COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF SOUTH KENTUCKY RURAL ELECTRIC COOPERATIVE CORPORATION FOR APPROVAL OF MASTER POWER PURCHASE AND SALE AGREEMENT AND TRANSACTIONS THEREUNDER	))))	**CASE NO. 2018-00050**

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POST-HEARING BRIEF OF GRAYSON RURAL ELECTRIC COOPERATIVE CORPORATION

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This brief, presented as a result of the previous Order of the Commission is the brief on behalf of Grayson Rural Electric Cooperative Corporation (Grayson) one of the intervenors herein and a distribution cooperative within the family of distribution cooperatives who are owners of East Kentucky Power Cooperative (EKPC).

FACTS

The facts of this case are relatively straight forward and fundamentally simple, yet in application provide for an intertwining of intricacies that affect all of the parties resulting in a Rubik's Cube type conundrum that the Commission must now unravel.

South Kentucky Rural Electric Cooperative Corporation (South Ky.) is a distribution electric cooperative serving several counties in southeast Kentucky. South Ky. is, along with the intervening distribution cooperatives, an owner of East Kentucky Power Cooperative (hereinafter EKPC). EKPC is the generation and transmission cooperative supplying the power, originally, to the intervening distribution cooperatives. Grayson is one of those distribution cooperatives which, along with the others, are the actual member/owners of EKPC.

In 1964 a Wholesale Power Contract was entered into between the distribution cooperatives and EKPC which was an all requirements contract. This contract required the electric generating facilities owned by EKPC to provide the electrical power to the member/owners. The member/owners likewise were required to buy all their power from EKPC. EKPC had certain generating facilities and built others and maintained others subsequent to the 1964 Wholesale Power Contract. At that time and continuing for several years thereafter all of the power purchased by the distribution cooperatives, the member/owners, was generated by EKPC. The distribution cooperatives would send one of their own board members to serve on the board of EKPC.

In 2003 EKPC and the distribution cooperatives entered into Amendment 3 to the Wholesale Power Contract. This is attached hereto as Exhibit 1 to this brief. Amendment 3 provided that the Wholesale Power Contract would have its terms extended to the year 2041. Amendment 3 also provided for the right of a distribution cooperative to purchase a percentage of its electrical power that it would sell to its own members up to 15% of its load. Amendment 3 further provided that if multiple elections were made by the distribution cooperatives to purchase power from an alternate source then, in the aggregate, the power purchased by the distribution cooperative from an alternate source could not exceed 5% of the EKPC load. The mathematical computation of these percentages easily demonstrates that each distribution cooperative could not purchase 15% of its load without exceeding the 5% cap on the EKPC load. For unexplained reasons no distribution cooperative ever complained or brought to the attention of any appropriate entity this mathematical incongruency.

In 2012 Grayson filed with the Commission in action number 2012-00503 its own request to have approved, a purchase of 15% of its load, then 9.7 megawatts, from an alternate source. After a couple of amendments to its Petition the request was for the approval of a Power Purchase

Agreement much like South Ky. has filed in the within case. That Power Purchase Agreement (PPA) was also with Morgan Stanley Capital Group, the same as the one here with South Ky. That action was filed in November of 2012.

Thereafter the Commission provided for a process of taking depositions and provided in a July 2013 Order that a methodology may need to be investigated because of the mathematical problem referenced hereinabove.

The distribution cooperatives, in large numbers, lined up against Grayson's request and included in that opposition was EKPC and South Ky. Ultimately, for unexplained and mysterious reasons, Grayson agreed to sign a document that became known as the Memorandum of Understanding, which document was signed by all of the distribution cooperatives and EKPC. The Memorandum of Understanding (MOU) is attached hereto as Exhibit 2 to this brief.

The Commission in a December 2015 Order in 2012-00503 determined that the MOU was an effective way of handling the mathematical problem and directed EKPC to file the MOU in its tariff file. The parties agreed for a dismissal of the case, the case was dismissed, and all parties ended their litigation before this Commission as well as Grayson and EKPC and the other distribution cooperatives ending Circuit Court litigation in the Mason Circuit Court. All, however, evidently, was not settled.

EKPC began utilizing in the past several years; PJM marketing, commenced by EKPC in 2013. EKPC would use this regional marketer to provide power to the distribution cooperatives. This regional marketer would utilize not only the power generated by EKPC from its own facilities but also generating sources in other locales by entities who were also members of PJM. Therefore, commencing with EKPC's entry into the PJM market place the reliance upon the generating capacity of EKPC by the distribution cooperatives was in effect, significantly reduced. The

importance of that generating capacity of EKPC does not now then, have the same significance or importance as it did prior to the entry of EKPC into PJM. EKPC is required to serve its native load by the cheapest costs power.

The power sourced through the PJM market place is generated by coal, gas, nuclear, and other renewables. The Morgan Stanley Capital Group contract sought to be approved by South Ky. also goes through PJM and has the energy sourced from multiple fuels and renewables.

In 2017, South Kentucky began pursuing the purchase of power through an alternate source, investigated the possibility of doing so after experiencing steady decline in sales from the year 2014, and realizing significant reduction in sales.

South Kentucky determined that it could save its members at least six million dollars per year by purchasing 15% of its load, 58 megawatts, from an alternate source. This alternate source would be through the Morgan Stanley Capital Group Power Purchase Agreement which agreement would utilize the regional marketer, PJM, and provide South Ky.'s members with a substantial reduction in the cost of power.

South Ky. sought and received assistance from EKPC in preparing an appropriate written notice to EKPC to elect to purchase this 58 megawatts through the parameters of Amendment 3 and the MOU. EKPC provided assistance through its legal counsel who was also the initial legal counsel for South Ky. in this proceeding and provided assistance through Don Mosier, David Crews, and Mike McNalley, senior officers of EKPC including CFO, Mr. McNalley. Tony Campbell, CEO and President of EKPC, also provided occasional assistance in discussions and meetings with South Ky. personnel commencing on or about August 7, 2017, a subsequent date in August of 2017, and on into the fall of 2017.

Ultimately, written notice was given to EKPC under the provisions of the MOU which notice was given November 28, 2017. This notice provided that South Ky. elected to purchase 58 megawatts of power through the Morgan Stanley Capital Group under the PPA sought to be approved in the within matter and that the purchase of this power would commence under the terms of that contract on June 1, 2019. The delayed date was done in accordance with the MOU which provided that there had to be an eighteen (18) month notice given to EKPC. EKPC officials have testified in the within case that the notice comports, as far as EKPC is concerned, with the requirements of the MOU. In fact the notice was done in the manner that EKPC directed that it be done according to the testimony given by Mr. Mosier, Mr. Crews, Mr. McNalley, and Mr. Campbell.

Despite this assistance given by EKPC to South Ky., EKPC has intervened in the within action and has objected to the purchase of the power under this PPA.

EKPC believes that the loss of this load that it would otherwise sell to South Ky. would result in decreased revenue and some costs shifting that the other distribution cooperatives will have to make up and that there will be lost opportunity to EKPC.

Mr. McNalley, the CFO and Executive Vice President of EKPC testified that the nature and extent of the loss to EKPC was speculative. He further testified that should other distribution cooperatives elect to purchase power from an alternate source that it would be difficult to ascertain the monetary loss. In point of fact, Mr. McNalley testified that should multiple distribution cooperatives seek alternate source elections over the next two (2) years that quantifying the dollars of that loss would be virtually impossible. Mr. McNalley, in a nutshell basically says that it is pure speculation on what the financial impact might be for EKPC if the PPA is approved. He just

believes that there would be some cost shifting, the extent to which he was unable to give a definitive number.

