

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

WALTER CALLIHAN AND GOLDIE CALLIHAN	)	
	)	
COMPLAINANTS	)	
	)	
V.	)	CASE NO. 2005-00280
	)	
GRAYSON RURAL ELECTRIC COOPERATIVE	)	
CORPORATION	)	
	)	
DEFENDANT	)	

ORDER

Complainants have moved for recusal of the Commission and its legal staff from this case, for emergency hardship relief, for leave to withdraw their complaint and for authority to take video depositions. Having carefully considered these motions, the Commission finds that Complainants' motion to withdraw their complaint should be granted and that all other motions should be denied. The Commission further finds, on its own motion, that this proceeding should continue as an investigation into Defendant's efforts to provide electric service to the Complainants.

On July 7, 2005, Walter Callihan and Goldie Callihan filed with the Commission a complaint against Grayson Rural Electric Cooperative Corporation ("Grayson RECC") and several officials of that utility and several present and former employees of this Commission. Complainants allege, *inter alia*, that the named defendants<sup>1</sup> conspired to

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<sup>1</sup> The named defendants were: Carol Ann Fraley, Grayson RECC's general manager; Ken Arrington, Donnie Crum, Harold DuPuy, Ralph Hall, Bill Rice, James Simmons, Roger Trent, and Eddie Martin, members of Grayson RECC's Board of Directors; Mark David Goss, Gary Gillis, and Martin J. Huelsman, current or former members of the Kentucky Public Service Commission; and Thomas M. Dorman, Deborah T. Eversole, and John E.B. Pinney, current or former employees of the Kentucky Public Service Commission. The Kentucky Public Service Commission was also named as a defendant.

deprive them of their civil rights, to violate the Sherman Anti-Trust Act<sup>2</sup> and the Clayton Act,<sup>3</sup> and to deprive them of their electric service. They requested compensatory and punitive damages that allegedly arise from the named defendants' conduct.

On August 1, 2005, the Commission dismissed the complaint as it related to all persons other than Grayson RECC. It further directed Grayson RECC to answer or satisfy the matters in the complaint that related to the Complainants' allegations that Grayson RECC had wrongfully discontinued Complainants' electric service on or about April 11, 2003 and that Grayson RECC had wrongfully refused to restore Complainants' electric service.

Following Grayson RECC's answer and the Commission's establishment of a procedural schedule, the Complainants moved for recusal of the Commission and the Commission's legal staff.<sup>4</sup> In support of their motion, they refer to a civil action pending in U.S. District Court for the Eastern District of Kentucky in which the Complainants have brought against, *inter alia*, the Commission and some Commission employees for issues related to the official performance of their duties in the enforcement of KRS Chapter 278.<sup>5</sup> They state no other reasons for their motion or provide any explanation as to why the Commission's efforts to defend itself in that civil action constitute an improper action or demonstrate a bias against them.

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<sup>2</sup> 15 USCA §§ 1 - 6.

<sup>3</sup> 15 USCA §§ 12 - 15, 15a - 15h, 16 - 18, 18a, 19, 21 - 26, 26a.

<sup>4</sup> In the same motion, Complainants also moved the Commission to take the video deposition of Goldie Callihan. Complainants alleged that Mrs. Callihan was not physically able to appear at any scheduled hearing in this proceeding. Complainants' subsequent motion to withdraw their complaint renders this motion moot.

<sup>5</sup> Callihan v. Grayson Rural Electric Cooperative Corp., Civil Action No. 04-90-KSF (E.D. Ky filed June 7, 2004). According to the U.S. District Court's docket, this action was been dismissed.

A motion to recuse is an extreme sanction which must be supported by real and substantial evidence to overcome the presumption that public officers act in good faith in the performance of their duties. See Summit v. Mudd, 679 S.W.2d 225 (Ky.1984); see also Kroger v. Louisville & Jefferson County Air Bd., 308 S.W.2d 435, 439 (Ky.1957); Rawlings v. City of Newport, 121 S.W.2d 10, 15 (Ky.App. 1938).

