

Creek commenced this action seeking to have KU's and Henderson-Union's existing territorial lines altered to permit Henderson-Union to serve its mine.

Wolf Creek now moves for Commission authorization of temporary service by Henderson-Union to the mine site. In support of its motion, Wolf Creek contends that, if its mining operations do not begin immediately, it will be unable to produce sufficient coal to meet its contractual obligations and will be forced into financial ruin. Wolf Creek's mine requires 69 KV service. KU's nearest 69 KV lines are 3-1/2 miles away from the mine site. It will take KU six months to extend these lines to the mining site. Henderson-Union can provide immediate electric service.

Wolf Creek claims that it is "caught in the middle of a power struggle between two utility giants." Its president testified that he conferred with KU officials in March 1989 about service to the new mine and was referred to Henderson-Union. Given the length and cost of the line extension required to serve the mine and the existence of the nearby 69 KV line of Big Rivers, all agreed that "it was foolish to think of building such a line."¹ Shortly thereafter, Wolf Creek sought electric service from Henderson-Union, which readily agreed to provide it until discovering that the mine's opening and substation were in KU's certified territory. Despite its earlier advice, KU now refuses to consent to service by Henderson-Union.

¹ Transcript of Evidence ("T.E.") at 16.

KU disputes these contentions and maintains that Wolf Creek comes before the Commission with unclean hands. It asserts that Wolf Creek was advised by KU of the need for a line extension and its cost. Wolf Creek was further advised that, since the mining site was near the Henderson-Union - KU territorial boundary, "it would be better for Wolf Creek if they could locate the mine substation in Henderson-Union territory."² Having failed to follow this advice and to properly plan the location of its mining site, KU maintains, Wolf Creek now has "no standing to demand this Commission ignore the law. . . and award service to [Henderson-Union] RECC in KU's territory."³

The Commission finds that although it may have made an ill-advised choice in the location of its mining site, Wolf Creek has not acted in bad faith. Wolf Creek's president testified that the issue of the certified territorial line was not a factor in determining the mine's location. He was instead seeking "the spot that would best line up without handling of the coal and running of belt lines. . . for the life of the mine."⁴ The costs of locating the mine on either side of the territorial line did not differ significantly.

² Affidavit of Robert M. Pfingston at 2.

³ T.E. at 32. KU advised the Commission at the April 20, 1990 hearing in this matter that it has no objection to Henderson-Union providing service while KU extends its 69 KV line to the mine site.

⁴ T.E. at 17.

The Commission further finds that Wolf Creek is in dire need of electric service at its mine site. Unless its underground mining operations begin shortly, it will be unable to meet its contractual obligations. Wolf Creek has no other operations from which to obtain coal. If these contractual obligations are not met, the Commission is of the opinion that Wolf Creek will suffer irreparable injury.

The Commission has also considered KU's contention that authorization of temporary service in this instance would be inconsistent with the result in Case No. 89-349,⁵ wherein the Commission denied a similar violation by KU to serve on an interim basis a mining site operated by Pyro Mining Company ("Pyro"). The facts of that case are distinguishable. Pyro's mining site was not yet operational and was not scheduled to begin operations for several months. Pyro suffered no hardship by the Commission's denial of KU's motion. In the present case, Wolf Creek's mining operations are ready to begin and must begin if the company is to avoid financial disaster. Denial of service would work an extreme hardship. Granting Wolf Creek's motion, therefore, would not conflict with past precedent.

IT IS THEREFORE ORDERED that:

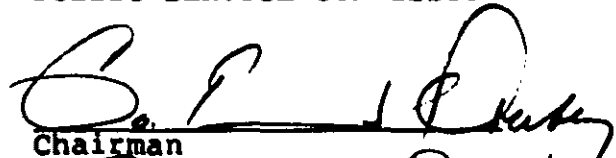
1. Wolf Creek's motion is granted.
2. Pending a final decision in this matter, Henderson-Union is authorized, effective April 20, 1990, to provide electric service to Wolf Creek's new mining site in Union County, Kentucky.

⁵ Case No. 89-349, Kentucky Utilities Company v. Henderson-Union Rural Electric Cooperative Corporation.

3. Nothing contained herein shall be construed as an adjudication of any matter set forth in Wolf Creek's complaint or of KU's right to serve the Wolf Creek mining site.

Done at Frankfort, Kentucky, this 25th day of May, 1990.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman

Commissioner

ATTEST:


Executive Director