

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PETITION AND COMPLAINT OF KENTUCKY)	
POWER COMPANY FOR A DECLARATION OF)	
ITS EXCLUSIVE RIGHT PURSUANT TO KRS)	
278.018(1) TO SERVE THOSE PORTIONS OF)	CASE NO.
THE SAND GAP ESTATES IN GREENUP)	2012-00224
COUNTY, KENTUCKY LYING WITHIN ITS)	
CERTIFIED TERRITORY IN LIEU OF)	
GRAYSON RURAL ELECTRIC COOPERATIVE)	
CORPORATION)	

ORDER

On June 1, 2012, Kentucky Power Company ("Kentucky Power") filed a Complaint against Grayson Rural Electric Cooperative Corporation ("Grayson"), pursuant to KRS 278.016 to KRS 218.018, KRS 278.040, and KRS 278.260, for an Order: (1) declaring that Grayson is providing electric service in violation of KRS 278.018(1) to two residences in the Sand Gap Estates in Argillite, Greenup County, Kentucky, located at 414 Sand Gap Road and 397 Olivia Boulevard; (2) declaring that Kentucky Power has the exclusive right to provide retail electric service to the aforementioned two residences currently served by Grayson, as well as any other electric-consuming facilities within Kentucky Power's certified territory; and (3) directing Grayson to maintain records during the pendency of this action and a reasonable period thereafter of service rendered on or after February 23, 2011, to the two residences that are the subject of this Complaint.

On July 2, 2012, Grayson filed its Answer wherein it (1) denied that it has supplied retail electric service to any location in an improvident manner; (2) stated that Kentucky Power's Complaint should be denied based upon an accord reached between Kentucky Power and Grayson several years ago allowing Grayson to supply retail electric service to the two customers complained of in the Complaint; (3) contended that Kentucky Power is estopped from asserting any Complaint based upon the accord reached earlier; (4) alleged that Kentucky Power has improperly served certain residential customers located within the certified service territory of Grayson and that the Commission should investigate this allegation; and (5) averred that Kentucky Power's prayer for relief should be denied on the ground that allowing Kentucky Power to serve the residential customers at issue would result in duplication of services and a blight on the landscape.

According to its Answer, Grayson requests that the Complaint be dismissed or, alternatively, a formal evidentiary hearing be scheduled.

PROCEDURAL BACKGROUND

A procedural schedule was issued on November 30, 2012, which was subsequently revised on December 5, 2012. One round of discovery was conducted and two informal conferences were held. A formal evidentiary hearing was conducted in this matter on August 6, 2013. Kentucky Power and Grayson simultaneously filed post-hearing briefs on September 5, 2013. The matter now stands submitted for a decision.

KENTUCKY POWER'S ARGUMENT

Two witnesses submitted testimony on behalf of Kentucky Power in this proceeding: Delinda K. Borden, Manager of Customer and Distribution Services at Kentucky Power, and Richard Howerton, Howerton Engineering & Surveying, PLLC. Ms. Borden testified that the area in dispute is bounded on the east by the Industrial Parkway and on the west by an old mining road. The subject area was largely undeveloped until the Industrial Parkway was constructed in 2000. After the Industrial Parkway was constructed, Sand Gap Estates was developed as part of a C-shaped tract between the Industrial Parkway and the old mining road. Four homes have been built since 2005 in Sand Gap Estates, including the two residences at issue in this matter, 414 Sand Gap Road ("Lot 14") and 397 Olivia Boulevard ("Lot 25"). Ms. Borden indicates that since 1990 Kentucky Power has provided electric service to Sand Gap United Baptist Church, which is located approximately 1,807 feet north of Lot 14.

According to Ms. Borden's testimony, representatives of Kentucky Power noticed a residence was being built at 397 Olivia Boulevard beginning in 2010.¹ Ms. Borden states that there was no evidence of electric service being provided to the residence at that time.² She further states that Kentucky Power investigated service to the other three residences in the Sand Gap Estates subdivision and discovered that Grayson was providing retail electric service to all three of those residences.³ Ms. Borden testifies that Kentucky Power never received an application for service for the 397 Olivia Boulevard residence, but at some point after the beginning of 2010, Grayson began

¹ Ms. Borden's testimony, p. 8.

