

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

CUMBERLAND VALLEY ELECTRIC, INC.)	
)	
COMPLAINANT)	
)	
v.)	CASE NO. 2006-00148
)	
KENTUCKY UTILITIES COMPANY)	
)	
DEFENDANT)	

ORDER TO SATISFY OR ANSWER

Kentucky Utilities Company ("KU") is hereby notified that it has been named as defendant in a formal complaint filed on April 7, 2006, a copy of which is attached hereto.

Pursuant to 807 KAR 5:001, Section 12, KU is HEREBY ORDERED to satisfy the matters complained of or file a written answer to the complaint within 10 days from the date of service of this Order.

Should documents of any kind be filed with the Commission in the course of this proceeding, the documents shall also be served on all parties of record.

Done at Frankfort, Kentucky, this 13th day of April, 2006.

ATTEST:

By the Commission


Executive Director

ANTHONY G. MARTIN
Attorney at Law
P. O. Box 1812
Lexington, KY 40588
(859) 268-1451 (Phone or Fax)
E-Mail agmlaw@aol.com

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APR 07 2006

PUBLIC SERVICE
COMMISSION

April 7, 2006

Ms. Beth O'Donnell
Executive Director
Public Service Commission
PO Box 615
211 Sower Blvd.
Frankfort, KY 40602-0615

Case No. 2006-00148

Re: Cumberland Valley Electric, Inc. v. Kentucky Utilities, Inc.

Hand Delivered

Dear Ms. O'Donnell:

Attached are the original and twelve copies of a formal Complaint of Cumberland Valley Electric, Inc. vs. Kentucky Utilities, Inc. In addition to the filed copies, I have this day caused a courtesy copy of the filed complaint to be sent by first class mail to the following:

F. Howard Bush, II
Manager, Tariffs/Special Contracts
LG&E Energy LLC
220 West Main Street
P.O. Box 32030
Louisville, KY 40232

S. Ross Kegan
Richard Matda
Black Mountain Resources LLC
158 Central Avenue
P.O. Box 527
Benham, KY 40807

Please call if you have any questions concerning this filing. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Anthony G. Martin", written over a horizontal line.

Anthony G. Martin
Attorney for Cumberland Valley Electric, Inc.



COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

CUMBERLAND VALLEY ELECTRIC, INC.)
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COMPLAINANT)
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vs.)
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KENTUCKY UTILITIES COMPANY)
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DEFENDANT)

CASE NO. *2006-00148*

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PUBLIC SERVICE
COMMISSION

**COMPLAINT OF CUMBERLAND
VALLEY ELECTRIC, INC.**

Pursuant to KRS 278.016-278.018, and 807 KAR 5:001, Section 12, Cumberland Valley Electric, Inc. ("Cumberland Valley"), by counsel, submits its Complaint against Kentucky Utilities Company ("KU") to the Kentucky Public Service Commission and states as follows:

1. Cumberland Valley is a rural electric cooperative formed pursuant to KRS 279 and subject to regulation by this Commission pursuant to the terms of KRS 279.210. Cumberland Valley's mailing address is P.O. Box 440, Gray, KY 40734.

2. KU is an investor owned electric utility that provides retail electric service to customers in many of the same counties served by Cumberland Valley. Its principal office address is One Quality Street, Lexington, KY 40507.

3. Both Cumberland Valley and KU are utilities as defined in KRS 278.010, and are thereby subject to the jurisdiction of the Commission under KRS278.016-278.018.

4. Cumberland Valley and KU have adjacent service territories in Harlan County, Kentucky, certified under KRS278.016 et seq..

5. KRS278.016-278.018 set forth the process for establishing certified territories for retail electric suppliers in Kentucky, and the standards and mechanism for minimizing disputes between such suppliers and resolving disputes that may arise between such suppliers as to the appropriate utility to serve customers locating in such certified territories.

6. In late summer 2005, Cumberland Valley learned that Stillhouse Mining, LLC ("Stillhouse"), an affiliate of Black Mountain Resources, Inc. ("BMR") had recently opened a new mine known as the Stillhouse Mine No. 2 just south of US119 near Canoe Hollow in Harlan County. At a meeting with BMR representatives in October, 2005, Cumberland Valley confirmed with BMR officials that the new mine portal is located entirely within the exclusive service territory of Cumberland Valley as established pursuant to KRS278.016-278.018.

7. Cumberland Valley was never contacted about service to this new mining facility, nor was it ever informed by Stillhouse or BMR prior to operations beginning that Stillhouse or BMR intended to take service for the new facility from KU at a point of service in KU's certified territory and transmit the power by using its own lines to extend service into Cumberland Valley's service territory.

8. Pursuant to the findings of the Commission in Case No. 2003-00226, Cumberland Valley informed KU that BMR or Stillhouse was extending service from KU into Cumberland Valley's exclusive territory, and sought an agreement from KU that Cumberland Valley should provide service to the new Stillhouse No. 2 mining facility. KU has continued to furnish, make available and extend such service to Stillhouse or BMR for use at the Stillhouse No. 2 mine and has denied any responsibility to prevent such actions or to compensate Cumberland Valley for lost revenues from such service. Further, neither KU, BMR nor Stillhouse has taken any action to seek approval from the Commission to provide such service.

9. Pursuant to KRS278.018, Cumberland Valley has the exclusive right to furnish service to all electric consuming facilities within its certified territory. Further, KRS278.018 expressly prohibits any retail electric supplier from furnishing, making available, rendering or extending its retail electric service to a consumer for **use** in electric consuming facilities located within the certified territory of another retail electric supplier. The statute makes no exception to allow such service when a customer extends its own lines to facilitate such a use.

10. The only relevant statutory exception to the exclusive right of a retail electric supplier to provide electric service to all electric consuming facilities within its certified territory is if a **new** electric consuming facility locates in two or more adjacent certified territories. KRS278.018(1).

11. Neither Stillhouse, BMR nor KU sought any agreement or accommodation with Cumberland Valley prior to extending KU service to the new Stillhouse Mine No. 2. In accordance with standards for mining operations applied in past Commission decisions, Stillhouse Mine No. 2 is a new electric consuming facility located in two adjacent service territories due to the presence of some reserves in KU's service territory. See, attached testimony of Ronald L. Willhite, which is incorporated herein by reference. KRS278.018(1) provides specifically that "the Commission **shall** determine which retail electric supplier shall serve said facility based on criteria in KRS278.017(3). [emphasis added]." Neither Stillhouse, BMR nor KU ever sought Commission approval to extend service into Cumberland Valley's service territory to serve the new facility, and the service currently being provided is therefore not in compliance with KRS278.018(1). Cumberland Valley further asserts that it should prevail as the supplier under the criteria set forth in KRS278.017(3), as set forth in the attached testimony of Ronald L. Willhite.

