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JAN 03 2007

PUBLIC SERVICE
COMMISSION

January 3, 2007

Ms. Beth O'Donnell
Executive Director
Public Service Commission
PO Box 615
211 Sower Blvd.
Frankfort, KY 40602-0615

Re: Cumberland Valley Electric, Inc. v. Kentucky Utilities, Inc.
Case No. 2006-00148

Hand – Delivered

Dear Ms. O'Donnell:

Attached are the original and eight copies of the Rebuttal Testimony of Cumberland Valley Electric, Inc. in the above-styled case. I have this day caused to be served a copy of the Testimony by first class mail on the parties named on the attached service list.

Please call if you have any questions concerning this filing. Thank you.

Sincerely,



Anthony G. Martin

Attorney for Cumberland Valley Electric, Inc.

Cc: Attached Service List [w/enclosure]

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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

JAN 03 2007
PUBLIC SERVICE
COMMISSION

In the Matter of:

| | | |
|----------------------------------|---|---------------------|
| CUMBERLAND VALLEY ELECTRIC, INC. |) | |
| |) | |
| COMPLAINANT |) | |
| |) | |
| vs. |) | CASE NO. 2006-00148 |
| |) | |
| |) | |
| KENTUCKY UTILITIES COMPANY |) | |
| |) | |
| DEFENDANT |) | |

REBUTTAL TESTIMONY
OF
RONALD L. WILLHITE

FILED: January 3, 2007

1
2
3
INTRODUCTION

4 **Q. Have you previously testified in this proceeding?**

5 A. Yes. I submitted Direct Testimony on April 7, 2006.

6 **Q. What is the purpose of your Rebuttal Testimony?**

7 A. The purpose of my rebuttal testimony is 1) to respond to KU's claims that the
8 Stillhouse Mine No. 2 is not a new electric consuming facility ("ECF") and 2) to
9 correct Mr. Bush's application, assuming BMR's facilities are considered, of the
10 criteria of KRS 278.017(3) .

11 **Q. Please restate the issue that is before the Commission in this proceeding.**

12 A. This is a classical service territory issue involving a new mining operation,
13 Stillhouse Mine No. 2, that is located in the adjacent territories of KU and CVE
14 and is appropriately resolved by the Commission pursuant to KRS 278.018(1) and
15 .017(3). When presented with such a situation the Commission is to decide
16 whether the mining operation is a new electric consuming facility ("ECF") and, if
17 so, then apply the criteria of KRS278.017(3) to determine the appropriate retail
18 electric supplier.

19 **Q. Has the Commission reviewed similar situations in the past?**

20 Yes. The Commission has reviewed similar matters on several occasions: Case
21 Nos. 89-349 Pyro, 2002-008 Highland (Peabody) and 2003-00228 Matrix. In each
22 of the cases an existing mining operation migrated across territory boundaries and
23 opened a new mine that required a new portal to execute its mining plan. The
24 Commission found each new mine to be a new electric consuming facility and

1 then applied the criteria of KRS 278.017(3). In addition, in Case No. 90-112
2 Shamrock the Commission approved a Settlement Agreement between CVE and
3 Kentucky Power (“KP”) that that set forth the manner for providing retail electric
4 service by CVE and KP as the Shamrock operation expanded from KP territory
5 into CVE’s certified territory. Each of the new mines required a new source of
6 power by connecting the new mining operation to existing electrical facilities.

7 **Q. What is your understanding of KU’s position in this matter as to whether**
8 **Stillhouse Mine No. 2 is a new electric consuming facility?**

9 A. Mr. Bush contends that Stillhouse Mine No. 2 is not a new ECF because “KU has
10 for decades served mining operations in this same seam of coal, on the same tract
11 of U.S. Steel Property, from one central station source.” On the other hand, if the
12 Stillhouse Mine No. 2 is a new ECF, KU claims it is entitled to provide service
13 pursuant to KRS 278.017(3) if BMR’s facilities are considered in applying the
14 criteria. KU does not claim it is entitled to serve the new ECF if the BMR
15 facilities are not considered.

PYRO – CASE NO. 89-349

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Q. Mr. Bush cites Case No. 89-349 in his testimony. Please comment on the facts and issues in Case No. 89-349 as they apply to this proceeding.

A. A complete reading of the Commission’s case file in Case No. 889-349 and subsequent court orders reveals considerable comparability to the instant matter.

In 1989 Pyro began developing mining operations on the Popular Ridge site. The new mine was to be a continuation of mining of Seam No.13.

KU filed a Complaint with the Commission on November 22, 1989 claiming that KU and HU had agreed in 1972 that KU would serve any mining activity at the Popular Ridge Mining Site. In the alternate, KU claimed that the mining operation was a new ECF as defined by KRS278.010(8) as it would utilize electric energy from a central station source, the new ECF was in adjacent territories and KU would prevail under KRS278.017(3).

