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September 4, 2013

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PUBLIC SERVICE
COMMISSION

Mr. Jeff Derouen
Executive Director
Public Service Commission
211 Sower Boulevard
P.O. Box 615
Frankfort, KY 40602

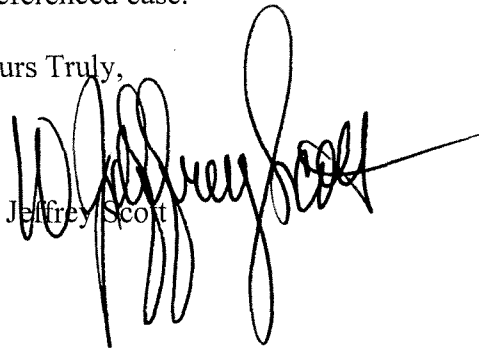
RE: PSC 2012-00224

Dear Mr. Derouen:

Enclosed please find one original and ten copies of a Brief filed on behalf of Grayson Rural Electric Cooperative Corporation in the above-referenced case.

Yours Truly,

W. Jeffrey Scott



WJS/knc
Enclosures (11)

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SEP 5 2013
PUBLIC SERVICE
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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE 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) CASE NO.
ESTATES IN GREENUP COUNTY, KENTUCKY) 2012-00224
LYING WITHIN ITS CERTIFIED TERRITORY IN)
LIEU OF GRAYSON RURAL ELECTRIC)
COOPERATIVE CORPORATION,)

**BRIEF OF RESPONDENT, GRAYSON RURAL
ELECTRIC COOPERATIVE CORPORATION**

Comes now Grayson Rural Electric Cooperative Corporation (hereinafter GRECC) and for its brief in support of its position in the within matter states as follows:

In 2005 GRECC was granted a right of way from Addington Land Company to provide electric service to its subdivision known as the Sand Gap Estates (see testimony of Carol Fraley beginning at 10:48:13 and GRECC post hearing data request response served August 23, 2013). That post hearing data request in response number 3 sets out a copy of the Sand Gap estates subdivision denoting the GRECC lines through the subdivision. In 2005, particularly February of 2005, Tamela Martin, Mark Terry, and Wesley Breeding applied for services to houses being constructed in the Sand Gap estates. As related by Carol Fraley, President and Chief Executive Officer of GRECC, all three had made applications or had at least made an inquiry to Kentucky Power and were referred to GRECC for service. Appropriately, these individuals received power from GRECC as their residences located on Lot 21 and 20 of the Sand Gap Estates subdivision.

GRECC had electric facilities south and west of this undeveloped area which it extended to the residences being built by Martin and Breeding.

Approximately five years later another house was constructed on Lot 14 being located on the northwestern side of the subdivision and Lot 25 located on the southeastern side of the subdivision. See January 16, 2013, map of Richard Howerton provided in response to July 15, 2013, data request (9:16:23 of video disc).

The within complaint filed by Kentucky Power, Petitioner herein, seeks to have the Commission declare that GRECC is providing service to Lot 14 and Lot 25 of the Sand Gap Estates in violation of KRS 278.018(1).

Accordingly, it would be incumbent upon Kentucky Power to allege and prove that GRECC is furnishing and making available and extending its retail electric service to a consumer for use in an electric consuming facility located within the certified territory of Kentucky Power.

The evidence in this case from all sources, including pre-filed testimony and testimony given at the hearing, demonstrates clearly and convincingly that Kentucky Power has failed to prove its case. GRECC supplies retail electric service to James W. and Shirley Porter on Lot 14 and to i.e. the 414 Sand Gap Road address and Lot 25 the 397 Olivia Boulevard address properly and reliably, to which there has been no complaint. That activity of GRECC has resulted in the rendering of adequate service, meeting the requirements of the customers, and done in an area that is within its certified territory.

The evidence in this case showed that Kentucky Power's closest facilities were in excess of 1,800 feet away, north of the Porter residence, and being located at the Sand Gap Church. GRECC, however, commencing service to the Lot 21 and 20 residences of Breeding and Martin respectively, then had service significantly closer to Lot 14 and Lot 25 than did Kentucky Power. The Lot 25, the Olivia Boulevard address complained of by Kentucky Power, is just across the

street from the Breeding residence. The Porter residence, the 414 Sand Gap Road residence is only six lots away from the Martin residence.

Significant in the evidence presented in this case was the Richard Howerton map referred to hereinabove dated January 16, 2013. What was learned from Mr. Howerton's testimony as elicited by staff attorney Faith Burns was that the line being the alleged agreed line between GRECC and Kentucky Power had an 80 foot margin of error and there is in addition, a 100 foot buffer area. The map shows a 40 foot line on the right and left side of the alleged agreed line and shape file boundary as shown by Kentucky Public Service Commission. (10:16:39 and 10:14:08). The only reasonable inference to draw from these lines on the map is that the location of the 414 Sand Gap Estates electric consuming facility and the location of the 397 Olivia Boulevard electric consuming facility is more than likely to be located within the certified territory of GRECC. It being more likely than not then, a conclusion must be made by the Commission that Kentucky Power has failed to meet its burden.

