Exhibit List Report

2018-00050 15May2018

South Kentucky Rural Electric

Judge: Bob Cicero; Talina Mathews; Michael Schmitt

Witness: James R Adkins; Carter Babbitt; Chris Brewer; Tony Campbell; Jerry Carter; David Crews; Carol Fraley; Ted Hampton; Joni Hazelrigg; Michelle D Herrman; Dennis Holt; Kerry Howard; Gregory Lee; Debra Martin; Mike McNalley; Don Mosier; Barry Myers; Mechonda O'Brien; William Prather; William S Seelye; Bobby Sexton; Tim Shart; Mark Stallons; Michael Williams; John Wolfram; Carol Wright

Clerk: Angela Fields

Name:	Description:
EKPC Exhibit 01	Email chain from Greg Shepler dated Apr. 3, 2018
EKPC Exhibit 02	Liberty Consulting Group Final Report dated Apr. 20, 2010
Nucor Exhibit 01	Memorandum of Understanding and Agreement Regarding Alternate Power Sources
Nucor Exhibit 02	807 KAR 5:058
Nucor Exhibit 03	PSC Case No. 2018-00050 Nucor's First Request for Information - Question 6
Nucor Exhibit 04	PSC Case No. 2018-00050 Commission's Staff First Request for Information - Item 18
Nucor Exhibit 05	CONFIDENTIAL - Marked but not entered. This will be included with the confidential session.
Nucor Exhibit 06	Enervision Charts
Nucor Exhibit 07	PSC Case No. 2008-00409 Testimony of William Seelye
OAG Exhibit 01	PSC Case No. 2007-00089 Direct Testimony of William Seelye
OAG Exhibit 02	PSC Case No. 2016-00370 Direct Testimony of William Seelye
OAG Exhibit 03	PSC Case No. 2008-00409 Testimony of William Seelye
OAG Exhibit 04	Kentukcy Utilities Company - Outdoor Sports Lighting Service
OAG Exhibit 05	PSC Order in Case No. 2016-00370 Electronic Application of KU for an Adjustment of its Rates and for a CPCN
OAG Exhibit 06	Duke Energy - Seasonal Sports Service
OAG Exhibit 07	PSC Order Case No. 2017 00321 Electronic Application Of Duke Energy Kentucky, Inc. For: 1) An Adjustment Of The Electric Rates. etc.
Owen Electric - Shelby Energy Exhibit 02	Article in Discovering Southern Kentucky - Do Unto Others
Owen Electric - Shelby Energy Exhibit 1	Guiding Principles - 2015 Annual Report
PSC (Seely) Exhibit 02	PSC Order in Case No. 2016-00417 Shouse v. KU
PSC (Seelye) Exhibit 01	KRS 278.260
PSC Exhibit 01	PSC Order in Case No. 2012-00503 re: Petition and Complaint of Grayson
SKY RECC Exhibit 01	Email chain between Mosier and McNalley date Jan. 4 -- Feb. 2, 2018
SKY RECC Exhibit 02	PSC Case No. 2017-00376 Response to Information Request - Request 3
SKY RECC Exhibit 03	PSC Case No. 2017-00376 Direct Testimony of Don Mosier
SKY RECC Exhibit 04	Email chain between Don Mosier and David Crews, Sept. 21 -- Nov. 28, 2017
SKY RECC Exhibit 05	Email on behalf of Tony Campbell dated Dec. 29, 2017, with attached EKPC Mitigation of Amendment 3 Load Loss memo dated Dec. 27, 2017
SKY RECC Exhibit 06	Roy M. Palk memo dated Apr. 28, 2003
SKY RECC Exhibit 07	PSC Case No. 2012-00503 Deposition of Anthony Campbell
SKY RECC Exhibit 08	MOU Discussion dated Sept. 9, 2013
SKY RECC Exhibit 09	Memo from David Eames dated Aug. 4, 2009

SKY RECC Exhibit 10	SKY RECC Request for Proposals
SKY RECC Exhibit 11	Email from David Crews to Mike McNalley dated Dec. 22, 2017

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PETITION AND COMPLAINT OF GRAYSON RURAL ELECTRIC COOPERATIVE CORPORATION FOR AN ORDER AUTHORIZING PURCHASE OF ELECTRIC POWER AT THE RATE OF SIX CENTS PER KILOWATTS OF POWER VS A RATE IN EXCESS OF SEVEN CENTS PER KILOWATT HOUR PURCHASED FROM EAST KENTUCKY POWER COOPERATIVE UNDER A WHOLESALE POWER CONTRACT AS AMENDED BETWEEN GRAYSON RURAL ELECTRIC COOPERATIVE CORPORATION AND EAST KENTUCKY POWER COOPERATIVE INC.	)	CASE NO. 2012-00503

ORDER

Pending before the Commission are two motions to dismiss this investigation: one filed jointly by Grayson Rural Electric Cooperative Corporation ("Grayson") and East Kentucky Power Cooperative, Inc. ("EKPC"); the other filed by Shelby Energy Cooperative, Inc. ("Shelby Energy"). This investigation was initiated by the Commission in response to the filing by Grayson of a complaint and petition relating to the interpretation of a 2003 amendment (known as "Amendment 3") to its contractual agreement with its wholesale power supplier, EKPC. As discussed below, we will grant the motions and dismiss this case. In doing so, we commend Grayson, EKPC, and EKPC's 15 other member distribution cooperatives ("Members") for working together collectively to resolve this contractual issue in a reasonable and efficient manner.

PSC EXHIBIT 1

BACKGROUND

Grayson and the 15 other Members are member/owners of EKPC and, until 2003, were contractually obligated to purchase their entire wholesale power requirements from EKPC. In 2003, Grayson and the other 15 Members entered into Amendment 3 with EKPC to allow each of the 16 Members to purchase a limited quantity of power from alternative sources. As discussed in more detail in our July 17, 2013 Order opening this investigation, the issues to be investigated in this case included "whether Amendment 3 requires or a need exists for a methodology for sharing among all Members the allocation of alternative sourced power authorized under Amendment 3."[1]

More specifically, we described this issue in the July 17, 2013 Order as follows:

> Amendment 3 authorizes EKPC's Members to purchase power and energy from someone other than EKPC, within the following limits: (a) up to a total of 5 percent of EKPC's highest coincident peak demand in the past 36 months; and (b) up to 15 percent of each Member's highest coincident peak demand in the past 36 months. Thus, while each Member has the right to purchase 15 percent of its coincident peak demand from a supplier other than EKPC, if each Member chose to do so, the total of all the Members' non-EKPC purchases would equal 15 percent of EKPC's peak demand; whereas Amendment 3 explicitly limits the aggregate of the Members' non-EKPC purchases to no more than 5 percent of EKPC's peak demand. The majority of the current controversy arises from this alleged inconsistency in the wording of Amendment 3, and that there appears to be no methodology or criteria, either contained in Amendment 3 or separately agreed to by the Members, to be used for allocating the right to purchase non-EKPC power among the 16 Members when one Member seeks to purchase more than 5 percent of its coincident peak load, thereby effectively

[1] July 17, 2013 Order at 20.

> limiting the other Members' total purchases to less than 5 percent of their respective coincident peak loads.[2]

In establishing this investigation, we recognized that EKPC's 15 Members other than Grayson might be impacted by the issues in this case, so we served a copy of the July 17, 2013 Order on each Member and invited Members to intervene individually or jointly. Thirteen of EKPC's 15 Members did intervene.[3] An informal conference was held at the Commission's offices on August 8, 2013, and the parties agreed on dates for conducting discovery, which consisted of written requests for information and the taking of depositions. Extensive discovery was conducted by the parties, and ultimately a joint motion to dismiss was filed by Grayson and EKPC.

DISCUSSION

The joint motion to dismiss filed by Grayson and EKPC states that the parties to this investigation have each executed a settlement agreement resolving all issues outstanding in this investigation, as well as certain issues in other proceedings involving Grayson and EKPC. Shelby Energy subsequently filed its own motion to dismiss, stating that it joins in the motion to dismiss as filed by Grayson and EKPC. In response to these motions, the Commission entered an Order on June 19, 2015, directing Grayson and EKPC to file a copy of the settlement agreement that was referenced in their joint motion to dismiss. In response to that Order, EKPC filed on June 22, 2015, a three-page Memorandum of Understanding, dated May 15, 2015, and signed by the

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[2] *Id.* at 2–3.

[3] The 13 Members of EKPC that intervened in this investigation are Big Sandy RECC, Blue Grass Energy Corporation, Clark Energy Corporation, Inc., Cumberland Valley Electric, Inc., Farmers Rural Electric Cooperative Corporation, Fleming-Mason Energy Cooperative, Jackson Energy Cooperative Corporation, Inter-County Energy Cooperative, Licking Valley Rural Electric Cooperative Corporation, Nolin Rural Electric Cooperative Corporation, Owen Electric Cooperative, Inc., Shelby Energy Cooperative, Inc., and South Kentucky Rural Electric Cooperative Corporation.

respective chairmen of the boards of directors of Grayson and EKPC. That document set forth numerous issues on which Grayson and EKPC had either already reached agreement or would work together in good faith to do so. One of those issues was Amendment 3, and EKPC agreed to seek approval from all 16 Members of a previously negotiated Amendment 3 Memorandum of Understanding ("Amendment 3 MOU") which "would successfully resolve lingering uncertainties regarding the operation of Amendment 3 to EKPC's Wholesale Power Agreement."[4]

EKPC followed through with its commitment to have its 16 Members approve the Amendment 3 MOU, and on September 30, 2015, EKPC filed copies of the Amendment 3 MOU as signed by each of its 16 Members. The Amendment 3 MOU includes provisions relating to, among other matters, the limits on the quantities of alternative-source power that can be acquired by each Member, the length of term for which the alternative-source power can be acquired, the advance notice that must be provided by a Member before acquiring alternative-source power, and a prohibition against EKPC's imposing a specific charge to recover lost demand revenue only from a Member electing to acquire alternative-source power. The Amendment 3 MOU also includes a statement that none of its provisions is intended to modify any of the express terms of Amendment 3.

With respect to the limits on the quantities of alternative-source power that can be acquired by each Member, the Amendment 3 MOU states generally that:

1. If, at the time a Member elects to acquire power from an alternative source, the aggregate load of all Members being served by alternative sources would

[4] *See* May 15, 2015 Memorandum of Understanding, attached to EKPC's June 22, 2015 Notice of Filing, at 3.

be less than 2.5 percent of EKPC's highest coincident peak demand in the past 36 months, the electing Member may acquire up to 15 percent of its highest coincident peak demand in the past 36 months.

2. If, at the time a Member elects to acquire power from an alternative source, the aggregate load of all Members being served by alternative sources would be equal to or greater than 2.5 percent of EKPC's highest coincident peak demand in the past 36 months, the electing Member may acquire up to 5 percent of its highest coincident peak demand in the past 36 months.

3. If, at the time a Member elects to acquire power from an alternative source, the aggregate load of all Members being served by alternative sources would be greater than 5 percent of EKPC's highest coincident peak demand in the past 36 months, the electing Member may not acquire the alternative source power unless the load to be served by the alternative source is reduced so the 5 percent threshold is not exceeded.

Based on a review of the evidence of record and being otherwise sufficiently advised, the Commission finds that the Amendment 3 MOU is comprehensive in nature, does not violate any legal or regulatory principle, and results in a reasonable resolution of all issues to be investigated in this case. As we noted in our July 17, 2013 Order initiating this case, any written agreement that contains provision relating to utility rates and service, as those terms are defined under KRS 278.010(12) and (13) respectively, is within the Commission's jurisdiction. In addition, KRS 278.160(1) requires a utility to have on file with the Commission "schedules showing all rates and conditions for service established by it and collected or enforced," while Commission regulation 807

KAR 5:011, Section 13, requires each utility to file with the Commission "a copy of all special contracts entered into governing utility service that establish rates, charges, or conditions of service not included in its general tariff." Thus, in granting the pending motions to dismiss, we will require EKPC to file in the Commission's Tariff Filing System one copy of the Amendment 3 MOU with the signature pages of each of its 16 Members.

There are also three petitions for confidentiality pending before the Commission. The first two, filed on July 26, 2013, and on July 29, 2013, by Owen Electric Cooperative, Inc. ("Owen Electric"), and Fleming-Mason Energy Cooperative ("Fleming-Mason"), respectively, request confidential protection for an earlier draft version of the Amendment 3 MOU and for a PowerPoint presentation describing the major provisions of that version of the Amendment 3 MOU. With respect to these petitions, the Commission finds that EKPC filed an unredacted copy of the Amendment 3 MOU here on September 30, 2015. Thus, this public disclosure of the document waives any claim of confidentiality that might otherwise be applicable to the Amendment 3 MOU or earlier versions and summaries of major provisions. For these reasons, these two petitions should be denied.

The third request for confidentiality, filed on January 6, 2015, by Grayson, was styled as an Amended Petition and requests confidential protection of a draft agreement for the purchase of power by Grayson from Morgan Stanley Capital Group, Inc. ("Morgan Stanley"). On April 20, 2015, EKPC filed a Response to Grayson's Amended Petition ("EKPC's Response"), raising numerous objections, including claims that Grayson had not satisfied the legal requirements of either the Commission or the Open

Records Act for granting confidential protection of the purchase power contract. More specifically, EKPC's Response notes that Grayson seeks confidentiality on the basis that public disclosure "would permit an unfair commercial advantage to competitors of the entity with whom Grayson proposes to contract,"[5] whereas the statutory exemption from public disclosure applies only to documents "which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records."[6] The Commission finds that Grayson's request for confidentiality of its purchase power agreement with Morgan Stanley should be denied, because Grayson has not satisfied the statutory requirement to show that public disclosure would permit an unfair commercial advantage to competitors of Grayson.

IT IS THEREFORE ORDERED that:

1. The motions to dismiss filed jointly by Grayson and EKPC and by Shelby Energy are granted.

2. The petitions for confidentiality filed on July 26, 2013, July 29, 2013, and January 6, 2015, are denied.

3. The material denied confidentiality shall not be placed in the record for 33 days to allow for the filing of a request for rehearing pursuant to KRS 278.400 or an action for review pursuant to KRS 278.410.

4. EKPC shall file within 20 days of the date of this Order, using the

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[5] *See* Grayson's Amended Petition at 8.

[6] *See* EKPC's Response at 8, and KRS 61.878(1)(c)(1).

Commission's Tariff Filing System, one copy of the Amendment 3 MOU with the signature pages of each of its 16 Members.

5. This case is closed and removed from the Commission's docket.

By the Commission

ENTERED

DEC 18 2015

KENTUCKY PUBLIC SERVICE COMMISSION

ATTEST:

Executive Director

*Honorable James M Crawford
Crawford & Baxter, P.S.C. Attorneys at Law
523 Highland Avenue
P. O. Box 353
Carrollton, KENTUCKY 41008

*Patrick C Woods
Director, Regulatory & Compliance
East Kentucky Power Cooperative, Inc.
P. O. Box 707
Winchester, KY 40392-0707

*East Kentucky Power Cooperative, Inc.
4775 Lexington Road
P. O. Box 707
Winchester, KY 40392-0707

*Grayson R.E.C.C.
109 Bagby Park
Grayson, KY 41143

*Clayton O Oswald
Jackson Energy Cooperative Corporation
115 Jackson Energy Lane
McKee, KY 40447

*Honorable Donald T Prather
Mathis, Riggs & Prather, P.S.C. Attorneys at Law
500 Main Street
Suite 5
Shelbyville, KENTUCKY 40065

*David S Samford
Goss Samford, PLLC
2365 Harrodsburg Road, Suite B325
Lexington, KENTUCKY 40504

*Honorable W. Jeffrey Scott
Attorney At Law
P.O. Box 608
311 West Main Street
Grayson, KENTUCKY 41143

278.260 Jurisdiction over complaints as to rates or service -- Investigations -- Hearing.

(1) The commission shall have original jurisdiction over complaints as to rates or service of any utility, and upon a complaint in writing made against any utility by any person that any rate in which the complainant is directly interested is unreasonable or unjustly discriminatory, or that any regulation, measurement, practice or act affecting or relating to the service of the utility or any service in connection therewith is unreasonable, unsafe, insufficient or unjustly discriminatory, or that any service is inadequate or cannot be obtained, the commission shall proceed, with or without notice, to make such investigation as it deems necessary or convenient. The commission may also make such an investigation on its own motion. No order affecting the rates or service complained of shall be entered by the commission without a formal public hearing.

(2) The commission shall fix the time and place for each hearing held by it, and shall serve notice thereof upon the utility and the complainant not less than twenty (20) days before the time set for the hearing. The commission may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest or for the protection of substantial rights.

(3) The complainant and the person complained of shall be entitled to be heard in person or by an attorney and to introduce evidence.

Effective: July 15, 1982

History: Amended 1982 Ky. Acts ch. 242, sec. 3, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 33, effective April 1, 1979. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 3952-33.

Seelye
PSC EXHIBIT 1

278.270 Orders by commission as to rates.

Whenever the commission, upon its own motion or upon complaint as provided in KRS 278.260, and after a hearing had upon reasonable notice, finds that any rate is unjust, unreasonable, insufficient, unjustly discriminatory or otherwise in violation of any of the provisions of this chapter, the commission shall by order prescribe a just and reasonable rate to be followed in the future.

Effective: July 15, 1982

History: Amended 1982 Ky. Acts ch. 82, sec. 31, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 34, effective April 1, 1979 -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 3952-14.

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

DAVID SHOUSE AND BRIAN SHOUSE, D/B/A SHOUSE FARMS, AND BRYAN HENDRICKSON, D/B/A HENDRICKSON GRAIN AND LIVESTOCK, LLP	)	CASE NO. 2015-00417
COMPLAINANTS	)	
V.	)	
KENTUCKY UTILITIES COMPANY	)	
DEFENDANT	)	

ORDER

This matter comes before the Commission on Kentucky Utilities Company's ("KU") motion to dismiss[1] with prejudice the Complaint filed by David Shouse and Brian Shouse, d/b/a Shouse Farms, and Bryan Hendrickson, d/b/a Hendrickson Grain and Livestock, LLP (collectively "Complainants"). Also before the Commission are KU's Reply to Complainants' Response to Defendant's Motion to Dismiss ("Motion to Strike Complainants' Response") and Objection to Complainants' Request for Information ("Motion to Strike Complainants' Request for Information"), filed jointly on January 19, 2016. Upon review of the record and applicable law, the Commission denies KU's Motion to Strike Complainants' Response, grants KU's Motion to Dismiss, and denies as moot KU's Motion to Strike Complainants' Request for Information.

[1] Motion to Dismiss for Failure to State a Claim Upon Which Relief can be Granted ("Motion to Dismiss") and Answer of Kentucky Utilities Company ("Answer") (jointly filed Dec. 28, 2015).

PSC EXHIBIT Seelye 2

On November 19, 2015, Complainants filed a Complaint with the Commission seeking refunds for service KU provided to them. By Order issued December 18, 2015, the Commission directed KU to file a written Answer addressing the merits of the Complaint. On December 28, 2015, KU tendered an Answer and an accompanying Motion to Dismiss the Complaint. On January 11, 2016, Complainants filed a Response to Defendant's Motion to Dismiss ("Response to KU's Motion to Dismiss"), and issued Requests for Information on KU. In KU's Motions to Strike Complainants' Response and Request for Information, filed January 19, 2016, KU reiterated its grounds for dismissal, moved the Commission to strike as untimely Complainants' Response to KU's Motion to Dismiss, and also asked that Complainants' Request for Information be stricken.

First, regarding KU's Motion to Strike Complainants' Response as untimely, the Commission notes that 807 KAR 5:001, Section 5(2), requires a party to file a response to a motion no later than seven days after the motion's filing date.[2] Complainants filed their Response to KU's Motion to Dismiss on January 11, 2016, 14 days after KU filed its Motion to Dismiss on December 28, 2015. However, despite Complainants' failure to comply with the mandates of 807 KAR 5:001, Section 5(2), the Commission finds no prejudice to KU as a result of the untimely filing and accepts Complainants' Response to KU's Motion to Dismiss as filed. Accordingly, the Commission will deny KU's Motion to Strike Complainants' Response.

The Commission now turns to KU's Motion to Dismiss the Complaint. In their Complaint, Complainants assert that the demand rate structure of KU's Power

[2] 807 KAR 5:001, Section 5(2). ("Unless the commission orders otherwise, a party to a case shall file a response to a motion no later than seven (7) days from the date of filing of a motion.")

Service rate schedule ("Rate PS") is not fair, just and reasonable, and seek refunds for service KU provided to them. Specifically, Complainants maintain that since their grain drying operations are seasonal in nature, with the equipment operating only two or three months out of the year, the demand rate charges they pay for electrical service under KU's Rate PS exceed the actual cost of the production of the power to serve them over the course of the year or billing cycle, resulting in a windfall to KU.[3] Complainants seek a refund for any monies KU purportedly unjustly received from the date Complainants began receiving electric service from KU, as well as any other monies that the Commission deems appropriate on utility charges that exceed the actual cost incurred by KU to provide electricity to Complainants over the course of the year or billing cycle.[4]

In response, KU submits that the allegations contained in the Complaint reflect Complainants' misunderstanding of the demand rates and fail to state a claim upon which relief can be granted.[5] While Complainants object to paying demand charges when their operations are not consuming electricity, KU states that the nature of the demand charge—a capacity cost essentially—is to ensure that the power will be available when Complainants want to use it, regardless of whether they use the capacity on occasion, or two to three months out of the year.[6] KU points out that though Complainants might use their facilities only at certain times of the year, they need access to electricity at all times.[7] Accordingly, KU builds the facilities necessary to meet

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[3] Complaint at 3–4.

[4] *Id.* at 4.

[5] KU's Motion to Strike Complainants' Response at 5–6.

[6] *Id.* at 8.

[7] *Id.*

the instantaneous demand of all customers at any time, regardless of when, or whether, the customers consume electricity, and KU's demand rate structure is designed to fully recover those costs, which include both capital and fixed operating costs.[8]

Since the Commission found the demand rate structure of Rate PS to be reasonable in KU's most recent base rate case, Case No. 2014-00371,[9] and considered Complainants' arguments against Rate PS at that time, KU asserts that Complainants are barred under the doctrine of *res judicata* from re-litigating the reasonableness of Rate PS.[10] KU further emphasizes that the Complaint does not allege or demonstrate that KU deviated from its schedule of Commission-approved rates in serving or billing Complainants, and states that KU in fact did not deviate.[11] As a result, KU asserts that Complainants' contentions are also precluded by the filed-rate doctrine.[12] Lastly, KU contends that the Commission should not review the Complaint since such a review would constitute single-issue ratemaking, which is prohibited.[13]

KU requests that the Complaint be dismissed on these grounds, and presents similar arguments as affirmative defenses in its Answer.[14] The Commission will address each argument in turn.

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[8] *Id.* at 8–9.

[9] Case No. 2014-00371, *Application of Kentucky Utilities Company for an Adjustment of Its Electric Rates* (Ky. PSC June 30, 2015).

[10] KU's Motion to Dismiss at 5.

[11] *Id.* at 2–3.

[12] *Id.*

[13] *Id.* at 4.

[14] KU's Answer at 12–15.

Collateral Estoppel

KU contends that the doctrine of *res judicata*, in particular collateral estoppel, bars Complainants from re-litigating the reasonableness of the rate structure of Rate PS, because that issue was raised by Complainants in KU's most recent base rate case, Case No. 2014-00371, and the issue was fully considered and decided by the Commission in that proceeding. In Case No. 2014-00371, Complainant David Shouse twice submitted the same oppositions to Rate PS demand rates that Complainants now advance in their Complaint.[15] KU asserts that the doctrine of *res judicata* bars the adjudication of issues that have already been litigated or should have been litigated in a prior case between the same or similar parties.[16] *Res judicata* applies to quasi-judicial acts of an administrative agency acting within its jurisdiction unless a significant change of conditions or circumstances has occurred between the administrative proceedings.[17]

Res judicata has two subparts: claim preclusion and issue preclusion.[18] Issue preclusion, also known as collateral estoppel,

> bars the parties from relitigating any issue actually litigated and finally decided in an earlier action. The issues in the former and latter actions must be identical. The key inquiry in deciding whether lawsuits concern the same controversy is whether they both arise from the same transactional nucleus of facts. If the two suits concern the same

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[15] Case No. 2014-00371, *Kentucky Utilities Company*, Public Comments of David Shouse ("Shouse Public Comments") (filed May 1, 2015 and June 16, 2015).

[16] 47 Am. Jur.2d, *Judgments*, Section 464.

[17] *Bank of Shelbyville v. Peoples Bank of Bagdad*, 551 S.W.2d 234, 236 (Ky. 1977). The Commission has applied the doctrine of *res judicata* in dismissing complaints. See, e.g., Case No. 97-311, *Orbin and Margie Brock v. Western Rockcastle Water Association* (Ky. PSC Feb. 25, 1998), Order; Case No. 91-277, *Dovie Sears v. Salt River Water District and Kentucky Turnpike Water District* (Ky. PSC June 30, 1992), Order.

[18] *Yeoman v. Commonwealth*, 983 S.W.2d 459, 464-65 (Ky. 1998).

> controversy, then the previous suit is deemed to have adjudicated every matter which was or could have been brought in support of the cause of action.

. . .

> For issue preclusion to operate as a bar to further litigation, certain elements must be found to be present. First, the issue in the second case must be the same as the issue in the first case. Second, the issue must have been actually litigated. Third, even if an issue was actually litigated in a prior action, issue preclusion will not bar subsequent litigation unless the issue was actually decided in that action. Fourth, for issue preclusion to operate as a bar, the decision on the issue in the prior action must have been necessary to the court's judgment.[19]

The Commission finds that the principle of issue preclusion, or collateral estoppel, applies in this case so as to bar Complainants' assertions concerning the reasonableness of KU's Rate PS. In Case No. 2014-00371, the Commission considered the reasonableness of KU's demand charges under Rate PS, including the two public comments submitted by Complainant David Shouse which presented identical issues concerning KU's Rate PS as those presented in the Complaint. Although Complainant David Shouse was not formally a party to that proceeding, the Commission finds that it duly considered his objections and that his interests, as a consumer, were represented by the Office of the Attorney General who did intervene, actively participated, and was a signatory to the settlement agreement.[20]

Specifically, the June 11, 2015 letter that Complainant David Shouse's counsel sent to the Commission in Case No. 2014-00371 stated:

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[19] *Id.* at 465–66.

[20] KRS 367.150(8)(a) makes the Attorney General's Consumer Protection Division the representative of all customers of a particular utility whenever that office chooses to intervene in a rate case before the Commission.

> It is understood and appreciated the necessity for certain demand charges; however, the seasonal work, i.e., farming, and the utilities associated with farming that are operated on a very limited seasonal basis enable KU to realize a windfall situation with respect to the customer that is, as a practical legal term, unjust enrichment, concerning the electrical charges made against Mr. Shouse.[21]

Paragraph 12 of the Complaint in this proceeding is substantively identical:

> Additionally, on opinion and belief, the 50 percent minimum demand rate equates to a sum substantively greater over the course of the year than the utilities that are actually used if paid for directly; therefore, resulting in a windfall for Defendant and/or otherwise unjustly enriching the Defendant, and/or contrary to the intent and spirit of the statutes and regulations.[22]

In Case No. 2014-00371, the Commission sent a letter to Mr. Shouse's counsel stating that the Commission understood Mr. Shouse's concerns regarding KU's demand rates, and that it would take into account Mr. Shouse's concerns when rendering a final Order in that proceeding:

> The Commission acknowledges receipt on June 16, 2015 of your letter, a copy of which is attached hereto, addressed to one of our rate analysts, regarding the above referenced case and your client's objection to the amount of demand charges he pays to Kentucky Utilities Company for the seasonal operation of his farming activities. Your letter is being treated as an official protest and will be placed in the case file of this proceeding. The Commission will take your concerns into consideration in its review and decision in this matter.[23]

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[21] Case No. 2014-00371, *Kentucky Utilities Company*, Shouse Public Comments (filed June 16, 2015).

[22] Complaint at 4.

[23] Case No. 2014-00371, *Kentucky Utilities Company*, Correspondence from Commission Staff to David Shouse (filed into the record on June 25, 2015).

Thus, the issues in the Complaint were presented in KU's most recent base rate case, and the record shows the Commission considered those issues and fully adjudicated the reasonableness of KU's proposed rates, including Rate PS. The Final Order in Case No. 2014-00371 reflects that the Commission thoroughly reviewed the schedule of rates in the proffered settlement agreement in that proceeding and applied its expertise to make an independent decision as to the level of rates to be approved, rather than simply deferring to the parties as to what constitutes fair, just and reasonable rates.[24] In the Final Order, the Commission noted that it had "performed its traditional ratemaking analysis, which consists of reviewing the reasonableness of each revenue and expense adjustment proposed or justified by the record, along with a determination of a fair return on equity."[25] As reflected in a letter, filed into the record on June 25, 2015, from the Commission to Complainant David Shouse, the Commission's review included the public comments addressing the rate design issues now presented in the Complaint. The Final Order addressing the merits of Case No. 2014-00371 considered the concerns Complainants raise in their Complaint and concluded that the settlement was in the public interest and that the rates were fair, just and reasonable.

In other words, the Commission addressed the reasonableness of KU's current Rate PS, including its demand rate, as a necessary component of its decision in Case No. 2014-00371. KRS 278.030 permits utilities to assess only "fair, just and reasonable rates" for their services, and prohibits the Commission from authorizing any rate that is not "fair, just and reasonable." Therefore, in fulfilling its statutory obligation and in

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[24] *Id.* (Ky. PSC June 30, 2015), Order at 7.

[25] *Id.*

applying its traditional ratemaking analysis, the Commission necessarily determined the reasonableness of each rate, including Rate PS, in approving the rates and charges set forth in the settlement agreement in Case No. 2014-00371.

In summary, the Complainants' concerns with KU's Rate PS and demand charge were raised during KU's prior base rate case proceeding, and the Commission clearly considered the objections during the course of its approval of the settlement agreement and KU's rates. The record does not indicate any changes of fact or circumstances since Case No. 2014-00371 that would require the Commission to further investigate this rate at this time. Accordingly, the doctrine of *res judicata*, particularly collateral estoppel, bars Complainants from re-litigating in their Complaint the identical issues that were raised and fully adjudicated in Case No. 2014-00371.

