

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PETITION AND COMPLAINT OF GRAYSON)	
RURAL ELECTRIC COOPERATIVE)	
CORPORATION FOR A DECLARATION OF)	CASE NO.
ITS EXCLUSIVE RIGHT PURSUANT TO)	2015-00131
KRS 278.018(1) TO SERVE THOSE PORTIONS)	
OF THE VALLEY VIEW SUBDIVISION IN CARTER)	
COUNTY, KENTUCKY LYING WITHIN ITS)	
CERTIFIED TERRITORY IN LIEU OF KENTUCKY)	
POWER COMPANY)	

ORDER

On April 6, 2015, Grayson Rural Electric Cooperative Corporation (“Grayson”) filed with the Commission a formal complaint (“Complaint”) alleging that Kentucky Power Company (“Kentucky Power”) is providing electric service to 11 residences in Grayson’s certified service territory in violation of KRS 278.018(1). On May 4, 2015, Kentucky Power filed its answer, denying the allegations and requesting the case be dismissed for failure to set forth a prima facie case. On May 14, 2015, the Commission issued an Order directing Grayson to file evidence supporting its claim. On May 27, 2015, Grayson filed its response. On June 4, 2015, the Commission issued an Order deeming the May 27, 2015 filing as nonresponsive and directing Grayson to file specific documents in support of its claim. On June 18, 2015, Grayson filed its response. Having reviewed the evidence of record, the Commission finds that Grayson has failed to set forth its claim with reasonable certainty. The Commission further finds that Grayson’s Complaint should be dismissed without prejudice to Grayson’s right to refile a

complaint provided Grayson sufficiently identifies with reasonable certainty the subject matter of its allegations.

BACKGROUND

In its Complaint, Grayson asserts that 11 residences in the Valley View subdivision in Carter County, Kentucky, are in Grayson's certified service territory, but are improperly receiving electric service from Kentucky Power. Grayson does not identify the street addresses of the 11 residences in its Complaint, only that the 11 residences are in the Valley View subdivision. In Paragraph 7 of the Complaint, Grayson references a map that shows "certain residences in the Valley View subdivision lie within Grayson's exclusive territory," but the map was not attached to the Complaint. The Complaint also referred to Exhibit A, which was attached to the Complaint and is an aerial Google Earth map with a hand-drawn line that is not labeled, but appears to depict the service boundary between Grayson and Kentucky Power. The map attached as Exhibit A does not identify the street names, the street addresses, or any other evidence sufficient to identify the 11 residences referenced in the Complaint. The map is of poor quality, which makes it difficult to determine how many buildings are located on either side of the hand-drawn line.

In its answer filed on May 4, 2015, Kentucky Power denied providing electric service to residences in Grayson's certified service territory. Additionally, Kentucky Power requested that the Complaint be dismissed because Grayson failed to provide sufficient information to establish that any residences served by Kentucky Power are located in Grayson's certified service territory and, therefore, failed to provide sufficient evidence to establish a prima facie case.

On May 14, 2015, the Commission issued an Order directing Grayson to file certain evidence to support its claim that the 11 residences referenced in the Complaint are within Grayson's certified service territory. On May 27, 2015, Grayson filed staking sheets and maps that purport to show the GPS coordinates of poles and transformers that Grayson alleges "feed meters" located in Grayson's certified service territory. Grayson failed to identify the owner of the poles and transformers, and the meters or residences allegedly served by said poles and transformers. Further, Grayson failed to explain how the information it filed complied with the Commission's directive to identify the 11 residences at issue, since the staking maps identified a total of 31 poles, transformers, and meters.

On June 4, 2015, the Commission issued a second Order deeming Grayson's May 27, 2015 filing as nonresponsive and directing Grayson to file specific documents that sufficiently identify the subject matter of Grayson's claim. The Commission ordered Grayson to file: 1) the street addresses of the 11 residences at issue; 2) a copy of the certified territory map referenced in the Complaint, Paragraph 7, that Grayson averred shows that the 11 residences served by Kentucky Power are in Grayson's certified service territory; 3) a survey that demonstrates the 11 residences served by Kentucky Power are in Grayson's certified service territory; and 4) any other aerial maps based upon a survey or the certified territory map that show the 11 residences at issue lie within Grayson's certified service territory.

