COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

HENDERSON-UNION RURAL ELECTRIC COOPERATIVE CORPORATION	)	
COMPLAINANT	)	
V.	)	CASE NO. 93-211
KENTUCKY UTILITIES COMPANY	)	
DEFENDANT	)	

O R D E R

By Order dated March 3, 1994, the Commission authorized Kentucky Utilities Company ("KU") to provide electric service to Gary E. Peyton operating as Union County Coal Company ("Union County"), at a proposed mining site in Union County, Kentucky. The decision was based on a finding that the proposed mining site constituted a new electric consuming facility located within adjacent service territories certified to KU and Henderson-Union Rural Electric Cooperative Corporation ("Henderson-Union"). Then, applying the statutory criteria set forth in KRS 278.017(3) for determining which utility should be awarded the right to serve this facility, the Commission determined that: 1) KU had existing facilities adequately sized to serve the anticipated load which were in closer proximity than those of Henderson-Union; and 2) the cost of extending electric service from KU would be significantly less.

The Commission subsequently granted a request for rehearing by Henderson-Union on the issue of providing electric service to a coal washing facility owned by Mr. Peyton and located in Henderson-Union's service territory. On rehearing, Henderson-Union maintains that the coal washing facility is separate and distinct from the underground mine and argues that it is a different customer because it is owned and operated by Mr. Peyton individually whereas the mine is owned and operated through a corporation wholly-owned by Mr. Peyton.

KU objects to Henderson-Union's interpretation and argues that the territorial boundary statute, KRS 278.016-278.018, does not distinguish between customers but focuses on the term "electric consuming facility" which is defined in KRS 278.010(8) as everything that utilizes electric energy from a central station source. KU cites as controlling precedent the decision in Owen County Rural Electric Coop. Corp. v. Public Service Comm'n, Ky.App., 689 S.W.2d 599 (1985), and states that since an industrial park was classified as an electric consuming facility in that case, the total mining operation including the coal washing facility is properly classified as a new electric consuming facility in this case.

Based on the evidence of record and being advised, the Commission hereby finds that the coal washing facility will be used to clean coal produced in the underground mine and is an integral part of the overall mining operation. Thus, the underground mine operation and the coal washing facility constitute but one electric

consuming facility. This decision will avoid the needless duplication of utility facilities which would otherwise result if service was awarded to Henderson-Union and is consistent with the Owen County case. However, this decision is without prejudice to Henderson-Union's right to relitigate the territorial boundary issue in the event that the proposed underground mine operation is not developed or, subsequent to its development, is abandoned.

IT IS THEREFORE ORDERED that KU be and it hereby is authorized to provide electric service to a coal washing facility to be operated by Mr. Peyton in conjunction with an underground mining operation in Union County, Kentucky.

Done at Frankfort, Kentucky, this 29th day of July, 1994.

PUBLIC SERVICE COMMISSION

Chairman

Vice Chairman

Commissioner

ATTEST:

Executive Director