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DEC 13 2006

PUBLIC SERVICE
COMMISSION

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December 13, 2006

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

Re: Cumberland Valley Electric, Inc. v. Kentucky Utilities, Inc.
Case No. 2006-00148

Hand – Delivered

Dear Ms. O'Donnell:

Attached are the original and eight copies of the Responses of Cumberland Valley Electric, Inc. to the second information requests of the Commission Staff and Kentucky Utilities Company in the above-styled case. I have this day caused to be served a copy of the Responses by first class mail on the parties named on the attached service list.

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

Sincerely,



Anthony G. Martin

Attorney for Cumberland Valley Electric, Inc.

Cc: Attached Service List [w/enclosure]

J. Gregory Cornett
Stoll Keenon Ogden PLLC
1700 PNC Plaza
500 West Jefferson St.
Louisville, KY 40202

F. Howard Bush III
Manager, Tariffs/Special Contracts
E.ON U.S. LLC
220 West Main Street
Louisville, KY 40202

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

Allyson K. Sturgeon
Attorney
E.ON U.S. LLC
220 West Main Street
Louisville, KY 40202

Forrest E. Cook
Attorney at Law
178 Main St - Ste 5
PO Box 910
Whitesburg, KY 41858-0910

W. Patrick Hauser
W. Patrick Hauser, PSC
200 Knox St.
P.O. Box 1900
Barbourville, KY 40906

Ted Hampton, Manager
Cumberland Valley Electric, Inc.
P.O. Box 440
Gray, KY 40734

Ronald L. Willhite
7375 Wolf Spring Trace
Louisville, KY 40241

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

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Barbourville, KY 40906

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7375 Wolf Spring Trace
Louisville, KY 40241

**CUMBERLAND VALLEY ELECTRIC
CASE NO. 2006-00148**

**Response to Supplemental Data and Document Requests
For Information From Commission Staff
Dated November 29, 2006**

1. Refer to the Cumberland Valley's response to the information Request of Kentucky Utilities Company ("KU"), Item 19. Provide the names and locations of all mines and residences that Cumberland Valley has served or is presently serving on the property Mr. Matda describes as the U.S. Steel Property.

ANSWER:

Account 34-98-001 was connected on May 14, 2001, in the name of North Fork Coal Corporation. This is a subsidiary company of Black Mountain Resources. It is located at CVE's Arkland Substation on Colliers Creek in Letcher County. The account is currently active.

Account 39-14-603 was connected on September 13, 2006, in the name of Black Mountain Resources. This is the service to the new Black Mountain Resources' mine in the Harlan Seam near the community of Blair in Harlan County. The service is located approximately 2,500 feet southeast of the intersection of US119 and the mine's haul road and between Charlie Blair Branch and Orchard Branch. The account is currently active.

Account 39-14-131 was connected on January 14, 2004, in the name of Nally & Hamilton. The account is located approximately 3,100 feet nearly due south of the aforementioned road intersection above. The account is currently inactive.

Account 38-28-601 was connected on January 26, 2006, in the name of Stillhouse Mining #2. This is the Stillhouse #2 water pump service. It is located at the dam of a holding pond on Lewis Branch south of US119 and approximately 2,500 feet north of the Shillhouse #2 portal. The account is currently active.

Account 38-37-22 was originally connected in the name of Aaron Dixon on February 16, 1961. This account was located approximately 200 feet east of the confluence of Judes Branch and Poor Fork River. The account is inactive.

Account 38-37-23 was originally connected in the name of Marvin W. Cornett on March 16, 1961. This account was located approximately 450 feet east of the confluence of Judes Branch and Poor Fork River. The account is inactive.

Account 38-37-25 was originally connected in the name of Clarence Isom on March 30, 1961. This account was located approximately 1,600 feet due south of the Poor Fork River and approximately 150 feet west of an unnamed branch between Judes Branch and Tantrough Branch. The account is inactive.

Account 38-28-21 was originally connected in the name of John Dixon, Jr. on May 2, 1962. This account was located approximately 450 feet southwest of the confluence of Perkins Branch and Poor Fork River and just on the east side of said branch. This account is inactive.

