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APR 21 2006

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April 21, 2006

HAND DELIVERY

Elizabeth O'Donnell
Executive Director
Kentucky State Board on Electric
Generation and Transmission Siting
211 Sower Boulevard
Frankfort, Kentucky 40602-0615

RE: *Cumberland Valley Electric, Inc. vs. Kentucky Utilities Company*
Case No. 2006-00148

Dear Ms. O'Donnell:

Enclosed please find and accept for filing the original and ten (10) copies each of Kentucky Utilities Company's Answer and Motion to Dismiss in the above-referenced matter. Please confirm your receipt of these filings by placing the stamp of your Office with the date received on the extra four additional copies of the filings and return them to me in the enclosed self-addressed stamped envelope.

Should you have any questions or need any additional information, please contact me at your convenience.

Very truly yours,



J. Gregory Cornett

JGC/cja
Attachments
cc: Parties of Record (w/enclosures)

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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APR 21 2006

PUBLIC SERVICE
COMMISSION

CUMBERLAND VALLEY ELECTRIC, INC.,

COMPLAINANT,

V.

CASE NO. 2006-00148

KENTUCKY UTILITIES COMPANY.

DEFENDANT.

ANSWER OF KENTUCKY UTILITIES COMPANY

Pursuant to the Commission's Order of April 13, 2006, Kentucky Utilities Company ("KU") hereby answers the Complaint of Cumberland Valley Electric, Inc. ("CVE") in this matter as follows:

1. KU admits the averments contained in numerical paragraphs 1 through 4 of CVE's Complaint.
2. KU neither admits nor denies the averments contained in numerical paragraph 5 of CVE's Complaint, but instead states that the provisions of KRS Chapter 278, as interpreted and applied by relevant precedent, speak for themselves.
3. With regard to the averments contained in numerical paragraph 6 of CVE's Complaint, KU denies that a "new mine" recently opened, and states that the reserves being mined from Stillhouse Mine No. 2 are in a seam of coal known as "the Harlan Seam," which seam of coal has been mined for decades by a number of mining operators, all of whom have taken service at KU's Lynch Substation and transmitted power across a customer-owned

distribution system to their mining operations. That line is now being used by Black Mountain Resources, Inc. (“BMR”) and / or its affiliate Stillhouse Mining, LLC (“Stillhouse”) to provide power to a number of mining operations, including Stillhouse Mine No. 2. BMR and / or Stillhouse are successors in interest to a number of previous mining operators, dating back to U.S. Steel in the 1930s, who have taken power at KU’s Lynch Substation and distributed that power to mining operations in the Harlan Seam (as well as other coal seams) via a privately-owned distribution network. It is KU’s position that the continuation of mining operations in the Harlan Seam through Stillhouse Mine No. 2, served through an existing central station source, does not constitute, and should not be considered by this Commission to constitute, a new electric consuming facility (“ECF”). In any event, without waiver of that position, KU states that the location of the portal is not a determining factor in the consideration of service rights under KRS Chapter 278 and established Commission precedent. KU is without information or knowledge sufficient to form a belief as to the truth of the remaining averments contained in numerical paragraph 6 of CVE’s Complaint.

4. KU is without information or knowledge sufficient to form a belief as to the truth of the averments contained in numerical paragraph 7 of CVE’s Complaint. However, KU does affirmatively state that it did not have actual knowledge of the operations at Stillhouse Mine No. 2 until after operations were underway. KU also states that the construction and use of customer-owned distribution systems is common in the coal-mining industry in Kentucky, that delivery of power to the customer on the facts of this case is consistent with the Certified Territories Act as interpreted and applied by the Commission, that neither BMR nor Stillhouse is acting as a utility, that the customer-owned line at issue has been in existence and energized by power supplied through KU’s Lynch Substation for decades, and that KU had no involvement in

the extension of the distribution line for delivery of service to the Stillhouse Mine No. 2. Accordingly, CVE's Complaint does not state a matter upon which relief can be granted and should be dismissed as a matter of law.