EKPC through its President and CEO, Tony Campbell, testified that over the past few years EKPC has been quite profitable and has, in fact, been able to not seek a rate increase since 2010. The 2010 rate case was concluded by a January 14, 2011 Order from this Commission (2010-00167) and it provided that should EKPC achieve a certain TIER level of 1.5 or above then it must petition the Commission for a rate decrease.

Furthermore, Mr. Campbell testified that EKPC had twenty two million dollars in margins in 2017, which had followed a thirty six million dollar margin and a fifty million dollar margin in the two years preceding 2017. Mr. Campbell, further testified that EKPC had so much revenue that it had been able to place in a separate account, one half billion dollars that it called a "credit cushion". Mr. Campbell said that this one half billion dollars was generating at least sixteen million dollars in interest to EKPC (a rather anemic return on one half billion dollars).

Other testimony included the testimony of Mr. Dennis Holt Chief Executive Officer of South Ky. in formulating the contract. Carter Babbitt, South Ky.'s expert, testified that the proposal through Morgan Stanley Capital Group was significantly beneficial to South Ky. and would generate over the course of the twenty year contract, a savings of between seventy eight million and one hundred ten million dollars.

Mr. Seelye further testified for South Ky. providing an analysis that was performed after the Application with this Commission was filed but one upon which he concluded was appropriate and beneficial from a financial point of view to the members of South Ky.

Mr. John Wolfram provided testimony for the group of nine distribution cooperatives that had intervened in his report provided that the cost shifting would be a significant burden upon the

distribution cooperatives were the PPA sought to be approved by South Ky. actually approved by the Commission. Mr. Wolfram stated that the distribution cooperatives other than South Kentucky would suffer a cost shift of between 15.9 and 18.3. See DT JW P. 5, l. 16-19. South Kentucky, he opined, failed to show to the commission how the proposed transaction is fair, just, and reasonable; South Kentucky's evaluation of the proposed transaction is insufficient and flawed, and imposes a significant unreasonable risk of uncertainty upon South Kentucky. *Id.* at p. 5, l. 11-15. He further stated, South Kentucky failed to include all the anticipated or possible incremental costs that are associated with PJM. *Id.* at p. 5-6. That South Kentucky also failed to consider the long term costs of PJM including costs of RTOs for things like large transmission projects. *Id.* at 8. He, Mr. Wolfram, thought South Kentucky's analysis as to price increases were arbitrary and unsupported. *Id.*, South Kentucky's hedge capacity would go above 15% of its based load violating the terms of Amendment 3 (See JW generally), and South Kentucky failed to consider possible changes in environmental law. *Id.* at 12.

Mr. Carter Babbitt provided rebuttal testimony to Mr. Wolfram. Mr. Babbitt believes that the proposed transaction is a significant opportunity for savings, and that "knowable risks have been assessed and are reasonably assumed." See RT Babbit at p. 3. Mr. Babbitt also discounts the analysis of EKPC witnesses with regards to "Change in Law" provisions for environmental costs. *Id.* at 6-7.

Mr. William Steven Seelye provided rebuttal testimony as well. Mr. Seelye believes no provision of the proposed transaction violates Amendment 3 or the MOU. See RT Seelye at p. 2. He believes that the prospect of cost shifting is irrelevant as it is a normal occurrence for all utilities. *Id.* at p. 2.

Were the issue before the Commission, simply whether the PPA through Morgan Stanley Capital Group is fair, just, and reasonable to the members of South Ky. then the answer would be easy. The cost of power would go down significantly to South Ky. were this PPA approved. The distribution cooperatives have feared EKPC cost shifting and fear a possibility of an increase in wholesale power costs resulting in an increase of its own rates to their various members. There would also be some possible initial increase in the fuel adjustment clause costs and the environmental surcharge assessment. The distribution cooperatives would be on the hook for over 15 million a year per Mr. Wolfram's testimony. Over the life of the contract, the Distribution cooperatives would pay hundreds of millions more in power costs due to the proposed transaction; a number that dwarfs the proposed savings to South Kentucky in even its rosiest scenario offered by Mr. Babbit and Enervision.

The other distribution cooperatives in some respects have also sought an election of alternate source power utilizing small generation and a little bit larger generation being sought by way of "defensive" move by Owen Rural Electric of 19 megawatts and Jackson of approximately 12 megawatts.

So what does the Commission do with the mathematical problem, a cost shifting problem that will occur unless EKPC "bites the bullet", and the inherent problem if each distribution cooperative seeks to benefit its own members and strive to exercise its own fiduciary duty to its member/owners to seek the lowest possible cost of power?

The Commission in oral pronouncement through individual members stated more than once during the hearing that it was going to solve the problem. Its resolution of the problem must be based upon the confines of its legislatively granted power and not on an arbitrary determination.

A review of the relevant law as to the Commission's power to take care of the issues involving Amendment 3 and the MOU is appropriate here.

The beginnings of the law as it applies to power companies traces back to Supreme Court analysis with regards to Shippers engaging in interstate commere. In *Keogh v. Chicago & Northwestern Railway Co.*, 43 S.Ct. 47, 67 L.Ed. 183 (1922), Keogh sued the defendant carriers and their officers and agents for conspiring to fix rates in violation of the Sherman Act. Keogh claimed that, but for the conspiracy, he would have paid lower rates than those he was required to pay. Accordingly, he requested that his damages, equal to the difference between the actual rate and what the rate would have been but for the conspiracy, be trebled. *Id.* at 159–60, 43 S.Ct. at 48–49.

The Supreme Court noted that the Interstate Commerce Commission had, in proceedings before it, determined that all the rates fixed were reasonable and nondiscriminatory, and had approved the rates that the defendant carriers charged. The Court went on to hold that *Keogh*, a private shipper, could not recover antitrust damages based on the lower rates he would have enjoyed absent the conspiracy. *Id.* at 161–62, 43 S.Ct. at 49. Justice Brandeis, writing for the Court, gave several reasons for dismissing the suit. Among them, he noted:

> Section 7 of the Anti–Trust Act gives a right of action to one who has been "injured in his business or property." Injury implies violation of a legal right. *The legal rights of shipper as against carrier in respect to a rate are measured by the published tariff. Unless and until suspended or set aside, this rate is made, for all purposes, the legal rate, as between carrier and shipper.* The rights as defined by the tariff cannot be varied or enlarged by either contract or tort of the carrier. And they are not affected by the tort of a third party. This stringent rule prevails, because otherwise the paramount purpose of Congress—uniform prevention of unjust discrimination—might be defeated. If a shipper could recover under Section 7 of the Anti–Trust Act for damages resulting from the exaction of a rate higher than that which would otherwise have prevailed, the amount recovered might, like a rebate, operate to give him a preference over his trade competitors.

Id. at 163, 43 S.Ct. at 49–50 (emphasis added) (citations omitted).

