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July 10, 2014

RECEIVED

JUL 11 2014

PUBLIC SERVICE
COMMISSION

VIA EXPRESS MAIL

Mr. Jeff Derouen
Executive Director
Public Service Commission
211 Sower Boulevard
P.O. Box 615
Frankfort, KY 40602

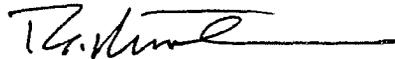
Re: Mona Corrin Jarboe, Complainant v. Meade County RECC, Defendant
PSC 2012-00310
Steven L. Miles, Complainant v. Meade County RECC, Defendant
PSC 2012-00311
David Ballantine Bell, Complainant v. Meade County RECC, Defendant
PSC 2012-00312

Dear Mr. Derouen:

Enclosed for filing in the above-referenced cases are the original and ten (10) copies of Meade County Rural Electric Cooperative Corporation's Motion for Summary Judgment.

If you have any questions, please inform me accordingly, I am,

Yours very truly,



Thomas C. Brite

Enclosures

cc: Parties of Record

RECEIVED

JUL 11 2014

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION PUBLIC SERVICE
COMMISSION

In the Matter of:

MONA CORRIN JARBOE)	CASE NO. 2012-00310
STEVEN L. MILES)	CASE NO. 2012-00311
DAVID BALLANTINE BELL)	CASE NO. 2012-00312
)	
COMPLAINANT(S))	
V.)	
)	
MEADE COUNTY RURAL ELECTRIC)	
COOPERATIVE CORPORATION)	
)	
DEFENDANT)	

**MEADE COUNTY RURAL ELECTRIC COOPERATIVE CORPORATION'S
MOTION FOR SUMMARY JUDGMENT**

In accordance with Rule 56 of the Kentucky Rules of Civil Procedure, Meade County Rural Electric Cooperative Corporation (hereinafter referred to as Meade) respectfully moves the Kentucky Public Service Commission of Kentucky (hereinafter referred to as Commission) for Summary Judgment in favor of Meade against Mona Corrin Jarboe, Steven L. Miles and David Ballantine Bell, (hereinafter referred to as "complainants") on complainants' claim for relief from the fluctuations and variations of voltage to complainants' premises. Meade is entitled to summary judgment in that the monitoring and testing indicate that the voltage fluctuations and spikes occurring are within the variation allowed under the regulations as set forth in 807 KAR 5:041, section 6, voltage and frequency.

STANDARD FOR SUMMARY JUDGMENT

Summary judgment is appropriate when "as a matter of law, it appears that it would be impossible for the respondent to produce evidence at the trial warranting a judgment in his favor and against the movant." Steelvest, Inc. v. Scansteel Service Center, Inc., 807 S.W.2d 476, 483 (Ky. 1991) (quoting Paintsville Hospital Co. v. Rose, 683 S.W.2d 255, 256 (Ky.1985)). In using the word "impossible" in Steelvest, the Kentucky Supreme Court has acknowledged that it "is used in a practical sense, not in an absolute sense." Perkins v. Hausladen, 828 S.W.2d 652, 654 (Ky. 1992). Furthermore, the party opposing summary judgment "cannot rely on the hope that the trier of fact will disbelieve the movant's denial of a disputed fact, but must present affirmative evidence in order to defeat a properly supported motion for summary judgment." Id. Steelvest, at 481. (emphasis added). When the adverse party cannot prevail, the court's duty is to "render a judgment forthwith [as] there is no genuine issue of as to any material fact and the moving party is entitled to judgment as a matter of law." Bennett v. Southern Bell Telephone & Telegraph Co., 407 S.W.2d 403, 405 (Ky. App. 1966).

CR 56.03 provides in part:

"The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, stipulations, and admissions on file, together with the affidavits, if any, show that there is no **genuine issue** as to any **material fact** and that the moving party is entitled to a judgment as a matter of law." (emphasis supplied).

The terms "genuine issue" and "material fact" have been defined as follows:

"An issue of fact is "genuine" if the evidence is significantly probative or more than merely colorable such that a jury could reasonably return a verdict for the nonmoving party. An issue of fact is "material" if proof might affect the outcome of the lawsuit as assessed by the controlling substantive law" Phillips Kurt A., et al., Kentucky Practice, Rules of Civil Procedure Annotated, §56.03(4) (6th ed. 2005).

