

RECEIVED

JUN 01 2012

PUBLIC SERVICE  
COMMISSION

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter Of:

Petition And Complaint Of Kentucky Power )  
 Company For A Declaration Of Its Exclusive )  
 Right Pursuant to KRS 278.018(1) To Serve )  
 Those Portions Of The Sand Gap )  
 Estates In Greenup County, Kentucky Lying )  
 Within Its Certified Territory In Lieu Of )  
 Grayson Rural Electric Cooperative Corporation )

Case No. 2012-\_\_\_\_\_

**Complaint and Petition**

Kentucky Power Company (“Kentucky Power” or the “Company”) petitions the Public Service Commission of Kentucky pursuant to KRS 278.016 to KRS 218.018, KRS 278.260, and KRS 278.040 for an order: (a) declaring that Grayson Electric Cooperative Corporation (“Grayson”) is providing electric service in violation of KRS 278.018(1) to two residences located at 14 Sand Gap Road and 397 Olivia Boulevard in Sand Gap Estates in Greenup County, Kentucky lying west of KY 67 (Industrial Parkway) and off of the old mining road; (b) declaring that Kentucky Power has the exclusive right to provide retail electric service to the two residences currently served by Grayson in Sand Gap Estates in Greenup County, Kentucky, as well as any other electric consuming facilities within Kentucky Power’s certified territory; and (c) directing Grayson to maintain records during the pendency of this action and a reasonable period thereafter of service rendered on or after February 23, 2011 to the two residences that are the subject of this complaint. In support thereof, Kentucky Power states:

### Bases For The Commission's Jurisdiction

1. This is an action by Kentucky Power Company ("Kentucky Power") pursuant to the Commission's authority under KRS 278.016-218.018 to administer the certified territory statutes of the Commonwealth, its authority under KRS 278.260 to adjudicate complaints "as to the rates and service of any utility," and its general regulatory authority under KRS 278.040 with respect to utilities providing service in the Commonwealth.

### Parties

2. Kentucky Power is an electric utility organized as a corporation under the laws of the Commonwealth of Kentucky in 1919. A certified copy of Kentucky Power's Articles of Incorporation and all amendments thereto was attached to the Joint Application in Case No. 99-149<sup>1</sup> as Exhibit 1. The post office address of Kentucky Power is 101A Enterprise Drive, P.O. 5190, Frankfort, Kentucky 40602-5190. Kentucky Power is engaged in the generation, purchase, transmission, distribution and sale of electric power. Kentucky Power serves approximately 173,000 customers in the following 20 counties of eastern Kentucky: Boyd, Breathitt, Carter, Clay, Elliott, Floyd, Greenup, Johnson, Knott, Lawrence, Leslie, Letcher, Lewis, Magoffin, Martin, Morgan, Owsley, Perry, Pike and Rowan. Kentucky Power also supplies electric power at wholesale to other utilities and municipalities in Kentucky for resale. Kentucky Power is a utility as that term is defined at KRS 278.010.

3. Grayson Rural Electric Cooperative Corporation ("Grayson") is a cooperative corporation organized under the laws of the Commonwealth of Kentucky in 1950 and is regulated as a utility by the Commission. Grayson is a member of East Kentucky Power Cooperative, Inc., and provides retail electric service in portions of five counties in northeastern

---

<sup>1</sup> *In the Matter of: The Joint Application Of Kentucky Power Company, American Electric Power Company, Inc. And Central And South West Corporation Regarding A Proposed Merger*, P.S.C. Case No. 99-149.

Kentucky. Grayson's certified territory in part abuts the certified territory of Kentucky Power. Its principal office is located at 109 Bagby Park, Grayson, Kentucky 41143. A copy of this Petition and Complaint is being served by U.S. Mail on Grayson's counsel and registered agent, W. Jeffrey Scott, 311 West Main Street, Grayson, Kentucky 41143.

#### Background

4. The area in dispute lies in Greenup County, Kentucky and is roughly bounded by KY 67 (Industrial Parkway) on the east and a former mining road on the west. A map of the area in dispute is attached as **EXHIBIT 1**.

5. Prior to the beginning of construction of KY 67 in 2000, the disputed area was relatively undeveloped. With the construction of KY 67 a "C"-shaped tract between KY 67 and the former mining road was delineated.

6. Four residences have been constructed in or near the disputed area since 2006.

#### The Certified Territory Map

7. The 1972 Kentucky General Assembly enacted Kentucky's Certified Territory Law, KRS 278.016-278.018. The Certified Territory Law was intended "to encourage the orderly development of retail electric service, to avoid wasteful duplication of distribution facilities, to avoid unnecessarily encumbering the landscape of the Commonwealth of Kentucky, to prevent the waste of materials and natural resources, [to promote] ... the public convenience and necessity and to minimize disputes between retail electric suppliers which may result in inconvenience, diminished efficiency and higher costs in serving the customer...."

8. Pursuant to KRS 278.017(2) retail electric suppliers were required to file with the Commission on or about June 16, 1972 maps showing the retail electric suppliers' then existing distribution lines. Thereafter, and based upon the then existing distribution lines, maps of the

certified territory of each retail electric supplier were prepared. KRS 278.017(2). By law the boundary lines were to be drawn substantially equidistant between the existing distribution lines of adjoining retail electric suppliers. KRS 278.017(1).

