



S T O L L · K E E N O N · O G D E N  
P L L C

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

July 18, 2006

VIA HAND DELIVERY

RECEIVED

JUL 18 2006

PUBLIC SERVICE  
COMMISSION

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 Motion for Approval to Provide Interim Service to Site of Expanded 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 two additional copies provided and return them 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

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

JUL 18 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 MOTION  
FOR APPROVAL TO PROVIDE INTERIM SERVICE TO SITE  
OF EXPANDED WAL-MART STORE NO. 591

\*\*\*\*\*

INTRODUCTION

This case involves an initial petition by Kentucky Utilities Company ("KU"), and a subsequently-filed petition by Blue Grass Energy Cooperative Corporation ("Blue Grass"), seeking an order from this Commission regarding permanent service rights to the expanded operations of Wal-Mart Stores, Inc. ("Wal-Mart") at its Store No. 591 in Cynthiana, Kentucky. For all of the reasons set forth below, time has become of the essence with regard to the provision of further service associated with construction on the expanded Wal-Mart Store No. 591, and KU now moves this Commission to enter an order permitting KU to provide interim service to the site of those expanded operations pending a final resolution of service rights in this matter.

BACKGROUND

KU is presently providing service to Wal-Mart Store No. 591, and has been providing such service since August 1984. That existing store is located entirely and exclusively within territory certified to KU by this Commission. However, Wal-Mart is currently working to

expand its operations in Cynthiana by constructing a SuperCenter at the same address, located approximately 200 feet behind the existing Store No. 591. During the construction on the expanded store, the existing Store No. 591 remains open for business.

The SuperCenter will replace the existing store, and will continue to be referred to as Store No. 591. Although a portion of the SuperCenter will be located within the certified territory of Blue Grass, the rest of the SuperCenter will be in KU's certified territory. Furthermore, the site of the existing Wal-Mart Store No. 591 (exclusively in KU's certified territory), which will be demolished, will serve as part of the lighted parking lot for the SuperCenter and house a fueling station. A map depicting the location of the existing Store No. 591 and the SuperCenter under construction was attached as Exhibit A to KU's Petition herein.

On June 8, 2006, KU began providing temporary service to a trailer associated with the construction of the SuperCenter. That trailer is located near the existing Wal-Mart store, and is entirely within KU's certified territory. Since that time, however, KU has also received a request from Wal-Mart to provide additional construction service at the SuperCenter building itself. Specifically, Wal-Mart has requested KU to install a pad-mounted transformer by mid-September, at which time the walls and roof of the SuperCenter are expected to be in place.<sup>1</sup> Wal-Mart has indicated that it must have the transformer and associated electric facilities in place by that time so that it can receive service for construction work inside the SuperCenter building in order to meet its construction deadlines.

It appears unlikely that this case will be finally resolved in time for Wal-Mart to receive construction service at the SuperCenter building by mid-September. Accordingly, KU believes that it is necessary for the Commission to rule upon the provision of service to Wal-Mart pending

---

<sup>1</sup> Construction on the SuperCenter is presently expected to be complete in early February 2007, and the store is expected to be open for business in the expanded building in early March.

a final decision in this matter, and moves the Commission for an order permitting KU to continue providing service to Wal-Mart by providing interim service to the SuperCenter.

### ARGUMENT

In the recent past, when faced with the issue of ensuring the delivery of electric service to a customer while a territorial dispute was the subject of an active proceeding, the Commission has entered an Interim Order allowing one utility to provide service to the customer pending resolution of the full dispute.<sup>2</sup> In that case, the Commission permitted KU to provide interim service to the customer in question because KU's facilities were closer to the customer than were the facilities of Cumberland Valley Electric, Inc. ("CVE"), the other utility involved, and because there was a dispute as to whether CVE's facilities were adequate to render reliable service to the customer.<sup>3</sup> While the facts in the present case are different than those in the *CTA* case, there is nonetheless evidence of record which supports an award of interim service to KU.

