

BOEHM, KURTZ & LOWRY

ATTORNEYS AT LAW
36 EAST SEVENTH STREET
SUITE 1510
CINCINNATI, OHIO 45202
TELEPHONE (513) 421-2255
TELECOPIER (513) 421-2764

RECEIVED

FEB 26 2018

**PUBLIC SERVICE
COMMISSION**

VIA OVERNIGHT MAIL

February 23, 2018

Gwen R. Pinson, Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, Kentucky 40602

Re: Case Nos. 2018-00050

Dear Ms. Pinson:

Please find enclosed the original and ten (10) copies of the RESPONSE OF NUCOR KENTUCKY'S OBJECTION TO ITS INTERVENTION for filing in the above-referenced matter.

By copy of this letter, all parties listed on the Certificate of Service have been served. Please place this document of file.

Very Truly Yours,



Michael L. Kurtz, Esq.
BOEHM, KURTZ & LOWRY

MLKkew
Attachment

cc: Certificate of Service
Nancy Vinsel, Esq.
Richard Raff, Esq.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by electronic mail (when available) or by regular, U.S. mail, unless otherwise noted, this 23rd day of February, 2018 to the following:


Michael L. Kurtz, Esq.

Kent Chandler, Esq.
Rebecca W Goodman, Esq.
Assistant Attorneys General
Office of Rate Intervention
700 Capitol Avenue, Suite 20
Frankfort, KENTUCKY 40601-8204
Kent.Chandler@ky.gov
Rebecca.Goodman@ky.gov

M. Evan Buckley, Esq.
Goss Samford, PLLC
2365 Harrodsburg Road, Suite B325
Lexington, KENTUCKY 40504
ebuckley@gosssamfordlaw.com

South Kentucky R.E.C.C.
925-929 N Main Street
P. O. Box 910
Somerset, KENTUCKY 42502-0910

Mark David Goss, Esq.
Goss Samford, PLLC
2365 Harrodsburg Road, Suite B325
Lexington, KENTUCKY 40504
mdgoss@gosssamfordlaw.com

W. Patrick Hauser, Esq.
W. Patrick Hauser, PSC
PO Box 1900
Barbourville, KENTUCKY 40906
phauser@barbourville.com

W. Jeffrey Scott, Esq.
Brandon M. Music, Esq.
W. Jeffrey Scott, P.S.C.
P.O. Box 608
Grayson, KY 41143
wjscott@windstream.net

James M. Miller, Esq.
R. Michael Sullivan
Sullivan, Mountjoy, Stainback & Miller, P.S.C.
100 St. Ann Street, P.O. Box 727
Owensboro, KY 42302-0727
jmiller@smlegal.com
msullivan@smlegal.com

James M. Crawford, Esq.
Crawford & Baxter
523 Highland Avenue
P.O. Box 353
Carrollton, Kentucky 41008
jcrawford@cbkylaw.com

Robert Spragens, Jr., Esq.
Spragens & Higdon, P.S.C.
15 Court Square – P.O. Box 681
Lebanon, KY 40033
Rspragens@spragenshigdonlaw.com

Clayton O. Oswald, Esq.
Taylor, Keller & Oswald, PLLC
P.O. Box 3440
1306 W. 5th St., Suite 100
London, KY 40743-3440
coswald@tkolegal.com

John Douglas Hubbard, Esq.
Jason P. Floyd, Esq.
Fulton, Hubbard & Hubbard, PLLC
117 E. Stephen Foster Avenue
P.O. Box 88
Bardstown, KY 40004
jd@bardstoswn.com

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

FEB 26 2018

PUBLIC SERVICE
COMMISSION

In The Matter Of: THE APPLICATION OF SOUTH KENTUCKY :
RURAL ELECTRIC COOPERATIVE CORPORATION FOR : Case No. 2018-00050
APPROVAL OF MASTER POWER PURCHASE AND SALE :
AGREEMENT AND TRANSACTIONS THEREUNDER :

