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PUBLIC SERVICE
COMMISSION

Commonwealth of Kentucky

Before the Public Service Commission

In the Matter of:

Tariff Filing of East Kentucky Power Cooperative,)
Inc. and Its Member Distribution Cooperatives for)
Approval of Proposed Changes to their Qualified)
Cogeneration and Small Power Production)
Facilities Tariffs and the Implementation of)
Separate Tariffs for Power Purchases for Solar)
Generating Qualifying Facilities)

Case No. 2017-00212

**MOTION FOR INTERVENTION
OF GREAT BLUE HERON SOLAR LLC**

Pursuant to 806 KAR 5:001 Section 3(8), Great Blue Heron Solar LLC ("Great Blue" or "Movant"), respectfully requests that the Commission grant it intervention as a party in the above-captioned matter. Movant (a) has an unrepresented, special interest in the rates and terms of the proposed solar power purchase tariffs that are the subject of this proceeding and (b) is likely to present issues or develop facts that will assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings. Movant Great Blue also respectfully suggests that the Commission enter a scheduling order for the case, to provide for information requests and a possible hearing. In support of its intervention request, Movant states as follows:

BACKGROUND

1. Great Blue is a limited-liability company organized under the laws of Kentucky. Its full name, mailing address, and electronic mail address are:

Great Blue Heron Solar LLC
Georg Veit
georg.veit@geenexsolar.com
7804-C Fairview Road #257
Charlotte, NC 28226

Great Blue is the developer of the Great Blue Solar Project, a 20-megawatt qualifying facility (“QF”), and self-certified on March 8, 2017.¹ The Great Blue Solar Project will be located in Harrison County, Kentucky, within the territory of Eastern Kentucky Power Cooperative, Inc. (“EKPC”) in an area served by EKPC member co-op Blue Grass Energy Cooperative Corporation (“Blue Grass Energy”). The Project will interconnect with EKPC on the 138 kV Renaker-Jacksonville line or the Jacksonville Substation near Broadwell, Harrison County, Kentucky.

2. On February 27, 2017, Great Blue submitted an interconnection application to PJM and was assigned PJM Queue No. AC2-075. On March 8, 2017, the day it self-certified, Great Blue wrote EKPC, expressing its commitment to sell the full output of the Project to EKPC, giving rise to a legally-enforceable obligation under 18 C.F.R. § 292.304 (“LEO”), as to all of the Great Blue Solar Project output. Great Blue met with EKPC representatives on May 15, 2017, to begin negotiations for the output from the Great Blue Solar Project.

3. FERC Termination Petitions: EKPC has filed a series of three essentially identical petitions, on December 7, 2016, March 13, 2017, and June 9, 2017, with the

¹ See Great Blue Heron Solar LLC, FERC dkt. QF 17-737, Form 556 Self-Certification (Mar. 8, 2017).

Federal Energy Regulatory Commission (“FERC”) seeking termination of its mandatory obligation under the Public Utility Regulatory Policy Act (“PURPA”) to enter into new contracts or obligations or to purchase power from QFs with a net capacity of over 20 MW on a service territory-wide basis. EKPC’s first petition to terminate was denied by operation of law, effective March 7, 2017. EKPC’s second petition was subsequently filed, and similarly denied by operation of law, effective June 9, 2017. Immediately, EKPC filed a third petition to terminate its purchase obligation, which is pending at FERC as docket number QM 17-5-000.

4. Ky. Tariff Filings: On March 31, 2017— after the first FERC petition was denied, the second FERC petition was filed, and soon after it received Great Blue’s LEO notice — EKPC and its distribution co-ops filed changes to their Cogeneration and Small Power Production Power Purchase Rate Schedules, including implementation of a tariff specifically for purchases from solar generation. The proposed changes substantially reduce all the capacity and energy rates at which power would be purchased from non-solar QFs. See EKPC redlined tariff sheet, PSC No. 8, ~~Sixth~~ *Seventh* Revised Sheet No. 4. The proposed Cogeneration and Small Power Production Power Purchase Rates Schedule from Solar Generation (“the Solar Tariff”) further disadvantages solar generation relative to other QFs by providing not even a nominally avoided-cost rate, but only referring to the hourly real-time locational marginal price for energy set by PJM at the zonal node and to the capacity rate “valued” in the applicable PJM

capacity auction.² The proposed changes to Blue Grass Energy's power-purchase tariff are parallel to EKPC's proposals.

