

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 )

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***GRAYSON RURAL ELECTRIC COOPERATIVE CORPORATION'S  
RESPONSE TO SALT RIVER'S MOTION TO STRIKE PORTIONS OF THE  
POST HEARING BRIEF OF EAST KENTUCKY POWER COOPERATIVE***  
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Comes now Grayson Rural Electric Cooperative Corporation (Grayson), by and through its counsel, and hereby files the within response to Salt River's Motion to Strike portions of the Post Hearing Brief of East Kentucky Power Cooperative. Grayson is in agreement with certain portions therein for the reasons stated herein below.

In the Post Hearing Brief of East Kentucky Power Cooperative (EKPC), EKPC recounts a narrative, that its Board met to discuss the issues in this case along with a possible resolution having been voted upon by its Board. See EKPC, Initial Brief, page 43. The implication of such proposal was that all cooperatives met and voted unanimously, among those who voted, to present a proposal to the Commission by the Post Hearing Brief of EKPC.

The Commission had previously entered a scheduling Order on May 18, 2018, reflecting communication with all counsel of record including counsel for EKPC about what was necessary to complete the evidentiary portions of the record. The Commission ordered that post hearing data requests would be filed on or before Monday, May 21, 2018, with responses to post hearing data requests to be completed by May 29, 2018. Such post hearing data requests would complete the

evidentiary portions of the record. There were no other grants of an extension of time to reopen the record for purposes of submitting additional evidence. Critically no party, including EKPC, asked for an amendment of the May 18, 2018, Order, and still have not as of the date of filing Grayson's Response to Salt River's Motion, with regards to reopening the record for submission of additional evidence.

The Commission was also clear that each party was free to submit proposals for the Commission's consideration in terms of resolution of the issues brought forth in this case. However, unsolicited, unverified assertions of fact were not part of any Commission Order addressing all post hearing matter. The hearing on this case concluded on May 17, 2018, after a lengthy hearing on the merits, and said record closing on said date with the exception of those matters reserved for post hearing data requests completing same on May 29, 2018. The facts asserted by EKPC with regards to a special board meeting did not even occur until June 8, 2018. Please see EKPC's Initial Brief, page 43.

Salt River's Motion to exclude those portions of the Brief so noted in said Motion alleged the number of basis upon which to exclude said matter from the record in consideration by the Commission. Grayson is in support of the ultimate redaction of any facts underlying any proposal by EKPC with regards to this Commission's consideration of a proposal. Grayson's belief is that a proper result of Salt River's Motion, should be that EKPC's proposal can be considered a proposal from EKPC, alone, as one of 18 parties to the case including the Attorney General's office, EKPC, and the 16 distribution cooperatives, but nothing more than EKPC's proposal; not that of 15 separate distribution cooperatives.

The ultimate impact and intent that the Commission can properly infer from EKPC's pleading is an intent to place additional weight upon the proposal made by EKPC, a single party

to this action, by implying that all cooperatives voted for this proposal. However, while that may be an assertion inherent by implication in the Brief of EKPC same is certainly not the case. It is quite troubling that such an assertion of fact would be placed into a Brief, on the ultimate issue at interest to all parties in this case, without even an averment by a source with knowledge of same. It is also clear that the purported date of the meeting and activities surrounding same occurred well after the close of the hearing and record herein.

Therefore, Grayson would request that Salt River's Motion be well taken, with the Commission striking from said Brief any and all factual assertions of the Brief of EKPC beginning on page 42, section VI, continuing into the conclusion section on page 45 of EKPC's Initial Brief. The Commission could still consider the proposal made by EKPC, as a single entity in this action and give it no further weight by the virtue of it having been made by EKPC than that made by any other party to this case and should only rely upon the substance of the proposal and not by whom it was made or the way in which it was voted upon.