The Commission noted that Pyro was boring an air/man shaft to support its underground operations and that Pyro would construct a substation adjacent to the airshaft, a new bathhouse and a power drop all of which would be located in HU territory. The Commission agreed with KU that the Popular Ridge Mining Site was a new ECF even though it was a continuation of mining of Seam 13. It determined

1 that the underground facilities must be considered when determining the location of
2 the ECF's and in fact coal seam No. 13 was in both territories.

3

4 In its Reply Brief KU stated:

5 KRS278.010 defines "electric consuming facilities" as "Everything
6 that utilizes electric energy from a central station source." HU lists the
7 facilities as "a bath house, a fan, an air/man shaft and a power drop.
8 This list inconsistently commingles end uses of electricity (such as the
9 bath house) with the power drop. The power drop is not the use of the
10 electricity – everything which uses electricity coming from the power
11 drop will be the user and everything so powered will be part of the
12 facility."

13 The similarities are readily apparent with the instant matter. A new mine operation
14 is initiated to mine the same seam. The Commission agreed with KU and
15 determined the new mine to be a new ECF and applied the criteria of KRS
16 278.017(3). In this case KU contends that a new ECF is not created unless a new
17 substation is required, but that is not what the Commission concluded in the Popular
18 Ridge case. The Commission concluded that a new ECF is present if a new central
19 source station is required. It did not conclude that a new substation was a
20 prerequisite for there to be a new ECF. The fact that facilities ("the power drop"),
21 inclusive of a 12 kv distribution line and substation at the mine portal, had to be
22 constructed and extended to the Stillhouse Mine No. 2 portal and water pump

1 clearly is the provision of a new source. The only way the Stillhouse Mine No. 2
2 could operate otherwise would be with on-site generation.

3
4
5 **KRS 278.016-.018 LIMITS USE OF RETAIL SERVICE TO CERTIFIED**
6 **TERRITORY**

7
8 **Q. What is KU's claim regarding the provision to an ECF in CVE's certified**
9 **territory?**

10 A. KU contends that it is entitled to serve the new ECF at its existing delivery or
11 service point at Lynch where KU's meter is located and as such there is no
12 requirement for an adjustment in the certified territory boundary lines of KU and
13 CVE. Such a presumption contradicts KRS278.018(1) which prohibits a retail
14 electric supplier from furnishing, making available, rendering or extending its
15 retail service for use in the territory of another supplier unless otherwise approved
16 by the Commission. In Case No. 6637 the matter of where service is provided
17 was clarified. The Commission in a February 1977 decision following the 1972
18 enactment of KRS 278.016-.018 found in Case No. 6637:

19 That the Cal-Glo's purchase of electricity takes place within the
20 service area of Cumberland, since the point of metering is the place of
21 sale.

22 The Court of Appeals, in its Opinion and Order of September 1, 1978, did not
23 agree:

1 ... we also think that the location of the electric meter is not the
2 controlling "factor in determining the point of sale of the electric
3 power.

4

5 Subsequently, in the previously referenced Pyro matter, the Commission
6 established the principle that the reserves to be mined were a part of an ECF. In
7 fact, the Franklin Circuit Court Order of April 4, 1991 stated:

8 RECC argues that the coal seam is not the correct focus since it is not
9 the coal that utilizes electricity. However, the mining equipment will
10 use electricity to mine the coal. It is (not) unreasonable to conclude
11 that the mining equipment may be used to mine the coal in KU
12 territory, thus triggering the KRS 278.016(3) criteria. [*Note: The*
13 *Order appears to contain typos as it omits the word "not" and*
14 *references KRS 278.016(3) rather than KRS 278.017(3).]* Individual
15 components of the mine site, such as the ventilation fan, hoist and
16 other mining equipment, consume electrical power. Furthermore, the
17 existence of the coal seams dictate the location of the new mining
18 operation, or the location of the mining equipment.

19 Clearly, the Commission and the Court were focusing on where the service is
20 used, not where service is delivered (furnished, made available or rendered) in
21 establishing that the location of the reserves to be extracted were paramount in
22 defining the ECF in that proceeding.

23

1 SEAM AND PROPERTY CLAIMS

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Q. KU claims it is entitled to serve Stillhouse Mine No. 2 because the mine will continue to extract Harlan Seam reserves from the U. S. Steel Property. Please comment.

A. The US Steel Property covers an enormous area of some 43,000 acres in Harlan and Letcher counties. The Stillhouse Mine No. 2 will extract Harlan seam coal on the far west-side of the Property. Exhibit Matda 3 shows that the new Stillhouse Mine No. 2 will extract Harlan seam coal at least through 2011 to the immediate west of reserves previously mined by ARCH Mine No. 37 in the territories of CVE and KU. BMR affirms that all of the coal extracted since July 2005 was located in CVE’s territory and it is not until late 2007 before any coal in KU territory is expected to be mined.