Filed-Rate Doctrine

KU further contends that the filed-rate doctrine prohibits the Commission from granting Complainants' requested refund because the Complaint does not allege that KU violated, and KU asserts that it did not violate, its tariff in serving or billing Complainants.[26] Consequently, KU avers that the relief Complainants request (a refund with interest and attorney's fees) is precluded by the filed-rate doctrine.[27] In their Response to KU's Motion to Dismiss, Complainants maintain that unjust, unfair, unreasonable and/or discriminatory rates are always subject to review pursuant to KRS 278.260 and KRS 278.270.[28]

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[26] KU's Motion to Dismiss at 2–3.

[27] *Id.*

[28] Complainants' Response to KU's Motion to Dismiss, paragraph 11.

The filed-rate doctrine, codified in KRS 278.160, requires a utility to file with the Commission "schedules showing all rates and conditions for service established by it and collected or enforced" once a utility's rates are approved by the Commission.[29] Under that statute,

> [n]o utility shall charge, demand, collect, or receive from any person a greater or less compensation for any services rendered or to be rendered than that prescribed in its filed schedules, and no person shall receive any service from any utility for a compensation greater or less than that prescribed in such schedules.[30]

Twenty years ago, the Commission interpreted KRS 278.160 as follows:

> Simply put, the statute demands that a utility strictly adhere to its published rate schedules and not, either by agreement or conduct, depart from them. While KRS 278.160(2) limits a utility's authority to depart from its filed rate schedules, KRS 278.160(1) imposes an affirmative obligation upon a utility to charge and collect its prescribed rates. KRS 278.170(1) requires a utility to treat all similarly situated customers in the same manner. If a utility fails to collect from a customer the full amount required by its filed rate schedule, it effectively grants a preference in rates to that customer as it allows him to pay less than other customers for the same service."[31]

In applying KRS 278.160, the Commission emphasized that "[t]he filed rate doctrine is the bedrock of utility rate regulation" and "the basic bulwark against rate discrimination and arbitrary utility action."[32] In the present case, the Complaint does not allege that KU

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[29] KRS 278.160(1).

[30] KRS 278.160(2).

[31] Case No. 95-107, *In the Matter of North Marshall Water District* (Ky. PSC Oct. 13, 1995), Order at 2.

[32] *Id.* at 3.

charged Complainants a rate other than one in KU's schedule of rates on file with the Commission for the service Complainants received. Rather, the Complaint simply reflects Complainants' displeasure with KU's rates, in particular the demand-rate structure of Rate PS. Yet, a customer's dissatisfaction with a utility's filed rate schedule does not provide grounds for lawfully ordering, or allowing, a utility to collect from that customer a rate different from that collected from other customers who are similarly situated.[33] Since neither the Complaint nor the Response to KU's Motion to Dismiss allege that KU deviated from its schedule of rates in serving or billing Complainants, KRS 278.160 and the filed-rate doctrine prohibit the Commission from granting Complainants' requested refund. In addition, the Commission notes that the only provision in KRS Chapter 278 authorizing the award of interest on refunds applies when a utility has placed new rates into effect subject to refund pursuant to KRS 278.190, a situation inapplicable to the facts of this case. Further, no provision of KRS Chapter 278 bestows upon the Commission the statutory authority to grant the legal relief that Complaints seek in the form of attorney fees.[34]

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[33] *City of Russellville v. Public Service Commission of Kentucky*, 2005 WL 385077 at *3 (Ky. App. 2005) ("[t]he purpose of the filed rate doctrine, in other words, '[i]s to preserve the authority of the legislatively created agency to set reasonable and uniform rates and to insure that those rates are enforced, thereby preventing price discrimination.'" (quoting *Sun City Taxpayers' Association v. Citizens Utilities Company*, 847 F.Supp. 281, 288 (1994) (citations omitted)).

[34] Case No. 2008-00199, *Jim Devers v. Kentucky Utilities Company* (Ky. PSC Dec. 30, 2008), Order at 5. ("[T]he Commission is without jurisdiction to award compensatory damages and attorney fees. Pursuant to KRS 278.040, the Commission has jurisdiction of only the 'rates' and 'services' of utilities as defined by KRS 278.010. Mr. Devers' request for damages and fees falls under neither category.")

Single-Issue Ratemaking

In its Motion to Dismiss, KU argues that in effect Complainants are asking the Commission to change KU's Rate PS to better suit their desires.[35] KU maintains that this requested relief violates the long-standing rule against single-issue ratemaking and should be denied.[36]

> The rule against single-issue ratemaking recognizes that the revenue formula is designed to determine the revenue requirement based on the aggregate costs and demand of the utility. Therefore, it would be improper to consider changes to components of the revenue requirement in isolation. Often times a change in one item of the revenue formula is offset by a corresponding change in another component of the formula.[37]

Specifically, KU contends that to address Complainants' opposition to the current structure of KU's Rate PS demand rates outside the context of a general rate proceeding would ignore the impact that changing one rate would have on KU's revenue requirement, as well as its impact on KU's many other Rate PS customers who are not parties to this proceeding and who have had no notice of it or opportunity to participate in it. While the Commission has on prior occasion rejected a utility's attempt to adjust a rate based on a single issue under KRS 278.190 and 807 KAR 5:001, Section 16, for a complaint filed under KRS 278.260 and KRS 278.270, the Commission is statutorily authorized to review the rate complained of and grant relief as

---

[35] KU's Motion to Dismiss at 3–4.

[36] *Id.* at 4.

[37] Case No. 94-453, *In the Matter of Big Rivers Electric Corporation's Proposed Mechanism to Credit Customers Amounts Recovered in Judicial Proceedings Involving Fuel Procurement Contracts* (Ky. PSC Feb. 21, 1997), Order at 7.

appropriate.[38] Thus, the prohibition against single-issue ratemaking does not preclude the Commission from addressing the Complaint. That said, dismissal of the Complaint is justified under the doctrine of *res judicata* and the filed-rate doctrine and, as a result, there is no need for the parties to conduct any discovery in this case. The Commission also finds that a hearing is not necessary in the public interest or for the protection of substantial rights. However, the Commission will re-examine the reasonableness of KU's Rate PS during KU's next base rate case, at which time KU should present testimony in support of the minimum billing demand provisions of Rate PS.

IT IS HEREBY ORDERED that:

1. KU's Motion to Strike Complainants' Response to KU's Motion to Dismiss is denied.

2. KU's Motion to Dismiss the Complaint with prejudice is granted.

3. KU's Motion to Strike Complainants' Request for Information is denied as moot.

4. KU shall include in its next application for a general adjustment in rates testimony in support of the monthly billing demand provisions of Rate PS.

5. This case is closed and removed from the Commission's docket.

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[38] *See, e.g.*, Case No. 2006-00510, *An Examination of the Application of the Fuel Adjustment Clause of Louisville Gas and Electric Company from November 1, 2004 to October 31, 2006* (Ky. PSC Oct. 12, 2007), Order at 7–8. ("While the Commission's FAC regulation establishes a single-issue ratemaking mechanism for fuel cost recovery, RSG [Revenue Sufficiency Guarantee] Make Whole Payments are neither fuel costs nor fuel related and, therefore, are not appropriate for inclusion in the FAC); and Case No. 2004-00459, *Application of Louisville Gas and Electric Company for Approval of New Rate Tariffs Containing a Mechanism for the Pass-Through of MISO-Related Revenues and Costs Not Already Included in Existing Base Rates* (Ky. PSC Apr. 15, 2005), Order at 7. ("[A]bsent specific statutory authorization, the Commission can only exercise its authority to adopt rate surcharges in the context of a general rate case.").

By the Commission

ENTERED

JUN 29 2016

KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:

Acting Executive Director

*Zack N. Womack
Womack Law Office, LLC
304 First Street
P.O. Box 637
Henderson, KENTUCKY 42419

*Kentucky Utilities Company
220 W. Main Street
P. O. Box 32010
Louisville, KY 40232-2010

*Kentucky Utilities Company
Kentucky Utilities Company
220 W. Main Street
P. O. Box 32010
Louisville, KY 40232-2010

*Denotes Served by Email

Gwyn Willoughby

From:	Don Mosier
Sent:	Saturday, February 3, 2018 8:44 PM
To:	Mike McNalley
Subject:	Re: Load Graph

Good point!

On Feb 3, 2018, at 8:41 PM, Mike McNalley <Michael.McNalley@ekpc.coop> wrote:

> Let's discuss strategy first. A low forecast can be useful...might be better to ask at what growth rate we are not concerned about mitigation.
>
> Mike McNalley
> EVP and CFO
> East Kentucky Power Cooperative
>
> On Feb 3, 2018, at 8:30 PM, Don Mosier <Don.Mosier@ekpc.coop> wrote:
>
>> Will look at the assumptions Monday.
>>
>> On Feb 3, 2018, at 8:21 PM, Tony Campbell <tony.campbell@ekpc.coop> wrote:
>>
>>> Mike,
>>>
>>> I understand where and how they derived this graph. However, I don't believe this at all?? If we do not have a major recession, I will be letting people go for not doing their job!!!!!!
>>>
>>> This reminds me of when I first got here. They were still using historical which suggested we were growing at 6% per year. I finally beat Jim Lamb all over our board room and demanded they reduce it. Now they are clearly to conservative.
>>>
>>> TC
>>>
>>> Sent from my iPhone
>>>
>>> On Feb 2, 2018, at 8:01 AM, Mike McNalley <Michael.McNalley@ekpc.coop> wrote:
>>>
>>>> Guys,
>>>> See below – this is the graph of our load forecast (blue) and what it would be with the loss of 150 MW at 100%LF in 18 months. You can see that we don't get back to this year's load until 2028, unless we find good mitigation options. I have similar graphs for the SK load reduction and will include both in the board presentation.

SK-1

SOUTH KY RECC
EXHIBIT 1

Mike McNalley
EVP & CFO
East Kentucky Power Cooperative, Inc.
859-745-9209 O
859-595-3897 C
Michael.mcnalley@ekpc.coop

From: Sally Witt
Sent: Thursday, February 1, 2018 2:54 PM
To: Mike McNalley <Michael.McNalley@ekpc.coop>
Cc: David Crews <David.Crews@ekpc.coop>; Julie Tucker <julie.tucker@ekpc.coop>
Subject: RE: Load Graph
Just for a look...assuming 100% lf...I'll change whatever you need...

From: Mike McNalley
Sent: Thursday, February 01, 2018 2:19 PM
To: Sally Witt <sally.witt@ekpc.coop>
Cc: David Crews <David.Crews@ekpc.coop>
Subject: Re: Load Graph
Can you update for full MOU load going (150MW I think)?

Mike McNalley
EVP and CFO
East Kentucky Power Cooperative

On Jan 5, 2018, at 9:27 AM, Sally Witt <sally.witt@ekpc.coop> wrote:

> Maybe....
>
> **From:** Mike McNalley
> **Sent:** Friday, January 05, 2018 9:23 AM
> **To:** Sally Witt <sally.witt@ekpc.coop>
> **Subject:** RE: Load Graph
> Thanks, Sally!
> Do you think, because of the annual MWh issue we were discussing, that a side-by-side bar chart would be clearer?
> Mike McNalley
> EVP & CFO
> East Kentucky Power Cooperative, Inc.
> 859-745-9209 O
> 859-595-3897 C
> Michael.mcnalley@ekpc.coop
>
> **From:** Sally Witt
> **Sent:** Friday, January 5, 2018 9:20 AM
> **To:** Mike McNalley <Michael.McNalley@ekpc.coop>
> **Cc:** Julie Tucker <julie.tucker@ekpc.coop>
> **Subject:** RE: Load Graph

Hi Mike!
I think this incorporates the changes you said this morning. Let me know if you need anything else.
Happy Friday!
Sally

From: Julie Tucker
Sent: Thursday, January 04, 2018 7:59 AM
To: Sally Witt <sally.witt@ekpc.coop>
Subject: RE: Load Graph
Yes, 100% load factor.
I think he wants actual for 2016, not forecast, and actual for 2017, then forecast going forward.
He's wanting to demonstrate that our rates are set such that we make a margin on each kWh we sell. When we don't sell those kWh, we lose margin. When we lose margin, everyone has to pay eventually to cover those lost revenues.

From: Sally Witt
Sent: Thursday, January 04, 2018 7:46 AM
To: Julie Tucker <julie.tucker@ekpc.coop>
Subject: RE: Load Graph
Since it's 58 MW at 100% load factor, that's 58*8760 for energy drop. Is the load factor still assumed to be 100%?
Also, why 2016? We aren't using the 2016 load forecast at this point. The financial forecast is based on a revised version.

From: Julie Tucker
Sent: Thursday, January 04, 2018 7:39 AM
To: Sally Witt <sally.witt@ekpc.coop>
Subject: FW: Load Graph
Please see Mike's request below. I'm thinking he wants to show annual energy not peaks.

From: Mike McNalley
Sent: Thursday, January 04, 2018 7:38 AM
To: Julie Tucker <julie.tucker@ekpc.coop>
Cc: David Crews <David.Crews@ekpc.coop>
Subject: Load Graph

Julie,
Can you put together a line chart showing the load forcast (MWh) from 2016-2030 or so as a line, and then in mid-2019 show a drop representing SKY's 58MW dropping off (round the clock, 100% load factor) and what I assume will be a parallel, lower line to the end for the adjusted load? I'd like a horizontal line from the end of 2017 load and another from the mid-2019 load (before the drop). Point of the chart is to show (a) how long it takes to recover the lost MWh from either starting date, and (b) that even though we get back to where we were, there is still a permanent load loss (so there is a permanent margin loss that all other members "own").
I can sketch it if that helps.

Timing is to support Feb board meeting.
Thanks!
Mike McNalley
EVP & CFO
East Kentucky Power Cooperative, Inc.
859-745-9209 O
859-595-3897 C
Michael.mcnalley@ekpc.coop

REDACTED

EAST KENTUCKY POWER COOPERATIVE, INC.
PSC CASE NO. 2017-00376
RESPONSE TO INFORMATION REQUEST

COMMISSION STAFF'S FIRST REQUEST FOR INFORMATION DATED 01/05/18
REQUEST 3
RESPONSIBLE PARTY: Don Mosier

Request 3. Refer to the Mosier Testimony at page 15, lines 16-18. Explain in more detail the statement that the retirement of Spurlock Units 1 and 2 would result in EKPC losing its status as a net generator in PJM. Quantify the impacts, if any, of EKPC no longer being a net generator in PJM.

Response 3. As previously directed by the Commission, EKPC has sufficient resources to cover its winter peak load and a reasonable margin, all of which can be sold into the PJM capacity market. In PJM, EKPC must purchase enough capacity in the PJM capacity market to cover its summer peak load plus a margin. Since EKPC's winter load is significantly larger than its summer peak load, EKPC's net position in the PJM market is a surplus. EKPC sells the surplus into the PJM capacity market and creates a benefit to EKPC's members. EKPC reported in its annual filing to the PSC on July 31, 2017 that it estimated this benefit from surplus capacity sales to be [redacted] from June 1, 2016 through May 31, 2017. EKPC reported its estimate for this value to be [redacted] for its first ten years of operations in PJM. If EKPC retired over 800 MW of generation at the Spurlock plant without adding another resource to hedge EKPC's winter

SOUTH KY RECC
EXHIBIT 2

demand and energy requirements, it would no longer have more generation to sell into the capacity market than what it would be required to purchase for its summer load requirements. The benefits realized by EKPC being a winter-peaking system in a summer-peaking market would be lost. EKPC would also have an unhedged energy position in the winter that would be detrimental to EKPC and its owner-members.

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF:

THE APPLICATION OF EAST KENTUCKY POWER COOPERATIVE, INC. FOR APPROVAL TO AMEND ITS ENVIRONMENTAL COMPLIANCE PLAN AND RECOVER COSTS PURSUANT TO ITS ENVIRONMENTAL SURCHARGE, SETTLEMENT OF CERTAIN ASSET RETIREMENT OBLIGATIONS AND ISSUANCE OF A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITYAND OTHER RELIEF	)	CASE NO. 2017-00376

DIRECT TESTIMONY OF DON MOSIER ON BEHALF OF EAST KENTUCKY POWER COOPERATIVE, INC.

Filed: November 20, 2017

SOUTH KY RECC
EXHIBIT 3

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

A. My name is Don Mosier and my business address is East Kentucky Power Cooperative, Inc. ("EKPC"), 4775 Lexington Road, Winchester, Kentucky 40391. I am Executive Vice President and Chief Operating Officer at EKPC.

Q. Please state your education and professional experience.

A. I obtained my Bachelor of Science degree in civil engineering from the University of Virginia and my Master of Business Administration degree from the Kenan-Flagler Business School at the University of North Carolina. My professional experience includes work at Carolina Power & Light (now Duke Energy Carolinas) in Raleigh, North Carolina, developing merchant generation projects and marketing activities, regulatory affairs, and nuclear power plant engineering and operations. I also was an engineering manager of U.S. Operations for Canatom Corp., a Toronto-based engineering firm that provides nuclear plant engineering and construction services. Immediately prior to joining EKPC, I was Vice President of St. Louis-based Ameren Energy Marketing ("AEM"), a subsidiary of Ameren Corp. At AEM, I managed wholesale power trading, plant dispatch, North American Electric Reliability Corporation and SERC compliance, transmission and congestion management activities, and customer account management for Ameren Corporation's unregulated merchant generation fleet located in the Midcontinent ISO and PJM Interconnection, LLC ("PJM"), a Regional Transmission Organization.

Q. Please provide a brief description of your duties at EKPC.

A. I manage the day-to-day operations of power production and construction, power delivery, power supply, and system operations. I report directly to EKPC's President and Chief Executive Officer, Mr. Anthony S. Campbell.

Q. What is the purpose of your testimony in this proceeding?

A. The purpose of my testimony is to support EKPC's application in this proceeding by discussing EKPC's strategic goals, the relief it is seeking in this case; and the overall advantages and benefits that this particular proposal offers for EKPC, its Owner-Member Cooperatives ("owner-members") and their End-Use Retail Members ("retail members").

Q. Are you sponsoring any exhibits?

A. No.

Q. Can you please describe EKPC and its owner-members' system.

A. EKPC is a not-for-profit, rural electric cooperative corporation established under KRS Chapter 279 with its headquarters in Winchester, Kentucky. EKPC has \$3.718 billion in assets and 696 employees. Our 2016 energy sales exceeded 12.6 million megawatt hours. We had total operating revenue in 2016 of \$887 million and a net margin of \$54 million. Pursuant to various agreements, EKPC provides electric generation capacity and electric energy to its sixteen owner-members: Big Sandy RECC, Blue Grass Energy, Clark Energy, Cumberland Valley Electric, Farmers RECC, Fleming-Mason Energy, Grayson RECC, Inter-County Energy, Jackson Energy, Licking Valley RECC, Nolin RECC, Owen Electric, Salt River Electric, Shelby Energy, South Kentucky RECC and Taylor County RECC. Those owner-members in turn serve approximately 530,000 Kentucky homes, farms and commercial and industrial establishments in eighty-seven (87) Kentucky counties.

In total, EKPC owns and operates a total of approximately 2,965 MW of net summer generating capability and 3,267 MW of net winter generating capability. EKPC owns and operates coal-fired generation at the John C. Cooper Station in Pulaski County, Kentucky (341 MW) ("Cooper Station") and the Hugh L. Spurlock Station in Mason County, Kentucky (1,346 MW) ("Spurlock Station"). EKPC also owns and operates natural-gas fired generation at the J. K. Smith Station in Clark County, Kentucky (753 MW (summer)/989 MW (winter)) ("Smith Station") and the Bluegrass Station in Oldham County, Kentucky (501 MW (summer)/567 MW (winter)), and landfill gas-to-energy facilities in Boone County, Laurel County, Greenup County, Hardin County, Pendleton County and Barren County (16 MW total). In November 2017, EKPC added 8 MW of solar capacity when its Community Solar facility came online at the company's headquarters in Winchester, Kentucky. Finally, EKPC purchases hydropower from the Southeastern Power Administration at Laurel Dam in Laurel County, Kentucky (70 MW), and the Cumberland River system of dams in Kentucky and Tennessee (100 MW). EKPC's record peak demand of 3,507 MW occurred on February 20, 2015.

EKPC also owns 2,940 circuit miles of high voltage transmission lines in various voltages. EKPC also owns the substations necessary to support this transmission line infrastructure. Currently, EKPC has seventy-four (74) free-flowing interconnections with its neighboring utilities.

Q. What is EKPC's mission?

A. EKPC has a Mission Statement, which is this: "EKPC exists to serve its member-owned cooperatives by safely delivering reliable and affordable energy and related services." We seek to fulfill this Mission Statement by adhering to five core values: safety, service, honesty and integrity, respect and teamwork.

Q. Do you know whether EKPC has a strategic plan?

A. Yes. EKPC's Board has developed a strategic plan that it reviews and updates regularly. The current Strategic Plan was last updated in 2016 and includes eight strategic objectives in the areas of: governance, people, financial integrity, generation and transmission assets, rates and regulatory relations, communications and public relations, economic development and cyber and physical security. The Strategic Plan guides management in the day-to-day operations of the Company while also providing a roadmap for what we hope to accomplish over the long-term. The Strategic Plan was instrumental in helping us identify and develop the best possible solution to the challenges presented by the Disposal of Coal Combustion Residuals ("CCR") from Electric Utilities Rule ("CCR Rule"), the Effluent Limitation Guidelines and Standards for the Steam Electric Power Generating Point Source Category ("ELG Rule") and state environmental regulations.

Q. How has EKPC's Strategic Plan assisted the Board and management develop this particular solution?

A. First, EKPC has stated that one of its strategic objectives is to "provide leadership and vision to identify, exercise due diligence and recommend...supply resources that diversify the portfolio via increased reliance on natural gas, viable renewable resources, distributed generation and bilateral market purchases." At the same time, we also have a strategic objective to "maximize returns on capital investments and mitigate exposure to stranded costs to limit impact on system reliability and exposure to future regulatory changes." I can give you two examples from our recent history to illustrate how these strategic objectives are implemented in real life.

In 2016, we were forced to retire the Dale Station as a coal-fired electric generating station due to the impacts of the Mercury Air Toxics Standards Rule ("MATS"). The retirement of the four units at the Dale Station resulted in a loss of 200 megawatts (MW) of electric generating capacity. After a lengthy process, we were able to secure 567 MW of new winter capacity by acquiring the Bluegrass Station near LaGrange, Kentucky. As the Commission is aware, one-third of the Bluegrass Station's capacity is currently subject to a tolling agreement with the Louisville Gas & Electric Company. The Bluegrass Station acquisition represented a shift in EKPC's generation portfolio away from coal towards natural gas, but it also allowed us to maximize our peak diversity within PJM. It was a good business transaction that achieved value for our owner-members while also advancing the Board's efforts to diversify our generation portfolio.

Prior to the Bluegrass Station acquisition, however, we were confronted with the question of what to do at the Cooper Station in light of the MATS requirements. In that situation, the most prudent course of action was to tie the older Cooper 1 into the existing air quality control system serving Cooper 2. By doing this, EKPC was able to preserve a valuable, existing coal-fired generation resource at a very favorable price.

The lesson from these two prior situations is that EKPC's strategic objective to diversify its fleet while mitigating the risk of stranded assets are not mutually exclusive options. Sometimes it makes sense to make additional investments in the coal-fired generation that we already have in place. Other times, diversification is the better option. EKPC's Strategic Plan is flexible enough to not rigidly dictate any particular outcome which may or may not be in the best interest of our owner-members. As you come to understand the options in play when EKPC considered how to best comply with the CCR Rule and ELG Rule, you see that the proposed Environmental Compliance Plan ("Compliance Plan") amendment falls perfectly within the scope of what the Board is trying to accomplish strategically.

Q. With that in mind, please generally describe what EKPC is seeking in this proceeding.

A. EKPC is asking for several things. First, EKPC is requesting the Commission to authorize an amendment to the Company's Compliance Plan. The amendment will add a project that is necessary to comply with the CCR Rule and ELG Rule. I will refer to this as the CCR/ELG Project from now on. Second, EKPC is asking for a Certificate of Public Convenience and Necessity ("CPCN") for the CCR/ELG Project. Third, EKPC is asking the Commission to allow it to recover the costs of the CCR/ELG Project through its environmental surcharge mechanism, pursuant to KRS 278.183. Fourth, EKPC is seeking the Commission's approval to settle certain Asset Retirement Obligations associated with its existing coal ash pond at the Hugh L. Spurlock Station ("Spurlock Station") as part of the recovery of the cost of the CCR/ELG Project through the environmental surcharge mechanism. Finally, to the extent that any other relief might be necessary to accomplish these four objectives, EKPC seeks such authorization from the Commission.

Q. Before we get into those topics, let me ask you some questions to help understand the legal authorities that have led EKPC to seek approval to amend its Environmental Compliance Plan. First, what is the CCR Rule?

A. Mr. Purvis provides a much more detailed description of the CCR Rule in his testimony, but I would broadly describe CCRs as being the residual material that is left over from the consumption of coal in the process of generating electricity. The CCR Rule is a federal environmental rule that severely restricts the way in which CCR from a coal-fired electric generation unit must be handled and dispersed.

Q. What is the ELG Rule?

A. Similar to the CCR Rule, the ELG Rule also arises from the combustion of coal in the process of generating electricity. Broadly speaking, the ELG Rule is a different federal environmental rule that applies to effluents from coal-fired generation units. As with the CCR Rule, the ELG Rule places very strict limitations on the effluent byproducts associated with coal-fired generation. Mr. Purvis also elaborates on the ELG Rule in his testimony.

Q. Is there any chance that the CCR Rule or the ELG Rule will somehow be replaced, repealed or superseded?

A. It is very unlikely that anything will happen to diminish the impact of the CCR Rule. By now, most all utilities, including EKPC, have already begun making investments to comply with the CCR Rule and there is nothing coming from the courts or the EPA to suggest that the CCR Rule will go away. In fact the EPA has not indicated that there will be any relief in the compliance and reporting deadlines that commenced on October 17, 2017. The status of the ELG Rule is a little less settled. Although the ELG Rule is in full effect, the change in administrations in Washington has caused the EPA to reconsider portions of the ELG Rule. It is unclear what effect this will have, if any, upon future effluent limitation guidelines for coal-fired generation units. Unfortunately, however, the EPA's most recent action has not suspended the compliance deadlines for the ELG Rule. So, EKPC must move forward with its compliance plan right now. We cannot just sit back and hope that the ELG Rule goes away.

Q. What would happen if the EPA eventually decided to withdraw or vacate the ELG Rule?

A. If the EPA eventually withdrew or vacated the ELG Rule, EKPC would still be faced with more stringent effluent limitations coming from the Kentucky Energy Cabinet Department of Environmental Protection's Division of Water ("KDOW"). Again, Mr. Purvis discusses these obligations in more depth in his testimony, but the bottom line is that effluents from coal-fired generation stations are becoming more strictly regulated by both the federal government and state authorities. Thus, even if the ELG Rule were to be withdrawn or vacated, the portion of the CCR/ELG Project related to effluent management would still be needed to comply with regional and state mandates.

Q. Can you describe the deliberative process that EKPC undertook when considering how to best comply with the CCR Rule, the ELG Rule and the KDOW's anticipated requirements?

A. EKPC's Board and management have invested considerable time and attention to the scope and depth of the CCR Rule and ELG Rule and its impact upon the company. Once the initial drafts of the CCR Rule and ELG Rule were published, EKPC staff began evaluating the potential fleet impacts of pending environmental regulations for CCR and ELG, and started communicating on a regular basis with the EKPC Board regarding the emergence of the rules and the status of the evaluation. Additionally, a cross-functional team of internal and external attorneys and engineers were engaged to evaluate and assess strategies and site specific options for meeting the combined CCR Rule, ELG Rule and KDOW's requirements in their preliminary forms. That work continued and the team closely monitored the federal rulemaking process until the rules were issued in final form and went into effect. The EKPC Board was informed regularly regarding the details of the rulemaking, and development of potential actions that might become necessary for compliance. A preferred plan emerged, alternatives were evaluated, and discussions for a path forward began with the Board in 2016. A Project Scoping Report to develop the preferred CCR Rule & ELG Rule compliance project – which includes preliminary designs, a schedule, and a cost estimate – was developed and used as the basis for comparison with alternatives. The final recommendation was presented to the Board in February of 2017.

Moreover, as part of that due diligence, EKPC obtained a report from Navigant Consulting that described the economic value of the Spurlock Station on a forward basis over a twenty (20) year term. The report concluded that Spurlock 1 and Spurlock 2 offered substantial value for EKPC over the long-term as coal-fired units, particularly in the base scenario and scenarios where fuel prices were greater than the base scenario or load growth was less than expected. This helped solidify our understanding that keeping the Spurlock 1 and Spurlock 2 assets operational was the best long-term option for EKPC.

Following a deliberative process covering several years and allowing for the maximum possible time to understand the rules and to assess the likelihood of them actually being implemented, the EKPC Board directed management to pursue the Compliance Plan that presented the reasonable, least-cost option in September 2017.

Q. Did EKPC consider any other options for complying with the CCR Rule and the ELG Rule other than CCR/ELG Project being proposed in this proceeding?

A. Yes. EKPC considered several other options. These are described in greater detail by Mr. Johnson in his testimony, but I would identify them here as follows:

- Converting Spurlock 1 and Spurlock 2 to natural gas-fired units;
- Retiring Spurlock 1 and Spurlock 2 and replacing that lost capacity with a new 600 MW combined cycle natural gas unit at the Smith Station while also purchasing 200 MW of power from the wholesale market through a bilateral power purchase agreement.
- Retiring Spurlock 1 and Spurlock 2 and replacing them with a long term market purchase of 800 MW of capacity and energy.
- Demolishing the wet scrubbers serving Spurlock 1 and Spurlock 2 and replacing them with a new dry-scrubber system.

As elaborated upon by Mr. Johnson and Ms. Hayes, none of these options was less expensive than the CCR/ELG Project and all of them carried unique risks. In addition, EKPC would incur significant stranded investment under these scenarios.

Q. **In Case No. 2008-00408,[1] the Commission mandated that every utility should consider whether energy efficiency offered a viable alternative to constructing new generation assets. Did EKPC consider whether energy efficiency could be a means to achieving compliance with the CCR Rule and ELG Rule?**

A. Yes. However, there is no conceivable way that energy efficiency could offset the loss of over 800 MW of baseload capacity and energy at Spurlock 1 and Spurlock 2. EKPC is committed to cost-effective energy efficiency and has developed several tariffs to promote it as part of its portfolio of demand side management tariffs, but energy efficiency is not a realistic method for replacing large generation units despite the Commission's mandate in Case No. 2008-00408. Likewise, there is no conceivable way to cover the potential loss of Spurlock 1 and Spurlock 2 with renewable resources. Solar, wind and landfill gas generation resources are all considered to be intermittent capacity. It would be imprudent to replace reliable baseload generation with intermittent capacity. Thus, neither energy efficiency nor renewable capacity offered EKPC a viable alternative for compliance with the CCR Rule or ELG Rule.