Since *Keogh* was decided, the decisions of the Supreme Court has recognized and reinforced Justice Brandeis' statement that the filed rate defines the rights of the shipper/customer as against the carrier/utility. *See, e.g., Maislin Indus., U.S., Inc. v. Primary Steel, Inc.,* 497 U.S. 116, 126, 110 S.Ct. 2759, 2765, 111 L.Ed.2d 94 (1990) ("This court has long understood that the filed rate governs the legal relationship between shipper and carrier."); *Square D Co. v. Niagara Frontier Tariff Bureau, Inc.,* 476 U.S. 409, 416, 106 S.Ct. 1922, 1926, 90 L.Ed.2d 413 (1986) (refusing to overrule *Keogh* and noting that Court in *Keogh* had reasoned that the legal right of the shipper against the carriers had to be measured by the filed rate); *Arkansas Louisiana Gas Co. v. Hall,* 453 U.S. 571, 577–78, 101 S.Ct. 2925, 2930–31, 69 L.Ed.2d 856 (1981) (stating that filed rate doctrine "forbids a regulated entity to charge rates [to its customers] for its services other than those properly filed with the appropriate federal regulatory authority," and noting that " 'The considerations underlying the doctrine ... are preservation of the agency's primary jurisdiction over reasonableness of rates and the need to insure that regulated companies charge only those rates of which the agency has been made cognizant.' " (quoting *City of Cleveland v. FPC,* 525 F.2d 845, 854 (D.C.Cir.1976)); *Montana–Dakota Util. Co. v. Northwestern Pub. Serv. Co.,* 341 U.S. 246, 250–52, 71 S.Ct. 692, 694–95, 95 L.Ed. 912 (1951) (utility/buyer of electricity sued utility/seller of electricity on the grounds that buyer's predecessor paid seller unreasonably high prices to seller for electricity; Court found that courts could not decide what reasonable rates during the past should have been and noted, "It is not the disembodied 'reasonableness' but that standard when embodied in a rate which the Commission accepts or determines that governs the rights of buyer and seller."). The lower courts have done the same. *See, e.g., Wegoland Ltd. v. NYNEX Corp.,* 27 F.3d 17, 18, 22 (2d Cir.1994) (stating that, "The filed rate doctrine bars suits against regulated *464 utilities [by

ratepayers] grounded on the allegation that the rates charged by the utility are unreasonable." and that, "[W]e note that the filed rate doctrine does not leave regulated industries immune from suit under the RICO or antitrust statutes."); *Pinney Dock and Transport Co. v. Penn Cent. Corp.,* 838 F.2d 1445, 1455 (6th Cir.1988), *cert. denied,* 488 U.S. 880, 109 S.Ct. 196, 102 L.Ed.2d 166 (1988) (noting that in *Keogh,* the Supreme Court stated that the main purpose of the Interstate Commerce Act was the prevention of unjust discrimination, and that this required that ICC-approved rates be the sole source of a shipper's rights against a carrier).

While the Filed Rate Doctrine is very applicable it is largely irrelevant in *this* case and the proposed transaction, as South Kentucky is stating its transaction is reasonable, fair, and just, seeking such approval from the commission. EKPC, and certain Distribution Cooperatives are stating that it is unreasonable. The Filed Rate Doctrine does not apply in a transaction involving fair, just and reasonable rates. *See, e.g., Taffet v. Southern Co.,* 967 F.2d 1483, 1485 (11th Cir.1992), *cert. denied,* 506 U.S. 1021, 113 S.Ct. 657, 121 L.Ed.2d 583 (1992) (stating that cases raised question whether a private suit under RICO may be brought against a utility to recover for excessive charges for electrical power). Kentucky has specifically declined to extend the filed rate doctrine this far. *See Big Rivers Elec. Corp. v. Thorpe*, 921 F. Supp. 460, 463–65 (W.D. Ky. 1996). The filed rate doctrine recognizes that where a legislature has established a ratemaking scheme, the filed rate defines the legal relationship between shipper/customer and carrier/regulated utility. Ratepayer rights in regard to the rate it pays are defined by the statutory scheme. *See Taffet,* 967 F.2d at 1490.

The jurisdiction of the Commission extends to all utilities in Kentucky, and the PSC has "exclusive jurisdiction over the regulation of rates and service of utilities." KRS 278.040(2); *see*

also Smith v. Southern Bell Tel. & Tel. Co., 268 Ky. 421, 104 S.W.2d 961, 963 (1937) (holding that primary jurisdiction and authority to fix rates rested exclusively and primarily in the PSC). Utilities must file schedules with the PSC that show their rates, and no utility may "charge, demand, collect or receive from any person a greater or less compensation for any service rendered or to be rendered than that prescribed in its filed schedules." KRS 278.160; *see also Boone County Sand & Gravel Co. v. Owen County Rural Elec. Coop. Corp.,* 779 S.W.2d 224, 225–26 (Ky.Ct.App.1989) (holding that under KRS 278.160, public utility could not be estopped from collecting undercharges even where the customer was negligently under-billed; to hold otherwise would result in under-billed customer receiving rate preference in contravention of statutory scheme). All utilities have the right to "demand, collect and receive fair, just and reasonable rates." KRS 278.030(1). They may not, however, "as to rates or service, give any unreasonable preference or advantage to any person or subject any person to any unreasonable prejudice or disadvantage." KRS 278.170. The PSC has "original jurisdiction over complaints as to rates ... of any utility," and upon a written complaint "made against any utility by any person that any rate in which the complainant is directly interested is unreasonable or unjustly discriminatory," the Commission must proceed to make an investigation. KRS 278.260; *see also Smith,* 104 S.W.2d at 965 (holding that PSC had primary jurisdiction to pass upon rates and whether same were reasonable; consequently, court found it improper to pass upon the reasonableness of the charges complained of by appellant). Whenever the Commission sua sponte or upon a complaint filed pursuant to KRS 278.260, and after a hearing had on reasonable notice, determines that any rate is unreasonable, unjust, insufficient, unjustly discriminatory or otherwise in violation of Chapter 278, the Commission must prescribe a fair just and reasonable rate to be followed in the future. KRS 278.270.

While all of these statutes and cases clearly set forth the underlying principles of the filed rate doctrine, neither they nor the doctrine forbids a customer of a utility from suing a person or an entity that the customer claims has injured the utility and the customer. In fact, where a customer sued a utility for breach of contract, the Kentucky Court of Appeals had this to say: [A]ppellant seeks damages for breach of contract. Nowhere in Chapter 278 do we find a delegation of power to the PSC to adjudicate contract claims for unliquidated damages. Nor would it be reasonable to infer that the Commission is so empowered or equipped to handle such claims consistent with constitutional requirement. *Carr v. Cincinnati Bell, Inc.*, 651 S.W.2d 126, 128 (Ky.Ct.App.1983) (citing Ky. Const. § 14).

Big Rivers Elec. Corp. v. Thorpe, 921 F. Supp. 460, 463–65 (W.D. Ky. 1996)(internal citations omitted, and lightly adapted for clarity and brevity).

The Commission has power to abrograte and change 20 year long power purchase contracts. In *Natl-Southwire Aluminum Co. v. Big Rivers Elec.* Corpo, the contracts were for 20 years and they contemplated rate changes by the Commission or changes due to a "force majeure." That case held that Kentucky law generally holds utility contracts are subject to rate changes ordered by the PSC, no matter what the contracts provide. *Board of Education of Jefferson County v. William Dohrman, Inc.*, Ky.App., 620 S.W.2d 328 (1981). Also, a prior approval of a contract and rate does not estop the PSC from subsequently changing the rate. *Fern Lake Co. v. Public Service Comm'n, supra.* See Nat'l-Southwire Aluminum Co. v. Big Rivers Elec. Corp., 785 S.W.2d 503, 517 (Ky. Ct. App. 1990) (lightly edited for brevity and clarity).