CVE has obtained a deed record from the Office of the Clerk of the County Court of Harlan County at Deed Book 262 Page 53 which documents the conveyance of 4.00 acres from U.S. Steel to Clarence R. and Hattie M. Wells on September 5, 1984. Item No. 9 of this deed makes the conveyance "SUBJECT TO AN EASEMENT from United States Steel Coal and Coke Company to Cumberland Valley Rural Electric Cooperative Corporation". A residence on this property was connected to service from CVE on May 8, 1950, in the name of Hamby with account number 38-28-018. The account is located immediately across US119 from the entrance to the haul road to Stillhouse #2 Mine. Clarence Wells occupied the account on June 14, 1971, purchased the property in September 1984, and the account is connected in his name to this day. This property is not part of the property described by Mr. Matda as the U.S. Steel Property but it was U.S. Steel property when the account was originally connected. The deed and customer record are attached to KU 2nd – 17.

Transformer No. 3857-25 Acct. No. 3857-25
 Transformer size L.S. 44503 St. 28
 Phase Volts Min. bill County Rate 11

Sub		Comm		Res		Elec. Hse		Trailer	
DATE	CONN. READ.	NAME	MEMBER-SHIP NO.	METER NO.	COOP. NO.	DIS. DATE	DIS. READING		
3-30-64		Plainsboro Road	5078	7052109	621	4-21-64			
6-30-64		Haystack Road	7572	7252109	621	9-7-65			
9-30-65		Plainsboro Road	5078	28519480	214	8-31-64			
2-1-67		Haystack Road	13687	9632934	3345	12-1-67			
3-31-70		Haystack Road	03170	14249248	9162	11-1-71			
12-30-71		Haystack Road	34543	31913804	7999	5-24-72			
6-10-72		Haystack Road	34689	4986596	28	11-30-72			
12-12-72		Haystack Road #2	34022	25489064	5480	7MC	691.3		
11-19-76	8164	Haystack Road #2	34022	2848354	414	12-22-76			

**CUMBERLAND VALLEY ELECTRIC
CASE NO. 2006-00148**

**Response to Supplemental Data and Document Requests
For Information From Commission Staff
Dated November 29, 2006**

2. State whether Cumberland Valley is still providing electricity service to the J&M Fields Coal Mine and Robert Smith Mine shown on the map attached to the Complaint as Item 1: Vicinity Map.

ANSWER:

CVE is not currently providing electric service to either of these mines.

**CUMBERLAND VALLEY ELECTRIC
CASE NO. 2006-00148**

**Response to Supplemental Data and Document Requests
For Information From Kentucky Utilities
Dated November 29, 2006**

INITIAL OBJECTIONS

Cumberland Valley Electric (“CVE”) objects to the instruction given by Kentucky Utilities Company (“KU”) directing CVE to advise counsel for KU of objections in advance on grounds that it is overly broad, unduly burdensome and inconsistent with controlling practice and procedure, and is not required by any regulation or prior directive of the Commission in this or other case known to CVE for cases such as the current matter. CVE also objects to the number and nature of the requests made by KU, which are, cumulatively and individually, burdensome and oppressive. CVE also objects to certain of the requests for information on the grounds set forth in subsequent specific responses. Without waiver of any objections, however, and subject to these and further specific objections as may be set out below, CVE responds to the requests for information propounded by KU as follows. All objections set forth above or below are made by counsel and not by any CVE witness.

CUMBERLAND VALLEY ELECTRIC
CASE NO. 2006-00148

Response to Supplemental Data and Document Requests
For Information From Kentucky Utilities
Dated November 29, 2006

1. Refer to CVE's answer to initial KU Request No. 15, which answer was served on November 1, 2006. State in detail the factual and legal basis on which Mr. Willhite was relying for the "logical" definition of "central station source" offered in lines 2 and 3 of that answer. Provide a citation to each and every statute, regulation, Commission order or court order or ruling in Kentucky which in any way supports the offered definition of "central station source", providing specific reference to the language in such statute, regulation, Commission order or court order or ruling on which you are relying.

ANSWER:

Objection. The question is overbroad, unduly burdensome, and could be read to call for the production of information that is covered by the attorney-client or attorney work product privileges. The question calls in part for a legal opinion from Mr. Willhite. Mr. Willhite is not an attorney and has not offered a legal opinion. CVE also objects on the grounds that such information is as accessible to KU as it is to CVE, and thus it is improper to request such original work from CVE or Mr. Willhite.