The Act does not separate territories by layers of the earth. If it did, then one and the first, retail electric supplier and one mine operator would be entitled to serve and mine the entirety of a seam (“Harlan”) regardless of whose territory the mining operation is located. However, there have been numerous operations, other than BMR and its predecessors that have extracted the Harlan Seam throughout eastern Kentucky and Virginia who have been served by other than KU. The present situation is no different than the previously cited Pyro, Highland, Matrix and Shamrock situations where existing operations migrated into the

1 territory of another supplier. In those cases, a new ECF was determined to be
2 established and the criteria of KRS 278.017(3) was applied.

3
4 Finally, in its Order of December 17, 1998 in Case No. 98-215 the Commission
5 noted:

6 KU claims that the entire Industrial Park is the new electric
7 consuming facility and that, since KU currently serves two customers
8 in Sector 1 and Green River has never served customers in the Park,
9 KU is entitled to provide retail electric service to the entire Industrial
10 Park. Green River alleges that it is entitled to provide retail electric
11 service to Carhartt because Carhartt's building and the vast majority
12 of the lighted access road and parking lot lies exclusively within its
13 territory boundary line that bisects Parcel 7 of Sector 2. Examined in
14 light of the facts, KU's position is overly broad and Green River's
15 argument ignores the fact that the parties' certified territories are
16 adjacent.

17 In fact, the Commission determined the Carhartt tract to be the new ECF to which
18 it then applied KRS 278.017(3). The Commission noted that Sector 1, except for
19 the northeast corner, was entirely in KU's territory and Sector 3 was entirely in
20 Green River's territory. The Commission further stated that KU was entitled to
21 provide permanent electric retail service to Carhartt and to any other electric
22 consuming facility to locate in and on Sector 2 of the Industrial park, thus, clearly

1 implying that multiple ECF's could be located within the entirety of the park and
2 within any of the Sectors including Sector 2

3

4

THE ELECTRIC-CONSUMING FACILITY

5

6 **Q. What is the ECF in this proceeding?**

7 A. Consistent with prior Commission Orders the electric consuming facility (“ECF”)
8 is the mining operation of Stillhouse Mine No. 2 which is be comprised of the
9 mining equipment that will use electricity to mine the reserves presented to the
10 Kentucky Department of Mines and Minerals on the Stillhouse Mine No. 2 Mine
11 License Map and the water pumping equipment above and below the portal. The
12 ECF is not the Harlan Coal Seam, the U.S. Steel Property, or the Permit Boundary
13 as claimed by KU.

14

15 I disagree with Mr. Bush’s contention that “electric consuming facility” (singular)
16 means all uses that arise from a substation. Mr. Bush’s definition misconstrues the
17 definition of “electric consuming facilities” (Plural) so as to remove any logical or
18 practical meaning from the term “electric consuming facility” (singular). In this
19 proceeding, Stillhouse Mine No. 2 is an electric consuming facility – it is
20 something that consumes power from a central station source. It is a discrete,
21 defined entity, and not an amorphous and ever-changing mass of land, activities
22 and facilities.

23

1 Mr. Bush claims that Stillhouse Mine No. 2 is not a new ECF as it consumes
2 energy delivered at KU's existing Lynch Substation that has been in existence
3 since 1931. He cites the *Owen Co. RECC - Consolidated Foods* matter, Case No.
4 8541, as the basis for his conclusion. However, the Court of Appeals Order in that
5 case does not reference a "substation". Rather, it states that ULH&P would
6 establish its "service entrance, metering and transforming equipment." ULH&P
7 had an existing three-phase primary service line along U.S. 27 that ran parallel
8 past the entrance to the Industrial Park. The line was extended 1000 feet along the
9 park service road to the location of the transforming and metering equipment on
10 the Industrial Park where service was provided. Owen is remarkably similar to
11 CVE's proposed service to Stillhouse Mine No. 2 as that service would include an
12 extension of CVE's existing three-phase primary service that runs parallel along
13 U.S. 119 in front of the haul road to the new ECF and CVE would install
14 transforming and metering equipment.

15
16 Mr. Bush also cites the Pyro matter, Case No. 89 -349 in support of his substation
17 claim. *KU Response to PSC 1st Requests No. 5*. In the Pyro proceeding, the
18 Commission determined that a new ECF is created whenever a new central source
19 station is required and cited the substation to be constructed by Pyro. In contrast
20 to *Owen* there was no new line required as an idle KU 69 kv line built in the mid-
21 50's to serve operations of Popular Ridge that never materialized was available at
22 the Popular Ridge Site and Pyro installed the substation. The Franklin Circuit and
23 Court of Appeals equated a service entrance, metering and transforming

1 equipment to a substation. The finding logically means that whenever a new
2 substation or facilities comprised of a service entrance, metering and transforming
3 equipment are required then a new ECF is created. While the Commission has
4 reviewed each case on its own facts, such a conclusion is certainly reasonable
5 both from a practical and engineering basis. When a building is constructed in an
6 open field or a mining operation opens a mine portal and installs a transformer
7 and extends conductor into the opening to serve the mining equipment then those
8 facilities must be connected to a source of electricity in order to operate.

