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October 6, 2017

**VIA HAND DELIVERY**

Ms. Gwen R. Pinson  
Executive Director  
Kentucky Public Service Commission  
P.O. Box 615  
211 Sower Boulevard  
Frankfort, Kentucky 40602

**RECEIVED**

OCT 6 2017

PUBLIC SERVICE  
COMMISSION

Re: PSC Case No. 2017-00212

Dear Ms. Pinson:

Please find enclosed and accept for filing in the above-styled matter on behalf of East Kentucky Power Cooperative, Inc. ("EKPC"), an original and ten (10) copies of EKPC's Response to Joint Application for Rehearing. Please return file-stamped copies to my office.

I appreciate your assistance with this matter, and please do not hesitate to contact me with any questions or concerns.

Respectfully,

*David S. Samford* *by UAH  
with permission*

David S. Samford

Enclosures

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 ) Case No. 2017-00212  
 POWER PRODUCTION FACILITIES TARIFFS )  
 AND THE IMPLEMENTATION OF SEPARATE )  
 TARIFFS FOR POWER PURCHASES FROM )  
 SOLAR GENERATION QUALIFYING FACILITIES )

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EAST KENTUCKY POWER COOPERATIVE, INC.'S  
 RESPONSE TO JOINT APPLICATION FOR REHEARING OF  
 BLUEBIRD SOLAR, LLC AND GREAT BLUE HERON SOLAR, LLC

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Comes now East Kentucky Power Cooperative, Inc. ("EKPC"), by counsel, pursuant to KRS 278.400 and 807 KAR 5:001 Section 5 and other applicable law, and, in response to the Joint Application for Rehearing filed by Bluebird Solar, LLC ("Bluebird") and Great Blue Heron Solar, LLC ("Great Blue") (collectively, "Movants"), in the above-captioned matter, respectfully states as follows:

The Commission correctly found that the Movants do not receive service from EKPC, do not pay any rates to EKPC, and are not customers of EKPC.<sup>1</sup> The Commission also correctly found that the Movants themselves expressly stated that their "interest in the rates and terms of EKPC's proposed tariff are predicated on their respective claims that they have created legally enforceable obligations to sell power to EKPC."<sup>2</sup> The Commission was also correct in finding that

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<sup>1</sup> See Order, p. 4 (Sept. 22, 2017).

<sup>2</sup> *Id.*

the Movants “have provided no support, under either Kentucky law or Commission precedent, to demonstrate that their respective solar QF projects have created legally enforceable obligations based on offers to negotiate contracts to sell their output to EKPC.”<sup>3</sup> And finally, the Commission correctly found that the “Movants intervention in this matter would unduly complicate and disrupt the proceedings.”<sup>4</sup>

The Movants’ Joint Application is merely a restatement of the arguments previously raised in their motions for leave to intervene.<sup>5</sup> The Commission has consistently recognized that a mere restatement of previously made, unpersuasive arguments is insufficient grounds to grant a motion for rehearing.<sup>6</sup> Accordingly, the Movants’ Joint Application should be summarily dismissed.

Apart from Commission precedent, the Joint Application should also be denied on the basis that the alleged harm which will befall the Movants if they are not allowed to participate in this proceeding is more imagined than real. For instance, the Movants’ concern that they will somehow be denied due process is plainly inconsistent with the Commission’s Order, which states:

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<sup>3</sup> *Id.*, p. 5.

<sup>4</sup> *Id.*

<sup>5</sup> The only thing that had changed since the filing of the Movants’ original motions for leave to intervene was the entry of an Order by the Federal Energy Regulatory Commission (“FERC”) in a separate case on September 7, 2017. It was EKPC, not the Movants, who filed a copy of the FERC Order with the Commission on September 8, 2017.

