

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PETITIONS OF KENTUCKY UTILITIES	)	
COMPANY AND BLUE GRASS ENERGY	)	
COOPERATIVE CORPORATION TO BE	)	CASE NO. 2006-00214
DESIGNATED AS THE RETAIL ELECTRIC	)	
SUPPLIER FOR THE NEW WAL-MART	)	
STORE IN CYNTHIANA, KENTUCKY	)	

O R D E R

On April 25, 2006, Kentucky Utilities Company ("KU") filed a petition with the Commission requesting authority to continue to serve as the power supplier for Wal-Mart Stores, Inc., Store No. 591, in Cynthiana, Kentucky ("Wal-Mart").<sup>1</sup> On May 26, 2006, Blue Grass Energy Cooperative Corporation ("Blue Grass") petitioned the Commission to be designated as the retail electric supplier for Wal-Mart.<sup>2</sup>

At the time the petitions were filed, Wal-Mart had initiated plans to expand its operations in Cynthiana, Harrison County, Kentucky by constructing a SuperCenter directly behind an existing Wal-Mart store and thereafter demolishing the existing Wal-Mart store. The location of the existing store would then constitute a portion of the parking lot for the SuperCenter. The certified territorial boundary line between KU and Blue Grass would

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<sup>1</sup> KU's application was originally filed as Commission Case No. 2006-00170 and subsequently consolidated into the instant case and the case was removed from the Commission's docket by Order dated June 6, 2006.

<sup>2</sup> Although in its petition Blue Grass refers to the "new" Wal-Mart store, contrary to KU's petition to "continue" to serve as the power supplier for the Wal-Mart store, both utilities are referring to the same Wal-Mart entity.

bisect the location of the planned SuperCenter. As a result, the SuperCenter would be situated within the certified territorial boundaries of both electric suppliers.<sup>3</sup>

On September 6, 2006, the parties filed a joint Notice of Tentative Settlement and advised the Commission that they had reached an agreement in principle to resolve their territorial dispute. On October 19, 2006, the parties filed a joint motion requesting that the Commission approve their settlement agreement ("Agreement"). In their Agreement, the parties agreed that KU would continue to serve the territory on which the existing Wal-Mart is located and would also serve the territory on which the SuperCenter is being constructed.<sup>4</sup> In return, Blue Grass would serve the territory designated as Lots 6 and 7 in the Brannon Crossings development near Nicholasville, Jessamine County, Kentucky and Lots 1 - 88 in the residential development known as The Cottages of Alton Station in Anderson County, Kentucky.<sup>5</sup>

Having reviewed this matter and being otherwise sufficiently advised, the Commission finds that:

1. KU furnishes electric service to consumers in the Commonwealth of Kentucky, including Harrison, Jessamine, and Anderson counties, for ultimate consumption.

2. Blue Grass furnishes electric service to consumers in the Commonwealth of Kentucky, including Harrison, Jessamine, and Anderson counties, for ultimate consumption.

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<sup>3</sup> KRS 278.010(5) and 278.017.

<sup>4</sup> Agreement Article 1.01.

<sup>5</sup> Agreement Article 1.02.

3. KU and Blue Grass are "retail electric suppliers."<sup>6</sup>

4. Wal-Mart is an active Delaware corporation in good standing whose principal office is located at 702 S.W. 8<sup>th</sup> Street, MS #0555, Bentonville, Arkansas 72716-0555.<sup>7</sup>

5. KU and Blue Grass responded to Commission Staff's data requests wherein they stated that: (a) the territories assigned to Blue Grass pursuant to the Agreement are unimproved vacant lots; (b) the owners of the properties have been informed that Blue Grass will likely be the retail electrical supplier for the properties; and (c) at this time, there are no retail customers affected by the changes in providers. The Commission has received no objections or comments from the owners of said properties.

6. The proposed Agreement filed on October 19, 2006 promotes the orderly development of retail electric service, avoids wasteful duplication of facilities, and minimizes disputes between retail electric suppliers which may result in inconvenience, diminished efficiency, and higher costs in serving the customers.

7. The proposed Agreement promotes the purposes of KRS 278.016 as required by KRS 278.018(6) and will provide adequate and reasonable service to the customers that it affects.

IT IS THEREFORE ORDERED that:

1. The Agreement, attached hereto as Appendix A, between KU and Blue Grass re-allocating the aforementioned territories is approved.

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<sup>6</sup> KRS 278.010(4).