Q. **What is involved in the construction of the CCR/ELG Project?**

[1] *See In the Matter of Consideration of the New Federal Standards of the Energy Independence and Security Act of 2007*, Rehearing Order, Case No. 2008-00408, p. 10 (Ky. P.S.C. July 24, 2012)

A. Mr. Johnson provides a greater description of the CCR/ELG Project in his testimony, but, broadly speaking, the CCR/ELG Project involves six major components, which are as follows:

- Bottom Ash Handling System – EKPC will convert the existing bottom ash system from a wet sluicing system to a new dry ash system on Spurlock 1 and Spurlock 2. In addition, a separate pyrites handling system with dewatering bins and settling basin will be installed.
- Wastewater Treatment System – EKPC will construct a new wastewater treatment plant to process flue gas desulfurization ("FGD") wastewater and blowdown from Spurlock 1 and Spurlock 2. The wastewater treatment plant will provide a physical/chemical treatment of the FGD blowdown and utilize an Optimized Mechanical Vapor Compression ("MVC") System that incorporates falling film evaporators ("FFE") designed for a flow of 240 gallons per minute ("GPM"). To accommodate excess wastewater flow, an additional 160 GPM of FGD wastewater will be consumed by ash mixing in the existing fly ash silos and by dry scrubber evaporation in the Gilbert Unit and Spurlock 4.
- Fly Ash Handling System – EKPC will construct a new fly ash storage silo and replace the existing transfer building with equipment to handle fly ash from Spurlock 1 and Spurlock 2. This addition is necessary to assure redundancy for ash removal since sluicing to the ash pond will no longer be available.
- Balance of Plant Systems – EKPC will install new piping, controls, instrumentation, electrical and mechanical equipment with the CCR/ELG

Project that are necessary to operate these new systems. As part of this work, EKPC will construct two new Power Control Module ("PCM") buildings as well as new 13,800 / 480 V station service transformers. The power feed from the switchyard to the MVC system will be made via new 138 kV / 13.8kV low resistance grounded transformers.

- Ash Pond Closure – EKPC's strategy is to identify, plan, permit and provide enough landfill space to meet end-of-life needs for the plant facility. As part of the ash pond impoundment closure, EKPC estimates that it will remove approximately 1.75 million cubic yards of CCR material from the existing sixty-seven (67) acre surface impoundment, which coincidentally represents approximately one year's ash production for normal operation at the Spurlock Station. CCR materials will be removed and placed in the Spurlock Station CCR Landfill. EKPC is in the process of permitting additional space adjacent to the existing landfill. Permitting this additional space will provide enough waste boundary for Spurlock Station to reach its end of life. To close the ash pond impoundment, CCR materials will be removed, the existing dams will be left in place, new topsoil and seed will be applied over disturbed areas, and a new water mass balance pond will be established within the footprint of the original pond. Upon the completion of the CCR removal, the Spurlock Station ash pond impoundment will be considered "clean-closed by removal."
- Water Mass Balance Pond Chemical Treatment System – EKPC will repurpose seventeen (17) acres of the existing surface impoundment as a new Water Mass Balance ("WMB") Pond. The WMB Pond will aid in settling constituents from

various plant process flows including the coal pile runoff stream, neutralization basins, clarifiers and air heater wash wastewater, non-chemical metal cleaning wastes and storm water to meet proposed discharge requirements. The WMB Pond will include a chemical treatment system to regulate pond pH, alkalinity, and total suspended solids and assist in the removal of iron and other chemical constituents ahead of discharging into the Ohio River pursuant to EKPC's Kentucky Pollutant Discharge Elimination System permit application.

Q. How will the CCR/ELG Project be implemented, if approved?

A. We have designed the CCR/ELG Project to be implemented in a way that causes the least possible disruption to the overall operation of the Spurlock Station. The schedule is designed to allow EKPC to timely comply with the CCR Rule and ELG Rule while taking into account several factors such as the long lead times associated with equipment orders for critical CCR/ELG Project components, the need to coordinate construction activities with planned unit outages and the time required to secure necessary regulatory approvals.

Q. How will the CCR/ELG Project be financed?

A. Mr. Stachnik provides a more detailed response to this question, but the short answer is that we primarily intend to use financing available from the Rural Utilities Service, which is available under our existing Trust Indenture, to provide the long-term financing for the CCR/ELG Project. Short-term financing necessary for construction will be available under our existing Credit Facility.

Q. What benefits to EKPC and its owner-members are associated with developing the CCR/ELG Project that is described in the Application?

A. EKPC has identified at least eleven distinct benefits that will accrue to it and its owner-members as a result of pursuing the CCR/ELG Project. First, EKPC will be able to retain 810 MW of existing, reliable, low-cost baseload generation capacity to supply the capacity and energy needs of its owner-members. The value of this cannot be understated. Preserving a known, existing resource eliminates a considerable amount of risk for EKPC going forward when compared to developing a new resource. Second, EKPC will be limiting the amount of stranded assets that would be required to be paid for by the owner-members and their retail members through rates by enabling existing utility plant to remain used and useful throughout its design life. Third, the CCR/ELG Project will have a broader impact upon the region by allowing EKPC to retain a significant source of coal-fired generation. This will have the effect of supporting the coal industry which has been hit hard in recent years. Fourth, the CCR/ELG Project presents the most reasonable, least-cost method for complying with the CCR Rule and the ELG Rule. Fifth, EKPC will be well-positioned to continue reaping the benefits from its ability to bid capacity and energy into the PJM wholesale markets. If EKPC was forced to retire Spurlock 1 and Spurlock 2, it would lose its status as a net generator in PJM and would lose the value of having peak diversity within the PJM markets. This solution allows us to preserve and maximize the value that EKPC receives from its membership in PJM. Sixth, the CCR/ELG Project furthers EKPC's efforts to provide reliable, safe, adequate and reasonable service to its owner-members at rates that are fair, just and reasonable. Seventh, it is desirable to remove a significant coal ash impoundment from a location that is adjacent to one of the largest rivers in North America and within the 100-year flood plain. There are some obvious and prudent environmental benefits to this proposal. Eighth, EKPC is preserving its ability to comply with future environmental regulations that may be imposed by the EPA, the KDOW, the Ohio River Valley Water Sanitation Commission ("ORSANCO") or other authorities. This allows us to keep continued operation of the Spurlock Station as a valuable option for complying with any future environmental rules that come into being in the years ahead. Ninth, EKPC will not be interrupting the operations of International Paper or cause that customer to have to make significant capital investments to generate its own steam. This outcome is consistent with the cooperative values that place a great emphasis on meeting our customers' needs while also doing what is within our power to assist one of the largest employers in Mason County stay viable and competitive. Tenth, EKPC is assuring that it continues to have adequate generation assets to satisfy load requirements, which the Commission has singled out in a prior case as being an important objective. EKPC agrees that having physical assets in place to meet its native power demand is an important hedge against market volatility. Finally, EKPC is fulfilling its strategic objective to maintain a reliable coal-fired electric generation fleet. By any objective standard, the CCR/ELG Project that EKPC is proposing is a good solution and should be approved.

Q. Why is the CCR/ELG Project needed?

A. As described in the Application, in the testimony of EKPC's other witnesses and in my own testimony above, EKPC has no other option but to comply with the CCR Rule and the ELG Rule. Moreover, we must be cognizant of whatever state environmental requirements that may come down from the KDOW. EKPC looked at several options for how best to achieve compliance in light of the Board's strategic plan and we have identified a plan that is sound, reasonable and doable. While the investment is significant, it is the reasonable, least cost option for meeting the ever-growing demands imposed by the federal and state regulators. Without the CCR/ELG Project moving forward, EKPC would be faced with options that are more expensive and less beneficial.

Q. Will the project result in wasteful duplication of facilities?

A. No. In fact, the CCR/ELG Project prevents the wasteful duplication of facilities. EKPC has made considerable investments in the Spurlock Station over the years. Walking away from that investment in Spurlock 1 and Spurlock 2 would result in EKPC having to spend hundreds of millions of dollars in new capital to replace assets that have many, many years of operations still available. Although the investment of $262.4 million in the Spurlock Station is itself substantial, it pales in comparison to what would have been required to pursue other options. Moreover, the CCR/ELG Project helps assure that EKPC's owner-members and their retail members are able to recognize and achieve the full value of the investments they have already made in the Spurlock Station through rates by minimizing the amount of stranded assets. For these reasons, the CCR/ELG Project avoids wasteful duplication and would satisfy that component of the Commission's inquiry as to whether a CPCN should be granted.

Q. Has EKPC provided its customers with the requisite notice of its filing?

A. Yes, EKPC filed its notice of intent as to the filing of this Application on September 15, 2017 and has provided the requisite notice of its filing to its owner-members as well. Copies of these notices are attached to the Application as Exhibits E and F respectively.

Q. Please summarize your testimony.

A. The CCR/ELG Project is a prudent solution to EKPC's need to comply with the CCR Rule and the ELG Rule. It helps EKPC achieve several specific strategic objectives and it offers a host of benefits and advantages to EKPC, its owner-members and their retail members. The CCR/ELG Project is needed and will not result in wasteful duplication. Accordingly, on behalf of the Company, I would respectfully ask the Commission to approve the amendment to EKPC's Compliance Plan, issue a CPCN for the CCR/ELG Project, approve cost recovery of the CCR/ELG Project through EKPC's environmental surcharge mechanism, and allow EKPC to settle the ARO and corresponding regulatory asset associated with the Spurlock Station ash pond as part of the completion of the CCR/ELG Project.

Q. Does this conclude your testimony?

A. Yes.

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF:

THE APPLICATION OF EAST KENTUCKY POWER COOPERATIVE, INC. FOR APPROVAL TO AMEND ITS ENVIRONMENTAL COMPLIANCE PLAN AND RECOVER COSTS PURSUANT TO ITS ENVIRONMENTAL SURCHARGE, SETTLEMENT OF CERTAIN ASSET RETIREMENT OBLIGATIONS AND ISSUANCE OF A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITYAND OTHER RELIEF	)	**CASE NO. 2017-00376**

VERIFICATION OF DON MOSIER, P.E.

COMMONWEALTH OF KENTUCKY)
)
COUNTY OF CLARK)

Don Mosier, P.E., Executive Vice President and Chief Operating Officer at East Kentucky Power Cooperative, Inc., being duly sworn, states that he has read the foregoing prepared direct testimony and that he would respond in the same manner to the questions if so asked upon taking the stand, and that the matters and things set forth therein are true and correct to the best of his knowledge, information and belief.

Don Mosier

Don Mosier, P.E.

The foregoing Verification was signed, acknowledged and sworn to before me this 20th day of November, 2017 by Don Mosier.

Gwyn M. Willoughby

NOTARY PUBLIC

Commission No. 500144

My Commission Expires: 11/30/17

GWYN M. WILLOUGHBY
Notary Public
State at Large
Kentucky
My Commission Expires Nov 30, 2017

Gwyn Willoughby

From: Don Mosier
Sent: Tuesday, November 28, 2017 8:36 AM
To: David Crews
Subject: RE: Updated Amendment Three Notice

Am sure SK understands they also are on the hook for PJM admin costs, charges/credits, etc. How will ARR/FTRs be handled?

From: David Crews
Sent: Monday, November 27, 2017 4:58 PM
To: Don Mosier ; Mike McNalley ; Tony Campbell
Subject: FW: Updated Amendment Three Notice

Latest draft notice from SK. Just a few minor changes from the red line I sent them back over the holiday.

I expect SK to give notice before the end of the week.

From: Dennis Holt [mailto:dholt@skrecc.com]
Sent: Monday, November 27, 2017 3:46 PM
To: Mark D. Goss <mdgoss@gosssamfordlaw.com>; David Crews <David.Crews@ekpc.coop>
Subject: Updated Amendment Three Notice

David,

Attached is the final draft of the EKPC notice for exercising our Amendment 3.

Dennis Holt
Interim CEO
South Kentucky RECC
Somerset, Kentucky 42503
Phone 606-678-4121
Cell 606-872-3555

SOUTH KY RECC
EXHIBIT 4

Gwyn Willoughby

From:	Don Mosier
Sent:	Thursday, September 21, 2017 1:17 PM
To:	David Crews
Subject:	RE: South Kentucky Opportunity

They should narrow down the parameters and required acceptance subject to PSC approval, that they cannot predict when will occur. Will likely chase away many.

From: David Crews
Sent: Thursday, September 21, 2017 12:05 PM
To: Don Mosier
Subject: FW: South Kentucky Opportunity

From: Greg Shepler [mailto:Greg.Shepler@enervision-inc.com]
Sent: Wednesday, September 20, 2017 7:52 AM
To: David Crews <David.Crews@ekpc.coop>
Subject: South Kentucky Opportunity

David,

Attached is the RFP for South Kentucky RECC soliciting proposals for alternate supply under Amendment 3 and the MOU. On behalf of South Kentucky RECC, we're glad that EKPC is considering submitting a proposal. So you're fully in the loop, below is additional background information we sent to potential suppliers in the cover e-mail:

> SKRECC is a member of East Kentucky Power Cooperative (EKPC) and they have an option in EKPC's all requirements contract that allows them to receive a portion of their power supply from an alternate supplier. We've looked at this option and believe it provides the opportunity for significant savings for SKRECC members relative to EKPC's wholesale costs. We're issuing an RFP on their behalf (see the attached) to a limited number of potential suppliers to identify an alternate power supply that can provide savings to SKRECC and their members; we think you are in a good position to put together a cost-effective proposal.

Just a couple of other notes unique to EKPC:

1) I'm not quite sure how to address confidentiality or if it even needs to be addressed. We are executing Confidentiality Agreements with all of the others to protect the proposals on their end and audited financials on our end (we don't anticipate the need to send them any other non-public information as part of this process). We also intend to keep confidential any and all information transferred between EKPC and SKRECC and their Representatives, but please advise if you think additional confidentiality/non-disclosure is warranted.
2) I have a couple of questions about Alternate Supply implementation from the MOU that I would like to ask you. Most of this is with respect to division of responsibility between the alternate supplier (whoever it is) and EKPC – things like if the supplier or EKPC will be we passing-through ancillary costs associated with the Alternate Supply. I'll follow up in a separate email.

It is a VERY tight timeline, so please don't hesitate to reach out to me if you have any questions, comments, or concerns.
Thank you,

Greg Shepler **Managing Principal**
T (678) 510-2921 | C (678) 525-2017 | (888) 999-8840

Jeff C. Greer

From:	Terri Combs <terri.combs@ekpc.coop>
Sent:	Friday, December 29, 2017 3:32 PM
To:	A L Rosenberger ; Alan Ahrman - Owen; Barry Myers -- Taylor County; Bill Prather -- Farmers; Bobby Sexton--Big Sandy; Boris Haynes; Carol Fraley -- Grayson; Carol Wright - Jackson Energy; Chris Brewer - Clark Energy; Debbie Martin -- Shelby; Dennis Holt; Elbert Hampton; Jerry Carter; Jim Jacobus -- Inter-County; Jimmy Longmire -- Salt River; Jody Hughes; Joe Spalding, Inter-County Energy; Joni Hazelrigg; Kelly Shepherd; Ken Arrington -- Grayson; Kerry Howard -- Licking Valley; Landis Cornett; Mark Stallons -- Owen; Mickey Miller -- Nolin; Mike Williams -- Blue Grass; Paul Hawkins -- Farmers; Raymond Rucker; Ted Hampton; Ted Holbrook; Tim Eldridge; Tim Sharp - Salt River Electric; Wayne Stratton -- Shelby; William Shearer -- Clark
Cc:	Tony Campbell; Mike McNalley; Don Mosier; David Smart
Subject:	From Tony Campbell re: Amendment 3 Memo
Attachments:	A3 Load Loss Mitigation Discussion Final.docx

Sending on behalf of Tony Campbell

All:

Since South Kentucky gave us notice to exercise their rights under the MOU, we have had a number of CEO's contact us. Many have asked questions about the financial impacts to the remaining Owner Members. Mike McNalley and his team have been working on the potential cost implications of losing this 58 MW baseload block of power. Please remember this was done somewhat quickly, and we will continue to refine the data. In addition, please note that we will do everything possible to totally mitigate this loss of load, and will protect our Owner Members should it return at an inopportune time.

Regards,
Anthony "Tony" Campbell
President and CEO
Phone: 859-745-9313
Fax: 859-744-7053

EAST KENTUCKY POWER COOPERATIVE
A Touchstone Energy Cooperative

EKPC SAFETY IS
R.I.G.H.T.

SOUTH KY RECC
EXHIBIT 5

East Kentucky Power Cooperative

Mitigation of Amendment 3 Load Loss

December 27, 2017

For this analysis I am using the SK Amendment 3 notice and their actual billings for the 12 months ending November 2017. The notice was for 58MW of load to be removed from the EKPC system, at an effective load factor of 100%.

South Kentucky Billing

EKPC billing differential to SK for the 12 months would have been a reduction of 508,000 MWh and $30.4 million over the 12 months. This includes a reduction of $28.5 million from Base Rates, an increase of $2.5 million from the FAC, and a reduction of $4.4 million in the ES. The base rate and FAC impacts should be taken together, for a net billing reduction of $26.0 million.

For SK, we calculate a reduced load factor on the EKPC system because they are removing 100% load factor MWs. SK's load factor in the 12 months of 2017 would have dropped from the actual 56.3% to only 43.5%; this would have resulted in an increased cost per MWh billed by EKPC of $6.07/MWh (from $68.95/MWh to $75.02/MWh). Because we do not have their new contract details it is impossible for us to calculate the net impact of their new contract on SK members.

Cost Shift and Mitigation

The load loss as a result of an Amendment 3 election will shift costs. EKPC will act promptly to mitigate that cost shift.

The cost shift consists of the fixed costs EKPC would no longer recover in base rates from SK, and the ES which would be "automatically" reallocated based on revenue to all members (including SK).

We estimate that the ES amount that would remain with SK is about $0.3 million, so approximately $4.1million would be reallocated to the other 15 owner-members.

EKPC's system is approximately half fixed cost and half variable cost (fuel, purchased power, etc). So of the base revenue loss ($26.0 million), about $13 million would be fixed and need to be recovered.

Thus, the total cost shift, without any mitigation, is approximately $17.1 million to the 15 owner members for the 12 month period ending November 2017.

Amendment3 (and SK) provides for a long notice period, which is necessary for EKPC to achieve the best mitigation of the load loss for its owner-members. This is important because it gives EKPC the time to develop and execute numerous options. Without the time to act, EKPC would have only two options: sales of the energy into PJM in the day-ahead and real-time market, and a base rate increase. For 2017, the energy market would have provided approximately $5/MWh of margin, or $2.3 million, leaving an unmitigated balance of $14.8 million. Given EKPC's low margins this year, this might be large enough to tip us into a base rate increase, especially if we had no further mitigation options.

However, with time, more options unfold. These include participating in the PJM Intermediate Capacity Auctions (IA), the PJM Base (May) Capacity Auction (BRA), natural load growth, economic development, and special contracted loads. In the IA we might expect from $800k to $1.6 million of revenue in the first year, growing as the market firms and better prices are realized (three years out) in the BRA.

Load growth in our budget for 2018, which includes a bounce back to weather-normal as well as some real load growth, is projected at 1,388 MW and 974,217 MWh. If this is achieved, it is sufficient to absorb the loss of the SK load, although our EKPC results would be lower than projected (because we have their entire load in our budget). Because the notice period extends beyond the 2018 budget year, it is reasonable to conclude that EKPC can grow load sufficiently to offset the SK loss by the time their load actually leaves. Any load growth on SK's system also will directly benefit the EKPC system and all owner-members because their notice is for a fixed block of power which cannot grow – thus all load growth must be served under the wholesale power agreement.

A significant new load developed through economic development efforts could further mitigate the SK load loss. However to be valuable in this context that new load should be at tariffed rates and not heavily discounted so that it makes a full contribution to the fixed costs. A load such as the expansion of Gallatin, which is interruptible and does not contribute substantially to fixed costs, will not provide a material benefit in this context (it is obviously valuable in other ways).

Special load contracts (bi-lateral agreements) could possibly be negotiated. However the MW size (58) is odd, and it is likely we would have difficulty finding a good match at the size needed.

Finally, the SK notice is for a 20 year contract. We will mitigate the load loss for that period, and this strictly means that we will not have those resources immediately available to serve SK should they desire to return early – again a key reason for the long notice periods in Amendment 3.

Additional Load Loss (more Amendment 3 Notices)

Under Amendment 3, after SK's election, there are approximately 69.2 MW of potential load to be noticed across all owner-members. If some or all of these MWs are noticed soon, EKPC will follow similar mitigation plans. However, our "natural" load growth scenario will be insufficient to absorb all of the load loss by the time the notices are effective, so there likely would be some margin depression for a year or so. Other mitigation efforts might make up some of the shortfall, but we should expect some cost shifting in base rates, at least for a year or two.

All figures are estimates and we are continuing to refine these analyses.

TO: EKPC Member System Managers

FROM: Roy M. Palk

DATE: April 28, 2003

SUBJECT: Wholesale Power Contract Extension

For clarification purposes, eleven of the sixteen members have expressed their intentions to extend the Wholesale Power Contract as currently written.

Because of some questions raised by some member systems related to the allowance to purchase a portion of their requirements from another supplier and the ability to totally exit the East Kentucky Power Cooperative (EKPC) system if they choose, EKPC has submitted draft contract language on both topics and the Rural Utilities Service (RUS) is currently reviewing our draft. A copy is enclosed with this memo for your information.

If you are one of the eleven systems who has already expressed an intention to extend the contract, you need do nothing at the present time unless you have questions about the enclosed document. If so, please send your questions or comments to me as soon as possible.

If you are one of the five systems who has requested consideration of an off-system purchase allowance and a possible exit policy or clause, please review the enclosed document and send me your comments as soon as possible, as well.

RUS has advised EKPC that the Gilbert loan will not go to the RUS Loan Committee for approval until such time as the Wholesale Power Contract has been extended by all 16 members.

All comments and questions will be compiled and these matters taken up with RUS. RUS will have to approve the changes to the contract. Then, we will mail a new set of amended documents to you with a request for your approval.

Please call me if you have any questions or need further information.

dd
Enclosure

SOUTH KY RECC
EXHIBIT 6

DISCUSSION DRAFT

AMENDMENT NO. 3 TO

**WHOLESALE POWER CONTRACT
BETWEEN
EAST KENTUCKY POWER COOPERATIVE, INC.
AND**

____

This agreement dated the _____ day of _______________, 2003, amends the Wholesale Power Contract dated ______________________ between said parties as follows:

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

1. <u>General</u> – 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 the Member shall require for the operation of the Member's system.

   Notwithstanding the provisions above, the Member may elect to receive electric power and energy other than from Seller provided that the aggregate amount so obtained under this paragraph shall not exceed 5% of the Member's highest historical monthly, uncontrolled demand. Member shall give Seller notice of not less than 12 months prior to this election. This election shall continue until 12 months after Member gives Seller notice of cancellation of the election. Energy from power supply under this paragraph will be required to be scheduled approximately on the basis of Member's most recent rolling three-year historical load profile at the time of the election.

   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.

DISCUSSION DRAFT

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

10. Withdrawal – A Member that decides to withdraw from Seller shall submit to Seller a resolution from its board of directors stating its intended course of action and specifying an effective date, which shall be no earlier than 12 months from the date of the resolution, unless the withdrawal action is a consolidation or merger which is designated a Permitted Transaction pursuant to Section 2(i) or (ii) of the Supplemental Agreement. Any withdrawal which is not a Permitted Transaction will require the approval of the Seller's board of directors and the Rural Utilities Service ("RUS").

Seller's management will recommend that their board of directors approve a withdrawal unless an analysis shows that, despite all relevant commitments agreed to by the Member as conditions for withdrawal, such actions would result in rate increases to other members, would impair Seller's ability to repay its secured loans in accordance with their terms, or would adversely affect system performance in a material way.

Any settlement due the Seller from the Member shall be determined at the time of the Member's withdrawal from the Seller and will be subject to the approval of the Seller's board of directors, RUS, and any other regulatory agencies as appropriate.

Seller's final approval will be conditioned upon the withdrawing Member's: (i) execution of all necessary documents to effect the withdrawal, including confidentiality agreements; (ii) compliance with other relevant provisions of the Seller's Articles, Bylaws, and Board Policies; (iii) and compliance with any ~~relevant~~ RUS and other regulatory requirements related to such withdrawal. ~~Circumstances~~ may require the Board to prescribe additional terms and conditions
requirements for a Member withdrawal, consistent with terms hereinabove.

The rights of a withdrawing Member to the retirement of patronage capital of Seller credited to its account shall be governed by the Articles, Bylaws, and Board Policies of Seller, as amended from time to time, including any amendments subsequent to the date of this policy or the Member's withdrawal; provided, however, that no such amendments will discriminate against a withdrawn Member in this regard.

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 Article 1

DISCUSSION DRAFT

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.
Seller

By: ______________________________
Chairman of the Board

ATTEST:

____
Secretary

____
Member

By: ______________________________
Chairman of the Board

ATTEST:

____
Secretary

(FINDIV\FINANCE\GENERAL\WHOLESALE POWER CONTRACT-AMEND-W-CHANGES-4-28-03)

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION
CASE NO. 2012-00503

In the Matter of:

PETITION AND COMPLAINT OF GRAYSON RURAL ELECTRIC COOPERATIVE CORPORATION FOR AN ORDER AUTHORIZING PURCHASE OF ELECTRIC POWER AT THE RATE OF SIX CENTS PER KILOWATT HOUR UP TO 9.4 MEGAWATTS OF POWER VS. A RATE IN EXCESS OF SEVEN CENTS PER KILOWATT HOUR PURCHASED FROM EAST KENTUCKY POWER COOPERATIVE UNDER A WHOLESALE POWER CONTRACT AS AMENDED BETWEEN GRAYSON RURAL ELECTRIC COOPERATIVE CORPORATION AND EAST KENTUCKY POWER COOPERATIVE, INC.)

DEPOSITION OF ANTHONY CAMPBELL

On Wednesday, the 8th day of January, 2014, at the approximate hour of 10:02 a.m., at the Hampton Inn, located at 1025 Early Drive, Winchester, Kentucky, before me, Nicol L. Voiles, Court Reporter and Notary Public within and for the Commonwealth of Kentucky, **ANTHONY CAMPBELL**, Witness, gave his oral deposition in the causes pursuant to Notice of Counsel for the respective parties as herein above set forth. Said deposition was taken for the purpose of discovery and any and all other purposes permitted by the Kentucky Rules of Civil Procedure.

CBS REPORTING
P.O. BOX 7
SCOTT DEPOT, WEST VIRGINIA 25560

(304) 397-6910 * 1-855-546-3321

APPEARANCES: **On behalf of Grayson Rural Electric:**

Hon. W. Jeffrey Scott
W. Jeffrey Scott PSC
311 West Main Street
P.O. Box 608
Grayson, Kentucky 41143

On behalf of East Kentucky Power Cooperative:

Hon. Mark David Goss
Goss Samford PLLC
2365 Harrodsburg Road, Suite B-325
Lexington, Kentucky 40504

ALSO PRESENT:

Don Mosier
Carol Ann Fraley
Don Combs
Bradley Cherry

I N D E X Page

ANTHONY CAMPBELL

of lawful age, Witness herein, having been first duly cautioned and sworn, as hereinafter certified, was examined and said as follows:

MR. SCOTT: Who is the gentleman to your left?

MR. GOSS: That is Don Mosier.

MR. SCOTT: You want him --

MR. GOSS: Yeah, he's my corporate representative for the purpose of the deposition.

EXAMINATION

BY MR. SCOTT:

Q. Would you state your name for the record please?

A. Anthony Scott Campbell.

Q. Mr. Campbell, why are you here today?

A. I was being deposed by Grayson.

Q. And you're seated in a room at the Hampton Inn in Winchester; is that correct?

A. That's correct.

Q. And did someone inform you that this is the place you needed to be?

A. Correct.

Q. And were you informed that there would be a deposition today?

A. Correct.

Q. And did you receive that information by way of a phone call or did your secretary tell you or did you get an e-mail or a letter or how were you informed of that?

A. E-mail.

Q. Okay. And when you were put on notice to be here, did you know who would be asking you questions?

A. No, I didn't. But I just assumed.

Q. Did you know the number of questions that you would be asked?

A. No.

Q. Did you know when you were put on notice to be here how long the deposition would take?

A. No.

Q. Okay. When you got that notice, did you know the number of attorneys who would be asking you questions?

A. No.

Q. All right. But nevertheless you arrived at the time that that notice advised you that you needed to be here; correct?

A. That's correct.
Q. Have you ever given a deposition before?
A. Yes.
Q. And in what kind of case?
A. It was a litigation over transmission.
Q. And would you tell us please by whom you are employed and what your job title is?
A. East -- I'm employed by East Kentucky Power Cooperative and my title is CEO, president and CEO.
Q. Okay. And how long have you had that title?
A. For just a little over four and a half years.
Q. And how old a man are you?
A. 54.
Q. And did you go to college?
A. Yes.
Q. Where did you go to college?
A. I went -- my undergraduate or my graduate?
Q. Undergrad.
A. Undergrad was at Southern Illinois University, Carbondale, Illinois.

Q. Is that where Walt Frazier went?
A. I don't know.
Q. Carbondale, Illinois. Did you graduate from Southern Illinois?
A. Yes, sir.
Q. And when did you graduate?
A. 1993.
Q. And after that did you start attending and complete a graduate program?
A. Not immediately, but soon after that, yes.
Q. Where was that?
A. University of Illinois.
Q. And did you complete a graduate program there?
A. Yes.
Q. And what was that?
A. Masters in business administration.
Q. Okay. And do you have any other degrees?
A. No.
Q. And when did you get your masters in business administration at the University of Illinois?