9
10 Regardless of who serves the new Stillhouse Mine No. 2 that new mining
11 operation will receive power from a central station source. Following *Owen-*
12 *“service entrance, metering and transforming equipment”*, KU, if the BMR
13 facilities are not considered, would apparently need to construct a line, *service*
14 *entrance*, from its existing 69 kv line on the north-side of U.S. 119 to the mine,
15 construct a 69/13 kv substation, *transforming equipment*, and install a meter
16 *,metering*. Assuming BMR facilities are considered, then, BMR would have to
17 extend a line, *service entrance*, from its existing facilities and install transformers
18 at the portal, *transforming equipment*. In either event, a new ECF is created.
19 Stillhouse Mine No. 2 is a new ECF and the criteria of KRS 278.017(3) should be
20 applied.

21 **Q. Do you agree with Mr. Bush that you are mixing the concept of a new**
22 **customer with the definition of an ECF?**

1 A. There is no such mixing in my testimony as I clearly address the fact that
2 Stillhouse Mine No. 2 is a new ECF and lists several reasons for that conclusion.
3 In addition, following discovery it is even more evident that Stillhouse Mine No.
4 2 is a new ECF. Stillhouse Mine No. 2 is a separate and distinct mining operation
5 from operations of both affiliates and non-affiliates of Stillhouse Mining. Each
6 operation has its own name and opening. Stillhouse Mine No. 2 similarly has its
7 own name, MSHA ID No. 15-18869, OMSL No. 18631, and Kentucky Surface
8 Coal Mining Reclamation Operations Permit No. 848-5387

9

10 **STILLHOUSE MINE NO. 2 IS NOT PART OF AN EXISTING ECF**

11

12 **Q. Please respond to KU's claim that the Stillhouse Mine No. 2 is part of an**
13 **ECF that existed prior to the 1972 enactment of the Act and that the**
14 **Commission resolved this type of situation in Case No. 9454.**

15 A. Case No. 9454 involved a complaint filed by Henderson Union RECC ("HU")
16 alleging that KU was preparing to serve a cluster of oil wells that HU has been
17 serving since 1951. KU filed a counterclaim alleging it had the exclusive right to
18 serve the oil wells as they were located in KU's territory.

19

20 HU contended that it had been serving since 1951 and pursuant to KRS
21 278.018(4) that HU was entitled to continue serving the oil wells as they existed
22 prior to enactment of the Territory Law. KU contended the wells were in their
23 territory and that the matter should be resolved pursuant to KR 278.018(3) as the

1 evidence supported a finding that HU's facilities were inadequate and that KU
2 could provide adequate service at a lower investment cost.

3
4 In its January 3, 1986 Order the Commission in addressing HU's motion to strike
5 KU's counterclaim stated:

6 HU's complaint raises the issues of a utility's authority to continue serving
7 a customer whose load lies within the certified territory of another utility,
8 whereas the counterclaim involves a utility's right to continue serving a
9 customer whose load has grown from within the serving utility's certified
10 territory into another utility's territory. While both the complaint and
11 counterclaim involve the same utilities and the same statute, the legal
12 issues are dissimilar.

13
14 In its July 8, 1986 Order the Commission stated:

15 KU supports its request for guidelines by reciting three prior boundary
16 disputes with HU. All of those disputes involved situations where a
17 customer's load migrated from one utility's service territory into another.
18 In each case, KU and HU were able to resolve the dispute by determining
19 the new point of delivery and referring to the territorial boundary
20 map..... The case now pending is dissimilar to those prior disputes.
21 Baldwin & Baldwin's load has not migrated. The cluster of oil wells now
22 being served has been the only cluster served for over 35 years. The wells

1 have always been served by HU and have always been located in KU's
2 certified territory

3

4 **APPLICATION OF KRS 278.017(3) CONSIDERING BMR'S FACILITIES**

5

6 **Q. Have you reviewed Mr. Bush's application of KRS 278.017(3).**

7 A. Yes. Mr. Bush has assumed that Stillhouse Mine No. 2 is a new electric consuming
8 facility and asserted that the Commission should apply the criteria of KRS
9 278.017(3) in light of BMR's facilities.

10 **Q. Do you agree with his analysis?**

11 A. No. While Mr. Bush states BMR's facilities should be considered, he totally ignores
12 them as he steps through the application of KRS 278.017(3) in determining the
13 proper service provider for the new ECF – Stillhouse Mine No. 2. My analysis,
14 assuming BMR's customer-owned distribution facilities are recognized as if they
15 are KU's in the application of KRS 278.017(3) to determine the appropriate retail
16 electric supplier to Stillhouse Mine No. 2, corrects Mr. Bush's omission of the BMR
17 facilities in his analysis.

