivery shall be developed based on the requirements set forth above in Sections 5(D) and 5(E).

## 6. Other Matters.

(A) EKPC shall not be entitled to charge any Owner Member for so-called "stranded costs" related to the Owner Member's implementation of its rights to use Alternate Sources. As a result, to the extent that an Owner Member's use of Alternate Sources reduces its billing demands under EKPC's rates under the Wholesale Power Contract as in effect from time to time, EKPC shall not be entitled to charge any special rate or charge to the Owner Member attributable

to such billing demand reduction. EKPC will, however, be entitled to continue to set its rates for all Owner Members under the Wholesale Power Contracts to produce revenues that are sufficient to cover all of its costs, in accordance with the Wholesale Power Contracts.

(B) EKPC covenants and agrees to revise or rescind existing Board Policies so that its Board Policies are consistent with this MOU&A.