RESPONSE OF NUCOR
TO SOUTH KENTUCKY'S OBJECTION TO ITS INTERVENTION

I. Procedural Background

On January 31, 2017, South Kentucky Rural Electric Cooperative Corporation ("South Kentucky") filed an Application seeking approval from the Kentucky Public Service Commission ("Commission") for approval of the Master Power Purchase and Sale Agreement ("Agreement") between South Kentucky and Morgan Stanley Capital Group ("Morgan Stanley"). The Agreement was entered into pursuant to the November 13, 2003 Amendment 3 to the wholesale power agreement between East Kentucky Power Cooperative ("EKPC") and its sixteen member-owners. Amendment 3 was further defined and explained by the July 23, 2015 Memorandum of Understanding ("MOU") between EKPC and its sixteen member-owners. By Order entered December 18, 2005 in Case No. 2012-00503, the Commission approved the Amendment 3 MOU, determined that the Amendment 3 MOU was a written agreement relating to utility rates subject to the Commission's jurisdiction and required EKPC to file the Amendment 3 MOU in the Commission's Tariff Filing System.

The Agreement at issue requires South Kentucky to purchase from Morgan Stanley 58 MW of firm energy on a 7x24x365 (100% load factor) basis for 20 years. This amounts to 508,080 MWh per year, or 42.4% of South Kentucky's 2017 retail energy sales. The Agreement also requires South Kentucky to purchase a financial capacity hedge of 68 MW (58 MW plus an 18% reserve margin) for 18 years. This represents 15% of South Kentucky's coincident peak demand. Finally, the Agreement requires South Kentucky to become a member of PJM.

On February 22, 2018, Nucor Steel Gallatin (“Nucor”) filed a Motion to intervene. In its Motion Nucor explained that the Agreement would result in a cost shift to its utility supplier, Owen Electric Cooperative (“Owen”). Owen is one of the sixteen EKPC member-owners. Nucor asserted that before mitigation through resale into the PJM energy and capacity markets, the Agreement would reduce EKPC’s fixed cost recovery by approximately \$15 million per year which would result in an immediate increase in the environmental surcharge collected by Owen and paid by Nucor. Nucor further asserted that the Agreement could result in an increase in its base rates. Finally, Nucor asserted that this case would establish the policy and precedent for buying Alternative Sources of power under Amendment 3 and the MOU, which policy and precedent would apply to Owen and therefore impact Nucor.

On February 22, 2018, eight EKPC member-owners filed a Motion to intervene. The eight joint Movants explained that the Agreement could increase their wholesale power costs from EKPC which would have a corresponding retail rate increase on their member-customers.

On February 23, Owen filed its own Motion to Intervene. Like the eight joint Movants, Owen explained that the Agreement “*will have a significant impact on the rates paid by OEC and its members for electricity*”, including Nucor.

On February 23, 2018, South Kentucky filed a Response And Objection opposing Nucor’s Motion to Intervene. South Kentucky argued that Nucor failed to meet the requirements of 807 KAR 5:001, Section 4(11)(a)(1) and Section 4(11)(b) primarily because it is “*harboring speculative and unsupported concern that it may pay higher rates in the future if South Kentucky is permitted to proceed pursuant to Amendment No. 3.*” Objection at p. 1. South Kentucky further argues that Nucor’s interests are “*too remote to justify intervention*” especially since it is “*not even a customer of the applicant utility...*” Objection at p. 2. South Kentucky further argues that Nucor’s interest is neither exceptional nor special and that Nucor’s intervention would open the door for intervention by all ultimate customers from EKPC’s sixteen member-owners. Objection at p. 3. South Kentucky argues that Nucor’s interests will be represented by EKPC, the Attorney General and the other member-owners (including Owen) and that Nucor “*is not likely to present issues or develop facts that will assist the*

Commission in fully considering the matter.” Objection at p. 4. Finally, South Kentucky argues that Nucor’s participation “*would unduly complicate or disrupt the proceedings...*” Objection at p. 5.

