

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION  
CASE NO. 2006-00495

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PUBLIC SERVICE  
COMMISSION

In the Matter of:

WALTER CALLIHAN,

COMPLAINANT,

VS. *RESPONSE OF GRAYSON RURAL ELECTRIC  
COOPERATIVE CORPORATION TO THE JANUARY 5, 2007  
ORDER OF COMMISSION AND DECEMBER 12, 2006  
MOTION OF COMPLAINANT*

GRAYSON RURAL ELECTRIC  
COOPERATIVE CORPORATION,

DEFENDANT.

Comes now the Defendant, Grayson Rural Electric Cooperative Corporation (hereinafter "*Grayson*"), and for its response to the motion of the Complainant, states as follows:

1. Grayson respectfully submits that the Complainant Walter Callihan's assertions that Grayson must initiate an action against Complainant to recover monies owed, is misplaced. Grayson has no obligation at all to pursue collection of a debt as a condition precedent to denial of electric service for nonpayment of previous service provided to the Complainant.
2. As this Commission is well aware, the defense of Statute of Limitations is one which must be pled in an action to recover that debt or else that defense would be barred.
3. The limitation of actions set forth in the applicable statute is not something which on its own bars recovery but is simply a defense. Were Grayson to initiate an action, it would be incumbent upon Complainant to assert an alleged Statute of Limitations as a defense otherwise the action could proceed.

4. The Complainant is further incorrect in his assertions that a four year statute of limitation applies since the statute to which the Complainant makes reference does not define electricity as a “goods”. In point of fact, G&K Dairy vs. Princeton Electrical Plant Board, Western District of KY (1991) 781 F. Supp.485 determined that electricity was not a “good”.
5. Grayson further relies upon Administrative Regulation 807 KAR 5:006 Section 14(f) as a complete bar to the complaint of the Complainant. That regulation provides that a “utility may terminate service at a point of delivery for nonpayment of charges incurred for utility service at that point of delivery”.
6. The indebtedness that the Complainant has to Grayson is a just debt arising out of the Complainant’s nonpayment for electric service about which there has been considerable testimony and documentation evidencing same in Kentucky Public Service Commission Case No. 2005-00280.
7. Grayson refers the Commission to the above-referenced 2005-00280 and asks that the responses filed therein by Grayson, particularly the answer of Grayson to the Commission Staff’s Interrogatories and Request for Production of Documents and the deposition testimony of President Carol Hall Fraley be adopted as further response by Grayson in the within matter.
8. The Commission initiated an investigation in Case No. 2005-00280 but has rendered no decision as a result of that investigation. In that action, Grayson has gone through considerable time and expense to document once again the obligation that the Complainant has to Grayson.
9. Grayson has never denied Mr. Callihan electric service except for nonpayment of service already provided. Grayson has repeatedly told Mr.

Callihan, and has repeatedly told the Commission, that upon payment of the outstanding indebtedness of a little over \$700.00, execution of the application for service, and compliance with all other rules and regulations of the Cooperative and the Commission, that Mr. Callihan would have electric service provided to him. As the Commission knows, however, Mr. Callihan has refused to abide by those rules and regulations and has refused to pay for electric service previously provided to him.

10. No new request has been made by Mr. Callihan tendered with payment for outstanding sums owed. Therefore, the motion should be denied or the Commission should set a hearing or the Commission should rule in Case No. 2005-00280 concluding that Grayson has violated no rules or regulations of the Commission nor any other law denying electric service to the Complainant.

*WHEREFORE*, the Defendant, Grayson Rural Electric Cooperative Corporation respectfully submits that the motion of the Complainant be denied, that the Commission take notice of the proceedings and filings in Case No. 2005-00280, and that this matter be dismissed.

RESPECTFULLY SUBMITTED,

W. JEFFREY SCOTT, P.S.C.

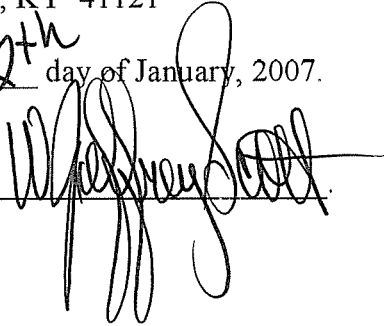
BY: 

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GRAYSON, KY 41143  
(606) 474-5194

This is to certify that the foregoing has been served upon the parties herein by mailing a true and correct copy of same to:

Mr. Walter Callihan  
P.O. Box 17  
Argillite, KY 41121

This 12<sup>th</sup> day of January, 2007.

  
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