5. EKPC filed revisions to the tariff filings on April 27, 2017.³ The proposed revised tariffs were to become effective June 1, 2017. By Order entered May 24, 2017, this Commission found that an investigation was necessary to determine the reasonableness of the proposed revisions and suspended the proposed tariff revisions up to and including October 1, 2017.

INTERVENTION GROUNDS

6. Special Interest: As a solar-power QF in EKPC territory, which has an LEO with EKPC and has begun negotiations with EKPC for a power-purchase agreement, Movant has a significant, concrete interest in the existing and proposed tariff rates and terms for EKPC's (and Blue Grass Energy's) purchase of power from solar generation. Great Blue has a special interest in the proceeding that is not otherwise adequately represented, which is one of the two bases for intervention provided in 807 KAR 5:001, Section 11(b).

7. As an intended seller of solar-generated power, Great Blue has an obvious interest in the tariff rates and other terms at which EKPC and its member co-ops must

² In addition, both the proposed Solar Tariff and the Purchase Rate Schedule over 100kW from Non- Solar Generation specify (twice) that "EKPC is no longer obligated to purchase electric energy and/or capacity from qualifying cogeneration or small power production facilities with a net capacity of over 20 MW."

³ This filing is mentioned in the Commission's 5/24/17 Order at p., but is not available as part of the online case file. See http://www.psc.ky.gov/PSC_WebNet/ViewCaseFilings.aspx?case=2017-00212.

offer to purchase power. The Solar Tariff's subjection of QF power to PJM market rates would mean that there would be little practical difference between a power purchase agreement with EKPC and direct participation in the PJM markets (to which EKPC seeks to limit larger-capacity projects by its FERC petitions to terminate). A separate Solar Tariff is unjustified; like other QF generation, solar power should also have definite, tariffed purchase rates. Great Blue is thus also concerned about the significant, and unsupported, proposed reduction in existing tariff rates.

8. Great Blue's special interest in maintaining its rights under PURPA to sell power to EKPC at avoided-cost rates is not represented in this proceeding. No QF from which EKPC (or its member coops) purchases power or which has been certified and has an LEO within EKPC territory has yet been made a party to this proceeding.⁴ Furthermore, Great Blue is unaware of the existence of any other QF located within EKPC territory for solar generation at or below 20 MW net capacity. Thus, Great Blue's circumstances and interests appear to be unique and cannot be adequately represented by another party.

9. Present Issues/Develop Facts: Intervention by Movant is also likely to present issues or develop facts that will assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings, which is the other basis for intervention provided in 807 KAR 5:001, Section 11(b). Indeed, the timing of

⁴ See List of Potentially Affected Qualifying Facilities, Atchmt.A to Application, FERC dkt. ZM 17-3-000, available as EKPC 3/31/17 tariff filing, PDF pp. 33-34.

these proposed tariff revisions suggests that EKPC's effort thereby to limit its purchase obligations and discourage QF solar power generation within its territory are in reaction to Great Blue's self-certification and LEO notice, because the relief requested in its FERC petitions to terminate will not exclude an obligation to purchase from Great Blue.

10. Great Blue's experience in seeking to establish whether and on what terms EKPC will purchase power from the Project and the effect on the Projects of aspects of the proposed tariff revisions will develop a fuller array of relevant facts and provide a different perspective to assist the Commission in its decision. Great Blue's participation in the case will bring forward facts about the probable effect on the Great Blue Solar Project of the proposed tariff terms, negotiation of power-purchase agreements under PURPA, and the development of successful projects in other jurisdictions.

11. Furthermore, Movant's intervention is likely to present issues to assist the Commission in fully considering the matter. In addition to other issues relating to the lawfulness and reasonableness of the proposed revisions, Great Blue's intervention will present issues about:

- a. the requirement that, regardless of whether it can provide firm output, a QF must have the option to sell its output with an avoided cost rate forecasted at the time the LEO is incurred — a fixed rate. *See* 18 C.F.R. § 292.304(d)(2); Declaratory Order, *Wyndham Solar*, 157 FERC ¶61,134 (Nov. 22, 2016) at P. 4; Memorandum and Order, *Allco Renewable Energy Ltd. v. Mass. Electric Co.*, Civil Action No. 15-13515 (D. Mass.