5. With regard to the averments contained in numerical paragraph 8 of CVE's Complaint, KU states that there were no "findings of the Commission" in Case No. 2003-00226, other than those based upon the settlement of the parties therein or restating the law as it already existed, and that in any event Case No. 2003-00226 is separate and distinct and has no relevance here. KU admits that it has had discussions with CVE and its representatives in an effort to resolve this matter by agreement, and admits that it has taken no action to seek Commission approval for its service to the customer at issue because it does not believe any such approval is required. KU denies the averment that the operations at issue constitute a "new" facility in the context of KRS Chapter 278, and denies that it has any responsibility for any claimed "lost revenues" because KU has not only the right, but also the obligation, to serve the customer at issue unless and until ordered to cease service by this Commission. Furthermore, this Commission has no jurisdiction to award any claimed damages to CVE. KU also denies that it has "extended" facilities to provide service to the customer at issue. To the contrary, KU has simply continued to provide service at its Lynch substation, just as it has done for decades, and has not taken any steps to extend or upgrade its facilities in any way in order to provide service to Stillhouse Mine No. 2.

6. With regard to the averments contained in numerical paragraphs 9 and 10 of CVE's Complaint, KU states that the provisions of KRS Chapter 278, as interpreted and applied by relevant precedent, speak for themselves. KU affirmatively states that it has not violated the Certified Territories Act by continuing to provide service to the customer at the Lynch

Substation, that there is no new ECF here and, without waiver of those positions, states that in any event the customer at issue is not located “within” CVE’s certified territory but is located in the adjacent territories of both KU and CVE. KU further states that the use of privately-owned distribution systems in the manner such as is at issue here is consistent with the Certified Territories Act as interpreted and applied by the Commission, and that jurisdiction over such lines does not reside with the Commission.

7. With regard to the averments contained in numerical paragraph 11 of CVE’s Complaint, KU admits that it has not at any time sought CVE’s approval to continue serving the mining operations in the Harlan Seam, and states that no such approval is required. KU is without information or knowledge sufficient to form a belief as to the truth of the averments as they relate to BMR. Although it is not clear what purported “standards for mining operations” CVE is referring to, KU denies the averments that Stillhouse Mine No. 2 is a new ECF, that KU has “extended” its facilities to provide service to the customer at issue, or that KU’s service to the customer is in any way contrary to or in violation of KRS Chapter 278. As relates to the citation to statutes, KU states that those statutes, as interpreted and applied by relevant precedent, speak for themselves. Finally, without waiver of its position as stated herein, KU denies CVE’s averment that it “should prevail as the supplier under the criteria set forth in KRS 278.017(3)” and affirmatively states that, if those criteria were applied in this case, they would establish that KU is entitled to continue providing service to the customer at issue.

8. KU, based on information and belief, denies the averments contained in numerical paragraph 12 of CVE’s Complaint.

9. With regard to the averments contained in numerical paragraph 13 of CVE’s Complaint, KU admits that Mr. Willhite’s testimony and exhibit were attached to the Complaint.

KU denies the substance of that testimony, consistent with its Answer herein, and states that it will provide responsive testimony, if this matter is not dismissed, in accordance with any procedural schedule established by the Commission herein.

10. With regard to the averments contained in numerical paragraph 14 of CVE's Complaint, KU states that CVE's requests for relief set forth therein do not require a specific response. However, KU denies that CVE is entitled to serve the customer at issue and denies that KU is in any way violating KRS Chapter 278. KU also notes that the Commission has already entered an Order in accordance with 807 KAR 5:001, Section 12(4)(b), as requested by CVE, and states that this Answer is filed in response to and compliance with that Order, which speaks for itself. KU is concurrently seeking dismissal of CVE's Complaint as a matter of law, and requests that no procedural schedule, other than that relating to the filing of briefs regarding KU's Motion to Dismiss (filed concurrently herewith), be set until the Commission rules upon KU's Motion. KU requests that the Commission dismiss CVE's Complaint on the grounds set forth in that Motion. Without waiver of that request, and only in the event that its Motion to Dismiss is denied, KU requests that the Commission enter a procedural schedule providing for adequate discovery rights to all parties and, if necessary, hold an evidentiary hearing to gather additional evidence, and that the Commission then enter an order providing that KU is entitled to continue providing service to the customer at issue.

11. With regard to the averments contained in numerical paragraph 14 of CVE's Complaint, KU objects to CVE's request on grounds that CVE has no claim for alleged lost revenue because it has no present right to serve the customer at issue, KU has not acted in violation of any law, and, in any event, distribution of power via customer-owned lines over land the customer has a legal right to occupy is outside the jurisdiction of this Commission. KU

affirmatively states that it has an obligation to continue providing service at its Lynch Substation, as it has done for decades, unless and until ordered to cease such service by this Commission. With regard to the request for installation of a meter, KU further objects to the extent that such request seeks to have KU place a meter on the customer's line, on grounds that the Commission has no jurisdiction over the customer's facilities, KU has no right to place any equipment on the customer's line, and KU should not be required to accept responsibility for such equipment.

