

MOU DISCUSSION

September 9, 2013

Item 2 – Review and Approve MOU

Lonnie Vice – we talked about last month, we discussed in committee and also in the board room. We are here to ask questions and approve that if that is what committee chooses to do and take to full board for tomorrow. Is there any discussion?

Landis – on S 24 the fourth whereas (may be getting cart before the horse) just one little typo there I think - it reads that we will address the issue equity between the owner members – I think that this should probably read the equity issue shouldn't it.

David – I think we can make this change. I leave up to Sherman (who drafted it) to defend this language.

Landis – looks like it has been flipped.

Sherman – yes, that is not a problem.

David Crews – good with that change. I mean the MOU hasn't changed since the last meeting.

Buddy – how has Ken and them rescinding their vote going to affect it?

David – until all members are willing to sign it won't be able to be ratified. But at this point I think it is prudent for the Board to carry through on the MOU because I think this is where EKPC was working with the Commission and the Commission was encouraging EKPC to act on this matter. To be in alignment with what we have been representing to the PSC it would be good for the board to move forward with it.

Buddy – do you have any comments Ken?

Ken – I think there were some issues there where they felt like it was just an opinion – than a iron clad fact and I think that they felt like they needed more time on those issues at this point.

Lonnie – was there a specific issue?

Ken – not sure about that. I am not sure exactly what the issues were.

Lonnie – any other comments? From a committee standpoint.

Bill – I am a little confused about what we will be accomplishing as a committee without having all 16 participating.

Lonnie – as David said we are not going to ratify the MOU if we don't have that on there, but it does somewhat say something about what this board intended to do as a whole, in in fact that is what they choose to do.

David Crews – the issue is that the PSC has given EKPC and its members a certain amount of time to attempt to resolve this. At one point this was agreed to by all the CEOs. All CEOs agreed to it and as such we moved forward with it and in moving in that direction. I think that was what was represented at the PSC and what it does at the PSC standpoint it shows that EKPC is not the constraint in getting this resolved and it shows that I am sure when it gets to the PSC the PSC will want to know which members are the ones that are not signed on at this point. I think it is important for EKPC to move on it so they can show they are supportive of the MOU and tried to resolve this amicably amongst the membership.

Tony C. – can I throw in my 2 cents. My position is that EKPC is constrained. Especially me and really all my staff have a fiduciary responsibility to fairness – fair and equitable for all owners. The MOU is outside of our realm. In theory, our 5% of our load is the max that can be lost. So we don't have a lot of skin in the game. It is really a member to member and if you can define (and that is what the MOU defines) something that is fair that all the members agree to. I think we need to approve it to take to the PSC and clearly the PSC has their noses under the tent. They are going to make a decision and I think if we approve it – it will be 15 of the 17 and is contingent upon everybody else approving it. If everybody else doesn't approve there is no way it can be enacted. Then we are still back to Amendment 3 and the PSC will take a look at everything and I am sure that Grayson will respond to the PSC on what their problems are and the PSC will make a ruling. I don't personally think the PSC will go against 15 members. Thinks important for us to approve and send to Commission and let the Commission fight it out?

Bill Shearer – is there someone else besides Grayson?

Tony – Salt River.

David Crews – it is my understanding is that Salt River had a board meeting Thursday but they did not bring up MOU to vote on

Tony – no, it was brought up and discussed at AGGNOSIUM (sp?), but their board didn't approve.

Mark Stallons – is it fair, I believe, trying to remember I don't think Salt River intervened is that correct. (That is correct *added*) So Salt River really will not have any standing so to speak in the case in order to come in and offer testimony in support or lack of support of the MOU. It may be fair to assess that they are basically standing on the sidelines waiting to see what happens in that case. If EKPC approves the MOU today, basically we have the vast majority of the coops that have approved it and all go to the PSC united and I think it makes us as an EKPC member owner family look better rather than going in with a lot of different options.

David Crews – but as far as the MOU goes until you have all 16 members approved it and signing onto it – it is not in affect. We cannot use it here. We are still with Amendment 3.

Tony C – this is going to be decided at the PSC. They gave us 45 days.

