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PUBLIC SERVICE  
COMMISSION

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

Petition and Complaint of Grayson Rural Electric )  
 Cooperative Corporation for a Declaration of Its )  
 Exclusive Right Pursuant to KRS 278.018(1) to Serve ) Case No. 2015-00131  
 Those Portions of the Valley View Subdivision in )  
 Carter County, Kentucky Lying Within Its Certified )  
 Territory in Lieu of Kentucky Power )

**ANSWER OF KENTUCKY POWER COMPANY**

In accordance with the Kentucky Public Service Commission's Order of April 24, 2015 in this proceeding, Kentucky Power Company ("Kentucky Power") respectfully submits this Answer to the Complaint and Petition ("Complaint") of Grayson Rural Electric Cooperative Corporation ("Grayson") filed on April 6, 2015. In response to the specific allegations contained in the Complaint, Kentucky Power states as follows:

1. Paragraph 1 does not state any allegations against Kentucky Power that require an admission or denial. To the extent an answer is required, Kentucky Power admits that Grayson is authorized to bring this action under KRS 278.260, and denies that there is any merit to Grayson's claim that Kentucky Power has violated KRS 278.016 to 278.018.

2. Kentucky Power admits the allegations contained in Paragraph 2.

3. Kentucky Power admits the allegations contained in Paragraph 3.

4. Kentucky Power admits the allegations contained in Paragraph 4.

5. Kentucky Power denies the allegations contained in Paragraph 5.

6. Answering Paragraph 6, Kentucky Power states that Kentucky's Certified Territory Law, KRS 278.016 to 278.018, speaks for itself and denies any allegations to the extent they are inconsistent with the terms of the statutes.

7. Kentucky Power is without knowledge or information sufficient to form a belief as to the accuracy of the purported map of the certified territory of Grayson identified in Paragraph 7. Therefore, Kentucky Power denies the allegation that the map shows that certain residences in the Valley View subdivision lie within Grayson's exclusive territory.

8. Kentucky Power is without knowledge or information sufficient to form a belief as to the accuracy of the allegations contained in Paragraph 8. Therefore, Kentucky Power denies that it is providing retail electric service to residences in the Valley View subdivision that are within Grayson's service territory.

9. Answering Paragraph 9, Kentucky Power admits that Grayson contacted Kentucky Power about the alleged violation of KRS 278.018(1) and that Kentucky Power continues to provide service to residences within the Valley View subdivision. Kentucky Power affirmatively states that its service to residences within the Valley View subdivision does not violate KRS 278.018(1).

10. Kentucky Power is without knowledge or information sufficient to form a belief as to the accuracy of the allegations contained in Paragraph 10. Therefore, Kentucky Power denies that its transmission infrastructure in the area interferes with Grayson's ability to provide retail electric distribution service to the residences in its service territory.

11. Kentucky Power denies the allegations contained in Paragraph 11.

12. Answering Paragraph 12, Kentucky Power admits that it continues to provide service to residences in the Valley View subdivision and that Grayson has claimed that some Valley View subdivision residences are located within its service territory. Kentucky Power denies the remaining allegations in Paragraph 12.

13. Answer Paragraph 13, Kentucky Power states that KRS 278.990(1) speaks for itself and denies any allegations to the extent they are inconsistent with the terms of the statute. Kentucky Power denies the remaining allegations in Paragraph 13.

14. Kentucky Power denies all allegations that have not been expressly admitted in this Answer.

#### **FIRST AFFIRMATIVE DEFENSE**

The Complaint fails to provide any identifying information about the residences at issue in this proceeding, including but not limited to the street addresses. Accordingly, it is impossible for the Commission to determine whether Kentucky Power is providing service to customers located in Grayson's territory.

#### **SECOND AFFIRMATIVE DEFENSE**

Kentucky Power has provided service to the residences located in Valley View subdivision since the time that the subdivision was developed in the 1970s, and prior to the establishment of the boundary map between Kentucky Power and Grayson in 1982. According, Kentucky Power should be permitted to continue providing service to the residences going forward regardless of where they fall along the current certified territory map.

#### **THIRD AFFIRMATIVE DEFENSE**

Kentucky Power should be permitted to continue providing service to the residences at issue pursuant to the criteria set forth in KRS 278.017(3) because its existing distribution lines were located in closer proximity than Grayson's at the time the Valley View subdivision was developed, its distribution lines have now been in place for approximately three decades, its distribution lines are adequate and dependable to provide dependable, high quality retail electric

service at reasonable costs, and this outcome will eliminate and prevent the unnecessary duplication of electric lines and facilities in the area.

#### **FOURTH AFFIRMATIVE DEFENSE**

Grayson permitted Kentucky Power to provide electric service to the residences in the Valley View subdivision for a period of approximately three decades before it brought this action to enforce its purported rights. Grayson slept on its rights and its Complaint is barred by the doctrines of estoppel, laches, and waiver.

#### **FIFTH AFFIRMATIVE DEFENSE**

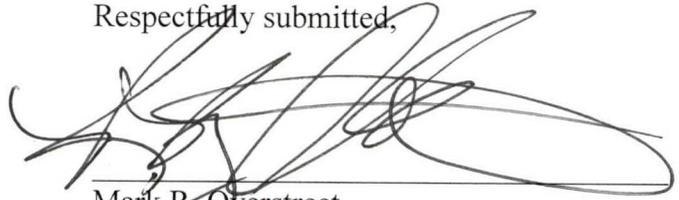
Grayson has failed to provide a survey or other evidence sufficient to establish that any houses presently served by Kentucky Power are located in Grayson's territory. Accordingly, Grayson has failed to set forth a *prima facie* case that Kentucky Power has violated KRS 278.018 or any other statute or Commission regulation, and the Complaint should be dismissed for that reason.

#### **SIXTH AFFIRMATIVE DEFENSE**

The Complaint fails to state a claim for which relief can be granted by the Commission and, therefore should be dismissed.

Based on the foregoing, Kentucky Power respectfully requests that the Commission dismiss Grayson's Complaint and enter an Order finding that there is no basis to conclude that Kentucky Power has violated KRS 278.018 or any provision of Kentucky law by providing retail electric service to customers in the Valley View subdivision.

Respectfully submitted,



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COUNSEL FOR:  
KENTUCKY POWER COMPANY

I hereby certify that a true and correct copy of the foregoing ANSWER OF KENTUCKY POWER COMPANY was served via First Class United States Mail, postage prepaid, on the following on this the 4th day of May, 2015:

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