The Commission in *Fern Lake Co. v. Pub. Serv. Comm'n* held the following principles:

> The Commission has the authority to change rates upon a proper showing and that its power may not be limited by contract because the law in force when and where a contract is made becomes a part of it. Appellees further maintain that the

> Commission's *prior approval of the contract does not estop it from subsequently changing rates therein* when necessary in the public interest. We cannot challenge the soundness of these contentions.

Fern Lake Co. v. Pub. Serv. Comm'n, 357 S.W.2d 701, 704 (Ky. 1962)(italics added). Should the Commission grant the proposals of Grayson, as detailed herein, it is vested with appropriate legal authority to do so.

In the Big Rivers Case, the Court further went on to state that Utilities are to charge "[F]air, just, and reasonable rates for the services rendered," KRS 278.030(1), See *Id.* at 518. The Court went on further to say "These ratesby a utility are not established simply by setting a rate which bankrupts neither the utility nor its customers, the ratepayers. Just as a utility should not be denied a fair return on its investment properly included in rate base, so a customer or consumer should not be required to pay for investments made by the utility which are of no benefit to the consumer. The "used and useful" concept protects against rates based upon such "useless" investments. *Nat'l-Southwire Aluminum Co. v. Big Rivers Elec. Corp.*, 785 S.W.2d 503, 518 (Ky. Ct. App. 1990) (Wilhoit, A., concurring in p., dissenting in p.). In the instant case and proposed transaction, this "investment" is the Alternate Source so designated by South Kentucky. The law here in *Big Rivers* is that shifted costs *should not* be passed along to others for useless investments.

The law for Kentucky utilities is clear that the result is to be what is achieved, not necessarily the process as enunciated by the Supreme Court. "We find no error by the PSC or the Franklin Circuit Court in its application of the *Hope* doctrine. In *Hope, supra,* the opinion reads, at 64 S.Ct. at 287: "Under the statutory standard of 'just and reasonable' it is the result reached not the method employed which is controlling. [Citations omitted.] It is not the theory

but the impact of the rate order which counts." *Nat'l-Southwire Aluminum Co. v. Big Rivers Elec. Corp.*, 785 S.W.2d 503, 512 (Ky. Ct. App. 1990).

In the case of *Big Rivers*, said utility was in bad shape, had defaulted on REA debt, aluminum prices were low for smelters and a foreclosure action had been filed. Big Rivers had asked for a rate increase twice to the Commission and was denied. Then another request for increase by Big Rivers was made and the Smelters asked for rate decrease. The Commission in that case ordered its own rate design, and abrogated the prior contracts in essence between *Big Rivers* and its aluminum smelter customers.

The Commission has stated that it wants to fix this MOU problem and presumably also the Amendment 3 problem since the MOU in large part states the Amendment 3 language.

The Commission heard testimony that the Amendment 3 was approved by the Rural Utility Service but that no approval was sought nor evidently needed by the Rural Utility Service as to the MOU. If the MOU is a tariff the Commission may be bound by the filed tariff doctrine. However, the Commission also is granted the authority under KRS 278.270 to, after a hearing, find that "any rate (and presumably the MOU) is unjust, unreasonable, insufficiently, unjustly, discriminatory or otherwise in violation of any of the provisions of this chapter". If the Commission so finds then it is authorized by that same statute to prescribe by order a just and reasonable rate to be followed in the future. So, therefore, the Commission has room within its legislative delegation to fix the MOU.

The Commission has the authority to rewrite a contract. The Commission can, also, be able to articulate the meaning of that contract as is within its plenary power legislatively granted in order to determine rates that are fair, just, and reasonable. See generally *Big Rivers*, and KRS 278.270.

Grayson respectfully submits that it sought the utilization of Amendment 3 initially and sought Commission's approval to do so in Case No. 2012-00503. The distribution cooperatives that have intervened in the within case to a large extent have not sought an election to purchase alternate sourced power. In point of fact some CEOs took the witness stand and stated that they never had nor do they ever want to. A quite limiting view was testified to by Ted Hampton on behalf of Cumberland Valley Rural Electric and Big Sandy Rural Electric CEO, Mr. Sexton, and Licking Valley CEO, Mr. Howard. The Commission may take their testimony in such a way as to conclude that their 15% of their load would be passed around to the remaining members since these individuals in their testimony, refusing to accept a benefit to their members, may have waived any future right to do so. While the Commission has no authority to find a breach of fiduciary duty the Commission has not been constrained in other orders to comment upon management activities that do not provide reasonably for the best interest of rate payers. Such an opportunity for comment has likely presented itself in the within action.

EKPC has from the inception of Amendment 3, always believed that it could give up 5% of its load. The language of Amendment 3 provides for this. 5% of that load is approximately 158 megawatts at the present time. Allowing each distribution cooperative to utilize 1/16 of EKPC's 5% load, at 100% load factor for each distribution cooperative, would provide a source of alternate power for each cooperative up to 9.875 megawatts. The rest of the terms of MOU as to how said 5% of East Kentucky's load is measured, notice, etc., should still be the same, and there should be no cost shifting allowed under the new proposal. Not EKPC, South Kentucky, or any of the Distribution Cooperatives object to these provisions of the MOU. Under this scenario each cooperative shares evenly in Amendment 3. Each cooperative has one vote on the Board, one

person one vote, and, therefore, one share of the 5% load. Each share would be 1/16. The Commission can abrogate the MOU and impose its own version of the MOU.

Grayson's proposal that each cooperative share equally in the 5% of load of East Kentucky represents the best of all possible worlds, and is a combination of the proposal of South Kentucky, East Kentucky, and the MOU continuing as is. Several cooperatives have only sought "behind the meter" projects of a megawatt or so, for environmental purposes, for "proof of concept" reasons, and for community relations. South Kentucky has attempted to be the "first hog to the trough", and has attempted to "rob the bank" before there is even a "run on the bank". Several other cooperatives have elected 15% as "defensive measures". East Kentucky has said "No" to just about any Alternate Source of Power designation due to the loss of load, and its self-centered practice of acting as a vertically integrated G&T instead of a cooperative G&T.

East Kentucky, South Kentucky, and the Defensive Distribution Cooperatives have been acting in a manner contrary to the cooperative principles and spirit. Grayson has been disheartened by this, and makes its proposal to bring this cooperative spirit and the cooperative principals back into Amendment 3. The last time there was dispirit among the cooperatives it was Grayson's proposals that settled *all* the issues. Each cooperative will share equally in Amendment 3, and therefore no cost shifting will occur. Cooperatives who only want to experiment with "behind the meter" project still have space to do that, and larger cooperatives still have significant savings but cannot crowd out the field or shift cost due to their size. East Kentucky receives clarity and stability in Amendment 3 and cost issues that will be *significantly* reduced.

Other cooperatives may want to propose each cooperative be allowed to utilize 15% of its power from an alternate source. In total this would equal 474 megawatts, as of the date of

hearing, if utilized by every cooperative; however, there are several who have stated that they have not sought nor will they ever seek alternate power as referenced hereinabove.

With one half billion dollars in its "credit cushion" account, EKPC has plenty of money to shoulder any cost shifting without passing along any of that to the member/owners. Under Grayson's proposal East Kentucky will see significant savings compared to the proposed transaction of South Kentucky, allowing it to absorb any costs from loss of load and *maintain* the substance of its "credit cushion".