12. Cumberland Valley is prepared to provide full and adequate service to the Stillhouse No. 2 mine through a short extension of a distribution line to the new mine portal. The service extension will not result in a charge to Stillhouse or BMR for the cost of the extension of service.

13. Attached hereto is the direct testimony and exhibit of Ronald L. Willhite in support of Cumberland Valley's Complaint. Said testimony and exhibit is incorporated by reference into this Complaint.

14. Cumberland Valley respectfully requests that the Commission accept this Complaint and the testimony and exhibit attached thereto pursuant to 807 KAR 5:001, Section 12, and serve an Order upon KU requiring that KU satisfy the Complaint or answer same within 10 days as required by 807 KAR 5:001, Section 12 (4)(b). Cumberland Valley further requests that the Commission order KU to file as part of any answer any defense it intends to offer to the Complaint, and the alleged facts upon which it relies to establish such a defense. Should KU fail to satisfy the Complaint, Cumberland Valley requests that the Commission establish a procedural schedule and hearing date for resolution of the issues raised by this Complaint. As part of the resolution of this Complaint, Cumberland Valley requests that the Commission determine that the extension of lines by a customer into the exclusive certified service territory of another retail electric supplier does not in any way affect or alter the provisions of KRS278.016-278.018, or relieve any retail electric supplier of its obligation to assure that it does not furnish, make available, render, or extend its retail electric service to a customer for use in the certified territory of another retail electric supplier. Cumberland Valley further requests that the Commission apply the factors contained in KRS278.017(3) and declare that Cumberland Valley is entitled to serve the new Stillhouse Mine No. 2, and that Kentucky Utilities cease and desist providing any such service to Stillhouse Mine No. 2 as soon as Cumberland Valley is able to extend service to Stillhouse Mine No. 2 so as to avoid any interruption of service to the mine site.

15. Cumberland Valley further respectfully requests that KU be ordered to file with the Commission an accounting of all usage provided and revenues received from such service to Stillhouse Mine No. 2 and pay to Cumberland Valley an amount equal to the billings that would have been otherwise rendered by CVE for service. In order to facilitate the appropriate billing reconciliation, Cumberland Valley further requests that the Commission expeditiously order the placement of a meter to capture the usage of Stillhouse Mine No. 2 during the pendency of this proceeding.

WHEREFORE Cumberland Valley respectfully requests that the Commission order KU to satisfy or answer this Complaint within 10 days as provided in 807 KAR 5:001, Section 12, and in the event that the complaint is not satisfied, to provide the further relief requested in the Complaint.

Respectfully submitted,



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**ATTORNEYS FOR COMPLAINANT
CUMBERLAND VALLEY ELECTRIC, INC.**



1 INTRODUCTION
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3

4 **Q. Please state your name and business address.**

5 A. My name is Ronald L. Willhite, 7375 Wolf Spring Trace, Louisville, KY 40241.

6 **Q. What is your position?**

7 A. I am a Consultant engaged by Cumberland Valley Electric (“CVE”) to assist in
8 this matter. Since retiring from my position as Director of Rates and Regulatory
9 Affairs in December 2001 from LG&E Energy Services I have provided
10 consulting services on regulatory and other utility matters. Prior to the formation
11 of the service organization and following the PowerGen acquisition of LG&E
12 Energy Corp., I had been employed by Kentucky Utilities Company (“KU”).
13 During my tenure at KU I testified before this and other commissions on
14 numerous rate and regulatory matters. I graduated from the University of
15 Kentucky in 1969 earning a B.S. in Electrical Engineering. I am a registered
16 professional engineer.

17 **A. What has been your past involvement with territorial matters?**

18 Q. I was involved with numerous electric service territorial boundary matters during
19 my thirty-three year career with KU. My involvement and responsibility with
20 regard to such matters increased over time as my position responsibilities
21 increased. I routinely assisted, advised and eventually became the final company
22 authority for such matters.

1 Q. **What is the purpose of your testimony?**

2 A. My testimony explains why pursuant to KRS 278.016-.018, The Territorial Act
3 (“Act”), that Cumberland Valley Electric (“CVE”) rather than Kentucky Utilities
4 Company (“KU”) is entitled to provide retail electric service to Stillhouse Mine
5 No. 2 (“Mine”) located in the certified territory of CVE just south of US 119 near
6 Canoe Hollow in Harlan County.

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THE TERRITORIAL ACT

11 Q. **Please describe the Territorial Act (“Act”) KRS 278.016-018.**

12 A. The Act became law on June 16, 1972 and established exclusive electric service
13 territory for utilities subject to the jurisdiction of the Public Service Commission.
14 The Commission was given explicit direction by the General Assembly to set
15 forth boundary lines on maps along with specific criteria, KRS 278.017(3), for
16 guidance in resolving retail electric supplier protests of the Commission maps as
17 initially established. Thereafter, the Commission was limited to 1) resolving
18 disputes when a new electric consuming facility (“ECF”) locates in two or more
19 adjacent certified territories based on the criteria of KRS 278.017(3), 2) resolving
20 any disputes arising from a new ECF locating in an area not included on
21 Commission maps, 3) authorizing another retail electric provider to furnish retail
22 electric service to an ECF of another retail electric provider who fails to comply
23 with an Order to correct inadequate service and 4) receiving and approving
24 agreements by retail electric suppliers allocating territories.

1 **Q. What occurs when an ECF locates in adjacent service territories?**

2 A. In the case where a new ECF or customer locates in the adjacent territory of two
3 or more providers, the providers typically resolve the matter considering the
4 criteria of KRS 278.017(3). If agreement cannot be reached, then one of the
5 providers or the customer should bring the matter to the Commission for an Order
6 pursuant to KRS 278.018(1).

7 **Q. Has CVE had any discussions with KU regarding service to the Stillhouse**
8 **Mine No. 2.**

9 A. Yes. CVE, mindful of the Commission's directive in Case No. 2003-00226 that
10 electric service suppliers not intentionally serve customers located within the
11 territory of another utility without the prior permission of the other utility or
12 approval by the Commission, contacted KU by letter on October 13, 2005. CVE
13 and KU met in November to discuss the matter followed by exchange of
14 correspondence in January and February, 2006 and a meeting on March 23, 2006.
15 While CVE and KU's positions differ as to the appropriate supplier, a mutual
16 Agreed Statement of Facts was developed and is attached as Willhite Exhibit No.
17 1.