² *Id.*

³ *Id.*

providing retail electric service to that residence.⁴ She states that Kentucky Power reviewed the boundary map and determined that two of the four residences in Sand Gap Estates are within Kentucky Power's certified territory – specifically the residences located at 414 Sand Gap Road and 397 Olivia Boulevard.⁵

Ms. Borden asserts that, since March 27, 1990, Kentucky Power has been providing retail electric service to Sand Gap United Baptist Church, which is located approximately 1,807 feet north of the 414 Sand Gap Road residence.⁶ Ms. Borden states that Kentucky Power has adequate and dependable existing distribution facilities in the vicinity that could be extended to provide reliable retail electric service to both the residences at 414 Sand Gap Road and 397 Olivia Boulevard.⁷

According to Ms. Borden's testimony, Kentucky Power first advised Grayson that the residences at issue are located within Kentucky Power's certified territory and that Kentucky Power requested that the service to the residences be transferred to Kentucky Power.⁸ She further states that based upon her review of Kentucky Power records and discussions with current and former employees who have knowledge of the boundary issue with Grayson, Kentucky Power has not contracted with Grayson concerning service to the area at issue in this proceeding.⁹ She further states that Kentucky Power

⁴ *Id.*

⁵ *Id.*

⁶ Ms. Borden's testimony, p. 5.

⁷ *Id.*

⁸ *Id.* at p. 9.

⁹ *Id.* at p. 10.

has entered no agreement authorizing Grayson to provide retail electric service to the residences located at 414 Sand Gap Road and 397 Olivia Boulevard.¹⁰

Ms. Borden further states that Kentucky Power field representatives do not possess the authority to enter into oral or written agreements authorizing other electric utilities to provide service to customers located within Kentucky Power's certified territory.¹¹ In describing the steps that Kentucky Power would take if an adjacent electric utility sought authorization to provide service to a customer located within Kentucky Power's certified territory, she states that first, Kentucky Power would require that an agreement authorizing an adjacent utility to provide retail electric service to a customer located within the company's certified territory be reduced to writing.¹² Second, she states that Kentucky Power would require that such an agreement be signed by its president, and that finally, Kentucky Power would seek the Commission's approval for such an agreement through the filing of a formal petition.¹³

Ms. Borden states that there is no written agreement authorizing Grayson to provide service to the residences at issue in this proceeding, that Kentucky Power's management did not approve any such agreement, and that approval was neither sought nor obtained from the Commission "for the alleged agreement."¹⁴ She states that when a customer requests service at a location that is close to the boundary with another electric utility, GPS (Global Positioning System) coordinates are established at

¹⁰ *Id.*

¹¹ *Id.* at pp. 10-11.

¹² *Id.* at p. 11.

¹³ *Id.*

¹⁴ *Id.* at p. 12.

the location, and then the GPS coordinates are then checked against the Commission's certified boundary maps to determine whether the customer is located within the certified territory of Kentucky Power or the adjacent electric utility.¹⁵

Mr. Howerton testified that he was retained by Kentucky Power to determine the location of the boundary line based on his professional judgment. Along with his pre-filed testimony, Mr. Howerton submitted several maps which showed the boundary line delineating the service territories of Grayson and Kentucky Power in Sand Gap Estates and the location of Lots 14 and 25 in relation to that boundary line. Based on his survey and professional judgment, Mr. Howerton concluded that both residences at issue in this matter are located within Kentucky Power's certified territory.¹⁶

GRAYSON'S ARGUMENT

Grayson contends that Kentucky Power has failed to satisfy its burden of proving that the two residences at issue are located inside Kentucky Power's service territory. Grayson asserts that it was granted a right-of-way from Addington Land Company, the entity that previously owned the tract of land that encompassed Sand Gap Estates, in 2005 to provide electric service to the subdivision. Grayson contends that it began providing electric service to two homes in Sand Gap Estates, located at Lots 20 and 21, in 2005, noting that it had electric facilities south and west of the subdivision. Grayson then asserts that it began providing electric service to the residences located on Lots 14 and 25 in 2010; that Lot 25 is directly across the street from Lot 20; and that its electric

¹⁵ *Id.*

¹⁶ Direct Testimony of Richard Howerton on Behalf of Kentucky Power Company filed Jan. 23, 2013, p. 4.

facilities, which are already in place and serving Lots 20 and 21, are much closer to the residences at issue than those of Kentucky Power.

