

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

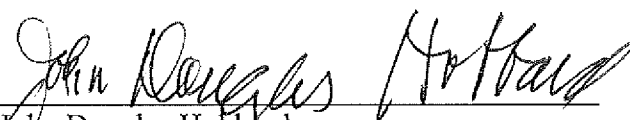
THE APPLICATION OF SOUTH KENTUCKY RURAL)
ELECTRIC COOPERATIVE CORPORATION FOR) Case No. 2018-00050
APPROVAL OF MASTER POWER PURCHASE AND)
SALE AGREEMENT AND TRANSACTIONS THEREUNDER)

RESPONSE OF SALT RIVER ELECTRIC COOPERATIVE
CORPORATION TO EAST KENTUCKY'S BRIEF AND MOTION
TO STRIKE PAGE 43, LINE 6 THROUGH PAGE 44, FOR ITS
ACTIONS IN OBTAINING THE DOCUMENT RECITED THEREIN

Respectfully submitted,

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CERTIFICATE OF SERVICE

Pursuant to 807 KAR 5:001 Section 6, the undersigned certifies that consistent with 807
KAR 5:001 Section 4(8)(d)(3), a copy of this document has been electronically served upon the
following on this the 20 day of January, 2018:

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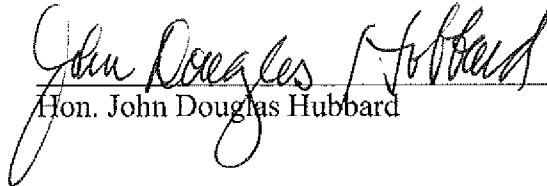
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Hon. John Douglas Hubbard

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This Brief, is presented by Salt River Electric Cooperative Corporation, (herein Salt River). Salt River believes it is the only Intervener of the Cooperatives that intervened in this case as a “neutral party” and believes that except for South Kentucky, Grayson, Shelby, Taylor, Jackson and Owen, the rest of the cooperatives came forth to support East Kentucky Power who, we believe is the only party who benefits by elimination or modification of the Memorandum of Understanding and Amendment 3.

INTRODUCTION

We agree that the facts of this case are relatively straight forward and fundamentally simple, and that East Kentucky Power Company (EKPC) has, since the beginning of Amendment 3 and the subsequent Memorandum of Understanding devoted its time and energy trying to eliminate or modify both of those two documents because of EKPC’s financial situation through the years.

The actions and financial history of EKPC do not indicate that its only purpose in existing is for the benefit of its owners, the 16 distribution cooperatives. In fact, many times the

situation seems reversed in that EKPC's existence is more important than the cooperatives themselves and those cooperatives exist for the benefit of EKPC. This gives rise to the expression of the tail seeming to wag the dog when EKPC seems to control the cooperatives who own it.

It is our understanding that EKPC was not able to borrow sufficient money at the time the Third Amendment arose unless EKPC was able to secure a ten-year extension to 2041 of its Wholesale Power Contract with all 16 distribution cooperatives. Despite the representations that were made during that period that EKPC was in great financial situation, RUS would not loan EKPC any additional money unless EKPC's owners, the distribution cooperatives, signed for EKPC by virtue of a ten year extension of the Wholesale Power Contract. This, to us, is somewhat akin to all General Motors stockholders being asked to guarantee its loans. We think this is consistent with testimony of others during the hearing.

However, all the distribution coops would not sign a ten year extension of the Wholesale Power Contract. It is our belief that those cooperatives did not feel the additional generation was warranted at the time. In retrospect, they were correct as the Smith plant was never built and became a regulatory asset. Nevertheless, those cooperatives agreed to sign the extension in return for being given a method by which they could purchase a small part of their needs from alternate sources. All of the distribution cooperatives and EKPC signed Amendment 3, which was the only way that EKPC was able to get its funding, which now amounts to total debt of around 2.9 billion dollars.

We must ask the question that if Amendment 3 is eliminated unilaterally, does that not mean that the expiration date of the power contract goes back to 2031? Will RUS now call EKPC's loans on the grounds they don't have adequate security today?

When Jackson Energy tried to secure a large part of its electricity under Amendment 3, they were persuaded not to go forward with this transaction by EKPC since it was not in the “cooperative spirit”.

We heard much about the “cooperative spirit”. It would seem that there is nothing from others to indicate that the “cooperative spirit” includes honoring contracts about Amendment 3 or the Memorandum of Understanding, despite the signatures of EKPC and all of the distribution cooperatives on both.

The next large step in the history of this involved Grayson’s application for an alternate source under the Wholesale Power Contract and Amendment 3. A dispute arose over how to apply Amendment 3. After much discussion, the Memorandum of Understanding (MOU) was developed by the cooperative CEOs and managers was subsequently agreed to and signed off on by all involved parties including EKPC. Even so, if I understand the evidence that was presented, EKPC spent a million dollars fighting to keep Grayson from being able to exercise its contractual right and kept Grayson from going forth with their proposal.

Who is the only entity that benefits from getting rid of the alternate sources provision of Amendment 3 and getting rid of the Memorandum of Understanding? EKPC.

WHAT FACTS GOT US HERE

How did we get here? Apparently we got here because South Kentucky was approached by an entity wanting to be a part of a contract by which South Kentucky could buy a small portion of its power needs from an alternate source at a much lower price than what it is having to pay EKPC for that small amount of power.