12. All other averments contained in CVE's Complaint are denied.

FIRST AFFIRMATIVE DEFENSE

CVE's Complaint, or parts of it, fails to state a claim upon which relief can be granted and should be dismissed.

SECOND AFFIRMATIVE DEFENSE

CVE's Complaint, or parts of it, raises matters beyond the jurisdiction of this Commission and should be dismissed.

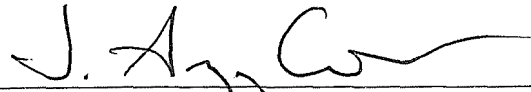
WHEREFORE, KU respectfully requests:

1. that the Commission enter an order dismissing CVE's Complaint as a matter of law and allowing KU to continue providing service to the territory in question; or
2. in the alternative, should the Commission not dismiss CVE's Complaint as a matter of law but instead determine that Stillhouse Mine No. 2 is a new electric-consuming facility as defined in KRS 278.010(8), that the Commission find that KU is nonetheless entitled to continue to serve the operations at Stillhouse Mine No. 2, pursuant to the criteria set out in KRS 278.017(3);

3. that the Commission amend the territorial boundary between KU and CVE to recognize that KU has the right to serve all mining operations in the Harlan Seam;
and
4. that the Commission grant KU such other relief as it may be entitled.

Dated at Louisville, Kentucky, this 21st day of April, 2006.

Respectfully submitted,



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*Counsel for Defendant,
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing was served via U.S. mail, postage prepaid, this 21st day of April, 2006, upon the following:

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Counsel for Defendant

**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

In the Matter of:

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

MOTION TO DISMISS

Kentucky Utilities Company ("KU") hereby moves the Kentucky Public Service Commission ("Commission") to dismiss the Complaint filed in this action by Cumberland Valley Electric, Inc. ("CVE"), which Complaint alleges that KU has violated the Certified Territories Act, KRS 278.016 *et seq.* (the "Act").¹ For all of the reasons set forth below, CVE's Complaint fails to state a claim upon which relief can be granted by this Commission and should be dismissed forthwith.

FACTUAL SUMMARY

This dispute involves the provision of electric service to underground mining operations at Stillhouse Mine No. 2, which is operated by Stillhouse Mining, LLC ("Stillhouse"), a subsidiary of Black Mountain Resources, Inc. ("BMR").² The portal for Stillhouse Mine No. 2 is located south of US 119 near Canoe Hollow in Harlan County, Kentucky, in CVE's certified

¹ KRS 278.018.

² CVE Complaint, ¶ 6.

territory, but the reserves to be mined, in what is known as the Harlan Seam, are in the territories of both KU and CVE.³ KU furnishes and meters 69 kV power to BMR at KU's Lynch Substation in Lynch, Kentucky.⁴ The Lynch Substation is located entirely in KU's certified territory and has been in existence and providing service to customers since 1931.⁵

BMR owns a substation, known as the BMR U.S. Steel Substation, immediately adjacent to KU's Lynch Substation.⁶ BMR's substation is connected to a 69 kV line, owned and operated by BMR (the "BMR 69 kV line"), which line is used to distribute electric power to mining operations conducted by BMR or its affiliates in Harlan County.⁷ KU has been furnishing electric service to BMR, for use in its mining operations and those of its affiliates, at the KU Lynch Substation since at least the early 1980s.⁸

On April 7, 2006, CVE filed a formal complaint against KU seeking a ruling that it is entitled to serve the Stillhouse Mine No. 2. On April 13, 2006, the Commission entered an order directing KU to satisfy or answer CVE's Complaint. This motion to dismiss is filed concurrently with KU's Answer. For the reasons set forth below, CVE's complaint should be dismissed with prejudice.

ARGUMENT

CVE alleges that, because BMR transmits KU-provided power to Stillhouse via a privately-owned line which extends into CVE's territory, KU is in violation of the "exclusive service" provisions of the Act. As part of its complaint, CVE has requested that the Commission

³ Willhite Testimony, p. 5, lines 6-8; p. 8, lines 7-8; p. 10, lines 7-12.