Grayson argues the maps that Kentucky Power submitted as part of the survey conducted by Mr. Howerton had a margin of error of 40 feet from each side of the boundary line as drawn on the maps. Grayson contends that “[t]he only reasonable inference to draw from these lines on the map is that the location of the 414 Sand Gap Estates electric consuming facility and the location of the 397 Olivia Boulevard electric consuming facility is more than likely to be located within the certified territory of [Grayson].”¹⁷

Grayson argues that the Commission should take into account other considerations, such as the extent to which a determination in favor of Kentucky Power would result in duplicative services and whether Kentucky Power is estopped from asserting its claim based on the allegation that Grayson and Kentucky Power had previously agreed that Grayson would serve the areas to the west of the Industrial Parkway which would encompass the two residences at issue and that Kentucky Power would serve the remaining areas adjacent to the Industrial Parkway.

FINDINGS

Having reviewed the record and being otherwise sufficiently advised, the Commission finds that Kentucky Power has sufficiently established that Lot 14 and Lot 25 are located within Kentucky Power's service territory. The maps submitted by Kentucky Power reasonably and accurately show the boundary line delineating the service territories of Kentucky Power and Grayson. The boundary line depicted in Kentucky Power's maps was a digitized rendering based upon Kentucky Power's copy

¹⁷ Grayson Post-Hearing Brief, p. 3.

of the agreed boundary from the United States Geological Survey map signed by Kentucky Power and Grayson, which is on file with the Commission. Exhibit RLH-3, attached hereto as Attachment A, clearly shows the residence of the property located on Lot 25 as being within Kentucky Power's service territory, even assuming there is a 40-foot margin of error. Likewise, Exhibit RLH-6, attached hereto as Attachment B, clearly shows the location of the residence located on Lot 14 as being within Kentucky Power's service territory. Again, even assuming a 40-foot margin of error, a vast portion of the residence on Lot 14 is located within Kentucky Power's service territory. Accordingly, we find that the residences at issue in this matter are within Kentucky Power's service area and should, therefore, be served by Kentucky Power.

The Commission finds no legal basis for Grayson's argument that Kentucky Power should be estopped from challenging Grayson's authority to provide electric service to Lots 14 and 25 in light of a purported agreement by the two utilities allowing Grayson to serve those properties. KRS 278.018(6)¹⁸ permits retail electric suppliers — such as Kentucky Power and Grayson — the ability to contract with each other to provide electric utility service to consumers in the territory of the other. If the Commission finds that such a contract will promote the purposes of KRS 278.016 and

¹⁸ KRS 278.018(6) provides, in full, as follows:

Notwithstanding the effectuation of certified territories established by or pursuant to KRS 278.016 to 278.020, and the exclusive right to service within such territory, a retail electric supplier may contract with another retail electric supplier for the purpose of allocating territories and consumers between such retail electric suppliers and designating which territories and consumers are to be served by which of said retail electric suppliers. Notwithstanding any other provisions of law, a contract between retail electric suppliers as herein provided when approved by the commission shall be valid and enforceable. The commission shall approve such a contract if it finds that the contract will promote the purposes of KRS 278.016 and will provide adequate and reasonable service to all areas and consumers affected thereby.

will provide adequate and reasonable service to all areas and consumers affected thereby, the statute states that the Commission shall approve such contract.

The record reflects that Kentucky Power disputes the existence of a contract concerning the allocation of territory and consumers in this instance. No contract was reduced to writing pursuant to KRS 278.018(6). The evidence also reflects that no written contract concerning the allocation of territory and consumers in this instance had been previously presented for the Commission's approval. In the absence of a Commission-approved contract addressing the provision of electric service to the residences at issue in this matter as contemplated by KRS 278.018(6), the Commission finds that Kentucky Power is not estopped from claiming that under the territorial boundary map it has an exclusive right to provide electric service to Lots 14 and 25.