Furthermore, there are other matters that should be considered by the Commission in deciding this case. These include the extent to which the awarding of the service to Kentucky Power would result in duplicative services, considerations of whether Kentucky Power is estopped from asserting this claim, and the resulting costs that must, be borne by the two consumers if Kentucky Power were to provide service in a non-discriminatory manner.

GRECC respectively submits that the purposes of the geographical service area as set forth in KRS 278.016; the encouragement of orderly development of retail electric service, the avoidance of wasteful duplication of distribution facilities, the avoidance of unnecessary encumbering of the landscape, the prevention of the waste of materials and natural resources, and for the public convenience and necessity as well as to minimize disputes between retail electric

suppliers all lend themselves to a finding that Kentucky Power has failed to meet its burden and that GRECC is providing service in an appropriate manner within the framework of the above statute and other relevant statutes.

What cannot be discounted in this analysis is the testimony of Carol Fraley, the President and CEO of GRECC who testified that the assistant engineer, Ronnie Evans, had met with officials of Kentucky Power and reached an accord whereby GRECC would serve the left or west quarter of this Industrial Parkway area and that all other three quarters being the east side of the industrial parkway, the northeast side and northwest side would be served by Kentucky Power. She related to how this was an easy division of the area and one to which there was an acquiescence by Kentucky Power. The landowner, Addington Land Company, had, of course, given GRECC an easement over the entire Sand Gap Estates subdivision back in 2005. However, the Commission need not reach a decision on whether such an accord existed as there is, as pointed out hereinabove, ample reason to find in favor of GRECC with respect to the disputed area.

In point of fact, it makes little sense to provide for Kentucky Power to serve a part of the Sand Gap Estates subdivision and for GRECC to serve a part of the Sand Gap Estates subdivision. The duplication of services would be paramount, the cluttering of countryside with ugly electrical wires, and the destruction in the value of the residences would be reason alone to deny the request of Kentucky Power. In point of fact, as shown by the response of Kentucky Power to the data request of the Commission Staff sent following the informal conference, Kentucky Power would propose to build 3,722 feet of new line to the Lot 14 Porter residence, the 414 Sand Gap Road address, which is located 1,807 feet from the takeoff point to GRECC's current pole. Kentucky Power also stated it would build two spans of line to the corner of Lot 15, a lot not even raised as a part of the disputed area, and to Lot 16 being 515 feet. Such construction is a total blight on the

landscape. Kentucky Power also asserts in their response to the data request of the Commission following the informal conference that there would be an additional construction of 140 feet to the southeast corner of Lot 37 and then would build 1,260 feet along Olivia Boulevard in order to get to the Lot 25 residence being the 397 Olivia Boulevard residence. This response also asserts that this line would go across Lot 28. This type of proposal, if granted, would result in such duplicity of services as to be an abuse of discretion and clearly erroneous. The economies involved would dictate that GRECC serve the entire subdivision which is the conclusion that the Commission should reach in the instant case.

A new applicant for Lot 18 about which GRECC made mention in its late filing as well, is clearly located within the service territory of GRECC fronting Sand Gap Road. For that resident three lots away from Lot 14 to have a different service provider would be ludicrous.

GRECC already has much underground service in the area and has supplied electric service to the residences in a way that is aesthetically pleasing so as to enhance the value of persons living along the Industrial Parkway. The Industrial Parkway itself is a clear delineation of the area and should be adopted pursuant to the agreement about which Ms. Fraley testified.

The evidence clearly showed that GRECC has made significant capital investments in facilities located in the disputed area to provide for enhanced service to individuals residing in the area as well as to the neighbors of each of them. GRECC relied upon the acquiescence of Kentucky Power who had to have knowledge several years in advance of the filing of the within action of the fact that GRECC was supplying service to Lot 14 and Lot 25 of the Sand Gap Estates. As a result of this reliance by GRECC on the inaction and in fact acquiescence of Kentucky Power then GRECC has changed its economic position to its detriment. (*Grayson Rural Electric v. City of Vanceburg*, 4 S.W. 3d 526, 1999).

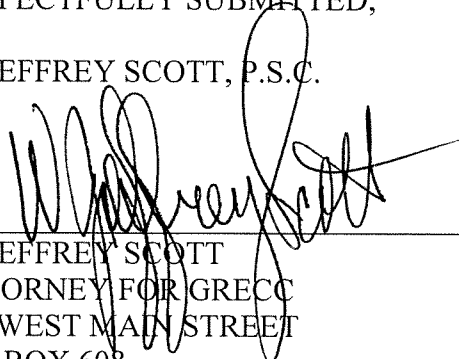
Wherefore, GRECC respectfully submits that to allow the granting of the relief requested by Kentucky Power would be redundant and useless duplication, a waste of both natural resources and otherwise, and would be in derogation of the best evidence that the current lines actually depict considering the variance that one must infer from the width of the line itself and the buffer associated therewith.

WHEREFORE, GRECC prays for the appropriate order.

RESPECTFULLY SUBMITTED,

W. JEFFREY SCOTT, P.S.C.

BY: _____


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This is to certify that the foregoing Brief has been served upon the parties by mailing a true and correct copy of same to:

Hon. Mark Overstreet
Hon. R. Benjamin Crittenden
Stites & Harbison PLLC
421 West Main Street
P.O. Box 634
Frankfort, KY 40602-0634

This 4th day of September, 2013.

