COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE ELECTRONIC APPLICATION OF EAST KENTUCKY POWER COOPERATIVE, INC. FOR A GENERAL ADJUSTMENT OF RATES APPROVAL OF DEPRECIATION STUDY AMORTIZATION OF CERTAIN REGULATORY ASSETS AND OTHER GENERAL RELIEF	**)**	**CASE NO. 2021-00103**

DIRECT TESTIMONY OF

SUEDEEN G. KELLY

ON BEHALF OF

APPHARVEST MOREHEAD FARM LLC

JULY 1, 2021

I. INTRODUCTION AND BACKGROUND

Q. Please state your name, affiliation, and business address.

A. My name is Suedeen G. Kelly. I am a lawyer practicing with the firm of Jenner & Block LLP, where I serve as Chair of its Energy Practice. My business address is 1099 New York Avenue, N.W., Suite 900, Washington, DC 20001.

Q. On whose behalf are you testifying in this proceeding?

A. I am testifying on behalf of AppHarvest Morehead Farm, LLC.

Q. Please describe your background and professional experience in the energy and utilities industries.

A. I hold a bachelor's degree in Chemistry from the University of Rochester. I also have a J.D. degree from Cornell Law School. I served on the New Mexico Public Service Commission, first as a Commissioner (1983-1984) and then as Chairwoman (1984-1986). I was nominated by Presidents Bush and Obama to three terms as a Commissioner on the Federal Energy Regulatory Commission ("FERC") and served as a Commissioner from 2003 through 2009. During that time, FERC resolved approximately 7,000 disputes with published decisions, and I personally authored 100 separate statements.

In addition to my experience as a regulator, I have served as regulatory counsel for the California Independent System Operator Corporation, have engaged in the private practice of energy law, and have taught courses on federal and state energy law, utility regulation, administrative law, and legislative process at the University of New Mexico School of Law, where I was a Professor of Law from 1986 until 2003. I continue to present, speak, and publish multiple times a year on topics involving energy law, most commonly

enforcement and regulation. Attached hereto as Attachment SGK-1 is a true and correct copy of my current Curriculum Vitae.

II. SUMMARY OF CONCLUSIONS

Q. What is the purpose of your testimony?

A. My testimony reviews two issues surrounding East Kentucky Power Cooperative, Inc.'s ("EKPC") filing seeking a general adjustment of rates submitted to the Kentucky Public Service Commission on or about April 1, 2021. First, I evaluate whether it is fair, just, and reasonable for ratepayers to continue funding the John Sherman Cooper Station. Second, I consider whether EKPC's treatment of Energy Efficiency Resources—and commercial and industrial lighting in particular—is fair, just, and reasonable.

Q. What are your conclusions?

A. I conclude that the John Sherman Cooper Station ("Cooper Station" or the "Plant") is no longer used and useful, and that it is no longer fair, just, or reasonable for ratepayers to continue to fund it. As an option, EKPC could retire the Plant before it is fully depreciated, and the depreciation costs and costs of capital could be classified as a regulatory asset and recovered in that way.

I also conclude that EKPC's actions preventing customers from entering Energy Efficiency Resources into PJM's capacity market, and its exclusion of commercial and industrial lighting resources from incentives, are also not fair, just, or reasonable. Energy Efficiency Resources are key tools for utilities to reduce their peak coincident loads and to save significant energy costs, and Energy Efficiency Resource owners should be compensated accordingly.

III. THE JOHN SHERMAN COOPER STATION IS NOT USED AND USEFUL

Q. What is the used and useful doctrine?

A. The used and useful doctrine is a bedrock principle of utility law that, put simply, holds that ratepayers should not be charged for the costs of facilities they are not receiving value from. State and federal regulators have routinely applied the doctrine for many decades to disallow costs associated with generators and other facilities that are idled or nearly idled, and therefore are not providing useful service to ratepayers.

Q. How do regulators typically evaluate whether an asset is used and useful?

A. The test for whether an asset is used and useful is whether it is fair, just, and reasonable for ratepayers to pay for the costs of a facility in view of the benefits that they receive from it.

