

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

HENDERSON UNION ELECTRIC)	
COOPERATIVE CORPORATION)	
)	
COMPLAINANT)	
v.)	CASE NO. 98-049
)	
KENTUCKY UTILITIES COMPANY)	
)	
DEFENDANT)	

O R D E R

On January 29, 1998, Henderson Union Electric Cooperative Corporation (Henderson Union) filed a formal complaint against Kentucky Utilities Company (KU) alleging that, based on information and belief, KU had entered into an agreement to provide retail electric service to a new electric consuming facility located within Henderson Union s territory as certified pursuant to KRS 278.016-278.018. The new electric consuming facility was identified as Black Diamond Resources, Inc. (Black Diamond), for electrical power at a new mine known as Shamrock No. 9 Mine Opening in Hopkins County, Kentucky. KU filed an answer to the complaint denying that the new electric consuming facility would be located exclusively within Henderson Union s certified territory and asserting that it would be located in the adjacent certified territories of KU and Henderson Union.

An informal conference was held at the Commission's offices on June 19, 1998. A procedural schedule was entered, but it was held in abeyance when Henderson Union and KU requested an extended opportunity to discuss a settlement. Henderson Union and KU eventually filed on February 18, 1999, a Settlement Agreement which is intended to be a full and complete resolution of the issues raised in this case.

The Settlement Agreement provides that as between KU and Henderson Union, KU shall be the exclusive provider of retail electric service to the electric consuming facilities of Black Diamond or its affiliates, successors, or assigns, relating to or required for mining the coal reserves in Hopkins and Webster counties, Kentucky and as depicted on a territorial map appended to the Settlement Agreement. The Settlement Agreement further provides that the stipulation is not intended to allocate service territories but is limited to an allocation of one consumer, Black Diamond.

Black Diamond filed a motion to intervene and a coal reserve development map, along with a request that the map be afforded confidential protection. However, Black Diamond subsequently filed a notice on March 24, 1999 requesting to withdraw its intervention and the return of its map on the basis of the Settlement Agreement.

Based on the Settlement Agreement and being sufficiently advised, the Commission finds that the allocation to KU of the electric consuming facilities of Black Diamond as more fully described within the Settlement Agreement will result in the orderly development of retail electric service, avoid wasteful duplication of distribution facilities, avoid unnecessary encumbering of the landscape, prevent the waste of materials and natural resources, promote the public convenience and necessity, and

minimize disputes which may result in inconvenience, diminished efficiency, and higher costs in serving consumers. Further, the Settlement Agreement will result in adequate and reasonable service to the one affected consumer. Therefore, pursuant to KRS 278.018(6), the Settlement Agreement should be accepted and approved for the purpose of allocating to KU the described facilities of one consumer, Black Diamond.

IT IS THEREFORE ORDERED that:

1. The Settlement Agreement jointly filed by Henderson Union and KU allocating to KU the described facilities of a new consumer, Black Diamond, is accepted as a full and complete resolution of the issues raised in this case.

2. Black Diamond's request to withdraw its motion to intervene is granted and the map it filed shall be returned to it.

3. Within 20 days of the date of this Order, Henderson Union and KU shall jointly file a revised territorial boundary map reflecting the extent to which the electric consuming facilities of Black Diamond are allocated to KU and the number of this case.

4. Henderson Union's complaint is dismissed as settled and this case is closed.

Done at Frankfort, Kentucky, this 6th day of April, 1999.

By the Commission

ATTEST:

Executive Director