



STOLL · KEENON · OGDEN
PLLC

RECEIVED

AUG 04 2006

PUBLIC SERVICE
COMMISSION

2000 PNC PLAZA
500 WEST JEFFERSON STREET
LOUISVILLE, KENTUCKY 40202-2828
502-333-6000
FAX: 502-333-6099
WWW.SKOFIRM.COM

J. GREGORY CORNETT
DIRECT DIAL 502-560-4210
DIRECT FAX 502-627-8710
greg.cornett@skofirm.com

August 4, 2006

VIA HAND DELIVERY

Elizabeth O'Donnell
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, KY 40601

**Re: In the Matter of Petitions of Kentucky Utilities Company and Blue Grass Energy Cooperative Corporation to be Designated as the Retail Electric Supplier for the New Wal-Mart Store in Cynthiana, Kentucky
Case No. 2006-00214
Our File No.: 400001/358795**

Dear Ms. O'Donnell:

Enclosed please find and accept for filing the original and ten (10) copies of Kentucky Utilities Company's Response to Motion of Blue Grass Energy Cooperative Corporation for Authorization to Provide Temporary and Interim Service to Wal-Mart Store No. 591 in the above-referenced matter. Please confirm your receipt of this filing by placing the stamp of your Office with the date received on the extra copy of the pleading and return it to me in the enclosed self-addressed stamped envelope.

Should you have any questions or need any additional information, please contact me at your convenience.

Very truly yours,


J. Gregory Cornett

JGC/cja
Enclosures
cc: Parties of Record

RECEIVED

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

AUG 04 2006

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)

**KENTUCKY UTILITIES COMPANY’S RESPONSE TO MOTION
OF BLUE GRASS ENERGY COOPERATIVE CORPORATION FOR
AUTHORIZATION TO PROVIDE TMPORARY AND INTERIM SERVICE
TO WAL-MART STORE NO. 591**

Blue Grass Energy Cooperative Corporation (“Blue Grass”) has filed a motion seeking an informal conference and an order from this Commission authorizing Blue Grass to provide “temporary and interim” service to the expanded operations of Wal-Mart Stores, Inc. (“Wal-Mart”) at its Store No. 591 in Cynthiana, Kentucky. Kentucky Utilities Company (“KU”) has no objection to Commission Staff holding an informal conference to discuss the present proceeding. However, KU does object to the request by Blue Grass seeking approval to extend temporary and interim service to Wal-Mart.

To begin with, for all of the reasons set forth in KU’s previously-filed Motion for Approval to Provide Interim Service to Site of Expanded Wal-Mart Store No. 591, and in KU’s Response to the Staff’s Data Request No. 5, it is KU’s position that the SuperCenter is not a “new” electric-consuming facility (“ECF”), but merely an expansion of operations by an existing KU customer. Accordingly, KU does not believe that the split-territory analysis set forth in KRS 278.017 and .018 is applicable here. *See In the Matter of: The Application of Richwood Industrial Development Corp. for Electric Service from the Union Light, Heat and Power Co.,*

Case No. 9203 (Order of August 7, 1985). As a result, KU contends that it should be permitted to continue providing service to its existing customer.

Blue Grass has not addressed the issue of whether the Wal-Mart SuperCenter is a new ECF in its present motion. Instead, Blue Grass has assumed that the SuperCenter can be classified as a new ECF, and has based its motion on the claim that it is better positioned to serve Wal-Mart's expanded operations. That contention is certainly disputed by KU, and appears questionable given the fact that it has neither been tested through discovery and cross-examination nor established by any documentary evidence provided by Blue Grass, and given that it is made only by ignoring the evidence regarding KU's facilities and capabilities for continuing to serve Wal-Mart.

Blue Grass first states that it has an existing distribution line "located within 30 feet of the location" of the SuperCenter.¹ That fact appears to be true. However, Blue Grass ignores the fact that KU also has an existing three-phase line – which has been used to provide service to Wal-Mart Store No. 591 since August 1984 – just feet from the SuperCenter. Specifically, KU's existing line is approximately 60 feet from the nearest point of the SuperCenter facility as planned and as KU's existing line is presently configured.² It is clear, therefore, that consideration of the location of existing facilities under KRS 278.017 (3)(a) does not significantly favor either utility.

Blue Grass next contends that it first provided service to the site of the SuperCenter in 1938, and claims that it has "continuously provided electrical service to this site" since that time. As an initial matter, it bears noting that Blue Grass has previously claimed a service history

¹ In its Petition, Blue Grass cited a line that is within "approximately 40 feet" of the SuperCenter.

