

COOK LAW OFFICE

178 Main St - Ste 5
PO Box 910
Whitesburg Ky 41858-0910

—
(606) 633-1315
fcCook@bellsouth.net

April 25, 2006

Ms. Elizabeth O'Donnell
Executive Director
Kentucky Public Service Commission
P.O. Box 615
Frankfort, Kentucky 40602-0615

RECEIVED
APR 26 2006
PUBLIC SERVICE
COMMISSION

Re: Case No. 2006-00148

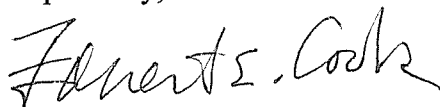
Dear Ms. O'Donnell:

Enclosed for filing in the above-captioned case are the original and ten (10) copies of the Motion for Full Intervention filed on behalf of Black Mountain Resources, LLC and Stillhouse Mining, LLC.

Please confirm your receipt of this filing by placing the stamp of your office with the date received on the enclosed additional copy and return it to me in the enclosed self-addressed stamped envelope.

Thank you for your assistance. Please contact me if you have any questions or need further information regarding this matter.

Respectfully,



Forrest E. Cook

/fc

Enclosures

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

APR 26 2006

PUBLIC SERVICE
COMMISSION

In the Matter of:

CUMBERLAND VALLEY ELECTRIC, INC.)
)
 COMPLAINANT)
)
Vs.)
)
KENTUCKY UTILITIES COMPANY)
)
 DEFENDANT)
_____)

CASE NO. 2006-00148

MOTION FOR FULL INTERVENTION

Pursuant to 807 KAR 5:001, Section 3(8), Black Mountain Resources, LLC and Stillhouse Mining, LLC request that each of said companies be granted full intervenor status in the above-captioned proceeding. In support of this motion, movants state as follows:

1. This dispute involves the provision of electric service to underground mining operations licensed and operated by Stillhouse Mining, LLC, a subsidiary of Black Mountain Resources, LLC (collectively hereafter "BMR").

2. BMR has (a) information (E.g., reserves, mine plans, the private electrical distribution system, facility locations, etc.) that no other party has as much access to, (b) concerns and interests that others may not have, and (c) a special interest in these proceeding that will not otherwise be adequately represented.

3. BMR requests full intervention in this proceeding in order to address concerns and protect interests, not otherwise adequately represented here. No other person or organization

that is or may become a party to this proceeding would adequately represent or protect the interests of BMR, which are personal.

4. The attorney for movants authorized to represent them in this proceeding and to take service of all documents is:

Forrest E. Cook
Attorney at Law
178 Main St. - Suite 5
PO Box 910
Whitesburg, KY 41858-0910
Telephone: (606) 633-1315

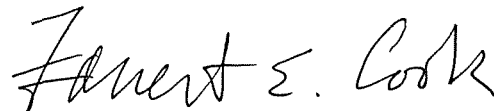
5. Participation by BMR will not unduly interrupt or burden the proceeding.

6. Full intervention should be allowed to identify and present issues and develop facts that assist the Commission in reaching a resolution of this case.

7. In support of this motion, movants attach hereto the Affidavit of Richard Matda, marked "Exhibit A," which is incorporated herein by reference.

WHEREFORE, Movants request that the Commission issue an order granting Black Mountain Resources, LLC and Stillhouse Mining, LLC, full intervenor status.

Respectfully submitted,



Forrest E. Cook
Attorney at Law
178 Main St - Ste 5
PO Box 910
Whitesburg, KY 41858-0910

Telephone: (606) 633-1315

Counsel for Black Mountain Resources,
LLC and Stillhouse Mining, LLC

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing motion was served by first-class mail,
postage pre-paid upon the following, this 25th day of April, 2006:

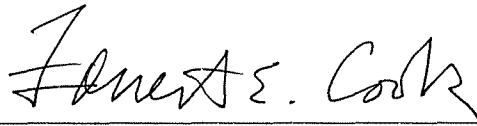
Hon. Anthony G. Martin
PO Box 1812
Lexington, KY 40588

