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January 12, 2012

RECEIVED

JAN 17 2012

PUBLIC SERVICE  
COMMISSION

Mr. Jeff Derouen, Executive Director  
Public Service Commission  
211 Sower Boulevard  
Frankfort, Kentucky 40602

Dear Mr. Derouen:

Re: PSC Case No. 2011-00314;  
William Allen Roberts v. Taylor County RECC

Enclosed herewith please find an original and 10 copies of Taylor County Rural Electric Cooperative Corporation's response to the Commission Staff's second request for information.

Very truly yours,

SPRAGENS & HIGDON, P.S.C.



Robert Spragens, Jr., Counsel for  
Taylor County RECC

RS,JR:js  
Enclosures

cc: Mr. Barry L. Myers, Manager,  
Taylor County RECC

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

IN THE MATTER OF:

JAN 17 2012

WILLIAM ALLEN ROBERTS )

PUBLIC SERVICE  
COMMISSION

COMPLAINANT )

V. )

CASE NO.  
2011-00314

TAYLOR COUNTY RURAL ELECTRIC  
COOPERATIVE CORPORATION )

DEFENDANT )

**TAYLOR COUNTY RURAL ELECTRIC COOPERATIVE CORPORATION'S  
RESPONSE TO COMMISSION STAFF'S SECOND REQUEST FOR INFORMATION**

Taylor County Rural Electric Cooperative Corporation (Taylor County) responds as follows to the Staff's second request for information issued herein on January 3, 2012.

1. Does Taylor County acknowledge that it may exercise, pursuant to KRS 279.110(4) and any other applicable law, the right of eminent domain?

**RESPONSE:** KRS 279.110(4) authorizes rural electric cooperative corporations, including Taylor County, to exercise the right of eminent domain in the manner provided by the Eminent Domain Act of Kentucky KRS 416.540 *et seq.*

2. Explain why Taylor County has not attempted to exercise its right of eminent domain so that electric utility service could be extended to the Roberts' property.

**RESPONSE:** Taylor County's investigation into this matter reveals that Mr. Roberts had offended the owners of adjoining property in the area of his cabin. Nonetheless, Taylor County continued to attempt to negotiate the acquisition of an easement corridor, particularly with Katie McKinney, by means of which the Roberts' property might be served. That effort at acquiring a negotiated easement continued until the time that the Commission's staff member who had investigated Roberts' informal Complaint apparently concluded, and advised both Roberts and management at Taylor County, that condemnation appeared to be the appropriate method of acquiring easement rights to the Roberts property. Concurrent with the giving of that advice by the Commission's staff member, Mr. Roberts, who is not joined by his spouse, who is also an owner of the property in question., filed his formal Complaint, and made it clear to Taylor County that it was his intention to avoid, to the extent possible, sharing in the cost of extending service to his property.

Taylor County is without knowledge of the extent to which the staff member recommending condemnation may be familiar with that legal process. Taylor County is apprised by its counsel, who has tried dozens of condemnation cases, representing both condemnors and condemnees, over the last 40 years, that its attempted utilization of the power of eminent domain, particularly with respect to the McKinney property, is problematic. The attached summary of prospective costs of the various options for extending service to the Roberts property reflect that, by far, the lowest allocated cost to Roberts is achieved through condemnation across McKinney for the purpose of installing overhead service. That, however, would not be Taylor County's preferred option in terms of extending its system and there certainly exists, in addition to the condemnation-across-McKinney option, other viable means of accessing the Roberts

property and, in the process, creating substantially less disruption to adjoining property owners and their respective properties. Were Taylor County to institute condemnation proceedings against the McKinneys, the McKinneys would be entitled to challenge the necessity of condemnation across then by pointing out that there exist other more preferable means of serving Roberts, and that condemnation over the McKinney property benefits only Roberts in reducing his prospective contribution. Under those circumstances, the Adair Circuit Court, which would entertain this proposed condemnation proceeding, might well summarily deny Taylor County's petition. Even if the Circuit Court permitted that proceeding to proceed to trial, the McKinneys would be privileged to undertake appeals and the result of all of that is that service to the Roberts cabin could be held in abeyance for years.

As among all of the potential options which might have been available here, the preferred option would have been to acquire, by negotiation, an easement across McKinney, which was conditioned upon the installation of underground service. Because of the conduct of Roberts which has been directed to the McKinneys, that sort of negotiated easement is no longer available. Accordingly, the next-in-preference option is proceeding along the county road/ private road corridor but, because the private road portion of that corridor is owned by other landowners whom Roberts has antagonized, utilization of that corridor will necessarily have to be achieved by condemnation, *and* utilization of the roadway corridor will require the installation of underground service as that roadway corridor is not sufficient to accommodate both the location of poles and the safe passage of vehicular traffic. Roberts clearly opposes the utilization of any easement path which requires substantial underground service.

In accordance with the foregoing, Taylor County deems it improvident to unilaterally go forward with any condemnation proceeding at this time.

3. Refer to page 8 of Taylor County's November 10, 2011 Response to question 8 of Commission's Staff's First Request for information. Three separate routes to the Roberts' property are identified. Regarding the cost of constructing facilities to provide electric service to William Allen Roberts' cabin:

a. Provide an estimate of the total cost of each of the alternative distribution routes available to the Roberts' cabin as described on page 8. Also include with this estimate the cost of each route if installed as overhead only, rather than as a combined overhead and underground route.

b. For each route identified in a. above, provide the amount that Taylor County alleges would be the responsibility of Taylor County and the amount that would be the responsibility of William Allen Roberts under the terms of 807 KAR 5:041, Section 11.