Q. Are you familiar with Cooper Station?

A. Yes, Cooper Station is a coal-fired electric generator located on Lake Cumberland near Somerset, Kentucky. Cooper Station has two baseload boilers and a nameplate capacity of approximately 341 MW. The Plant started operating in 1965, and EKPC has stated that it expects the plant to be fully depreciated no later than 2030.[1]

Q. To what extent is Cooper Station serving ratepayers' energy needs?

A. EKPC is maintaining Cooper Station in a near-idle state. EKPC reported that in 2020, Cooper Station's Plant Factor was just over 6%.[2] For more than half of the year, Cooper Station was not in service *at all*.[3] In two other months, each unit operated less than ten

[1] *See* Case No. 2021-00103, Direct Testimony of John J. Spanos, Ex. JJS-1 at 38 (Apr. 1, 2021).

[2] *See id.*, EKPC Response to AG & NUCOR Initial Request for Data Dated 5/14/21, Response to Request No. 40 at 484. "Plant Factor" is defined by the Rural Utilities Service as the ratio of the average load on the plant over a designated period of time, to the aggregate rating of all of the generating equipment installed in the plant.

[3] *See id.*, Response to Request No. 40. EKPC appears to track plant data cumulatively throughout the year.

hours.[4] This was not a blip. In 2019, EKPC operated Cooper Station at a Plant Factor of just over 7%.[5] This data is particularly notable because the Plant's boilers are designed for baseload generation. Cooper Station's operation—effectively—as a peaker is not only inefficient from a cost perspective, but it likely exacerbates the environmental effects of the facility. In addition, it goes without saying that the Plant incurs costs of many millions of dollars annually whether EKPC uses it for generation or not.[6]

Q. Are there are other factors that the Commission should take into account?

A. Yes. In addition to the actual use of Cooper Station, the Commission should recognize the severe environmental effects of the Plant. In 2019, even though Cooper Station's Plant Factor was well under 10%,[7] the Plant still released more than 200,000 tons of carbon dioxide.[8] That is equivalent to the annual carbon dioxide emissions of roughly 40,000 cars, and would require more than 200,000 acres of U.S. forests to offset.[9] As recently as 2018, Cooper Station released more than 630,000 tons of carbon dioxide.[10] These emissions are harmful to health and the environment.

Q. In your view, is Cooper Station currently used and useful?

A. Based on the Plant's near-idle state, it is my opinion that Cooper Station is no longer used and useful for EKPC's ratepayers. The Plant does not appear to serve any meaningful need for EKPC's system or for the grid operator, PJM Interconnection, L.L.C. ("PJM"), be it

[4] *See id.*

[5] *Id.* at 229.

[6] *See id.* at 484.

[7] *See id.* at 229.

[8] EPA, Power Plant Data Viewer, https://www.epa.gov/airmarkets/power-plant-data-viewer.

[9] *See* EPA, Greenhouse Gas Equivalencies Calculator (Mar. 2021), https://www.epa.gov/energy/greenhouse-gas-equivalencies-calculator.

[10] EPA, Power Plant Data Viewer, https://www.epa.gov/airmarkets/power-plant-data-viewer.

energy supply, capacity, or ancillary services. Ultimately, the plant is tantamount to excess capacity, and it is not fair, just, or reasonable for ratepayers to continue to be responsible for expenses related to it.

Q. How do you respond to Mr. Campbell's testimony that Cooper Station provides some insurance against energy market fluctuations and reliability benefits?

A. The used and useful principle considers the totality of circumstances. As I discussed earlier, the key question is whether the costs of a facility are fair, just, and reasonable given its actual use for utility purposes. That the Plant can provide occasional system or customer benefits does not alter the fact that it is no longer used and useful. In other words, a plant does not become used and useful simply because the owner can identify some discreet use. Here, for the vast majority of the year, the Plant is not used, or is used minimally. To the extent that it provides sporadic benefits, they do not justify the costs to ratepayers. EKPC has not offered evidence showing that these needs cannot be handled by other generators or the PJM market, or that they justify the costs of operating Cooper Station.

Q. What are the ratemaking implications of your conclusion that Cooper Station is no longer used and useful?

A. Because Cooper Station is no longer used and useful, the Commission should protect ratepayers from the burden of the facility. To the extent that EKPC does not decide to retire the Plant, the Commission should reduce EKPC's recovery of costs associated with the Plant by at least 90%, to reflect the actual useful value of the Plant to ratepayers.