On August 5, 2013, one day prior to the start of the evidentiary hearing, Grayson filed certain information in the record, including an application for electric service from the owner of the land located at Lot 18. In its filing, Grayson requests a determination of whether Lot 18 is located within the service territory of Grayson or Kentucky Power because that tract of land is situated in what it characterized as a "disputed area."

The information filed by Grayson with regard to Lot 18 was entered into the record the day before the hearing in this matter. Due to the timing of this filing, neither Kentucky Power nor Commission staff was afforded the opportunity to issue requests for information based on Grayson's August 5, 2013 filing. More significantly, no evidence has been presented to show where the real property on Lot 18 is located in relationship to the boundary line between the service territories of Kentucky Power and Grayson. As such, the Commission finds that it is premature to render a decision

concerning which utility is entitled to provide electric service to the electric-consuming facility located on Lot 18 of Sand Gap Estates Subdivision, and we decline to do so now.

The Commission also recognizes that when either party receives a future request for electric service to the unserved parcels in the Sand Gap Estates Subdivision, there is likely to be a dispute as to which utility is authorized to serve that parcel. Both parties recognize this issue. The Commission strongly encourages Kentucky Power and Grayson to work together in a cooperative manner to address any and all remaining parcels in the area of the Sand Gap Estates Subdivision that are located in both utilities' service territories. Upon reaching an agreement for the allocation of territories and consumers between them, the parties should file the agreement with the Commission for its review, pursuant to KRS 278.018(6).

Lastly, the Commission finds that Grayson's actions herein do not constitute a willful violation of either KRS 278.016 or KRS 278.018. Accordingly, the Commission further finds that Kentucky Power is not entitled to recover the amounts charged by Grayson during the period of time Grayson provided electric service to the two residences at issue in this matter.

IT IS THEREFORE ORDERED that:

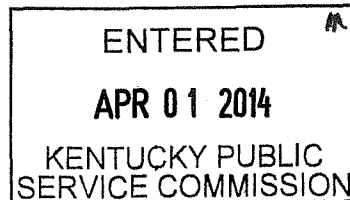
1. The electric-consuming facility located on Lot 14 of Sand Gap Estates Subdivision is located within the certified territory of Kentucky Power, and Kentucky Power should be entitled, pursuant to KRS 278.016, KRS 278.018, and all other applicable law, to exclusively provide retail electric service to that facility.

2. The electric-consuming facility located on Lot 25 of Sand Gap Estates Subdivision is located within the certified territory of Kentucky Power, and Kentucky Power should be entitled, pursuant to KRS 278.016, KRS 278.018, and all other applicable law, to exclusively provide retail electric service to that facility.

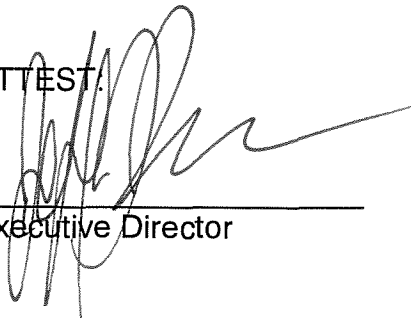
3. The record is not sufficiently developed with regard to the electric-consuming facility located on Lot 18 of Sand Gap Estates Subdivision and the Commission declines to rule on that matter as presented in Grayson's August 5, 2013 filing.

4. Kentucky Power's request to have Grayson maintain records during the pendency of this action, and for a reasonable period thereafter, of service rendered on or after February 23, 2011, to the two residences that are the subject of the instant complaint is denied.

By the Commission



ATTEST:



Executive Director

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2012-00224 DATED **APR 01 2014**

I DO HEREBY CERTIFY THIS DOCUMENT WAS PERFORMED UNDER MY DIRECTION. THE INFORMATION CONTAINED HEREIN IS TRUE AND CORRECT TO THE BEST OF MY INFORMATION, KNOWLEDGE AND BELIEF.