18

19

1 *Statement of Facts – Item 2* which is a copy of the Map Transmittal Letter of
2 Stillhouse Mining, LLC for their Mine No. 2. Operations began in July 2005.

3 **Q. When did CVE learn of the new mine?**

4 A. CVE personnel in the area first noticed a newly constructed telephone line
5 extending over the highway and up the mountain to the Mine in late summer
6 2005. Because of the mountainous wooded terrain, the location of the new mine
7 relative to the territorial line had to be confirmed.

8 **Q. Has CVE discussed with representatives of Stillhouse Mining their concerns**
9 **relative to the appropriate retail electric supplier?**

10 A. Yes. Mr. Abner, CVE Engineer, talked by phone with Mr. Kegan, Vice President
11 – Operations of BMR on September 29, 2005. Mr. Abner and I met on October 6,
12 2005 with Mr. Kegan and Mr. Matda of BMR. Mr. Kegan advised that they were
13 aware that the new mine was in CVE’s territory and that he believed that KU is
14 the rightful provider of service. BMR or Stillhouse did not advise CVE or KU of
15 the new mine even though BMR knew the new mine was in CVE’s territory. A
16 joint meeting with KU and BMR took place on March 23, 2006 wherein
17 information was exchanged and a draft Statement of Facts was reviewed and
18 discussed.

19 **Q. How is electric service currently furnished to Stillhouse Mine No. 2?**

20 A. KU furnishes and meters electric service to BMR at its Lynch Substation at 69 kv
21 which is then transmitted over customer-owned lines to the Mine.

22

1 **Q. Please describe BMR's electric facilities used to transmit the energy to the**
2 **Mine.**

3 A. Adjacent to that station is the US Steel Station owned by BMR. BMR has a 69 kv
4 transmission line that extends from the US Steel Station some 4.5 miles in an
5 easterly direction to BMR's 69/12 kv distribution substation south of Cloverlick.
6 BMR then has a 12 kv distribution line that extends nearly three miles, first east,
7 and then northeast toward the new mine into CVE territory. BMR advised that
8 this line has been in place since the early 1980's to provide power to ventilation
9 fans in other mines. BMR recently extended this 12 kv distribution line some 529
10 feet further into CVE's territory to the new mine site and appears to have rebuilt
11 over 1000 feet of the old line. The BMR facilities are shown on *Willhite Exhibit*
12 *No. 1 Statement of Facts - Item 1 Vicinity Map.*

13

14

15 **STILLHOUSE MINE No. 2**

16 **A NEW ELECTRIC-CONSUMING FACILITY**

17

18 **Q. Is Stillhouse Mine No. 2 a new electric-consuming facility ("ECF")?**

19 A. Yes. While KU and BMR claim that the Mine is a continuation of an existing
20 operation the facts simply do not support such an assertion. Rather, the Mine is a
21 new electric-consuming facility as evidenced by the following facts. First, the
22 Kentucky Department of Mines and Minerals Map Transmittal Letter of
23 Stillhouse Mining, LLC Mine No. 2, *Willhite Exhibit No. 1 Statement of Facts-*

1 *Item 2*, clearly states the map purpose to be a “New Mine”. Second, the Mine
2 License Map, *Willhite Exhibit No. 1 Statement of Facts - Item 4*, clearly states
3 there are no existing mines above or below the area licensed for the Mine. Third,
4 nearly eight years ago, Arch of Kentucky filed with the Kentucky Department of
5 Mines and Minerals on May 18, 1998 a Mine Closure Map, *Willhite Exhibit No. 1*
6 *Statement of Facts - Item 6*, for ARCH Mine No. 37 from which were extracted
7 the Harlan Seam reserves east of the Harlan Seam reserves being extracted by
8 Stillhouse Mine No. 2. Clearly, Stillhouse was not extracting coal from the Harlan
9 Seam in the licensed area or the area immediately to the east at the time
10 operations at the Mine commenced in July 2005. In fact, the Letter clearly states a
11 general mining plan for the next twelve months is not applicable for Mine No. 37.
12 Fourth, the telephone line to the Mine did not exist prior to summer 2005 as it was
13 constructed to serve the new mine, nor did BMR’s extension and rebuilding in
14 2005 of its existing 12 kv distribution line to the mine opening. Finally, Stillhouse
15 requested service from CVE for a new water pump adjacent to US 119 on January
16 13, 2006. The pump is an integral part of the Mine as it provides water to the
17 mine located some 2600 feet above it on the mountainside as sufficient water was
18 not available from bore holes above the mine. CVE initiated service to the pump
19 on February 1, 2006.

20
21

1 **Q. Do you agree with BMR and KU's position that KU is entitled to provide**
2 **energy for Stillhouse Mine No. 2 as consumption of KU furnished energy**
3 **does not constitute service to new ECF?**

4 A. No. KU's position as expressed in a January 27, 2006 letter to CVE is that KU is
5 continuing to provide service to BMR in a similar fashion as it has done
6 historically and thus consumption of KU furnished energy by Stillhouse Mine No.
7 2 does not constitute service to a new ECF. Such an inference is without merit.
8 First, the Act clearly states that each electric supplier shall not furnish retail
9 electric service for use in the certified territory of another supplier without
10 Commission approval. Second, Commission review of the rightful provider under
11 the erroneous KU/BMR position would have been required as the combined
12 extraction of Harlan Seam reserves by Stillhouse Mines No. 1 and 2 is an ECF.
13 However, neither, KU or BMR, have ever sought to have the Stillhouse
14 operations to be declared a new ECF by the Commission even though the reserves
15 would be in adjacent territories under this erroneous scenario. Third, KU's
16 Witness Palmer, an experienced coal mining engineer, in a similar proceeding
17 before the Virginia State Corporation Commission testified that mineral leases
18 held by a company do not constitute a single, integrated or contiguous mining
19 operation, but that mines are separate and distinct. Fourth, accepting the KU/BMR
20 position that somehow Stillhouse Mine No. 2 is a continuation of an existing
21 operation and not a new distinct and separate operation would mean every time a
22 new Wal-Mart or Kroger is opened as part of a corporate expansion plan in a
23 neighboring town or county in the territory of another retail electric supplier they

1 are somehow grandfathered to a prior retail electric service provider that serves an
2 existing store. The Act simply does not work that way nor is there retail choice in
3 Kentucky. Clearly, Mine No. 2 is new separate and distinct operation, not a
4 continuation of an existing operation, and should be reviewed as a new ECF by
5 the Commission pursuant to the Act.