A. 1996.
Q. After that did you start working somewhere?
A. Actually I started working right after I got my undergraduate degree.
Q. Where was that?
A. Corn Belt Energy -- Corn Belt Cooperative, Corn Belt Electric Cooperative.
Q. Okay. And where was that?
A. Bloomington, Illinois.
Q. And that is Illinois State, isn't it?
A. Yeah, it's Illinois State in Bloomington, correct.
Q. Doug Collins?
A. Yeah, yes, sir.
Q. And how long did you work there?
A. I was there five years.
Q. Okay. And what did you do there?
A. I -- well, I started in as -- I'm trying to think what my title was, but it was head of electronics, IT. I was really hired to put in their SCADA system. They didn't have anything. Didn't have any automation whatsoever. Automate their substations, things like that. I don't

remember my title exactly. I was in charge of purchasing too.

Q. So you started there in '93ish?

A. Correct.

Q. And stayed there a couple years after you got your MBA?

A. Yeah, that is right, uh-huh.

Q. And then left there and went where?

A. I went to Soyland Power Cooperative.

Q. Where was that?

A. That was in Decatur, Illinois.

Q. And what did you do there?

A. I was -- I don't remember my title either, but I was really a power sales. You know, I went out and tried to sell power, small deals to off system sales.

Q. And was that a distribution?

A. No, it was a G&T.

Q. And how long did you work there?

A. About a year.

Q. How did you perform the essential functions of your task at Soyland? What did you do to accomplish your job?

A. Well, you know, mostly was to try to

structure deals such that the cooperative could make money and mitigate risk and then find opportunities out there with the end consumers.

Q. To whom did you make sales?

A. Well, we were working with -- when I left, we were working close to a deal with a city up in Chicago, by Chicago, Charleston or somewhere like that, St. Charles, St. Charles. And then we were in Missouri trying to do a deal with Citizens Electric actually.

Q. Who owned that cooperative?

A. Well, we had owners, just distribution owners that owned the cooperative. I can't tell you how many because it was kind of in a transition, a flux period.

Q. So you were there about a year?

A. Yes.

Q. And then went where?

A. Then the CEO of Corn Belt Electric Cooperative actually had just took over another distribution system and came and asked if I would come back.

Q. And did you?

A. I did.

Q. As?
A. Vice president of engineering and operation.
Q. And how long did you stay there?
A. Five years.
Q. Okay. So we're now what about 2002 or so or 2001?
A. 3.
Q. 3. Okay. And then where did you go?
A. Then I went to -- I was hired at Citizens Electric Cooperative -- actually Corporation over at St. Genevieve, Missouri.
Q. And what did you do there?
A. President and CEO.
Q. And did you say that was or was not a cooperative?
A. It was a cooperative.
Q. And the name of it again was what?
A. Citizens Electric Corporation.
Q. Citizens?
A. Yeah.
Q. And how long did you stay there?
A. I was there six years.
Q. And then how many members did that

cooperative have?

A. None. It was just -- it was owned by itself.

Q. Oh, okay.

A. You mean end consumers you're talking about?

Q. Yeah. It was a distribution cooperative?

A. I see what you are asking. I was thinking you were thinking it was a G&T. It had owners. I don't remember, but I'm thinking like 30,000 roughly.

Q. Okay. And was it when you left there that you came to East Kentucky?

A. That's correct.

Q. And that was four and a half years ago?

A. That's correct.

Q. In this other case in which you gave a deposition, by whom were you employed at that time?

A. Corn Belt Energy Corporation.

Q. Is that the only deposition you have ever given?

A. That's the only one.

Q. Okay. Then you know then as we go through here this morning that when I ask you a question and you want to say yes, it's better to say yes than uh-huh because we have a court reporter over here that is taking everything down. If you want to say no, it's better to say no than huh-uh or if you do not understand a question that I have asked or if I have not stated it very clearly, that you can just ask me to repeat it and I will. Okay?

A. That's good advice. Thank you.

Q. And I would like to also see if you and I could agree that -- I hope this would work this way. If I say in a question "did you" or if I refer to "you", I'm going to try to do that in a way that "you" means East Kentucky Power. Is that okay to try to -- unless I say, "now, Mr. Campbell, in this question when I say you, I want it to be Mr. Campbell." All right? Can we do that? Is that okay?

A. It's up to counsel.

MR. GOSS: Yeah.

THE WITNESS: As far as I am concerned.

Q. I don't know. It just seems to me that

that might work. If I say you, then --
A. You means East Kentucky Power Cooperative.
Q. If I say you, I'm talking about East Kentucky Power. Okay. I don't know if that is good or not. Anyway, I just thought it might be a way to try to get through this.
East Kentucky Power is owned by who?
A. We have 16 owners, distribution cooperatives that own us.
Q. And one of those owners is Grayson Rural Electric; correct?
A. That is correct.
Q. And is there a contract that is known as a wholesale power contract that East Kentucky Power has with its distribution cooperative owners?
A. That is correct.
Q. And was that entered into in 1964?
A. I don't remember the exact date, but close to that.
Q. And has it been supplemented or amended two or three times with one of those amendments called Amendment 3 to the wholesale power

contract?

A. Yes.

Q. Okay. And what is it that East Kentucky Power believes Amendment 3 does?

A. Well, our interpretation of Amendment 3 is that it allows our end consumer or our owners, 16 owners, to procure power outside of our system to a certain percentage without having EKPC as their provider.

Q. Let me back up a little bit and ask you to explain what your job duties are as president and CEO? What is it that either by board policy or written directive from the board as a whole you believe your actual day-to-day duties are.

A. My day-to-day duties are operating the -- running the cooperative and relative to the strategic plan developed by our board of directors given in the confines of the policies that we have and contracts that we have.

Q. Does East Kentucky Power have a COO?

A. Yes.

Q. And who is that?

A. Mr. Don Mosier.

Q. And that is Mr. Mosier that is seated over here to your left?

A. That's correct.

Q. Or to the left of your attorney?

A. Yes.

Q. And what are the duties of the COO?

A. The chief operating officer is actually responsible for all day-to-day operating responsibilities of the cooperative generation, the delivery system, actually power purchases, making sure we comply with environmental, things like that.

Q. Okay. Does that wholesale power contract as you, Tony Campbell, understand it --

A. Was that Tony Campbell me or not East Kentucky Power?

Q. It's Tony Campbell. It's Tony Campbell or Mr. Campbell. I will call you Mr. Campbell. As Mr. Campbell understands it, do you, Mr. Campbell, believe that that wholesale power contract requires East Kentucky Power to deliver electric power to the distribution cooperatives?

A. Yes. It actually in my -- and this is Tony Campbell's thought process. It not only requires us to deliver power to our 16 owners, but it requires our 16 owners to buy power from East Kentucky Power Cooperative.

Q. It requires, does it not, East Kentucky to sell and deliver to the 16 distribution cooperatives and also the 16 distribution cooperatives to buy and receive that power; correct?

A. That's correct.

Q. And the only modification of those things is what Amendment 3 would allow?

A. That's correct.

Q. All right. Now, would you agree with me, would East Kentucky agree with me, that East Kentucky under that wholesale power contract is to pay for all final connections at points of delivery?

A. I'm not sure I'm understanding the question. Could you ask that again please?

Q. Okay. Do you know if that contract requires East Kentucky to pay for all final connections at points of delivery?

A. And you're talking -- I just want to make sure I understand the question. You are talking like all the facilities' final connections being the hardware, the substations to our delivery points?

Q. Yeah. Let's just -- let's just take a look here. Let me show you a document here and you can show your lawyer here in case he wants to look at that to see if that -- and there may be more than one copy there. I think that might be a copy of the wholesale power contract.

MR. GOSS: What are you asking him?

Q. Do you see on the section there, Mr. Campbell, right in numerical paragraph 2?

A. Uh-huh.

Q. Can you read that?

A. Sure. You want me to start with the 2?

Q. Correct.

A. Electric characteristics and delivery points. Electric power and energy to be furnished hereunder shall be alternating current, three phase, four wide, 60 cycle. The seller shall make and pay for all final connections between the systems of the seller and the member points of delivery.

Q. So the answer to my question I asked you a minute ago would be yes?

A. For all physical connections, yes.
Q. Okay. Could I have all of that back?
A. Certainly.
Q. I believe that sheet there might be --
A. Sorry.
Q. For what purpose that is like that I don't know. So what does that mean? What does that mean that section you just read?
A. Well, to me that would mean like the substations, all the transmission line, the meters to our metering point, that we pay for all the breakers, all the regulators, transformers, et cetera, to get electric power to flow to our end consumers or owners.
Q. And then the next section, section 3 that kind of goes on. I don't know if it's kind of redundant from the previous section or if it's trying to add something else, but it says the seller shall own, read that part right there.
A. Okay. Substations, the seller shall install and own, maintain the necessary substation equipment at the points of connection. Want me to read on?
Q. Yeah.

A. The seller shall own and maintain switching and protective equipment which may be reasonably necessary to enable the member to take and use electric power and energy hereunder and to protect the system of the seller. Meters and metering equipment shall be furnished and maintained by the seller and shall be located at the point of delivery on the low voltage side of such transforming equipment. Member will be responsible for reading meters and making reading information available to seller.

Q. Now, would you agree with me, sir, and would East Kentucky agree with me that Amendment 3 to this contract does not change the provisions that you just read?

A. No. That is correct. I agree with you that we should still own all the physical equipment.

MR. GOSS: Jeff, just for the record let the record reflect that the witness was reading from subsection 3 of the October 1, 1964 wholesale power contract between East Kentucky and Grayson and previously paragraph 2.

Q. Does East Kentucky Power send the

distribution cooperatives a notice once each year of the rate that they are going to be charged for this power?

A. I don't know that I can answer that. I would assume so, but I don't know that for sure.

Q. If it does, and would you through counsel agree to provide a copy of any notice that has been sent annually for that purpose in the last, let's say each of the last three years?

A. I would think we would.

MR. GOSS: Yes, yes. So let me just make sure. You want 2010, '11, '12 or 2011, '12, '13? What three years do you want?

MR. SCOTT: Start with '10.

MR. GOSS: '10, '11, '12.

MR. SCOTT: And '13. So we will call it four years.

MR. GOSS: And 13.

Q. Upon what is that rate based?

A. The cost of service study that we have done in the past and taking it to the Public Service Commission and had approved.

Q. In that cost of service study most recently I guess, you tell me if I'm wrong, would

have been submitted to the Public Service Commission in 2010, 167 case I think is the case number maybe, where you got your last rate fixed?
A. That is right. We used as I recollected that cost of service study we used in 2010 for the rate -- base rate increase that we requested was maybe dated by a year or two, but I'm not sure of that.
Q. Whenever it was. That was the one that --
A. That was the basis --
Q. -- was submitted on which the rate that came out of that case was set?
A. That is correct, yeah. The Commission set -- allowed us to set those rates based on that cost of service study.
Q. And is there an expense associated with administrative and general expenses of East Kentucky that are components of that?
A. I'm not sure what you're asking, please.
Q. Is there an expense of administrative and general expenses or a heading such as that that is a component of --
A. Oh, the rates?

Q. Yes.

A. Yes, sir.

Q. Okay. And what is it that fits within administrative and general?

A. Well, there is a whole host of things in administration and general that are -- the way we book administrative and general. In fact it starts with the salaries, it starts with legal fees, a whole host of things. In fact I've been trying to push accounting on modifying that. I think there are probably too many things in A&G that shouldn't be.

Q. And maybe should be assigned somewhere else. Is that your point?

A. Exactly, correct.

Q. And that is part of the cost of service study that was submitted?

A. Yes.

Q. You have stated that Amendment 3, what East Kentucky believes Amendment 3 does or can do. Let me ask you if you got some letters from Carol Fraley and I'm not going to ask you if you received notice from Carol Fraley because that'd probably be met with an objection because that is what lawyers do when they talk about words that have some meaning or term of art or something like that. So I'm not going to give Mr. Goss the opportunity to object to that. But I'm going to ask if you got certainly pieces of correspondence from Carol Fraley and they be deemed to be whatever it is that they would be deemed to be rather than somebody trying to argue if its, quote, unquote, noticed. But did you get a letter dated June 22, 2012 from Carol Fraley?

A. Yes, I did get a letter from Miss Fraley.

Q. And is that a copy of it that you've got in your hand?

A. Is this the letter?

THE WITNESS: Would you want to check that letter?

MR. GOSS: Yeah. Let me check. Yeah.

THE WITNESS: Yes.

Q. And did you get a letter here -- this purports -- this is an unsigned copy, but did you get a letter dated August 9, 2012 from Carol Fraley?

A. I did get a letter from Miss Fraley on the 29th of August -- on the 9th of August. I'm sorry.

Q. And is that a copy of it?

A. Yes.

Q. That I have handed you. And did you also get a letter from Carol Fraley actually addressed to you I believe January 18, 2013?

MR. GOSS: Yes.

THE WITNESS: Yes, I did.

Q. And is that a copy of it that you've got there?

A. Yes, sir.

Q. And did you also get a letter from Carol Fraley dated September 26, 2013?

MR. GOSS: Yeah.

THE WITNESS: Yes, I did.

Q. The last one seems to be drafted a whole lot better than the other ones, wouldn't you agree?

A. I'm not an attorney. So I wouldn't know.

Q. Well, you don't have to be an attorney. I mean an MBA could answer that question. What -- whatever -- and you have got copies of all of those with you there; right?

A. Correct.

Q. And whatever it is that makes up the content of those letters, the words that are in there, the paragraphs that are used, and the meaning that you gleaned from them, whatever meaning you gleaned from them, you did glean a meaning from them, didn't you?

A. Correct.

Q. All right. And you received them at or about the time of a day or two following the date on each of the letters, wouldn't you think?

A. That's correct.

Q. So the one in September 26, 2013 you probably got in September. The one in January 18, 2013 you probably got in January.

A. I think that is a fair assumption.

Q. Okay. Go to the very first one there, the June 2012 letter.

A. Okay.

Q. When you got that, what did you do with it or about what did you do? Did you have a discussion with somebody? Did you notify somebody, Mr. Mosier or an attorney or a staff member or a secretary or anybody?

A. Well, let me just read this letter again and make sure I'm on the right page with you. I don't want to give you misinformation.

(Pause in proceedings).

A. Yeah, this is the letter. As I recollect, when I received this letter I think I called -- I did a number of things. I called Miss Fraley and said that I was in receipt of the letter and that we would be taking it to the board. I called the chairman of the board and shared this letter and told him that I was going to put it on the agenda and I believe I shared it with David Smart and maybe -- I don't know if I shared it with Don or not. But I did because I said we were -- I must have because I said we were going to put it on the SI Committee for discussion.

MR. GOSS: Say for the record what the SI Committee is.

THE WITNESS: The Strategic Issues Committee is a committee of our board of directors at East Kentucky Power Cooperative.

Q. Now, that letter refers to a certain

number of megawatts, does it not?
A. Correct.
Q. And what is that number?
A. Well, the peak demand of 2009 to 2011 is 71.4 megawatts.
Q. Yeah. I guess it has got a lot of them on it. All right. Very good. Would you go to the August letter, August 9, 2012 letter?
A. I have that letter.
Q. And similarly when you got it -- and you have already said you did get it. When you got it, what did you do with it?
A. Let me just read it. I want to make sure that I'm on the same page. So this -- this letter I'm sure I didn't call Miss Fraley, but I did call Chairman Hawkins, told him that I received this, David Smart and I think Don Mosier too and stating that we would put this on the SI Committee.
Q. David Smart is general counsel for East Kentucky Power?
A. General counsel for East Kentucky, yes, sir.
Q. And does that letter, that August 9

letter, inform East Kentucky that Grayson intends to purchase from Magnum Drilling of Ohio 5 megawatts of power commencing in the year 2012?

A. That is correct.

Q. Now, does 5 megawatts of power mean anything to East Kentucky with respect to Grayson and that letter? Does that number 5 have any particular meaning?

A. Well, the only -- I mean I'm not sure what it meant for Grayson, but to me and East Kentucky Power Cooperative it meant that it would qualify under Amendment 3 to be allowed with 90-days notice.

Q. Okay. Would it also mean that it would be within 15 percent of Grayson's load ratio?

A. I don't remember what your load ratio was at the time, but as I recollect, you were below that and so it would have been within the 15 percent.

Q. Okay. And certainly 5 megawatts would have been significantly less than 5 percent of East Kentucky's production; correct?

A. That is -- well, our three-year rolling average? Is that what you mean?

Q. Yeah.

A. Yes, that would have been well within the three-year rolling average. Even when added back with the current Amendment 3 exercises that we already had out there.

Q. So you said when you got the August 9 letter you called Mr. Hawkins?

A. Yes.

Q. And Mr. Hawkins is Paul Hawkins.

A. That is correct.

Q. He's the chairman of the board of East Kentucky Power?

A. That is correct.

Q. And for what reason did you call him?

A. To tell him that we needed to put this on the agenda of the next board meeting.

Q. For the SI, the Strategic Issues Committee?

A. That's correct.

Q. I want to show you another letter that I have received from your lawyer finally the weekend before Christmas and you can let your lawyer look at that.

MR. GOSS: Yeah, yeah.

Q. Is that a letter on East Kentucky's letterhead from its then general counsel to Larry Hicks the president and CEO of Salt River?

A. Yes, it is.

Q. And the date of that is what?

A. April 20, 2005.

Q. And does that letter -- that is from Dale Henley?

A. This is from Dale Henley, yes.

Q. And was Dale Henley at that time general counsel of East Kentucky Power?

A. It -- the way he signed it, it says he was general counsel. That was before I started East Kentucky so I don't recollect, but --

Q. Yeah. Does that letter from the general counsel of East Kentucky Power to Mr. Hicks, president and CEO of a distribution member owner cooperative of East Kentucky, tell Mr. Hicks that his earlier notice to East Kentucky of Salt River wanting to purchase a certain number of megawatts of power is within it's load ratio and is within the load ratio of East Kentucky's 5 percent and therefore need not be presented to the Allocation Committee?

A. It does.

Q. Could you reconcile then, sir, the import of that or the content of that with the statement that you made a minute ago that when you got the August 9 letter from Grayson Rural Electric you notified Mr. Hawkins and said this needs to go to the committee?

A. Well, first thing is --

Q. If there is a need to reconcile it. But I mean it seems that they are the same. You tell me what is different about them, if any?

A. I'm not sure exactly where Mr. Henley was in the process of exercising Amendment 3, but after I came and was requested to exercise -- by a different owner to exercise Amendment 3, I quickly realized we didn't have a process in place and we needed one. And I adopted a process for Amendment 3 so everybody would get exactly the same treatment.

Q. Is that process that you adopted one that is in writing?

A. No.

Q. So when did you adopt this unwritten process?

A. I don't recollect the exact date, but I can tell you that what stimulated that adoption was a request by Mr. Don Schaefer, president and CEO of Jackson Energy, request for 40 megawatts.

Q. Is that down in Bowling Green?

MR. GOSS: No, Jackson, Kentucky.

MR. SCOTT: Yeah. I mean the 40 -- no, that was -- the 40 that they wanted was --

MR. GOSS: OMU.

MR. SCOTT: Was that the Wellhead thing?

MR. GOSS: OMU, Owensboro.

MR. SCOTT: Owensboro. I knew it was somewhere west of here. Yeah.

Q. And that was 2010? When was that?

A. Well, I'm not sure of the exact dates, but we can certainly look those up and give them to you.

Q. It's in some of this.

A. But it started, his first verbal request to me was when Jim Lamb who was vice president of power supply was still at East Kentucky. It was right after I started. So I'm going to guess about September of 2009. His formal request to me was probably very early in 2010.

Q. I think we probably got that. So did you communicate this unwritten policy to anybody at all?

A. Yes.

Q. So whom did you communicate?

A. The board of directors.

Q. Is there a board minutes or are there minutes reflecting that?

A. I don't know, Mr. Scott, but we can sure check. There should be something in the minutes where I just said, hey, we are going to have a process where we are going to bring these Amendment 3s back to the board of director and actually do what the Amendment 3 suggests we do.

Q. So you think if there was a board minute reflecting that, that it would be in late summer, early fallish of '09, maybe into early 2010, somewhere in there?

A. Actually -- well, I will have to check that out, Mr. Scott. First thing, the 40 megawatts -- we need to get our timeline square. And I don't have the exact dates and I do apologize for that. My memory is getting worse as I get older. But when Mr. Schaefer came for the

40 megawatts, I went back to Mr. Schaefer and had a meeting with him. No, he came in and had a meeting with Mr. Schaefer and I said look you can't do a 40 megawatt block, 7 by 24. You need to follow load and you need to designate load if you are going to do that.

And then he sent a request back to me and said I'm going to withdraw my 40 megawatt request because I started talking about the cost. You need -- you need to make sure that the other members are compensated for any stranded investment that we have. And then he said I will withdraw my 40 megawatts, although I still want to make sure that it is out there and let's try to fix this if you would. Fix the language of Amendment 3. That is what really promulgated the suggested Amendment 5 which was language to try to fix Amendment 3, which was unsuccessful.

Q. Does that letter I handed you refresh your memory any?

A. Yeah. This is the letter.

MR. GOSS: Let me -- it's your deposition, Mr. Scott, but we're handing him letters and contracts and everything and we're identifying them by date. I presume you're going to move for admission of these with the court reporter. And if you want to refer to them by date and then the letter that is fine or if you want to refer to them by exhibit number that might be better. Again I don't want to tell you how to do your deposition, but in fairness to the witness and in fairness to whoever reads this transcript, we probably need to maybe identify these documents as they are being handed to him or, you know, so the record will be made up in some fashion, however you want to do it.

Q. Does that help you? That letter that you are looking at?

A. Uh-huh.

MR. GOSS: I'm sorry. Would you identify the letter by date and who the author is?

MR. SCOTT: We will get there, Mr. Goss.

MR. GOSS: Well, I mean you have asked him, Mr. Scott, to look at a letter you handed him.

MR. SCOTT: I know and I'm getting there. I mean if there is any other question you want me to ask, write them down and I will try to ask them, you know.

MR. GOSS: Well, I mean, you have taken enough deposition, you ought to know how to -- and I know you know how to identify a document in fairness to the witness and whoever is reading a deposition transcript. So and I don't want to -- I don't mean to interrupt you, but if you can just identify the document so the record will be clear and then I will hush.

THE WITNESS: The letter that I'm looking at is from Jackson Energy Cooperative. It is to Wayne Stratton chairman of the EKPC board of directors from the Jackson Energy Cooperative board of directors dated September 1, 2010 regarding 40 megawatts, Amendment 3, 40 megawatt wholesale power contract purchase. This is the letter.

Q. So we are then September of 2010 rather than September of 2009?

A. No, no. I said he initially approached me roughly September of 2009 verbally saying, hey, we're looking at the 40 megawatt deal. Then he formally came in 2010. I just didn't know the date.

Q. So go back to the Dale Henley letter that I showed you that is dated what?
A. This date of Dale Henley letter from -- to Mr. Larry Hicks is dated April 20, 2005.
Q. And it's your belief as president and CEO of East Kentucky Power that what Mr. Henley was conveying to Mr. Hicks was not the way you thought it should be handled with respect to Amendment 3 notices?
A. Clearly I think my interpretation of this letter to Mr. Hicks is pretty sloppy work.
Q. Okay. All right. You said something a minute ago about you told -- I believe you said you told Mr. Schaefer you can't -- cannot -- something about you cannot buy a 7 by 24 block of power. Did you say that?
A. No. I said you have to designate the load.
Q. The load.
A. You can buy it although you can't come in and take a base load block of power off of our system. You have to designate load and then follow that load. If you want to buy a -- if Mr. Schaefer wanted to buy a block, 7 by 24 block,

follow the load, do whatever he wanted to do with the rest, that is fine. I didn't have a problem with that. And --

Q. And you told him that.

A. Yeah. And I also said that one would have to make sure that they paid all stranded investment to the other -- to cover the other members, to make sure there wasn't a subsidy going on.

Q. Is that the position of East Kentucky Power today?

A. That if --

Q. What you just said?

A. So the position of East Kentucky Power is if an owner comes in and then wants something less equal to or less than their 5 percent share, we have no problem. We feel that that should just be really exercised on and we certainly would recommend.

Q. 5 percent or 15?

A. No, 5 percent, their 5 percent share. However if it goes over their 5 percent share, then we believe that it needs to go back to the Allocation Committee and be allocated to that board or -- and I really promoted this, one cooperative working with another cooperative outside of our realm to do that.

Q. You said their 5 percent share?

A. Correct.

Q. Distribution cooperative's 5 percent share of what?

A. Our owners share of their three-year rolling average.

Q. And you get that position from what?

A. Well, I get that position first thing is mathematically East Kentucky Power Cooperative is only exposed to 5 percent no matter who gets what. We really don't have a dog in the fight, a bone in the fight of how the owners split it up, but I do have a fiduciary responsibility as CEO of East Kentucky Power Cooperative to make sure that we try to do it as fair as we can.

My discussion with the board of directors was, look, if an owner wants to take their 5 percent share, their three-year rolling average, 5 percent share, they should be allowed to do about whatever they want with that, I mean given the confines of, you know, not endangering the other owners. However if they go over that 5 percent share and then want to take more than that, then I think -- and I actually emphatically said it to the board, then you have an issue of fairness and think it needs to go through the process, which would be Amendment 3 and then push it into the 305. That is the way it is set up right now.

Q. So 5 -- you're throwing --

A. Although could I say one other thing?

Q. Yeah. Go ahead.

A. Do you mind? I also make an appeal at the same time that I did that and I actually did this through a presentation. I've probably done a number of them, but I made an appeal to all our owners to try to work together to solve this with the 5 percent because I think that would -- that really is the most fair thing.

Q. Is that what started the Amendment 5? Is that what you are talking about or did it come after that?

A. No. Amendment 5 came actually right after I received the formal request -- oh, I don't have that right now.

Q. From Jackson.

A. From the Jackson Energy for the 40 megawatts. And the reason for that, Mr. Scott, was because I told Don that I wouldn't support that. First thing he -- it was written such that it was a 7 by 24 and you can't take a block of power away. I mean because clearly the Amendment 3 says load or loads and I pointed that out. And we had a lot of discussion about that.

However, I asked him, I said look, I agree that Amendment 3 is not written as well as it should be and I have had meetings with other counsel, older counsel that said the same thing. So I said, well, why didn't we just fix this and he said if you fix it, I will withdraw my 40 megawatt request and that is what started Amendment 5 to try to get to that process which ultimately failed, Amendment 5.

Q. Explain to me -- when you say 5 percent in your answer there, 5 percent of what? What are you talking about?

A. The 5 percent of our owners? Is that what you mean?

Q. Whatever you refer to it as. Whatever you meant for it to be. I want to know what you Tony Campbell or you East Kentucky think 5 percent means. 5 percent of what? We know 5 percent is a percentage. It's a percentage of what?

A. Let's go through our interpretation of the 5 percent. There is two 5 percents. One 5 percent is -- the way the Amendment 3 is, East Kentucky Power Cooperative and the wholesale power contract and Amendment 3 is exposed to potentially losing 5 percent of our three-year rolling average load, period. Can't go over that 5 percent.

Then when you start dispersing it, if you just look at it mathematically, each member really has 5 percent. And in the amendment, Amendment 3, I believe it states -- or 305, I'm not sure. It says each member will get their 5 percent share. I mean mathematically that is the way it works. Right? Has to. And then a member has an option to go up to actually 15 percent if no one else is using, but nobody -- there is absolutely no owners that can go over our rolling, East Kentucky Power Cooperative's rolling three year 5 percent average in totality.

Q. So you say that each distribution

cooperative getting 15 percent of their average coincident peak could exceed the 5 percent and therefore that is why you believe there is this fairness issue?

A. It can't exceed the 5 percent. Clearly that is in the contract.

Q. Well, if you did the math and they all did it, than that is greater than 5 percent.

A. Mathematically it would be greater.

Q. So therefore that is why you think or East Kentucky thinks or maybe East Kentucky and Tony Campbell, that they ought not be able to get that for lack of a better term willy-nilly because in the aggregate if they did, it would exceed the 5 percent, which is not allowed by Amendment 3.

A. Could you state that one more time? I just want to make sure because I'm not so sure.

Q. Probably not, but I guess your position is that if Grayson Rural Electric got 15 percent of his average coincident peak, Jackson did, Owen did, and everybody did, then in the aggregate that would exceed 5 percent of East Kentucky's; correct?

A. Yes, and that is disallowed.

Q. But Amendment 3 does not allow that?

A. That is correct.

Q. Now, tell me -- let me show you a document here. To satisfy Mr. Goss it's dated November 21, 2003. It has got a copy of exhibit 2 on there for reasons that I don't know. Probably something that I attached to the complaint in this case. It says Amendment 3 to the wholesale power contract. And I suggest to you that it is in fact Amendment 3 to the wholesale power contract?

A. Thank you.

Q. You can show Mr. Goss that to see if he concurs if it is that.

A. Yes, sir, Mr. Scott. This is Amendment 3 to the wholesale power contract.

Q. And you see there where it says numerical paragraph 1 where it says general and general is underlined?

A. Yes, sir.

Q. Go on over to the second page which would be still under general, but lower case a, where it says during any calendar year the member, blah, blah, blah. Do you see that?

A. Yes, sir.

Q. 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. Do you see that?

A. Yes.

Q. Did I read that correctly?

A. Yes.

Q. Is that the language upon which you base -- East Kentucky bases and Tony Campbell bases its belief that you must designate a particular load on your system to which the 15 percent or up to 15 percent that you are going to buy outside East Kentucky would apply?

A. Yes. And it actually says it again in paragraph B.

Q. Correct. With a greater than --

A. Yes.

Q. So is a load --

A. But I will -- I will say and this probably does need to be on the record. You know, I softened that in my thought process. Whether it be fair or unfair, softened that in that I kind of told the board of directors if an owner wants to come in for some of their 5 percent, not to exceed their 15 percent of their load, that I think they should be able to do whatever they want. I don't think -- I don't think we care what you do with that. It's only in my personal opinion when you go over the 5 percent, then all of a sudden you get cost shifting and we have to just make sure that it is fair and equitable for everyone.

Q. So if Grayson Rural Electric's -- if 15 percent of Grayson Rural Electric's average coincident peak is 9.3 megawatts, you think that they should only be allowed to use 3.1?

A. No. I believe that Grayson Rural Electric can still exercise their right under Amendment 3 to request up to 15 percent of their average three-year -- rolling average three-year peak. However, if it's the 5 percent, let's say that number and I don't have a calculator with me, but it is roughly 3 megawatts. I believe --

Q. Let's assume for purposes that 15 is 9.3. so the 5 would be 3.1. right?

A. Okay.

Q. Okay.

A. So assuming that is correct, I believe that the 3.1 should be -- the board should approve and really I think the board approved just to make sure that everybody knows and that is in the minutes that Grayson is going to do something. I don't believe, that's my belief, Tony Campbell, that we should say that you have to designate a lead. I really think --

Q. If it's up to --

A. Up to their 5 percent.

Q. 5 percent of your 15?

A. Right. Because every --

Q. And tell me why you say that?

A. My hypothesis is that every member has 5 percent of the load, of East Kentucky Power Cooperatives three-year rolling 5 percent average of our peak load. Every member has that 5 percent.