18 CVE does not accept the assumption regarding BMR's distribution lines as it does
19 not comport with the ACT. Neither, KU or CVE, should be given credit for BMR's
20 facilities.

21 **Q. What is the electric consuming facility?**

22 A. Consistent with prior Commission Orders the electric consuming facility ("ECF") is
23 comprised of the mining equipment that will used to mine the reserves as presented

1 to the Kentucky Department of Mines and Minerals on the Stillhouse Mine No. 2
2 Mine License Map, and the water pumping equipment above and below the portal.

3 **Q. Please discuss how the criteria of KRS 278.017(3) is appropriately applied**
4 **considering BMR's facilities.**

5 A. The criteria is applied as follows:

6
7 **KRS 278.017(3) condition (a) is the proximity of existing distribution lines.**

8 Neither CVE nor BMR have any facilities on the ECF.

9
10 BMR's existing 12 kv line as shown on the Vicinity Map extending from Cloverlick
11 is the nearest BMR facility to the ECF and is some 1048.2 feet east of the portal.

12 All reserves to be mined are west of the portal. Commission *BMR-4 and Agreed*
13 *Statement of Facts Item 1*

14
15 CVE's 25 kv distribution line along the north-side of US 119 is the nearest CVE
16 facility to the ECF some 312 feet north of the water pump currently being served by
17 CVE. *Agreed Statement of Facts 7.*

18
19 CVE prevails as its facilities are in closer proximity to the ECF.

20
21 **KRS 278.017(3) condition (b) which supplier was first furnishing retail**
22 **service, and the age of existing facilities in the area.**

1 CVE was providing three-phase electric service in 1949 in the area to Hillcrest
2 Farms northeast of the ECF and south of old US 119. In addition, CVE provided
3 service to the Clarence Isom residence in 1961 between US 119 and the ECF. CVE
4 provided single-phase electric service in 1964 to the J & M Fields Coal Company
5 Mines believed to be located in part on the west-side of the ECF and adjacent to the
6 mine portal. CVE also provided single-phase service to the Robert Smith Mines in
7 1966 believed to be located on the ECF in part along the north mine boundary just
8 west of the ECF. Both the Fields and Smith mines are believed to be shown on
9 Exhibit Matda 1, 2 and 3.

10
11 KU is the supplier, because BMR does not qualify as a retail electric supplier under
12 the ACT. Even if BMR were considered to be a retail electric supplier, its
13 predecessor ARCH did not provide service until 1981 and ceased service in 1998
14 *Matda Testimony*. BMR merely uses its facilities to distribute energy furnished
15 from KU's point of delivery or service at the Lynch Substation that is nearly seven
16 air-miles away from the Stillhouse Mine where the retail electric is used. According
17 to KU the first date of service in the area was 1931 at Lynch. *Willhite Exhibit No. 1*
18 *Statement of Facts – Items 1, 10, 11, Bush Direct at 4 and Electrical Installation*
19 *Map*.

20
21 CVE's 25 kv feeder above old US 119 was constructed in 1949, converted from
22 13.2 kv to 24.5 kv in 1974 and relocated to be along new US 119 in 2005. CVE
23 initiated service to the Mine Water Pump along US 119 on February 1, 2006.

1 BMR's existing three-phase 12 kv distribution facilities nearest the ECF were
2 constructed around 1981. *Matda Testimony*. BMR constructed the 1048'2 foot
3 extension from the existing (1981) 12 kv line to the portal in 2005. BMR
4 acknowledges that maintenance, pole replacement and clearing has been performed,
5 but does not have records of the incurred costs. *Willhite Exhibit No. 1 Statement of*
6 *Facts - Items 1 and 13.*

7
8 CVE was clearly the first retail electric supplier to provide service in the area
9 adjacent to the ECF. KU admits it furnished service some 7.5 miles away. *Bush*
10 *page 4*. CVE's three-phase distribution facilities, in place since 1949, were
11 relocated and modernized last year in 2005 along new US 119. BMR's facilities
12 have not been modernized since 1981 and possibly since 1931.

13
14 CVE prevails.

15
16 Application of this condition clearly points out why it is inappropriate for the
17 Commission to consider BMR lines in any of the conditions. This condition penned
18 by the General Assembly clearly refers to "supplier" which pursuant to the
19 definition of the term "retail electric supplier" cannot be BMR who is not engaged
20 in furnishing retail electric service, only entities like KU and CVE by statute are
21 suppliers. BMR merely uses its facilities to distribute energy to its equipment like
22 many other customers. The General Assembly when talking of the "supplier" was
23 clearly talking about the age of the supplier's (KU or CVE) facilities, not the

1 facilities of a customer. In fact, it is reasonable to conclude that the General
2 Assembly was expecting that only supplier facilities would be considered when
3 setting forth the criteria for the application of any of the conditions of KRS
4 278.018(7). After all, it was the supplier's facilities that were used to establish the
5 boundary lines.