² That existing line will soon be relocated – closer to the SuperCenter – as part of road widening project along Ladish Road. That relocation is independent of this proceeding, and will occur regardless of which utility provides service to the SuperCenter. Thus, once the relocation occurs, KU's three-phase line will be less than 60 feet from the SuperCenter. KU Response to Staff Data Request No. 1 Dated July 25, 2006.

dating back only to 1945.³ Thus, there is an inconsistency in Blue Grass' claims on this point. Most importantly, however, it appears that Blue Grass has been imprecise in the language it has used to describe its history of service, and that it has again ignored KU's service in the area.

KU's review of publicly-available property records indicates that the land now owned by Wal-Mart (including that property used for the existing store and that additional property on which the SuperCenter is being constructed) was formerly part of a large tract of land originally owned by the LeBus family (the "LeBus property").⁴ KU does not dispute that Blue Grass has had service on portions of the land which formerly comprised the LeBus property. However, a field investigation by KU's representatives and counsel indicates that Blue Grass in fact does not appear to be presently providing service of any kind on the tract of land which is the site of the SuperCenter, and it is believed that Blue Grass has never had active service on that site. Likewise, it does not appear that Blue Grass is presently providing service to the tract of land currently occupied by the existing Wal-Mart store, which tract of land will also be used for lighted parking associated with the Wal-Mart SuperCenter, and KU also does not believe that Blue Grass has ever provided service to that tract of land.

KU, on the other hand, has a history of serving both the larger tract of the LeBus property as well as the portions thereof now owned by Wal-Mart. KU believes that its service in the area dates back to the early 1930s, when it began providing service to a cheese factory located on part of the original LeBus property in or about 1933.⁵ KU was also providing service to a barn on the LeBus property at least as early as 1946, which service continues to this day.⁶ In addition, KU

³ Blue Grass Petition, ¶ 12(b).

⁴ KU Response to Staff Data Request No. 2 Dated July 25, 2006.

⁵ *Id.*

⁶ *Id.*

began providing service to the existing Wal-Mart in 1984, and to a construction trailer at the site of the Wal-Mart SuperCenter earlier this year.⁷

Accordingly, it appears based on the evidence presently of record that with regard to both the larger LeBus property and the smaller tracts owned by Wal-Mart, that KU was the utility to first provide service. For that reason, consideration of the history of service in the area pursuant to KRS 278.017 (3) (b) favors KU.

Blue Grass then alleges in its motion that it has existing facilities capable of serving the SuperCenter. KU does not dispute that fact, based on the information available to it at this time. However, Blue Grass also claims that it has some “superior” ability to provide service to the SuperCenter, though it provides no basis for that claim, other than to point to the irrelevant fact that it has a substation approximately .75 miles from the SuperCenter. Furthermore, that claim is made without any consideration whatsoever of the fact that KU has been providing adequate, dependable and low-cost power to Wal-Mart Store No. 591 for over two decades, without issue.

KU’s existing three-phase line, adjacent to the SuperCenter, is unquestionably capable of continuing to provide service at the expanded SuperCenter. That line serves Wal-Mart out of KU’s Kawneer Substation, which has more than adequate available capacity.⁸ In addition, the existing three-phase line is interconnected to the Cynthiana 12 kV substation and the Cynthiana South 12 kV substation.⁹

There is, therefore, no basis in the record for finding that Blue Grass has a superior capability to serve the Wal-Mart SuperCenter. At most, taking Blue Grass’ allegations concerning its system capabilities as true for purposes of the pending motion, consideration of

⁷ KU Petition, ¶ 5. The referenced construction trailer is wholly within KU’s certified territory.

⁸ KU Response to Staff Data Request No. 3(a) Dated July 25, 2006.

⁹ *Id.*

the relative abilities of KU and Blue Grass to provide service from existing facilities pursuant to KRS 278.017 (3)(c) does not provide a significant advantage to either utility.¹⁰

Finally, Blue Grass alleges, again without supporting reference, that an award of service rights to Blue Grass would eliminate and prevent duplication of electrical lines and facilities. There is simply no merit to that contention. It is undisputed that both utilities have existing facilities in place, and that both would have to make similar minor extensions in order to serve the SuperCenter. Thus, with regard to the need to construct additional facilities, consideration of this factor does not appear to be a significant issue in this proceeding. However, it is accurate to state that, given the fact that KU is presently serving Wal-Mart Store No. 591 and has made its system planning decisions based on that service, a decision awarding Blue Grass the right to provide service to the expanded operations at the SuperCenter would decrease the use of KU's existing system by the amount of the load lost. Conversely, no such decrease in use would be seen in Blue Grass' facilities if KU were permitted to continue serving the Wal-Mart load in Cynthiana, because Blue Grass is not now serving that load. For that reason, the final statutory factor, KRS 278.017 (3)(d), does appear, based on the existing record, to slightly favor KU.