Hon. W. Patrick Hauser
200 Knox St.
Box 1900
Barboursville, KY 40906

Hon. J. Gregory Cornett
Stoll Keenon Ogden PLLC
1700 West Jefferson Street
Louisville, KY 40202

Hon. Allyson K. Sturgeon
Attorney for E.ON U.S. LLC
220 West Main Street
Louisville, KY 40202

Hon. Elizabeth L. Cocanougher
Senior Corporate Attorney
E.ON U.S. LLC
220 West Main Street
Louisville, KY 40202



Counsel for Black Mountain Resources, LLC
and Stillhouse Mining, LLC

property acquired in the early twentieth century. The history and development of this property is co-extensive with the private electrical distribution system, also owned by BMR, which predates Kentucky Utilities Company ("KU") and Cumberland Valley Electric, Inc. ("CVE") in this part of Southeastern Kentucky.

The property, estimated to contain some 43,000 acres, was – for the most part – purchased in 1917 by the U.S. Steel Coal and Coke Co. The town of Lynch is said to have been named for Thomas Lynch, the first president of that company. It is also often said that Lynch's tipple -- the place coal was loaded onto rail cars -- was the largest in the world when it was built in the early 1920s.

Both the town of Lynch and the tipple obtained their electricity from the same source. From the outset, the owner constructed a power plant, erected utility poles, strung power lines and built sub-stations. Although multiple companies have since owned and mined the property, the contiguous boundary of quality coal and the electrical distribution system are the foundation upon which all owners have relied through the years.

Beginning in 1931, the power plant was closed and retail electrical service was purchased from KU. Electricity was thereafter delivered to the Lynch substation. The existing private distribution system was used to distribute power to the property. With periodic upgrades, that distribution system has continued in place to the present date. It was a part of the acquisition by BMR; it has been an essential part of BMR's mining plans at all times since. BMR relied on the private distribution system for its planning, development and licensing of mines on the property.

5. Affiant and Ross Kegan, BMR Vice President of Operations, met with Mark Abner and Ron Wilhite, representatives of Cumberland Valley Electric, Inc. ("CVE"), October 6, 2005. A few weeks prior to the meeting, affiant first became aware that CVE was claiming that BMR's mining operation on Lewis Branch was in CVE "retail territory."

During the meeting, BMR stressed that its private distribution system was already in place to the Stillhouse #2 location but CVE's representatives had no concern for the customer's inconvenience, diminished efficiency and higher costs and stressed that BMR had no choice in the matter.

6. Affiant attended a March 23, 2006, meeting in Lexington, Kentucky, attended by representatives of Kentucky Utilities Company ("KU"), CVE and BMR. This meeting was a collaborative effort to determine if a stipulation (Agreed Statement of Facts) could be developed to facilitate a hearing on the merits before the Public Service Commission ("the PSC").

BMR expressed its wish to the group that it be involved in the stipulation and the PSC hearing as a party. Affiant understood that everyone had agreed on these two requests.

Prior to the meeting, CVE (Mark Abner and Ron Wilhite) distributed a draft document titled "Agreed Statement of Facts." During the meeting, affiant questioned the CVE Cost estimate as being much too low. The total CVE Cost estimate was \$24,750 for both the 25/12 kv transformer bank at Stillhouse Mine No. 2 (\$7,500) and the 2300 foot 25 kv three-phase extension from the Water Pump to Stillhouse Mine No. 2 (\$17,250).

After first defending the total cost as reasonable/accurate, CVE belatedly revealed that it had received a cost estimate of \$24,250 for the transformer bank (listed estimate \$7,500). As the newly increased cost estimate of \$41,350 was still not adequate (perhaps 2/3rds of BMR's estimate of the cost), BMR was not willing to stipulate to the CVE Cost figure unless or until documentation was provided¹.

7. Despite some concerns about the nature of what CVE was asking KU and BMR to include in an Agreement of Facts, affiant continued to participate in the collaborative approach with the hope of developing an Agreed Statement of Facts. That co-operation included the following:

7A. On Wednesday, March 29, 2006, affiant overnighted to CVE (Mark Abner) mine license maps for both Stillhouse Mining No. 1 and Stillhouse Mining No. 2.