Richard L. Howerton 1/21/2013
 RICHARD L. HOWERTON, PE PS CFM ELI DATE

GRAYSON RECC SERVICE AREA

LEGEND

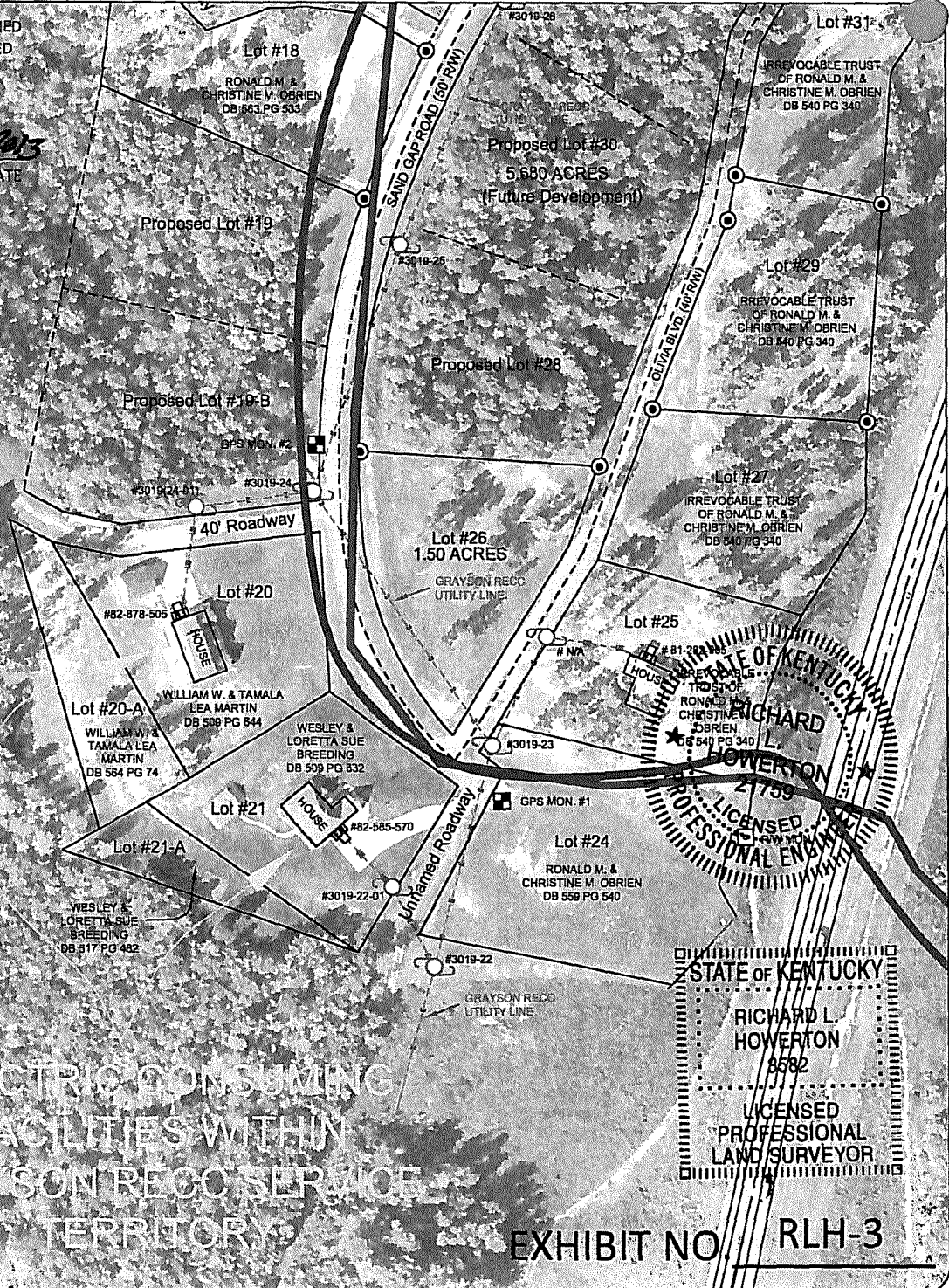
- AGREED BOUNDARY FROM SIGNED USGS MAP FILED WITH THE KENTUCKY PUBLIC SERVICE COMMISSION, DATED 1982.
- BOUNDARY FROM SHAPE FILE PROVIDED BY THE KENTUCKY PUBLIC SERVICE COMMISSION.
- EXISTING GRAYSON RECC UTILITY LINE.
- EXISTING GRAYSON RECC UNDERGROUND UTILITY LINE.
- GPS MONUMENT: 1/2" REBAR W/CAP
- RIGHT OF WAY MONUMENT
- ELECTRIC METER
- UTILITY POLE
- IRON PIN FOUND (TURNING POINT/BACK)

GRAPHIC SCALE



(IN FEET)
 1 inch = 200 ft.