David Smart – we had a long discussion in the IC (informal conference) with the Commission. The Commission is very interested. They are behind a little bit. We have been dealing with this a lot. They looked at Amendment 3, they looked at the MOU, and read Grayson's issues with regard to it. They wanted to know where we were and EKPC told them the same thing Tony just

said. We have fiduciary duty with everyone to do it equally, however, if all 16 members agree on another form of distributing this portion of what the RUS has allowed us to buy off of EKPC, because that would be fair and equitable to EKPC because it would be fair and equitable to all 16 members that own East Kentucky. We support the MOU and we are going to vote on Tuesday to approve the MOU to show our support. That is why it is on the agenda at least as far as legal is concerned. It is to demonstrate EK's support to what the members have determined is fair and equitable. If that changes and doesn't pass, like Tony said we go back to something else that the Commission decides is fair and equitable and EKPC decides is fair and equitable. We are not going to be the road block to the 16 that unanimously voted for the MOU, we are in a little different territory now that Salt River hasn't and Grayson rescinded. That is why it is on the agenda. We made representation to the PS.....

Tony Campbell – I recommend that we pass it. Pass with those contingencies.

Mark Stallons – it was really interesting being in that IC. It was obvious that Richard Graph looked at the Salt River representative and asked point blank what was their position? And he had to explain why they hadn't moved on it or done anything with it. The Commission strongly wanted to understand what everybody's position was.

Lonnie Vice – so as a committee if we send to the full board we are sending as it is defined today with the two abstentions that we have or the lack of approval at this point. But getting it to the full board then all the other distribution systems will have an opportunity to react to their position on that.

Landis – And understanding that even if it is passed out at the meeting and it passes at the full board, without 16, his signature doesn't put it into effect. Have to have consensus of all 16 coops. They all have to sign off on it.

Lonnie – but we have taken action on the MOU as it stands at this particular time. Which is the lack of approval of two distribution systems. That is what we are doing

Landis makes motion to move out of Committee to full board / Jody Hughes second.

It was a Unanimous decision. No opposition.

After Barry's presentation of KPI report, Lonnie requested that the committee go back to S24 of the Board Book. The 5th whereas clause reads that "we are approving the MOU" and that language will be corrected and in the board information for tomorrow. We in effect did not approve the MOU, we approved as the vote existed as of today and did not approve the MOU.

David Smart – it will be correct to be an exact reflection of what happened among the 16 and EKPC.

Continue to work on A#3 and MOU. Managers met after last board meeting. General consensus reached on draft MOU. Key terms are no stranded costs, generators 5 mw or less requires 90 day notice. If you have installations less than 5 mw and want to bring in as Am #3 it is only 90 days. If greater than 5 mw requires 18 months' notice. Not different from A#3 in MOU – it is a restatement of what's currently in the A#3 – only real clarification here it used to be the 18 and 90 days set straddle the 5 mw and it didn't say where 5 mw fell on which side of the fence. Went conservatively and dropped 5 mw on the 90 day side. Again this is clear in A#3 but alternate resources don't fall within WPC. Once you give notice for Amendment 3 you are not taking service under WPC any more. This means you don't have transmission service. The WPC is a bundled rate of generation and transmission services to the members and once you opt out of the WPC with Amendment 3 notice if you are delivering via the transmission system any of that load or any of that generation you have to go out and file for network transmission service just as EKPC. That is standard ___ to tariff.

Owner may install up to 15% of 3 year average until EKPC reaches half of its 5% limit and that gets to 2 1/2%. Resources that do not deliver to transmission system don't participate in the PJM market (that's kind of been called behind the meter resources in the MOU). Resources that are delivered to the transmission system – that load and those alternate resources have to participate in the PJM market. Alternate sources are defined as to what is in and what's out. As far as generators. At last meeting with regard to MOU we talked about generators that participate in the demand response market because you can have generator that sits at industrial site and it could lower the demand and participate in the PJM demand response market. It is a defined market with rules and will have a tariff around it. We decided to carve those generators out. Also place where it was not well defined how we would calculate replacement energy if a generator on the transmission system failed and then the member doesn't have resource to serve that load and it goes to PJM market. If it is a behind the meter resource and on the member transmission or an industrial customer, EKPC will serve as always have. We will back stand units behind the meter, but once on transmission system plays by different set of rules.

Draft 3/15/13. Trying to schedule another meeting to review proposed draft and possibly some members have a few more changes.

David and Lonnie asked for comments /

Mark Stallons summarized very well / Carol Ann acknowledged fine.