Q. What alternatives does EKPC have with respect to Cooper Station?

A. Rather than maintain the Plant as excess capacity, EKPC could reasonably retire the plant as soon as possible and before it is fully depreciated. Although there may be some

ratepayer effect with respect to the retirement costs and potential lost capacity revenue, these costs would likely be outweighed by the benefits of the retirement. In addition, under these circumstances, it may be a reasonable compromise for the Commission to permit EKPC to recover its depreciation and costs of capital through, for example, a regulatory asset or securitization, in return for agreeing to an early retirement.

IV. EKPC SHOULD PROMOTE ENERGY EFFICIENCY RESOURCES

Q. What are Energy Efficiency Resources?

A. Although the definition varies slightly throughout the industry, in general, an Energy Efficiency Resource is a product whose energy consumption is below the applicable standards, and that is capable of achieving a continuous reduction in electric energy consumption. These can include everything from LED light bulbs and air conditioning units to refrigerators and industrial machinery.

Q. How are Energy Efficiency Resources relevant to utility operations?

A. Energy Efficiency Resources are important measures that have proven to be key tools in reducing energy costs for utilities and consumers. In particular, Energy Efficiency Resources allow utilities to reduce their peak coincident loads, thereby lessening the need for expensive and environmentally damaging peaking capacity.

Q. What incentive programs exist for consumers and businesses to install Energy Efficiency Resources?

A. The incentives for installing Energy Efficiency Resources vary from region to region and utility to utility, but within PJM's footprint, there are two primary programs. First, the PJM Open Access Transmission Tariff ("PJM Tariff") allows for Energy Efficiency

Resources to be bid into PJM's Reliability Pricing Model capacity market.[11] This is typically managed by third-party aggregators, although large producers of Energy Efficiency Resources can themselves participate in PJM's market. Second, many individual utilities, including EKPC, offer direct rebates for energy efficient products, such as light bulbs and air conditioners.

A. Participation in Wholesale Markets

Q. Can EKPC customers receive the benefits of participating in PJM's capacity market?

A. They cannot. In 2017, at EKPC's request, the Kentucky Public Service Commission ("Commission") issued an order prohibiting retail electric customers from participating directly or indirectly in PJM's wholesale market, including with respect to demand response and Energy Efficiency Resources, except pursuant to a tariff or special contract on file with the Commission.[12] Thereafter, FERC issued a declaratory order providing that it has exclusive jurisdiction over the participation of Energy Efficiency Resources in wholesale markets, but providing the Commission with an exception to restrict customers from participating in wholesale markets based on the unique history of PJM's expansion to Kentucky.[13] To my knowledge, EKPC does not have a tariff or special contract on file with the Commission enabling Energy Efficiency Resources to participate generally in PJM markets.

[11] *See* PJM Open Access Transmission Tariff, Attachment DD-1(L).

[12] *In re: Ky. Pub Serv. Comm'n, Application of East Kentucky Power Cooperative, Inc. for a Declaratory Order Confirming the Effect of Kentucky Law and Commission Precedent on Retail Electric Customers' Participation in Wholesale Electric Markets*, Docket No. 2017-00129, Final Order (June 6, 2017).

[13] *Advanced Energy Economy*, 161 FERC ¶ 61,245, at P 59, 66 (2017).

Q. What was EKPC's rationale for seeking to prohibit customers from entering their Energy Efficiency Resources into PJM's capacity market?

A. I understand that EKPC's position was that because it could not know the quantity of Energy Efficiency Resources being bid from its service territory into the PJM Capacity Market in advance of the auction, EKPC would be unable to estimate its load for purposes of accurately submitting its own bid.

Q. Do you believe that EKPC's concern was valid?

A. I do not. Far from creating uncertainty, PJM's Energy Efficiency program *enables* utilities to determine their system loads with *greater* accuracy, which prevents overbidding. By definition, Energy Efficiency Resources, for purposes of the PJM Tariff, are "not reflected in the peak load forecast prepared for the Delivery Year for which the Energy Efficiency Resource is proposed."[14] With or without capacity payments, some amount of Energy Efficiency Resources will be deployed onto utilities' systems. Thus, absent a method for reporting, it may take several years for the utility and system operator to understand the cumulative effects of these resources on load.[15] Indeed, in a recent report, the Brattle Group estimated that this lag could be up to a decade or more. But with Energy Efficiency participation in the capacity market, the RTO, and ultimately, the utility, can understand the effect of Energy Efficiency Resources much more quickly. Based on this and other factors, the Brattle Group concluded that "[h]aving EE on the supply side of the capacity market reduces its contribution to demand forecast uncertainty."[16]

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[14] *See* PJM Tariff Attachment DD-1(L).