⁴ *Id.*, p. 6, lines 20-21.

⁵ Agreed Statement of Facts (attached as Willhite Testimony Exhibit 1), p. 3; Item 1 Vicinity Map (attached to Agreed Statement of Facts).

⁶ Willhite Testimony, p. 7, line 3.

⁷ *Id.*, p. 7, lines 1-11.

⁸ *Id.*, p. 7, lines 7-9. The line, or parts of it, has been in existence for decades, but only came to be owned by BMR in the early 1980s. As noted above, the Lynch Substation has been in existence since 1931.

make a determination that "the extension of lines by a customer into the exclusive certified service territory of another retail electric supplier does not in any way affect or alter the provisions of [the Certified Territory Act]."⁹ That very issue has previously been resolved by this Commission, however, and that precedent requires dismissal of CVE's Complaint.

Under the Certified Territories Act, each electric supplier has the exclusive right to provide service to electric-consuming facilities within its certified territory, and "shall not furnish, make available, render or extend its retail electric service to a consumer for use in electric-consuming facilities located within the certified territory of another retail electric supplier."¹⁰ CVE's Complaint is premised on the claim that delivery to a customer within a utility's certified territory is unlawful if some portion of the power is then transmitted by a private distribution network and used by the customer outside that territory.¹¹ That exact argument was rejected by the Commission in a case (which involved CVE taking, and prevailing on, a position exactly opposite of that which it now takes here) decided early in the history of the Certified Territories Act.¹²

In *Jellico v. CVE*, a case with facts remarkably similar to those present here, the Commission considered a case involving Cal-Glo Coal Company ("Cal-Glo"). In 1967, Cal-Glo began with operations in the territory of the Jellico Electric System ("Jellico"), near Gatliff, in Whitley and Knox Counties in Kentucky, and took service from Jellico.¹³ Later, Cal-Glo opened three underground mining operations which were served by Cumberland Valley Rural Electric Cooperative Corporation, now known as Cumberland Valley Electric, Inc., or CVE, because they

⁹ CVE Complaint, p. 5.

¹⁰ KRS 278.018(1).

¹¹ CVE Complaint, p. 3.

¹² *In the Matter of: The Complaint of Jellico Electric System v. Cumberland Valley Rural Electric Cooperative Corp.*, Case No 6637 (Order of February 22, 1977) (hereafter "*Jellico v. CVE*"). A copy of that Order is attached hereto as Exhibit A.

¹³ *Jellico v. CVE*, p. 1.

were located wholly within CVE's territory.¹⁴ Over time, Cal-Glo decided to expand its operations in Jellico's territory.¹⁵ After discussions with Jellico stalled, Cal-Glo decided to supply power to its expanded operations by constructing a half mile extension of an existing line that Cal-Glo owned and which was connected to CVE's system.¹⁶ Under that proposal, Cal-Glo would take power from CVE at a metering station in CVE's territory, then transmit the power to its operations in Jellico's territory via its privately-owned distribution network.¹⁷

Jellico filed a complaint with the Commission, arguing that CVE should be "totally precluded from selling Cal-Glo any power which may be used in Jellico's territory."¹⁸ That argument was soundly rejected by the Commission as being too "rigid[]." ¹⁹ Instead, the Commission agreed with CVE and Cal-Glo that the proposed service did not violate the Certified Territories Act, and dismissed Jellico's Complaint against CVE. In reaching that decision, the Commission stated:

Finally, this Commission agrees with the reasoning of [CVE] and Cal-Glo to the effect that **the point at which [CVE] meters its electricity to Cal-Glo is the point where the actual service takes place.** The 1974 amendment under K.R.S. 278.010[] defines an electric consuming facility to mean 'everything that utilizes electric energy from a central station source.' This 'central station source' is [CVE]'s metering station to Cal-Glo which is concededly in [CVE]'s territory. Thus, **even though the power then travels through Cal-Glo's private line for ultimate usage by Cal-Glo at Gatliff (i.e., in Jellico's territory), the service boundaries of the two utilities are still respected since the 'electric consuming facilities' in Jellico's area are served by power from the 'central station source' in [CVE]'s territory.**²⁰

¹⁴ *Id.*

¹⁵ *Id.*, p. 2.

¹⁶ *Id.*, p. 3.

