COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

GREEN RIVER ELECTRIC CORPORATION	)	
	)	
COMPLAINANT	)	
	)	
vs.	)	CASE NO. 98-215
	)	
KENTUCKY UTILITIES COMPANY	)	
	)	
DEFENDANT	)	

O R D E R

On April 24, 1998, Green River Electric Corporation ("Green River") filed a complaint against Kentucky Utilities Company ("KU") alleging that KU's efforts to provide electric service to a new customer in Sector 2, Parcel 7 of the Hanson Industrial Park ("Industrial Park") will violate Green River's rights under the electric Territorial Boundary Act, KRS 278.016-278.018. The Act establishes exclusive service territories for each electric supplier regulated by the Commission. KRS 278.018(1).

KU filed an Answer in which it denies any violation of the Territorial Boundary Act. KU asserts that the new customer is located in the adjacent certified territories of KU and Green River and that, pursuant to the provisions of KRS 278.018(1) and KRS 278.017(3), KU is entitled to serve the new customer. The new customer, Carhartt, Inc. ("Carhartt") is constructing a distribution center on Sector 2 of the Industrial Park.

FINDINGS OF FACT

The Industrial Park consists of 399 acres of real estate located in the city of Hanson, Kentucky. The Industrial Park is divided into three sectors as follows: Sector 1

contains 87 acres; Sector 2 contains 71.7 acres; and Sector 3 contains 240.3 acres. Sector 1 and Sector 2 are divided by the Pennyrile Parkway with Sector 1 lying contiguous to and west of the parkway and Sector 2 lying contiguous to and east of the parkway. Sector 3 lies east of Sector 2 and is divided from Sector 2 by Otter Creek. Except for the far northeast corner, Sector 1 lies solely in the certified territory of KU. Sector 3 lies solely in the certified territory of Green River. Carhartt purchased the northern portion of Sector 2, known as Parcel 7, consisting of 50.7 acres. The balance of Sector 2, or the southern portion, is known as Parcel 6 and consists of 21.1 acres. Sector 2 is bisected by the territory boundary line between Green River and KU. Specifically, the Carhartt property, or Parcel 7, is bisected. The location of the territorial boundary line between Green River and KU results in Carhartt's physical building being located in Green River's territory and a part of the lighted access road and parking lot being located in KU's territory. It is undisputed that the area in question is in the adjacent certified territories of Green River and KU. KRS 278.018 provides, in pertinent part, that "[i]n the event that a new electric-consuming facility should locate in two or more adjacent certified territories, the Commission shall determine which electric retail supplier shall serve said facility based on the criteria in KRS 278.017(3). . . ."

Thus, in resolving this dispute, the Commission is to apply the criteria set out in KRS 278.017(3):

> (a) the proximity of existing distribution lines to such certified territory; (b) which supplier was first furnishing retail electric service, and the age of existing facilities in the area; (c) the adequacy and dependability of existing distribution lines to provide dependable, high quality retail electric service at reasonable cost; and, (d) the elimination and prevention of duplication of electric lines and facilities in supplying such territory.

KU argues that the entire Industrial Park is the new electric consuming facility and that, since KU currently serves two customers in Sector 1 and Green River has never served any customer in the Industrial Park, KU is entitled to provide retail electric service to the entire Industrial Park. Green River alleges that it is entitled to provide retail electric service to Carhartt because Carhartt's building and the vast majority of the lighted access road and parking lot lies exclusively within its territorial boundary line that bisects Parcel 7 of Sector 2. Examined in light of the facts, KU's position is overly broad and Green River's argument ignores the fact that the parties' certified territories are adjacent. Based upon the record, the Commission cannot agree with the view of either party.

In applying the statutory criteria to the facts in the record, the Commission finds as follows: (a) Although Green River has a single phase distribution line approximately 900 feet from the Carhartt property, it is acknowledged by the parties that Carhartt must be served by a 3-phase distribution line. Green River would have to construct a new 3-phase electric distribution line and facilities for a distance of approximately 3,400 feet from its nearest existing 3-phase service to the Carhartt property line and an additional 600 feet on the Carhartt property to the connection switch cabinet. KU currently has in existence (since 1966) a 3-phase distribution line which extends from Sector 1 of the Industrial Park over the Pennyrile Parkway to a point in and on Sector 2. KU would have to construct a new 3-phase distribution line from that point extending approximately 470 feet to the Carhartt property and then an additional 1,200 feet on the Carhartt property to the connection switch cabinet; (b) Green River has never supplied electric service to any electric consuming facility anywhere within the boundary of the

Industrial Park. KU provided electric service to a farm customer as early as 1953 at a point in the southern portion (Parcel 6) of Sector 2 of the Industrial Park and has had the 3-phase distribution line on Sector 2 since 1966; (c) Both KU and Green River would have to extend a 3-phase distribution line to the Carhartt facility and, if all other factors were equal, both utilities could provide adequate and dependable retail electric service; and (d) The construction of a new 3-phase distribution line by Green River along Otter Creek would be a duplication of electric lines and facilities considering the existing KU 3-phase distribution line and facilities located on the southern portion of Sector 2 of the Industrial Park.

Green River also argues that it has a right to provide retail electric service to Sector 2 of the Industrial Park and the Carhartt parcel based upon the terms of an exclusivity clause in a Power Purchase Agreement between Big Rivers Electric Corporation ("Big Rivers") and LG&E Energy Marketing, Inc. ("LEM") dated on or about July 15, 1998. The Commission rejects this argument for two reasons. First, the disputed issue in this case should have been known and recognized by Big Rivers and LEM and addressed specifically in the negotiations and execution of the final Power Purchase Agreement. The Agreement reflects no such specific consideration of the dispute in this case. Second, the language of the exclusivity provision of the Power Purchase Agreement clearly would apply only if Section 2 and the Carhartt parcel were located <u>within</u> the certified territory of Green River. This is not the case. It is undisputed that the Carhartt parcel in Sector 2 is located in the <u>adjacent</u> territories of the parties.

CONCLUSIONS OF LAW

Pursuant to KRS 278.018(1), the Commission, in considering which utility will provide electric service to a new electric consuming facility which is located in two adjacent certified territories as is Sector 2 and the Carhartt Parcel of the Industrial Park at Hanson, is mandated to apply the criteria of KRS 278.017(3). After applying the four criteria to the facts of record, the Commission finds that to avoid wasteful duplication of distribution facilities, KU shall continue to provide temporary electric service to Carhartt and shall be entitled to provide permanent electric retail service to Carhartt and to any other electric consuming facility to locate in and on Sector 2 of the Industrial Park.

The Commission having reviewed the evidence of record and having been otherwise sufficiently advised,

IT IS ORDERED that KU is entitled to serve Sector 2 of the Hanson Industrial Park, including Carhartt.

Done at Frankfort, Kentucky, this 17th day of December, 1998.

PUBLIC SERVICE COMMISSION

Vice Chairman

Commissioner

DISSENT

I respectfully dissent because it does not appear that the electric consuming facility should cover the entire Carhartt tract of real estate. It is my opinion that the actual location of the boundary line between Green River and KU as it relates to the

new Carhartt facility should be the crucial factor in determining which utility is authorized to serve. It is abundantly clear that the actual boundary line only dissects a small portion of the parking lot of Carhartt and leaves only a few parking lot lights in the present certified territory of KU. The balance of the parking lot and the building which constitutes the electric consuming facility are clearly in the present certified territory of Green River. These facts being uncontroverted, I would allow Green River to serve the Carhartt building.

B. J. Helton, Chairman

ATTEST:

Executive Director