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APR 10 2015

PUBLIC SERVICE
COMMISSION

April 10, 2015

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: Application of East Kentucky Power
Cooperative, Inc. for a General Adjustment of Electric Rates
PSC Case No. 2010-00167 (Closed)

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 Response to Grayson Rural Electric Cooperative Corporation's Motion for Hearing. 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 (2010-00167) - 150410

COMMONWEALTH OF KENTUCKY

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BEFORE THE PUBLIC SERVICE COMMISSION

APR 10 2015

In the Matter of:

PUBLIC SERVICE
COMMISSION

APPLICATION OF EAST KENTUCKY POWER)
COOPERATIVE, INC. FOR A GENERAL)
ADJUSTMENT OF ELECTRIC RATES)

Case No. 2010-00167
(CLOSED)

**EAST KENTUCKY POWER COOPERATIVE, INC.’S RESPONSE TO
GRAYSON RURAL ELECTRIC COOPERATIVE CORPORATION’S
MOTION FOR HEARING**

Comes now East Kentucky Power Cooperative, Inc. (“EKPC”), by counsel, pursuant to 807 KAR 5:001, Section 5(2), and for its response to the Motion for Hearing filed by Grayson Rural Electric Cooperative Corporation (“Grayson”) on April 3, 2015, in the above-captioned proceeding, respectfully states as follows:

I. Introduction

More than four (4) years ago, the Kentucky Public Service Commission (“Commission”) entered its final substantive Order in this matter. During the ensuing three (3) years, and consistent with a 2010 Management Audit conducted by Liberty Management Consulting Group (“Management Audit”), EKPC made great strides towards improving its financial condition and complied in all respects with the directives of the Commission. Then, in April of 2014, Grayson filed a Motion to Reopen this proceeding. It is with respect to that Motion that Grayson now requests a hearing.

As discussed in detail in EKPC's Response to Grayson's Motion to Reopen,¹ Grayson has no valid grounds to demand the relief it seeks. In addition to its insurmountable procedural and legal defects, Grayson's Motion to Reopen is rife with factual errors, unsupported claims and misleading assertions. While Grayson may now disagree with the direction, corporate philosophy and strategic plans of EKPC, which Grayson's representative on EKPC's Board supported, Grayson's misguided tactics and unfounded attacks must be rebuffed by the Commission in accordance with law, equity, and common sense. Put simply, Grayson's Motion to Reopen and its request for a hearing thereon should be swiftly and conclusively denied.

II. Argument

EKPC does not believe it necessary to fully recapitulate each of the numerous fundamental flaws that underlie Grayson's Motion to Reopen. Indeed, in its Response to Grayson's Motion to Reopen, EKPC specifically and systematically refuted the various baseless claims raised by Grayson, including but not limited to those related to EKPC's margins, TIER, interest rate expense, salaries and wages, membership in PJM, accounting of the Smith Unit 1 regulatory asset, and consideration and approval of the settlement achieved in this proceeding. Importantly, however, EKPC does wish to reiterate the procedurally-deficient nature of Grayson's chosen course of action here.

At the outset, it must be noted that Grayson lacks standing to request that this matter be reopened. Neither the Commission's specific precedent nor broader Kentucky law contemplates the reopening of a closed administrative proceeding upon the motion of a non-party. Certainly, Grayson's Motion to Reopen, as well as its Reply to EKPC's Response to its Motion to Reopen,²

¹ EKPC's Response to Grayson's Motion to Reopen was filed on April 24, 2014, and is incorporated herein by reference.

² Grayson's Reply to EKPC's Response to its Motion to Reopen was filed on May 5, 2014.

fail to cite a single authority to support its request. Nowhere in KRS Chapter 278 is it expressed or contemplated that a person who is not a party to a proceeding may request the Commission to reopen a closed proceeding more than three (3) years after it was finally and substantively determined.