ELECTRIC CONSUMING FACILITIES WITHIN GRAYSON RECC SERVICE TERRITORY



STATE OF KENTUCKY
 RICHARD L. HOWERTON
 LICENSED PROFESSIONAL ENGINEER
 21759
 LICENSED PROFESSIONAL LAND SURVEYOR
 8582

EXHIBIT MAP SHOWING ELECTRIC CONSUMING FACILITIES WITHIN THE GRAYSON RECC TERRITORY AT SAND GAP ESTATES ON THE INDUSTRIAL PARKWAY IN GREENUP COUNTY KENTUCKY.

American Electric Power
 835 TECH CENTER DRIVE
 CHARLTON, GA 34504-8200

HOWERTON ENGINEERING & SURVEYING PLLC
 SITE EXHIBIT

40-A MAIN STREET
 GREENUP, KENTUCKY
 (606) 475-3848

633 SECOND STREET
 PORTSMOUTH, OH 44882
 (714) 344-3444

REVISIONS :

JOB #	DATE
8582	DEC. 17, 2013
SCALE	
1" = 200'	
SHEET	
1	1

EXHIBIT NO. RLH-3

APPENDIX B

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2012-00224 DATED **APR 01 2014**

I DO HEREBY CERTIFY THIS DOCUMENT WAS PERFORMED UNDER MY DIRECTION. THE INFORMATION CONTAINED HEREIN IS TRUE AND CORRECT TO THE BEST OF MY INFORMATION, KNOWLEDGE AND BELIEF.

Richard L. Howerton
 RICHARD L. HOWERTON, PE, PS, CFM, CLS DATE: 12/27/23

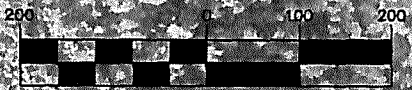
ELECTRIC CONSUMING FACILITY WITHIN AEP SERVICE TERRITORY

LEGEND

- AGREED BOUNDARY FROM SIGNED USGS MAP FILED WITH THE KENTUCKY PUBLIC SERVICE COMMISSION, DATED 1982.
- 40' BUFFER ZONE OF AGREED BOUNDARY FROM SIGNED USGS MAP FILED WITH THE KENTUCKY PUBLIC SERVICE COMMISSION, DATED 1982.
- BOUNDARY FROM SHAPE FILE PROVIDED BY THE KENTUCKY PUBLIC SERVICE COMMISSION.
- 100' BUFFER ZONE OF KENTUCKY PUBLIC SERVICE COMMISSION BOUNDARY.
- EXISTING GRAYSON RECC UTILITY LINE.
- EXISTING GRAYSON RECC UNDERGROUND UTILITY LINE.
- GPS MONUMENT, 1/2" REBAR W/CAP.
- RIGHT OF WAY MONUMENT.
- ELECTRIC METER.
- UTILITY POLE.
- IRON PIN FOUND (TURNING POINT) BACK.