However, without waiver of and subject to that objection, Mr. Willhite bases his definition on his knowledge and experience as an Electrical Engineer and the fact that KRS278.016-.018 applies to retail electric suppliers who operate or have access to generator sources, central station sources, that produce energy in order to supply the load requirements of their customers. The reference to "central station source" in KRS278.010(8) can logically be interpreted to distinguish retail electric suppliers from customers, or others who operate generators to which the Act does not apply.

CUMBERLAND VALLEY ELECTRIC
CASE NO. 2006-00148

**Response to Supplemental Data and Document Requests
For Information From Kentucky Utilities
Dated November 29, 2006**

2. Admit that in *Owen Co. RECC v. PSC*, 689 S.W.2d 599 (Ky.App. 1985) the substation and metering equipment was considered to be the “central station source.” If your answer is anything other than an unqualified admission, state in detail the basis for your answer, providing specific reference to the language in the case opinion which you contend supports your answer.

ANSWER:

Objection. The request for admission could be read to call for the production of information that is covered by the attorney-client or attorney work product privileges. Further objection is made because the Order cited speaks for itself.

However, without waiver of and subject to the objection, CVE denies the statement as written. The *Owen Co. RECC* matter does not reference a “substation”. Rather, it states that ULH&P would establish its “service entrance, metering and transforming equipment.” ULH&P had an existing three-phase primary service line along U.S. 27 that ran parallel past the entrance to the Industrial Park. The line was extended 1000 feet along the park service road to the location of the transforming and metering equipment on the Industrial Park where service was provided. Owen is remarkably similar to CVE’s proposed service to Stillhouse Mine No. 2 as that service would include an extension of CVE’s existing three-phase primary service that runs parallel along U.S. 119 in front of the haul road to the new ECF and CVE would install transforming and metering equipment.

CUMBERLAND VALLEY ELECTRIC
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Response to Supplemental Data and Document Requests
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Dated November 29, 2006

3. Admit that in the Commission's Order of May 23, 1990 in Case No. 89-349, and the Franklin Circuit Court and Kentucky Court of Appeals decisions affirming the Commission's final order in Case No. 89-349), the substation and metering equipment was considered to be the "central station source." If your answer is anything other than an unqualified admission, state in detail the basis for your answer, providing specific reference to the language in the order or case opinion which you contend supports your answer.

ANSWER:

Objection. The cited orders speak for themselves.

However, without waiver of and subject to the objection, the Commission did not make such a conclusion. Rather, the Commission determined that a new ECF is created whenever a new central source station is required and cited the substation to be constructed by Pyro. In contrast to *Owen* there was no new line required as an idle KU 69 kv line built in the mid-50's to serve operations of Popular Ridge that never materialized was available at the Popular Ridge Site and Pyro installed the substation. The referenced Courts equated a service entrance, metering and transforming equipment to a substation. There is no mention of metering in the Pyro cases other than when the link to Owen is made. The finding logically means that whenever a new substation or facilities comprised of a service entrance, metering and transforming equipment are required then a new ECF is created. While the Commission has reviewed each case on its own facts, such a conclusion is certainly reasonable both from a practical and engineering basis. When a building is constructed in an open field or a mining operation opens a mine portal and installs a transformer and extends conductor into the opening to serve the mining equipment then those facilities must be connected to a source of electricity in order to operate.

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Dated November 29, 2006

4. What does CVE contend is the central station source for KU's service to Stillhouse #2? Explain that answer in detail.

ANSWER:

Regardless of who serves the new Stillhouse Mine No. 2 that new mining operation will receive power from a central station source. Following *Owen-“service entrance, metering and transforming equipment”*, KU, if the BMR facilities are not considered, would apparently need to construct a line, *service entrance*, from its existing 69 kv line on the north-side of U.S. 119 to the mine, construct a 69/13 kv substation, *transforming equipment*, and install a meter, *metering*. Assuming BMR facilities are considered, then BMR would have to extend a line, *service entrance*, from its existing facilities and install transformers at the portal, *transforming equipment*. In either event, a new ECF is created. Stillhouse Mine No. 2 is a new ECF and the criteria of KRS278.017(3) should be applied.