Grayson has also reviewed the Response of Jackson and noted its agreement partially with same. The positions of the board of Grayson and the other distribution cooperatives are not represented by the vote of EKPC. Nothing in the record indicates that there was time for the board of Grayson and the other cooperatives to be notified of the meeting or such proposal having been adopted at the meeting nor to have their counsel look into the issue that was coming up for consideration by EKPC. Apparently, counsel for EKPC sat in at the special June 8, 2018, board meeting. This action by counsel for EKPC raises certain issues. As EKPC would note, South Kentucky obviously left the discussion before any vote on a proposal due to its interest in the litigation. However, the same conflict of interest that would apply to EKPC would apply to all the other distribution cooperatives as they all had an interest in the pending ongoing litigation. As

such, counsel for EKPC would be providing information or having discussion with agents of the distribution cooperative without said conflict being waived by any of the distribution cooperatives or counsel for any of the distribution cooperatives having been present or have the opportunity to be heard prior to any sort of proposal being formulated or discussed. This would provide EKPC with the ability to provide for knowledge or inside information thus coloring the perspective of the board member of the respective distribution cooperatives prior to consideration of the board of any distribution cooperative of any proposal made by EKPC.

As the Commission can recall, the Commission made mention of a possible conflict of interest that the EKPC board has with respect to its owners being the distribution cooperatives who send one of their own board members to sit on the EKPC board. When there is ongoing litigation where the distribution cooperatives are at odds with EKPC or are not in lock step with EKPC then that conflict is made even more apparent. This conflict extends further with respect to legal counsel of EKPC attempting to sit in on an EKPC board meeting to put together a proposal to settle such litigation. Those persons sitting in that board meeting are obviously from the owner/member who as in the instant case are at odds, in part, with the position of EKPC.

In this case, if EKPC determined that it was going to attempt to provide a proposal to the Commission then if that was going to be voted on by its board, then certain preliminary steps should have been taken so as not to spoil the integrity of any proposal made by EKPC. Legal counsel for EKPC should have communicated with members of counsel for the distribution cooperatives in order to seek an agreement on a waiver of a potential conflict of interest or, alternatively, have the board appoint some independent individuals with no conflict of interest but subject to the board's oversight function to review such a proposal. The failure of EKPC to do either, as in the instant case, should cause the Commission to look with great skepticism upon the

action by EKPC. This action by EKPC to treat its board members as both persons who speak for EKPC and for their individual distribution cooperatives when the need suits EKPC's upper management is really just insidious. This is an attempt to manipulate and create facts that otherwise do not exist.

As was pointed out by Grayson in its Initial Brief, each party to this proceeding is an independent body speaking only through its respective board and should not have an attempt made by another party to assert what its position is.

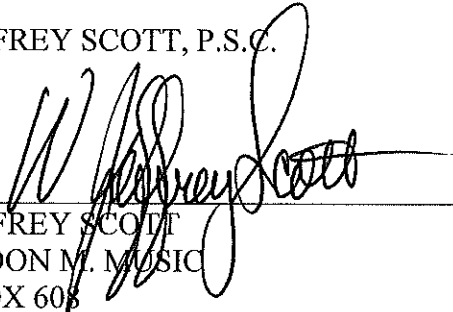
Grayson suggests that the proposal by EKPC be considered only as its proposal rather than some attempt at a unified effort of 15 distribution cooperatives. Nothing could be farther from the truth as none of the other 15 distribution cooperatives ever considered such a proposal.

**WHEREFORE**, Grayson asks that Salt River's Motion be granted and that the Commission enter all other and appropriate orders.

RESPECTFULLY SUBMITTED,

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

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

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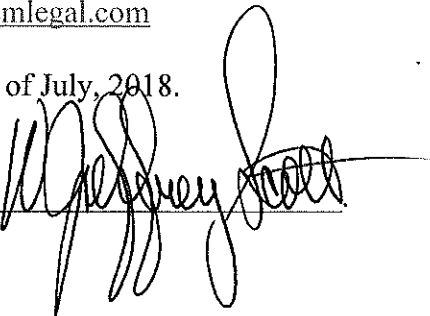
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This 31<sup>st</sup> day of July, 2018.



A handwritten signature in black ink, appearing to read "W. Patrick Hauser", is written over a horizontal line.

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