

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

***REPLY BRIEF OF INTERVENOR,
GRAYSON RURAL ELECTRIC COOPERATIVE CORPORATION***

Comes now Grayson Rural Electric Cooperative Corporation (Grayson) and for its reply brief provides the following:

STATEMENT OF PROCEEDING

Grayson respectfully submits that the Commission's prior Order did not specifically set forth the party or parties for whom the filing of a reply brief was available. Grayson, therefore, takes this opportunity to file its reply brief based upon assertions that have been made in post-hearing brief by parties to the within proceeding including East Kentucky Power Cooperative (EKPC) and the office of the Kentucky Attorney General (AG).

BASIS OF GRAYSON REPLY BRIEF

Grayson respectfully submits that the assertions by EKPC in its Brief, based upon alleged factual matters and certain opinionated or editorial comments are ones which are inappropriately placed in a post-hearing brief and in certain instances constitute blatant misstatements. EKPC has determined that it must criticize and condemn Grayson based upon the existence of the 2012-00503 proceeding in this Commission and the Charleston Bottoms case filed in the Mason Circuit Court.

For example, EKPC on page 7 asserts that Grayson filed the Charleston Bottoms case *without merit*. EKPC says that the fifteen other coops agreed. In point of fact, however, the Charleston Bottoms Circuit Court case in action 12-CI-00270 was hardly without merit.

In that case, Grayson alleged that EKPC had dissolved a corporation in which Grayson and the other fifteen members had an ownership interest by virtue of being members of the Charleston Bottoms Cooperative. Any Plaintiff's lawyer knows, and the undersigned has filed, handled, and tried many Plaintiff's jury cases, that getting over the hurdle of a summary judgment motion is the barrier that a Plaintiff's lawyer must always strive to achieve. In the Charleston Bottoms case as referenced in the official record 12-CI-00270, which Grayson believes this Commission should take judicial notice of, the Trial Judge determined that the Motion of EKPC for summary judgment should be denied. The Trial Court directed that there were questions of fact that could only be resolved by a jury leaving the matter to be decided by a jury sitting in Mason County. That occurrence, i.e. directing that the case go to a jury trial, belies the assertion that the case had no merit.

Furthermore, certain of the distribution cooperatives did not disagree with Grayson's assertion and simply joined in the case to let happen whatever would happen after Grayson paved the way to get the case to a jury trial. Therefore, the assertion by EKPC in its brief that the other fifteen coops agreed that the Charleston Bottoms case was without merit is a false statement.

EKPC further asserts in its brief that the filing of Grayson's 2012-00503 case in this Commission added to the "acrimony" after two or three years worth of fighting in the Mason Circuit Court case. Chronologically that is incorrect as both cases were filed in 2012.

On page 8 of the EKPC brief, EKPC asserts that on July 23, 2015, all parties "developed and executed the MOU". That is a misstatement as well. The MOU had been prepared well prior

to July 23, 2015, and had been prepared in point of fact, at a time when Grayson was seeking its election to pursue alternate sourced power. Grayson knew that the only reason EKPC wanted the MOU was so that EKPC could argue then as it has done now that no distribution cooperative should really be allowed to exercise its rights under Amendment 3. The MOU gave EKPC something that Amendment 3 did not give it, thus its push for the adoption of the MOU.

Not until December of 2015 did the Commission decide to adopt the MOU as a tariff for EKPC. Even then, EKPC was dilatory in filing the tariff so as to make sure that all of their actions were covered. Therefore, the assertion on page 8 of EKPC brief that nothing in the MOU changed the governing provisions of Amendment 3 is factually incorrect.

Anthony “Tony” Campbell, is referenced on page 8 of having stated that the reason that the MOU was signed and the reason that he believed the other CEOs gave for signing the MOU was because the companies were “litigation-weary and had spent excessive sums of EKPC’s end-consumer’s money to defend Grayson’s meritless claims in the civil case and the Amendment 3 matter at the Commission.” There, of course, is no reference to the record of where that testimony actually was given.

There is nothing in the record to support an assertion that the sixteen distribution cooperatives and EKPC signed the MOU to end Grayson’s meritless claims. The Commission can draw inferences from the testimony as to why the MOU was signed by Grayson and any other non-signatory coop but certainly any claim of Grayson being without merit was not the basis for such a signing.