CUMBERLAND VALLEY ELECTRIC
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Response to Supplemental Data and Document Requests
For Information From Kentucky Utilities
Dated November 29, 2006

5. What would be the central station source for CVE's service to Stillhouse #2, if granted the right to provide that service? Explain that answer in detail.

ANSWER:

Regardless of who serves the new Stillhouse Mine No. 2 that new mining operation will receive power from a central station source. Following *Owen-“service entrance, metering and transforming equipment”*, CVE's service to Stillhouse Mine No. 2 would include a line extension, *service entrance*, of CVE's existing three-phase primary service that runs parallel along U.S. 119 in front of the haul road to the ECF. CVE would install 25/13.2 kv transformers, *transforming equipment*, and a meter, *metering equipment*.

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Response to Supplemental Data and Document Requests
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Dated November 29, 2006

6. Provide a list of all customers who take service from CVE but then transmit or distribute that power further by use of customer-owned facilities. If necessary, but only if necessary, identify the customer(s) by classification (residential, industrial, mining, etc.) rather than by specific name in order to protect customer privacy.

ANSWER:

Objection. This request is over broad, unduly burdensome and seeks the production of information which is irrelevant to the issues in this proceeding and not reasonably calculated to lead to the discovery of admissible evidence.

However, without waiver of and subject to that objection, CVE states that it has identified a number of mining operations that utilize their own distribution systems, as shown below, which is a representative, and not necessarily exhaustive, list. CVE is generally not aware of the specifics regarding such facilities.

Black Mountain Resources
North Fork Coal
Specialty Coal
National Coal
Cumberland River Coal
F&M Coal
G&P Contracting
Bituminous Laurel
Coastal Coal
DTE Clover LLC
Clover Coal

See CVE's response to question #21 of KU's initial data request.

CUMBERLAND VALLEY ELECTRIC
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Response to Supplemental Data and Document Requests
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7. Provide a list of all customers who have facilities connected to CVE that extend into the territory of another retail electric supplier, and state whether said customer uses electricity, in whole or in part, in the territory of another retail electric supplier. If necessary, but only if necessary, identify the customer(s) by classification (residential, industrial, mining, etc.) rather than by specific name in order to protect customer privacy.

ANSWER:

Objection. CVE does not have such a list in its possession and the request seeks original work and is unduly burdensome.

However, without waiver of and subject to that objection, CVE presently serves one mining customer in Whitley County (formerly Gatliff Coal or Cal Glo) that purchases electric energy from CVE and distributes said energy to be consumed in an ECF located within the service territory of Jellico Electric. This arrangement is the result of a Commission approved industrial power contract resolving the issues in Case No. 6637, Complaint of Jellico Electric System v. Cumberland Valley Electric, Order of December 8, 1981.

CVE is unaware of any other such instance on its system. If KU is aware of any situation where such service was physically extended into KU's service territory without agreement, please advise CVE and CVE will work with KU to resolve any question as to such service.

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8. Is it CVE's position that the BMR preparation plant at or near Cloverlick is itself a single electric consuming facility ("ECF") or that it instead is part of some larger ECF? Explain the answer in detail. If the answer is that the plant is part of a larger ECF, identify the ECF and explain the answer in detail. Include in your answers any statute, regulation, Commission order or case law that you claim supports the answer.

ANSWER:

Objection. This request is over broad, unduly burdensome and seeks the production of information which is irrelevant to the issues in this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. The statutes, regulations, orders and case law speak for themselves and are as accessible to KU as to CVE.

However, without waiver of and subject to that objection, the preparation plant appears to be a stand-alone facility that processes coal from BMR operations in both Harlan and Letcher counties that are served by either CVE and KU. As CVE has previously stated it does not object to the use of customer owned lines and facilities where appropriate, but does not agree that the use of such lines or facilities should in any way be considered or attributed to a particular utility when establishing the rightful retail electric supplier for an ECF, nor should a customer be permitted to extend its distribution lines into the service territory of one retail electric supplier from the territory of another retail electric supplier without the express agreement of the affected retail electric suppliers and/or the Commission's approval.

