

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

WALTER CALLIHAN)	
)	
COMPLAINANT)	
)	
v.)	CASE NO. 2011-00351
)	
GRAYSON RURAL ELECTRIC COOPERATIVE CORPORATION)	
)	
DEFENDANT)	

ORDER

On July 21, 2011, Walter Callihan filed a formal complaint against Grayson Rural Electric Cooperative Corporation ("Grayson RECC"), in which he alleged that the electric utility unlawfully refuses to provide electric service to him. After Grayson RECC answered this Complaint and denied the allegations of unlawful refusal of service, the Commission scheduled this matter for hearing. On November 29, 2011, the Commission held a hearing in this matter at which Mr. Callihan failed to appear or to otherwise notify the Commission of any inability to appear. Grayson RECC has moved to dismiss this matter with prejudice.

As the Complainant in this matter, Mr. Callihan has the burden of proof. See, e.g., *Energy Regulatory Comm'n v. Kentucky Power Co.*, 605 S.W.2d 46, 50 (Ky. App. 1980) ("Applicants before an administrative agency have the burden of proof."); *Lee v. International Harvester Co.*, 373 S.W.2d 418, 420 (Ky. 1963) ("The claimant, bearing the burden of proof, 'has the risk of not persuading the Board in his favor.'"). The

Commission provided adequate notice to Mr. Callihan of this burden and the consequences should he fail to appear at the scheduled hearing.¹

Mr. Callihan's failure to appear leaves the Commission with a record that contains little support for his allegations of unlawful refusal of service. In Case No. 2005-00280, the Commission after an extensive investigation found that Mr. Callihan had an outstanding debt of \$692.26 to Grayson RECC for electric service.² In response to Commission Staff's Requests for Information in this proceeding, a Grayson RECC official stated under oath that, since we entered our Final Order in Case No. 2005-00280, Mr. Callihan had not made any payments on this outstanding debt³ nor had Grayson RECC initiated any legal proceeding to collect this debt.⁴ The existing record, therefore, supports the continued existence of Mr. Callihan's debt to Grayson RECC.

Administrative Regulation 807 KAR 5:006, Section 14(1)(d) provides that "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." In light of Mr. Callihan's outstanding debt, Grayson RECC's refusal to restore electric service is not unlawful, but within the utility's right.

¹ Order of October 27, 2011 at 3 ("As the Complainant bears the burden of proof in this matter, his failure to appear at the formal hearing and to present proof in support of his complaint may result in the dismissal of his complaint with prejudice.").

² Case No. 2005-00280, *An Investigation Into Grayson Rural Electric Cooperative Corporation's Provision of Electric Service to Walter and Goldie Callihan* (Ky. PSC Mar. 6, 2006). By Order of October 27, 2011, the Commission incorporated by reference the record of this case into the record of the current proceeding.

³ Grayson RECC's Response to Commission Staff's Request for Information, Item 2.

⁴ *Id.* Item 4.

In his Complaint, Mr. Callihan asserts that any alleged debt to Grayson RECC is barred by the statute of limitations and thus cannot serve as a basis for refusing service. Commission precedent, however, suggests otherwise. In *Callihan v. Grayson Rural Electric Coop. Corp.*, 105 PUR4th 218, 220 (Ky. PSC 1989), we held that, where the statute of limitations may bar legal proceedings to collect a debt owed for utility service, the utility may still lawfully refuse service because the debt still exists:

Grayson RECC's right to receive payment, however, remains. "[A] statute of limitations does not extinguish the legal right but merely affects the remedy." *Ley v. Simmons*, 249 S.W.2d 808, 809 (Ky. 1952). As the right to receive payment on the debt still exists, Commission Regulation 807 KAR 5:006, Section 11(1)(d), permits Grayson RECC to refuse service.

Nothing in the record of the current proceeding provides us with a compelling argument to disturb this holding.

Based upon the above, the Commission finds that the Complainant has failed to prove that Grayson RECC has unlawfully denied him electric service and that his Complaint should be dismissed with prejudice.

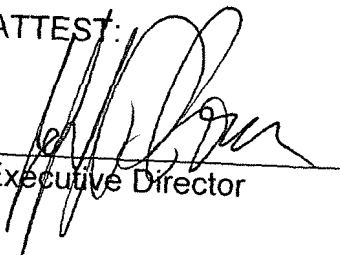
IT IS THEREFORE ORDERED that:

1. Grayson RECC's motion to dismiss is granted.
2. The Complaint is dismissed with prejudice.

By the Commission

ENTERED ^{ea}
DEC 14 2011
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:



Executive Director

Case No. 2011-00351

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