- Sep. 23, 2016) (finding that Mass. DPU regulation setting standard avoided cost rates as the spot market ISO New England rate failed the PURPA § 210(f)(1) mandate to properly implement FERC regulations).⁵
- b. the avoided costs rate for QF purchases, which should be equal to full avoided costs. *See* FERC Order 69, Small Power Production and Cogeneration Facilities; Regulations Implementing Section 210 of PURPA, 45 Fed. Reg. 1223 (Feb. 25, 1980) at 12223; *Independent Energy Producers Ass'n, Inc. v. California PUC*, 36 F.3d 848, 854-55 (9th Cir. 1994)
 - c. technology-specific avoided cost rates, which must be based on supply characteristics affecting factors required to be considered. *See* 18 C.F.R. § 292.304.
 - d. a requirement that EKPC provide data from which avoided cost rates can be calculated. *See* 18 C.F.R. § 292.302; FERC Order 69, 45 Fed. Reg. at 12214 (such information “enables project investors to evaluate the economic feasibility of the project before it is constructed”).
 - e. a five-year term as substantively insufficient to allow a QF reasonable opportunities to attract capital from potential investors and as discriminatory *vis-a-vis* the effective term for EKPC. *See Wyndham Solar*, 157 FERC ¶ 61,134 at P. 8; 18 C.F.R. § 292.304(a)(ii) (nondiscrimination requirement).

⁵ The *Allco* Memorandum and Order is available online at https://scholar.google.com/scholar_case?case=1995356597289468930&hl=en&as_sdt=4000006.

12. The development of facts and presentation of issues enabled by granting Great Blue leave to intervene can be accomplished without unduly complicating or disrupting the matter. It will add one party and a different "side" to the proceedings (that of those "served" under the tariff, *i.e.*, selling QFs), but that is not an undue complication. No scheduling or procedural order or information requests have yet been issued, no deadlines have been set, and there will be no delay or disruption caused by Great Blue's intervention.

13. Timeliness: This motion is timely. No schedule or deadlines have been set, and Great Blue has not missed anything other than the opportunity to participate in the informal conferences held on June 12 and July 17, 2017. In its Order entered May 24, 2017, the Commission found that an investigation was necessary to determine the reasonableness of the proposed tariff revisions; Great Blue has moved to intervene in time to participate fully in any formal steps of that investigation.

14. There is no procedural schedule in existence at this time to which Movant might be subject pursuant to 807 KAR 5:001, Section 4(11). Great Blue respectfully suggests that the Commission enter a procedural schedule forthwith that provides for information requests and the possibility of a hearing in this matter. If a procedural schedule is entered shortly before intervention is granted, Great Blue agrees to be subject to that schedule.

SERVICE

15. The persons authorized to receive service of papers in this proceeding on behalf of Great Blue Heron Solar LLC are:

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Great Blue respectfully requests that these persons be added to the service list used by the Commission and the other parties to this case.

16. The persons listed in ¶21 are capable of receiving electronic transmissions and the electronic mail addresses to which all electronic notices and messages related to the above-style proceeding should be served are provided in ¶21.

CONCLUSION

WHEREFORE, Movant Great Blue Heron Solar LLC respectfully requests that it be granted intervention as a party to this proceeding.

Respectfully submitted,



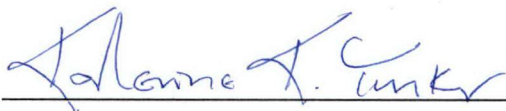
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SOLAR LLC

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on the 21st day of July, 2017, the original and 10 copies of the foregoing were filed by hand-delivery to the Public Service Commission, 211 Sower Boulevard, Frankfort, KY 40601, and that a copy of the foregoing was served by mailing it via first-class U.S. Mail, postage prepaid, to the addressees listed on the attached Service List.

A handwritten signature in blue ink, reading "Lorraine T. Cunko", is written over a horizontal line.

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