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9. Admit that Mr. Willhite executed a Non-Competition and Confidentiality Agreement with LG&E Energy Corp. and its successors and assigns in 2001, and remains legally bound by the confidentiality provisions therein to this day. If your answer is anything other than an unqualified admission, state the basis for the answer in detail.

ANSWER:

Objection. The request is argumentative and seeks the production of information which is irrelevant and immaterial to the issues in this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. In addition, the request appears to seek a legal opinion from Mr. Willhite, who is not a lawyer.

Without waiver and subject to that objection, Mr. Willhite admits to the extent borne out by the language of paragraph 1.1 of the agreement dated December 22, 2001.

CUMBERLAND VALLEY ELECTRIC
CASE NO. 2006-00148

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Dated November 29, 2006

10. Refer to the documents attached to CVE's answer to initial KU Request No. 23, which answer was served on November 1, 2006. Explain in specific detail how copies of those documents (which were not requested by KU) came to be in the possession of Mr. Willhite or CVE, identifying the source from which the documents were originally obtained, the date on which they were obtained, and the purpose for which they were obtained.

ANSWER:

Objection. The question is argumentative, overbroad and seeks the production of information which is irrelevant to the issues in this proceeding and not reasonably calculated to lead to the discovery of relevant information. It also seeks information that is protected by attorney client privilege or as attorney work product. The information provided subject to objection (which objection has not been, and is not hereby, waived) in the response to initial KU Request No. 23 was obtained by co-counsel for CVE after KU's initial Request was filed, in anticipation of litigation and for trial. Answering the question propounded by KU would disclose counsel's mental impressions, conclusions, opinions or legal theories in the provision of those documents. In its response to initial KU Request No. 23, it was necessary for CVE to correct KU's apparent impression that Mr. Willhite's referenced testimony was based directly on KU's testimony. No KU testimony or pleadings in Case No. PUE960303 were in Mr. Willhite's, nor CVE's, nor CVE counsel's possession prior to KU's initial Request. See, also, CVE Response to initial KU Request No. 24. The Hearing Examiner Report, and not any of KU's documents, was the document source for Mr. Willhite's reference to KU testimony (as stated in response to KU No. 23). The testimony of Mr. Palmer and the other provided documents relate to the issues and KU positions as stated in the Hearing Examiner's Report and subsequent Virginia Commission Orders. KU's Initial Request No. 31 also demanded the production of "all documents which support any and all of your responses to the foregoing requests, to the extent not otherwise requested."

Without waiver of and subject to these objections, Mr. Willhite states that the documents provided over objection in response to initial KU Request No. 23 first came into his possession after KU's initial Requests were filed.

**CUMBERLAND VALLEY ELECTRIC
CASE NO. 2006-00148**

**Response to Supplemental Data and Document Requests
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Dated November 29, 2006**

11. For any customer served by CVE, does CVE have any policy, practice or procedure for inspecting, reviewing or examining customer-owned lines or facilities to determine if they are located or delivering power, in whole or in part, into the territory of another retail electric supplier? If so, state and explain that policy, practice or procedure in detail and produce all documents supporting or evidencing the policy, practice or procedure.

ANSWER:

CVE attempts to examine territorial boundary lines when it becomes apparent that a prospective customer is locating near said lines to determine the appropriate electric supplier. If the prospective customer is on or very near a boundary line, contact is made with the adjoining utility to jointly determine the appropriate supplier. Should agreement be unobtainable, CVE would seek an order of the Commission for service rights. If CVE staff jointly or unilaterally determines the adjoining utility to be the appropriate supplier, the prospective customer is instructed to contact the adjoining utility for electric service. In any event, CVE attempts to always comply with The Certified Territories Act.

Attached is correspondence of June 6, 1977 from CVE to Jellico and Jellico's response of June 8 that reflect CVE's strict adherence to KRS278.018(1).

CUMBERLAND VALLEY

Rural Electric Cooperative Corporation

GRAY, KENTUCKY
40734

June 6, 1977

CUMBERLAND, KENTUCKY
40823

Mr. W. C. Murphy, Jr.
Jellico Electric System
P. O. Box 510
Jellico, Tennessee 37762

Dear Mr. Murphy:

It was brought to my attention that Cumberland Valley RECC has a house connected in your service area. I sincerely apologize as it is not the intention of Cumberland Valley RECC to connect anyone out of their service area.