¹⁷ *Id.*

¹⁸ *Id.*, p. 4. (Emphasis in original.)

¹⁹ *Id.* That same "rigid" approach is now offered by CVE. CVE Complaint, p. 3 (focusing on the word "use").

²⁰ *Id.*, pp. 5-6. (Emphasis added.) Given the fact that the *Jellico v. CVE* case is on point and involved CVE as the prevailing party, it is surprising that the case is not acknowledged by CVE in its filing.

That decision is consistent with the fact that the Commission does not have jurisdiction over privately-owned electric facilities.²¹

The Commission's ruling in *Jellico v. CVE* is directly applicable to, and actually dispositive of, the issue before the Commission in this case. Here, BMR is served through a metering station at KU's Lynch Substation, well within KU's certified territory.²² Under the Commission's holding in *Jellico v. CVE*, "even though the power then travels through [BMR's] private line for ultimate usage [at Stillhouse Mine No. 2 in CVE's territory], the service boundaries of the two utilities are still respected since the 'electric consuming facilities' in [CVE's] territory are served by power from the 'central station source' in [KU's] territory."²³ For that reason, CVE's Complaint against KU fails to state a claim for violation of the Certified Territories Act and should be dismissed.

CONCLUSION

For purposes of this Motion, the facts as claimed by CVE in its Complaint and accompanying testimony and exhibits have been taken as true. Even accepting the facts as alleged by CVE to be true, it is clear that CVE has failed to state a claim upon which it can be granted the relief sought by this Commission. KU is delivering power to its customer at a point within its certified territory. That power is then transmitted by BMR, across its privately-owned distribution network, for use at a number of mining operations run by it or its affiliates, including Stillhouse Mine No. 2, which is located partially within the certified territory of CVE. The Commission has no jurisdiction over BMR's distribution network because BMR is not a utility

²¹ The Commission's jurisdiction covers only utilities within the state. KRS 278.040(2); *In the Matter of: The Application of Electric Energy, Inc. for a Certificate of Convenience and Necessity to Construct a Power Transmission*, Case No. 89-232 (Order of November 1, 1989). A "utility" is defined as one who "owns, controls, operates, or manages any facility used or to be used in connection with ... the generation, production, transmission, or distribution of electricity to or for the *public, for compensation*, for lights, heat, power, or other uses." KRS 278.010(3)(a). (Emphasis added).

²² Willhite Testimony, p. 6, lines 20-21; Agreed Statement of Facts, p. 3; Item 1 Vicinity Map.

as defined by KRS 278.010(3)(a) and, under the precedent of *Jellico v. CVE* – precedent established at CVE’s own urging – KU’s provision of power to BMR at the Lynch Substation is in compliance with the Certified Territories Act. For those reasons, CVE’s Complaint should be dismissed with prejudice and this matter should be closed on the Commission’s docket.

Respectfully submitted,



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Counsel for Kentucky Utilities Company

²³ *Jellico v. CVE*, pp. 5-6.

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 21st day of April, 2006:

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Counsel for Kentucky Utilities Company

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY

* * * * *

In the Matter of

THE COMPLAINT OF JELICO
ELECTRIC SYSTEM

VS.

CUMBERLAND VALLEY RURAL
ELECTRIC COOPERATIVE
CORPORATION

CASE NO. 6637

OPINION AND ORDER

Background

This complaint arises out of the substantial expansion of the operations of the Cal-Glo Coal Company ("Cal-Glo") and the concomitant need for a reliable and economical source of additional electrical power. Cal-Glo began its operations near Gatliff, Kentucky in 1967 by leasing substantial acreage in what is commonly called the Gatliff Tract in Whitley and Knox counties, Kentucky. This area lies within both the certified service areas of the Jellico Electric System ("Jellico") and the Cumberland Valley RECC ("Cumberland"). Cal-Glo's initial operations were within Jellico's service area (but only a few hundred feet from Cumberland's territory). Cal-Glo constructed its own line into Gatliff, Kentucky where it received electricity from Jellico. This Commission held that there was nothing improper in this action by Cal-Glo and this decision was affirmed by the courts.¹

As Cal-Glo's activities in this area expanded, it opened three underground mines in the adjacent area served by Cumberland and, accordingly, received the electrical power required for such mines solely from Cumberland. The coal produced from these three mines is then transported by truck to Cal-Glo's loading facilities in Gatliff, Kentucky, a distance of approximately two and one-half miles. Cal-Glo's present purchases of electricity from all sources thus breaks down as follows: Approximately 90% of all electricity

¹ Cumberland Valley Rural Electric Cooperative Corporation vs. PSC of Kentucky, 433 SW 2d 103 (Ky. 1968).

purchased is used at the three mines in Cumberland's territory and is supplied by Cumberland; the remaining 10% of purchased electricity comes from Jellico and is used to serve Cal-Glo's loading facilities and offices in Gatlin.