6

7 **Q. Is the Stillhouse Mine No. 2 located in both the territories of CVE and KU?**

8 A. Yes, if defined by the Commission decisions in PSC Case Nos. 89-349, 93-211,
9 2002-008 and 2003-00228 which considered underground facilities, including
10 reserves, in determining whether a new ECF is in adjacent territories. As shown
11 on *Willhite Exhibit No. 1 Statement of Facts – Item 1 Vicinity Map*, the coal
12 reserves to be extracted by the new mine extend into both territories.

13

14

15 **CVE IS ENTITLED TO SERVE STILLHOUSE MINE No. 2**

16

17 **Q. Who is entitled under KRS 278.018(1) and KRS 278.017(3) to serve the**
18 **Stillhouse Mine No. 2?**

19 A. CVE is clearly entitled to serve the Stillhouse Mine No. 2 under the Act.

20 **Q. Please describe how you reached your conclusion as to the rightful service**
21 **provider to the Stillhouse Mine No. 2.**

22 A. First, I visited the area along with CVE’s President, Ted Hampton, and Engineer,
23 Mark Abner, to observe the mining operation and location of the various facilities.

1 Then using information provided by the Willhite Exhibit No. 1 Agreed Statement
2 of Facts I applied the criteria of KRS 278.017(3) as follows:

3
4 ***KRS 278.017(3) condition (a) is the proximity of existing distribution***
5 ***lines.*** CVE has the closer adequate distribution facilities necessary to
6 serve the Mine. CVE has a 25 kv three-phase distribution line
7 approximately 2300 feet from BMR's line south of the Mine. KU's nearest
8 three-phase distribution facilities are approximately 2 miles away at
9 Cloverlick. *Willhite Exhibit No. 1 Statement of Facts - Items 1, 7 and 8.*

10
11 ***KRS 278.017(3) condition (b) is which supplier was first furnishing***
12 ***retail service, and the age of existing facilities in the area.*** CVE was
13 providing three-phase electric service in 1949 in the area to Hillcrest
14 Farms just northeast of the mine portal and south of old US 119. In
15 addition, CVE provided service to the Clarence Isom residence in 1961
16 between US 119 and the mine tract. CVE provided single-phase electric
17 service in 1964 to the J & M Fields Coal Company Mines located on the
18 west-side and contiguous to the current Mine portal. CVE also provided
19 single-phase service to the Robert Smith Mines in 1966 located just west
20 of the Mine portal. KU's first date of service in the area was 1931 at the
21 Lynch Substation. That point of service is nearly seven air-miles away
22 from the Mine portal. *Willhite Exhibit No. 1 Statement of Facts – Items 1,*
23 *10 and 11.*

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CVE's 25 kv feeder along old US 119 was constructed in 1949, converted from 13.2 kv to 24.5 kv in 1974 and relocated to be along new US 119 in 2005. CVE initiated service to the Mine Pump on February 1, 2006. KU's existing three-phase 4 kv distribution facilities nearest the mine opening at Cloverlick were constructed in 1976. *Willhite Exhibit No. 1 Statement of Facts - Items 1, 12 and 13.*

CVE was clearly the first retail electric supplier to provide service in the immediate area of the Mine and CVE's three-phase distribution facilities, in place since 1949, were relocated and modernized last year along new US 119.

KRS 278.017(3) condition (c) is the adequacy and dependability of existing distribution lines to provide dependable, high quality retail service at reasonable costs. CVE's facilities are clearly more adequate and dependable to provide service to the Mine at the required three-phase 12 kv distribution delivery voltage. CVE has to only construct a 2300 foot extension, *Willhite Exhibit No. 1 Statement of Facts - Item 7*, and place a 25/12 kv transformer bank at the mine opening at a cost of \$41,000.

CVE's facilities, constructed as part of its long range plan, are more than adequate as they are new and are now located along new US 119 where they are more accessible and less exposed to outages. The loading on the

1 11.2/14 MVA Chad Substation is currently 65 percent. *Willhite Exhibit*
2 *No. 1 Statement of Facts - Item 14.* On the other hand, KU does not have
3 12 kv three-phase service currently available in the area. Therefore, KU
4 would likely have to tap their 69 kv transmission line located north of US
5 119 and construct a 69/12 kv distribution substation as they only have 4 kv
6 in the area. Assuming the tap would be directly north of the mine in
7 CVE's territory, KU would need to construct an approximate 3,500 foot
8 12 kv line to the Mine. KU declined to provide the cost for the substation
9 and line. In any event, the cost would be significantly more than CVE's
10 cost to serve the Mine at 12 kv from its nearest facilities.

11
12 Clearly, CVE's facilities are dependable and its investment to provide
13 service would be significantly less than what KU would incur to extend
14 service to the Mine.

15
16 ***KRS 278.017(3) condition (d) is the elimination and prevention of***
17 ***duplication of electric lines and facilities supplying such territory.*** There
18 would be no duplication of retail electric supplier facilities if CVE
19 provides service. KU would have to construct a substation and at least
20 duplicate part of the line CVE currently has in place to the water pump.
21 Because any KU facilities would be more extensive and expensive than
22 those required by CVE they would result in excessive investment in
23 relation to efficiency and disorderly development of retail electric service.

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In summary, CVE prevails on each of the four criteria of KRS 278.017(3): (a) CVE facilities are in closer proximity, (b) CVE was providing service first in the immediate area and its facilities are more modern, (c) CVE's existing facilities are more adequate and dependable and (d) CVE facilities would not be duplicative of KU required facilities to serve the Mine.

BMR's FACILITIES

Q. Do you believe the General Assembly intended for the 12 kv distribution facilities of BMR be considered when the Commission applies the criteria of KRS 278.017(3)?

A. Absolutely not. The General Assembly when they enacted the Act did not envision a retail electric service customer circumventing the expressed Act result of restricting retail electric suppliers to serving only in their certified territory by constructing and extending customer-owned distribution lines into the service territory of another supplier. The General Assembly was careful to codify a process with explicit criteria for initially establishing boundary lines based on existing distribution lines of the retail electric suppliers. They further recognized that the same criteria should be applied if a future new ECF located in the territory of two or more retail electric suppliers. While some customers, such as BMR, elect to construct their own distribution network, they make that decision in

1 light of the Act. Whatever construction they undertake, it should in no way be
2 considered by the Commission when resolving an adjacent territory matter
3 pursuant to the criteria of KRS 278.017(3).

