

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

MR. AND MRS. JAMES RIDDICK)	
)	CASE NO.
COMPLAINANTS)	2009-00020
)	
V.)	
)	
AMERICAN ELECTRIC POWER COMPANY,)	
KENTUCKY POWER COMPANY,)	
AND GRAYSON RURAL ELECTRIC)	
COOPERATIVE CORPORATION)	
)	
DEFENDANTS)	

O R D E R

On January 14, 2009, Mr. and Mrs. James W. Riddick (“Complainants”) filed a complaint alleging that Defendants, American Electric Power (“AEP”), Kentucky Power Company (“Kentucky Power”) and Grayson Rural Electric Cooperative Corporation (“Grayson”), were depriving them of electrical service at their home located at 1230 Rockhouse Trace Road in Louisa, Kentucky. The complaint further alleged that Kentucky Power had presented Complainants with an unreasonable amount to establish electrical service to their residence.

Kentucky Power filed its answer to the complaint on February 9, 2009, urging the Commission to dismiss AEP as a defendant because it is not a proper party to this proceeding and to dismiss the complaint on the grounds that Kentucky Power acted in accordance with its filed tariffs and the Commission’s regulations. Kentucky Power subsequently filed a motion to dismiss on March 30, 2009.

Grayson filed its answer to the complaint on February 12, 2009 and asked that the complaint be dismissed for failure to state a cause of action against Grayson. In particular, Grayson contends that the complaint sets forth no allegations against Grayson and that the complaint only asserts that Grayson notified Complainants that their residence was located within the service territory of Kentucky Power. Grayson further states that a meeting occurred on approximately September 9, 2008 involving Complainants, representatives of Kentucky Power, and representatives of Grayson in which all the parties came away with the understanding that Complainants' residence was within the service territory of Kentucky Power.

On April 6, 2009, Complainants filed their response to the arguments raised by Defendants, arguing that AEP, "as the parent company of Kentucky Power, should be responsible for the actions of its corporate children." With respect to Kentucky Power, Complainants assert that Kentucky Power's proposal for extension of service to their property is both arbitrary and excessive. Complainants' response is silent as to the arguments raised by Grayson.

Kentucky Power filed its reply on April 24, 2009, arguing that the complaint failed to set forth any facts supporting the Commission's exercise of jurisdiction over AEP in this matter. Kentucky Power further argues that, under Kentucky law, separate corporate interests, including subsidiaries and affiliates, are separate legal entities which must be recognized and treated as such. Thus, Kentucky Power maintains that AEP cannot be held responsible for the acts of Kentucky Power in the absence of any evidence showing that the corporate relationship is a mere sham.

Regarding the claims against it, Kentucky Power reiterates its argument that the complaint failed to allege that it acted unlawfully, either in violation of its tariff or in violation of any Kentucky statute or regulation.

The matter now stands submitted to the Commission for decision. For the reasons stated below, the Commission finds that the complaint should be dismissed.

BACKGROUND

According to the complaint, Complainants contacted AEP in June or July of 2008 seeking to have electric service provided to their home located at 1230 Rockhouse Trace Road in Louisa, Kentucky. Complainants noted that electric service had been provided to the site of their home and in the surrounding area at some point in time within the last 20 years. Apparently, electric service facilities near Complainants' property, which had been used for purposes of serving a coal mining operation, were removed in 1989 or earlier. Complainants alleged that they received a letter from Kentucky Power¹ on November 18, 2008 indicating that the cost to provide service to Complainants' home would amount to \$38,907.

According to Kentucky Power, it maintains facilities to the north and south of Complainants' residence from which an electric service extension could be made to the subject property. The distance to extend a distribution line to Complainants' property from Kentucky Power's facilities north of Complainants' residence is approximately 8,940 feet. To serve Complainants from Kentucky Power's facilities south of Complainants' property would require the construction of approximately 6,900 feet of

¹ Complainants refer to this letter as being sent by AEP, but the letterhead shows that the letter was issued by Kentucky Power.

distribution line along Rockhouse Trace Road. However, access along this route is not possible because one of the landowners along the proposed right of way will not provide Kentucky Power with an easement for the distribution line.

After several discussions with Complainants, on November 13, 2008, Kentucky Power provided Complainants with a formal written proposal to construct an 8,940-foot extension from Kentucky Power's facilities to the north of Complainants' residence. Under Kentucky Power's calculation, the total cost of the proposed extension would be \$58,537.64. The average cost per foot of the entire extension was \$6.55.

