

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)

REPLY OF

**SOUTH KENTUCKY RURAL ELECTRIC COOPERATIVE CORPORATION TO
SALT RIVER ELECTRIC COOPERATIVE'S RESPONSE AND MOTION TO STRIKE**

Filed: July 31, 2018

South Kentucky Rural Electric Cooperative Corporation (“South Kentucky”) provides this brief reply in connection with the motion to strike filed by Salt River Electric Cooperative Corporation (“Salt River”) and in accordance with the Commission’s July 23, 2018 order inviting the opportunity to respond. South Kentucky was not allowed to participate in the June 8, 2018 special meeting of the East Kentucky Power Cooperative (“EKPC”) Board. South Kentucky thus cannot comment on the parliamentary defects, dissension and other arguments raised by Salt River, EKPC, Joint Intervenors and now Jackson Energy Cooperative Corporation. For all South Kentucky knows, EKPC thought the resolution might convince the Commission to believe that the pathway to consensus lay through Winchester. The additional briefing has made clear though that the resolution adopted by EKPC’s Board is decidedly less unanimous than initially characterized.

South Kentucky appreciates that the Commission, in considering what is before it, cannot be blind to the future. Nevertheless, the Commission must balance any interest in future proceedings against the fundamental legal principles implicated here. The MOU and Amendment 3 govern South Kentucky’s alternate source designation, and they govern the positions of EKPC and the other 15 owner-members relative to that designation. EKPC’s resolution, effective or not, has no bearing whatsoever on these instruments. Likewise, a valid rate change, whether filed by EKPC or ordered by this Commission, can only be implemented in accordance with the Filed Rate Doctrine principles reflected in the laws duly enacted by the General Assembly and the Commission’s decisions.¹ And whatever the source of any change, its field of operation will be prospective only.²

¹ See *Cincinnati Bell Tel. Co. v. Ky. Pub. Serv. Comm’n*, 223 S.W.3d 829, 837-39 (Ky. Ct. App. 2007) (“underlying principles [of the doctrine] are incorporated and recognized in both our statutory and our case law.”); *Id.* at 839 (“In light of the General Assembly’s comprehensive rate-making scheme, including only a narrowly defined circumstance under which refunds can be ordered, the filed rate can only be lawfully altered prospectively.”); see

South Kentucky's briefs make clear its views.³ The future is best informed by the past, and EKPC and the owner-members will have an easier time navigating what is next if they know the Commission will hold them to their agreements. The clearest path to end the in-fighting is to enforce the only unanimous agreements in the record, Amendment 3 and the MOU.

Respectfully submitted,

/s/Matt Malone

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**SOUTH KENTUCKY RURAL ELECTRIC
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also In re North Marshall Water Dist., Case No. 95-107, page 3 (Oct. 13, 1995) (“While the amount of undercharges is small, the principle at stake is not. The filed rate doctrine is the bedrock of utility rate regulation. Acceptance of the Settlement Agreement would erode the basic bulwark against rate discrimination and arbitrary utility action. Even the smallest erosion of this rule must be avoided.”); *South Kentucky Initial Brief*, p. 13 & nn.47-49.

² See KRS 278.270 (“Whenever the commission, upon its own motion or upon complaint as provided in KRS 278.260, and after a hearing had upon reasonable notice, finds that any rate is unjust, unreasonable, insufficient, unjustly discriminatory or otherwise in violation of any of the provisions of this chapter, the commission shall by order prescribe a just and reasonable rate **to be followed in the future.**” (emphasis added)); see also *South Kentucky Initial Brief*, p. 13 & n.49. For this reason, all of the proposed unilateral rewrites of Amendment 3 and the MOU (Salt River’s, Jackson Electric’s, etc.) should be disregarded.

³ See, e.g., *South Kentucky Initial Brief*, pp. 13-20; *South Kentucky Reply Brief*, pp. 32-35.

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:

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This 31st day of July, 2018.

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