Grayson believes the Commission should make an appropriate inquiry as to the credit cushion and the monthly margins of EKPC and the extent to which each is to the detriment of the members, and, therefore, the members at the end of the line. Several distribution cooperatives, especially those in eastern Kentucky have sought rate increases in recent years which would not have to be done had EKPC distributed some of this cushion interest, let alone principal. The distribution cooperatives believe in the cooperative action of distributing capital credits, and EKPC ought hold itself to no lower of a standard. The cost to member systems keeps getting higher and EKPC's revenues keep getting higher. Since 2010 EKPC has never sought a rate increase and the distribution cooperatives have nearly all sought with few exceptions and some have sought multiple rate increases. The Commission should make an inquiry on appropriate distribution from this capital credit cushion.

The hearing held in this case over three days of long hours during each of those days brought comment about, among other things, utilizing an alternate source to the extent of five percent of each Cooperative's load. Such an approach is fraught with problems as to fairness, as each cooperative is not of equal size and thus allows the larger cooperatives a "Free meal" with the danger of cost shifting that South Kentucky exposes to each cooperative.

Each party to this proceeding is certainly entitled, within the framework of the evidence and exhibits that were presented at the hearing, to make suggestions as to what the Commission should do in this case again, based solely upon the law and that which was submitted of record. The Commission, however, should, make its decision solely upon that which was adduced at the hearing rather than some action by a party, unilateral in nature and which in effect would unduly step on the toes of an independent Board of Directors governing its own corporation. Each party to the within proceeding is an independent legally constituted distinct corporate entity that has acted and should act within the confines of its own corporate structure and not have other corporate entities speak for it.

Grayson respectfully submits then that undoing the MOU is certainly within the Commission's power, and finding justness to the people on the lower economic scale is a cause that it should undertake and provide for in order to give fairness to all members of the Commonwealth. Grayson's proposal herein for a change in the MOU provides fair, just, reasonable, and equitable access to each of the cooperatives while still allowing for efficiency, reward in customer and demand growth, and savings to struggling "End of the line" customers. For those reasons, South Kentucky's proposal should be denied, and Grayson's proposal on how to design the MOU should be adopted by the Commission.

RESPECTFULLY SUBMITTED,

W. JEFFREY SCOTT, P.S.C.

BY: _____

W. JEFFREY SCOTT
BRANDON M. MUSIC
P.O. BOX 608
GRAYSON, KY 41143
(606) 474-5194

This is to certify that the original of the foregoing
was filed with the Public Service Commission at:

Kentucky Public Service Commission
211 Sower Blvd.
Frankfort, KY 40601

This is to further certify that the foregoing has been served upon
the parties of record by mailing a true and correct copy of same to:

Hon. Matthew R. Malone
Hon. William H. May, III
Hurt, Deckard & May PLLC
mmalone@hdmfirm.com
bmay@hdmfirm.com

Hon. Clayton O. Oswald
Taylor, Keller, & Oswald, PLLC
coswald@tkolegal.com

Hon. Scott B. Glover
Hon. S. Michael Madison
Balch & Bingham, LLP
sgrover@balch.com
mmadison@balch.com

Hon. Robert Spragens, Jr.
Spragens & Hidgon, PSC
rspragens@spragenhigdonlaw.com

Hon. Kent A. Chandler
Hon. Rebecca W. Goodman
Assistant Attorney General
Kent.Chandler@ky.gov
Rebecca.Goodman@ky.gov

Hon. David T. Royse
Randsdell Roach & Royse PLLC
david@rrrfirm.com

Hon. W. Patrick Hauser
W. Patrick Hauser, PSC
phauser@barbourville.com

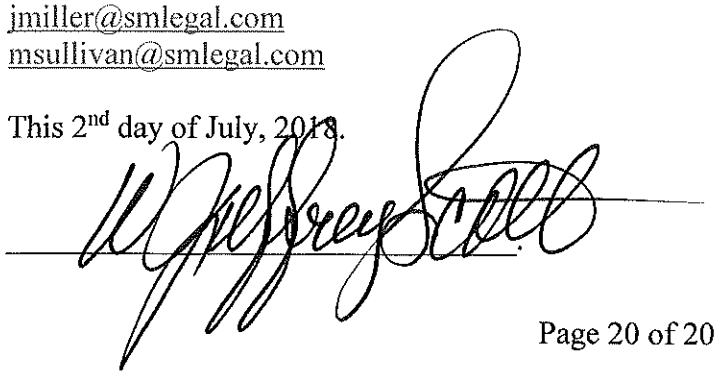
Hon. David Smart
Hon. Roger R. Cowden
EKPC
David.smart@ekpc.coop
Roger.cowden@ekpc.coop

Hon. Michael L. Kurtz
Boehm, Kurtz, & Lowry
mkurtz@bkllawfirm.com

Hon. James M. Miller
Hon. R. Michael Sullivan
Sullivan Mountjoy, PSC
jmiller@smlegal.com
msullivan@smlegal.com

Hon. John Doug Hubbard
Hon. Jason P. Floyd
Fulton, Hubbard, & Hubbard, PLLC
jdh@bardstown.com
jpf@bardstown.com

This 2nd day of July, 2018.



EXHIBIT
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AMENDMENT NO. 3 TO WHOLESALE POWER CONTRACT
BETWEEN EAST KENTUCKY POWER COOPERATIVE, INC. AND
Grayson Rural Electric Cooperative Corporation

This Agreement dated the 21st day of November, 2003, amends the Wholesale Power Contract dated October 1, 1964 between East Kentucky Power Cooperative, Inc. (hereinafter "Seller") and Grayson Rural Electric Cooperative Corporation (hereinafter "Member") as follows:

I. Numerical Section 1 of the Wholesale Power Contract shall be amended and restated to read in its entirety as follows:

1. General - The Seller shall sell and deliver to the Member and the Member shall purchase and receive from the Seller all electric power and energy which shall be required to serve the Member's load, including all electric power and energy required for the operation of the Member's system. Notwithstanding the foregoing, the Member shall have the option, from time to time, with notice to the Seller, to receive electric power and energy, from persons other than the Seller, or from facilities owned or leased by the Member, provided that the aggregate amount of all members' elections (measured in megawatts in 15-minute intervals) so obtained under this paragraph shall not exceed five percent (5%) of the rolling average of Seller's coincident peak demand for the single calendar month with the highest peak demand occurring during each of the 3 twelve month periods immediately preceding any election by the Member from time to time, as provided herein and further provided that no Member shall receive more than fifteen percent (15%) of the rolling average of its coincident peak demand for the single calendar month with the highest average peak demand occurring during each of the 3 twelve

month periods immediately preceding any election by the Member from time to time, as provided herein.

For any election made or cancelled under this Section, the following provisions shall apply:

a. During any calendar year, the Member may make or cancel any such election or elections by giving at least 90 days' notice to the Seller with respect to any load or loads with an average coincident peak demand (calculated in the same manner as provided in the preceding paragraph) of 5.0 Megawatts or less, in the annual aggregate.

b. During any calendar year, the Member may make or cancel any such election or elections by giving at least 18 months or greater notice to the Seller with respect to any load or loads with an average coincident peak demand (calculated in the same manner as provided in the preceding paragraph) of 5.0 Megawatts or more, in the annual aggregate

Upon the effective date of the Member's cancellation of any such election under this Agreement, the load or loads shall be governed by the all requirements obligations of the Seller and the Member in this Section, and notice of same shall be provided to the Rural Utilities Service ("RUS") by the member. Such loads which are transferred to Seller's all-requirements obligations shall not thereafter be switched by Member to a different power supplier.

c. Should any such election by Member involve the acquisition of new service territory currently served by another power supplier or municipal utility, Member shall provide evidence to Seller and RUS in the new Load Purchase Agreement that the acquired territory must be served by the current power supplier as a condition of the acquisition of the new load.