I am enclosing a copy of our detail map with the boundry lines sketched on line at Trace Branch. In house #5 we have Joie Fuson connected now. This account has been connected for several years.

We have an application on Joie Fuson trailer. I have instructed our Engineering Department not to connect any customer in another service area. If you do find where Cumberland Valley RECC has connected a service in your area, please bring it to my attention and I will correct it immediately.

When you make arrangements to connect Joie Fuson trailer, let me know and you can connect house #5 also.

Once again you have my sincere apology in the Joie Fuson matter.

Very truly yours,

CUMBERLAND VALLEY RURAL ELECTRIC
COOPERATIVE CORPORATION

Ted Hampton
Ted Hampton, Manager

TH:mh

enclosure

JELICO ELECTRIC SYSTEM
AND
JELICO WATER SYSTEM

P. O. BOX 510
JELICO, TENNESSEE 37762

June 8, 1977

Mr. Ted Hampton, Manager
Cumberland Valley RECC
Gray, Kentucky 40734

Dear Mr. Hampton:

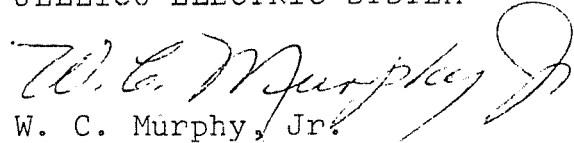
Regarding your letter of June 6, 1977, concerning service to Joie Fuson, we have no facilities in this area and have no objection to Cumberland Valley RECC serving this customer. We have been aware of the service indicated as house #5 for some time and have no objection to your serving this customer also.

If you do not wish to serve this customer, we can under our extension policy, serve this customer. Our policy is to serve the first 1300' to a permanent residence at no cost. Beyond 1300' the cost will be borne by the customer. I believe several hundred feet would be involved which would be very costly to this customer. For this reason we have no objection to you serving this customer from your line which appears to be only a few feet away.

We will be glad to work with Cumberland Valley RECC on any border line residence seeking service. If we have facilities in the area and you wish us to serve a customer, a letter from you will receive our immediate attention and if it is feasible, Jellico will work with you.

I appreciate your concern over territories and give you our assurance of equal cooperation. Should we get outside our territory, without your knowledge and consent, we can and will withdraw upon notice.

Very truly yours,
JELICO ELECTRIC SYSTEM


W. C. Murphy, Jr.
Manager

CUMBERLAND VALLEY ELECTRIC
CASE NO. 2006-00148

**Response to Supplemental Data and Document Requests
For Information From Kentucky Utilities
Dated November 29, 2006**

12. Does CVE or Mr. Willhite have any knowledge of any underground or strip mining operations (other than the operations of Stillhouse Mine No. 2) which are operating or have ever operated, in whole or in part, within the current permitted boundary of Stillhouse Mine No. 2 as shown on Exhibits Matda-1 and Matda-2? If so, please explain the source and full extent of such knowledge and produce all documents supporting or evidencing the existence of such operations.

ANSWER:

CVE knows that it served the Robert Smith Mine and the J&M Fields Mine and that their existence and locations, as evidenced by Attachments 2 through 4 of CVE's response to question #2 of KU's initial data request, correspond to the two old work mines depicted on Matda-1 and Matda-2 immediately to the west of the Stillhouse #2 portal. See CVE's response to question #3 of KU's initial data request. In addition, Matda-1 and Matda-2 depict an old work underground mine, located to the east of the Stillhouse #2 portal and adjacent to the CVE/KU boundary, on the former property of G.B. Nolan, part of which extends into the current permitted boundary of Stillhouse Mine No. 2. Matda-1 and Matda-2 also depict what CVE believes to be a surface mine immediately to the east of the Stillhouse #2 portal. This surface mine can be seen in the aerial photography on CVE's Vicinity Map filed with CVE's complaint and it appears on the Arch Mine No. 37 Final Closure Map annotated as "Perkins Branch Surface Mine Pits". All of the aforementioned underground mines also appear on the Arch Mine No. 37 Final Closure Map, attached hereto. Due to the size of the map, only one copy is being provided to each party. The closure map is also available on the Kentucky Department of Mines and Minerals web site.