6
7 **KRS 278.017(3) condition (c) is the adequacy and dependability of existing**
8 **distribution lines to provide dependable, high quality retail service at**
9 **reasonable costs.**

10
11 As Mr. Abner testifies CVE's facilities are clearly adequate and dependable to
12 provide service to the ECF at the required three-phase 12 kv distribution delivery
13 voltage. CVE has 25/12 kv service in existence at the water pump along US 119.
14 Either, BMR or CVE would have to construct a 3100 foot extension along the haul
15 road from the water pump to the portal. A 25/12 kv transformer bank and metering
16 equipment would also be required. CVE's facilities are more than adequate as they
17 are new and are now located along new US 119 where they are more accessible and
18 less exposed to outages. The loading on the 11.2/14 MVA Chad Substation is
19 currently 65 percent. *Willhite Exhibit No. 1 Statement of Facts - Item 14.*

20
21 It is assumed that BMR's 12 kv distribution facilities would have adequate capacity
22 to provide service to the ECF although BMR has refused to provide information
23 sufficient to confirm the reliability of its system. BMR incurred a cost of some

1 \$10,000 to construct the 1048.2 foot extension and an unknown amount to
2 reconstruct and/or repair the existing line. ARCH would have incurred a significant
3 cost to extend the 2.75 miles of line from the Cloverlick Station to the Mine No. 27
4 fan.

5
6 As Mr. Abner testifies, both the CVE and BMR tap lines and their substations,
7 Chad and Cloverlick, are subject to single contingency outages. However, the line
8 exposure to an outage is significantly more as the BMR line extends for some 7.5
9 miles from KU's Lynch Station as compared to some 4700 feet miles of CVE line
10 from CVE's Chad Station. Where all of the relevant BMR lines run over and
11 through mountainous wooded terrain, the CVE distribution feeder runs along US
12 119 and is readily accessible. CVE has line crews readily available at its
13 Cumberland Office which is adjacent to the ECF west on US 119. *Agreed Statement*
14 *of Facts Item 1.* The availability of BMR service personnel is unknown.

15
16 Clearly, CVE's facilities are adequate and more dependable than BMR's and CVE
17 can provide retail service at reasonable cost.

18
19 CVE prevails.

20
21 **KRS 278.017(3) condition (d) is the elimination and prevention of duplication**
22 **of electric lines and facilities supplying such territory.**

1 CVE had only to construct a 312 foot extension to the ECF and BMR had to
2 construct a 1048.2 foot extension. In any event an approximate 3100 foot line along
3 the haul road is required to connect the pump and portal. BMR had constructed in
4 2005 a pole line down the haul road from the mine portal by the water pump to U.S.
5 119 which currently contains only a telephone line.

6
7 Actions by ARCH, and now BMR has led to duplicate facilities and unnecessary
8 encumbering of the landscape. ARCH extended a line some 2.75 miles from its
9 Cloverlick Station into CVE's territory to serve a fan at Perkins Branch for Mine
10 No. 37. The final 1.25 mile tap line segment of that line constructed from KU's
11 territory into CVE's territory in 1981 was long after enactment of KRS278.016-.018
12 and was apparently built without the knowledge of either CVE or KU. CVE would
13 have extended service to the fan pursuant to its tariff had an appropriate service
14 request been made by ARCH. CVE would have constructed a line somewhat less
15 than a mile in length from its then existing 25 kv three-phase circuit north of old US
16 119. Today, at minimum, the CVE line route and likely the circuit could have been
17 used to provide service to the new Stillhouse Mine No. 2.

18
19 The duplication is obvious. BMR and ARCH constructed some 3 miles of line,
20 whereas CVE would have constructed less than a mile of line to serve the ARCH
21 No. 37 fan and that line would have been in place to serve the new Stillhouse Mine
22 No. 2. In addition, BMR had constructed the pole line for the telephone
23 unnecessarily further encumbering the landscape.

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Not only in this matter has BMR and its predecessors constructed duplicate facilities and unnecessarily encumbered the landscape, construction of distribution facilities by BMR and its predecessors has resulted in significant encumbering of the landscape by idled facilities. Not only was the tap line idled by ARCH in 1998 with no apparent future plans to ever use the line, but extensive other line segments which KU and BMR fail to identify on Exhibit LEB-1 stand idle or de-energized on the U.S. Steel Property. While the Commission cannot dictate to customers as to how and when they construct facilities, the Commission pursuant to its authority under KRS278.016- 018 can control those activities when a consumer attempts to receive retail electric service from one supplier in the territory of another supplier by constructing distribution lines across territory boundaries.