Recognizing that the northern route is longer than the southern route, Kentucky Power offered to bear the cost of the additional 2,000 feet of the line in addition to the cost for the first 1,000 feet as required under 807 KAR 5:041. Thus, Complainants would be required to pay for the cost of approximately 5,940 feet of extension. Under this proposal, the total cost would be \$38,907.

ANALYSIS

A. Grayson

The uncontroverted evidence establishes that Complainants' residence is located entirely within the certified service territory of Kentucky Power. Grayson is not required to provide electric service to Complainants. Indeed, pursuant to KRS 278.018, Grayson is prohibited from furnishing retail electric service to a consumer who is located within the certified territory of another retail electric supplier. Accordingly, the Commission finds that Grayson should be dismissed from this matter.

B. AEP

KRS 278.040 provides that the Commission's jurisdiction "shall extend to all utilities in this state." KRS 278.010(3)(a), in turn, defines a utility to mean "any person . . . who owns, controls, operates, or manages any facility used . . . in connection with . . . [t]he generation, production, transmission, or distribution of electricity to or for the public, for compensation"

AEP does not own, control, operate, or manage any electric facility in the state of Kentucky for public consumption. The Commission thus has no jurisdiction or control over AEP. Accordingly, the Commission finds that AEP should be dismissed from this matter.

C. Kentucky Power

807 KAR 5:041, Section 11, is the regulation that governs distribution line extensions. 807 KAR 5:041, Section 11(1), requires a utility to bear the costs associated with an extension of 1,000 feet or less of single-phase line. In turn, the regulation also requires the prospective customer to apply for and contract to use the service for one year or more and provides a guarantee for such service. 807 KAR 5:041, Section 11(2)(a), governs distribution line extensions in excess of 1,000 feet and provides, in relevant part, as follows:

When an extension of the utility's line to serve an applicant or group of applicants amounts to more than 1,000 feet per customer, the utility may, if not inconsistent with its filed tariff, require total cost of the excessive footage over 1,000 feet to be deposited with the utility by the applicant or applicants, based on the average estimated cost per foot of the total extension.

Consistent with the Commission's regulations, Kentucky Power's filed tariff provides, in relevant part, as follows:

Pursuant to 807 KAR 5:041, Section 11, paragraph (5), of Public Service Commission Regulations, the Company will make an extension of 1,000 feet or less to its existing distribution line without charge for a prospective permanent residential customer served under this R.S. Tariff.²

In this case, Kentucky Power has offered to assume the cost of the first 3,000 feet of the line since a right of way could not be obtained over one property which would be a shorter route. Kentucky Power has offered to assume 2,000 feet beyond the initially required 1,000 feet. The Commission finds that the offer of Kentucky Power is clearly consistent with the applicable regulations as well as with Kentucky Power's tariff. The proposed offer of Kentucky Power is above and beyond what is required of Kentucky Power, since it is offering to assume the cost of 3,000 feet of line instead of just the required 1,000 feet. The Commission understands that this line will be costly to the Complainants; however, the Commission finds that this cost should be assumed by the Complainants and not the other customers of Kentucky Power who will not be using this new line.

Should Complainants reach an agreement with Kentucky Power for an extension of service to their residence in excess of 1,000 feet, the Commission takes this opportunity to point out that Complainants could be eligible for reimbursement pursuant to 807 KAR 5:041, Section 11(b). This section provides in full as follows:

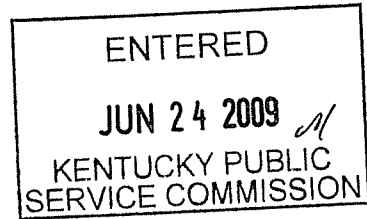
Each customer receiving service under such extension will be reimbursed under the following plan: Each year, for a refund period of not less than ten (10) years, the utility shall refund the customer(s) who paid for the excessive footage the cost of 1,000 feet of extension in place for each additional customer connected during the year whose service line is directly connected to the extension installed and not to extensions or laterals therefrom. Total amount

² Kentucky Power Tariff, Sheet No. 6-3.

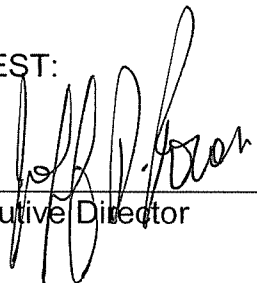
refunded shall not exceed the amount paid the utility. No refund shall be made after the refund period ends.

IT IS THEREFORE ORDERED that the complaint is dismissed for failure to state a claim upon which relief could be granted.

By the Commission



ATTEST:



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