[15] Brattle Group, *The Benefits of Energy Efficiency Participating in Capacity Markets*, at 6 (Apr. 2021), https://info.aee.net/hubfs/The%20Benefits%20of%20Energy%20Efficiency%20Participation%20in%20Capacity%20Markets1.pdf.

[16] *Id.* at 5.

Q. How does PJM ensure that the data received is accurate?

A. PJM maintains rigorous measurement and verification procedures that Energy Efficiency suppliers must follow.[17] With these protocols, PJM is able to receive the most accurate picture of Energy Efficiency participation in the region.

Q. What is your conclusion with respect to EKPC's prohibition on Energy Efficiency Resources' participation in PJM's capacity market?

A. It is my opinion that it is not fair, just, or reasonable for EKPC to prohibit Energy Efficiency Resources from participating in PJM's capacity market. As discussed above, Energy Efficiency Resources' participation *helps* utilities better plan their load forecasts. It also provides compensation for a valuable contribution to reducing peak coincident loads.

B. Energy Efficiency Incentive Programs

Q. What Energy Efficiency incentives does EKPC offer its customers?

A. EKPC maintains a suite of Energy Efficiency incentives for customers.[18] These include providing LED lights to members and providing rebates for HVAC duct sealing, weatherization, and heat pump retrofits.[19] Until recently, EKPC offered a commercial lighting incentive.[20] According to EKPC, in 2019, 81 commercial and industrial advanced lighting rebates were provided to members, "resulting in a lifetime savings of 60,814 MWh and 121,628,063 pounds of carbon dioxide emissions."[21]

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[17] *See* PJM Tariff Attachment DD-1(L); PJM Manual 18B: Energy Efficiency Measurement & Verification, Rev. 4 (Aug. 22, 2019), https://www.pjm.com/-/media/documents/manuals/m18b.ashx.

[18] *See* EKPC, Demand Side Management 2019 Annual Report, https://www.ekpc.coop/sites/ekpc/files/PDFs/2019%20EKPC%20DMS%20DLC%20Annual%20Report.pdf.

[19] *Id.*

[20] *See id.* at 9.

[21] *Id.*

Q. Why does EKPC no longer offer a rebate program for commercial and industrial lighting?

A. In a 2019 Commission proceeding on demand-side management programs, EKPC proposed eliminating the commercial and industrial lighting program, which the Commission approved.[22] In support of this change, EKPC admitted that the commercial and industrial lighting program remained "cost-effective," but it said that LED bulbs have "becom[e] the baseline light of choice."[23]

Q. Did EKPC adequately justify its decision to remove the Commercial and Industrial Lighting Program?

A. The rationale provided in EKPC's tariff filing is inadequate, overly simplistic, and ultimately deficient for two main reasons.

First, EKPC has provided no study, analysis, or other further evidence to show that LEDs have already become the baseline light of choice. Experience shows that this conclusion is far too simple. It is true that *consumer* LED bulbs have become more affordable in the last several years, but LED lights for commercial and industrial applications—including for use in commercial-scale greenhouses—remain more expensive than inefficient alternatives. I understand that AppHarvest Morehead Farm, for example, elected *not* to install all LED lights in its greenhouse facility, in part because doing so would have been costly. Instead, AppHarvest elected to use a mix of LEDs and less efficient High Pressure Sodium bulbs.

[22] *See Demand-Side Management Filing of East Kentucky Power Cooperative, Inc.*, Case No. 2019-00059, Final Order (Nov. 26, 2019).

[23] *Id.*, EKPC Tariff Filing, Ex. D at Commercial and Industrial Lighting Program (Jan. 30, 2019).

Second, because EKPC did not say that efficient lighting is considered in its load forecasts, EKPC may overprocure capacity. As I explained above, a key benefit of Energy Efficiency programs is that they enable utilities to obtain data about purchasing trends of Energy Efficiency Resources that otherwise would not be accessible. Thus, even if it were the case that LEDs have become the baseline consumer choice, maintaining an incentive program would be beneficial because it would provide EKPC with key information about its load.

Q. What is your recommendation concerning commercial and industrial energy efficient lighting incentives?

A. EKPC should implement an incentive program for energy efficient commercial and industrial lighting similar to the one it discontinued.

