

Exhibit 1

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT PADUCAH

TENNESSEE VALLEY AUTHORITY,
ET AL.,
PLAINTIFFS,

v. CIVIL ACTION
NO. 79-0009-P

ENERGY REGULATORY COMMISSION
OF KENTUCKY (FORMERLY
PUBLIC SERVICE COMMISSION
OF KENTUCKY),
DEFENDANTS.

SUMMARY JUDGMENT

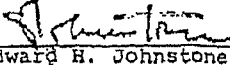
For the reasons stated in the Memorandum Opinion
this day entered,

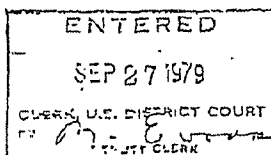
IT IS ORDERED AND ADJUDGED that the plaintiffs'
motion for Summary Judgment be, and hereby is, SUSTAINED.

This is a final and appealable judgment and there is
no just cause for delay.

IT IS FURTHER ORDERED that enforcement of plaintiffs'
injunction be STAYED during the time in which any notice
of appeal may be filed.

DATED: September 25, 1979.


Edward H. Johnstone
Judge, United States District Court



UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT PADUCAH

TENNESSEE VALLEY AUTHORITY,
ET AL.,
PLAINTIFFS,

v.

CIVIL ACTION
NO. 79-0009-P

ENERGY REGULATORY COMMISSION
OF KENTUCKY (FORMERLY
PUBLIC SERVICE COMMISSION
OF KENTUCKY),
DEFENDANTS.

MEMORANDUM OPINION

Plaintiffs, Tennessee Valley Authority (TVA) and various distributors of TVA electric power in Kentucky brought suit under 28 U.S.C. §§1331, 1337, 1345 and 2201-2202 asking for declaratory and injunctive relief preventing the Energy Regulatory Commission of Kentucky (ERC) from exercising any authority over the rates charged by the TVA distributors. Plaintiffs have moved for summary judgment. The Court is of the opinion that this motion should be granted.

The TVA, a United States Government corporation, was created by the Tennessee Valley Authority Act of 1933. The act authorizes the TVA to generate and sell electric power under contracts for terms of up to twenty years. In 1935 Section 10 of the Tennessee Valley Authority Act was amended to provide that:

. . . the [TVA] Board is authorized to include in any contract for the sale of power such terms and conditions, including resale rate schedules, and to provide for such rules and regulations as in its judgment may be necessary or desirable for carrying out the purposes of this Act. . . .

49 Stat. 1076 (1935), 16 U.S.C. §831i (1976).

Pursuant to this congressional grant of authority, the TVA contracted to sell electrical power to plaintiff TVA distributors. These distributors then resell the power to consumers in Kentucky.

One purpose of Congress in creating the TVA was to establish a "yardstick" with which to measure utility rates around the country. That is, by charging TVA with the duty to supply electrical power at the lowest possible cost, a national standard of fairness was established with regard to utility rates. In describing the TVA yardstick, the 1938-1939 Joint Congressional Committee report placed special emphasis on the retail rates charged by TVA distributors:

(B) The Yardstick

The resolution in subsection (g) directs the committee to investigate "Whether by accounting methods and cost charges applicable to private industry, the electric rates of the Authority provide a legitimate, honest 'yardstick' of equitable rates of private industry.

...
Regardless of the numerous and conflicting descriptions of the yardstick, it can be defined as follows: The yardstick is not in the Authority's wholesale rates, but in the retail rates of the various municipalities and other local organizations that have purchased Authority power and distributed it at unusually low rates. If their operations are shown to be of a kind that may be substantially duplicated in other parts of the country, their rates may be considered a Nationwide yardstick, or measure of results to be expected.

Report of the Joint Comm. on the Investigation of the Tennessee Valley Authority, S. Doc. No. 56, 76th Cong., 1st Sess., pt. 1, at 179, 190, 197-98 (1939).