Moreover, "a party opposing a properly supported summary judgment motion cannot defeat that motion without presenting at least some affirmative evidence demonstrating that there is a genuine issue of material fact requiring trial." Hubble v. Johnson, 841 S.W.2d 169, 171 (Ky.1992). The inquiry should be whether, from the evidence of record, facts exist which would make it possible for the non-moving party to prevail. In the analysis, the focus should be on what is of record rather than what might be presented at trial. Meade's burden of proof is not the issue before the Commission on this Motion for Summary Judgment but, as movant Meade must show that complainants have presented no evidence to support their case. Welch v. American Publishing Co. of Kentucky, 3 S.W.3d 724, 730 (Ky.1999). The trial court "must examine the evidence, not to decide any issue of fact, but to discover if a real issue exists." Steelvest, Inc. v. Scansteel Serv. Ctr., Inc., 807 S.W.2d 476, 480 (Ky.1991). In the absence of any genuine issue as to any material fact regarding the claim of complainants, Meade is entitled to Summary Judgment in the form of an Order Dismissing Complainants' Complaints.

STATEMENT OF UNDISPUTED FACTS

Hilltop Big Bend Quarry, LLC (hereinafter referred to as Hilltop) upgraded its facility/operation on or about December 1, 2011. Meade began receiving complaints from members near Hilltop shortly thereafter. Meade responded to these complaints by visiting or phoning the members then checking lines and services. On or about February 1, 2012, it began monitoring the lines and services with voltage recorders which indicated Hilltop's operations was the source of the members' complaints of high flickering problems. Meade's staff began written and verbal communication with Hilltop in an attempt to deal with the problems, but Hilltop failed to cooperate until it received a letter dated June 6, 2012 from Meade's attorney. The letter gave notice of termination to Hilltop on August 1, 2012, if "issue(s) is not resolved to our satisfaction". Two of the three members complaints (Jarboe and Miles) were filed with the Commission on June 27, 2012, with Bell filing on July 6, 2012. On July 24, 2012, Meade received a letter from Hilltop's attorney requesting "uninterrupted service" and a meeting to "resolve differences" with this meeting being held on August 3, 2012, at which time concurrent testing was agreed upon "in order to isolate the problem(s) and to determine a solution". This testing and further discussions with Hilltop's agents and Meade's staff resulted in the construction of a single phase service line (express line) which was completed on December 28, 2012, which presently serves 86 members effectively bypassing Hilltop's three phase service. This express line has been monitored by Meade, Roger Wilson, consultant engineer, and the Commission numerous times and the results are included in the record of these

cases. Meade's staff continued to communicate with the members and to check the express line and services. At the Commission's request, Meade filed its First Request for Information on September 20, 2012, Second Request for Information on February 28, 2013, and the Third Request for Information on September 6, 2013. Following the last telephone conference and the Commission staff's request, Meade provided historical voltage data indicating no changes in the substation voltage following Hilltop's upgrade and complainants' filings.

ARGUMENT

The complainants filed their Complaints with the Commission prior to Meade's construction of an express service line affectively bypassing Hilltop which had obviously caused voltage fluctuation problems with the complainants and other members of Meade in the Big Bend Meade County area. It is Meade's contention that the construction of the express line as proven by the monitoring of this line by the Commission's staff, Roger Wilson, consultant, and Meade established that this line has satisfactorily resolved the voltage issues for Meade's members including the complainants. Meade responded to a staff investigation report dated February 14, 2014, which summarizes Meade's argument in these three cases. A copy of the Defendant's Comments to the Staff's Investigative Report is attached hereto and marked as "Exhibit A". As previously indicated in this Motion, Meade provided to the Commission historical voltage data relative to the sub station which affects the complainants and Hilltop. This data indicates that there has not been any changes in the voltage fluctuation since the Hilltop upgrades.

CONCLUSION

For the reasons herein stated, Meade believes that it has satisfied the requirements set forth in 807 KAR 5:041, section 6, voltage and frequency, as proven by the monitoring data submitted and the requirements of CR 56.03 and for these reasons the Commission should enter a Summary Judgment in favor of Meade.

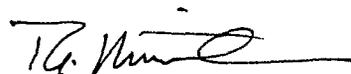
Respectively submitted,



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ATTORNEY FOR PLAINTIFF,
MEADE COUNTY RURAL ELECTRIC
COOPERATIVE CORPORATION

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and correct copy of the foregoing Motion for Summary Judgment was on this 10 day of June, 2014 mailed to Mona Corrin Jarboe, 7055 Big Bend Road, Battletown, Kentucky 40104; Steven L. Miles, 6750 Big Bend Road, Battletown, Kentucky 40104 and David Ballantine Bell, 5615 Big Bend Road, Battletown, Kentucky 40104, the original with ten (10) copies to Jeff Derouen, Executive Director, Kentucky Public Service Commission, 211 Sower Blvd., P.O. Box 615, Frankfort, Kentucky 40602-3460.