Q. Does this conclude your testimony?

A. Yes.

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Direct Testimony of Suedeen G. Keely

Attachment SGK-1

SUEDEEN G. KELLY

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EMPLOYMENT

Jenner & Block, LLP, Washington, DC
Partner and Co-Chair of Energy Practice (2017-Present)

Chosen by *Law360* - List of Ten Influential Women in Energy Law (2018); Jenner & Block Energy Practice chosen by *Law360* Five Top Energy Practices (2019)

Akin Gump Strauss Hauer & Feld LLP, Washington, DC Partner, and Chair of Energy Practice (2012-2017)

Chosen by *Metropolitan Corporate Counsel* as its cover story for January 2016; Chambers Global Ranked (2012-2016), energy electricity, regulatory and litigation; Recognized by *The National Law Journal* as 2015 Top 50 Regulatory & Compliance Trailblazers in environment, energy and law; Top Author, JD Supra Readers' Choice Award (2015).

Member, Board of Directors, **UIL Holdings**, New Haven, CT (2011 -2015)

Member, Board of Directors, **Access Midstream Partners**, Oklahoma City, OK (2010 -2015)

Member, Board of Directors, **Tendril,** Boulder, CO (2010-2012)

Patton Boggs LLP, Washington, DC Partner, 2010 -2012
Co-Chair of Energy Industry Practice

Federal Energy Regulatory Commission, Washington, DC Commissioner (2003 -2009)
Responsibilities included (1) making decisions in approximately 1300 cases each year involving electric and natural gas wholesale markets and interstate transmission, hydroelectric licensees and gas pipeline certificates, oil pipeline rates, electricity reliability, and enforcement; (2) maintaining relations with the U.S. Senate Energy and Natural Resources Committee and the U.S. House Commerce and Energy Committee, including testifying before the committees as required and following legislative developments; (3) maintaining relations with industry and market participants; (4) speaking publicly on energy industry developments and maintaining relations with the press; (5) co-chairing the Smart Grid Collaborative between FERC and the National Association of Regulatory Utility Commissioners; (6) managing the budget and staff of the Office of the Commissioner.

University of New Mexico School of Law, Albuquerque, NM
Professor of Law, 1986 - 2003

Taught Energy Law, Public Utility Regulation, Legislative Process and Administrative Law, and Administrative Practice. Served as Editor-in-Chief, Natural Resources Journal (1995-2000) (responsibilities included managing all aspects of the publication of four volumes of the Journal each year, its budget and administrative staff, and supervising the student editorial staff). Was the Lewis & Clark Law School Distinguished Visitor (1998) and was awarded the Susan and Ronald Friedman Faculty Excellence in Teaching Award (1995-96) and the Keleher & McLeod Professor of Law Award (1997-99).

Staff of **U.S. Senator Jeff Bingaman**, Washington, DC
Detail to the U.S. Senate Energy and Natural Resources Committee, 1999 (on leave from U. of NM)
Contributed to development of energy and hydroelectric licensing legislation.

California Independent System Operator, Folsom, CA Regulatory Counsel, 2000 (on leave from U. of NM)
CAISO operates much of California's transmission grid and dispatches interconnected generation, which was coordinated with the California Power Exchange until 2001. Responsible for learning and understanding the ISO's protocols and tariff provisions so as to be able to answer day-to-day legal questions. Worked on the regulatory proceeding involving the 70 unresolved issues remaining from the FERC's conditional certification of the ISO.

Modrall, Sperling, Roehl, Harris & Sisk, Albuquerque, NM
Attorney, 2001 - 2003 (on leave from U. of NM)
Responsibilities included creating and heading up the firm's public utility practice. Clients included independent power producers, water utilities, a local gas distribution company, and NM State University in its capacity as a large electricity customer.

Suedeen G. Kelly, Attorney-at-Law, Albuquerque, NM
Attorney, 1986 - 2001
Managed a part-time practice in federal and state energy and public utility law, representing private and publicly-owned clients in transactions, legislation, rulemakings and litigation concerning electric, gas and water utility certification, rates and service; electricity assets siting, financing, acquisitions and mergers; electric and gas industry restructuring; and doing business with electric and gas utilities.