On the other hand, four of the plaintiff distributors are Kentucky rural electric cooperatives. These four cooperatives were created pursuant to the provisions of an Act of the General Assembly of Kentucky incorporated into K.R.S. Chapter 279. The other named plaintiff distributors

are a Tennessee rural electric cooperative and a Tennessee municipality that sell electric power in Kentucky. The same legislative act enables these non-resident entities to distribute power to a distance of not more than three miles from the state boundary.

The Kentucky laws, in addition to providing for the creation of these resident cooperatives, also impose limitations and obligations with regard to their operations. Specifically the state law provides that these and all other distributors so created or doing business under the Act are subject to the general supervision of the Public Service Commission (now ERC).¹

For the purpose of this action the intention of the Kentucky General Assembly was twofold: (1) To permit the creation or operation of the plaintiff distributors or their like; and (2) to subject those distributors to ERC supervision.

¹ K.R.S. 279.210 provides in part:

(1) Every corporation formed under KRS 279.010 to 279.220 shall be subject to the general supervision of the Public Service Commission, and shall be subject to all the provisions of KRS 278.010 to 278.450 inclusive, and KRS 278.990.

K.R.S. 279.220 provides in part:

(1) Any rural electric cooperative corporation organized under a law of any state contiguous to this state, which law is substantially similar to the law under which such corporations may be organized in this state, may extend its operations into this state for a distance not exceeding three miles from the boundary between that state and this state, . . .

(2) The operations of such corporation within this state shall be subject to the supervision of the Public Service Commission, and the commission may take the necessary action to require the corporation to furnish adequate service at reasonable rates. If the corporation fails to comply with the regulations and requirements of the commission it shall forfeit the privilege granted by this section.

The TVA and the ERC have each sought to fulfill their legislative mandates. On the federal side, TVA, in exercising the power delegated to it by Congress, has set resale rates to be followed by its distributors by including the following language in the TVA and distributors contracts:

5. Resale Rates. In order to assure a wide and ample distribution of electric energy in the area served by [the TVA distributor], the parties agree as follows:

(a) [The TVA distributor] agrees that the power purchased hereunder shall be sold and distributed to the ultimate consumer without discrimination among consumers of the same class, and that no discriminatory rate, rebate, or other special concession will be made or given to any consumer, directly or indirectly.

(b) [The TVA distributor] agrees to serve consumers . . . at and in accordance with the rates, charges, and provisions set forth . . . and not to depart therefrom. . . .

The contracts with the TVA distributors contain provisions which allow resale rates to increase as the cost of fuel used by the distributors increases.

Over on the state side, the ERC, in responding to the obligation delegated to it by the General Assembly of Kentucky, ordered the named TVA distributors to set retail rates by reference to fuel escalation schedules differing from the fuel escalation provisions imposed by the TVA contract.

ERC argues that no actual conflict exists between the regulation undertaken by it and the fuel escalation provisions in the contracts between TVA and the TVA distributors. The ERC points out that the statutory mandate imposed on it by the Kentucky Revised Statutes -- to see that utility rates are fair, just, and reasonable -- does not conflict with TVA's mission to make low-cost power available to domestic and rural consumers.

This contention ignores the fact that it is impossible for the TVA distributors to comply with the ERC regulation without breaching contracts with the TVA. This Court finds direct conflict exists between an exercise of federal authority granted TVA by Congress and an exercise of state authority granted ERC by the General Assembly of Kentucky.

When compliance with the legitimate directions of a state government is impossible without violating the legitimate directions of the federal government, Article IV §2 of the United States Constitution, the Supremacy Clause, demands that the exercise of federal authority supersede the exercise of state authority. Ray v. Atlantic Richfield Co., 435 U.S. 151 (1978), United States v. Georgia Public Service Commission, 371 U.S. 285 (1963), McDermott v. Wisconsin, 228 U.S. 115 (1912).

The United States Congress and the General Assembly of Kentucky each have the ultimate power over the entities they create. Congress can curtail the authority of TVA⁽¹⁾ The General Assembly can alter the authority of electrical cooperatives established under its acts.