Seller will provide transmission, substation, and ancillary services without

discrimination or adverse distinction with regard to rates, terms of service or availability of such service as between power supplies under paragraphs above and Member will pay charges therefore to Seller. Seller also agrees to allow, at Member's sole cost and expense, such additional interconnection as may be reasonably required to provide such capacity and energy as contemplated in the above paragraphs..

Member will be solely responsible for all additional cost associated with the exercise of elections under the above paragraphs including but not limited to administrative, scheduling, transmission tariff and any penalties, charges and costs, imposed by the Midwest Independent System Operator ("MISO") or other authorities.

II. Section 10 of the Wholesale Power Contract shall be restated as Section 11 and new Section 10 and Section 11 shall read in their entirety as follows:

10. Retail Competition - Seller and its subsidiaries, shall not, during the term of this contract, without the consent of the Member, (i) sell or offer to sell electric power or energy at retail within the Member's assigned or expanded geographic area, if any, established by applicable laws or regulations or (ii) provide or offer to provide retail electric service to any person which is a customer of the Member.

11. Term – This Agreement shall become effective only upon approval in writing by the Administrator and shall remain in effect until January 1, 2041, and thereafter until terminated by either party's giving to the other not less than six months' written notice of its intention to terminate. Subject to the provisions of Section 1 hereof, service hereunder and the obligation of the Member to pay therefore shall commence upon completion of the facilities necessary to provide service.

Executed the day and year first above mentioned.

EAST KENTUCKY POWER
COOPERATIVE, INC.

BY: Dino Talarico

ITS: CHAIRMAN OF THE BOARD

Sam Penn
ATTEST, SECRETARY

BY: Roger L. Hunt

ITS: Chairman of the Board

William T. Rice
ATTEST, SECRETARY

(H:Legal/misc/amend3-vpo)

MEMORANDUM OF UNDERSTANDING AND AGREEMENT REGARDING ALTERNATE POWER SOURCES

This Memorandum of Understanding and Agreement (**"MOU&A"**) is entered into and effective as of this 23 day of [July], 2015, by and between East Kentucky Power Cooperative, Inc. (**"EKPC"**), and each of the following Member Distribution Cooperatives (also referred to herein as **"Owner Member"**):

Member Distribution Cooperatives

Big Sandy Rural Electric Cooperative Corporation
Blue Grass Energy Cooperative Corporation
Clark Energy Cooperative, Inc.
Cumberland Valley Electric
Farmers Rural Electric Cooperative Corporation
Fleming-Mason Energy Cooperative
Grayson Rural Electric Cooperative Corporation
Inter-County Energy Cooperative Corporation
Jackson Energy Cooperative Corporation
Licking Valley Rural Electric Cooperative Corporation
Nolin Rural Electric Cooperative Corporation
Owen Electric Cooperative, Inc.
Salt River Electric Cooperative Corporation
Shelby Energy Cooperative, Inc.
South Kentucky Rural Electric Cooperative Corporation
Taylor County Rural Electric Cooperative Corporation

Factual Recitals

0.1 Each Owner Member is an electric cooperative, organized under the laws of the State of Kentucky, engaged in the business of supplying and distributing electric power and energy to its members within a certain service area, for which business the Owner Member operates an electric distribution system, among other operations.

0.2 EKPC is a generation and transmission cooperative corporation, organized under the laws of the State of Kentucky, which is owned by its Owner Members, which are certain electric cooperatives operating in the State of Kentucky (**"Owner Members"**).

0.3 EKPC and each Owner Member are parties to a Wholesale Power Contract, dated October 1, 1964, as amended, pursuant to which (among other things) EKPC sells and delivers to that Owner Member, and that Owner Member purchases and receives, electric power and energy

required for the operation of the Owner Member's electric system. Such Wholesale Power Contracts are identical in all material respects, except for the identification of the respective Owner Member that is a party to each such agreement. A reference herein to **"Wholesale Power Contract"** refers to each and every such agreement.

0.4 As of October 23, 2003, each Wholesale Power Contract was amended by the execution of that certain amendment designated and known as **"Amendment No. 3"** thereto, to provide, among other things, for the obtaining by the subject Owner Member of electric power and energy from sources other than EKPC for use in operating the Owner Member's electric system, subject to certain limitation and required procedures set forth therein. Except for the identification of the respective Owner Member that is a party to each such Amendment No. 3, all of such amendments are identical. A reference herein to **"Amendment No. 3"** refers to each and every such amendment.

0.5 EKPC and certain Owner Members have, in the past, disagreed on the interpretation of some provisions of Amendment No. 3 and, therefore, to the Wholesale Power Contract as amended thereby.

0.6 The Owner Members each have a keen interest in pursuing or investigating opportunities to develop or otherwise obtain and use sources of electric power and energy other than EKPC. Such non-EKPC sources are hereinafter referred to as **"Alternate Sources"** and further defined in Section 2(A) below.

0.7 EKPC and each Owner Member each desire to avoid litigation over the provisions of the Wholesale Power Contract that pertain to Alternate Sources, and thereby avoid the costs and uncertainty of such litigation.

NOW THEREFORE, in consideration of the mutual covenants, understandings, and undertakings set forth herein, each of the Owner Members and EKPC, agree as follows:

Understandings, Stipulations, and Agreements

1. Term

(A) This MOU&A shall become effective on the date first written above and shall continue in effect until the termination of the Wholesale Power Contract. If the Wholesale Power Contract between EKPC and one of the Owner Members terminates before the other Wholesale Power Contracts, then this MOU&A shall terminate with respect to that Owner Member, but shall remain in effect with respect to the other Owner Members.

2. Scope

(A) The purpose of this MOU&A is to memorialize EKPC's and the Owner Members' mutually agreed interpretation of Amendment No. 3 with respect to Alternate Sources. Except as provided in Section 2(B), an **"Alternate Source"** is any generating resource that is owned (directly or indirectly, in whole or in part) or controlled (directly or indirectly, in whole or in part) by an Owner Member, regardless of whether the resource is connected to the Owner

Member's distribution system, or any power purchase arrangement under which an Owner Member purchases capacity or energy (or both), if such generating resource or power purchase arrangement is used to serve any portion of the Owner Member's load.

(B) A generating resource that meets the definition of a "Behind the Meter Source" as set forth in Section 4(A)(v)(a) that is used by a Member solely to provide energy to serve interruptible retail load during times when service for such load through PJM has been interrupted pursuant to the load's participation in PJM's demand response program will not be considered an "Alternate Source" subject to the requirements of this MOU&A. If an Owner Member desires to use such a generating resource at any other time, the Owner Member must comply with the requirements of this MOU&A with respect to that generating resource.

(C) Nothing in this MOU&A is intended to modify any of the express provisions of Amendment No. 3. During the term of this MOU&A, neither EKPC nor any Owner Member shall assert that this MOU&A is invalid for the reason that it is contrary to or inconsistent with the Wholesale Power Contract. In the event of an actual conflict between the Wholesale Power Contract, as amended, including by Amendment No. 3, and this MOU&A, the Wholesale Power Contract, as amended, including by Amendment No. 3, shall control.

3. Maximum Permissible Demand Reduction.

(A) The maximum demand reduction that an Owner Member can obtain through the use of Alternate Sources shall be determined as follows:

(i) All demand measurements, whether of EKPC aggregate demand or an Owner Member's demand, called for in this Section 3 shall be measured in megawatts in 15-minute intervals and shall be adjusted to include any interruptible load that was interrupted at the time of measurement.