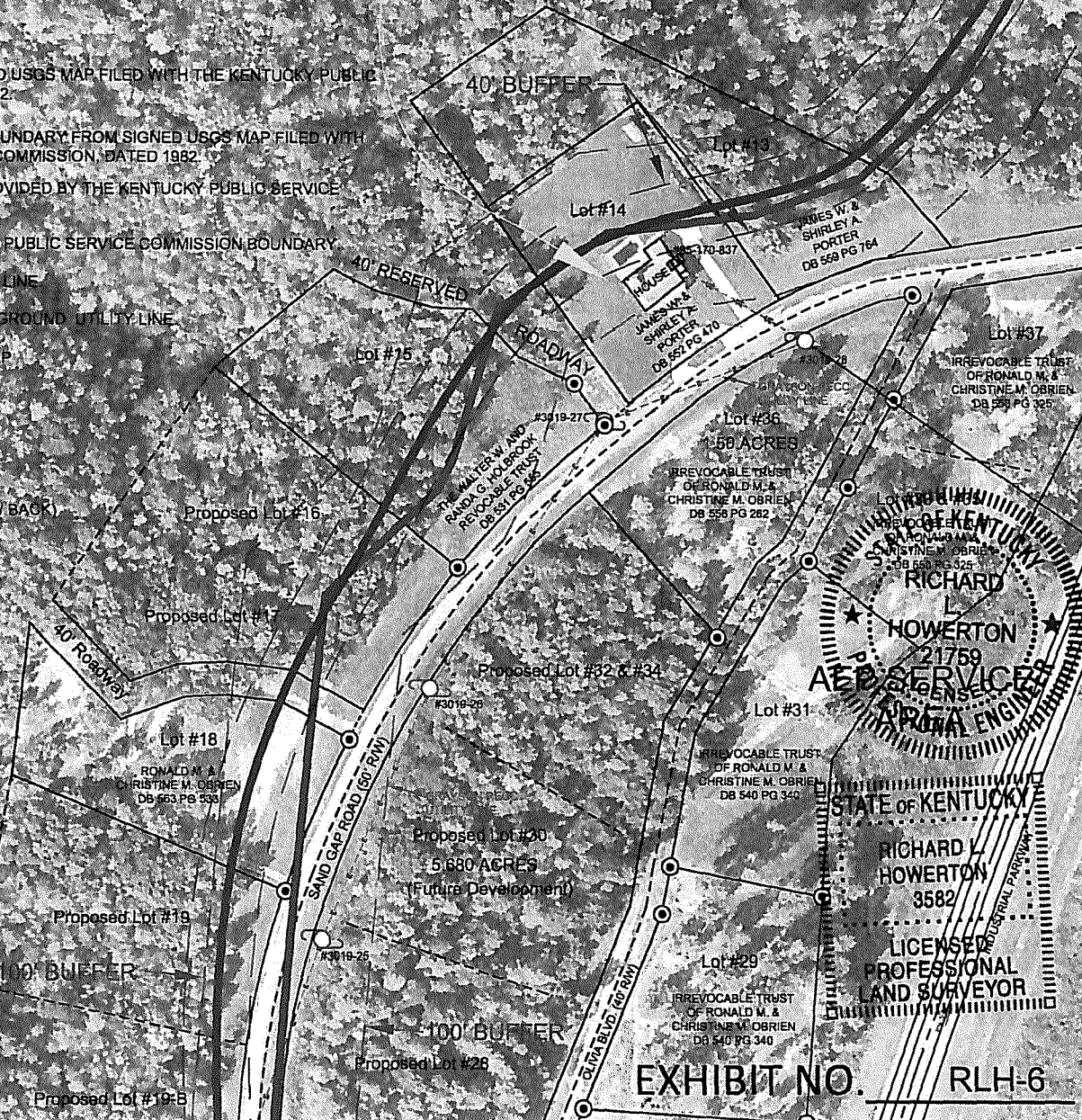


GRAPHIC SCALE



(IN FEET)
 1 inch = 200 ft.

GRAYSON RECC SERVICE AREA



STATE OF KENTUCKY
 RICHARD L. HOWERTON
 21759
AEP SERVICE AREA ENGINEER

STATE OF KENTUCKY
 RICHARD L. HOWERTON
 3582
LICENSED PROFESSIONAL LAND SURVEYOR

EXHIBIT NO. RLH-6

EXHIBIT MAP SHOWING ELECTRIC CONSUMING FACILITY WITHIN THE AEP TERRITORY AT LOT 14 OF SAND GAP ESTATES ON THE INDUSTRIAL PARKWAY IN GREENUP COUNTY KENTUCKY.

AEP AMERICAN ELECTRIC POWER
 825 TECH DRIVE
 COLUMBIA, OH 43230-8290

HOWERTON & ENGINEERING & SURVEYING PLLC
 SITE EXHIBIT

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833 SECOND STREET
 PORTSMOUTH, OH 43084
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REVISIONS :	

JOB #	DATE
201813	JUN 28, 2013
SCALE	1" = 200'
SHEET	1

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