CVE prevails.

In summary, CVE prevails on each of the four criteria of KRS 278.017(3) when applying in light of BMR facilities: (a) CVE facilities are in closer proximity, (b) CVE was providing service first in the immediate area and its facilities are more modern, (c) CVE's existing facilities are adequate and more dependable and (d) CVE facilities would not be duplicative of BMR and KU required facilities to serve the ECF.

1 available or extend its retail service to a consumer for use in electric
2 consuming facilities located within the certified territory of another retail
3 electric supplier without Commission approval.

4
5 **Q. What is your recommendation to the Commission?**

6 A. It is clear that the Stillhouse Mine No. 2 is a new ECF and that applying the
7 criteria of KRS 278.017(3) considering the facilities of the affected retail electric
8 suppliers, CVE and KU, results in CVE being appropriately awarded service
9 rights to the new mine. Even if BMR facilities are considered the same result
10 occurs.

11 **Q. Does this conclude your Rebuttal Testimony?**

12 A. Yes.

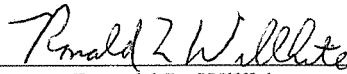
VERIFICATION

STATE OF KENTUCKY

COUNTY OF JEFFERSON

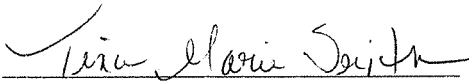
BEFORE ME, the undersigned authority, duly commissioned and qualified in and for the State and County aforesaid, personally came and appeared, Ronald L. Willhite, who, being by me first duly sworn deposed and said that:

He is appearing as a witness on the behalf of Cumberland Valley Electric, Inc., before the Kentucky Public Service Commission in a Complaint filed by Cumberland Valley Electric, and if present before the Commission and duly sworn, his testimony would be set forth in the annexed testimony.



Ronald L. Willhite

SWORN TO AND SUBSCRIBED BEFORE ME this
3rd day of JANUARY, 2007



NOTARY PUBLIC

Tina Marie Smith
Commission Expires January 13, 2010
Notary Public, State at Large, KY

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

JAN 03 2007

PUBLIC SERVICE
COMMISSION

In the Matter of:

CUMBERLAND VALLEY ELECTRIC, INC.)
)
COMPLAINANT)
)
vs.) CASE NO. 2006-00148
)
)
KENTUCKY UTILITIES COMPANY)
)
DEFENDANT)

REBUTTAL TESTIMONY

OF

MARK ABNER

FILED: January 3, 2007

1 **Q. Please state your name and business address.**

2 A. Mark Abner, P.O. BOX 440, Gray, KY 40734.

3 **Q. What is your profession, current position, and professional and educational**
4 **background?**

5 A. I am a professionally licensed electrical engineer in the State of Kentucky
6 currently employed by Cumberland Valley Electric as Manager of Engineering.
7 My graduation was from the University of Kentucky College of Engineering in
8 May, 1990. I was employed by Kentucky Utilities Company as a Technical
9 Engineer from graduation until December, 2004. On April 16, 2004, I
10 successfully completed the Professional Engineering Examination and was
11 subsequently granted PE licensure by the Kentucky Board of Engineering
12 Licensure.

13 **Q. What is the purpose of your testimony?**

14 A. The purpose of my testimony is to provide rebuttal testimony concerning Mr.
15 Bellar's claim that CVE service to Stillhouse Mine No. 2 would not be as
16 dependable as KU's current service. I explain why CVE is fully capable of
17 providing adequate and dependable electric service to Stillhouse Mining's No. 2
18 Mine. My rebuttal will also briefly address Mr. Bush's claim that service by CVE
19 will result in unduly encumbering the landscape and unnecessary duplication of
20 facilities.

21 **Q. How would CVE serve Stillhouse No. 2?**

22 A. CVE currently has a three phase 25 kV distribution source available at the
23 Stillhouse No. 2 water pump just south of US 119. Either BMR or CVE can

1 construct a three phase power line extension from CVE's facilities serving the
2 Stillhouse No. 2 water pump, along the mine haul road to the mine portal, which
3 is essentially the same route as the existing telephone line. The length of the
4 extension would be approximately 3,133 feet. CVE would also install adequate
5 metering and transforming equipment as required. CVE's cost is expected to be
6 approximately \$37,000, right-of-way clearing, transforming and metering
7 equipment not included.

8 **Q. Does CVE have adequate capacity to serve Stillhouse No. 2?**

9 A. CVE does have adequate capacity, both in its Chad Substation and its distribution
10 circuitry, to provide adequate service to Stillhouse No. 2. The station is currently
11 loaded at 65% at peak. CVE recently relocated our distribution feeder No. 4 along
12 US 119 making the line more accessible and less exposed to outages. This was
13 done as part of our 2003-2006 Work Plan as approved by the Commission in Case
14 No. 2003-00026.