The Instant Proceeding

The present controversy between Jellico and Cumberland was precipitated by Cal-Glo's major expansion of its Gatlin facilities with the resulting increase in its electric power requirements. Specifically, Cal-Glo is currently constructing a unit train loading facility at its Gatlin terminal which will be operational in early 1977. This will require an increase in Cal-Glo's power requirements at Gatlin from the present 200 horse power to 800 horse power. Cal-Glo also plans to install new coal washing facilities within the next year, further increasing the company's power needs to 3,200 h.p. Additionally, Cal-Glo's long-range plans include the opening of three new mines in this area which would bring their total power needs to 6,500 horse power.

Cal-Glo presented its planned expansion program to Jellico and requested that the utility begin the necessary upgrading of its transmission lines in the Gatlin area so as to serve Cal-Glo's increased power requirements. In August, 1975, Jellico responded that it would construct the necessary 7.4 miles of 12.5 KV, 3 phase power lines required by Cal-Glo, but only if Cal-Glo itself would advance the necessary capital for such construction estimated to be \$133,000. Jellico proposed to reimburse this amount to Cal-Glo by reducing the company's power bill 10% annually for 10 years. The following year Cal-Glo proffered a second arrangement whereby Jellico would only have to expend \$22,000 to finance the immediate limited construction and improvement of Jellico's lines to serve the immediate needs of Cal-Glo. Again, Jellico required Cal-Glo to advance the capital with reimbursement to be made through future bill adjustments.

Cal-Glo rejected both proposals of Jellico, citing the financial hardship that would be incurred by Cal-Glo if it were forced to bear the cost of construction itself.² Instead, Cal-Glo opted to upgrade and extend by one-half mile an existing line owned by Cal-Glo which connected an abandoned mine east of Gatliff to an existing interconnection with Cumberland's facilities. This construction, which will serve the immediate needs of Cal-Glo's expanded operations, can be done at the relatively low cost of \$7,000 to the company. Moreover, with an additional expenditure of approximately \$30,000, Cal-Glo can utilize this private line to supply all of its projected future power needs at its Gatliff facilities by purchasing the power directly from Cumberland.

Jellico protested Cal-Glo's actions, alleging that Cumberland's proposal to sell power to the adjacent coal company infringed upon Jellico's certificated service area. Jellico accordingly filed a complaint with this Commission on September 13, 1976. A hearing was held in the Commission's offices in Frankfort, Kentucky on October 20, 1976 in which representatives of Jellico, Cumberland, and Cal-Glo participated.

At first appearance, the resolution of this case would seemingly involve only the relatively simple procedure of establishing the geographical location of each utilities' facilities and determining whether, in fact, there has been an illegal invasion of Jellico's certificated service area. However, the unusual facts giving rise to this controversy mandates further analysis into the relative equities on each side. The case, therefore, involves the very type of balancing of the various factors comprising the public interest equation for which administrative bodies were specifically created. Thus, it may well be that Cal-Glo has a "right", based upon this Commission's analysis of the evidence of record, to energize its new facilities by purchasing power from Cumberland rather than Jellico; if this Commission so holds in a

² The interest payments on the \$133,000 Cal-Glo would be forced to borrow under Jellico's plan would amount to over \$55,000 during the proposed ten year reimbursement period.

validly enacted order, then such action by Cal-Glo is "lawful".
Jallico's conflicting statement of the issue in this regard is
especially perplexing.³

Findings

Based upon the pleadings, evidence adduced at the hearing, and the supporting briefs of each party, the Commission makes the following findings:

(1) That the expansion of Cal-Glo's operations in Catliff, eventually requiring an eight-fold increase in electric power requirement constitutes a new electric-consuming facility;

(2) That Jallico Electric System is incapable to supplying this new facility without a large capital expenditure for new construction and that Jallico would undertake this construction only if the money was advanced to the utility by the customer seeking service;

(3) That with a relatively small expenditure Cal-Glo Company could upgrade an existing line owned by Cal-Glo to interconnect with the Cumberland Valley RECC, with such interconnection involving no duplication of existing facilities.

