

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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In the Matter of:

HENDERSON UNION RURAL)	
ELECTRIC COOPERATIVE CORPORATION)	
)	
VS.)	CASE NO. 9454
)	
KENTUCKY UTILITIES COMPANY)	

O R D E R

On December 2, 1985, Kentucky Utilities Company ("KU") filed an answer and counterclaim to the complaint of Henderson Union Rural Electric Cooperative Corporation ("Henderson Union"). On December 9, 1985, Henderson Union filed a motion to strike and dismiss KU's counterclaim on the grounds that: (1) the Commission's regulations do not authorize the filing of a counterclaim; (2) the counterclaim arises out of facts and circumstances dissimilar to those in the complaint and are not relevant thereto; (3) the counterclaim fails to show that an actual case or controversy exists with the complainant; and (4) the allegations of the counterclaim are too vague and imprecise to sufficiently state a claim for relief.

On December 12, 1985, KU filed both a response to Henderson Union's motions and a motion to amend its answer and counterclaim. KU argues that Henderson Union's motions should be denied on the grounds that: (1) the Commission's regulations do not specifically prohibit counterclaims and should be liberally

interpreted to permit them; (2) the complaint and counterclaim are between the same utilities, arise under the same statute and involve the same legal issue; (3) the counterclaim could have been filed as a separate complaint against Henderson Union along with a motion for consolidation with Henderson Union's complaint. With respect to its motion to amend, KU asserts that while it believes its answer and counterclaim to be sufficient, it desires to amend its pleadings to eliminate the questions of sufficiency raised by Henderson Union. The substance of KU's amendment is to add the affirmative defense of estoppel to both its answer and counterclaim.

In reply to KU's response, Henderson Union alleges that the counterclaim arose from an incident in 1982 when a mining customer extended its operations from KU's service territory into Henderson Union's, whereas the present complaint involves an alleged error in establishing Henderson Union's existing certified territory boundary.

Based on the evidence of record and being advised, the Commission is of the opinion and hereby finds that the regulations governing the filing of complaints against a utility, 807 KAR 5:001 Sections 12 and 13, neither prohibit nor expressly permit the filing of a counterclaim. Under these circumstances, the Commission finds that a counterclaim should be permitted only when it arises from the same nucleus of operative facts as the complaint, involves the same legal issues and would lead to administrative efficiency. Henderson Union's complaint raises the issue of a utility's authority to continue serving a customer

whose load lies within the certified territory of another utility, whereas the counterclaim involves a utility's right to continue serving a customer whose load has grown from within the serving utility's certified territory into another utility's territory. While both the complaint and counterclaim involve the same utilities and the same statute, the legal issues presented are dissimilar. Consequently, Henderson Union's motion to strike KU's counterclaim should be granted.

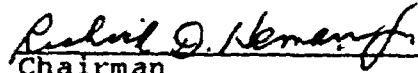
The Commission has the discretionary authority, pursuant to 807 KAR 5:001 Section 3(5), to allow KU to amend its answer. KU's amended answer, filed 10 days subsequent to its answer, pleads the affirmative defense of estoppel. Based on the fact that this case is still in a preliminary stage and a hearing has not yet been held, the Commission finds that KU's motion to amend its answer should be granted.

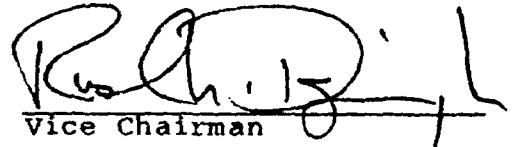
IT IS THEREFORE ORDERED that:

1. Henderson Union's motion to strike and dismiss KU's counterclaim be and it hereby is granted without prejudice.
2. KU's motion to amend its answer be and it hereby is granted.

Done at Frankfort, Kentucky, this 3rd day of January, 1986.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:

Secretary