<sup>6</sup> See e.g. *In the Matter of: Elec. Investigation of the Reasonableness of the Demand Side Mgmt. Programs & Rates of Kentucky Power Co.*, Order, Case No. 2017-00097 (Ky. P.S.C., May 17, 2017) (“Walmart, in its motion for rehearing, provided no facts to the Commission that added to what Walmart submitted in its initial request for intervention. Absent any additional facts from Walmart to support its argument that it meets the standards for intervention enumerated in 807 KAR 5:001, Section 4(11), the Commission will not reverse its decision to deny Walmart’s intervention.”); *In the Matter of: Application of Kentucky Utilities Co. for an Adjustment of Base Rates*, Order, Case No. 2009-00548 (Ky. P.S.C. July 2, 2010) (“Based on the application for rehearing and being otherwise sufficiently advised, the Commission finds that no new arguments or facts have been presented to justify granting rehearing.”); *In Re Kentucky-Am. Water Co.*, Order, Case No. 2002-00317 (Ky. P.S.C, Jan. 29, 2003) (“While the Intervenors refer to the possible adverse effects of GATS and other international trade agreements, they provide no specific instances of how the Commission’s jurisdiction is threatened. Fear of the unknown without identification of a specific threat is insufficient basis upon which to base a condition. Accordingly, we deny rehearing on this issue.”).

However, each of the Movants may individually initiate a proceeding before the Commission, either by filing a complaint or a petition for a declaratory order, for a determination of whether its proposed QF solar project qualifies as a legally enforceable obligation under 807 KAR 5:054, Section 7(4)(b). In such a proceeding, each Movant would have the opportunity to demonstrate that it is eligible to form a legally enforceable obligation, the extent of the commitment it has made to sell the output of its QF project to EKPC, and that EKPC has unjustifiably refused to enter into a purchase contract with the QF. Due to the fact-specific nature of such a demonstration, the issue of whether either of the Movants has a legally enforceable obligation is well beyond the scope of issues before the Commission in this investigation, which is limited to EKPC's proposed cogeneration tariff.<sup>7</sup>

Likewise, the importance the Movants attach to what they label as an “*ex parte* communication” is facially absurd. EKPC informed the Commission’s acting Executive Director (not the Commissioners) of what it believes was a significant mischaracterization of an Order previously entered by FERC (not the Kentucky Public Service Commission) that appeared in a trade publication (and not in any pleading). EKPC did not state anything of substance in the email to the acting Executive Director that it had not already stated in its public filings at FERC or at the Commission. Out of an abundance of caution, the Commission Staff placed the email in the record of this case, an action to which EKPC did not (and does not) object. Placing the email in the record cures whatever *ex parte* problem there might have been (if any). The Movants’ attempt to create an issue where none exists is indicative of the degree to which their intervention would disrupt the proceedings.

The Movants’ Joint Application demonstrates once again their position is this: they should be granted the relief they seek without having to offer any evidence (as opposed to rhetoric) to support their claim. The Commission has quite properly held that the Movants should have the

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<sup>7</sup> Order, p. 5.

opportunity to state their claims and present their evidence in an appropriate proceeding where they must sustain the burden of proof which the law imposes upon them. In the meantime, the Commission has also appropriately protected its docket from an intervention that would be disruptive and unduly complicate the case. The Commission properly recognized that EKPC's proposed tariff is not to be used as a bargaining chip in the Movant's contractual negotiations with EKPC.

WHEREFORE, on the basis of the foregoing, EKPC respectfully requests the Commission to deny the Movants' Joint Application for Rehearing.

Done this 6<sup>th</sup> day of October 2017.

Respectfully submitted,

 *by CPH  
w/ permission*

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*Counsel for East Kentucky Power  
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## CERTIFICATE OF SERVICE

This will certify that a true and correct copy of the foregoing was served by depositing same into the custody and care of the U.S. Mails, postage pre-paid on this 6<sup>th</sup> day of October, 2017, addressed to the following:

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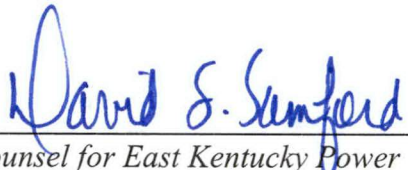
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