South Kentucky secured the services of Mr. Goss, an outstanding lawyer, who many of us considered the attorney for EKPC, for Mr. Goss to assist South Kentucky in their efforts to

secure power from the alternate source, pursuant to the agreements that South Kentucky has with EKPC and all of the rest of the distribution cooperatives have signed and under the provisions of Amendment 3 of the Wholesale Power Contract that, again, all of the cooperatives and EKPC are parties to and have signed. Many of us thought Mr. Goss was an attorney for EKPC. If I may repeat myself, all of the distribution cooperatives and EKPC contractually agreed to the provisions of the Amendment 3 Memorandum of Understanding and signed those documents. It was Amendment 3 that allowed EKPC to secure sufficient financial assistance from RUS with an additional 10 year loan guarantee.

South Kentucky certainly made no secret about its intent. It consulted, obviously, with Mr. Goss and in its conversation with Tony Campbell, the President and CEO of EKPC, who assured them that he could mitigate any damages to EKPC. The evolution of EKPC's efforts to assist South Kentucky is very interesting. EKPC was originally, going to stay out of South Kentucky's application process, then claimed that it was just being neutral, then claimed it was just intervening so that it would know what was going on and finally to be in total opposition to South Kentucky.

Today some of the distribution cooperatives would have you believe that they had no idea that the process could create stranded costs and cause problems for everyone except the applicant. I would be the first to admit to you that I'm an old country lawyer but all I can say if there is anybody who signed Amendment 3 of the Memorandum of Understanding as everyone did, who claims today that they did not understand that the process would create stranded costs then I wonder what they were thinking at the time.

The reason for buying from alternate sources is to save the purchaser money from what they would otherwise be paying for what little they are getting from an alternate source if they

were having to pay what EKPC is charging. Certainly Salt River understood exactly what we were signing. We understood that the reason for securing from an alternate source was solely for the benefit of our members. Why else would you want to buy from an alternate source? We submit that if all cooperatives exercised their rights and buy from an alternate source that it would benefit all of their members and avoid any problem of the shifting of stranded costs.

As to EKPC they seem to be claiming today that they didn't understand what they were signing, then I also wonder what they were thinking at the time. Likewise, all of the people who have been in charge of EKPC management since those documents were signed should have been actively contemplating how to mitigate the impacts when a cooperative chose to exercise their rights under Amendment 3.

Finally, if there is going to be any changes made to the Third Agreement or subsequent amendments we need to remember that all of those changes were predicated on the distribution coops being able to secure electricity from alternate sources. If we cannot, then the Wholesale Power Contract should revert back to ending in 2031, which was what the distribution cooperatives gave up in return for the ability to choose alternate sources.

MOTION TO STRIKE

We agree that something is wrong with the situation, but we believe that what's wrong is how EKPC handled this issue with a Board Members only meeting.. Without us present one of EKPC's attorneys apparently convinced these Board members that they had no choice but to adopt some type of resolution that EKPC wanted. However, we submit that the meeting was improper without notice to counsel and without the opportunity for counsel to be present to correct any misstatements, misimpressions or ideas from the trial counsel of EKPC. Since it

was done in a secret manner, without counsel, we respectfully request that the so-called resolution be stricken from the record and from any consideration in this litigation.

CONCLUSION

We believe that all of the parties to those contracts even EKPC which is supposedly owned by the distribution cooperatives, have a right to express their thoughts as to how best to resolve the problems that are being deliberately created by someone in regard to these two items.

Salt River, likewise, has a suggestion that we share with the Commission. There was nothing secret about this suggestion. In fact it was contained in the letter of invitation for all of the CEOs and Managers to come to Bardstown and sit down and discuss the matter. Maybe that is what caused the urgency that EKPC perceived the need to have a meeting without notice to the other lawyers and to have a meeting in which their attorney was the only one supposedly advising EKPC's Board of Directors, one of whom was Chairman of the Board of Salt River.

We believe that basically there are three options. Option no. 1 is that everyone else in addition to South Kentucky gets the same 15% that South Kentucky is requesting. Anyone not taking their allotment would have the right to sell its share to an EKPC distribution cooperative. Option 2, everyone gets 5% and South Kentucky can keep its notification and pay the stranded costs above 5% for what it has requested. If any of the others do not wish to take their 5% they can sell it to any other EKPC coop. Option 3 South Kentucky drops its notification and everyone is entitled to 5%. If any of the others do not use their 5% they would have the right to sell it to any other EKPC coop. These are only possible options and solutions. We believe, though, that this resolution needs to be fair and reasonable for all parties and not just to rescue EKPC from another financial problem that it has created.

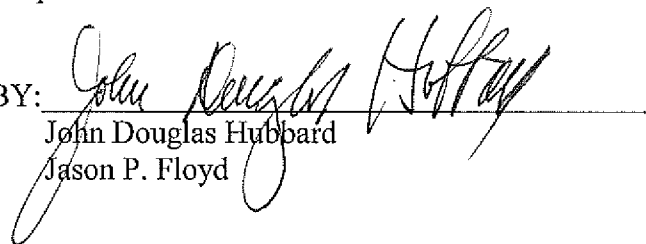
Finally, maybe EKPC needs to avail itself of the protections provided for Debtors, who are overwhelmed with debt and seem to have little solution except cost its ownership more every day.

Respectfully submitted,

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