For the reasons stated below, South Kentucky’s Objection should be denied and Nucor’s intervention should be approved

II. Argument

807 KAR 5:001, Section 4(11)(b) establishes two separate grounds for granting a timely motion for intervention. First, the Commission “*shall*” grant a person leave to intervene if the Commission finds that “*he or she has a special interest in the case that is not otherwise adequately represented.*” Second, the Commission “*shall*” grant intervention if it finds that “*his or her intervention is likely to present issues or to develop facts that assist the commission in fully considering the matter without unduly complicating or disrupting the proceedings.*” Even though meeting just one of the two standards would be sufficient for granting Nucor’s intervention, Nucor meets both standards. In fact, Nucor’s Motion to Intervene is far more detailed and specific in explaining how the intervention standard has been met than any of the other interventions filed to date.

A. Nucor Has A Special Interest That Is Not Otherwise Adequately Represented

Nucor is by far the largest retail ratepayer on the EKPC system. Pursuant to a Commission approved special contract, Nucor purchases approximately one billion kWh annually from EKPC through Owen. This represents approximately 7.5% of all retail sales on the EKPC system. Because of the operating flexibility of Nucor’s electric arc furnace operations, Nucor provides EKPC with more than 100 MW of interruptible capacity to help meet EKPC’s operating and reserve requirements in PJM. This is more than all of the other interruptible load on the EKPC system combined. Because of its large size and significant impact on EKPC’s operations, Nucor is required each day to submit a binding hourly schedule for expected energy consumption on its 345 Kv line and is penalized for load forecast errors. No other ratepayer has this load forecast obligation. Finally, because of its large size, Owen directly assigns to Nucor environmental surcharge costs charged by EKPC. Again, no other customer is subject to this environmental surcharge rate treatment.

The Agreement between South Kentucky and Morgan Stanley could have unique and adverse effects on Nucor and its Commission approved special contract. The loss of up to \$15 million in fixed cost recovery would immediately increase EKPC's environmental surcharge and Nucor's direct assignment of that cost. This concern is real, not speculative. Approval of the Agreement could also force EKPC into a rate case thus increasing Nucor's base rates. The loss of up to \$15 million in margins would absolutely accelerate the need for EKPC to raise rates. The loss of 68 MW of capacity could affect EKPC's system planning and the use of the Nucor interruptible resource in PJM. It is highly doubtful that EKPC, the Attorney General or any of the member-owners have any concern for Nucor's interruptible rate. Nucor recently received an economic development rate from EKPC to add a galvanizing line to its operations which would add approximately 75 full time employees and consume an additional 25 MW. Nucor is considering additional major investments at its Kentucky operations and the cost of electricity is a major factor in those decisions. Any environmental surcharge or base rate increase resulting from the Agreement would adversely affect those expansion plans. Again, this is a concern exclusive to Nucor, not any of the other intervenors.

The fact that Nucor is not a customer of South Kentucky does not diminish the importance of this case to Nucor. Nucor is not concerned with South Kentucky's rates. Our concern is the impact of the Agreement on EKPC, Owen and ultimately our own rates. Interventions in G&T rate proceedings are always one step removed. Nucor routinely intervenes in EKPC rate proceeding because the rate impact is ultimately passed through to Owen and Nucor. If Owen has standing to intervene in this case, then so too should Nucor.

Given its unique rate arrangement with EKPC and Owen, Nucor has a special interest that is not otherwise adequately represented.