In its June 18, 2015 response, Grayson failed to provide the street addresses of the 11 residences, as the Commission directed. The exhibits Grayson filed were not the specific documents requested. Further, the maps Grayson filed identified more than 11

residences, but each map contained a different number of residences identified as improperly receiving service from Kentucky Power. Grayson did not provide an explanation for the inconsistencies between the maps or how the additional residences depicted on the maps relate to the 11 residences referenced in the Complaint. Grayson filed the following exhibits:

1. Exhibit 1, which is a purported certified territory map without any reference to the 11 residences at issue. This map is not dated and signed by both Grayson and Kentucky Power and, thus, cannot be considered a “certified” territory map;

2. Exhibit 2, which is a Google Earth map listing 16 street addresses of residences that Grayson alleges are improperly receiving service from Kentucky Power;

3. Exhibit 3, consisting of staking sheets and maps listing 19 residences that Grayson alleges are improperly receiving service from Kentucky Power, along with 11 transformer poles and a cable TV booster. Grayson provided full addresses for 13 of the residences and partial addresses in the form of street names only for six of the residences; and

4. Exhibit 4, which is a Google Earth topographical map containing 30 push-pin icons. The map does not contain a legend, but the filing indicates the push-pin icons are placed in the same location as the GPS locations contained in Exhibit 3.

DISCUSSION

Pursuant to 807 KAR 5:001, Section 20(1)(c), each complaint shall state with “reasonable certainty” the act or omission that is the subject matter of the complaint. Further, the party filing a complaint has the burden of proof. Here, by failing to specifically identify the discrete residences to which Grayson alleges Kentucky Power is

improperly providing electric service, Grayson has failed to establish a prima facie case and failed to conform to Commission regulations regarding complaints.

Not only has Grayson failed to comply with the Commission's directive to identify the 11 residences referenced in the Complaint, Grayson provided exhibits containing discrepancies and conflicting information that make the number and location of residences at issue indeterminate. While 11 residences were referenced in the Complaint, Exhibit 2 to Grayson's June 18, 2015 filing identifies 16 residences that Grayson states are improperly receiving service from Kentucky Power, and Exhibit 3 to Grayson's June 18, 2015 filing identifies 19 residences that allegedly are improperly receiving service from Kentucky Power. Additionally, the locations of some of the residences depicted on Exhibit 2 do not match with the information provided in Exhibit 3. For example, the residence depicted as 70 Beach Street on Exhibit 2 is depicted as 67 Beach Street on Exhibit 3.

Grayson had three opportunities to state with reasonable certainty the residences that it alleges are improperly receiving electric service from Kentucky Power: in its April 6, 2015 Complaint; in its May 27, 2015 filing in response to a Commission Order directing Grayson to identify the 11 residences at issue; and in its June 18, 2015 filing in response to a second Commission Order directing Grayson to identify the 11 residences at issue.

Grayson and its counsel are sophisticated parties who appear regularly in matters before the Commission, including in a previous boundary dispute between

Grayson and Kentucky Power, Case No. 2012-00224.¹ In Case No. 2012-00224, the subject matter of the complaint was identified with reasonable certainty. The street addresses of the residences at issue were provided in the body of the complaint and depicted in the map filed as an exhibit to the complaint. As a respondent in the previous boundary dispute with Kentucky Power, Grayson is deemed on notice as to what type of evidence is required to establish a prima facie case in a boundary dispute.

Having reviewed the record and being otherwise sufficiently advised, the Commission finds that Grayson's Complaint should be dismissed without prejudice. Grayson did not comply with Commission regulations and did not establish a prima facie case when it failed to state with reasonable certainty the act of which complaint is made. Despite several opportunities, Grayson failed to sufficiently identify the 11 residences that it alleged are improperly receiving electric service from Kentucky Power. By dismissing the Complaint without prejudice, the Commission notes that Grayson retains the right to refile its complaint in the future. However, any such filing should comply with Commission regulations, including the requirement set forth in 807 KAR 5:001, Section 20(1), that the complaint shall state with reasonable certainty the act of which complaint is made. At a minimum in a boundary dispute, the complainant should identify the street address for each and every residence at issue so that the subject matter of the complaint is identified with reasonable certainty.


IT IS THEREFORE ORDERED that Grayson's Complaint shall be dismissed without prejudice, and this case is removed from the Commission's docket.

¹ Case No. 2012-00224, *Petition and Complaint of Kentucky Power Company for a Declaration of Its Exclusive Right Pursuant to KRS 278.018(1) to Serve Those Portions of the Sand Gap Estates in Greenup County, Kentucky Lying Within Its Certified Territory in Lieu of Grayson Rural Electric Cooperative Corporation* (Ky. PSC Apr. 1, 2014).

By the Commission

ENTERED
AUG 05 2015
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:



Executive Director

Case No. 2015-00131

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