**RESPONSE:** a. It is not possible for Taylor County to provide meaningful estimates of total costs because, under any scenario, the acquisition of right(s) of way will apparently have to be achieved through condemnation, the costs attendant with which cannot be predicted. Accordingly, Taylor County has requested its engineering staff to prepare estimates which match the information and maps previously furnished, and those estimates set forth the probable costs of the various means of installation *if legal access along and upon each of those various routes were readily available.*

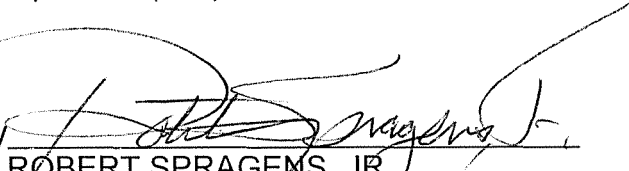
b. The estimates provided upon attached Exhibit A set forth the estimated cost to the consumer under each of those options. Setting aside, for purposes of these estimates, the unpredictable costs of achieving legal access, it remains impracticable at

this point to attempt to estimate Taylor County's costs under the various options. For example, any overhead installation across McKinney would entail the clearing of a 60 foot corridor across a heavily forested area lying generally to the south of the Roberts property. That project would be achieved upon contractors' bids to Taylor County which is not, for obvious reasons, in a position to solicit bids for that project at this time.

The undersigned acts as counsel for Taylor County Rural Electric Cooperative Corporation and, acting in that capacity, has supervised the preparation of this Response, which is true and accurate to the best of counsel's knowledge, information and belief formed after a reasonable inquiry.

DATED this 12th day of January, 2012.

SPRAGENS & HIGDON, P.S.C.  
Attorneys at Law  
15 Court Square - P. O. Box 681  
Lebanon, (270) 692-3141  
Telephone: (270) 692-3141

By   
ROBERT SPRAGENS, JR.  
Counsel for Taylor County Rural  
Electric Cooperative Corporation

I hereby certify that a true copy of  
the foregoing was mailed this  
12th day of January, 2012, to:

Mr. William Allen Roberts  
4078 Snake Creek Road  
Columbia, KY 42728

By   
Robert Spragens, Jr.

**Allen Roberts - Cost of Each of the 3 Alternatives**

rev 1/11/12

**Option 1**

From Joey Curry's Transformer Pole

Color of Option via last Filing = *RED/MARCON*

OH & UG

100	OH ft	
35	UG ft	*Down pole
935	UG ft	
<u>1070</u>		

	<u>Footage</u>	<u>Type</u>	<u>\$/Ft</u>	<u>Cost</u>
	100	OH	0	\$0.00
	900	UG	2.33	\$2,097.00
>1000'	70	UG	5.26	\$368.20
				<u>\$2,465.20</u>

\*Consumer Opens/Closes Ditch

OH

100
315
310
310
<u>1035</u>

	<u>Footage</u>	<u>Type</u>	<u>\$/Ft</u>	<u>Cost</u>
	1000	OH	0	\$0.00
>1000'	35	OH	2.93	\$102.55
				<u>\$102.55</u>

**Option 2**

From Ken Burton, through Katie's Field via the Water Line Easement

Color of Option via last Filing = *PURPLE/BWE*

OH & UG

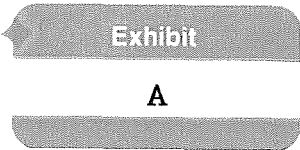
215	OH ft	
220	OH ft	
35	UG ft	*Down pole
780	UG ft	
935	UG ft	
<u>2185</u>		

	<u>Footage</u>	<u>Type</u>	<u>\$/Ft</u>	<u>Cost</u>
	215	OH	0	\$0.00
	220	OH	0	\$0.00
	565	UG	2.33	\$1,316.45
>1000'	1185	UG	5.26	\$6,233.10
				<u>\$7,549.55</u>

\*Consumer Opens/Closes Ditch

OH

215



220  
 280  
 250  
 250  
 315  
 310  
 310  


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 2150

	<u>Footage</u>	<u>Type</u>	<u>\$/Ft</u>	<u>Cost</u>
	1000	OH	0	\$0.00
>1000'	1150	OH	2.93	\$3,369.50
				<u>\$3,369.50</u>

**Option 3**

From Ken Burton, along the Road on County Right of Way

Poles 4, 5 & 6 will locate on County Right of Way

Ms Mckinney's trees along road will require attention - against her will

Color of Option via last Filing = GREEN

**OH & UG**

215 OH ft  
 220 OH ft  
 35 UG ft \*Down pole  
 780 UG ft  
 935 UG ft  


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 2185

	<u>Footage</u>	<u>Type</u>	<u>\$/Ft</u>	<u>Cost</u>
	215	OH	0	\$0.00
	220	OH	0	\$0.00
	565	UG	2.33	\$1,316.45
>1000'	1185	UG	5.26	\$6,233.10
				<u>\$7,549.55</u>

\*Consumer Opens/Closes Ditch

**OH**

215  
 220  
 280  
 250  
 250  
 315  
 310  
 310  


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 2150

	<u>Footage</u>	<u>Type</u>	<u>\$/Ft</u>	<u>Cost</u>
	1000	OH	0	\$0.00
>1000'	1150	OH	2.93	\$3,369.50
				<u>\$3,369.50</u>