(ii) If in connection with its acquisition of new service territory the Owner Member provides evidence to EKPC and the RUS in the related acquisition agreement that the acquired service territory must continue to be served by the current power supplier as a condition of the acquisition, the acquired service territory may be supplied by such current power supplier for so long as is required under the terms of such acquisition agreement. Until such supply from the current power supplier is terminated, the load of such acquired service territory shall not be included in the calculations of the 5% and 15% limitations set forth below in this Section 3 applicable to the Owner Member that acquired the service territory or any other Owner Member. From and after the termination of such supply from the current power supplier, the load of such acquired service territory (including such load during the three (3) twelve-month (12-month) periods immediately preceding the date of termination of such supply from the current power supplier) shall be included in calculations of the 5% and 15% limitations set forth below in this Section 3 applicable to the Owner Member or any Other Member.

(iii) If, at the time the Owner Member submits an election notice pursuant to Section 4, the aggregate amount of all Owner Members' loads being served with Alternate Sources (including the load proposed to be served by the Owner Member's new Alternate Source) would be less than two and one half percent (2.5%) of the rolling average of EKPC's coincident peak demand for the single calendar month with the highest peak demand occurring during each of the three (3) twelve-month (12-month) periods immediately preceding the date the Owner Member delivers such election notice, the Owner Member's aggregate demand reduction from Alternate Sources (including the demand reduction from the proposed new Alternate Source) may not exceed 15% of the rolling average of the Owner Member's coincident peak demand for the single calendar month with the highest average peak demand occurring during each of the three (3) twelve-month (12-month) periods immediately preceding the date the Owner Member delivers such election notice. If this 15% threshold would be exceeded, the Alternate Source shall not be permitted unless the load proposed to be served by it is reduced such that this 15% threshold is not exceeded.

(iv) If, at the time the Owner Member submits an election notice pursuant to Section 4, the aggregate amount of all Owner Members' loads being served with Alternate Sources (including the load proposed to be served by the Owner Member's new Alternate Source) would be equal to or greater than two and one half percent (2.5%) of the rolling average of EKPC's coincident peak demand for the single calendar month with the highest peak demand occurring during each of the three (3) twelve-month (12-month) periods immediately preceding the date the Owner Member delivers such election notice, the Owner Member's aggregate demand reduction from Alternate Sources (including the demand reduction from the proposed new Alternate Source) may not exceed five percent (5%) of the rolling average of the Owner Member's coincident peak demand for the single calendar month with the highest average peak demand occurring during each of the three (3) twelve-month (12-month) periods immediately preceding the date the Owner Member delivers such election notice. If this five percent (5%) threshold would be exceeded, the Alternate Source shall not be permitted unless the load proposed to be served by it is reduced such that this five percent (5%) threshold is not exceeded.

(v) If, at the time the Owner Member submits an election notice pursuant to Section 4, the aggregate amount of all Owner Members' loads being served with Alternate Sources (including the load proposed to be served by the Owner Member's new Alternate Source) would be greater than five percent (5%) of the rolling average of EKPC's coincident peak demand for the single calendar month with the highest peak demand occurring during each of the three (3) twelve-month (12-month) periods immediately preceding the date the Owner Member delivers such election notice, the

Alternate Source shall not be permitted unless the load proposed to be served by it is reduced such that this five percent (5%) threshold is not exceeded.

(vi) The term of any Alternate Source (inclusive of any renewal options), whether the Alternate Source is a generating facility owned or controlled by the Owner Member or a contract with a third party, shall not exceed twenty (20) years.

(a) Any Alternate Source that is a contract in effect at the time when the 2.5% threshold defined in Section 3(A)(iii) is reached will be honored for the remaining term of the contract (without exercise of any renewal option). However, if at the end of the existing contract's term that was in effect when the 2.5% threshold was reached, the 2.5% threshold continues to be reached or is exceeded, and the Owner Member's aggregate amount of Alternate Source elections then exceeds the 5% threshold defined in Section 3(A)(iv), then the Alternate Source contract may not be renewed unless the Owner Member reduces the aggregate amount of the Owner Member's load served by Alternate Sources such that the aggregate amount of the Owner Member's load served by Alternate Sources (taking into account the renewal of the contract) does not exceed the 5% threshold set forth in Section 3(A)(iv). The Owner Member may meet this requirement by using demand reduction available to another Owner Member, in accordance with Section 3(B).

(b) Any Alternate Source that is a generating facility owned or controlled by the Owner Member that is in effect when the 2.5% threshold defined in Section 3(A)(iii) is reached will be honored for the remaining term of the Alternate Source as set forth in the notice provided under Section 4(A).

(B) Demand reduction available to one Owner Member may be used by another Owner Member if those two Owner Members so agree; provided, however, that in no event may a new Alternate Source proposed by an Owner Member in an election notice pursuant to Section 4 be approved if:

(i) the aggregate amount of all Owner Members' loads being served with Alternate Sources (including the load proposed to be served by the Owner Member's new Alternate Source) would be greater than five percent (5%) of the rolling average of EKPC's coincident peak demand for the single calendar month with the highest peak demand occurring during each of the three (3) twelve-month (12-month) periods immediately preceding the date the Owner Member delivers such election notice; or

(ii) the aggregate amount of the Owner Member's load being served by Alternate Sources (including the load proposed to be served by the Owner Member's new Alternate Source) would be greater than fifteen percent (15%) of the rolling average of the Owner Member's coincident peak demand for the single calendar month with the highest average peak demand occurring during each of the three (3) twelve-month (12-month) periods immediately preceding such notice.

4. Alternate Source Notices

(A) In order for an Owner Member to reduce its purchases from EKPC by using electric power and energy from an Alternate Source, that Owner Member shall have provided EKPC with prior written notice of such reduction in accordance with the procedures and requirements set forth herein. Each such notice hereunder (an **"Alternate Source Notice"**) shall set forth the following information regarding the subject Alternate Source:

(i) the term during which the Alternate Source will be used to reduce the Owner Member's purchases from EKPC under the Wholesale Power Contract, including the date on which such use will begin, and the length of time during which such use will continue, which length may not exceed 20 years (including any renewal options for an Alternate Source that is a contract with a third party);

(ii) the maximum electrical capacity, in kW, to be available from the Alternate Source and the corresponding amount of reduction in demands to be served by EKPC as a result of the use of the Alternate Source, appropriately taking into account expected losses, if any;

(iii) a general description of the nature of the Alternate Source and the primary generating facilities from which the subject electric power and energy will be produced;

(iv) the approximate, expected pattern of use or dispatching of the Alternate Source and the corresponding pattern of hourly reductions in energy to be purchased by the Owner Member from EKPC; and

(v) a designation of whether the Alternate Source will be:

(a) interconnected to the Owner Member's distribution system (and not to any transmission system) and will not produce energy in any hour in excess of the Owner Member's load at the Related EKPC Point of Delivery. Such Alternate Sources are referred to in this MOU&A as **"Behind the Meter Sources"**. The **"Related EKPC Point of Delivery"** with respect to any Alternate Source is the point of delivery under the Owner Member's Wholesale

Power Contract through which energy purchased from EKPC would be used to serve the load served by the Alternate Source if the Alternate Source did not exist;

(b) interconnected or delivered to EKPC's or another entity's transmission system; or

(c) interconnected to the Owner Member's distribution system and will produce energy that exceeds the Owner Member's load at the Related EKPC Point of Delivery.