The undersigned is constrained by appropriate rules to not place into the record matters which had not been placed in the record by way of testimony. But the Commission can draw inferences.

Page 13 of EKPC brief contains an assertion that EKPC has not challenged South Kentucky's manner of election or the notice under the MOU and even *attempted to assist South Kentucky with the procedures set forth in the MOU*. This assistance was done pursuant to the testimony given at the hearing in this case, by none other than the legal counsel for EKPC, Mr. Mark David Goss, who was then also representing as legal counsel, South Kentucky Rural Electric Cooperative Corporation. Attorney Mark David Goss as known by the Commission at this point was forced to file a motion to be relieved as counsel for South Kentucky Rural Electric Cooperative Corporation when his dual representation and obvious conflict of interest posed for him and his law firm serious ethically considerations.

With respect to the Kentucky Attorney General brief, Grayson must point out the inconsistencies asserted by the AG relative to its opposition to the request of South Kentucky but yet its assertion on the final page of its brief that the Commission should direct the distribution cooperatives and EKPC to basically, just work out some arrangement. This is hardly the approach that the defender of the consumer should take in the within proceeding especially since on page 9 of that brief the AG refers to statements from CEO Ted Hampton of Cumberland Valley stating that he believes that the distribution cooperatives and EKPC are a family and "why would I want to do something that hurt the family". Apparently, neither the AG nor Mr. Hampton understands that Cumberland Valley's immediate family is its members. This same statement could be assigned to the head of and board of Licking Valley Rural Electric, Big Sandy Rural Electric, and Farmers who all gave similar testimony about not wanting to harm EKPC. The Attorney General tries to argue that since some of the distribution cooperatives' members are in "service territories being in some of the poorest counties in the nation" then they cannot afford any increase in their rates occasioned by a speculative hike brought about by cost shifting if the South Kentucky PPA

is approved. See page 13 of AG brief. Page 10 and 11 of the AG brief is further simply assertions of the increased costs that are based upon only speculation which speculation was confirmed by EKPC witnesses at the hearing.

The assertion by the AG that many of the members are in some of the poorest counties in the nation is, in fact, true. As set forth in the 2017 Report of the Economic Innovation Group and its Distressed Communities Index, particularly on page 47 thereof, it is stated that Kentucky's 5th Congressional District of Congressman Hal Rogers, in which South Kentucky Rural Electric is placed along with Big Sandy Rural Electric, Licking Valley Rural Electric, Cumberland Valley Rural Electric and Grayson Rural Electric, is the number one most distressed Congressional District in America based upon district level distress scores. This Economic Innovation Group is a bipartisan public policy organization that works with all members of all political parties. One would wonder and the Commission would have to have some wonderment as to why the Kentucky Attorney General would not believe that a reduction in rates of several million dollars per year to the members in this Congressional District would, for some reason, not be appropriate. Again, the Commission can draw inferences from the AG argument.

The assertion by the Attorney General that the cost shifting would harm the other distribution coops and EKPC is nothing more than sophistry that is not based upon fact. This is a concerted effort by EKPC and the Attorney General to prohibit the saving of money by people within this economically distressed area.

Grayson is compelled to address the attempt by EKPC on page 43 of its brief wherein it asserts some action by EKPC board at a meeting held on June 8, 2018. This is certainly inappropriate for that information if it actually exists, to have been placed in a post-hearing brief when obviously June 8, 2018, is some three weeks after the hearing was actually held. Grayson

agrees with the Salt River Rural Electric position that the content of page 43 and 44 of the EKPC brief should be stricken as same was not before the Commission, is the result of some meeting if at all, that was not involving counsel for the parties in this case with the exception of counsel for EKPC. Again, that action is inappropriate and should not be a part of an argument set forth in a post-hearing brief.

Grayson's suggestion in its brief based upon EKPC's agreement that it could give up, up to 5% of its load, approximately 158 megawatts, would while denying South Kentucky's request in this case, afford all the distribution cooperatives within this EKPC system the opportunity to save millions of dollars. That savings could be passed on to those persons in these economically distressed, poorest counties in America. EKPC desires based upon a corporate narcissism to pad its accounts, place itself on some lofty perch looking down upon its subservients and tries to continue that approach through a false narrative.