As an initial matter, KU is the only utility to provide actual service to Wal-Mart Store No. 591, which service continues at this time.<sup>4</sup> Wal-Mart is only expanding its existing operations at the same address, and the SuperCenter will be served by the same central station source that has served Store No. 591 for years. For that reason, it is KU's contention that there is no "new" electric-consuming facility ("ECF") which requires application of the statutory criteria in KRS 278.017(3). Indeed, as it relates to interim service, permitting KU to provide construction service to the SuperCenter building will be nothing more than a preservation of the status quo pending a final resolution of service rights. In a situation such as that here, where an existing customer is expanding its operations into the territory of two neighboring utilities, any resolution of interim service rights should seek to preserve the status quo where possible.

---

<sup>2</sup> Re: *CTA Acoustics, Inc.*, Case No. 2003-00226 (PSC Order of July 21, 2003).

<sup>3</sup> *Id.* at p. 3.

Moreover, even if the case is analyzed as one involving a new ECF, an award of interim service to KU is still proper. The record presently before the Commission reveals that both KU and Blue Grass have existing three-phase lines near the Wal-Mart SuperCenter, and that there is presently no question regarding the adequacy of any of those facilities to serve Wal-Mart's expanded operations.<sup>5</sup> Likewise, both utilities claim to have first had facilities in the area at or about the same time.<sup>6</sup> In such a situation, where the utilities' facilities appear to be similarly situated, the Commission will look to an analysis of the cost to provide service to the customer by both utilities to determine service rights.<sup>7</sup> 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.<sup>8</sup> Accordingly, the lower cost of service to Wal-Mart clearly tips the balance in favor of KU as the provider of service to the expanded Store No. 591.<sup>9</sup>

KU certainly recognizes that, if awarded interim service, it would undertake that service without prejudice to the rights of Blue Grass regarding permanent service. KU will not utilize any order awarding interim service as a basis for arguing that it should be awarded permanent service. And, in the event that the Commission ultimately awards permanent service rights to Blue Grass, KU will work with Wal-Mart and Blue Grass to remove its facilities and permit the transfer of service to Blue Grass in a manner designed to minimize any service disruptions to the extent practicable.

---

<sup>4</sup> KU Petition, ¶¶ 5, 7.

<sup>5</sup> KU Petition, ¶¶ 14, 16; Blue Grass Petition, ¶¶ 12 (a) and 12 (c). For purposes of this Motion only, KU accepts the factual averments in the Blue Grass Petition. However, KU reserves the right to investigate and, if necessary, question and challenge those averments in this proceeding.

<sup>6</sup> KU Petition, ¶ 15; Blue Grass Petition, ¶ 12 (b) c).

<sup>7</sup> *In the Matter of: Inter-County Rural Electric Cooperative Corp. v. Kentucky Utilities Co.*, Case No 95-326 (PSC Order of March 14, 1996).

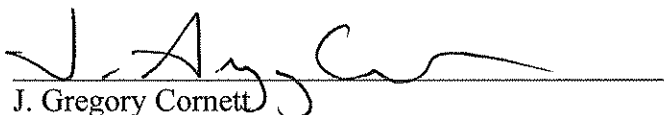
<sup>8</sup> KU Petition, ¶ 19.

<sup>9</sup> *Id.*

**CONCLUSION**

For all of the reasons set forth above, KU respectfully requests that the Commission enter an order permitting KU to extend its facilities to the site of the Wal-Mart SuperCenter under construction in Cynthiana for the purpose of providing service to that SuperCenter pending a final order resolving permanent service rights in this matter.

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

**CERTIFICATE OF SERVICE**

It is certified that a true and correct copy of the foregoing was served via U. S. Mail, postage prepaid, this 18<sup>th</sup> day of July, 2006 upon:

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



---

Counsel for Kentucky Utilities Company