In the present case, Complainants have presented no evidence nor articulated any argument to suggest remotely that the Commission or its legal staff would not perform their duties in good faith. The Commission has a statutory duty to defend the provisions of KRS Chapter 278 and its Orders when they are challenged in the courts of justice. Its legal counsel, as employees of the Commonwealth, has a similar duty. Nothing presented by the Complainants suggests that either the Commission or its legal staff was acting in any manner inconsistent with their official duties. Accordingly, the Commission finds that the Complainants' motion for recusal should be denied.

Complainants further move for "emergency hardship relief" to compel Defendant to restore Complainant's electric service. They argue that federal and state law currently prohibit an electric utility from discontinuing electric service between December 1 and April 1 and that the same law permits the Commission to order during this period the restoration of electric power to persons whose service has been discontinued for nonpayment. They fail, however, to identify any federal or state statute that supports their position.

The Commission is unaware of the existence of such law. Its review of federal and state statutes has failed to locate any law requiring the restoration of electric service to persons whose service was previously discontinued for nonpayment solely on the basis of "emergency hardship."

As a general rule, “a utility shall not be required to furnish new service to any customer who is indebted to the utility for service furnished or other tariffed charges until that customer has paid his indebtedness.”<sup>6</sup> Administrative Regulation 807 KAR 5:006, Section 15, requires the reconnection of electric service to customers who apply for reconnection between the months of November and March and meet certain conditions, including agreeing to pay any outstanding indebtedness and making a good faith effort to reduce the level of outstanding indebtedness. Complainants have offered no evidence or argument to demonstrate that they meet the conditions set forth in Administrative Regulation 807 KAR 5:006, Section 15. In the absence of such evidence, their motion must be denied.

Complainants have also moved to compel Grayson RECC to disclose the name, address, and telephone number of its insurance carrier. They offer no grounds for their motion or explanation why the information is relevant to this proceeding. Finding that information is not relevant to the allegations of wrongful discontinuance of service and wrongful refusal to restore service and is not designed to elicit relevant information about those issues, the Commission denies the motion.

The Complainants have also filed a notice of withdrawal of their complaint. The Commission considers this notice as a motion to withdraw. While finding no evidence to support the grounds provided in support of the Complainants’ motion, the Commission finds that, as a matter of policy, the Complainants should be permitted to withdraw their complaint. As Complainants have alleged improper utility conduct in this forum and others in recent years, however, the Commission is of the opinion that an investigation into Grayson RECC’s provision of electric service to the Complainants should continue.

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<sup>6</sup> 807 KAR 5:006, Section 14(1)(d).

To the extent possible, this investigation should use informal procedures, including the use of interviews and depositions, to gather all available evidence regarding this subject. At the conclusion of these informal procedures, the Commission will determine whether a formal hearing on this subject is required.

IT IS THEREFORE ORDERED that:

1. Complainants' motion to recuse the Commission and its legal staff is denied.
2. Complainants' motion for emergency hardship relief is denied.
3. Complainants' motion to compel Grayson RECC to release the name, address, and telephone number of its insurance carrier is denied.
4. Complainants' motion to withdraw their complaint is granted.
5. This case shall remain on the Commission's docket as an investigation of Defendant's provision of retail electric service to the Complainants and its practices related to the provision of such service.
6. The style of this case is revised to: "An Investigation into Grayson Rural Electric Cooperative Corporation's Provision of Electric Service to Walter and Goldie Callihan."
7. The Executive Director shall continue to serve the Complainants with a copy of all Orders that the Commission enters in this proceeding.
8. The hearing in this matter that is scheduled for March 23, 2006 is continued generally.
9. Commission Staff shall use informal procedures, including the use of witness interviews and depositions, to gather evidence in this investigation.
10. Complainants' motion for video depositions is denied as moot.

Done at Frankfort, Kentucky, this 15<sup>th</sup> day of March, 2006.

By the Commission

ATTEST:

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke at the bottom.

Executive Director

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