Based on the evidence of record, therefore, it appears that two of the four factors set forth in KRS 278.017 (3) favor KU, and that there is no clear advantage under the other two factors. While that analysis is enough to support an award of interim service to KU, there is also one additional factor that the Commission may consider. In a case where the statutory criteria do not provide a "clear advantage" to either utility, the Commission may consider rates to determine

¹⁰ KU presently has no information concerning Blue Grass' costs to extend its facilities to serve KU, which is the other component of a consideration of the adequacy of existing facilities under KRS 278.017 (3)(c). However, KU anticipates that the utilities' costs for extension of service would be similar, given the fact that the existing lines of both KU and Blue Grass are similarly situated in relation to the location of the SuperCenter. However, as discussed below, there is a substantial difference when the rates of the two utilities are considered.

whether doing so will “tip the scales” in favor of one utility.¹¹ Thus, to the extent that the Commission determines that the balance in favor of KU is not clear enough on the present record, it can and should consider the cost to Wal-Mart from taking service from KU as opposed to Blue Grass.

In its motion, Blue Grass largely ignores the issue of cost of service to the customer, referring only to its rates as having been “approved as reasonable” by the Commission. The mere fact that Blue Grass has rates that are filed in a Commission-approved tariff is irrelevant, however. Indeed, the Commission has expressly held that the reference to “reasonable costs” in the Territorial Boundary Act contemplates the Commission’s review and comparison of the adjacent supplier’s costs to connect service and supply electricity,” and that “reasonable” can not be “equated to being filed in a tariff” for purposes of that review and comparison.¹²

Here, based upon Wal-Mart’s projected electric consumption and available electric rates, KU estimates that Wal-Mart will see significant savings by receiving electric service from KU when compared to service from Blue Grass under its filed tariffs.¹³ Those anticipated savings range from approximately \$81,000 to \$135,000 per year.¹⁴ Of course, Wal-Mart would realize such savings under interim service from KU, as well as through permanent service, should the Commission so rule. Consideration of the utilities’ respective rates, therefore, clearly “tips the balance” even more substantially in favor of KU as the provider of service to the expanded Store No. 591.

¹¹ *In the Matter of: Inter-County Rural Electric Cooperative Corp. v. Kentucky Utilities Co.*, Case No 95-326 (PSC Order of March 14, 1996).

¹² *Id.*, p. 9.

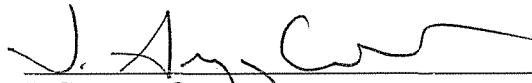
¹³ KU Response to Staff Data Request No. 3(c) Dated July 25, 2006.

¹⁴ *Id.*

CONCLUSION

For all of the foregoing reasons, and because permitting KU to provide interim service to the Wal-Mart SuperCenter building will be nothing more than a preservation of the status quo pending a final resolution of service rights, KU respectfully requests that the Commission enter an order denying Blue Grass' motion and permitting KU to provide interim service to the SuperCenter, pending final resolution of this matter.¹⁵

Respectfully submitted,



J. Gregory Cornett
STOLL KEENON OGDEN PLLC
2000 PNC Plaza
500 W. Jefferson Street
Louisville, KY 40202
(502) 333-6000

Elizabeth L. Cocanougher
Senior Corporate Attorney
E.ON U.S. LLC
220 West Main Street
Louisville, KY 40202
(502) 627-4850

Allyson K. Sturgeon
Attorney for E.ON U.S. LLC
220 West Main Street
Louisville, Kentucky 40202
(502) 627-2088

Counsel for Kentucky Utilities Company

¹⁵ Connection of that service would allow KU to provide permanent service to the SuperCenter, if approved by the Commission, without any further extensions or upgrades. However, KU will not utilize any order awarding interim service as a basis for arguing that it should be awarded permanent service.

CERTIFICATE OF SERVICE

It is certified that a true and correct copy of the foregoing was served via U. S. Mail, postage prepaid, this 4th day of August, 2006 upon:

Howard Downing
109 South First Street
Nicholasville, KY 40356
Attorney for Blue Grass Energy
Cooperative Corporation



Counsel for Kentucky Utilities Company