4
5 In fact, the Commission has consistently focused on only retail electric supplier
6 facilities. In the four previous cases resolved by the Commission involving coal
7 mines located in adjacent territories the Commission expressed the following:

8 **Case No. 89-349: “KU already has adequate facilities near the site.**
9 **Henderson-Union in contrast must construct 1.5 miles of 69 kv**
10 **line to provide service to the site”.**

11
12 **Case No. 93-211: “Henderson-Union is neither benefited nor**
13 **prejudiced if the statutory criteria are considered in light of**
14 **Peyton’s privately constructed 69 kv line. With Peyton’s line,**
15 **service from Henderson-Union would require an additional 69 kv**
16 **line exceeding two miles and costing approximately \$267,000.”**

17
18 **Case No. 2002-008: “Kenergy’s definition of “distribution line”**
19 **undermines the clear intent of the statute to favor the utility**
20 **(emphasis added) whose cost to extend service will be less and to**
21 **avoid duplication of facilities that would result from construction**
22 **of more than two additional miles into Big Rivers line. While**
23 **Kenergy would have to extend the Big Rivers 69 kv line, KU need**
24 **only construct a tap and metering structure from its existing 69**
25 **kv line”.**

26
27 **Case No. 2003-00228: “The record demonstrates that Matrix will**
28 **be served by a 69 kv line, and that the nearest 69 kv line**
29 **belonging to Big Sandy’s transmission (and generation) supplier,**
30 **East Kentucky Power Cooperative, Inc. (East Kentucky Power”),**
31 **is three times as far from the mine entrance as Kentucky Power’s**
32 **69 kv line. Thus, Kentucky Power’s 69 kv facilities needed to**
33 **provide service are in much closer proximity to the mine”.**

34
35 In Case Nos. 89-349, 93-211, 2002-008 and 2003-00228 the coal reserves were
36 located in adjacent territories and the customers required 69 kv service.

1 Additional similarities between the facts in the most recently reviewed coal mine
2 territorial matter by the Commission, Case No. 2003-00228 and the instant review
3 regarding Stillhouse Mine No. 2 are strikingly similar with two key exceptions.

4 First, the similarities:

5 1. Matrix LLC, an affiliate of Czar Coal Corporation, was
6 opening a new mine just as Stillhouse Mining, LLC, an affiliate of
7 BMR, has opened the new Stillhouse Mine No. 2.
8

9 2. The customer owns its substation and takes 69 kv transmission
10 delivery from its supplier at the supplier's tap point.
11

12 3. Distribution lines of the customer are located within the
13 boundaries of mine tract.
14

15 However, there are two significant differences. First, Kentucky Power had
16 distribution lines on the surface within the Matrix tract. Second, Matrix required
17 69 kv transmission service to avoid line loss problems at the mine mouth, whereas
18 Stillhouse requires 12 kv distribution service. While, BMR receives power from
19 KU at 69 kv, it steps down the voltage to 12 kv at its substation some 4.5 miles
20 from the KU delivery point and transmits the power over its 12 kv distribution
21 line almost three miles and into CVE's territory. In contrast to Case No. 93-211,
22 where the presence of a customer constructed tap line "neither benefited nor
23 prejudiced" Henderson-Union in consideration of the statutory criteria of KRS
24 278.017(3), CVE is severely prejudiced should the commission give any weight
25 whatsoever to BMR's facilities
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CONTROL OVER CUSTOMER USE

Q. Does a utility have control over the use of the energy it supplies to a customer?

A. Certainly. The Act states that a retail electric supplier “ shall not furnish, make available, render or extend its retail electric service to a consumer for use in electric-consuming facilities located within the certified territory of another retail electric supplier.” It is incumbent upon any supplier when it learns of such a situation to advise the customer and affected other utility of the problem and seek a resolution. Otherwise, the explicit provisions in the Act for resolving disputes when a new electric-consuming facility locates in two or more adjacent territories and allocating territories are voided. Suppliers routinely contract to allocate territories and consumers and file those agreements and modified official territory maps with the Commission to bring such agreed changes in compliance with the Act. As a last resort, after advising the customer and other utility and failing to workout an appropriate solution, suppliers can terminate service for unauthorized use even though such action would not be a preferable choice.

Clearly, KU is furnishing, making available and rendering retail electric service for use in electric-consuming facilities in another supplier’s (CVE) service territory as a result of BMR extending distribution lines into CVE’s territory to transmit KU furnished energy to Stillhouse Mine No. 2. KU’s position expressed

1 in their January 9, 2006 letter to CVE is that “KU cannot be “placed” in violation
2 of Kentucky’s Certified Territory Act by the acts of an entity over which it has no
3 control.” However, KU has made no effort to request Commission approval to
4 modify the territory maps to include the Stillhouse Mine No. 2 in their territory.
5 On-the-other-hand, KU’s position advocates circumvention of the Act by
6 customer extension of lines into other supplier service territory, a position
7 strikingly different from KU’s position in a similar proceeding in Virginia.

8
9
10 **INTERIM METERING**

11
12 **Q. Should the Commission order the placement of a meter to capture the usage
13 by the Stillhouse Mine No. 2 while this matter is pending?**

14 **A.** Yes. When Stillhouse energized Mine No. 2, KU’s meter at Lynch began
15 capturing the usage and KU has been billing BMR for that usage as part of the
16 total metered usage at Lynch. A finding by the Commission that upholds CVE’s
17 right to serve the new mine should facilitate a means of appropriately applying
18 CVE and KU’s rates to the new mine usage to rectify billing during the interim
19 period when KU furnished energy was being consumed by the Stillhouse Mine
20 No. 2 operation. This is exactly the action taken by Kentucky Power (Case No.
21 2003-00228) on their initiative when they installed a 12.47 metering set “on the
22 customer’s line to determine how much electricity was being used at the Matrix
23 Mine site” when KP learned that Big Sandy had not consented to KP’s provision

1 of temporary service. CVE requested permission of BMR at the March 23, 2006
2 meeting to locate a billing meter at the Mine. BMR has not responded.

3 4 5 **CONCLUSIONS AND RECOMMENDATION**

6
7 **Q. Please summarize your conclusions.**

8 The Stillhouse Mine No. 2 is a new ECF located in the adjacent territories of CVE
9 and KU. Applying the four conditions set forth in the Act, CVE is clearly the
10 rightful retail electric service supplier to the Stillhouse Mine No. 2. The
11 Commission should follow past precedent and give no weight to customer-owned
12 facilities when applying the criteria of KRS 278.017(3). The situation presented in
13 this proceeding is what the General Assembly was striving to eliminate. With the
14 extension of BMR's lines into CVE's territory to serve the Stillhouse Mine No. 2,
15 disorderly development of retail service occurs and now there are duplicate and
16 wasteful facilities that now encumber the landscape and have wasted materials
17 and natural resources.

