

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

| | | |
|------------------------------------|---|---------------------|
| WALTER CALLIHAN |) | |
| |) | |
| COMPLAINANT |) | |
| |) | |
| V. |) | CASE NO. 2006-00495 |
| |) | |
| GRAYSON RURAL ELECTRIC COOPERATIVE |) | |
| COOPERATIVE CORPORATION |) | |
| |) | |
| DEFENDANT |) | |

ORDER

Complainant has filed a formal complaint with the Commission in which he alleges that the Defendant wrongfully refuses to furnish electric service based upon a debt for which the statute of limitations bars any legal proceedings. He requests that the Defendant immediately restore electric service to his residence. Finding that the statute of limitations does not bar any proceedings to collect the outstanding debt, we dismiss the complaint.

Grayson Rural Electric Cooperative Corporation ("Grayson RECC") is a rural electric cooperative corporation that is organized pursuant to KRS Chapter 279. It provides electric service for heat, power, lights and other uses to 15,423 customers in Carter, Elliott, Greenup, Lawrence, Lewis and Rowan counties, Kentucky.¹ It is a utility subject to the Commission's jurisdiction.²

¹ Annual Report Grayson Rural Electric Cooperative Corporation to the Public Service Commission of Kentucky for the Year Ending December 31, 2005, at 17 and 19.

² KRS 278.010(3)(a); KRS 279.210.

Complainant is a resident of Argillite, Kentucky. Between October 21, 1991 until April 9, 2003, Grayson RECC provided electric service to Complainant's property. On April 9, 2003, it discontinued electric service to the Complainant for nonpayment of bills. It refuses to restore electric service to the Complainant until he pays the outstanding amount owed for electric service previously furnished.

The Commission has investigated the circumstances surrounding Grayson RECC's termination of Complainant's service.³ We found that the Complainant was indebted to Grayson RECC in the amount of \$707.26 for electric service at the time of its discontinuance of service and that Grayson RECC's actions were consistent with Administrative Regulation 807 KAR 5:006, Section 14. We further found that Complainant is currently indebted to the electric cooperative in the amount of \$818.87 for electric service.

In his complaint, Complainant asserts that the statute of limitations precludes Grayson RECC from refusing to provide service. He contends that electricity is a sale and that the Kentucky Commercial Code governs its sale. The Kentucky Commercial Code requires that an action must be commenced within 4 years of the time an action accrues.⁴ The Complainant further alleges that, because his debts for electric service were incurred more than 4 years ago, they are barred by the statute of limitations and may not be used as a basis for refusal of service.

In Walter Callihan v. Grayson RECC, 105 PUR4th 218 (Ky. PSC May 1, 1989), the Commission previously addressed the effect of the statute of limitations upon a

³ Case No. 2005-00280, An Investigation Into Grayson Rural Electric Cooperative Corporation's Provision of Electric Service to Walter and Goldie Callahan (Ky. PSC Feb. 12, 2007).

⁴ KRS 355.2-725(1).

utility's right to refuse service. We found that the Kentucky Commercial Code governed the sale of electricity and that the statute of limitations set forth in that Code governed sales of electricity. We further found that while a statute of limitations extinguishes a utility's right to bring legal proceedings to collect a debt, it did not extinguish the debt and therefore did not extinguish a utility's right under Administrative Regulation 807 KAR 5:006, Section 14(1)(d), to refuse service.⁵

While good grounds may exist to reexamine the rationale of our decision in Callihan, it is not necessary in this case. We note that at least a portion of debt that the Complainant owes to Grayson RECC was incurred for electric service furnished between January 27, 2003 and April 9, 2003. As 4 years has not elapsed since this debt was incurred, KRS 355.2-725(1) does not bar Grayson RECC from bringing an action to collect it.

Having previously found that Complainant is indebted to Grayson RECC for electric service furnished, we find no basis to Complainant's contention that Grayson RECC is improperly denying him electric service. We further find that no hearing in this proceeding is necessary in the public interest or for the protection of substantial rights.

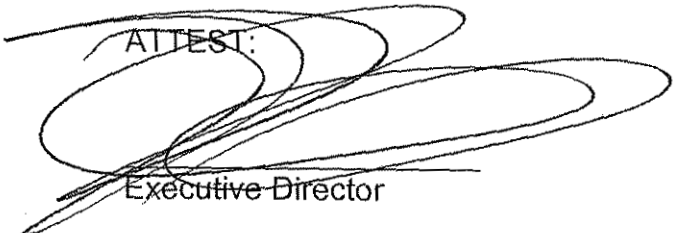
IT IS THEREFORE ORDERED that the complaint is dismissed.

⁵ 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."

Done at Frankfort, Kentucky, this 12th day of February, 2007.

By the Commission

ATTEST:



Executive Director

Case No. 2006-00495