B. Nucor's Intervention Will Present Issues And Develop Facts That Will Assist The Commission

Nucor (and its predecessor Gallatin Steel) has participated in all major EKPC rate proceedings over the last fourteen years which gives it and its counsel special expertise in EKPC rate matters that can assist the Commission. These proceedings include:

- *Application of East Kentucky Power Cooperative, Inc. for Deviation from Obligation Resulting from Case No. 2012-00169, Case No. 2015-00358*

- *Application Of East Kentucky Power Cooperative Inc. For Certificate Of Public Convenience And Necessity For Alteration Of Certain Equipment At The Cooper Station And Approval Of A Compliance Plan Amendment For Environmental Surcharge Cost Recovery*
Case No. 2013-00259
- *Application of East Kentucky Power Cooperative, Inc. to Transfer Functional Control of Certain Transmission Facilities to PJM Interconnection, LLC*, Case No. 2012-00169
- *Investigation Of East Kentucky Power Cooperative, Inc.'s Need For The Smith 1 Generating Facility*, Case No. 2010-00238
- *General Adjustment Of Rates Of East Kentucky Power Cooperative, Inc.*,
Case No. 2010-00167
- *General Adjustment of Electric Rates of East Kentucky Power Cooperative, Inc.*,
Case No. 2008-00409
- *Application Of East Kentucky Power Cooperative, Inc. For Approval Of An Amendment To Its Environmental Compliance Plan And Environmental Surcharge*, Case No. 2008-00115
- *General Adjustment of Electric Rates of East Kentucky Power Cooperative, Inc.*,
Case No. 2006-00472
- *Application Of East Kentucky Power Cooperative Inc. For Approval Of An Environmental Compliance Plan And Authority To Implement An Environmental Surcharge*,
Case No. 2004-00321

It has been our experience that participation by other individual ratepayers in these proceedings has been extremely limited. So any concern that ratepayers from the sixteen member systems will flood into this case are overblown, especially since the intervention deadline is today. This case is being processed on an expedited basis with limited time for discovery and other matters. Nucor's participation will not complicate or disrupt this proceeding. To the contrary, we intend to productively assist the Commission in making a reasonable decision that balances the interests of all affected parties. Counsel for Nucor has reviewed the Application and supporting testimony. To demonstrate the issues and facts which we intend to present in an effort to assist the Commission, we tender these initial observations.

1. **The Agreement Likely Violates Amendment 3 And The MOU Because It Results In The Purchase From Morgan Stanley Of 15% Of South Kentucky's Capacity Requirements But 42.4% Of Its Energy Requirements**

Amendment 3 and the MOU are very clear regarding the amount of capacity that can be purchased from Alternative Sources. Only five percent of EKPC's coincident peak demand can be provided to the sixteen member-owners from Alternative Sources, and no individual member-owner shall receive more than fifteen

percent of its coincident peak demand from Alternative Sources. The amount of energy that can be provided from Alternative Sources is less clear. But reading Amendment 3 and the MOU together demonstrates that the intent regarding energy purchases was to match the member-owner's overall load profile. The proposed Agreement creates a mismatch where 15% of South Kentucky's demand will be purchased at market based rates, whereas 42.4% of its energy will be purchased at market.

Section 4 (A)(iv) of the MOU requires the Alternative Source Notice to include information about the pattern of dispatch of the Alternative Source and the corresponding pattern of hourly reductions in energy to be purchased from EKPC. That Section requires each Alternative Source Notice to include "*the approximate, expected pattern of use or dispatching of the Alternative Source and the corresponding pattern of hourly reductions in energy to be purchased by the Owner member from EKPC.*"

But, contrary to the intent of the Commission approved rate, South Kentucky will purchase 58 MW of energy on a 7x24x365 basis (100% load factor). The actual pattern of South Kentucky's energy use results in a load factor closer to 50%. Of course, it is much cheaper to purchase large blocks of off-peak market energy than it is to purchase an energy product that follows the customers' actual usage pattern. Conversely, with the loss of an around-the-clock energy block of 58 MW, EKPC's cost to load follow and serve the remaining South Kentucky load will be higher than is reflected in its current rates.