The cushion of credit referenced by EKPC President and CEO Anthony "Tony" Campbell in his testimony is indicative of this continued approach.

Under 7 CFR 1785.69 the cushion of credit provides for a 5% interest payment. Based upon some of the testimony which Mr. Campbell gave, concerning the amount of money that had been placed in that account, the sixteen million dollar figure he gave for interest is probably incorrect. The regulation allows for a 5% rate but Mr. Campbell testified to only a sixteen million dollar return in the last year based upon a five hundred million dollar investment.

This Commission is reminded of the January 2011 Order in the last EKPC rate case where EKPC under certain scenarios would be required to go back to the Commission for a rate reduction. EKPC as testified to by Tony Campbell, increased the amount that it placed in its cushion of credit. This placement of these sums and increased sums over a period of years would negate achieving

a certain equity level and would create this false financial position so as to prevent a return to the Commission for a rate adjustment. It is suggested, therefore, that EKPC then has the wherewithal to mitigate any cost shifting occasioned by allowing the distribution cooperatives to exercise rights that would be afforded them under the amended scenario suggested by Grayson in the within proceeding. EKPC had at least sixteen million dollars in margins in the year 2017 and exceeded that amount in 2016 and 2015 per the testimony of Mr. Anthony "Tony" Campbell.

The discrepancies referenced hereinabove by Grayson in this reply brief are done only for one purpose. That purpose is to demonstrate that there is a need by EKPC, and apparently the AG, to discredit Grayson in order to convince the Commission to deny the request by South Kentucky. Grayson believes also that South Kentucky's request should be denied. Not because of some nefarious activity or concern of South Kentucky or some built in animus that Grayson would have against South Kentucky but simply because of the contractual problem that Amendment 3 and MOU present. What has to be kept in mind is that EKPC agreed in both the Amendment 3 and MOU that it could give up 5% of its load without a problem. The time is now for EKPC to let go of trying to redo its contractual arrangement and allow all of the distribution cooperatives which are its owners to exercise some freedom to save money for their respective members. Rigid adherence to the executive staff of EKPC by the distribution cooperatives without regard to their fiduciary duty must be halted. The Commission must take the stand in halting this wayward sidestepping of fiduciary duty. The fiduciary duty extends from the board of directors of each of these distribution cooperatives to their own members. That is fundamental corporate law that several distribution cooperatives in this case, seemingly do not want to follow.

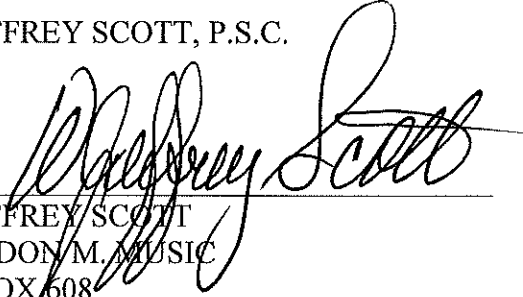
It is time for the MOU to be modified which Grayson in its original brief pointed out the Commission had the authority to do.

Many people in Eastern Kentucky have long thought that the Winchester wall kept progress and economic growth from venturing into Eastern Kentucky. EKPC is located in Winchester, Kentucky. The actions and arguments in this case by those sitting in Winchester assisted by the AG in Frankfort demonstrate that the existence of this wall lives today. Mr. Campbell, tear down that wall.

RESPECTFULLY SUBMITTED,

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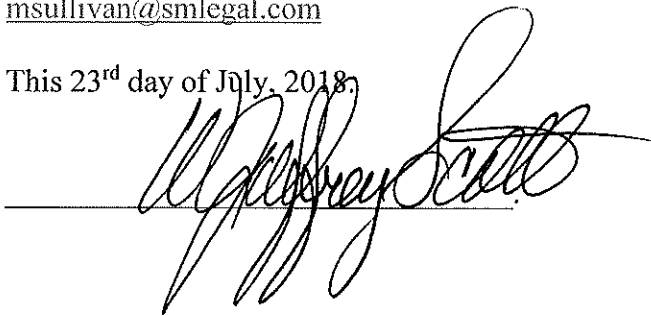
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