⁽¹⁾ Mr. Justice Burger observed in Tennessee Valley v. Hill, 437 U.S. 153, 98 S.Ct. 2279 (1978),

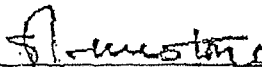
Our individual appraisal of the wisdom or unwisdom of a particular course consciously selected by the Congress is to be put aside in the process of interpreting a statute. Once the meaning of an enactment is discerned and its constitutionality determined, the judicial process comes to an end. . . .

. . . in our constitutional system the commitment to the separation of powers is too fundamental for us to pre-empt congressional action by judicially decreasing what accords with 'commonsense and the public weal'.

But so long as plaintiff cooperatives distribute power purchased from TVA they must comply with the legitimate conditions imposed upon them by TVA.

An appropriate order is this day entered.

DATED: September 25, 1979.



Edward H. Johnstone
Judge, United States District Court

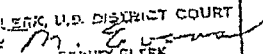
ENTERED
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CLERK, U.S. DISTRICT COURT
BY 
DEPUTY CLERK

Exhibit 2



Tennessee Valley Authority, PO Box 292409, OCP 1F, Nashville, Tennessee 37229-2409

January 24, 2013

Mr. Gregory H. Grissom
Manager/President/CEO
Hickman-Fulton Counties Rural Electric Cooperative Corporation
Post Office Box 190
Hickman, Kentucky 42050-0190

Dear Mr. Grissom:

It has come to our attention that the Kentucky Public Service Commission (KPSC) is considering a petition from the Kentucky Cable Telecommunications Association (KCTA) seeking to demonstrate that the KPSC has the authority to regulate pole attachment terms for Tennessee Valley Authority electric cooperatives. In light of this development, we have been asked about TVA's position on the regulation of the pole attachment terms for the distributors of TVA power.

As you know, TVA is the exclusive retail rate regulator for the distributors of TVA power, including the five Kentucky cooperatives. As the regulator, TVA works with its distributors to keep retail rates as low as feasible and to ensure that the operations of the electric system are primarily for the benefit of the consumers of electricity. TVA becomes concerned when any electric asset gets used for other purposes. In the interest of efficiency and economy, a power distributor may use property and personnel jointly for the electric systems and other operations subject to agreement between distributor and TVA as to appropriate cost allocations.

Regarding pole attachment rental fees, TVA requires that a distributor recover its full cost associated with the pole attachment and not place any unfair burdens on the electric ratepayers by ensuring full cost recovery. TVA does not object to joint facilities as long as the power distributor recovers the costs associated with pole attachment rentals and that the electric rate payers do not subsidize the costs of these rentals.

TVA is committed to working with distributors to ensure that together, we carry out the objective of the TVA Act, which is to sell power to all of the ratepayers at the lowest rates feasible.

Please do not hesitate to contact me at (615) 232-6865 if you have further questions.

Sincerely,

A handwritten signature in cursive script that reads 'Cynthia L. Herron'.

Cynthia L. Herron
Director
Retail Regulatory Affairs

Exhibit 3



Tennessee Valley Authority, PO Box 292409, OCP 1F, Nashville, Tennessee 37229-2409

January 24, 2013

Mr. Eston Glover
President/CEO
Pennyrile Rural Electric Cooperative Corporation
Post Office Box 2900
Hopkinsville, Kentucky 42241-2900

Dear Mr. Glover:

It has come to our attention that the Kentucky Public Service Commission (KPSC) is considering a petition from the Kentucky Cable Telecommunications Association (KCTA) seeking to demonstrate that the KPSC has the authority to regulate pole attachment terms for Tennessee Valley Authority electric cooperatives. In light of this development, we have been asked about TVA's position on the regulation of the pole attachment terms for the distributors of TVA power.