(4) That the Cal-Glo's purchase of electricity takes place within the service area of Cumberland, since the point of metering is the place of sale.

Analysis

Jallico vehemently argues that Cumberland is totally precluded from selling Cal-Glo any power which may be used in Jallico's territory. In support of this argument, Jallico quotes extensively from the provisions of K.R.S. 278.016 and 278.018 which relate to the division of the state into geographical service areas. However, Jallico would have this Commission to rigidly apply this provision based on purely geographical considerations. Neither this particular provision nor the public utility statute as a whole will support such reasoning.

³Brief for Complainant, p. 7.

The guiding principle in this, as in every case involving service to the public, is stated in K.R.S. 278.030 (2):

Every utility shall furnish adequate, efficient, and reasonable service and may establish reasonable rules governing the conduct of its business and the conditions under which it shall be required to render service. (Emphasis supplied).

Clearly the legislature intended to insure that a utility granted a monopoly power to serve a particular customer would, in turn, be required to maintain such service under reasonable conditions.

In the instant case, Jellico admits that the portion of its facilities located in Kentucky are inadequate to supply Cal-Glo's immediate and projected needs. Moreover, as a condition to agreeing to upgrade its facilities to provide this service, Jellico demands that Cal-Glo itself borrow the necessary funds (and bear the interest rate thereon) and advance the money to Jellico for the necessary construction. This Commission finds that such a condition is unreasonable under the above-quoted statute and would in itself be sufficient grounds for denying Jellico the right to serve Cal-Glo's new facilities at Gatliff.

However, equally persuasive is this Commission's finding that the new construction at Cal-Glo's Gatliff terminal facilities (involving an 800 percent increase in electrical power requirements) constitutes a new electric-consuming facility in any commonsensical interpretation of the phrase. Cal-Glo's total operations transcend the "border" of Jellico and Cumberland's certified territory. Accordingly, under the provisions of K.R.S. 278.018 (1), this Commission may determine which retail electric supplier shall serve this new facility.

Finally, this Commission agrees with the reasoning of Cumberland and Cal-Glo to the effect that the point at which Cumberland meters its electricity to Cal-Glo is the point where the actual service takes place. The 1974 amendment under K.R.S. 278.018(1) defines an electric-consuming facility to mean "everything that utilizes electric energy from a central station source". The "central station source" is Cumberland's metering station to Cal-Glo.

which is concededly in Cumberland's territory. Thus, even though the power then travels through Cal-Glo's private line for ultimate usage by Cal-Glo at Gatliff (i.e., in Jellico's territory), the service boundaries of the two utilities are still respected since the "electric consuming facilities" in Jellico's area are served by power from the "central station source" in Cumberland's territory. We believe this interpretation of the statute is reasonable in view of the legislature's stated intent in establishing service boundaries as set forth in pertinent part from K.R.S. 278.016:

To avoid wasteful duplication of distribution facilities, to avoid unnecessary encumbering of the landscape of the Commonwealth of Kentucky, to prevent the waste of materials and natural resources, for the public convenience and necessity and to minimize disputes between retail electric suppliers which may result in inconvenience, diminished efficiency and higher costs in serving the consumer***

This Commission believes that the application of the above-stated principles to the instant case mandates our decision in favor of Cumberland's serving Cal-Glo's new facilities at Gatliff. By a relatively small expenditure of funds and a minimum of new construction, Cal-Glo can immediately implement all but the final phase of its expanded operations at Gatliff. Moreover, if Cal-Glo decides to open the three new mines in the Gatliff area at some date in the future, this too can be done with a much lower financial and environmental cost by taking the required power from Cumberland.

IT IS THEREFORE ORDERED That the Complaint filed by Jellico Electric System versus the Cumberland Valley R.E.C.C. be dismissed.

IT IS FURTHER ORDERED That Cumberland Valley R.E.C.C. shall have the right to supply electrical service to the new coal-loading facilities operated by Cal-Glo Coal Company at Gatliff, Kentucky as more fully set forth in the record herein.

Done at Frankfort, Kentucky, this 22nd day of February,

1977.

By the Commission

ATTEST:

Secretary

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