

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

|   |   |          |
|---|---|----------|
| CUMBERLAND VALLEY RURAL ELECTRIC<br>COOPERATIVE CORPORATION | ) |          |
|   | ) |          |
| COMPLAINANT   | ) |          |
|   | ) |          |
| VS.   | ) | CASE NO. |
|   | ) | 90-112   |
| KENTUCKY POWER COMPANY                                      | ) |          |
|   | ) |          |
| DEFENDANT   | ) |          |

O R D E R

On December 10, 1990, after extensive discovery had been conducted but prior to a hearing in this matter, the parties submitted a Settlement Agreement resolving all disputed issues in this matter and jointly moved for dismissal of this case.

After reviewing the Settlement Agreement, the Motion to Dismiss, the evidence of record, and being otherwise sufficiently advised, the Commission finds that:

1. Kentucky Power Company ("Kentucky Power") and Cumberland Valley Rural Electric Cooperative Corporation ("Cumberland Valley") are "retail electric suppliers" as defined in KRS 278.010(4).
2. Kentucky Power and Cumberland Valley have adjacent certified service territories in Leslie County, Kentucky.
3. Shamrock Coal Company ("Shamrock") presently operates an underground coal mine in Leslie County, Kentucky, within Kentucky Power's certified service territory. These operations are collectively known as its Beech Fork Mining operations.

4. Shamrock intends to expand the underground portion of its Beech Fork Mining operations through the use of new long-wall deep mining equipment.

5. Shamrock's long-wall mining plans call for underground mining to occur under and within the certified service territory of both Kentucky Power and Cumberland Valley.

6. On December 10, 1990, Kentucky Power, Cumberland Valley, and Shamrock entered into a Settlement Agreement, appended hereto,<sup>1</sup> for the purpose of designating the retail electric supplier which shall serve these newly expanded operations and any future expansion of the Beech Fork Mining operations.

7. The Settlement Agreement will avoid wasteful duplication of distribution facilities, will avoid unnecessary encumbering of the landscape of the Commonwealth, and will prevent the waste of materials and natural resources.

8. The agreement is reasonable, will promote the purposes of KRS 278.016, and will provide for adequate and reasonable service to Shamrock's Beech Fork Mining operations.

9. Given the finding reached in paragraph 8 above, KRS 278.018(6) requires Commission approval of the Settlement Agreement.

IT IS THEREFORE ORDERED that:

1. The Settlement Agreement, appended hereto, is incorporated into this Order as if fully set forth herein.

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<sup>1</sup> Because of technical difficulties in reproducing Exhibit A, it has been omitted from the copy of the Settlement Agreement appended hereto.

2. The terms and conditions set forth in the Settlement Agreement are adopted and approved.

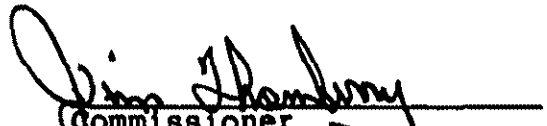
3. The Parties' Motion to Dismiss is granted. This case is hereby dismissed with prejudice.

Done at Frankfort, Kentucky, this 29th day of January, 1991.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ATTEST:

  
Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 90-112 DATED 1/29/91

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

In the Matter of:

DEC 10 1990

CUMBERLAND VALLEY RURAL ELECTRIC )  
COOPERATIVE CORPORATION )

PUBLIC SERVICE COMMISSION

COMPLAINANT )

vs. )

CASE NO. 90-112

KENTUCKY POWER COMPANY )

DEFENDANT )

\* \* \* \* \*

SETTLEMENT AGREEMENT

This Settlement Agreement, made and entered into this 10<sup>th</sup> day of December 1990, between and among Cumberland Valley Rural Electric Cooperative, Kentucky Power Company and Shamrock Coal Company:

WITNESSETH

Whereas Shamrock Coal Company is currently intending to expand its Beech Fork Mining operations through the use of new long-wall deep mining equipment; and

Whereas Kentucky Power Company currently supplies retail electric power to Shamrock Coal Company at its Beech Fork location; and

Whereas Shamrock's long-wall mining plans for its Beech Fork location currently call for underground mining to occur under and within the certified service territory of both Kentucky Power Company and Cumberland Valley Rural Electric Cooperative; and

Whereas a dispute has arisen between Cumberland Valley Rural Electric Cooperative and Kentucky Power Company over the right to provide retail electric service to Shamrock Coal Company at its Beech Fork location; and

Whereas Cumberland Valley Rural Electric Cooperative, as a result of the above-described dispute, has filed two Complaints before the Kentucky Public Service Commission; to wit, Cumberland Valley Rural Electric Cooperative v. Kentucky Power Company, Case No. 90-112 (in which Shamrock Coal Company has intervened) and Cumberland Valley Rural Electric Cooperative v. Kentucky Power Company, Case No. 90-332, and

Whereas the parties hereto are desirous of reaching a settlement with regard to the claims and issues raised in the above-styled administrative litigation, and are further desirous of establishing a means and mechanism for addressing future retail electric service to Shamrock Coal Company.