Q. You know it's not going to exceed East Kentucky's 5 percent if everybody took --

A. 5 percent.

Q. It's never going to get higher than that.

A. Plus every owner has exactly the same opportunity to exercise their right for that 5 percent. And so if there is some cost shifting, that is because one owner would chose not to exercise that right and cost shift back. But then I think when it goes over the 5 percent, then I thought well then we need to really go back into the 305 because there is probably going to be some cost shifting.

Q. Would you agree with me, Mr. Campbell, that -- I'm sure you won't, but I'm going to ask you. As we sit here today and you know we lawyers have sent stuff back and forth about notices or requests for election under Amendment 3 that Salt River has done or that Jackson has done or Farmers and just as a practical down to earth matter here I want to ask you, this thing has been in effect since what, November of 2003, a little over ten years. And the requests that have been made or the notices that have been sent to East Kentucky are a far cry from that 5 percent.

So is it your interpretation or your position that you just gave here one that is based upon things that aren't really in existence and maybe an effort to try to fix something that is really not broken?

A. And that's a really good question

actually. And so I agree with you in that we're a long ways from our East Kentucky Power Cooperatives three-year rolling average peak. We're a long ways from that. However I think I also have that fiduciary responsibility to say if something comes along and some owner has more than their 5 percent and everybody wants their 5 percent, there is not going to be enough to go around. And I just want to make sure that everybody understands that, because that is the only bone in the fight that I have.

I mean I'm really not worried about let's say the 150 megawatts, our 5 percent, our three-year rolling average 5 percent which is going to go up now that we had this big peak yesterday, but roughly it was about 150 megawatts. I mean I can certainly mitigate that. We have a staff that can do that as best we can as long as it's fair with all the owners.

I only am concerned that if owners take over their 5 percent, that the other owners need to understand that there is still only -- we are only going to give up to that 5 percent so somebody is going to be left out.

Q. Tell me what you think defines your fiduciary duty?

A. Well, I believe as a cooperative CEO that I need to follow the seven cooperative principles and that it has to be fair and equitable for everyone.

Q. So to whom do you owe a fiduciary duty and what do you think sets forth that basis for your fiduciary duty?

A. All of our owners. I think each and every one of our owners needs to be protected by me. I shouldn't favor any owner over another owner.

Q. Is that the board of directors fiduciary duty rather than the president and CEO?

A. I think it's the board of directors fiduciary duty too, but personally I think that is my ethical responsibility and fiduciary duty to our owners.

Q. I have seen the number and done the math, but I can't remember it. If every co-op did go after their 15 percent, it would exceed the 150 by how much? Do you know off the top of your head?

A. Well, it would -- it would exceed it mathematically by 10 percent.

Q. Do you know what that number is off the top of your head?

A. I don't off the top of my head, but I can hypothesize which I don't like to do in a deposition, but I will hypothesize.

Q. I'm not going to hold you to it.

A. If East Kentucky Power Cooperative's 5 percent is 150 megawatts, assuming we had a 3,000 megawatt average peak, that is 150 megawatts. If it's 15 percent, it's going to be what, 400 and --

Q. -- 50.

A. -- 50 megawatts. So it's going to exceed that by 300 megawatts.

Q. Do you East Kentucky have any document where RUS, Rural Utility Service, approved Amendment 3?

A. Yes. I think they had to sign off on that, Mr. Scott. I don't have that in my hand.

Q. I saw something referencing December of 2003 or something like that. Maybe even Christmas Eve, something like December 24, which I thought was strange. Could you provide --

A. If we have it, we can certainly provide that.

MR. GOSS: Tell me exactly what it is you want.

MR. SCOTT: RUS presumably sent written notification of approval of Amendment 3 and I believe it might have been in December of 2003 or whenever it was. And if East Kentucky has a copy of that, I would like to have a copy.

A. In actuality too, Amendment 3 was written by RUS.

Q. I was going to ask you that a minute ago when you said something about its drafting. Do you know who actually drafted that?

A. I was told by Roy Polk I believe that Amendment 3 was drafted by Rural Utility Services and the reason that was done was because obviously they were the -- at the time they were the only lending institution we had and they wanted to make sure that they -- that it was drafted such that they still had adequate security for their loans.

Q. Is it, sir, as reasonable to infer from the language in Amendment 3, 1A and 1B, that we looked at there a minute ago.

A. I have it before me.

Q. That the reference to load or loads is referencing the entirety of the distribution systems load as it is to believe that it is referencing a specific load of a customer on that system?

A. Well, I think that is a really good question. And we had some fairly intense discussion with Jackson Energy. You know, could you reference your load as a substation instead of a load. Now, I was told the spirit of this agreement, and that came from Roy Polk, that it was really for a new load, economic development new load, but it is really poorly written and doesn't say that. I met with Jackson Energy and also I believe I met with Owen, Mr. Crawford and Mr. Stallings and I said, well, I understand that is poorly written, but I believe you could in my interpretation of it say, hey, I want to have this industrial customer or this substation would be the load and deliver to that point.

Q. But East Kentucky is not agreeing that that could be done at this point? Do I understand that correctly? That you don't think it could apply to just a substation?

A. No. I haven't been in any discussions with anybody at East Kentucky that has given me any concern that you can't point to a load. As long as you can point to that load and then we know we won't serve that load anymore and it's within the guidelines of Amendment 3, I believe that would be fine.

Q. Well, you know what Grayson Rural Electric is trying to do here, don't you?

MR. GOSS: I'm going to object to that question. It's a very general question. Maybe you can be more specific.

Q. Well, that probably opens up for you to say a whole hell of a lot, but let me ask you this, do you know what Grayson Rural Electric is trying to do with respect to the content of the letters that were sent to you in June and August of 2012 and January of 2013 and September of 2013 and in the complaint that is filed with the Commission and the notice of amendment and Duke Energy? Do you know what it is that Grayson is trying to do?

A. I assume that Grayson is trying to buy some portion of their load off of East Kentucky Power Cooperative system.

Q. From Duke?

A. Well, whoever.

Q. Yeah. Well, did you get from the -- I guess the September 26 letter that it was Duke Energy that they were seeking to buy that from?

A. I think one was Duke and one was Magnum and I don't remember who the other one was. There was another one in there. When you went to 5 megawatts, was that a different supplier? I don't know.

Q. No. But you know that the September 26 letter tells you that they want to buy power from Duke; correct?

A. Yes.

Q. All right. And have you seen any -- a financial model that a consultant from Grayson Rural Electric put together?

A. I have not.

Q. Okay. You haven't seen anything from a Mr. Greg Shepler with EnerVision?

A. I haven't seen any of the documentation. I have heard about it, but I haven't seen anything.

Q. Do you have an understanding of how it is that Grayson Rural Electric believes that this can be accomplished purchasing this power from Duke and putting it on their system? Do you have an understanding of how you believe this can happen?

A. I haven't been involved in those discussions, no.

Q. Okay. All right. So you wouldn't know anything about that?

A. No.

Q. Okay. Have you read the deposition of David Crews that was given here a couple months ago?

A. I haven't read it word for word, but I have scanned it.

Q. Okay. All right. So why is it that East Kentucky believed Grayson can't do what it desires to do as you understand it?

A. So let me just make sure that the assumptions are right. I'm assuming that Grayson wants to take up to 15 percent of their three-year rolling average peak load to the market off of

East Kentucky Power Cooperative system. And I see no reason why you can't if you follow the rules and make sure that your obligations are paid. I mean I -- and we run it through the process and 305 -- either 305 is approved through the Allocations Committee or if your neighbors would want to give you some portion of their 5 percent, I see no reason why Grayson can't do that.

Q. What is it about Amendment 3 that says for Grayson to do this a neighboring cooperative must give them a portion of their 5 percent?

A. There is nothing in there that says that.

Q. Okay.

A. So my interpretation, and I talked with the board about this, was if every member -- and I'm going to kind of restate, if every member wants to take their 5 percent, I don't believe East Kentucky Power Cooperative has any bone in the fight because really it's a fairness issue that you can mitigate yourself, if everybody gets their 5 percent.

If somebody wants to go over their 5 percent, I think from a cooperative principle that is just a good thing to do and everybody gets their 5 percent and somebody can give you a portion of their 5 percent and I think there is no bones in the fight there either. So to me I just highly recommended that. That is just a good cooperative way to solve the problem.

Q. So Grayson could go out and get 6.2 megawatts from 15 other distribution co-ops and -- well, no, that wouldn't -- yeah, 6.2 megawatts from 15 other distribution co-ops and to arrive at their total of 9.3, assuming 9.3 is 15 percent, and East Kentucky would think that that would be swell?

A. Assuming the 9.3 is actually the three-year rolling average of your peak demand, I believe that we would just run that through just like we do on everyone else. It is just 5 percent. And I don't think there should be -- in my personal opinion, that is Tony Campbell's opinion, and the board has said that seems fair and equitable. There shouldn't be any stranded investment because every owner has the same opportunity with those 5 percent. That doesn't mean we won't have to exercise something, but that

-- I see no reason why that won't work.

Q. Let me change to something else here, Mr. Campbell.

A. Could I say one other thing?

Q. Say whatever you want to say.

A. That is one avenue, but still Grayson could -- so the notices that were given to me were taken to the SI Committee and tabled. And then finally brought off the table and I think Ken Arrington made the motion actually and we -- we just did away with those. Right?

But you could -- Grayson still has the right, as does any of our owners, to petition East Kentucky Power Cooperative. We will run it through the SI Committee and then the SI Committee -- if it's over your 5 percent in all probability I would assume the SI Committee -- and I don't want to get ahead of them too far, but they will send that to the Allocation Committee. You may -- may well get that through the Allocation Committee and get it anyway. It may not make any difference. Although I'm sure there will be stranded investment issue, but then I don't know that for a fact.

Q. But this letter that Dale Henley sent that you said was sloppily done.

A. Yes, I don't have that in front of me.

Q. That references since Salt River's request was within its load ratio it need not go to the Allocation Committee. You think that that is improper. That irrespective of whether the number is within or over the load ratio, that it would still need to go to the Allocation Committee and you are required on Board Policy 305 to say that?

A. Correct. So let me just specify. I think first off the Larry Hicks letter that Mr. Dale Henley wrote April 20, 2005, the two megawatt request that they made was still under their 5 percent. However he didn't take that into consideration. He only looked at East Kentucky Power Cooperative's 5 percent cap. And I don't think he took into any consideration -- the reason I thought it was sloppy, he didn't let anybody know. He didn't have it documented and he didn't let the board of directors know. And I think the board of directors need to know so that every system knows what is going on within our system.

Because no matter what -- no matter what power leaves, there is going to be some maybe almost minute and negligible, but there is going to be some impact to our power portfolio supply and they need to understand that.

Q. And on that score Mr. Crews' deposition testimony at least partially and in his answers to interrogatories that he signed off on, and maybe Mr. Mosier, and I think two or three people signed off on those, talked about really the only impact to East Kentucky for Grayson to do this is the revenue loss of a little less than 4 million dollars. Is that 3. -- I think he said 3.6 one time. Then he said 3.993 or something maybe in the answers to interrogatories. Let's call it 4 million. Is that your recollection?

A. Well, I saw those numbers, but obviously I don't know if the numbers are right. I don't know that those numbers have been scrubbed. They haven't been presented to me, but I mean it is a number that can be derived. You know, whatever that stranded investment is.

Q. And he said that it was just the only impact is that the loss of that revenue and that would be accurate, wouldn't it?

A. I think that's an accurate statement. The only thing is East Kentucky Power Cooperative will do everything we can to mitigate that. So it might be smaller than that actually. We will do whatever we can to mitigate that for you and the rest of our owners. So there is two costs, right, that -- potentially -- I'm just going to use somewhat of a hypothetical.

Let's assume Grayson gives us notice to buy their 15 percent. We take that to the SI Committee and the SI Committee would send that to 305 and you would get that allocation, then you transact and get your deal. We would have some stranded investment that would need to be mitigated and we would do our best to mitigate that for you as our owner and our other owners, but there is also a cost.

So that is why we have 18 months to try to mitigate that and then before you can come back, we have to have 18 months to mitigate that because there is going to be a -- you are never going to come back -- I can say this firsthand, you are never going to come back when markets are low. You are going to come back at the worst possible time when markets are very high and so there is going to be some costs to blend that back in that -- and that is what that 18 months really does. You are kind of pushing that owner out there.

Q. Let me interrupt you if I could and ask you does East Kentucky's deal with PJM change that in any way --

A. Well --

Q. -- on how that operates?

A. Yes, sir. It does change that significantly because there are some delivery issues that you will be doing with PJM. However, it doesn't change that from the Amendment 3 because the Amendment 3 we were in MISO at the time. So we have just really flipped from MISO to PJM.

Q. But the PJM deal makes it easier, doesn't it, as far as East Kentucky is concerned, doesn't it?

A. Does it make it easier? I don't know that I am qualified or experienced enough to say that it makes it easier for us, but --

Q. Okay.

A. I don't know that I know that actually.

Q. Okay.

A. I really need to think that through, but I think we're indifferent. I don't think it makes any difference either way. I know. I see. Okay. Now I get it. I'm slow apparently. So what it does make it easier -- I don't think it makes it any easier from the transaction or -- and it may be even maybe a little more complicated as far as you have got a lot of costs and, you know, you have costs that you are going to have to pay and watch and materially that is -- that is a challenge.

I had that challenge back when I was at Citizens, but when you are small and not have the staff to do that. However, it does make being in PJM or MISO in a market makes it easier for us to mitigate stranded investment. So I think we can do a much better job mitigating the stranded investment than we could when we were on our own.

Q. And certainly how East Kentucky works with PJM is not really contemplated in Amendment 3. I mean that is --

A. Well, it kind of is because it says you will pay all MISO. MISO is just a market just like this. So they were in MISO at the time. I think they got out of MISO when LG&E and KU bought their way out, I think that threw East Kentucky out. But I'm not sure, Mr. Scott.

THE WITNESS: Could I get a cup of coffee while you are --

MR. SCOTT: Yeah, sure. Do you all want to take a break?

MR. GOSS: The court reporter might want to. Let's take five minutes.

(Thereupon, a short break was taken.)

Q. Mr. Campbell, what does behind the meter mean?

A. Behind the meter means if you had that context that we're talking about means that if you had generation and it was operated behind the meter and serving all the load behind the meter but not having excess generation, that is where you would have to have a detented meter, feed it both ways.

Q. In a response to document request that I sent early October, I received the weekend before

Christmas in this case, I was looking at and there is in that response that your lawyers sent letters from other co-ops sending notice about exercising rights under Amendment 3 and things like that. Have you had discussions with Paul Hawkins in the year 2012 or the first past of 2013 concerning Farmers Rural Electric utilizing diesel generators for peak shaving or other purposes?

A. I don't recollect the conversation, but I'm sure I did. I'm sure I did. Certainly had conversations with Mr. Bill Prather, the CEO there.

Q. Do you know what is going on there with respect to those generators?

A. Well, I -- I'm sorry.

Q. Whether they are using or how that applies if at all to Amendment 3?

A. I'm sorry. I didn't mean to interrupt you. So I just found out about that I don't remember when, maybe mid 2012, early 2012. I didn't realize they were doing peak shaving and they weren't a part of Amendment 3 actually. And I think we were owned -- and this is really shooting from the hip a little bit, but I think they were owned by hospitals or something and then Farmers ended up taking them over. But I didn't know about it and I don't believe they had exercised their right under Amendment 3 at the time.

So my conversations were, hey, you have got these out here. You have got two issues. I don't believe this is confidential with them. You have two issues, one is RICE MACT and if you are using them to generate power, peak clip, and you are an electric utility, they have to be -- they have to be licensed by the Department of -- Kentucky Department of Air Quality and they had to be careful. I was warning them about that and then the new RICE MACT rules that they were going to have to comply with.

And the second thing I said, if you are going to have those and you can generate, you have to be under Amendment 3. You should run those through under Amendment 3 since they are less than your 5 percent and they did. But I -- that was a long answer to your question. I apologize. I don't remember if that was with Chairman Hawkins.

Q. How did you learn -- how did you learn of that?

MR. GOSS: I'm sorry. What was the question?

Q. How did you learn of that?

A. I don't know how I learned of that, but it got to me somehow because I didn't know about it. But I don't know who brought it to me, Mr. Scott.

Q. So is it your belief then, East Kentucky's belief and Tony Campbell's belief, that as a result of those conversations that you had with Mr. Prather, written notice then was sent to East Kentucky in an attempt to comply with Amendment 3?

A. Yes. I think they're complying with two things, Mr. Scott. One was they were complying with Amendment 3, but most importantly they were complying with the wholesale power contract.

Q. So were there some dollars lost that should not have been lost by East Kentucky as a result of them doing that?

A. No, there wasn't.

Q. Then how were they earlier in noncompliance with the wholesale power contract?

A. Well, first thing is the wholesale power contract says that everything that you sell to your customers will be purchased through East Kentucky Power Cooperative. That is our guarantee. Obviously we use that for our banks and when we buy assets. That is the first part.

The second part that you need to understand is if they are doing peak clipping -- when they were doing peak clipping with one of their owners, the end consumer, that is -- that is outside of the wholesale power contract. We can't stop that. To serve -- like hospitals serving their own load or whatever.

However, when they are doing peak clipping, which I think they were doing, we're -- that is within the wholesale power contract and they just can't do that. They have to stop that or we would have taken action.

The second thing is, and I'm sure this is your next question. I will go ahead and answer it. I have said that we didn't lose revenues and we didn't lose revenues because anytime owners peak clip, whether that be with a generator or whether that be with demand side management, that is cost shifting. We're still going to recover at East Kentucky.

So that is much like what this is. This discussion with Amendment 3 is if owners go over their 5 -- their allotted 5 percent, if they want to take up to 15 percent, what you have is cost shifting. Because no matter what, being a cooperative, you know, we're going to recover our -- whether we have to have raised rates or whatever, we are going to recover and make enough margin that we cover our loan covenants and the Commission will grant that, but there is cost shifting from that.

Now, in Amendment 3 there is cost shifting too, right. Still those are under Amendment 3, but in my mind first thing is I think that is what the amendment says and we don't have any choice and everybody agreed to that, but also every member has the same opportunity to do that with their 5 percent.

Q. What about their 15 percent?

A. Yeah. I think every member has the right to petition East Kentucky Power Cooperative for 15 percent and we will run it through and see what the Allocation Committee would allocate.

Q. What is it or where is it in Amendment 3 where it says that for a distribution cooperative to utilize 15 percent it must petition East Kentucky to do that?

A. Yeah. It -- and certainly I will concur with you that Amendment 3 is not well written whatsoever. However, there is two things, it doesn't say that, although when you look at the Policy 305, it was ratified by our board unanimously. Actually the person that made the motion was from Jackson Energy at the time and they were petitioning for 40 megawatts.

And all of our board members say, yeah, that is how we're going to operate Amendment 3 by. That was a 305.

On the other hand Amendment 3 also doesn't state that an owner can go up -- can necessarily get their 15 percent. It just says you can't go over 15 percent. So it's not a -- in my interpretation, and I'm not an attorney, but my interpretation, it doesn't say you can necessarily get 15 percent. It just says you can't go over 15 percent.

Q. Wouldn't you take the language that says, "shall have the option from time to time with notice to the seller to receive electric power and energy provided at the aggregate measured in 15 percent -- or 15 minute," blah, blah, blah. That "shall" and "option to receive," does that not imply that it grants a right to the 15 percent?

MR. GOSS: Note my objection as to the question calls for a legal conclusion and the witness has not been -- has stated that he is not an attorney. If you can answer the question, go ahead.

THE WITNESS: Well, all I can -- I'm not an attorney, but all I can say is that my interpretation is that it doesn't say you can necessarily go up to the 15, but it certainly says you cannot go over the 15 percent. But maybe my interpretation is incorrect.

Q. And as a matter of fact, you would agree, would you not, that with the Public Service Commission's order of July 2013 wherein it said, among other things, that there is no requirement in Amendment 3 that East Kentucky must grant permission to receive the 15 percent?

A. I would like to see the language. I don't remember it.

Q. Okay.

A. Right off hand if we have that please.

MR. GOSS: If you want to point to that, then I am happy to show it to him.

THE WITNESS: I apologize. I just don't remember that document well.

MS. SCOTT: See if I don't spill my coffee here whether I find it.

MR. GOSS: Jeff, I think your question is correct up to the point where -- up to the point were you said 15 percent. I think you're right. I think the Commission said that East Kentucky --

MR. SCOTT: Well, that was the very last thing I stuck in here last night.

MR. GOSS: I'm trying to find it myself.

MR. SCOTT: So I would make sure that I had it. Here we go.

MR. GOSS: What page?

MR. SCOTT: July 17, 2013 --

MR. GOSS: I can show it to him, if you

just give me the page number. I have got it here in front of me to show him.

MR. SCOTT: Let me find it.

MR. GOSS: If you go to page 16, middle of the page. This is off the record.

(Thereupon, an off-the-record discussion was had.)

Q. If you look there, your lawyer has found it for me there. I believe it says about the middle of the page, it is in the second paragraph that starts with "under Amendment 3", blah, blah, blah. But I believe there is a sentence there that says, "however, a review of Amendment 3 does not reveal any requirement that a member's purchase of power from an alternative source be approved by EKPC."

A. I see that sentence.

Q. I don't know if that is an actual finding by the Commission, but at least it's a -- it could be determined to have been a finding. At least it's -- it's some dictum in there. But do you agree or disagree with that statement?

A. Well, I don't know how this is -- I don't know the context that this statement is made, but I guess I've got to get back to my interpretation of Amendment 3 -- my interpretation of Amendment 3, like I said East Kentucky doesn't have a bone in the fight. We are only exposed to losing 5 percent. Is that I'm hoping that it's fair and equitable to all of our owners as the load is dispersed. If the Commission determines that that is fair and equitable, then I will certainly accept the Commission's ruling.

Q. Well, I would expect that. But now I've got to go back and see what started all of this. What question started it, but --

A. You know, the MOU was another avenue that -- so let's just go through the process. I asked Jackson to withdraw their request for the 40 megawatts 7 by 24 deal and was trying to fix Amendment 3 because we knew there was different interpretations of Amendment 3.

However we were using East Kentucky's interpretation. And so then we came with Amendment 5 and that failed, clearly failed. And then four of the CEOs, our owner CEOs tried to fix Amendment 3 valiantly. And that avenue failed. And I don't remember what they called that. And then all the owners, all the CEOs, our owner CEOs got together and I backed away. I purposefully backed away thinking that I might be the lightning rod that wasn't allowing this to get fixed and they derived the MOU.

Now, my interpretation of the MOU is that it's not necessarily fair. However, as I have said, East Kentucky Power Cooperative doesn't have a bone in the fight if all of our owners construe that the MOU is fair, then we will be all right with it and we will say that it is fair and I think the same thing with the Commission. If the Commission --

Q. And I think you said that way back in May or June of 2012 at East Kentucky in some meeting you said that when there was -- maybe it was the Strategic Issues Committee that I was at you said, "you guys figure it out." Pointing to the distribution cooperative. "You guys come up with something."

A. Probably didn't say it that way, but I certainly said --

Q. I mean words to that effect.

A. If all of our 16 owners get together and construe fairness, I'm fine with that certainly.

Q. But you said there, Mr. Campbell, we knew that there were other interpretations to Amendment 3.

A. Yes.

Q. And if Grayson Rural Electric gets 9.3 megawatts of power onto its system from Duke Energy or John's Electric Company or whoever it is and no other entity within East Kentucky system has asked for any outside power other than these that are disclosed, Jackson's two or whatever, and the differences to East Kentucky is 4 million dollars in revenue over a course of a year and East Kentucky has margins of 60 million dollars or 50 million dollars over the course of a year. What is wrong with that?

A. Are you asking Tony Campbell or are you asking Tony Campbell East Kentucky?

Q. Either way -- however you want to answer it. Just tell me which way it is when you start answering it.

A. So I will answer it as Tony Campbell East Kentucky since I'm here being deposed as East Kentucky. To East Kentucky Power Cooperative I think we're indifferent. It's just all -- all we are bound by is try to be fair and equitable and I think the fair and equitable part in Amendment 3 is our interpretation. However our owners that don't interpret it the same, I hope can come up with a resolution to what they consider fair and equitable and I don't have a bone in the fight then.

Q. Are there owners who with that scenario that I just gave, the scenario that Grayson is seeking here, are there owners that you think disagree with that occurrence? Even though they at this point have not sought to use any of their allotment?

A. I think that is a great question. So my interpretation of the MOU and everyone that signed it, and even Grayson initially had approved it. The only one that I can't speak for is Salt River. They didn't approve it at all.

Q. Now, wait a minute. Nobody signed an MOU, did they?

A. Or approved it I should say. I'm sorry. Approved the MOU. All of other owners approved it except for Salt River and Grayson did originally or initially. I think -- I don't know that any owners other than maybe Salt River and I don't know -- I don't want to speak for Grayson. I don't think that that is a problem.

Q. Have you told me all you know about the Farmers' generators and the conversations and I could ask you more pointed questions, but if you can tell me that whatever you recall about all of that you think you have told me, I will shut up about it.

A. Well, I believe you know everything that I know there.

Q. Now, don't be so sure of that. But just what you have said here today you think is all you know about it?

A. That's all I can certainly remember, yes.

Q. What do you know, if anything, about -- I believe that was this year or -- strike that. 2013 where discussions were held with Salt River regarding their, I think they call it Lock 7, and East Kentucky deciding well, they are going to bill you for some things and then maybe decide they are not going to bill you and then some letter that maybe Mr. Crews sent to Salt River explaining a new arrangement. What do you know about any of that?

A. Well, let me just tell you what I know. I'm assuming that is what you want me to do.

Q. Yeah.

A. So that stems back to Jackson Energy's request for the 40 megawatts. When they requested the 40 megawatts --

Q. All roads lead to Jackson.

A. Yeah, they do because that opened the door. I wasn't even paying attention to Amendment 3. Then when that happened, all of a sudden I really started opening all the books and all the doors and turning over all the stones and that is when I started running into, hey, we didn't really have a good methodology of doing this. We weren't even tracking it. Doing it very haphazardly. And I find that disheartening for East Kentucky.

So then I found out that we had their Lock 7 and then I started taking a look at the Lock 7 and I felt that they were being subsidized by other of our owners. And I contacted Larry Hicks and I said --

Q. When did you do that?

A. Oh, boy, it was a long time, Mr. -- ago, Mr. Scott. I'm going to guess 2000 and -- I'm guessing, totally guessing, but maybe fall of 2011 or, you know, when I finally dug into it and found out what was going on, maybe the summer of 2011.

I contacted Mr. Hicks and said, look, I get that you are doing this and we don't have a problem with that. I mean, you know, it wasn't done very well, but you're still under your 5 percent. Plus it was, you know, I mean to a certain degree you had to grandfather. Couldn't go back. But I said the transmission is clearly a subsidy, being subsidized by all the other owners and that is just not fair and equitable.

So then Mr. Hicks came in with the -- his partner on the Lock 7 and we had a long meeting with them complaining that, hey, we had a deal. So I informed them to get all the paperwork they had on the deal. If they could prove to me that East Kentucky Power Cooperative had signed a deal where we were going to pick up that transmission and it was going to be fair and equitable. He couldn't supply anything. He said everything was verbal. And then I contacted the people he said it was verbal with and they disagreed that that was their understanding.

I don't know if that is true or not, but at any rate then I went to Don Mosier and David Crews and I said we've got a transmission issue and it's not fair and we've got -- we have got to fix this.

Q. When did you do that?

A. I'm going to guess that was probably the summer or fall of 2012. What we did, they went to Mr. Hicks and gave him notice that we were going to change that transmission. He asked for an opportunity to get that through KU because he said he knew the CEO of KU real well and he can get all -- because that is who it was flowing across.

Their power was flowing across KU. There was a wheel there that was being subsidized by our other owners. And I said we were not going to do that. That that -- we just will not do that, allow that. So he said I know the CEO of KU and he will do this for free and chastised me quite a bit. And so we gave him an opportunity then to go to KU and get this deal done.

He never called us back. Never called us back. Then I finally had it in my tickler file. Came up. I called David Crews and/or Don Mosier. Maybe it would have been Don Mosier first, but I said go to Larry and change it. Don't care what you got to do. Fix this. We're not going to continue to pay this.

And then I don't remember what that came to fruition, but it was 2013 when we started telling Mr. Hicks, hey, this is the deal. We are going to change this. You have to pay at least this wheel.

Q. It looks to me like in documents that I received in December of 2013 that there were some arrangements reached between East Kentucky and Salt River in the summer of 2013?

A. Yeah, I would say -- I would say spring or summer.

Q. And those arrangements are what as initially and what did they become if they changed from what they were initially?

A. I don't know that I'm the guy that can tell you that because I didn't -- I didn't consummate the deal or approve that deal. I just wanted them to pay it, but I don't remember. David Crews is the fellow that handled that and maybe Don can shed some light on that for you.

Q. Well, you told David Crews or Don Mosier to fix it?

A. Yeah. It needed to be fair and equitable.

Q. Do you know if it got fixed? Do you know if it got fixed?

A. Yes.

Q. And how were you informed that it got fixed?

A. That they -- that he was going to begin to pay some portion of his transmission obligation to make it fair and equitable.

Q. Do you know if they are paying it?

A. Yes, I do know. They are. They are doing it begrudgingly, but they are doing it.

Q. And that commenced July or August or when did that commence?

A. I don't recollect, but I would say sometime in there. I know initially Mr. Hicks had refused to pay and there was some discussion on what our actions would be and I told him I would carry out my fiduciary responsibilities to the cooperative.

Q. Your lawyer sent me December 2 and then again on December 17 a copy of a May 9 letter from David Crews to Larry Hicks regarding this topic and there was some billings attached. There were some billings attached. Sounds like I'm from Carter County.

MR. GOSS: Jeff, was that in response to your request following David Crews' deposition?

MR. SCOTT: Yeah. Actually David Samford's letter is December 2 and your letter is December 17.

MR. GOSS: Yeah.