18 **Q. What is your recommendation to the Commission?**

19 **A.** The Commission should affirm CVE's rights under the Act to serve the Stillhouse
20 Mine No. 2 and direct KU to disconnect service to BMR at Lynch unless the
21 Stillhouse Mine No. 2 is separated from other BMR facilities and connected to
22 CVE. In addition, the Commission should authorize CVE to bill and collect from
23 Stillhouse for usage for the new Mine on concurrent effective rates during the

1 period KU furnished energy was consumed by the Mine. Likewise, KU should
2 refund Stillhouse for all unauthorized billing for the Mine.

3 Q. **Does this conclude your testimony?**

4 A. Yes.

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VERIFICATION

STATE OF KENTUCKY

COUNTY OF JEFFERSON

BEFORE ME, the undersigned authority, duly commissioned and qualified in and for the State and County aforesaid, personally came and appeared, Ronald L. Willhite, who, being by me first duly sworn deposed and said that:

He is appearing as a witness on the behalf of Cumberland Valley Electric, Inc., before the Kentucky Public Service Commission in a Complaint filed by Cumberland Valley Electric, and if present before the Commission and duly sworn, his testimony would be set forth in the annexed testimony.



Ronald L. Willhite

SWORN TO AND SUBSCRIBED BEFORE ME this
6th day of APRIL, 2008



NOTARY PUBLIC

Stephen Scott Kirkpatrick
Commission Expires June 27, 2009
Notary Public, State at Large, KY



04/07/06

TERRITORIAL MATTER

AGREED STATEMENT OF FACTS

STILLHOUSE MINE No. 2

Cumberland Valley Electric (“CVE”) and Kentucky Utilities Company (“KU”) agree to the accuracy of the following Facts related to service to Stillhouse Mining, LLC Mine No. 2 (“Stillhouse Mine No. 2”) located just south of US 119 near Canoe Hollow in Harlan County, Kentucky. By agreeing to this Statement of Facts, CVE and KU do not waive any claim or defense, or agree to the admissibility of any particular evidence, including anything set forth herein. The parties also reserve the right to offer or seek to introduce other evidence regarding the service at issue.

FACTS

1. The attached map labeled Vicinity Map Stillhouse Mine No. 2 Territorial Matter and dated April 4, 2006, Scale: 1in = 1000 ft, is a true and accurate representation of the following: 1) the electric service territorial boundary of CVE and KU, 2) the location of electrical facilities of CVE, KU and BMR, 3) the location of the approved Stillhouse Mining, LLC Mine No. 2 Mine Map , 4) the location of the approved Stillhouse Mining, LLC Mine No. 1 Mine Map and 5) the location of the underground reserves in the Harlan Seam previously mined or to be mined by Stillhouse Mining, LLC or predecessor mining companies in the area. The yellow highlighted area relating to the Benham City Municipal Utilities was inadvertently denoted on the Vicinity Map and is not intended to be a relevant fact in determining the rightful electric service supplier to Stillhouse Mine No. 2. The parties are not stipulating to the location of the Benham City Municipal Utilities.
2. The attached Map Transmittal Letter is a true and accurate copy of the May 24, 2005 Stillhouse Mining, LLC letter to the Kentucky Department of Mines and Minerals transmitting the Mine License Map for Stillhouse Mine No. 2, State File No. 18631.
3. The attached Map Transmittal Letter is a true and accurate copy of the January 20, 2006 Stillhouse Mining, LLC letter to the Kentucky Department of Mines and Minerals transmitting the Mine License Map for Stillhouse Mine No. 1, State File No. 18063.
4. The attached map labeled Stillhouse Mining, LLC Mine Map dated 5-24-05 is a true and accurate representation of the Kentucky Department of Mines and Minerals License Map, State File No. 18631, and shows the location of the Stillhouse Mine No. 2 opening and areas planned to be mined from 2005 through 2009 as of 5-24-05.
5. The attached map labeled Stillhouse Mining, LLC Mine Map dated February 1, 2005 is a true and accurate representation of the Kentucky Department of Mines and Minerals License

04/07/06

Map, State File No. 18063, and shows the location of the Stillhouse Mine No. 1 opening and areas planned to be mined from 2005 through 2009 as of February 1, 2005.

6. The attached Map Transmittal Letter appears on the Kentucky Department of Mines and Minerals website, [<http://minemaps.ky.gov/>], and is believed to be a true and accurate copy of the June 29, 1998 Arch Coal Inc letter to the Kentucky Department of Mines and Minerals transmitting the Mine Closure Final Map for Mine No. 37, State File No. 540.9.

7. CVE DISTANCES (circuit feet scaled from Item 1. Vicinity Map):

CVE 25 kv line tap point along the north-side of US 119 to Stillhouse Mine No. 2 Water Pump constructed in December 2005	312 feet
Stillhouse Mine No. 2 Water Pump to BMR 12 kv Extension	2,300 feet
BMR 12 kv Extension to Stillhouse Mine No. 2	300 feet

8. KU DISTANCES (circuit feet scaled from Item 1. Vicinity Map):

KU Cloverlick 69/4 kv substation to Stillhouse Mine No. 2	10,750 feet
KU Lynch 69 kv Substation to BMR US Steel Station	less than 10 feet

9. BMR DISTANCE (circuit feet scaled from Item 1. Vicinity Map)

BMR 69 kv line from KU 69 kv Lynch Substation to BMR 69/12 kv Substation near Cloverlick	24,700 feet
Existing BMR 12 kv three-phase line from BMR 69/12 kv Substation to Stillhouse Mine No. 2	14,700 feet
New BMR 12 kv three-phase line from end of existing line to Stillhouse Mine No. 2	539 feet

10. CVE FIRST DATE OF SERVICE IN AREA

Three-phase service to Hillcrest Farms	1949
Single-phase service to Clarence Isom residence	1961
Single-phase service to J & M Coal Company	1964

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Single-phase service to Robert Smith Mines 1966

11. KU FIRST DATE OF SERVICE IN AREA

Service to U S Steel at U S Steel Station adjacent to KU Lynch Substation 1931

12. AGE OF CVE FACILITIES

25 kv three-phase circuit along the north-side of US 119 12/2005

25 kv three-phase line from tap point along the north-side of US 119 to Stillhouse Mine No. 2 Water Pump 01/2006

13. AGE OF KU FACILITIES

69/4 kv substation at Cloverlick 1976

69/7.2 kv Lynch Substation 1931

14. CVE FACILITY CAPACITY

Chad 69/25 kv Substation capacity 11.2/14 MVA

Chad 69/25 kv peak loading as of January 2005 9.1 MVA

CVE 25 kv three-phase circuit along the north-side of US 119 capacity 14.6 MVA

CVE 25 kv three-phase circuit along the north-side of US 119 loading 4.3 MVA

15. KU FACILITY CAPACITY

Cloverlick 69/4 kv Substation capacity 7 MVA

Cloverlick 69/4 kv loading 3.9 MVA

Lynch 69 kv Transmission Network Substation capacity 34 MVA

Lynch 69 kv Transmission Network Substation loading 17 MVA

This Agreed Statement of Facts may be executed in counterparts.