NOW THEREFORE, for and in consideration of the covenants and premises set forth hereinabove, the parties agree as follows:

1. Cumberland Valley Rural Electric Cooperative shall DISMISS its pending two Complaint proceedings against Kentucky Power Company, Case Nos. 90-112 and 90-332, with prejudice.
2. Kentucky Power shall provide Shamrock Coal Company with retail electric service to be used in Shamrock's currently planned long-wall mining operation for the Beech Fork Mine, said area being designated and colored in pink on the Map attached hereto as Appendix A and included herein as if fully set out.

3. The designated boundary line as shown on Appendix A marking the certified service areas for Cumberland Valley Rural Electric Cooperative and Kentucky Power Company shall remain unchanged.

4. Shamrock Coal Company has designated by a yellow boundary marking on Appendix A that area of coal reserves currently underlying Cumberland Valley's service territory which represent the lesser of either:

(a) The outer limit of coal reserves capable of being mined with electric power delivered from the existing bore hole located in Kentucky Power's service territory; or

(b) Those boundaries of coal reserves reasonably foreseeable to be obtained and mined by Shamrock in the area immediately adjacent to the south or southeast of the existing service boundary line.

The yellow-marked boundary represents reserve area which is the lesser of the reserves under either subparagraph 4(a) and subparagraph 4(b) above, and is further bounded on the east by United States Highway 421 in Leslie County, Kentucky.

5. In the event Shamrock Coal Company is successful in obtaining mineable reserves in the area south or southeast of the existing Cumberland Valley/Kentucky Power service boundary and circumscribed in yellow on Appendix A, Shamrock will give written Notice to both Cumberland Valley Rural Electric Cooperative and

Kentucky Power Company of its intent to extend its mining operations into said area at least twelve (12) months prior to the commencement of such mining - provided such twelve (12) month Notice is feasible. If circumstances prevent Shamrock from giving such twelve (12) month notice, Shamrock will give as much Notice as is possible from the date the pertinent coal reserves are obtained.

6. Upon receipt of the Notice described in paragraph 5 above, the parties hereto shall promptly commence discussions to determine the retail electric supplier and manner of retail service for Shamrock's proposed mining into the area south or southeast of the existing boundary line and circumscribed in yellow on Appendix A. In the event the parties cannot agree to the retail electric supplier to serve Shamrock's coal mining load within the area circumscribed in yellow on Appendix A, then Shamrock shall have the right to choose between Cumberland Valley and Kentucky Power to be its retail electric supplier. Should Shamrock choose Kentucky Power as its retail electric supplier, then Shamrock shall pay to Cumberland Valley (as compensation for the rights and claims surrendered by Cumberland Valley in this Settlement Agreement) an amount of compensation based upon the power consumed by Shamrock in the yellow area, and based further upon the following factors and considerations:

- (a) The capital cost investment which will be saved by Shamrock by having Kentucky Power serve the additional mining load;

- (b) The capital cost investment which will be saved, if any, by Cumberland Valley and East Kentucky Power (Cumberland Valley's wholesale electric supplier) by not having to serve Shamrock's additional mining load;
- (c) The difference in retail electric rates, if any, between Cumberland Valley and Kentucky Power;
- (d) The rate of return then being enjoyed by Cumberland Valley from similar industrial customers;
- (e) The operating costs, including fuel, saved by Cumberland Valley by not having to serve Shamrock's additional mining load;
- (f) The then current concurrent exchange rate between Kentucky Power Company and East Kentucky Power Cooperative, Inc.; and,
- (g) Any and all other factors necessary to assure a fair compensation to Cumberland Valley for the lost opportunity to serve Shamrock in the yellow area.

Should Shamrock choose Cumberland Valley as its retail electric supplier, then no compensation shall be due to Kentucky Power under the terms of this Paragraph of the Settlement Agreement.

7. Any mining undertaken by Shamrock Coal Company on the quadrangle shown on Appendix A beyond the area circumscribed in yellow and exclusively in Cumberland Valley's service territory



shall be served by Cumberland Valley Rural Electric Cooperative, unless otherwise agreed to by the parties.

8. Any Notices called for under the terms of this Settlement Agreement shall be mailed certified mail return receipt requested to:

Kentucky Power Company  
P. O. Box 1428  
Ashland, Kentucky 41105-1428

Cumberland Valley Rural Electric Cooperative  
P. O. Box 440  
Gray, Kentucky 40734

9. This Settlement Agreement constitutes the entire understanding and agreement among the parties relating to the subject matter hereof and any other prior oral or written terms, understandings, representations, proposals or conditions that might have preceded this Agreement shall be deemed merged into this Settlement Agreement and otherwise be Null and Void and of no legal effect.

10. This Settlement Agreement shall be provided to the Kentucky Public Service Commission as an attachment to Cumberland Valley's Motion to Dismiss its Complaint in Case No. 90-112.

11. The undersigned have authority on behalf of their respective companies and/or cooperatives to execute this Settlement Agreement and to bind said companies and/or cooperatives to the terms hereof.

IN WITNESS WHEREOF, the parties hereto have affixed their  
signatures.

  
CUMBERLAND VALLEY RURAL ELECTRIC  
COOPERATIVE

  
KENTUCKY POWER COMPANY

  
SHAMROCK COAL COMPANY