7B. On Wednesday, April 5, 2006, affiant emailed to CVE a true and accurate copy of the Stillhouse No. 1 Transmittal letter for the most recently submitted mine license map. At the same time, affiant provided certain straight-line measurements requested by Mr. Abner.

7C. On Thursday morning, April 6, 2006, at 9:51 a.m., affiant emailed CVE (Mark Abner), as follows:

I have tried unsuccessfully to email you the Stillhouse 1 and 2 mine license maps. I received an error message indicating that either your mailbox was full or just not big enough to receive the drawing files. I can burn the files on a disk and

¹ This is the same cost estimate, although not included in the stipulation signed by CVE and KU, cited in the prepared testimony of Ron Wilhite. See page 12, Direct Testimony of Ron Wilhite filed, April 7, 2006.

send them to you or you can pick them up. Let me know which way to go.

7D. On Thursday afternoon, April 6, 2006, at 2:36 p.m., affiant emailed CVE (Ron Wilhite), as follows:

I received a copy of the revised map from Mark Abner this morning. After reviewing the map, I have identified some problems/errors with the map including but not limited to the fact that the "Benham Municipal Utility" area appears to be in the wrong place. At this point in time, I cannot execute the agreement until I have been provided a copy of the final stipulation document complete with any and all attachments and exhibits.

7E Although affiant had earlier advised CVE that there were errors, he received, on Thursday afternoon, April 6, 2006, at 2:50 p.m., an email from Ron Wilhite, as follows:

Attached is the Final Agreed Statement of Facts. I have eliminated "Draft" from the header and inserted today's date from the previous draft. Per my conversation just now with Howard, CVE will add a label with error (*sic*) pointing to the Stillhouse Mine No. 1 Portal in a similar fashion to that for Mine No. 2. Please sign the signature page three times and overnight to me ...

8. On Friday, April 7, at 5:48 p.m., CVE (Ron Wilhite) advised that BMR had been eliminated, without consultation, from the stipulated "Agreed Statement of Facts," which was now forwarded to the PSC. He went on to say:

Apparently, the map you reviewed is the immediate prior version that did not include labeling ...

With regard to the highlighting of the Benham City Municipal Utilities, there is no relevance to that area being highlighted or shown. It was simply inadvertently included on the map...

This matter has been pending for many months, and it has now been three months since Mr. Hampton suggested that

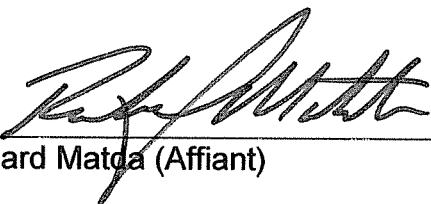
CVE and KU meet and try to work out an agreed statement of facts. ...

CVE has delayed its intended filing date on several occasions to assist in this effort. While we appreciate BMR's efforts to participate in such an agreement, CVE simply cannot continue to indefinitely extend its filing. Therefore, CVE has proceeded with a filing with the PSC that includes the Agreed Statement.

BMR may subsequently agree to the Statement or point out problems if you should find any errors following further review of the documents. CVE is prepared to continue to discuss any issues with respect to the Statement and to file appropriate errata at some future date.

9. As indicated by the foregoing, BMR has (a) information that no other party has as much access to, (b) concerns and interests that others may not have, and (c) a special interest in these proceeding that will not otherwise be adequately represented. Full intervention should be allowed to identify and present issues and develop facts that assist the Commission in reaching a resolution of this case.

Dated: 4/24/06.


Richard Matca (Affiant)

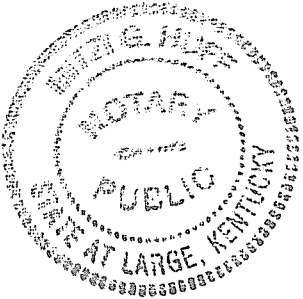
COMMONWEALTH OF KENTUCKY

COUNTY OF HARLAN

Subscribed, sworn to and acknowledged before me by RICHARD MATDA,
on this 24th day of April 2006.

My commission expires: 10/23/07

{Seal}



Mitzi D. Huff
Notary Public, State at Large