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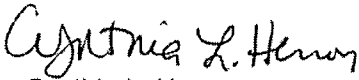

Cynthia L. Herron
Director
Retail Regulatory Affairs

Exhibit 4



Tennessee Valley Authority, PO Box 292409, OCP 1F, Nashville, Tennessee 37229-2409

January 24, 2013

Mr. Paul Thompson
Executive Vice President/General Manager
Tri-County Electric Membership Corporation
Post Office Box 40
Lafayette, Tennessee 37083-0040

Dear Mr. Thompson:

It has come to our attention that the Kentucky Public Service Commission (KPSC) is considering a petition from the Kentucky Cable Telecommunications Association (KCTA) seeking to demonstrate that the KPSC has the authority to regulate pole attachment terms for Tennessee Valley Authority electric cooperatives. In light of this development, we have been asked about TVA's position on the regulation of the pole attachment terms for the distributors of TVA power.

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Please do not hesitate to contact me at (615) 232-6865 if you have further questions.

Sincerely,

A handwritten signature in cursive script that reads 'Cynthia L. Herron'.

Cynthia L. Herron
Director
Retail Regulatory Affairs

Exhibit 5



Tennessee Valley Authority, PO Box 292409, OCP 1F, Nashville, Tennessee 37229-2409

January 24, 2013

Mr. Gary K. Dillard
President/CEO
Warren Rural Electric Cooperative Corporation
Post Office Box 1118
Bowling Green, Kentucky 42102-1118

Dear Mr. Dillard:

It has come to our attention that the Kentucky Public Service Commission (KPSC) is considering a petition from the Kentucky Cable Telecommunications Association (KCTA) seeking to demonstrate that the KPSC has the authority to regulate pole attachment terms for Tennessee Valley Authority electric cooperatives. In light of this development, we have been asked about TVA's position on the regulation of the pole attachment terms for the distributors of TVA power.

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TVA is committed to working with distributors to ensure that together, we carry out the objective of the TVA Act, which is to sell power to all of the ratepayers at the lowest rates feasible.

Please do not hesitate to contact me at (615) 232-6865 if you have further questions.

Sincerely,

A handwritten signature in cursive script that reads "Cynthia L. Herron".

Cynthia L. Herron
Director
Retail Regulatory Affairs

Exhibit 6



Tennessee Valley Authority, PO Box 292409, OCP 1F, Nashville, Tennessee 37229-2409

January 24, 2013

Mr. David Smart
President/CEO
West Kentucky Rural Electric Cooperative Corporation
Post Office Box 589
Mayfield, Kentucky 42066-0589

Dear Mr. Smart:

It has come to our attention that the Kentucky Public Service Commission (KPSC) is considering a petition from the Kentucky Cable Telecommunications Association (KCTA) seeking to demonstrate that the KPSC has the authority to regulate pole attachment terms for Tennessee Valley Authority electric cooperatives. In light of this development, we have been asked about TVA's position on the regulation of the pole attachment terms for the distributors of TVA power.

As you know, TVA is the exclusive retail rate regulator for the distributors of TVA power, including the five Kentucky cooperatives. As the regulator, TVA works with its distributors to keep retail rates as low as feasible and to ensure that the operations of the electric system are primarily for the benefit of the consumers of electricity. TVA becomes concerned when any electric asset gets used for other purposes. In the interest of efficiency and economy, a power distributor may use property and personnel jointly for the electric systems and other operations subject to agreement between distributor and TVA as to appropriate cost allocations.

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Please do not hesitate to contact me at (615) 232-6865 if you have further questions.

Sincerely,

A handwritten signature in cursive script that reads "Cynthia L. Herron".

Cynthia L. Herron
Director
Retail Regulatory Affairs

Exhibit 7

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

* * * * *

In the Matter of

THE APPLICATION OF HICKMAN-FULTON)	
COUNTIES RURAL ELECTRIC COOPERATIVE)	
CORPORATION FOR AN ORDER AUTHORIZING)	
SAID CORPORATION TO BORROW ONE HUNDRED)	
EIGHTY-NINE THOUSAND DOLLARS (\$189,000.00))	
FROM THE NATIONAL RURAL UTILITIES COOPERA-)	CASE NO.
TIVE FINANCE CORPORATION FOR THE PURPOSE)	8858
OF CONSTRUCTION, IMPROVEMENT AND OPERATION)	
OF ELECTRIC DISTRIBUTION AND SERVICE)	
FACILITIES IN HICKMAN, FULTON, GRAVES AND)	
CARLISLE COUNTIES, KENTUCKY)	