THOMAS C. BRITE
ATTORNEY FOR MEADE COUNTY
RURAL ELECTRIC COOPERATIVE
CORPORATION

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

MONA CORRIN JARBOE)	CASE NO. 2012-00310
STEVEN L. MILES)	CASE NO. 2012-00311
DAVID BALLANTINE BELL)	CASE NO. 2012-00312
)	
COMPLAINANT)	
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MEADE COUNTY RURAL ELECTRIC)	
COOPERATIVE CORPORATION)	
)	
DEFENDANT)	

DEFENDANT'S COMMENTS TO THE STAFF INVESTIGATIVE REPORT

On March 7, 2014 the Kentucky Public Service Commission entered an Order in the above styled case granting Meade County Rural Electric Cooperative Corporation, hereinafter referred to as "Meade" an opportunity to submit comments on the staff investigative report signed by Jeffrey C. Moore dated February 14, 2014. Before responding to the report, a few facts regarding these cases should be reviewed.

These cases began after Hilltop quarry installed new equipment at its plant near the location of the complainants. Meade became aware of the service problems experienced by the complainants and other members on this service line and in December 2012 installed an express circuit which is now serving 86 accounts including the three complainants. Since the express circuit line was installed, Meade has received no complaints other than those of the three complainants on this line.

Upon receiving the Order entered by the commission on March 7, 2014, Meade consulted with Roger Dean Wilson, of Wilson Consulting, Inc., of Berea, Kentucky. Mr. Wilson and Meade's vice president of operations, David Poe, reviewed the Moore data and Meade's data extensively. They agree that the Moore report and the Meade equipment indicates some infractions referred to as "heavy spikes" during the voltage data periods of 4/23/2013 – 5/7/2013 and from 6/24/2013 – 7/25/2013 and in a majority of these cases, Meade can explain the fluctuations. Particularly during the months of June and July of 2013, there were several thunderstorms in the area which would result in these infractions and fluctuations. In other days, it is noted that no fluctuations or infractions were

reported which indicates an acceptable system was in place. Further, Meade points out that there are other situations where these fluctuations and variations could occur. One instance would be the power supplier itself (Big Rivers) whose transmission lines have not been monitored and could cause some spikes. Also there could be problems between the meter and the service of each complainant as the complainants' systems have not been monitored. Finally, it should be noted that animals, birds and other unknown factors on utility lines can result in voltage fluctuations and spikes similar to those monitored.

In concurrence with the Commission's monitoring, Meade also installed digital recorders during the same time periods. The resulting data charts can be seen in the attached addendum. It should be noted that these recorders are capable of sampling the voltage levels 256 times per cycle or 15,360 times per second which is over 200 times faster than a human can perceive a lighting change. The graphs show the minimum and the maximum samples in any 10 second logging period during the 10 days or so they were recording.

These recorders were installed at idle services in order to measure any fluctuations due to the primary source and not anything that the member could be creating within their service. The graphs shown in the addendum are from an idle service to a grain bin near Mr. Bell's residence which immediately precedes the three complainants' residences.

The first graph in each group represents the overall voltage levels for the entire recording period. The following graphs show voltage readings for the 5 PM to 11 PM time frame for each day during the recording period. The average or nominal voltage for the Big Bend area of the system is around 125.5 Volts. Therefore, from 11 PM to 5 PM, the voltages must remain within 10% of the nominal voltage, yielding a range of 113 Volts to 138 Volts. During the 5 PM to 11 PM time period, the voltage range of 5% (not to exceed a total variation of more than 6%) equates to a range of 119.2 Volts to 131.8 with a variation not to exceed 7.5 Volts. See the requirements set forth in 807 KAR 5:041, Section 6, Voltage and Frequency.

During the first span of testing (April 23 through May 14, 2013) there was a sustained outage on the 28th of April and only one sag on May 13 that was outside of the required boundaries for a couple of logging periods and the reason is not known. A sag lasting more than one logging period is usually due to a brief interruption such as a reclosure operation or something coming in contact with the primary line such as a small bird or falling limb. However, there were no samples outside of the required boundaries within the 5 – 11 PM time periods.

The next two testing periods (6/24 – 7/3 and 7/15 – 7/25) do depict a few samples outside of the requirements; however, the majority of these are due to thunderstorms that rolled through the area. These have been marked as storm related incidences; three outside of the 5-11 PM window have no known reasons at this time. Three occurred between 5 and 11 PM on the 27th and 29th of June and one on the 20th of July. The one on the 29th looks to be caused by an outside

disturbance, such as something contacting the line; the other two are minimally out of the 5% limits and are unexplainable at this time.

See Addendum attached to this Defendant's Comments to the Staff Investigative Report.

CONCLUSION

Meade believes that it is satisfying the requirements as set forth in 807 KAR 5:041, Section 6, Voltage and Frequency. It is Meade's position that the Moore report and its data does not indicate a violation of this section, and in particular, sub-section (2) relative to the voltage at the customer service entrance or connection and sub-section (6) of this regulation.