Q. And there is just -- and there is discussion in there about NITS and all that kind of -- OATT and all that stuff that I --

A. Point to point and I think they were negotiated should it be point to point or should it be NITS. And as I recollect, and I am really recollecting, but I remember, you know, we wanted to be fair and equitable on both sides and Larry was pointing out some things, but I was told it was -- it ended fair and equitable and they were paying.

Q. Let me get to what I'm really after on this thing just to see if I understand all I know about it.

MR. SCOTT: Do you have the August 22 letter, Mark David, from David Crews? Actually it's basically I hate to say memorandum of understanding, but it looks like it's a letter where -- that you sent me December 17?

MR. GOSS: Yeah, and believe it or not I think that is about the only document I don't have in my notebook. I didn't include that. So if you could show it to him.

Q. Let me show you this. This was sent to me by Mr. Goss under cover of December 17. And it appears to be a letter of -- I think it's called letter of agreement or something like that where Larry Hicks and Mr. Crews both signed acknowledging an arrangement on this matter. Is that basically what you think that is?

A. That is what I would interpret this to be.

Q. Have you seen that before?

A. Yeah, I have. I don't recollect it, but

I'm sure I did. Because I was pushing hard to get this done.

Q. Read that first sentence there.

A. "This letter is to confirm our discussions of July 17, 2013."

Q. Well, shot, let me -- yeah, see where I have marked that? That is my markings there. "EKPC has worked with PJM to have the Lock 7 resource be treated as a behind the meter resource at the PJM treatment coupled with the Amendment 3 MOU." And I have made a remark there. How -- how is the MOU applicable there?

A. I don't know. That is a good question, Mr. Scott, that I can't answer. But I can certainly find out.

Q. I'm just tickled to death that about four times you've said those are great questions. Why would the MOU be applicable?

A. I can't answer that.

Q. Let me ask you if it might be this. Might it be that if the MOU were in effect, then this arrangement would be within the MOU, but if it is not in effect, then it would not be appropriate and would be in noncompliance with

Amendment 3?

A. Yeah. I think -- I think I need to check this out because I want to make sure Mr. Hicks is paying everything he is supposed to be paying.

Q. All right.

A. I'm sorry I can't shed more light on that.

Q. That's good. That's good.

A. I want to know too.

Q. Tell me what distributed generation is or what that means. What that term means.

A. Distributed generation to me means smaller -- not the mainframe generation that we have. Smaller generation is distributed out closer to the load to the system. A lot of times it can be behind the meter, but it doesn't necessarily have to be behind the meter. And a lot of times end consumers can have it or even our owners could have distributive generation. Distributed throughout system. It really just kind of means what it says.

Q. If a distribution cooperative had one of its members use solar panels at their let's say home and is that distributed generation?

A. I think that could be construed as distributed generation.

Q. If a member system of East Kentucky Power had generators that were behind the meter utilization, does East Kentucky believe that that is something that must come within the purview of Amendment 3?

A. Were you saying our owners have that?

Q. Yes.

A. Yes, it has to because the wholesale power contract prevents any of our owners from generating and selling retail.

Q. So behind the meter doesn't change that at all?

A. Doesn't make any difference.

Q. If it is -- if there is a member owner of East Kentucky that has a generator that is declared or stated to be used solely where there is an outage or something like that, is that something that is within Amendment 3? And does that exist anywhere?

A. Yeah, I think that does exist. It probably exists at a lot of our owners that have generation for their facilities and I think that is outside the wholesale power contract because they are not used for peak clipping and things like that, but just for a backup generation source.

Q. Redundant?

A. Correct.

Q. How does East Kentucky monitor that, if it does?

A. Well, you know, that is always a challenge with every G&T is how you monitor that and I think some of these things kind of happen over time and we don't know about it and I think we just need to do the best we can to try to find out if somebody is utilizing distributed generation in counter to the wholesale power contract. But we don't have a clearcut way. We don't -- we're -- we don't make everybody sign everything every year that you are not doing that. So we hope that everybody enjoys the cooperative principles and doesn't do that.

Q. Are there one or two of these generators at Farmers that are -- did I see there where one of those was supposedly just for backup or did I make that part up?

A. Well, I'm talking beyond what I really know, but it is my understanding they were for backup and their end consumer went a different direction or left and they were just left sitting there. But I believe -- I believe --

MR. GOSS: Here is the letter that says for backup -- for emergency backup service. That is the first letter.

THE WITNESS: Okay. My counsel Mr. Goss has given me a letter from Mr. Prather to our chairman that says they were for backup. Oh, it says they are -- the units are used to provide emergency backup service.

Q. So why is it --

A. And to an industrial member and for peak shaving conservation. The units are owned though by Farmers Rural Electric Cooperative.

Q. And there is another one though that is owned by East Kentucky or their plan is to have one that will be owned or is owned or will be owned beginning in 2015 by East Kentucky. What is the deal on that?

A. That is a landfill. That -- and I was a lot more involved with that. That is going to be a landfill project that's at the city landfill that they have. East Kentucky -- well, it wouldn't be a profitable if Farmers couldn't run that through Amendment 3 and avoid our cost at the end. Keep that under their 5 percent.

So East Kentucky is going to own that and operate that, but we won't take any risk. All the risk will be shed to Farmers. So Farmers really ultimately is doing that.

Q. How is the Green Valley landfill work up our way? How is that --

A. The Green Valley is owned by East Kentucky Power Cooperative as just exactly a part of our power supply portfolio.

Q. What is the production there?

A. I don't know. Specifically on that one I can't tell you. But overall we're generating about 16 megawatts and a lot of credits. We have a lot of credits there, but that's all I know.

Q. Let's talk just for a minute. I'm about through, Mr. Campbell, but tell me how PJM -- well, strike that.

There was -- there was a letter that I

think Miss Fraley sent you several months ago about any documents that East Kentucky has executed concerning its involvement with PJM and I believe you responded and said here they are and you had I think maybe a cover letter with it or something. And then you said I believe that there are other documents to be signed or words to that effect.

A. That letter came from me?

Q. I think it was from you.

A. I don't recollect that letter.

Q. But anyway, to the extent that you can, do you think you and your counsel could gather up whatever documents there are that set forth East Kentucky's involvement with PJM and make a copy and send that to us. You sent a couple, but I seem to recall a reference that there is still something to be signed or something like that and this goes back maybe even before -- I think you started -- was it July or June when you --

A. June 2009. Who me?

Q. East Kentucky.

A. I thought you meant my start date.

Q. East Kentucky into PJM.

A. Yes, June 1, 2013.

Q. And this was in that time May maybe or even April, but -- and you said there were -- I believe that there were other documents to be signed.

A. Yes.

Q. And could you maybe take a look and see what there are.

A. Sure.

Q. And make a copy of them and send that to us?

A. Sure. There were lots of documents that had to be consummated and those are all done.

Q. You sent two or three and then I think you referenced that there were others. Tell me how PJM works. Tell me what -- how that deal gets done and how the power gets distributed or I guess transmitted rather.

A. Well, PJM is just a market and PJM has been in existence for a long, long time. Probably the oldest market in the United States and probably the most successful market so far in the United States. But what happens there is we still own our transmission system, we still own our generates and still have the load, but PJM actually manages all of that for us as a market and our transmission system at the high voltage level they do, but not the subtransmission or any of our distribution owners systems.

Every day they have a day ahead and then the realtime market. And you have to pick your own strategy. Every day we bid the load in as we expect it. We do mostly day ahead because we are very conservative and we don't want to speculate. Then we will bid in the day ahead. They will go out to the market -- we bid in our load and we bid in our generates.

So we have really separated them completely. Our load is completely separated from our generators now. And our generators are truly just a hedge against our load. Every day we will bid those in and PJM with start down through the generator list and they will say, okay, we got this load to serve with day ahead and they will keep picking these generators and say, okay, we are going to run this one tomorrow, this one tomorrow, and this one tomorrow. And then you will get to the bottom, and they will say we don't need these depending on what the day is like. Recently they have been saying we need everything.

Q. And that is based upon the cost of generation that they --

A. Yes.

Q. -- they would -- PJM would look at the cost of production of one generating plant being higher than another and then use that data to base their decision?

A. They go from the lowest cost to highest cost. Always start that way. And of course there is a lot of other things that go into that. You know, depends on where the generation is, what the transmission constraints are to get that generation to the load. I mean you can't take something from here and serve New England, right, because of all the transmission congestion.

They take all those things into consideration. So then you get a price and you are going into the real day. Then you start to settle out, right, because we project what our load is, but sometimes weather systems don't come in or humidity may change, whatever it is or maybe a Gallatin goes offline, something like that. Our load doesn't match the day ahead and it may not match under or may not match over.

So then that is settled in the realtime market. And the realtime market is same with the generators have a realtime. They may call on more generators or they may call on less generators. If they call on less and you're scheduled to run, you know you are going to get paid whatever that amount is because all the load is going to be paying for that.

If they come in let's say they need more, they call on extra. Then they will do an economic dispatch and it is whatever -- it's whatever the market bears for the generate -- for the load that didn't get predicted right and for the generator that wasn't called on. So then it settles out every day.

So we're -- we have a team that is strategizing every day trying to make sure that we match up and make sure that we hedge. So the -- the nice thing -- there is a lot of things about PJM. One of the nice things is if we have excess generation, we can sell it into the market to somebody that is away from here. And we did that last summer. But then in the market like when it's really cold, like and we need everything we can get, we can import. And we have kind of -- we have kind of done away with those boundaries around us. PJM allows us to import because we can just buy people. They have to serve that load. Although the cost is whatever it is every five minutes. I mean the costs change.

And so then the hedge is -- I lost my train of thought. The real hedge is our steel in the ground. That is our hedge. And it may be at $35 or $23 or whatever it is, but if the market happens to be less than that, we will idle these plants. And I mean that there are other numbers that go into it. Like you can't idle a coal plant and bring it back without spending a lot of money heating it back up. We will idle those and we will buy from the marker to exploit that for the end consumer. Did I confuse you?

Q. Like Spurlock -- Spurlock runs more than the others; right?

A. Spurlock is our least cost asset and actually Spur 3 and 4 are the least cost because they can burn the lowest cost coal. So the fuel is so cheap. Spur 1 and 2 are a little bit higher, but they are our next least cost and they run almost all the time. Although in off peak times during the fall and the spring we have seen some potential opportunities to idle either Spurlock 1 or Spurlock 2.

Now, there is a lot that goes into that strategy other than just price, right. When we idle that, we also serve steam to Inland Container up there and we only have two units that can serve steam. Unit 1 and unit 2 and unit 2 is the traditional one. It's a 550 megawatt generator and they have grown so much. It really works better if they are on unit 2. So we have a little concern if we really start to idling that we need to keep our steam going to them. They are paying for that.

Also we don't want any hiccups when those units come back on. And there is also a maintenance analysis that we do. You know, when you ramp these coal units up, they don't really like going up and down. They kind of like being taken to the top. So it costs us a little bit more. We have to bill that into our scheme. So to make a long story short, mostly those units run full out all the time.

Q. Except when they are -- you do the maintenance?

A. Maintenance.

Q. You got to bring them down for that.

A. Yes, sir.

Q. Then will you pick up with Cooper or -- I mean whatever else --

A. Well, it could be the market. You know, because traditionally when we are doing maintenance id spring and fall when the load is really low and we will replace a lot of that with the market.

Q. Speaking of the steam, has -- who pays -- does Fleming-Mason pay that?

MR. GOSS: Do you understand the question?

THE WITNESS: I do understand the question. I just don't know that I know the -- remember the answer. And I should because we just worked on that, but I know they do the electric, but I think the steam is direct.

Q. To Inland?

A. To us. East Kentucky to Inland. I believe we bill that directly because there are no margin put on. I know that for a fact. I remember that. There is no margin put on there by Fleming-Mason. It is direct from us. But I don't think we bill that through Fleming-Mason, but that is all I can remember.

Q. Can you take a look and see?

A. Sure.

Q. Maybe and any documents that would evidence that.

A. We can get back with you on that.

Q. And then you mentioned --

MR. GOSS: So you want to know specifically what --

MR. SCOTT: Correct, the billing on that.

MR. GOSS: Billing reference. Okay

Q. And is there -- is that anything that -- did the Commission have to approve that arrangement?

A. Yes. The Commission approved that contract and arrangement.

Q. Do you know about when that was? How

long that has been?

A. Well, initially, no, I don't remember, but it has been over ten years. I know that. So with have just had a modification, not really a modification, but it has just been reapproved by the Commission just recently, the contract.

Q. Yeah, yeah. And then there is another special contract with Gallatin; right?

A. Yes.

Q. And how is that done?

A. That is negotiated. That is a three-way contract -- well, actually -- oh, I'm getting confused. I want to back up. Let me say Gallatin I know for sure is a three-way contract between --

Q. Owen.

A. -- Owen, East Kentucky and Gallatin. And we still sell through Owen. So they take the risk. If Gallatin wouldn't.show up to pay their bill, it would default back to Owen. They would still owe us. But it's a three-way contract because it has nuances in the contract.

Q. Do the other distribution co-ops basically help pay for that?

A. So you are asking if there is a subsidy?

So before we consummated the new contract. So that contract expires every so often. Before that one was consummated, and I don't remember the date on that, maybe the end of 2010 I believe. So we went from a ten-year contract to a five-year contract now. And I believe it was consummated in the fall of 2000 -- Septemberish 2010 and approved by the Public Service Commission.

There was some subsidy going on because the contract didn't cover some of the environmental -- actually Owen had some environmental -- they were losing money too. But with the new contract there is no subsidy. Now, I will say we don't make a lot of margin off of Owen or off of Gallatin. I think we should make more when we have another contract, which will be coming up here soon. We will -- because our cost of service says we need -- but we are not losing any -- there is no cost subsidization there now.

Actually I follow that quite closely. I mean, you know, every year at least or not -- six months, I will be asking what is our margins on this account.

Q. And East Kentucky's margins for 2013

were what?

A. Well, we don't know for 2013 because our books just closed and we're in the process of working through all the depreciation.

Q. Was there not just a board meeting yesterday or day before or some kind of --

A. Yesterday was our board meeting, but remember we close -- we close our books and then it takes a while to get the numbers. So yesterday our board was looking at our close of November. But we haven't -- we just closed December and our accounting hasn't got that all --

Q. So close the November looked like what for margins?

MR. GOSS: Hold on a second. Is that -- I mean I know you don't mind Grayson knowing, but is that confidential in any regard? Somebody that might be reading this transcript, is that something that --

THE WITNESS: Well, it's going to be in our annual report.

MR. GOSS: Okay. Fine.

THE WITNESS: It will be in our annual report. So just at the close of November, which it wouldn't be specific. It would be close of December, but we were at about 61 million as I recollect.

Q. Hey, speaking of yesterday or day -- maybe it was the day before. Was there some kind of Strategic Issues Committee meeting that was going to discuss this distributed generation that we talked about a minute ago? Maybe some proposed modification or something like that?

A. Well --

Q. Or do you know?

A. Monday was a challenge because we moved both of our Board Risk Oversite Committee and our Strategic Issues Committee to the exact same time in the afternoon because it was so cold. So I didn't -- I was in the Board Risk Oversite Committee, but I think Don, he's the liaison to the strategic issues. He could probably answer that for you much better than me.

Q. Mr. Ericton's deposition was Monday morning. He said he had to get down there and he thought there was some discussion on that, but he didn't know what it was going to be. So I just wondered if -- you think Mr. Mosier would know if there was or not?

A. Yeah. What I do know is everything would have been informational. The only one thing that the Strategic Issues Committee --

Q. Not an action.

A. -- voted on, but that wasn't that issue.

Q. Okay. Is it accurate that there were no -- let's go back to this Salt River thing. That there were no charges billed to Salt River prior to June 1 of 2013?

A. That is accurate.

Q. Is that something about which there should be some inquiry by East Kentucky on whether or not that is something that recoupment should be made or some kind of adjustment or something like that?

A. Well --

Q. In other word if it was --

A. I know exactly what you are saying. I know exactly what you are saying and I -- you know, the sad thing is we were a little sloppy on the front end at East Kentucky unfortunately and we are kind of trying to clean these up. Should we go back and say, well, Salt River needs to pay more?

Q. But for Grayson filing this complaint, it may not have been brought up.

A. No, no, no, no, no, no. That was a done deal anyway. He knew he was going -- way before you filed the complaint I had already gone to Salt River and said this is not fair. You have got to pay transmission. The question was what magnitude and when would he start.

Should he pay back transmission? I mean I guess one could go either way on that. To a certain degree me as CEO of East Kentucky kind of said, look we have had sins in the past. We are turning over all the rocks. We are going to correct this for all of our owners and make it fair and equitable. And I didn't go back on that, but one could certainly say that we should maybe. I don't know.

Q. But whether -- whether you should or shouldn't, whether East Kentucky should or shouldn't, you East Kentucky and you as CEO of East Kentucky said, well, let's at least start it now. Let's at least go forward.

A. Yes.

Q. Whatever should -- whatever did not happen, let's at least start now with what we think ought happen going forward?

A. Clearly we have been cleaning up since 2010. Absolutely. I mean as I said initially, you know, I feel that I have a fiduciary -- an ethical responsibility to all of our owners that it is fair. Has to be fair. And if I find out there is a not fair, it is my fiduciary responsibility to fix it.

Q. Can you get me documents -- Mr. Goss or maybe it's Mr. Samford in his December 2 letter attachment, had the billing to Salt River and it looked like the November billing was very minor. I'm not sure I understand why its amount was so much different. But can you get me through your lawyer documents evidencing what has been paid? I saw that billing, but I would like to see what has been paid.

A. Sure. I think we can. And I'm going to look into the MOU language in that.

Q. And this letter that you looked at that had the signature of Mr. Hicks and Mr. Crews, this letter of agreement, is that the way agreements are done with distribution co-ops or is that something that maybe ought have been approved by the board rather than Mr. Crews and Mr. Hicks cutting the deal?

A. Well, I think -- you know, I think --

MR. GOSS: First of all note my objection to the phrase cutting the deal, but go ahead and answer the question.

THE WITNESS: Yeah. Thank you for objecting to that because I don't think it was cutting a deal.

MR. SCOTT: Well, it was kind of cutting a deal.

THE WITNESS: But it was certainly cleaning up a mess.

MR. GOSS: That's your interpretation. I think the phrase is incorrect and unfair, but go ahead and answer the question.

THE WITNESS: So at East Kentucky Power Cooperative we have authority levels and I think we have to do that and try to get things done. Should we take that back to the board and have that approved? Well, I guess that gets back to kind of Amendment 3. Are they going to approve everything on Amendment 3 or are they not? They were made aware of it, of the correction to the transmission cost. But I don't -- but I did not take it to them and have them approve that document.

Q. Similarly the Farmers' situation was not how that got --

A. That was taken back to the board.

Q. Oh, it was?

A. Yes, and approved, yes, sir.

Q. Do you know when that was? 2013?

A. I don't recollect. It was 2013, yes, sir.

Q. So this Lock 7 matter even back in '05, that was not anything that East Kentucky ever quote, unquote, approved, was it? Basically just kind of acquiesced?

A. Well, Dale Henley it looked like approved it, but I don't believe that that is a very good way to do it.

Q. So it was kind of acquiesced rather than formal approval?

A. Yes, it was not formal.

Q. Mr. Campbell, I might be through. Could we have a couple minutes here? I might be through.

(Thereupon, a short recess was taken.)

MR. SCOTT: I am through with Mr. Campbell.

MR. GOSS: For the record, Jeff, let me make sure that we are on the same page in regard to what I am supposed to provide you because I don't want to leave anything out. The first thing I have is we are going to provide notices sent to Grayson providing the cost of all power to Grayson for the four years, 2010 through 2013 inclusive.

The next thing we're to produce is written notification by RUS of Amendment 3s approval.

MR. SCOTT: Correct.

MR. GOSS: Notification given to East Kentucky which probably would have been sometime in 2003.

Next we're to produce all documents which were signed by East Kentucky and PJM in order to finalize East Kentucky's integration into PJM.

And then the final thing -- no, the next to the last thing we are to produce.

MR. SCOTT: The Salt River --

MR. GOSS: Any information describing how billing is handled for the Inland Container steam service. And then we're to produce documents which show what Salt River has actually paid for transmission since this arrangement in the summer of 2013. Is there anything else that I missed?

MR. SCOTT: No.

MS. FRALEY: Did you want Gallatin special contract. I've got down special contract.

MR. SCOTT: I didn't ask for that.

MR. GOSS: That's all.

MR. SCOTT: Because he said that there was no payment made before June of '13. So it would be just --

THE WITNESS: For transmission?

MR. SCOTT: Correct.

THE WITNESS: That is right.

MS. FRALEY: And you have got the most recent cost of service study.

MR. SCOTT: Cost of service study is filed in the 2010 167.

MR. GOSS: So the only other thing, there has been a lot of documents that have been referred to. Are you going to move for their admission or --

MR. SCOTT: Nah.

MR. GOSS: It's your deposition.

MR. SCOTT: No. They will eventually make it in.

(Thereupon, the deposition was concluded at 12:36 o'clock p.m.)

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION
CASE NO. 2012-00503

In the Matter of:

PETITION AND COMPLAINT OF GRAYSON RURAL ELECTRIC COOPERATIVE CORPORATION FOR AN ORDER AUTHORIZING PURCHASE OF ELECTRIC POWER AT THE RATE OF SIX CENTS PER KILOWATT HOUR UP TO 9.4 MEGAWATTS OF POWER VS. A RATE IN EXCESS OF SEVEN CENTS PER KILOWATT HOUR PURCHASED FROM EAST KENTUCKY POWER COOPERATIVE UNDER A WHOLESALE POWER CONTRACT AS AMENDED BETWEEN GRAYSON RURAL ELECTRIC COOPERATIVE CORPORATION AND EAST KENTUCKY POWER COOPERATIVE, INC.)

CERTIFICATION OF THE COURT REPORTER

I, Nicol L. Voiles, Stenotype Reporter and Notary Public within and for the Commonwealth of Kentucky, do hereby certify that the foregoing one hundred and fourteen (114) pages is a true and correct transcript of the proceedings had in this matter, as herein above set forth, and that I have no interest of any nature whatsoever in the ultimate disposition of this litigation.

Nicol L. Voiles
Stenotype Reporter

MOU DISCUSSION

September 9, 2013

Item 2 – Review and Approve MOU

Lonnie Vice – we talked about last month, we discussed in committee and also in the board room. We are here to ask questions and approve that if that is what committee chooses to do and take to full board for tomorrow. Is there any discussion?

Landis – on S 24 the fourth whereas (may be getting cart before the horse) just one little typo there I think - it reads that we will address the issue equity between the owner members – I think that this should probably read the equity issue shouldn't it.

David – I think we can make this change. I leave up to Sherman (who drafted it) to defend this language.

Landis – looks like it has been flipped.

Sherman – yes, that is not a problem.

David Crews – good with that change. I mean the MOU hasn't changed since the last meeting.

Buddy – how has Ken and them rescinding their vote going to affect it?

David – until all members are willing to sign it won't be able to be ratified. But at this point I think it is prudent for the Board to carry through on the MOU because I think this is where EKPC was working with the Commission and the Commission was encouraging EKPC to act on this matter. To be in alignment with what we have been representing to the PSC it would be good for the board to move forward with it.

Buddy – do you have any comments Ken?

Ken – I think there were some issues there where they felt like it was just an opinion – than a iron clad fact and I think that they felt like they needed more time on those issues at this point.

Lonnie – was there a specific issue?

Ken – not sure about that. I am not sure exactly what the issues were.

Lonnie – any other comments? From a committee standpoint.

Bill – I am a little confused about what we will be accomplishing as a committee without having all 16 participating.

Lonnie – as David said we are not going to ratify the MOU if we don't have that on there, but it does somewhat say something about what this board intended to do as a whole, in in fact that is what they choose to do.

SOUTH KY RECC
EXHIBIT 8

David Crews – the issue is that the PSC has given EKPC and its members a certain amount of time to attempt to resolve this. At one point this was agreed to by all the CEOs. All CEOs agreed to it and as such we moved forward with it and in moving in that direction. I think that was what was represented at the PSC and what it does at the PSC standpoint it shows that EKPC is not the constraint in getting this resolved and it shows that I am sure when it gets to the PSC the PSC will want to know which members are the ones that are not signed on at this point. I think it is important for EKPC to move on it so they can show they are supportive of the MOU and tried to resolve this amicably amongst the membership.

Tony C. – can I throw in my 2 cents. My position is that EKPC is constrained. Especially me and really all my staff have a fiduciary responsibility to fairness – fair and equitable for all owners. The MOU is outside of our realm. In theory, our 5% of our load is the max that can be lost. So we don't have a lot of skin in the game. It is really a member to member and if you can define (and that is what the MOU defines) something that is fair that all the members agree to. I think we need to approve it to take to the PSC and clearly the PSC has their noses under the tent. They are going to make a decision and I think if we approve it – it will be 15 of the 17 and is contingent upon everybody else approving it. If everybody else doesn't approve there is no way it can be enacted. Then we are still back to Amendment 3 and the PSC will take a look at everything and I am sure that Grayson will respond to the PSC on what their problems are and the PSC will make a ruling. I don't personally think the PSC will go against 15 members. Thinks important for us to approve and send to Commission and let the Commission fight it out?

Bill Shearer – is there someone else besides Grayson?

Tony – Salt River.

David Crews – it is my understanding is that Salt River had a board meeting Thursday but they did not bring up MOU to vote on

Tony – no, it was brought up and discussed at AGGNOSIUM (sp?), but their board didn't approve.

Mark Stallons – is it fair, I believe, trying to remember I don't think Salt River intervened is that correct. (That is correct *added*) So Salt River really will not have any standing so to speak in the case in order to come in and offer testimony in support or lack of support of the MOU. It may be fair to assess that they are basically standing on the sidelines waiting to see what happens in that case. If EKPC approves the MOU today, basically we have the vast majority of the coops that have approved it and all go to the PSC united and I think it makes us as an EKPC member owner family look better rather than going in with a lot of different options.

David Crews – but as far as the MOU goes until you have all 16 members approved it and signing onto it – it is not in affect. We cannot use it here. We are still with Amendment 3.

Tony C – this is going to be decided at the PSC. They gave us 45 days.

David Smart – we had a long discussion in the IC (informal conference) with the Commission. The Commission is very interested. They are behind a little bit. We have been dealing with this a lot. They looked at Amendment 3, they looked at the MOU, and read Grayson's issues with regard to it. They wanted to know where we were and EKPC told them the same thing Tony just said. We have fiduciary duty with everyone to do it equally, however, if all 16 members agree on another form of distributing this portion of what the RUS has allowed us to buy off of EKPC, because that would be fair and equitable to EKPC because it would be fair and equitable to all 16 members that own East Kentucky. We support the MOU and we are going to vote on Tuesday to approve the MOU to show our support. That is why it is on the agenda at least as far as legal is concerned. It is to demonstrate EK's support to what the members have determined is fair and equitable. If that changes and doesn't pass, like Tony said we go back to something else that the Commission decides is fair and equitable and EKPC decides is fair and equitable. We are not going to be the road block to the 16 that unanimously voted for the MOU, we are in a little different territory now that Salt River hasn't and Grayson rescinded. That is why it is on the agenda. We made representation to the PS…..

Tony Campbell – I recommend that we pass it. Pass with those contingencies.

Mark Stallons – it was really interesting being in that IC. It was obvious that Richard Graph looked at the Salt River representative and asked point blank what was their position? And he had to explain why they hadn't moved on it or done anything with it. The Commission strongly wanted to understand what everybody's position was.

Lonnie Vice – so as a committee if we send to the full board we are sending as it is defined today with the two abstentions that we have or the lack of approval at this point. But getting it to the full board then all the other distribution systems will have an opportunity to react to their position on that.

Landis – And understanding that even if it is passed out at the meeting and it passes at the full board , without 16, his signature doesn't put it into effect. Have to have consensus of all 16 coops. They all have to sign off on it.

Lonnie – but we have taken action on the MOU as it stands at this particular time. Which is the lack of approval of two distribution systems. That is what we are doing

Landis makes motion to move out of Committee to full board / Jody Hughes second.

It was a Unanimous decision. No opposition.

After Barry's presentation of KPI report, Lonnie requested that the committee go back to S24 of the Board Book. The 5th whereas clause reads that "we are approving the MOU" and that language will be corrected and in the board information for tomorrow. We in effect did not approve the MOU, we approved as the vote existed as of today and did not approve the MOU.

David Smart – it will be correct to be an exact reflection of what happened among the 16 and EKPC.

Continue to work on A#3 and MOU. Managers met after last board meeting. General consensus reached on draft MOU. Key terms are no stranded costs, generators 5 mw or less requires 90 day notice. If you have installations less than 5 mw and want to bring in as Am #3 it is only 90 days. If greater than 5 mw requires 18 months' notice. Not different from A#3 in MOU – it is a restatement of what's currently in the A#3 – only real clarification here it used to be the 18 and 90 days set strattle the 5 mw and it didn't say where 5 mw fell on which side of the fence. Went conservatively and dropped 5 mw on the 90 day side. Again this is clear in A#3 but alternate resources don't fall within WPC. Once you give notice for Amendment 3 you are not taking service under WPC any more. This means you don't have transmission service. The WPC is a bundled rate of generation and transmission services to the members and once you opt out of the WPC with Amendment 3 notice if you are delivering via the transmission system any of that load or any of that generation you have to go out and file for network transmission service just as EKPC. That is standard ___ to tariff.

Owner may install up to 15% of 3 year average until EKPC reaches half of its 5% limit and that gets to 2 1/2%. Resources that do not deliver to transmission system don't participate in the PJM market (that's kind of been called behind the meter resources in the MOU). Resources that are delivered to the transmission system – that load and those alternate resources have to participate in the PJM market. Alternate sources are defined as to what is in and what's out. As far as generators. At last meeting with regard to MOU we talked about generators that participate in the demand response market because you can have generator that sits at industrial site and it could lower the demand and participate in the PJM demand response market. It is a defined market with rules and will have a tariff around it. We decided to carve those generators out. Also place where it was not well defined how we would calculate replacement energy if a generator on the transmission system failed and then the member doesn't have resource to serve that load and it goes to PJM market. If it is a behind the meter resource and on the member transmission or an industrial customer, EKPC will serve as always have. We will back stand units behind the meter, but once on transmission system plays by different set of rules.

Draft 3/15/13. Trying to schedule another meeting to review proposed draft and possibly some members have a few more changes.

David and Lonnie asked for comments /

Mark Stallons summarized very well / Carol Ann acknowledged fine.