Further, even if it was procedurally appropriate for a non-party to request the Commission to reopen a case, Grayson's specific reasoning for such requested relief fails to satisfy the Commission's precedent on the question. Grayson's Motion to Reopen is based upon events that have transpired after the Commission entered its January 14, 2011 Order ("Rate Order"), which brought this proceeding to a close. The Commission has previously held that "changes in facts and circumstances significant to [a] matter" are an insufficient basis to justify re-opening a closed proceeding.³ Likewise, if one were to strip away the specific factual assertions made by Grayson – virtually all of which are demonstrably false and misleading – and instead focus upon Grayson's over-arching point that it does not believe that EKPC's rates are fair, just and reasonable, then Grayson's requested remedy is still inappropriate. The time to challenge the reasonableness of the Commission's Rate Order was in the period immediately after the Rate Order was entered, not years later. On this point the Commission has held that it will "not entertain any motion to reopen [a case] to address any matters that were or could have been presented here."⁴

Importantly, if Grayson believes that EKPC's rates are unfair, unjust or unreasonable, then KRS 278.260 and KRS 278.270 afford Grayson the proper procedural basis for asserting

³ See *In the Matter of: The Application of NANPA on Behalf of the Kentucky Telecommunications Industry for Approval of NPA Relief Plan for the 270 NPA, and Number Conservation Measures Within Kentucky*, Order, Case No. 2006-00357 (Ky. P.S.C., Oct. 30, 2008).

⁴ See *In the Matter of the Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for the Construction of Transmission Facilities in Jefferson, Bullitt, Meade, and Hardin Counties, Kentucky*, Order, Case No. 2005-00467 and Case No. 2005-00472 (Ky. P.S.C., May 26, 2006).

those claims. Yet, rather than pursue this well-established and familiar statutory process, Grayson has instead filed a motion that has no foundation in fact, the legal authority of KRS Chapter 278, or the Commission's regulations as promulgated in 807 KAR Chapter 5. The only conceivable reason for seeking to reopen a case to which it was not a party, as opposed to filing a complaint in its own name, is to improperly shift the burden of proof. If Grayson's motion is granted, then the burden of proof would be upon EKPC as the applicant in the rate case whereas Grayson, as a complainant, must bear the burden of proof in any formal complaint which it may file.⁵ Grayson's unwillingness to raise its allegations in the form of a verified complaint is itself strong evidence that it knows its claims cannot withstand scrutiny.

Unsurprisingly, Grayson's Reply to EKPC's Response to its Motion to Reopen fails to effectively counter any of EKPC's assertions and is wholly unpersuasive. Even a cursory review of this filing reveals that Grayson cannot substantively support its positions and that it merely desires to challenge the fundamental conclusions and recommendations of the Management Audit and re-litigate issues long-ago resolved. If there is any useful or noteworthy assertion within Grayson's Reply, it is as Grayson stated that it "welcomes any ordered management audit and has absolutely nothing to fear with such an audit."⁶ Grayson's behavior in this case, like in so many other cases before this Commission, reflects a grave lack of due diligence and woefully insufficient oversight, which is why EKPC suggested in its Response to Grayson's Motion to Reopen that the Commission conduct a comprehensive review of Grayson's financial condition, governance and management practices.

⁵ See *Energy Regulatory Commission v. Kentucky Power Co.*, 605 S.W.2d 46, 49 (Ky. App. 1980); *In the Matter of The Office of the Attorney General, The Commonwealth of Kentucky v. Atmos Energy Corporation*, Order, Case No. 2005-00057 (Ky. P.S.C., Feb. 2, 2006).

⁶ Grayson's Reply, ¶ 11.

III. Conclusion

Grayson's Motion to Reopen is procedurally defective, substantively unsupported, and should be summarily denied. Consequently, Grayson's most-recent Motion for Hearing should also be rejected, as there is no need to waste the time and resources of either the Commission or the relevant parties by continuing a farcical exploration of long-since resolved issues in this closed case.

Done this 10th day of April, 2015.

Respectfully submitted,



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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing was served by depositing same in the custody and care of the U.S. Mails, postage pre-paid, on this 10th day of April, 2015, addressed to the following:

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Larry Cook, Assistant Attorney General
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