

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

|                    |   |                     |
|--------------------|---|---------------------|
| JONATHAN S. ROLAND | ) |                     |
|                    | ) |                     |
| COMPLAINANT        | ) |                     |
|                    | ) |                     |
| v.                 | ) | CASE NO. 2003-00057 |
|                    | ) |                     |
| KENERGY CORP.      | ) |                     |
|                    | ) |                     |
| DEFENDANT          | ) |                     |

O R D E R

On February 19, 2003, Complainant filed a formal complaint with the Commission against Kenergy Corp. ( Kenergy ) alleging that although he resides in Kentucky Utilities Company's ( KU ) certified territory, he is a Kenergy customer. Complainant asks that the Commission order Kenergy to release him as a customer and allow KU to provide him electric service. Kenergy, in its answer, denies that it must release Complainant as a customer.

On May 13, 2003, the Commission issued an Order naming KU as a party to the case and directing KU to file its comments on Complainant's claim. KU's comments indicate that it is willing and able to extend service to Complainant.

BACKGROUND

Kenergy, or its predecessor, Henderson Union Electric Cooperative Corporation, has provided electric service to Complainant's address since at least 1949. In 1972, when certified areas for electric were created pursuant to KRS 278.016, KRS 278.017

and KRS 278.018, the territorial boundaries inadvertently included Complainant in KU's certified area, despite his status as an existing Kenergy customer. This oversight did not become apparent until the filing of this complaint.

It appears from the record that Complainant is the only person served by Kenergy in this area. KU has stated that it has electric facilities located within 200 feet of Complainant's property and has expressed its willingness to extend service from these facilities to Complainant's property.

### DISCUSSION

In 1972, the General Assembly enacted KRS 278.016 to KRS 278.018 which provide for the establishment of certified areas in which an electric utility has sole authority to provide service. The boundaries of the certified areas were subsequently established either by Commission Order or agreement between bordering electric utilities.

Complainant's residence should have been included in Kenergy's certified area because Kenergy was already serving the property. The reasons for this oversight are unclear and are unimportant to the outcome of this case.

KRS 278.018(4) provides, in pertinent part, that:

[N]o retail electric supplier shall furnish, make available, render or extend retail electric service to any electric-consuming facility to which such service is being lawfully furnished by another retail electric supplier on June 16, 1972 .

This applies to Complainant, as Kenergy has been supplying his address with service since at least 1949. KU, therefore, is seemingly barred from serving Complainant. The Commission, however, despite KRS 278.018(4), has the power to

switch Complainant's electric service provider if the Commission finds that the current electrical provider is not providing adequate electric service. KRS 278.018(3).<sup>1</sup>

KRS 278.010 defines adequate service as:

[H]aving sufficient capacity to meet the maximum estimated requirements of the customer to be served during the year following commencement of permanent service and to meet maximum estimated requirements of other actual customers to be supplied from the same lines or facilities during such year and to assure customers of reasonable continuity of service.

The Commission, when it determines the boundaries of certified areas, takes into account several factors including [w]hich supplier was first furnishing retail electric service,<sup>2</sup> and the adequacy and dependability of existing distribution lines to provide dependable, high quality retail electric service....<sup>3</sup>

The question is, then, whether Kenergy is providing Complainant with adequate service. The Commission, in order to make this determination, has reviewed information from both KU and Kenergy relating to their respective provision of service in the area. As there are no allegations of insufficient capacity, and no evidence that such an insufficiency exists, the Commission is restricted to analyzing the continuity of Complainant's service.

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<sup>1</sup> Ordering such a switch of providers can occur only after a hearing. After the hearing, the Commission must determine what is causing the inadequate service and order the recalcitrant utility to fix the problem giving the utility ample time in which to correct the problem. If the utility fails to correct the problem, only then may the Commission order another electric utility to supply service.

<sup>2</sup> KRS 278.017(3)(a).

<sup>3</sup> KRS 278.017(3)(c).

According to Kenergy's records, Complainant has lost power on seven separate occasions since January 1, 2002, for a total of 9 hours and 56 minutes. This interruption of continuity of service is not unreasonable.

Underscoring the adequacy of Kenergy's service is KU's information regarding power outages in the area. KU supplied information regarding the facilities from which Complainant would receive service if KU renders it. If Complainant were KU's customer on these facilities, he would have lost power on four separate occasions since January 1, 2002, for a total of 12 hours and 15 minutes. If Complainant had been a KU customer, rather than a Kenergy customer, he would have been without power for more than 2 hours longer.

It is apparent from the record that Kenergy is providing adequate service to Complainant and that, therefore, no basis exists for ordering KU to serve Complainant.

IT IS THEREFORE ORDERED that this complaint is dismissed with prejudice and is removed from the Commission's docket. This is a final and appealable Order.

Done at Frankfort, Kentucky, this 2<sup>nd</sup> day of September, 2003.

By the Commission

ATTEST:

  
Executive Director