EAST KENTUCKY POWER COOPERATIVE

TO: Sixteen Member Systems

FROM: David G. Eames

DATE: August 4, 2009

RE: Fourth Amendment to the Wholesale Power Contract

The Fourth Amendment to the Wholesale Power Contract between East Kentucky Power Cooperative and your cooperative has received administrative approval from RUS.

Enclosed is a blue-jacketed copy containing an original signature. According to RUS, the blue-jacketed signature is sufficient for the amendment.

If you have any questions, please feel free to call me.

fo/dd

Enclosure

SOUTH KY RECC
EXHIBIT 9

4775 Lexington Road 40391
P.O. Box 707, Winchester,
Kentucky 40392-0707

Tel. (859) 744-4812
Fax: (859) 744-6008
http://www.ekpc.coop

A Touchstone Energy Cooperative

U.S. DEPARTMENT OF AGRICULTURE
RURAL UTILITIES SERVICE

RUS BORROWER DESIGNATION Kentucky 54 Wayne

THE WITHIN Fourth Amendment dated May 12, 2009 to the Wholesale Power Contract dated October 1, 1964 between East Kentucky Power Cooperative, Inc. and South Kentucky Rural Electric Cooperative Corporation

SUBMITTED BY THE ABOVE DESIGNATED BORROWER PURSUANT TO THE TERMS OF THE LOAN CONTRACT, IS HEREBY APPROVED SOLELY FOR THE PURPOSES OF SUCH CONTRACT.

FOR THE ADMINISTRATOR

DATED

7/27/09

RUS FORM 28a REV 5-73

(a computer generated facsimile)

FOURTH AMENDMENT
TO
WHOLESALE POWER CONTRACT, AS AMENDED

THIS AMENDMENT made on May 12, 2009 by and between EAST KENTUCKY POWER COOPERATIVE, INC., a corporation organized and existing under the laws of the Commonwealth of Kentucky, hereinafter called "SELLER", and SOUTH KENTUCKY RURAL ELECTRIC COOPERATIVE CORPORATION., a corporation organized and existing under the laws of the Commonwealth of Kentucky, hereinafter called "MEMBER".

WHEREAS, SELLER and MEMBER have entered into a contract dated October 1, 1964, for the purchase and sale of electric power and energy, with the approval of the Administrator of the Rural Electrification Administration (the predecessor of the Rural Utilities Service), and said Wholesale Power Contract is now in full force and effect; and

WHEREAS, SELLER and MEMBER and the aforesaid Administrator have entered into two Supplemental Agreements dated October 1, 1964 and August 13, 1998, that provide for certain rights and obligations to guarantee compliance with the aforesaid Wholesale Power Contract; and

WHEREAS, SELLER and MEMBER have also entered into two amendments to the Wholesale Power Contract, dated October 21, 1976, and March 20, 1980, that provide for a combined extension in the Wholesale Power Contract from 2010 to 2025 in compliance with RUS loan policy and requirements; and

WHEREAS, SELLER and MEMBER have also entered into a third amendment to the Wholesale Power Contract, dated November 13, 2003, which provides for an extension of the Wholesale Power Contract from 2025 to 2041, in compliance with RUS loan policy and requirements, and which provides the MEMBER certain limited rights to provide a portion of its own power requirements, or to obtain a portion of its power requirements from another power supplier;

WHEREAS, SELLER has proposed and the aforesaid Administrator is contemplating a lien accommodation request relating to approximately $900,000,000 of private financing to finance a project consisting of the construction and operation of a 278 MW coal-fired generating unit, with related substation and transmission line facilities; and

NOW, THEREFORE, in consideration of the mutual undertakings herein contained, and in order to consummate and finalize the aforesaid financial arrangements, SELLER and MEMBER do hereby reiterate and reaffirm the provisions of the aforesaid Wholesale Power Contract, the two Supplemental Agreements, and the First, Second and Third Amendments to the Wholesale Power Contract, with the exception of the following provisions to which they do now hereby agree to amend and adopt, to-wit:

1. Section 10 of the aforesaid Wholesale Power Contract, as Amended, is further amended to read:

> Term. This Agreement shall become effective only upon approval in writing by the Administrator and shall remain in effect until January 1, 2051, 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 Article 1 hereof, service hereunder and the obligation of the MEMBER to pay therefore shall commence upon completion of the facilities necessary to provide service.

IN WITNESS WHEREOF, the parties have caused this Fourth Amendment to be duly executed as of the date first above written.

(SELLER) EAST KENTUCKY POWER COOPERATIVE, INC.

By: ______________________________

(Title) Chairman of the Board

ATTEST:

____

Secretary

(MEMBER) SOUTH KENTUCKY RURAL ELECTRIC COOPERATIVE CORPORATION

By: ______________________________

(Title) President

ATTEST:

Tom Estes

Secretary

APPROVED: UNITED STATES OF AMERICA

By: ______________________________

Administrator of Rural Utilities Service

EAST KENTUCKY POWER COOPERATIVE

September 20, 2004

Allen Anderson
Head Coach and CEO
South Kentucky RECC
P. O. Box 910
Somerset, KY 42502

Re: Amendment No. 3 – Wholesale Power Contract

Enclosed is your executed copy of Amendment No. 3 to the Wholesale Power Contract, approved by RUS.

Sincerely,

Dale W. Henley

Dale W. Henley
General Counsel

dwh/ln
enclosure

4775 Lexington Road 40391
P.O. Box 707, Winchester,
Kentucky 40392-0707

Tel. (859) 744-4812
Fax: (859) 744-6008
http://www.ekpc.com

U.S. DEPARTMENT OF AGRICULTURE
RURAL UTILITIES SERVICE

RUS BORROWER DESIGNATION Kentucky 54 Wayne

THE WITHIN Amendment No. 3 dated November 13, 2003 to the Wholesale Power Contract dated October 1, 1964 between East Kentucky Power Cooperative, Inc. and South Kentucky Rural Electric Cooperative Corporation

SUBMITTED BY THE ABOVE DESIGNATED BORROWER PURSUANT TO THE TERMS OF THE LOAN CONTRACT, IS HEREBY APPROVED SOLELY FOR THE PURPOSES OF SUCH CONTRACT.

[signature]

FOR THE ADMINISTRATOR

DATED

5/6/04

RUS FORM 28a REV 5-73
(a computer generated facsimile)

AMENDMENT NO. 3 TO WHOLESALE POWER CONTRACT
BETWEEN EAST KENTUCKY POWER COOPERATIVE, INC. AND
SOUTH KENTUCKY RURAL ELECTRIC COOPERATIVE CORPORATION

This Agreement dated the 13th day of NOVEMBER, 2003, amends the Wholesale Power Contract dated October 1, 1964 between East Kentucky Power Cooperative, Inc. (hereinafter "Seller") and SOUTH KENTUCKY 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: Delno Tolliver

Delno Tolliver

ITS: CHAIRMAN OF THE BOARD

Sam Penn

ATTEST, SECRETARY

Sam Penn

SOUTH KENTUCKY RURAL ELECTRIC
COOPERATIVE CORPORATION

BY: Allen Anderson

ITS: Manager & CEO

Tom Estes

ATTEST, SECRETARY

(H:Legal/misc/amend-3-wpc)

RESOLUTION

At a regular meeting of the Board of Directors of South Kentucky Rural Electric Cooperative Corporation held at Somerset, Kentucky on January 15, 2004, the following business was transacted:

> A document entitled Third Amendment to Wholesale Power Contract, as Amended, dated November 13, 2003, with East Kentucky Power Cooperative, Inc. was presented. This Amendment reaffirms two earlier Amendments, two Supplemental Agreements and a Memorandum of Understanding, and extends the term of the Wholesale Power Contract from January 1, 2025 to January 1, 2041; in addition to providing, for the first time, some flexibility in the Cooperative's obligation to secure all of its system power supply needs from EKPC, all in compliance with RUS Loan Policy and Requirements.
>
> After discussion, a motion was made, seconded and passed to approve this Third Amendment to Wholesale Power Contract, as Amended, and authorize Allen Anderson, CEO of the Corporation to execute same.

The foregoing is a true and exact copy of a resolution passed at a meeting called pursuant to proper notice at which a quorum was present and which now appears on the Minute Book of Proceedings of the Board of Directors of the cooperative and said resolution has not been rescinded or modified.

Witness my hand this 15th day of January, 2004.

Tom Estes

SECRETARY

JAN 1 9 2004

U.S. DEPARTMENT OF AGRICULTURE
RURAL UTILITIES SERVICE

RUS BORROWER DESIGNATION Kentucky 54 Wayne

THE WITHIN Supplemental Agreement dated August 13, 1999 to Wholesale Power Contract dated October 1, 1964 between South Kentucky Rural Electric Cooperative Corporation and East Kentucky Power Cooperative, Inc.

SUBMITTED BY THE ABOVE DESIGNATED BORROWER PURSUANT TO THE TERMS OF THE LOAN CONTRACT, IS HEREBY APPROVED SOLELY FOR THE PURPOSES OF SUCH CONTRACT.

Sue M. Moy

FOR THE ADMINISTRATOR

DATED

10/5/99

RUS FORM 28a REV 5-73
(a computer generated facsimile)

SUPPLEMENTAL AGREEMENT

THIS SUPPLEMENTAL AGREEMENT is made as of the 13th day of August, 1998, between **EAST KENTUCKY POWER COOPERATIVE, INC.** (hereinafter called the "Seller"), and South Kentucky Rural Electric Cooperativ(hereinafter called the "Member"), its successors and assigns, and the United States of America (hereinafter called the "Government"), acting through the Administrator of the Rural Utilities Service (hereinafter called the "Administrator").

WHEREAS, the Seller and the Member have entered into a contract for the purchase and sale of electric power and energy dated 10/1/64 ~~8/10/98~~, which contract, as it may heretofore have been amended and supplemented, is hereinafter called the "Power Contract"; and,

WHEREAS, the Seller is seeking a new loan which is subject to the approval of the Administrator; and,

WHEREAS, the Government is relying on the Power Contract as supplemented by this Supplemental Agreement, and similar contracts between Seller and other borrower from the Rural Utilities Service to assure that the "Notes" referred to in the Power Contract are repaid and the purposes of the Rural Electrification Act of 1936, as amended, are carried out and the Seller and Member by executing this Supplemental Agreement, acknowledge this reliance.

NOW, THEREFORE, for and in consideration of the mutual undertaking herein contained and the approval by the Administrator of the pending loan, the parties hereto agree as follows:

SECTION 1 Limitations on Transfers of the Member's Assets.

(a) The Member agrees that, for so long as any of the Seller Notes are outstanding, the Member will not, without the approval in writing of the Seller and the Administrator, take or suffer to be taken any steps for reorganization or dissolution, or to consolidate with or merge into any corporation, or to sell, lease or transfer (or make any agreement therefor) all or a substantial portion of its assets, whether now owned or hereafter acquired. The Seller will not unreasonably withhold or condition its consent to any such reorganization, dissolution, consolidation, or merger, or to any such sale, lease or transfer (or any agreement therefor) of assets. The Seller will not withhold or condition its consent except in cases where to do so otherwise would result in rate increases for the other members of the Seller or impair the ability of the Seller to repay its secured loans in accordance with their terms, or adversely affect system performance in any material way.

(b) Notwithstanding paragraph (a) of this section, the Member may take or suffer to be taken any steps for reorganization or dissolution or to consolidate with or merge into any corporation or to sell, lease or transfer (or make any agreement therefor) all or a substantial portion of its assets, whether now owned or hereafter acquired without the Seller's consent, so long as the Member shall pay such portion of the outstanding indebtedness on the Seller's Notes or other obligations as shall be determined by the Seller with the prior written consent of the Administrator and shall otherwise comply with such reasonable terms and conditions as the Administrator and Seller may require either:

(1) to eliminate any adverse effect that such action seems likely to have on the rates of the other members of the Seller, or

(2) to assure that the Seller's ability to repay the Seller Notes and other obligations of the Seller in accordance with their terms is not impaired.

(c) The Administrator may require, among other things, that any payment owed under (b)(2) of this section that represent a portion of the Seller's indebtedness on the Seller Notes shall be paid by the Member in the manner necessary to accomplish a defeasance of those obligations in accordance with the loan documents relating thereto, or be paid directly to the holders of the Seller Notes for application by them as prepayments in accordance with the provisions of such documents, or be paid to the Seller and held and invested in a manner satisfactory to the Administrator

SECTION 2 Permitted Transactions

Notwithstanding the provisions of section 1 of this Supplemental Agreement, the Member may merge into or consolidate with:

(i) another member of the Seller, provided that the Member shall have provided evidence, in form and substance satisfactory to the Seller and the Administrator, that the obligations of the Member under the Power Contract and this Supplemental Agreement have been assumed by and are binding on the successor; or

(ii) a third party that is not a business competitor of the Seller or another Member System, or is not owned by or affiliated with such a business competitor of the Seller or another Member System, provided that the Member and such third party shall have provided assurances, in form and substance satisfactory to the Seller and the Administrator, that the obligations of the Member under the Power Contract and this Supplemental Agreement have been assumed by and are binding on such third party, the third party shall have the ability to perform its payment and other obligations under the Power Contract and this Supplemental Agreement, electric service will continue to be provided to those customers served by such Member, and such merger or consolidation will not otherwise materially adversely affect the Seller or the Government.

SECTION 3. Specific Performance Available.

The Seller, the Member and the Administrator agree that (i) if the Member shall fail to comply with any provision of the Power Contract, the Seller, or the Administrator, if the Administrator so elects, shall have the right to enforce the obligations of the Member under the provisions of the Power Contract and (ii) if the Seller shall fail to comply with any provision of the Power Contract, the Member, or the Administrator, if the Administrator so elects, shall have the right to enforce the obligations of the Seller under the provisions of the Power Contract. Such enforcement may be by instituting all necessary actions at law or suits in equity, including, without limitation, suits for specific performance. Such rights of the Administrator to enforce the provisions of the Power Contract are in addition to and shall not limit the rights which the Administrator shall otherwise have as third party beneficiary of the Power Contract or pursuant to the assignment and pledge of the Power Contract and the payments required to be made thereunder as provided in the "Mortgage" referred to in the Power Contract. The government shall not, under any circumstances, assume or be bound by the obligations of the Seller or Member under the Power Contract except to the extent the Government shall agree in writing to accept and be bound by any such obligations in whole or in part.

SECTION 4. This Agreement may be simultaneously executed and delivered in two or more counterparts, each of which so executed and delivered shall be deemed to be an original, and all shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above mentioned.

By: Keith Sloan
Member

Title: General Manager/CEO

ATTEST:
Tom Estes
Secretary

By: [signature]
Seller

Title: CHAIRMAN OF THE BOARD

ATTEST
[signature]
Secretary

UNITED STATES OF AMERICA

By ____________________

Administrator
of the
Rural Utilities Service

(sup3-agm)

001085

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement, dated 8/13/98, by and between South Ky RECC, a Kentucky corporation with its principal office at 925-929 N. Main St. Somerset, KY (hereinafter called "Member"); and East Kentucky Power Cooperative, Inc., a Kentucky corporation with its principal offices at 4775 Lexington Road, P. O. Box 707, Winchester, Kentucky 40392-0707 (hereinafter referred to as "Seller").

WITNESSETH

Whereas, Seller and Member are parties to a Wholesale Power Contract (the "Power Contract") along with the United States of America, acting through the Administrator of the Rural Utilities Service (the "Administrator") dated ~~8/13/98~~ 10/1/04, and a Supplemental Agreement to said Power Contract (the "Agreement") dated 8/13/98, and

Whereas, The Parties hereto desire to establish certain additional understandings relating to said Agreement;

Now, Therefore, in consideration of the mutual covenants made herein, the parties hereto agree as follows:

1. <u>Settlement Efforts</u>

In the event that Member shall determine to enter any transaction requiring approval under paragraph 1(a) of the Agreement or to exercise its rights under paragraph 1(b) of the Agreement, Seller and Member agree to enter into negotiations in good faith in an effort to reach a mutually acceptable determination of any factual issues concerning the possible adverse impacts of such actions and/or a fair and equitable determination of a settlement amount or the portion of outstanding indebtedness on Seller's Notes and other obligations, which portion shall be determined as provided in paragraph 1(b) of the

Agreement, that Member shall be required to pay. The parties agree to keep all of Seller's other Member Systems advised of the progress of such negotiations and to seek the advice and input of such Member Systems, as appropriate. In the event that the parties cannot reach agreement on the subjects involved in such negotiations, they may agree to utilize alternative dispute resolution measures to facilitate the completion of the negotiations : Provided however, that nothing herein shall limit the rights of the Administrator to determine the acceptability of such a determination or settlement with Seller or such portion of Seller's indebtedness that must be paid by the Member, taking into account the recommendation of the Member and Seller.

2. **Fundamental Rights**.

The parties hereto agree that the terms of the Supplemental Agreement are not intended to and do not change the fundamental rights of the parties under the Power Contract, and do not change any legal rights of the Seller or Member which existed prior to the execution of the Agreement

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above mentioned

By: Keith Sloan
Member

Title General Manager/CEO

ATTEST
Tom Estes
Secretary

By: E A Gilbert
Seller

Title CHAIRMAN OF THE BOARD

ATTEST
Debra Tolar
Secretary

(agm3-rus)

U.S. DEPARTMENT OF AGRICULTURE
RURAL UTILITIES SERVICE

RUS BORROWER DESIGNATION Kentucky 54 Wayne

THE WITHIN Supplemental Agreement dated August 13, 1999 to Wholesale Power Contract dated October 1, 1964 between South Kentucky Rural Electric Cooperative Corporation and East Kentucky Power Cooperative, Inc.

SUBMITTED BY THE ABOVE DESIGNATED BORROWER PURSUANT TO THE TERMS OF THE LOAN CONTRACT, IS HEREBY APPROVED SOLELY FOR THE PURPOSES OF SUCH CONTRACT.

Lei M. May
FOR THE ADMINISTRATOR

DATED
10/5/99

RUS FORM 28a REV 5-73
(a computer generated facsimile)

SUPPLEMENTAL AGREEMENT

THIS SUPPLEMENTAL AGREEMENT is made as of the 13th day of August, 1998, between **EAST KENTUCKY POWER COOPERATIVE, INC.** (hereinafter called the "Seller"), and South Kentucky Rural Electric Cooperativ(hereinafter called the "Member"), its successors and assigns, and the United States of America (hereinafter called the "Government"), acting through the Administrator of the Rural Utilities Service (hereinafter called the "Administrator").

WHEREAS, the Seller and the Member have entered into a contract for the purchase and sale of electric power and energy dated ~~8/16/68~~ 10/1/64, which contract, as it may heretofore have been amended and supplemented, is hereinafter called the "Power Contract"; and,

WHEREAS, the Seller is seeking a new loan which is subject to the approval of the Administrator; and,

WHEREAS, the Government is relying on the Power Contract as supplemented by this Supplemental Agreement, and similar contracts between Seller and other borrower from the Rural Utilities Service to assure that the "Notes" referred to in the Power Contract are repaid and the purposes of the Rural Electrification Act of 1936, as amended, are carried out and the Seller and Member by executing this Supplemental Agreement, acknowledge this reliance.

NOW, THEREFORE, for and in consideration of the mutual undertaking herein contained and the approval by the Administrator of the pending loan, the parties hereto agree as follows:

SECTION 1 Limitations on Transfers of the Member's Assets

(a) The Member agrees that, for so long as any of the Seller Notes are outstanding, the Member will not, without the approval in writing of the Seller and the Administrator, take or suffer to be taken any steps for reorganization or dissolution, or to consolidate with or merge into any corporation, or to sell, lease or transfer (or make any agreement therefor) all or a substantial portion of its assets, whether now owned or hereafter acquired. The Seller will not unreasonably withhold or condition its consent to any such reorganization, dissolution, consolidation, or merger, or to any such sale, lease or transfer (or any agreement therefor) of assets. The Seller will not withhold or condition its consent except in cases where to do so otherwise would result in rate increases for the other members of the Seller or impair the ability of the Seller to repay its secured loans in accordance with their terms, or adversely affect system performance in any material way.

(b) Notwithstanding paragraph (a) of this section, the Member may take or suffer to be taken any steps for reorganization or dissolution or to consolidate with or merge into any corporation or to sell, lease or transfer (or make any agreement therefor) all or a substantial portion of its assets, whether now owned or hereafter acquired without the Seller's consent, so long as the Member shall pay such portion of the outstanding indebtedness on the Seller's Notes or other obligations as shall be determined by the Seller with the prior written consent of the Administrator and shall otherwise comply with such reasonable terms and conditions as the Administrator and Seller may require either:

(1) to eliminate any adverse effect that such action seems likely to have on the rates of the other members of the Seller, or

(2) to assure that the Seller's ability to repay the Seller Notes and other obligations of the Seller in accordance with their terms is not impaired.

(c) The Administrator may require, among other things, that any payment owed under (b)(2) of this section that represent a portion of the Seller's indebtedness on the Seller Notes shall be paid by the Member in the manner necessary to accomplish a defeasance of those obligations in accordance with the loan documents relating thereto, or be paid directly to the holders of the Seller Notes for application by them as prepayments in accordance with the provisions of such documents, or be paid to the Seller and held and invested in a manner satisfactory to the Administrator

SECTION 2 Permitted Transactions.

Notwithstanding the provisions of section 1 of this Supplemental Agreement, the Member may merge into or consolidate with:

ıother member of the Seller, provided that the Member shall have provided evidence, in form and substance satisfactory to the Seller and the Administrator, that the obligations of the Member under the Power Contract and this Supplemental Agreement have been assumed by and are binding on the successor; or

(ii) a third party that is not a business competitor of the Seller or another Member System, or is not owned by or affiliated with such a business competitor of the Seller or another Member System, provided that the Member and such third party shall have provided assurances, in form and substance satisfactory to the Seller and the Administrator, that the obligations of the Member under the Power Contract and this Supplemental Agreement have been assumed by and are binding on such third party, the third party shall have the ability to perform its payment and other obligations under the Power Contract and this Supplemental Agreement, electric service will continue to be provided to those customers served by such Member, and such merger or consolidation will not otherwise materially adversely affect the Seller or the Government.

SECTION 3. Specific Performance Available

The Seller, the Member and the Administrator agree that (i) if the Member shall fail to comply with any provision of the Power Contract, the Seller, or the Administrator, if the Administrator so elects, shall have the right to enforce the obligations of the Member under the provisions of the Power Contract and (ii) if the Seller shall fail to comply with any provision of the Power Contract, the Member, or the Administrator, if the Administrator so elects, shall have the right to enforce the obligations of the Seller under the provisions of the Power Contract. Such enforcement may be by instituting all necessary actions at law or suits in equity, including, without limitation, suits for specific performance Such rights of the Administrator to enforce the provisions of the Power Contract are in addition to and shall not limit the rights which the Administrator shall otherwise have as third party beneficiary of the Power Contract or pursuant to the assignment and pledge of the Power Contract and the payments required to be made thereunder as provided in the "Mortgage" referred to in the Power Contract. The government shall not, under any circumstances, assume or be bound by the obligations of the Seller or Member under the Power Contract except to the extent the Government shall agree in writing to accept and be bound by any such obligations in whole or in part.

SECTION 4. This Agreement may be simultaneously executed and delivered in two or more counterparts, each of which so executed and delivered shall be deemed to be an original, and all shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above mentioned.

By: Keith Sloan
Member

Title: General Manager/CEO

ATTEST:

Tom Estes
Secretary

By: Eli Gilbert
Seller

Title: CHAIRMAN OF THE BOARD

ATTEST:

Delma Tollison
Secretary

UNITED STATES OF AMERICA

By ______________________
Administrator
of the
Rural Utilities Service

(sup3-agm)

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement, dated 8/13/98, by and between South Ky RECC, a Kentucky corporation with its principal office at 925-929 N. Main St. Somerset, KY (hereinafter called "Member"); and East Kentucky Power Cooperative, Inc., a Kentucky corporation with its principal offices at 4775 Lexington Road, P. O. Box 707, Winchester, Kentucky 40392-0707 (hereinafter referred to as "Seller").

WITNESSETH

Whereas, Seller and Member are parties to a Wholesale Power Contract (the "Power Contract") along with the United States of America, acting through the Administrator of the Rural Utilities Service (the "Administrator") dated ~~8/13/98~~ 10/1/04, and a Supplemental Agreement to said Power Contract (the "Agreement") dated 8/13/98; and

Whereas, The Parties hereto desire to establish certain additional understandings relating to said Agreement;

Now, Therefore. in consideration of the mutual covenants made herein. the parties hereto agree as follows:

1. <u>Settlement Efforts</u>

In the event that Member shall determine to enter any transaction requiring approval under paragraph 1(a) of the Agreement or to exercise its rights under paragraph 1(b) of the Agreement, Seller and Member agree to enter into negotiations in good faith in an effort to reach a mutually acceptable determination of any factual issues concerning the possible adverse impacts of such actions and/or a fair and equitable determination of a settlement amount or the portion of outstanding indebtedness on Seller's Notes and other obligations, which portion shall be determined as provided in paragraph 1(b) of the

Agreement, that Member shall be required to pay. The parties agree to keep all of Seller's other Member Systems advised of the progress of such negotiations and to seek the advice and input of such Member Systems, as appropriate. In the event that the parties cannot reach agreement on the subjects involved in such negotiations, they may agree to utilize alternative dispute resolution measures to facilitate the completion of the negotiations : Provided however, that nothing herein shall limit the rights of the Administrator to determine the acceptability of such a determination or settlement with Seller or such portion of Seller's indebtedness that must be paid by the Member, taking into account the recommendation of the Member and Seller.

2. Fundamental Rights.

The parties hereto agree that the terms of the Supplemental Agreement are not intended to and do not change the fundamental rights of the parties under the Power Contract, and do not change any legal rights of the Seller or Member which existed prior to the execution of the Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above mentioned

By: Keith Sloan
Member

Title: General Manager/CEO

ATTEST:

Tom Estes
Secretary

By: E A Gilbert
Seller

Title CHAIRMAN OF THE BOARD

ATTEST

Debra Tolan
Secretary

(agm3-rus)

001094

U. S. DEPARTMENT OF AGRICULTURE
RURAL ELECTRIFICATION ADMINISTRATION

REA BORROWER DESIGNATION Kentucky 54 Wayne

THE WITHIN Amendment No. 2 dated March 20, 1980, to the Wholesale Power Contract dated October 1, 1964, with East Kentucky Power Cooperative, Inc.

SUBMITTED BY THE ABOVE DESIGNATED BORROWER PURSUANT TO THE TERMS OF THE LOAN CONTRACT, IS HEREBY APPROVED SOLELY FOR THE PURPOSES OF SUCH CONTRACT.

Frank W Bennett
FOR THE ADMINISTRATOR

DATED
5/14/80

REA FORM 28a REV 5-73

SECOND AMENDMENT
TO
WHOLESALE POWER CONTRACT, AS AMENDED

THIS AMENDMENT made on April 1, 1980 by and between EAST KENTUCKY POWER COOPERATIVE, INC. (formerly named EAST KENTUCKY RURAL ELECTRIC COOPERATIVE CORPORATION), a corporation organized and existing under the laws of the Commonwealth of Kentucky, hereinafter called "SELLER", and SOUTH KENTUCKY RURAL ELECTRIC COOPERATIVE CORPORATION, a corporation organized and existing under the laws of the Commonwealth of Kentucky, hereinafter called "MEMBER".

WHEREAS, SELLER and MEMBER have entered into a contract dated October 1, 1964, for the purchase and sale of electric power and energy, with the approval of the Administrator of the Rural Electrification Administration, and said Wholesale Power Contract is now in full force and effect; and

WHEREAS, SELLER, MEMBER and the aforesaid Administrator have entered into a Supplemental Agreement dated October 1, 1964, that provides for certain rights and obligations to guarantee compliance with the aforesaid Wholesale Power Contract; and

WHEREAS, SELLER and MEMBER have also entered into a First Amendment to Wholesale Power Contract dated October 21, 1976, that provides for an extension in the Wholesale Power Contract from 2010 to 2018 in compliance with REA loan policy and requirements; and

WHEREAS, SELLER has proposed and the aforesaid Administrator is contemplating a loan, guaranteed or otherwise, in the approximate amount of $1,500,000,000 to finance a project consisting of the construction and operation of two 650 MW generating units, with related substation and transmission line facilities; and

NOW, THEREFORE, in consideration of the mutual undertakings herein contained, and in order to consummate and finalize the aforesaid financial arrangements, SELLER and MEMBER do hereby reiterate and reaffirm the provisions of the aforesaid Wholesale Power Contract, Supplemental Agreement and First Amendment to Wholesale Power Contract with the exception of the following provisions to which they do now hereby agree to amend and adopt, to-wit:

1. Section 2 of the aforesaid Wholesale Power Contract, as Amended, is further amended to read:

Electric Characteristics and Delivery Point(s). Electric power and energy to be furnished hereunder shall be alternating current, three phase, four wire, sixty cycle. The Seller shall make and pay for all final connections between the systems of the SELLER and the MEMBER at the point(s) of delivery.

The points of delivery will be:

Albany	Bronston	East Somerset	Floyd
Monticello	Mt. Olive	Mt. Victory	Nancy
	Norwood	Russell Springs	Sewellton
	Shopville	Somerset	South Albany
	Whitley City	Windsor	Zula

and such other points as may be required by MEMBER to adequately serve their respective members.

2. Section 10 of the aforesaid Wholesale Power Contract, as Amended, is further amended to read:

Term. This Agreement shall become effective only upon approval in writing by the Administrator and shall remain in effect until

January 1, 2025, 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 Article 1 hereof, service hereunder and the obligation of the MEMBER to pay therefor shall commence upon completion of the facilities necessary to provide service.

IN WITNESS WHEREOF, the parties have caused this Second Amendment to be duly executed as of the date first above written.

(SELLER) EAST KENTUCKY POWER COOPERATIVE, INC.

By: James S Patterson
Chairman of the Board

ATTEST:

Howard Ragland
Secretary

(MEMBER) SOUTH KENTUCKY RECC

By: Hugh B Morrison
(Title) President of the Board

ATTEST:

Richard S. Stephens
Secretary

APPROVED: UNITED STATES OF AMERICA

By: ______________________
Administrator of
Rural Electrification Administration

FROM THE MINUTE BOOK OF PROCEEDINGS
OF THE BOARD OF DIRECTORS OF

South Kentucky RECC

At a regular meeting of the Board of Directors of South Kentucky RECC held at Somerset, Kentucky on 20th, March, 1980, the following business was transacted:

A document entitled Second Amendment to Wholesale Power Contract, as Amended, dated October 21, 1976, with East Kentucky Power Cooperative, Inc. was presented. This Amendment lists all current points (substations) of power deliveries and extends the expiration date of the aforesaid contract, as Amended, from January 1, 2018 to January 1, 2025 in compliance with REA Loan Policy and Requirements.