04/05/06

DATED THIS 7TH DAY OF APRIL, 2006

CUMBERLAND VALLEY ELECTRIC

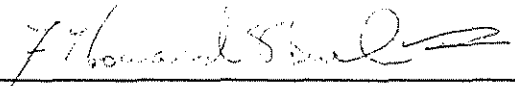
By: Mark Abner
Mark Abner
Engineer

By: Ronald L. Willhite
Ronald L. Willhite
Consultant

04/05/06

DATED THIS 7TH DAY OF APRIL, 2006

KENTUCKY UTILITIES COMPANY

By: 
F. Howard Bush, Jr.
Manager of Tariffs & Special Contracts



Item 1 – Vicinity Map

This large map is in the case file and is available for viewing at the Kentucky Public Service Commission office in Frankfort, Kentucky.

Case No. 2006-00148

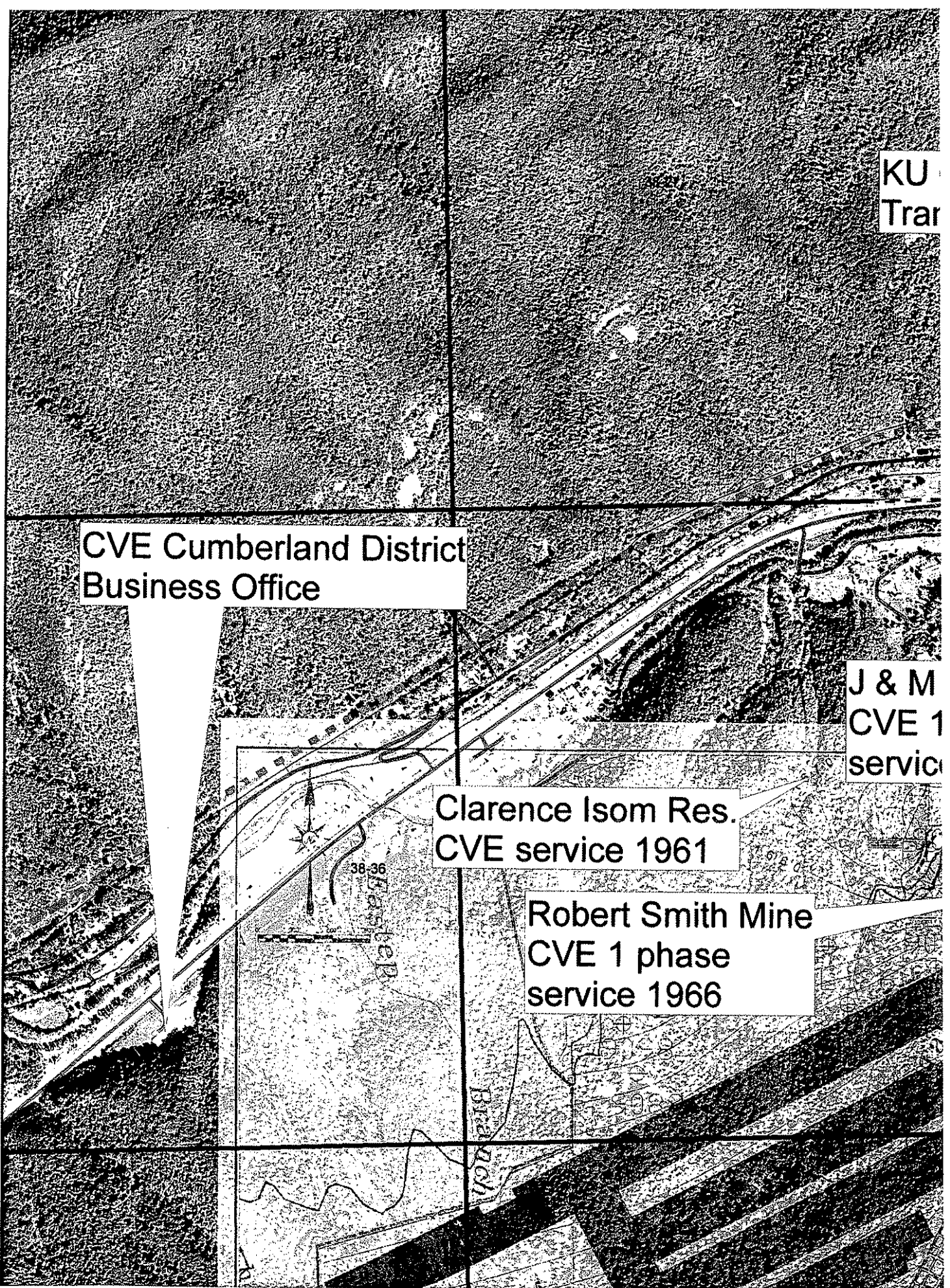
KU
Tran

CVE Cumberland District
Business Office

J & M
CVE 1
service

Clarence Isom Res.
CVE service 1961

Robert Smith Mine
CVE 1 phase
service 1966





KENTUCKY DEPARTMENT OF MINES AND MINERALS
MAP TRANSMITTAL LETTER
Underground Mine

License Year 2005

State File No. 18631

Map Covers Period Ending 5-24-05

Company Name Stillhouse Mining, LLC Mine Mine No. 2

Former Company Name and Mine _____ Last Year Licensed _____

Nearest Town Cumberland County Harlan Map Scale 1" = 300'

Stream, branch or hollow Perkins BR of Cumberland River Quad Name Louellen

Entry: Latitude 36°57'28.648" Longitude 83°02'19.818"; see Mapping Standards document for details

Use coal seam (bed) names as found on the USGS Geologic Quadrangle and refer to the KDMM seam listing.