New Mexico Public Service Commission, Santa Fe, NM
Chairwoman, 1984 - 1986.
Commissioner, 1983 - 1984.
Responsibilities included regulation of the state's electric, gas and water utilities; management of the agency, its budget and staff; and maintaining relations with the State Legislature, the Governor's Office, the industry, and the public.

New Mexico Office of the Attorney General, Santa Fe, NM
Attorney, Public Utilities Division, 1982 - 1983
Managed cases being litigated in New Mexico state courts and cases before the NM Public Service

Commission.

Luebben, Hughes & Kelly, Albuquerque, NM
Partner, 1978-1982
Managed a private law practice, representing clients in state and federal litigation and regulatory agency practice in utility, natural resources, energy and Indian law.

University of New Mexico Graduate School of Public Administration, Albuquerque, NM
Adjunct Faculty, 1979 - 1982
Taught Administrative Law.

Natural Resources Defense Council, Inc., Washington, DC
Attorney, 1977 - 1978
Law Clerk, 1975
Managed a case load involving environmental litigation in the federal courts, federal agency proceedings and federal legislative developments.

Ruckelshaus, Beveridge, Fairbanks & Diamond, Washington, DC
Associate Attorney, 1976 - 1977
Worked on cases in federal litigation, federal and state agency proceedings, and helped to advise clients regarding legislation. Matters involved environmental, commercial and constitutional law.

U.S. Environmental Protection Agency, Washington, DC
Law Clerk, 1974
Provided research regarding the Federal Water Pollution Control Amendments of 1972 and federal clean water policy.

EDUCATION

Cornell Law School, J.D., *cum laude*, 1976.
Cornell Law Scholarship; Delaware School Foundation Scholarship; International Law Journal Staff; Director, Cornell Legal Aid (responsible for managing the case load of the Family Division and supervising its student attorneys).

University of Rochester, B.A. in Chemistry, *With Distinction*, 1973.
Bausch & Lomb Science Award and Scholarship; President, University Women's Residence Assistants (responsible for managing women's residential assistance program and supervising the residence assistants).

PUBLICATIONS WITHIN THE LAST FIVE YEARS

To Ensure That Its Policies Support the Continued Development of Reliable and Resilient Transmission Infrastructure, FERC Should Discontinue Its Practice of Allowing Pancaked Complaints (Edison Electric Institute) (2018).

Escalating Threats to Infrastructure Confirm Our Need to Harden the Electric Grid (The Hill) (Oct. 30, 2017).

Episode 7: Mysterious Frontiers: The New FERC, Grid Geeks Podcast (August 9, 2017) (with host Alison Clements), available at http://www.goodgrid.net/blog/2017/8/9/grid-geeks-podcast-episode-7.

Federal/State Jurisdictional Split: Implications for Emerging Electricity Technologies, Lawrence Berkeley National Laboratory - Energy Analysis and Environmental Impacts Division (December 2016) (co-authored with Jeffery S. Dennis, Robert R. Nordhaus, and Douglas W. Smith), available at https://www.energy.gov/sites/prod/files/2017/01/f34/Federal%20State%20Jurisdictional%20Split--Implications%20for%20Emerging%20Electricity%20Technologies.pdf.

A FERC challenge: Opening up electricity markets to advanced energy technologies, UtilityDive.com (June 30, 2016) (co-authored with Arvin Ganesan), available at https://www.utilitydive.com/news/a-ferc-challenge-opening-up-electricity-markets-to-advanced-energy-technol/421891/.

SWORN TESTIMONY

Bandera Master Fund LP, et al. v. Boardwalk Pipeline Partners LP, C.A. No. 2018-0372-JTL, Delaware Court of Chancery. On behalf of Boardwalk Pipeline Partners LP (2020-21).

In the Matter of Southwestern Public Service Company's Application For: (1) Revision of its Retail Rates Under Advice Notice No. 292; (2) Authorization and Approval to Abandon its Plant X Unit 3 Generating Station; and (3) Other Associated Relief, No. 20-00238-UT (New Mexico Public Regulation Commission). On behalf of Southwestern Public Service Company (2021).

In Re: Extraction Oil & Gas, Inc. v. Grand Mesa Pipeline LLC, Case No. 20-11548 (CSS), U.S. Bankruptcy Court for the District of Delaware, Oct. 1, 2020. On behalf of Grand Mesa Pipeline LLC.