O R D E R

On September 27, 1979, the United States District Court for the Western District of Kentucky ruled that the Commission has no authority to regulate the rates of electric utilities in Kentucky that buy their power from the Tennessee Valley Authority ("TVA"), Tennessee Valley Authority, et al. v. Energy Regulatory Commission of Ky., Civil Action No. 79-0009-P, W.D. Ky., September 27, 1979, unpublished opinion. In January 1983, the Commission received correspondence from TVA stating that in its opinion the principle enunciated in the 1979 federal court decision would apply to service as well as rates. The Commission agreed with this interpretation and has returned all tariffs to the TVA-supplied cooperatives.

On November 12, 1982, the Franklin Circuit Court issued its opinion in West Kentucky RECC v. Energy Regulatory Commission, Civil Action No. 80-CI-1747, to the effect that the Rural Electrification Administration ("REA") falls within the classification of the "federal

government or any agency thereof" and, accordingly, borrowings from REA are exempt from Commission scrutiny under the provisions of KRS 278.300(10).

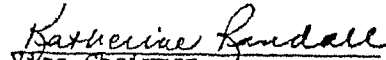
The Commission, having considered the decisions of the United States District Court, the Franklin Circuit Court and being advised, is of the opinion and finds that, absent jurisdiction over rates, service and borrowings from REA, any attempt to exercise jurisdiction over other borrowings by TVA-supplied rural electric cooperatives including the National Rural Utilities Cooperative Finance Corporation, the lender herein, would be ineffectual.

IT IS THEREFORE ORDERED That this case be and it hereby is dismissed.

Done at Frankfort, Kentucky, this 27th day of June, 1983.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:

Secretary

Exhibit 8

West Agency



COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION

730 SCHENKEL LANE
POST OFFICE BOX 615
FRANKFORT, KY. 40602
(502) 564-3940

March 2, 1983

Senator William L. Quinlan
Chairman
Joint Interim Committee on Energy
Room 21 - Capitol Annex
Frankfort, Kentucky 40601

Dear Senator Quinlan:

On September 25, 1979, the United States District Court for the western district of Kentucky ruled that the Kentucky Public Service Commission had no authority to regulate the rates of electric utilities in Kentucky that buy their power from the Tennessee Valley Authority. The court's ruling was based upon the fact that Congress gave TVA the power to set the retail rate for all customers who purchase electricity from TVA under a wholesale contract. The power of the federal government to set the retail rate for these utilities takes precedence over the power of the state to likewise set the rate. Accordingly, since 1979 the PSC has not exercised any jurisdiction over the retail rates of the following utilities operating in Kentucky: Hickman-Fulton RECC, Pennyryle RECC, Warren RECC, West Kentucky RECC, Tri-County Electric Membership Corporation, and Jellico Electric Company.

In January of this year, the PSC received correspondence from TVA stating that it was TVA's belief that the principle enunciated in the 1979 federal court decision would apply to service as well as rates. TVA thus contends that none of its wholesale customers operating in Kentucky are subject to any of the PSC's regulations governing the provision of electrical service to customers. The PSC has considered this matter and it is our conclusion that TVA is right on this point and that federal rather than state law governs the service as well as the rates of all TVA-supplied utilities. Since construction projects by utilities are also related to the rates and service of the utilities, the PSC believes it cannot legally certificate construction projects for these utilities. Accordingly, the PSC wishes to inform your committee that our agency will no longer regulate the rates, service, or construction of the aforementioned six utilities operating in Kentucky which purchase their electricity from the TVA.

Senator William L. Quinlan
March 2, 1983
Page Two

If you or any member of your committee have questions regarding this matter, please feel free to contact our agency at anytime.