(B) Except as provided in Section 4(C) below, each Alternate Source Notice shall be provided to EKPC in writing at least eighteen (18) months prior to the date on which the use of the subject Alternate Source is to begin.

(C) For each Alternate Source having a noticed demand reduction of 5,000 kW or less, the required prior written notice may be provided to EKPC up to, but not later than ninety (90) days prior to the date on which the Owner Member intends to begin using that Alternate Source.

(D) An Owner Member may change or cancel an Alternate Source Notice only by providing to EKPC prior written notice of such change or cancellation, as follows: If after three years of operation an Alternate Source has a three-year rolling average peak capacity less than the maximum capacity set forth in the initial Alternate Source Notice, the Owner Member may reduce the maximum capacity of such Alternate Source by providing written notice to EKPC. Any such reduction shall not change the term or other characteristics of the Alternate Source. Ninety (90) days' prior written notice of any other change or any cancellation shall be required for an Alternate Source having an associated demand reduction of 5,000 kW or less. Otherwise, eighteen (18) months' prior written notice to EKPC of a change or cancellation shall be required. If any change is made to the demand reduction amount of an Alternate Source, the thresholds provided in Section 3 will be re-calculated as of the date the notice of change is submitted.

(E) If the Owner Member does not implement an Alternate Source within six (6) months after the date set forth in its notice for commencement of deliveries from the Alternate Source, the Owner Member may not implement the Alternate Source without re-submitting the notice required under this Section 4 and such notice shall be subject to re-calculation of the thresholds provided in Section 3 as of the date of such re-submitted notice. During the six (6) month period described in this Section (E), EKPC shall continue to serve the load intended to be served by the Alternate Source through sales of power and energy to the Owner Member under its Wholesale Power Contract.

5. Development and Use of Alternate Sources

(A) During the noticed term of use of that Alternate Source, it shall be the responsibility of the Owner Member to use commercially reasonable efforts to develop or otherwise acquire the subject Alternate Source so that such source may be used to supply a portion of the Owner Member's requirements beginning on the noticed date. EKPC shall use

commercially reasonable efforts to cooperate with and assist the Owner Member in its development or acquisition; provided that EKPC shall not be required to make out-of-pocket expenditures or provide or facilitate financing for any Alternate Source.

(B) Except as otherwise agreed to by EKPC and an Owner Member, the owning Owner Member shall use commercially reasonable efforts to operate, maintain, and dispatch the facilities comprising each of its Alternate Sources (or to cause such operation, maintenance, and dispatching) so as to reduce the maximum electrical demand placed on EKPC's system by the corresponding noticed demand reduction.

(C) With respect to each noticed Alternate Source of an Owner Member, the obligations set forth in the foregoing two paragraphs shall continue until the end of the noticed term of the Alternate Source; provided, however, that such term may be shortened or lengthened at any time by the Owner Member by providing to EKPC prior written notice of such change, as follows: For each such change, ninety (90) days' prior written notice of such change shall be required for an Alternate Source having an associated demand reduction of 5,000 kW or less. Otherwise, eighteen (18) months' prior written notice to EKPC of such change shall be required.

(D) Other requirements for Behind the Meter Sources are as follows:

(i) To the extent that the Alternate Source does not deliver capacity or energy sufficient to serve the actual load of the Owner Member intended to be served by the Alternate Source, EKPC will charge the Owner Member for capacity and energy at the rates for electric service provided under the Wholesale Power Contract.

(ii) The Owner Member must provide to EKPC information regarding the expected generation from the Behind the Meter Source, including planned and unplanned outages, as needed by EKPC so that EKPC can include such information in its schedules of load submitted to PJM and minimize to the extent reasonably practicable any PJM penalties for deviations in load attributable to differences between the estimated and actual generation from the Behind the Meter Source.

(iii) The Alternate Sources will be metered with revenue class meters.

(E) Other requirements for Alternate Sources interconnected or delivered to EKPC's or another entity's transmission system are as follows:

(i) To the extent that the Alternate Source does not deliver capacity or energy sufficient to serve the actual load of the Owner Member intended to be served by the Alternate Source, EKPC will charge the Owner Member for capacity and energy as provided in this MOU&A, and not at the rates for electric service provided under the Wholesale Power Contract. EKPC will purchase amounts of replacement capacity and energy based on the historical amounts of capacity and energy provided by the Alternate Source.

(ii) The Owner Member must provide to EKPC a day-ahead schedule of generation. EKPC will work with the Owner Member to develop the day-ahead schedule.

(iii) The day-ahead schedule of load to be served by the Alternate Source will be deemed to equal the day-ahead generation schedule of the Alternate Source.

(iv) EKPC will pass through to the Owner Member all revenues, credits and charges from PJM associated with the Alternate Source, including without limitation PJM day-ahead and real-time energy market revenues, charges and credits, PJM capacity market revenues, charges and credits, PJM operating reserve revenues, credits and charges, and PJM operating services necessary to serve the load served by the Alternate Source (i.e. capacity, energy, ancillary services (including operating reserves), NITS transmission, RTEP, etc.).

(v) The Alternate Sources will be metered with revenue class meters.

(vi) The Owner Member will pay an administrative fee to EKPC to cover the increased operation and administrative costs.

(vii) PJM market participant activities for the Alternate Source and related load will be managed by EKPC or EKPC's agent. The Owner Member shall pay EKPC a non-discriminatory, cost-based fee for such PJM market participant services, which shall be performed in accordance with good utility practices. Any dispute regarding such fee shall be submitted to the Kentucky Public Service Commission for a determination of the appropriate fee.

(F) Other requirements for Alternate Sources interconnected to an Owner Member's distribution system that produce energy that exceeds the Owner Member's load at the Related EKPC Point of Delivery shall be developed based on the requirements set forth above in Sections 5(D) and 5(E).

6. Other Matters.

(A) EKPC shall not be entitled to charge any Owner Member for so-called "stranded costs" related to the Owner Member's implementation of its rights to use Alternate Sources. As a result, to the extent that an Owner Member's use of Alternate Sources reduces its billing demands under EKPC's rates under the Wholesale Power Contract as in effect from time to time, EKPC shall not be entitled to charge any special rate or charge to the Owner Member attributable to such billing demand reduction. EKPC will, however, be entitled to continue to set its rates for all Owner Members under the Wholesale Power Contracts to produce revenues that are sufficient to cover all of its costs, in accordance with the Wholesale Power Contracts.

(B) EKPC covenants and agrees to revise or rescind existing Board Policies so that its Board Policies are consistent with this MOU&A.

(C) This Agreement may be executed in counterpart, which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Big Sandy Rural Electric Cooperative Corporation — Date: 7/23/2015

Blue Grass Energy Cooperative Corporation — Date

Clark Energy Cooperative, Inc. — Date

Cumberland Valley Electric — Date

Farmers Rural Electric Cooperative Corporation — Date

Fleming-Mason Energy Cooperative — Date

Grayson Rural Electric Cooperative Corporation — Date

Inter-County Energy Cooperative Corporation — Date

Jackson Energy Cooperative Corporation — Date

Licking Valley Rural Electric Cooperative Corporation — Date

Nolin Rural Electric Cooperative Corporation — Date

Owen Electric Cooperative, Inc. — Date

Salt River Electric Cooperative Corporation — Date

Shelby Energy Cooperative, Inc. — Date

South Kentucky Rural Electric Cooperative Corporation Date

Taylor County Rural Electric Cooperative Corporation Date