In the Matter of Southwestern Public Service Company's Application For: (1) Revision of Its Retail Rates Under Advice Notice No. 282; (2) Authorization and Approval to Shorten the Service Life of and Abandon Its Tolk Generating Station Units; and (3) Other Related Relief, No. 19-00170-UT (New Mexico Public Regulation Commission). On behalf of Southwestern Public Service Company (2019)

In the Matter of the Application of Grain Belt Express Clean Line LLC for a Certificate of Convenience and Necessity, No.EA-2016-0358 (Public Service Commission of the State of Missouri) On behalf of Grain Belt Express Clean Line LLC (2016)

Rockies Express Pipeline LLC v. U.S. Dep't of the Interior, Civilian Board of Contract Appeals, CBCA 3704 (1921)-REM. [REM denotes that the case was on remand from the U.S. Court of Appeals for the Federal Circuit.] On behalf of Rockies Express Pipeline LLC (2015-16)

In the Matter of the Merger of Exelon Corporation and Pepco Holdings, Inc., No. 9361 (Public Service Commission of the State of Maryland). On behalf of Exelon Corporation (2015)

PROFESSIONAL ACTIVITIES

Member, Expert Advisory Board, Initiative on Climate Risk and Resilience Law, www.icrrl.org (2021-Present).

Member, Board of Directors, Advanced Energy Economy Institute (2020-Present)

Member, Advisory Board of Directors, American Wind Energy Association (2019-2020)

Member, Board of Advisors, Duke University Nicholas Institute (2018-Present)

Member, Dean's Advisory Council, Hajim School of Engineering, University of Rochester, Rochester, NY (2012 - 2020).

Rocky Mountain Mineral Law Foundation, Trustee (1988 - 1993, 2015 - 2017).

Member, Environmental Law Institute Leadership Council (2015 - 2017).

Member, Advisory Board, The Perfect Power Institute, Chicago, IL (2011 – 2015).

Board Member, Charitable Foundation of the Energy Bar Association (2010 - 2013).

Member, Advisory Board, Gridquant, Columbus, OH (2013).

Member, Smart Grid Advisory Committee, National Institute of Standards and Technology (2010 - 2013).

Council Member, American Bar Association, Section of Administrative Law and Regulatory Practice (2010 - 2012).

Advisory Council, Women's Council on Energy and Environment, Washington, DC (2008 – 2012; Chair 2010 - 2012).

Council Member, American Bar Association, Section of Environment, Energy and Resources (2000 - 2003).

New Mexico Women's Bar Association (1991 - 2003).

Barrister, H. Vearle Payne American Inn of Court (1995 - 2003).

Board Member, Santa Fe Diocese Foundation (1999 - 2003).

Founding Board Member, Albuquerque Open Space Alliance (1996 - 1999).

N.M. Legislative Task Force on Management of the Middle Rio Grande Bosque (1993 - 1994).

American Association of Law Schools, Chair of the Executive Committee of the Legislation Section (1994 - 1995).

Border Research Institute of New Mexico State University, Member of the Advisory Committee on its studies (1992 - 1993).

The National Regulatory Research Institute, Ohio State University, Member of the Research Advisory Committee to the Board (1988 - 1992).

Board Member, New Mexico Bar Association, Natural Resources Section (1987 - 1992)

U.S. Consumer Product Safety Commission, Chair of its Advisory Council (1980 - 1981); Member (1979-1981).

U.S. National Air Quality Commission-Four Comers Region Study, Member of Advisory Committee (1979 - 1981).

N.M. Legislative Task Force, Federal Lands Action Group, (1979 - 1981).

Washington D.C. Council of Lawyers, Executive Board Member (1977 - 1978).

Member of the Bars of New Mexico and the District of Columbia; of the U.S. Courts of Appeal for the District of Columbia, 9th and 10th Circuits; and of the U.S. District Courts for the District of Columbia and New Mexico

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AFFIDAVIT

DISTRICT OF COLUMBIA

Suedeen Kelly, being duly sworn, deposes and states: that the attached is her sworn testimony and that the statements contained therein are true and correct to the best of her knowledge, information, and belief.

Suedeen G. Kelly

Subscribed and sworn to or affirmed before me this 1 day of July, 2021

Notary Public

My commission expires:

CHERYL L. OLSON
NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires October 31, 2024

CHERYL L. OLSON NOTARY PUBLIC MY COMMISSION EXPIRES 10/31/2024 DISTRICT OF COLUMBIA