Very truly yours,

William M. Sawyer

William M. Sawyer
General Counsel

Exhibit 9



Raff

COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION
730 SCHENKEL LANE
POST OFFICE BOX 615
FRANKFORT, KY. 40602
(502) 564-3940

August 27, 1993 RECEIVED

AUG 30 1993

Albert P. Marks, Esq.
Marks, Shell, Maness & Marks
114 South Second Street
Post Office Box 1149
Clarksville, Tennessee 37041-1149

GENERAL COUNSEL

Re: Cumberland Electric Membership Corp.

Dear Mr. Marks:

The Commission Staff has reviewed your request for a legal opinion as to whether Cumberland Electric Membership Corporation, a Tennessee Valley Authority Distribution Cooperative, is required to seek a Certificate of Public Convenience and Necessity from this Commission prior to borrowing funds from the Rural Electrification Administration and the National Utilities Cooperative Finance Corporation.

For those utilities subject to our jurisdiction, KRS 278.020 prohibits the construction of utility facilities until the Commission has issued a Certificate of Public Convenience and Necessity, and KRS 278.300 prohibits the issuance of any evidence of indebtedness by a utility without prior Commission approval.

As you know, the District Court for the Western District of Kentucky ruled in TVA, et al. v. Energy Regulatory Commission, Civil Action No. 79-0009-P (W.D. Ky. Sept. 27, 1979), the Commission was preempted on rate regulation by the TVA, a federal agency. The Commission subsequently concluded that TVA's service requirements similarly preempt those of Kentucky, leaving no aspect of a TVA distribution cooperative's operations subject to our jurisdiction. (See Opinion Letter dated March 2, 1983 attached hereto.) Thus, Cumberland Electric Membership Corporation is not required to either obtain a Certificate of Public Convenience and Necessity prior to constructing facilities or obtain any authorization in connection with the issuance of indebtedness.

If you have any further questions, please contact Richard Raff of our Legal Staff.

Sincerely yours,

Don Mills
Executive Director

fb
Attachment

West Agency



COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION

730 SCHENKEL LANE
POST OFFICE BOX 615
FRANKFORT, KY. 40602
(502) 564-3940

March 2, 1983

Senator William L. Quinlan
Chairman
Joint Interim Committee on Energy
Room 21 - Capitol Annex
Frankfort, Kentucky 40601

Dear Senator Quinlan:

On September 25, 1979, the United States District Court for the western district of Kentucky ruled that the Kentucky Public Service Commission had no authority to regulate the rates of electric utilities in Kentucky that buy their power from the Tennessee Valley Authority. The court's ruling was based upon the fact that Congress gave TVA the power to set the retail rate for all customers who purchase electricity from TVA under a wholesale contract. The power of the federal government to set the retail rate for these utilities takes precedence over the power of the state to likewise set the rate. Accordingly, since 1979 the PSC has not exercised any jurisdiction over the retail rates of the following utilities operating in Kentucky: Hickman-Fulton RECC, Pennyriple RECC, Warren RECC, West Kentucky RECC, Tri-County Electric Membership Corporation, and Jellico Electric Company.

In January of this year, the PSC received correspondence from TVA stating that it was TVA's belief that the principle enunciated in the 1979 federal court decision would apply to service as well as rates. TVA thus contends that none of its wholesale customers operating in Kentucky are subject to any of the PSC's regulations governing the provision of electrical service to customers. The PSC has considered this matter and it is our conclusion that TVA is right on this point and that federal rather than state law governs the service as well as the rates of all TVA-supplied utilities. Since construction projects by utilities are also related to the rates and service of the utilities, the PSC believes it cannot legally certificate construction projects for these utilities. Accordingly, the PSC wishes to inform your committee that our agency will no longer regulate the rates, service, or construction of the aforementioned six utilities operating in Kentucky which purchase their electricity from the TVA.

Senator William L. Quinlan
March 2, 1983
Page Two

If you or any member of your committee have questions regarding this matter, please feel free to contact our agency at anytime.

Very truly yours,

William M. Sawyer

William M. Sawyer
General Counsel