<sup>7</sup> [http://apps.sos.ky.gov/business/obdb/\(rnbmps55fsq4rs552trrfuih\)/default.aspx](http://apps.sos.ky.gov/business/obdb/(rnbmps55fsq4rs552trrfuih)/default.aspx).

2. Within 15 days of the date of this Order, KU and Blue Grass shall file with the Commission service area maps accurately depicting the boundary changes as defined in the Agreement approved herein.

3. All other certified territorial boundaries between KU and Blue Grass shall remain unchanged.

4. This case is closed and is removed from the Commission's docket.

5. This is a final and appealable Order.

Done at Frankfort, Kentucky, this 12th day of December, 2006.

By the Commission

ATTEST:

  
Executive Director

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE  
COMMISSION IN CASE NO. 2006-00214 DATED December 12, 2006.

## **SETTLEMENT AGREEMENT**

This Settlement Agreement is entered into this 18<sup>th</sup> day of October, 2006, by and between Kentucky Utilities Company ("KU") and Blue Grass Energy Cooperative Corporation ("BGE").

### **W I T N E S S E T H:**

**WHEREAS**, KU and BGE were parties to an action before the Commission, in Case No. 2006-00214, regarding the provision of service to a Wal-Mart SuperCenter being constructed in Cynthiana, Kentucky;

**WHEREAS**, an informal conference in Case No. 2006-00214 was held on August, 25, 2006, and both during and after the informal conference the parties, with the knowledge but not the involvement of Commission Staff, engaged in settlement discussions; and

**WHEREAS**, a unanimous settlement of all issues in the referenced proceeding has been reached by KU and BGE.

**NOW, THEREFORE**, for and in consideration of the agreements and conditions set forth herein, the parties hereby agree as follows:

#### **Article 1      Amendment of Territorial Boundaries**

- 1.01    KU will continue to serve the territory on which the current Wal-Mart in Cynthiana is located and will also serve the territory on which the Wal-Mart SuperCenter in Cynthiana is being constructed.
- 1.02    BGE will serve the territory designated as lots 6 and 7 in the Brannon Crossings development near Nicholasville, Kentucky, as well as lots 1-88

in the residential development known as The Cottages of Alton Station in Anderson County, Kentucky.

- 1.03 KU and BGE will serve those portions in the Cynthiana-Harrison County Industrial Park as identified on the maps attached hereto.
- 1.04 Revised territorial boundary maps reflecting the above-referenced agreements are attached hereto.

**Article 2      Effect on Pending Action**

- 2.01 The Parties will jointly move the Commission to dismiss Case No. 2006-00214 as settled.
- 2.02 Upon formal Commission adoption and acceptance of the tendered Agreement and Order as a full resolution of all issues arising from the proceedings described in Article 2.01 above, no party will file a petition for rehearing under KRS 278.400 or an appeal under KRS 278.410.
- 2.03 In the event that the Commission declines to approve this Settlement Agreement and the revised maps attached hereto, then this Agreement, and the proposed revised territorial divisions, shall be rendered null and void and the parties will proceed with Case No. 2006-00214 without prejudice.

**Article 3      Additional Provisions**

- 3.01 This Settlement Agreement shall in no way be deemed to divest the Commission of any jurisdiction under, or to supersede in any way, Chapter 278 of the Kentucky Revised Statutes.

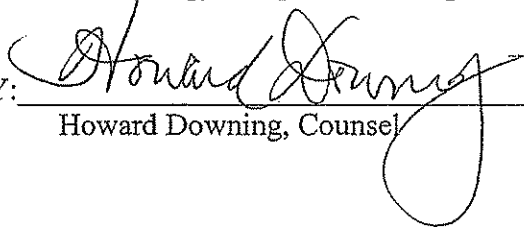
- 3.02 This Settlement Agreement shall inure to the benefit of and be binding upon the parties hereto, their heirs, successors and assigns.
- 3.03 The signatories hereto warrant that they have informed, advised, and consulted with the respective parties hereto in regard to the contents and significance of this agreement and based upon the foregoing are authorized to execute this Settlement Agreement on behalf of the parties hereto.
- 3.04 This Settlement Agreement is a product of negotiation among all the parties, and no provision of this Settlement Agreement shall be strictly construed in favor of or against any party.

**IN WITNESS WHEREOF**, the parties hereto have hereunto affixed their signatures.

**Kentucky Utilities Company**

BY:   
J. Gregory Cornett, Counsel

**Blue Grass Energy Cooperative Corporation**

BY:   
Howard Downing, Counsel