15 **Q. Mr. Bellar claims that KU provides service with superior reliability. What
16 are your comments with respect to this issue?**

17 A. Mr. Bellar's claim of superior reliability relates only to KU's point of service to
18 the entire BMR load served from KU's Lynch Station, including Stillhouse No. 2.
19 The issue of service reliability to Stillhouse No. 2, as should properly be
20 addressed by this proceeding, is not addressed by Mr. Bellar as he ignores the
21 existence of BMR's approximate 7.5 miles of transmission and distribution lines
22 and their substations. Neither BMR nor KU has produced reliability data for the
23 BMR system. Furthermore, line maintenance practices of BMR may be somewhat

1 questionable. A damaged phase conductor can be observed from the ground at a
2 structure atop the mountain south of the Stillhouse No. 2 portal. The damaged
3 conductor was not properly repaired. Instead, a wire jumper was installed across
4 the damage with connectors that are not designed to support conductors under
5 tension. If this damaged conductor should completely fail, it would most likely
6 result in a power interruption to Stillhouse No. 2.

7
8 CVE's Chad Station and its existing 25 kV distribution circuitry are much closer
9 to Stillhouse No. 2 than any KU transmission, substation or distribution facilities.
10 CVE's Chad Station is also closer to Stillhouse No.2 than BMR's substation
11 facility which is located on Cloverlick Creek.

12
13 I agree with Mr. Bellar that failure of KU's Arnold to Evarts 69 kV line, CVE's
14 Chad Substation, or CVE's distribution line would subject power flow to
15 Stillhouse No. 2 to single contingency interruptions. A single contingency source
16 is typical and is fully adequate and dependable. However, the 69 kV tap from
17 KU's Lynch Station to BMR's U.S. Steel Station, BMR's 69 kV line to its
18 Cloverlick Station, BMR's 69/12 kV substation at Cloverlick and the BMR 12 kV
19 distribution line extending from the Cloverlick Substation to Stillhouse No. 2
20 present significantly more risk of a single contingency outage for a KU served
21 Stillhouse Mine No. 2. BMR will have to maintain a 7.5 mile line, including 2.75
22 miles which BMR apparently claims is only useful for serving Stillhouse Mine

1 No. 2, and two substations, as opposed to some 4,700 feet from CVE's Chad
2 Substation for CVE to provide service.

3
4 Mr. Bellar's direct testimony at page 3 lines 20 & 21 states that CVE ignores the
5 existence of BMR's own distribution network. Mr. Bellar then selectively ignores
6 the existence of BMR's distribution network when asserting his claims as to
7 service reliability by failing to point out the fact that KU's furnished retail electric
8 service at Lynch for use at Stillhouse No. 2, as well as all other BMR loads served
9 by BMR's distribution network, are also subject to single contingency
10 interruptions. Mr. Bellar also fails to mention that KU's point of service to BMR,
11 namely KU's metering equipment, may also represent a point of single
12 contingency service.

13
14 CVE can provide adequate and more reliable service to Stillhouse No. 2 than KU.

15 **Q. Has the landscape of the Commonwealth been unduly encumbered and have**
16 **facilities been duplicated by the actions of Stillhouse Mining and/or BMR?**

17 A. Yes to both. BMR has constructed, according to Mr. Matda,
18 approximately 1,048 feet of three phase power line to the Stillhouse No. 2 portal.
19 In addition, BMR constructed, or caused to be constructed, a telephone line from
20 US 119 along the Stillhouse No. 2 haul road to the mine portal. Had CVE been
21 requested initially to provide service to Stillhouse No. 2, only one pole line would
22 have been necessary to provide both power and telephone service to Stillhouse
23 No. 2. If CVE is awarded service, CVE's pole route along the Stillhouse haul road

1 will essentially coincide with the existing telephone line, thereby minimizing any
2 further duplication of facilities. In addition, BMR has existing de-energized lines
3 that encumber the landscape, which, according to Mr. Matda, are not depicted by
4 LEB-1 but are believed to appear on CVE's Vicinity Map.

5 **Q. Does this conclude your testimony?**

6 **A. Yes.**

VERIFICATION

COMMONWEALTH OF KENTUCKY

COUNTY OF KNOX

BEFORE ME, the undersigned authority, duly commissioned and qualified in and for the State and County aforesaid, personally came and appeared Mark Abner, who, being by me first duly sworn deposed and said that:

He is appearing as a witness on behalf of Cumberland Valley Electric, Inc. before the Kentucky Public Service Commission in Case No. 2006-00148, and if present before the Commission and duly sworn, his testimony would be set forth in the annexed testimony.

Mark Abner
Mark Abner

SWORN TO AND SUBSCRIBED BEFORE ME this 3rd day of January, 2007.

Chad T Ferguson
Notary Public

My Commission Expires: September 7, 2010