List coal seams being mined during this License Year:

<u>Harlan</u>	Average Thickness <u>120"</u>	Appx. Elevation <u>1440'</u>
_____	Average Thickness _____	Appx. Elevation _____
_____	Average Thickness _____	Appx. Elevation _____

CARRIER STILLHOUSE MINING LLC S ROSS KEGAN P O BOX 527 BENHAM KY 40807 06/14/05 15-18869	HARLAN	06/14/05 0522 MINE 2 18631 CUMBERLAND HARLAN UTC	<p style="font-size: 1.2em; margin: 0;"><u>New Mine</u></p> MAP PURPOSE 18631_2005L_20050524_t
--	--------	--	---

	YES	NO	NA
1. Are the KDMM standard data block, North Arrow, scale, and bar scale shown?	X		
2. If using a grid is it labeled and the datum (NAD), linear units and projection indicated?	X		
3. Is the general mining plan for the next five years indicated? (Use a different color for each year's projections.)	X		
4. Are pillared, worked-out and abandoned areas indicated, including major roof falls?	X		
5. Are all entries and air courses with air flow indicated by arrows shown?	X		
6. Are escapeways indicated?	X		
7. Are the required property and mineral lease lines with owners shown?	X		
8. Are there mines above or below? If yes, information must be provided.	X		
9. Are adjacent works and inaccessible areas shown?	X		
10. Are surface mines, auger holes, highwall miner entries and all underground mines indicated?	X		
11. Are water pools above? If yes, information must be provided.		X	
12. Are oil and gas wells (producing or abandoned) indicated including owners and well numbers?	X		
13. Is the 25 foot barrier indicated as required by KRS 352.490?	X		
14. Are all mine fans indicated? Information must be provided.	X		
15. Is the watershed near the mine opening shown and named?	X		
16. Are detailed worked-out areas within 1000 feet of future mining indicated along with precautions?	X		
17. Are all known drill holes (core holes, etc.) that penetrate the coal bed shown?	X		
18. Is the location and description of at least two permanent base line points coordinated with the underground and surface traverses indicated? See Map Standards document for details.	X		
19. Is the location and description of at least two permanent elevation bench marks used in the mine elevation surveys indicated?	X		
20. Are the elevations of tops and bottoms of shafts and slopes and the floor at the entrance to drift and tunnel openings indicated?	X		
21. Are contour lines passing through whole number elevations of the coal bed being mined, not exceeding 10 foot intervals indicated?	X		

Kenneth B. Pigsty 5-24-05
 Engineer Signature Date
 Engineer Name (printed) KENNETH B. PIGSTY
 Registration number 20890

Charlie Ruiz 6/14/05
 Inspector Date
Rennie Hampton 6/14/05
 District Supervisor Date



OFFICE OF MINE SAFETY AND HEALTH
MAIL TRANSMITTAL LETTER
Underground Mine

Transmittal No. 2006-001

Transmittal No. 2006-001

Mine(s) Covered by this Transmittal 2006-001

Mine Name 2006-001

Location of Mine 2006-001

County 2006-001

State 2006-001

Effective Date of this Transmittal 2006-001

Expiration Date of this Transmittal 2006-001

Applicable Regulations 2006-001

Applicable Standards 2006-001

Applicable Orders 2006-001

I, THE UNDERSIGNED, DO HEREBY
CERTIFY THIS DOCUMENT TO BE A TRUE
AND CORRECT PHOTOGRAPHY OF THE ORIGINAL
AS OF THIS 4th DAY OF APRIL 2006
AT THE COUNTY OF 2006-001
STATE OF 2006-001

Item	Remarks	Responsible Party
1. All MSHA standards shall be observed and enforced in accordance with the provisions of the MSHA Act.		
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KENTUCKY DEPARTMENT OF MINES AND MINERALS
 MAP TRANSMITTAL LETTER
 (Underground Mine)

DISTRICT HAELAN MAP PURPOSE MINE CLOSURE Final Map
 Company Name ARCH COAL INC. dba ARCH OF KY Mine No. 37 File No. 540.9
 Company Address MAPLE & CHURCH ST, LYNCH KY 40955 Map Scale 1" = 500'
 Former Company Name and Mine No. _____
 Engineer GREGORY YOUNG 5-18-1998 Reg. No. 18102 Last Year Licensed 1998
 Map Covers Period Ending 3/27/98 Mine Location (Hollow, branch, etc.) POUNDRING MILL BR. OF CLOVERLICK CRK.
 Nearest Post Office CUMBERLAND KY 40823 Seam HAELAN Seam Thickness 48"-132"
 Number of Sections 4 Number of Men 0 County HAELAN Type Mine DRIFT URC
 Topo Name LOUELLEN Entry (Longitude) 83° 00' 09" (Latitude) 36° 57' 22"
 Digitizing Point (Longitude) 83° 00' 06" (Latitude) 36° 57' 24"

	YES	NO	N/A
1. Is the North Arrow shown?	X		
2. Are the required property and mineral lease lines shown?	X		
3. Are the owners of each tract shown?	X		
4. Is the general plan of mining for the next 12 months indicated?	N/A		
5. Are all pillared, worked-out and abandoned areas indicated?	X		
6. Are all entries and air courses with air flow indicated by arrows shown?	N/A		
7. Is the dip of the coal indicated?	X		
8. Are escapeways indicated?	N/A		
9. Are major roof falls indicated?	X		
10. Are there mines above or below? If yes, information must be provided.	X		
11. Are water pools above? If yes, information must be provided.		X	
12. Are oil and gas wells (producing and abandoned) indicated?	X		
13. Are well owners and well numbers listed?			X
14. Are inaccessible areas shown?	X		
15. Is the 25' barrier indicated as required by KRS 352.490?	X		
16. Are all openings, including strip and auger mines areas indicated?	X		
17. Are all mine fans indicated? If yes, information must be provided.	N/A		
18. Is name and location of nearest railroad indicated?	X		
19. Is name and location of nearest public highway indicated?	X		
20. Are all permanent mine buildings located and named?	N/A		
21. Is the water shed near the mine opening shown?	X		
22. Are worked-out areas within 1000' of future mining indicated along with precautions?			X
23. Are all known drill holes (core holes, etc.) that penetrate the coal bed shown?	X		
24. Is the location and description of at least two permanent base line points coordinated with the underground and surface traverses indicated?	X		
25. Is the location and description of at least two permanent elevation bench marks used in mine elevation surveys indicated?	X		
26. Are the elevations of tops and bottoms of shafts and slopes and the floor at the entrance to drift and tunnel openings indicated?	X		
27. Is the elevation of the floor at intervals of not more than 200' indicated at required locations?	X		
28. Are contour lines passing through whole number elevations of the coal bed being mined, not exceeding 10' elevation levels indicated?	X		

Gregory C. Young 6/29/98
 Engineer Date

Jolly White 7-2-98
 Inspector Date
Dewey Middleton 7-2-98
 District Supervisor Date