After discussion, a motion was made, seconded and passed to approve this Second Amendment to Wholesale Power Contract, as Amended, and authorize its execution.

The foregoing is a true and exact copy of a resolution passed at a meeting called pursuant to proper notice at which a quorum was present and which now appears on the Minute Book of Proceedings of the Board of Directors of the Cooperative and said resolution has not been rescinded or modified.

Witness my hand and seal this 20th day of March, 1980.

Richard D. Stephens, Secretary

Corporate Seal

001099

VAULT FILE

U. S. DEPARTMENT OF AGRICULTURE
RURAL ELECTRIFICATION ADMINISTRATION

REA BORROWER DESIGNATION Kentucky 54 Wayne

THE WITHIN Amendment #1 dated October 21, 1976 to Wholesale Power Contract dated October 1, 1964 with East Kentucky Power Cooperative, Inc.

SUBMITTED BY THE ABOVE DESIGNATED BORROWER PURSUANT TO THE TERMS OF THE LOAN CONTRACT, IS HEREBY APPROVED SOLELY FOR THE PURPOSES OF SUCH CONTRACT.

David A. Hamil
~~FOR THE~~ ADMINISTRATOR
DAVID A. HAMIL
Administrator

DATED
JAN 12 1977

REA FORM 28a REV 5-73

SOUTH KENTUCKY RECC
SOMERSET, KENTUCKY

Resolution Approving First Amendment to Wholesale Power Contract

RESOLUTION: A document entitled First Amendment to Wholesale Power Contract dated October 1, 1964 with East Kentucky Power Cooperative, Inc. was presented. This amendment lists all current points (substations) of power deliveries and extends the expiration date of the aforesaid contract from January 1, 2010 to January 1, 2018 in compliance with REA Loan Policy and Requirements.

After discussion, a motion was made, seconded and passed to approve this First Amendment to Wholesale Power Contract and authorize its execution.

I, Hugh B. Morrison, Secretary of South Kentucky Rural Electric Cooperative Corporation do hereby certify that the above is a true and correct copy of a resolution duly adopted by the Board of Directors of said cooperative and entered in the minutes of the meeting held on the 21st day of October, 1976.

Hugh B. Morrison
Secretary

FIRST AMENDMENT TO WHOLESALE POWER CONTRACT

THIS AMENDMENT made on October 21, 1976 by and between EAST KENTUCKY POWER COOPERATIVE, INC. (formerly named EAST KENTUCKY RURAL ELECTRIC COOPERATIVE CORPORATION), a corporation organized and existing under the laws of the Commonwealth of Kentucky, hereinafter called "SELLER", and SOUTH KENTUCKY RURAL ELECTRIC COOPERATIVE CORPORATION, a corporation organized and existing under the laws of the Commonwealth of Kentucky, hereinafter called "MEMBER".

WHEREAS, SELLER and MEMBER have entered into a contract dated October 1, 1964, for the purchase and sale of electric power and energy, with the approval of the Administrator of the Rural Electrification Administration, and said Wholesale Power Contract is now in full force and effect; and

WHEREAS, SELLER, MEMBER and the aforesaid Administrator have entered into a Supplemental Agreement dated October 1, 1964, that provides for certain rights and obligations to guarantee compliance with the aforesaid Wholesale Power Contract; and

WHEREAS, the aforesaid Administrator has entered into a contract of guarantee with SELLER, whereby SELLER shall obtain a guaranteed loan of $379,268,000 to finance a project consisting of the construction and operation of a 500 MW generating unit at the Spurlock Power Station, with related substation and transmission line facilities; and

NOW, THEREFORE, in consideration of the mutual undertakings herein contained, and in order to consummate and finalize the aforesaid financial arrangements, SELLER and MEMBER do hereby reiterate and reaffirm the provisions of the aforesaid Wholesale Power Contract and Supplemental Agreement with the exception of the following provisions to which they do now hereby agree to amend and adopt, to-wit:

1. Section 2 of the aforesaid Wholesale Power Contract is amended to read:

Electric Characteristics and Delivery Point(s). Electric power and energy to be furnished hereunder shall be alternating current, three phase, four wire, sixty cycle. The Seller shall make and pay for all final connections between the systems of the Seller and the Member at the point(s) of delivery.

The points of delivery will be:

Albany	Mt. Olive	Sewellton
Bronston	Mt. Victory	Shopville Somerset
Floyd	Nancy	South Albany Whitley City
Ingle	Norwood	Windsor Zula
Monticello	Russell Springs	

and such other points as may be required by Member to adequately serve their respective members.

2. Section 10 of the aforesaid Wholesale Power Contract is amended to read:

Term. This Agreement shall become effective only upon approval in writing by the Administrator and shall remain in effect until January 1, 2018, 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 Article 1 hereof, service hereunder and the obligation of the Member to pay therefor shall commence upon completion of the facilities necessary to provide service.

IN WITNESS WHEREOF, the parties have caused this First Amendment to be duly executed as of the date first above written.

(SELLER) EAST KENTUCKY POWER COOPERATIVE, INC.

By: James S Patterson
Chairman of the Board

ATTEST:

Howard Ragland
Secretary

(MEMBER) SOUTH KENTUCKY RURAL ELECTRIC COOPERATIVE CORPORATION

By: Grant C. Rice President
(Title)

ATTEST: 10/21/76

Hugh B Morrison
Secretary

001104

001105

VAULT FILE

U. S. DEPARTMENT OF AGRICULTURE
RURAL ELECTRIFICATION ADMINISTRATION

REA BORROWER DESIGNATION Kentucky 54 Wayne

THE WITHIN Wholesale Power Contract with the East Kentucky Rural Electric Cooperative Corporation

SUBMITTED BY THE ABOVE DESIGNATED BORROWER PURSUANT TO THE TERMS OF THE LOAN CONTRACT, IS HEREBY APPROVED SOLELY FOR THE PURPOSES OF SUCH CONTRACT.

Richard H. Wood
FOR THE ADMINISTRATOR

DATED DEC 24 1964

W H O L E S A L E   P O W E R   C O N T R A C T

Between

EAST KENTUCKY RURAL ELECTRIC COOPERATIVE CORPORATION

and

SOUTH KENTUCKY RURAL ELECTRIC COOPERATIVE CORPORATION

Made as of October 1, 1964

CONTENTS

EAST KENTUCKY RURAL ELECTRIC COOPERATIVE CORPORATION

WHOLESALE POWER CONTRACT
(Superseding Previous Contract)

AGREEMENT made as of October 1, 1964, between EAST KENTUCKY RURAL ELECTRIC COOPERATIVE CORPORATION (hereinafter called the "Seller"), a corporation organized and existing under the laws of the State of Kentucky and SOUTH KENTUCKY RURAL ELECTRIC COOPERATIVE CORPORATION (hereinafter called the "Member"), a corporation organized and existing under the laws of the State of Kentucky.

WHEREAS, the Seller owns and operates electric generating plants, transmission system and other facilities, and may purchase or otherwise obtain electric power and energy for the purpose, among others, of supplying electric power and energy to borrowers from the Rural Electrification Administration which are or may become members of the Seller; and

WHEREAS, the Seller has heretofore entered into or is about to enter into agreements for the sale of electric power and energy similar in form to this agreement with all of the borrowers which are members of the Seller, and may enter into similar contracts with other such borrowers who may become members, and

WHEREAS, the Member desires to purchase electric power and energy from the Seller on the terms and conditions herein set forth;

NOW THEREFORE, in consideration of the mutual undertakings herein contained, the parties hereto agree 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 the Member shall require for the operation of the Member's system to the extent that the Seller shall have such power and energy and facilities available; provided, however, that the Member shall have the right to continue to purchase electric power and energy under any existing contract or contracts with a supplier other

than the Seller during the remainder of the term thereof. The Member shall terminate, if the Seller shall, with the approval or at the direction of the Administrator of the Rural Electrification Administration (hereinafter called the "Administrator"), so request, any such existing contract or contracts with a supplier other than the Seller at such times as it may legally do so, provided the Seller shall have sufficient electric power and energy and facilities available for the Member.

2. Electric Characteristics and Delivery Point(s). Electric power and energy to be furnished hereunder shall be alternating current, three phase, four wire, sixty cycle. The Seller shall make and pay for all final connections between the systems of the Seller and the Member at the point(s) of delivery.

The points of delivery will be:

Albany	Sewellton	Windsor
Floyd	Shopville	Mt. Olive
Monticello	Somerset	
Nancy	Whitley City	

and such other points as may be required by Member to adequately serve their respective members.

3. Substations. The Seller shall install, own, and maintain the necessary substation equipment at the point(s) of connection. The Seller shall own and maintain switching and protective equipment which may be reasonably necessary to enable the Member to take and use the electric power and energy hereunder and to protect the system of the Seller. Meters and metering equipment shall be furnished and maintained by the Seller and shall be located at the point of delivery on the low voltage side of such transforming equipment. Member will be responsible for reading meters and making reading information available to Seller.

4. Rate.(a) The Member shall pay the Seller for all electric power and energy furnished hereunder at the rates and on the terms and conditions set forth

in Rate Schedule A, (Effective January 1, 1963), attached hereto and made a part hereof.

(b) The Board of Directors of the Seller at such intervals as it shall deem appropriate, but in any event not less frequently than once in each calendar year, shall review the rate for electric power and energy furnished hereunder and under similar agreements with other Members and, if necessary, shall revise such rate so that it shall produce revenues which shall be sufficient, but only sufficient, with the revenues of the Seller from all other sources, to meet the cost of the operation and maintenance (including without limitation, replacements, insurance, taxes and administrative and general overhead expenses) of the generating plant, transmission system and related facilities of the Seller, the cost of any power and energy purchased for resale hereunder by the Seller, the cost of transmission service, make payments on account of principal of and interest on all indebtedness of the Seller, and to provide for the establishment and maintenance of reasonable reserves. The Seller shall cause a notice in writing to be given to the Member and other members of the Seller and the Administrator which shall set out all the proposed revisions of the rate with the effective date thereof, which shall be not less than thirty (30) nor more than forty-five (45) days after the date of the notice, and shall set forth the basis upon which the rate is proposed to be adjusted and established. The Member agrees that the rate from time to time established by the Board of Directors of the Seller shall be deemed to be substituted for the rate herein provided and agrees to pay for electric power and energy furnished by the Seller to it hereunder after the effective date of any such revisions at such revised rates; provided, however, that no such revision shall be effective unless approved in writing by the Administrator.

5. Meter Readings and Payment of Bills. The Member shall read meters monthly. Electric power and energy furnished hereunder shall be paid for at the office of the Seller in Seller's designated office monthly within fifteen (15)

days after the bill therefor is mailed to the Member. If the Member shall fail to pay any such bill within such fifteen-day period, the Seller may discontinue delivery of electric power and energy hereunder upon fifteen (15) days' written notice to the Member of its intention so to do.

6. Meter Testing and Billing Adjustment. The Seller shall test and calibrate meters by comparison with accurate standards at intervals of twelve (12) months. The Seller shall also make special meter tests at any time at the Member's request. The costs of all tests shall be borne by the Seller; provided, however, that if any special meter test made at the Member's request shall disclose that the meters are recording accurately, the Member shall reimburse the Seller for the cost of such test. Meters registering not more than two per cent (2%) above or below normal shall be deemed to be accurate. The readings of any meter which shall have been disclosed by test to be inaccurate shall be corrected for the ninety (90) days previous to such test in accordance with the percentage of inaccuracy found by such test. If any meter shall fail to register for any period, the Member and the Seller shall agree as to the amount of power and energy furnished during such period and the Seller shall render a bill therefor.

7. Notice of Meter Reading or Test. The Seller shall notify the Member in advance of the time of any meter reading or test so that the Member's representative may be present at such meter reading or test.

8. Right of Access. Duly authorized representatives of either party hereto shall be permitted to enter the premises of the other party hereto at all reasonable times in order to carry out the provisions hereof.

9. Continuity of Service. The Seller shall use reasonable diligence to provide a constant and uninterrupted supply of electric power and energy hereunder. If the supply of electric power and energy shall fail or be interrupted, or become defective through act of God or of the public enemy, or because of accident, labor troubles, or any other cause beyond the control of the Seller, the Seller shall not be liable therefor or for damages caused thereby.

10. Term. This Agreement shall become effective only upon approval in writing by the Administrator and shall remain in effect until January 1, 2010, 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 Article 1 hereof, service hereunder and the obligation of the Member to pay therefor shall commence upon completion of the facilities necessary to provide service.

When this contract and agreement is fully approved and executed, it completely replaces and supersedes Wholesale Power Contract dated January 13, 1951, and all amendments related thereto, between Seller and Member.

EXECUTED THE day and year first above mentioned.

EAST KENTUCKY RURAL ELECTRIC COOP.CORP.
Seller

By: Alex B Veech
President

ATTEST:

James S Patterson
Secretary

SOUTH KENTUCKY RURAL ELECTRIC COOP.CORP.
Member

By: Frank Crawford
President

ATTEST:

A.E. Smith
Secretary

SUPPLEMENTAL AGREEMENT

AGREEMENT made as of October 1, 1964, between EAST KENTUCKY RURAL ELECTRIC COOPERATIVE CORPORATION (hereinafter called the "Seller"), SOUTH KENTUCKY RURAL ELECTRIC COOPERATIVE CORPORATION (hereinafter called the "Member"), and the United States of America, acting through the Administrator of the Rural Electrification Administration (hereinafter called the "Administrator").

WHEREAS, the Seller and the Member have entered into a contract for the purchase and sale of electric power and energy, which contract is attached hereto and is hereinafter called the "Power Contract"; and

WHEREAS, the execution of the Power Contract between the Member and the Seller is subject to the approval of the Administrator under the terms of the loan contracts entered into with the Administrator by the Seller and the Member respectively;

NOW, THEREFORE, in consideration of the mutual undertakings herein contained, and the approval by the Administrator of the Power Contract, the parties hereto agree as follows:

1. The Seller, the Member and the Administrator agree that if the Member, upon being requested to do so by the Seller with the approval or at the direction of the Administrator, shall fail to terminate any contract with a power supplier other than the Seller, as provided by Section 1 of the Power Contract, the Seller, or the Administrator if he shall so elect, shall have the right to enforce the obligations of the Member under the provisions of said Section 1 of the Contract by instituting all necessary actions at law or suits in equity, including, without limitations, suits for specific performance.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the day and year first above mentioned.

001114

Supplemental Agreement
(Contd.) - Page 2

EAST KENTUCKY RURAL ELECTRIC COOP. CORP.
Seller

By: Alex B Veech
President

ATTEST:

James S Patterson
Secretary

SOUTH KENTUCKY RURAL ELECTRIC COOP.CORP.
Member

By: Frank Crawford
President

ATTEST:

C.E. Smith
Secretary

UNITED STATES OF AMERICA

By: ______________________
Administrator
of
Rural Electrification Administration

EAST KENTUCKY RURAL ELECTRIC COOPERATIVE CORPORATION 001115
Wholesale Power Rate Structure
Schedule A (Revised - Effective January 1, 1963)

AVAILABILITY

Available to all cooperative associations which are or shall be members of the Seller. The electric power and energy furnished hereunder shall be separately metered for each point of delivery.

MONTHLY RATE - PER SUBSTATION OR METERING POINT

Substation Charge

$100 per month for each energized substation. In the event of joint utilization, this charge shall be divided equally.

Demand Charge

$1.10 per kw of billing demand.

Energy Charge

First 300,000 Kwh @ 5.0 mills per Kwh
Next 400,000 Kwh @ 4.4 mills per Kwh
Excess of 700,000 Kwh @ 3.9 mills per Kwh

Minimum Monthly Charge

The minimum monthly charge under the above rate shall not be less than $100 to each member for each energized substation (metering point).

BILLING DEMAND

The billing demand is the arithmetical sum of the maximum kilowatt demands measured (and adjusted for power factor as provided below) at all points of delivery. The maximum kilowatt demand at each point of delivery shall be the highest average rate at which energy is used during any fifteen consecutive minute period of the month.

FUEL ADJUSTMENT

The above energy charges will be increased or decreased 0.001323¢ per Kwh for each .1¢ by which the average delivered cost of fuel at the Dale and Cooper stations during the immediately preceding six months exceeds 21¢ or is less than 18¢ per million BTU.

POWER FACTOR ADJUSTMENT

The member cooperative agrees to maintain unity power factor as nearly as practicable at each point of delivery. If the power factor measured at a point of delivery at the time of monthly maximum demand is determined to be less than 80%, the monthly maximum demand measured at that point of delivery shall be adjusted by multiplying the monthly maximum demand by 80% and dividing the product thus obtained by the actual per cent power factor measured at the time of such maximum demand.

001116

RECEIVED
JAN 18 1985
EAST KENTUCKY R. E. C. C.

South Kentucky Rural Electric Cooperative Corporation

Request for Proposals

Introduction:

South Kentucky Rural Electric Cooperative Corporation (SKRECC), headquartered in Somerset, Kentucky, is a distribution cooperative serving over 67,000 members. SKRECC is a member of East Kentucky Power Cooperative (EKPC) and is supplied under an all requirements contract with EKPC. SKRECC has the right within the contract to choose an alternate supplier for a portion of their member needs – EnerVision, on behalf of SKRECC, is issuing this RFP and soliciting proposals pursuant to this contractual right.

Request for Proposals:

SKRECC is requesting proposals for 58 MW of power to serve its members.

Considerations:

- SKRECC desires to procure 58 MW for the period beginning June 1, 2019. Note that the all requirements contract with EKPC requires 18 months' notice prior to delivery.
- Term length – will consider any term length greater than 5 years, but would like proposals to outline a path that could achieve a 20-year supply period.
- Pricing and economic risk, including:
  - All-in pricing estimate including all components of power supply;
  - Fixed price versus variable (e.g., market-based) power supply components;
  - Length/duration for firm pricing components prior to extension periods where pricing is yet to be defined.
- Creditworthiness of counterparty and terms providing for continuity of delivery/service even through unforeseen credit conditions.

Proposal Requirements:

- For each proposal, at a minimum please specify:
  - Quantity – annual capacity/energy; expected pattern of energy delivery;
  - Term – proposed start and tenor, including any potential extension period(s);
  - Delivery Point;
  - Pricing:
    - Demand and/or energy charges;
    - Indexes and/or price escalators upon which demand/fuel/other components may be based;
    - Any market-based or pass-through components of power supply;
    - Pricing to be based on market close on September 29, 2017;
  - Any unit contingencies or assets backing the sale of capacity and/or energy;
  - Credit requirements/expectations of both parties.

SOUTH KY RECC
EXHIBIT 10

Schedule:

Request for Proposal Release Date	September 19, 2017
RFP Response Date	**October 3** (e-mail proposals preferred)
Short List Decision Date / Negotiations Begin	Week of October 16
Contract Execution	November 30 (preferred, to coincide with EKPC notice)
Delivery Commencement	June 1, 2019 (preferred)

Additional Information:

- A form of Confidentiality Agreement is being distributed to recipients with this RFP.
- All Respondents have the obligation and responsibility to clearly mark and identify any and all proprietary information included in the Response. SKRECC and its consultants are not restricted from using or disclosing any data that is already obtainable from another pubic source, without restriction. SKRECC and its legal and engineering consultants will use their best efforts to maintain the confidentiality of any submitted proprietary information, however, should such information be accidentally disclosed, Respondents agree that SKRECC and its legal and engineering consultants shall not be liable for such accidental disclosure.
- All Respondents are responsible for their costs related to the preparation of their respective proposal(s).
- This RFP is not an offer or a contract. SKRECC and/or EnerVision reserve the right to accept or reject any or all proposals and are not obligated to contract for any of the products/services described in this RFP. SKRECC is under no obligation to accept any proposal, nor is SKRECC obligated to accept the lowest cost proposal, as there are many other factors which will be considered in the review and analysis of the proposals. SKRECC may at its sole option determine to revise this RFP at any time. All Respondents, by submitting a proposal, agree that they will not seek any legal recourse against SKRECC for rejection of their respective proposal, or for any other matter related to actions or inactions on the proposal.

Contact Information:

- Address all RFP questions, correspondence, confidentiality agreements, and proposals to:
  - Greg Shepler, Managing Principal, EnerVision, Inc.
    - greg.shepler@enervision-inc.com
    - 678-510-2921 office; 678-525-2017 mobile

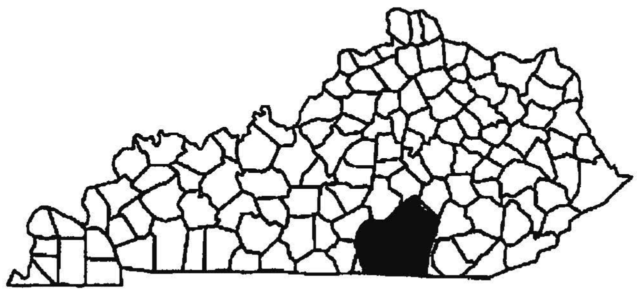
Next Steps:

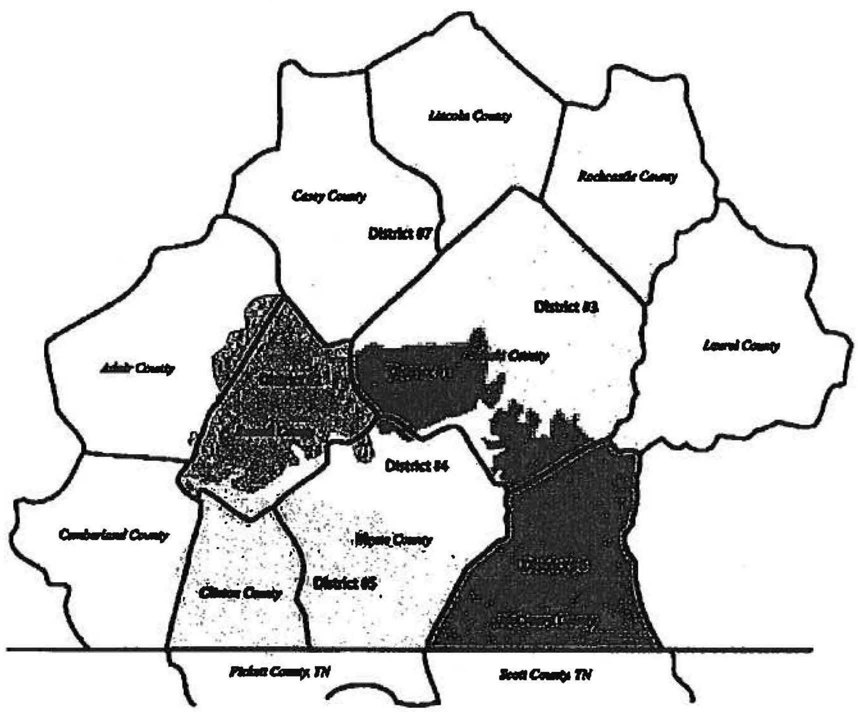
- Initiate confidentiality process.
- Ask clarifying questions; responses to FAQs will be distributed to all RFP recipients.
- Begin preparing proposals.

SKRECC Information:

- SKRECC serves over 67,000 members across 13 counties in Southern Kentucky and Northern Tennessee (see maps below).
- SKRECC's rates are regulated by the Kentucky Public Service Commission.

SERVICE AREA





Gwyn Willoughby

From: David Crews
Sent: Friday, December 22, 2017 10:22 AM
To: Mike McNalley
Cc: Tony Campbell; Don Mosier
Subject: Re: SK Load Loss Paper

Nice job Mike. The alternate source starts 6/1/2019. We essentially get two years of load growth to mitigate the SK impact. You point out that the past two years have been below normal with regard to weather. Hopefully, weather will get back on track this year. We should have some load growth that isn't reflected in our current performance.

I read an article about housing. My recollection is they said housing starts were up 6%. That sounds high to me. Housing is really where we live. New house starts will definitely help us.

Sent from my iPhone

On Dec 22, 2017, at 9:01 AM, Mike McNalley <Michael.McNalley@ekpc.coop> wrote:

> Guys,
> After talking to Mike W yesterday I decided to try to put the numbers and key issues on paper for all owner-members to use as they see fit. The attached is a first attempt. I will send it to Isaac to review and update his numbers; would appreciate all inputs on this. For the market mitigation I just assumed a margin of $5/MWh based on a guess, if anyone has a better number of what we might have achieved in 2017 please let me know.
> I'd like to be able to send next week or very early the following week because the CEOs are talking to their boards already, especially Mike, Mark, Joni, Tim and Carol.
> Thanks and Merry Christmas!
> Mike McNalley
> EVP & CFO
> East Kentucky Power Cooperative, Inc.
> 859-745-9209 O
> 859-595-3897 C
> Michael.mcnalley@ekpc.coop

SOUTH KY RECC
EXHIBIT 11

*Big Sandy R.E.C.C.
Big Sandy R.E.C.C.
504 11th Street
Paintsville, KY 41240

*David T Royse
Attorney At Law
Ransdell Roach & Royse PLLC
176 Pasadena Drive, Building I
Lexington, KENTUCKY 40503

*Honorable James M Miller
Attorney at Law
Sullivan, Mountjoy, Stainback & Miller, PSC
100 St. Ann Street
P.O. Box 727
Owensboro, KENTUCKY 42302-0727

*William H May, III
Hurt, Deckard & May
The Equus Building
127 West Main Street
Lexington, KENTUCKY 40507

*Dan H McCrary
Balch & Bingham, LLP
1710 Sixth Ave. North
Birmingham, ALABAMA 35203

*Jake A Thompson
Crawford & Baxter, P.S.C. Attorneys at Law
523 Highland Avenue
P. O. Box 353
Carrollton, KENTUCKY 41008

*Bradley Cherry
Grayson R.E.C.C.
109 Bagby Park
Grayson, KY 41143

*Farmers R.E.C.C.
Farmers R.E.C.C.
504 South Broadway
P. O. Box 1298
Glasgow, KY 42141-1298

*Jesse S Unkenholz
Balch & Bingham, LLP
1710 Sixth Ave. North
Birmingham, ALABAMA 35203

*Brandon Music
W. Jeffrey Scott, PSC
PO Box 608
Grayson, KENTUCKY 41143

*Honorable James M Crawford
Crawford & Baxter, P.S.C. Attorneys at Law
523 Highland Avenue
P. O. Box 353
Carrollton, KENTUCKY 41008

*Kent Chandler
Assistant Attorney General
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204

*Carol Hall Fraley
President & CEO
Grayson R.E.C.C.
109 Bagby Park
Grayson, KY 41143

*John Douglas Hubbard
Fulton, Hubbard & Hubbard
117 E. Stephen Foster Avenue
P.O. Box 88
Bardstown, KENTUCKY 40004

*Nolin R.E.C.C.
Nolin R.E.C.C.
411 Ring Road
Elizabethtown, KY 42701-6767

*Clayton O Oswald
Taylor, Keller & Oswald, PLLC
1306 West Fifth Street, Suite 100
Post Office Box 3440
London, KENTUCKY 40743-3440

*Jason Floyd
Fulton, Hubbard & Hubbard
117 E. Stephen Foster Avenue
P.O. Box 88
Bardstown, KENTUCKY 40004

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

*Honorable David A Smart
Attorney at Law
East Kentucky Power Cooperative, Inc.
P. O. Box 707
Winchester, KY 40392-0707

*Fleming-Mason Energy Cooperative, In
Fleming-Mason Energy Cooperative, Inc.
1449 Elizaville Road
P. O. Box 328
Flemingsburg, KY 41041

*Honorable Michael L Kurtz
Attorney at Law
Boehm, Kurtz & Lowry
36 East Seventh Street
Suite 1510
Cincinnati, OHIO 45202

*Steven M Madison
Balch & Bingham, LLP
1710 Sixth Ave. North
Birmingham, ALABAMA 35203

*Inter-County Energy Cooperative Corp
Inter-County Energy Cooperative Corporation
1009 Hustonville Road
P. O. Box 87
Danville, KY 40423-0087

*Scott B Grover
Balch & Bingham, LLP
1710 Sixth Ave. North
Birmingham, ALABAMA 35203

*Honorable Matthew R Malone
Attorney at Law
Hurt, Deckard & May
The Equus Building
127 West Main Street
Lexington, KENTUCKY 40507

*Jackson Energy Cooperative Corporati
Jackson Energy Cooperative Corporation
115 Jackson Energy Lane
McKee, KY 40447

*Ted Hampton
General Manager
Cumberland Valley Electric, Inc.
Highway 25E
P. O. Box 440
Gray, KY 40734

*R. Michael Sullivan
Sullivan, Mountjoy, Stainback & Miller, PSC
100 St. Ann Street
P.O. Box 727
Owensboro, KENTUCKY 42302-0727

*Licking Valley R.E.C.C.
Licking Valley R.E.C.C.
P. O. Box 605
271 Main Street
West Liberty, KY 41472

*Honorable W. Jeffrey Scott
Attorney At Law
P.O. Box 608
311 West Main Street
Grayson, KENTUCKY 41143

*Honorable W. Patrick Hauser
Attorney At Law
P. O. Box 1900
Barbourville, KENTUCKY 40906

*Honorable Ruth H Baxter
Attorney at Law
Crawford & Baxter, P.S.C. Attorneys at Law
523 Highland Avenue
P. O. Box 353
Carrollton, KENTUCKY 41008

*Blue Grass Energy Cooperative Corp.
Blue Grass Energy Cooperative Corp.
1201 Lexington Road
P. O. Box 990
Nicholasville, KY 40340-0990

*Rebecca W Goodman
Assistant Attorney General
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204

*Clark Energy Cooperative, Inc.
Clark Energy Cooperative, Inc.
2640 Ironworks Road
P. O. Box 748
Winchester, KY 40392-0748

*Roger R Cowden
Senior Corporate Counsel
East Kentucky Power Cooperative, Inc.
4775 Lexington Road
P. O. Box 707
Winchester, KY 40392-0707

*East Kentucky Power Cooperative, Inc
East Kentucky Power Cooperative, Inc.
4775 Lexington Road
P. O. Box 707
Winchester, KY 40392-0707

*Robert Spragens, Jr.
Spragens & Higdon, P.S.C.
15 Court Square
P.O. Box 681
Lebanon, KENTUCKY 40033