9. As shown on the map of the certified territory of Kentucky Power and Grayson, two of the four residences and the “C”-shaped territory between KY 67 and the old mining road lie within Kentucky Power’s exclusive territory. The residences within Kentucky Power’s certified territory are marked as A (414 Sand Gap Road, Argilite, Kentucky) and B (397 Olivia Boulevard, Argilite, Kentucky) on EXHIBIT 1. KY 67 was constructed approximately 28 years after the establishment of the exclusive service territories of Kentucky Power and Grayson.

10. Kentucky Power currently provides retail electric service to Sand Gap United Baptist Church, located approximately 1,934 feet north of the disputed territory. Kentucky Power has been providing service to Sand Gap United Baptist Church since at least March 27, 1990.

#### The Present Controversy

11. Beginning in 2010, Kentucky Power representatives noticed a residence (marked as B on EXHIBIT 1) was being constructed in the disputed area. There was no evidence of electric service being provided to the residence at that time.

12. Thereafter, Kentucky Power discovered that Grayson was providing retail electric service to the residence marked as A on EXHIBIT 1 and located at 414 Sand Gap Road. Subsequently, Grayson began providing retail electric service to the residence marked as B on EXHIBIT 1 and located at 397 Olivia Boulevard. Both residences are within Kentucky Power’s service territory.

13. On February 23, 2011, Kentucky Power first contacted Grayson about Grayson's violation of KRS 278.018(1). Despite subsequent communication between Grayson and Kentucky Power, including a meeting on November 8, 2011, Grayson continues to provide and charge for service to the two residences in Kentucky Power's certified service territory in violation of KRS 278.018(1).

14. Grayson has acknowledged that the residences marked A and B on EXHIBIT 1, as well as the "C"-shaped territory between KY 67 and the old mining road lie within Kentucky Power's exclusive territory.

15. Grayson's distribution facilities in the area interfere with Kentucky Power's ability to provide retail electric distribution service to the residences in its service territory. Kentucky Power has offered to purchase the distribution facilities being used by Grayson to provide service to the two residences but Grayson has declined the offer.

#### Bases For Kentucky Power's Claims

15. Grayson's current service to residences within Kentucky Power's certified service territory is contrary to law and the policies underlying Kentucky's Certified Territory Law. Specifically, its service outside its service territory results in the disorderly development of retail electric distribution facilities in the disputed area, the wasteful duplication of facilities, the unnecessary encumbering of the landscape of the Commonwealth in the disputed area, and the waste of materials and natural resources. Further it is contrary to the public convenience and necessity and will result in inconvenience, diminished efficiency and higher costs in serving the area.

16. Grayson has continued to provide and charge for electric service to retail customers outside its service territory and in violation of the law. It has been on notice since no

later than February 23, 2011 that it was providing service in violation of Kentucky's Certified Territory Law.

17. Grayson should not be permitted to benefit from its knowing and willful violation of the law. KRS 278.990(1) makes such violation a penal offense and Kentucky Power is entitled to recover the amounts charged by Grayson in willful violation of the law.

Wherefore, Kentucky Power Company respectfully requests:

1. That the Commission enter an Order declaring that Grayson's provision of retail electric service to the two residences within Kentucky Power's certified territory and marked as A and B on EXHIBIT 1 was in violation of KRS 278.018(1);

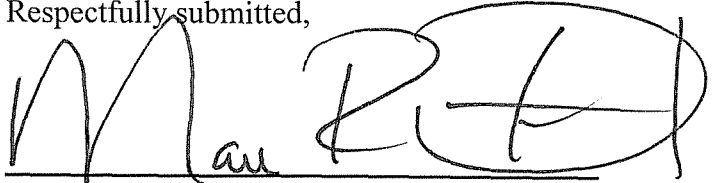
2. That the Commission enter an Order declaring that Kentucky Power has the exclusive right to provide retail electric service to the two residences within Kentucky Power's certified territory marked A and B on EXHIBIT 1 and the "C"-shaped territory shown on EXHIBIT 1 lying between KY 67 and the old mining road;

3. That the Commission enter an Order directing Grayson to maintain records during the pendency of this action, and for a reasonable period thereafter, of service rendered on or after February 23, 2011 to the two residences that are the subject of this complaint; and

4. That the Commission grant Kentucky Power such further relief to which it may be entitled.

This 1<sup>st</sup> day of June, 2012.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Mark R. Overstreet". The signature is written in a cursive style with a horizontal line underneath the name.

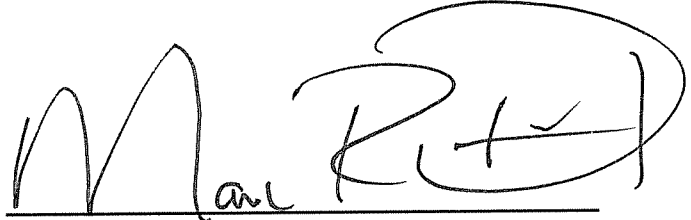
Mark R. Overstreet  
STITES & HARBISON PLLC  
421 West Main Street  
P. O. Box 634  
Frankfort, Kentucky 40602-0634

COUNSEL FOR KENTUCKY POWER  
COMPANY

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was served by first class mail, postage prepaid, upon the following this 1<sup>st</sup> day of June, 2012.

W. Jeffrey Scott  
311 West Main Street  
Grayson, Kentucky 41143

A handwritten signature in black ink, appearing to read "Mark R. Overstreet", written over a horizontal line. The signature is stylized and somewhat cursive.

Mark R. Overstreet



# **EXHIBIT 1**



A 414 Sand Gap Road, Argillite, KY

sandgap Rd

C Service Territory Boundary

Industrial Pkwy

Sandstone Rd

B 397 Olivia Boulevard, Argillite, KY

Homeplace Dr

67