58 MW on a 100% load factor basis results in 508,080 MWh per year (58 MW x 24 x 365). On page 6 of her testimony, Ms. Herrman testifies that South Kentucky's 2017 energy usage was 1,197,891 MWh. Therefore, the purchase from Morgan Stanley is for 42.4% of South Kentucky's energy requirements. This far exceeds the 15% purchase limitation in Amendment 3.

EKPC's base rate energy charge does not recover only variable costs. Instead, EKPC's base rate energy charge for Rates A, B and C of \$40.502/MWh recovers approximately \$10/MWh in fixed costs. This means that the loss of energy sales will reduce EKPC's margins which will ultimately raise base rates on all member-customers.

15% of South Kentucky's 2017 energy usage is 179,683 MWh. This is 328,397 MWh less than the 100% load factor purchase from Morgan Stanley. This translates into approximately \$3.28 million in lost fixed

cost recovery because South Kentucky exceeded the maximum 15% energy purchase limit. That \$3.28 million will be made up from member-customers, including Nucor.

The loss of energy sales above the 15% threshold will also increase environmental surcharge costs on the remaining 15 member-owners. EKPC recovers certain environmental fixed cost through its environmental surcharge. EKPC's environmental surcharge is allocated to its 16 member-owners on the basis of total revenue, including energy revenue. This means that by purchasing 42.4% of its energy from Morgan Stanley, South Kentucky will improperly shift fixed environmental costs to the other 15 member-owners (even though EKPC will be made whole since it will recover the same fixed environmental costs but from fewer sales). As stated previously, Nucor is the only ratepayer that is directly assigned environmental surcharge costs from EKPC.

2. The Agreement Likely Violates KRS 278.170

KRS 278.170 prohibits utilities (including EKPC) from giving any unreasonable preference or advantage to any person (including South Kentucky) or subjecting any person (including the remaining 15 member-owners) to any unreasonable prejudice or disadvantage for doing a like and contemporaneous service under the same or substantially the same conditions. KRS 278.170(1) provides:

"No utility shall, as to rates or service, give any unreasonable preference or advantage to any person or subject any person to any unreasonable prejudice or disadvantage, or establish or maintain any unreasonable difference between localities or between classes of service for doing a like and contemporaneous service under the same or substantially the same conditions."

Amendment 3 limits the amount of purchases from Alternative Sources to 5% of EKPC's coincident peak demand. EKPC's coincident peak demand is the sum of the demands of all sixteen of its member-owners. Yet Amendment 3 also allows an individual member owner to purchase up to 15% of its capacity and related energy needs from Alternative Sources. Mathematically, if member-owners start the process each claiming 15%, then EKPC's 5% limit will be hit before all of the member-owners can participate. And if the big member-owners go first, then the majority of the remaining member-owners will get zero. Whether this is described as a run on the bank or a race to the court house, the result is unduly discriminatory.

The process described above will result in an unreasonable preference to the early movers and an unreasonable prejudice to those left behind. Those left behind will receive no low cost market purchases, and to add insult to injury, will be forced to pick up the tab for EKPC's lost margins through higher base rates as well as higher environmental surcharge costs.

The Commission's December 18, 2015 Order in Case No. 2012-00503 approving the Amendment 3 MOU determined that it constituted a rate subject to the Commission's jurisdiction and required EKPC file it in the Commission's Tariff Filing System. All rates are subject to change by Order of the Commission. Accordingly, it is our initial conclusion and recommendation that the Commission should order that all Amendment 3 purchases from Alternative Sources must be limited 5% of each member-owner's energy and capacity needs. That way all member-owners will be treated equally as required by KRS 278.170.

WHEREFORE, for the reasons presented herein, Nucor's Motion to Intervene should be granted.

Respectfully submitted,



Michael L. Kurtz, Esq.
BOEHM, KURTZ & LOWRY
36 East Seventh Street, Suite 1510
Cincinnati, Ohio 45202
513.421.2255 Fax: 513.421.2764
E: mail: mkurtz@BKLawfirm.com

COUNSEL FOR NUCOR STEEL GALLATIN

February 23, 2018