

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

NASHVILLE, TENNESSEE

June 24, 2019

IN RE:	)	
	)	
PETITION OF KENTUCKY UTILITIES COMPANY	)	DOCKET NO.
FOR AN ORDER AUTHORIZING KENTUCKY	)	19-00001
UTILITIES COMPANY TO ABANDON ITS SERVICE	)	
AREA IN TENNESSEE AND TO WITHDRAW ITS	)	
TARIFF FOR ELECTRIC SERVICE AND AN ORDER	)	
DECLARING THAT KENTUCKY UTILITIES IS NO	)	
LONGER A PUBLIC UTILITY UNDER TENNESSEE	)	
LAW AND NO LONG SUBJECT TO TENNESSEE	)	
PUBLIC UTILITY COMMISSION REGULATION	)	

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ORDER GRANTING AMENDED PETITION TO ABANDON CCN

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This matter is before the Vice Chair Kenneth C. Hill, Commissioner Herbert H. Hilliard, and Commissioner John Hie of the Tennessee Public Utility Commission (“Commission” or “TPUC”), the voting panel assigned to this docket, at a regularly scheduled Commission Conference held on May 20, 2019, for consideration of the *Amended Petition to Request Abandonment of its CCN* in Tennessee filed by Kentucky Utilities Company (“KUC” or “Company”) on May 16, 2019.<sup>1</sup>

Previously on January 2, 2019, KUC filed the *Petition of Kentucky Utilities Company*, requesting permission to abandon its service area in Tennessee and a declaratory order that the Company is no longer a public utility in Tennessee subject to regulation by the Commission.<sup>2</sup>

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<sup>1</sup> *Motion for Leave to Amend Petition*, (May 16, 2019); *Order Granting Motion to Amend Petition*, (May 17, 2019).

<sup>2</sup> *Petition of Kentucky Utilities Company*, pp. 7-8 (January 2, 2019).

## **BACKGROUND AND PETITION**

KUC has approximately 525,000 customers in Kentucky and 29,000 in Virginia.<sup>3</sup> Previous to December of 2018, the Company served a total of four customers in Claiborne County, Tennessee, via a single distribution line without any street lighting.<sup>4</sup>

KUC is a Kentucky and Virginia Corporation which began providing electric service in Tennessee in 1919. In 1926, the Company received a franchise to construct and maintain lines within Claiborne County, Tennessee. The passage of the Tennessee Valley Authority (TVA”) Act of 1933 gave rise to disagreements over service area boundaries and as time progressed controversies arose over the service areas of investor-owned utilities and distribution cooperatives served by TVA. In 1952, KUC received a second perpetual franchise to construct and operate electric lines over, along, and across county highways between Cumberland Gap and New Tazewell, Tennessee. In the same year, KUC and Powell Valley Electric Cooperative (“Powell Valley”) entered into an agreement whereby neither would enter the service territory of the other. This agreement was superseded by a more detailed agreement in 1958.<sup>5</sup>

In 1959, Congress amended the Act barring TVA from expanding sales outside “the area for which [it] or its distributors were the primary source of Power on July 1, 1957.” This amendment provided protection to private utilities from TVA competition.<sup>6</sup> Thereafter, in 1960, KUC and Powell Valley created a map outlining their respective service areas. And on August 26, 1964, the TVA Board found and determined all of Claiborne County, Tennessee was within the service area of TVA or its distributors. After ultimately appealing to the Supreme Court, it was determined that all of Claiborne County, Tennessee was within the TVA service area.

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<sup>3</sup> *Id.* at 1-2.

<sup>4</sup> *Id.* at 4-5.

<sup>5</sup> *Id.* at 2-3.

<sup>6</sup> *Id.* at 3

Therefore, in time, TVA's distributor Powell Valley served nearly all of KUC's former customers in Claiborne County.<sup>7</sup>

Until March of 2019, KUC maintained a small foothold within Tennessee and provided service to four small residential properties in Claiborne County, Tennessee.<sup>8</sup> As of December 2018, KUC purchased the four residential sites identified by the following addresses: 5914 Fork Ridge Road, Cumberland Gap, Tennessee; Klondike Hollow in Cumberland Gap, Tennessee; 5640 Fork Ridge Road, Cumberland Gap, Tennessee; and 239 Good Lance, Cumberland Gap, Tennessee. These properties remained in a lease agreement with the lease back agreements expiring from January 9, 2019 to March 13, 2019, and all of the properties were vacated no later than March 2019.<sup>9</sup>

KUC asserts the public welfare is no longer an issue because the Company will not have customers in Tennessee. Further, because of the small limited service area in Tennessee, it has not been economically beneficial for KUC to provide service in Tennessee and has been a financial burden, given the imbalance in the amount of plant dedicated to service in Tennessee verses the revenues received. For these reasons, KUC is requesting pursuant to T.C.A. § 65-4-114, that the Commission authorize KUC to abandon its Tennessee service area and allow the Company to withdraw its tariff in Tennessee.<sup>10</sup>

On May 16, 2019, the Company filed the *Motion for Leave to Amend Petition* ("Motion to Amend") requesting to amend its *Petition* to seek the specific relief of abandonment of its CCN pursuant to Tenn. Code Ann. § 65-4-114 and under the Commission's general authority

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<sup>7</sup> *Id.* at.3.

<sup>8</sup> *Transcript of Commission Conference*, p. 11 (May 20, 2019).

<sup>9</sup> *Petition of Kentucky Utilities Company*, p. 4 (January 2, 2019).

<sup>10</sup> *Id.* at 5.

under Tenn. Code Ann. §§ 65-4-203 and 204. The Hearing Officer granted the *Motion to Amend*.<sup>11</sup>

### **THE HEARING**

The Hearing in this matter was held before the voting panel during the regularly scheduled Commission Conference on May 20, 2019, as noticed by the Commission on May 10, 2019. Participating in the Hearing were:

Kentucky Utilities Company – Kendrick Riggs, Esq., Stoll, Keenon & Ogden, 500 West Jefferson Street, Suite 2000, Louisville, Kentucky 40202-2828

During the Hearing, Robert M. Conroy, the Company's Vice President of state regulation and rates, appeared telephonically.<sup>12</sup> Mr. Conroy testified that the KUC's four customers in Tennessee have relocated since the filing of the *Petition* and the Company has dismantled distribution lines to the properties the Company now owns.<sup>13</sup> The Hearing Panel invited any member of the public to provide comment. No party or individual sought recognition.

### **FINDINGS AND CONCLUSIONS**

The Commission has broad authority with respect to the approval, qualification, or withdrawal of CCNs.<sup>14</sup> Pursuant to Tenn. Code Ann. § 65-4-114(2), upon notice and a public hearing, the Commission may grant a request to "abandon any service when, in the judgement of the Commission, the public welfare no longer requires the same." After reviewing the evidentiary record, the unique service history of the Company in Tennessee, and facts in this case, the Hearing Panel unanimously voted to grant the *Amended Petition* of Kentucky Utilities Company to abandon its CCN in Tennessee. The panel further resolved that should KUC desire

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<sup>11</sup> *Order Granting Motion to Amend Petition*, (May 17, 2019).

<sup>12</sup> *Order Granting Electronic Participation in Hearing*, (May 16, 2019).

<sup>13</sup> *Transcript of Commission Conference*, p. 11 (May 20, 2019).

<sup>14</sup> Tenn. Code Ann. §§ 65-4-104, 203, 204.

to restore operations and provide future service in Tennessee, it must seek and obtain a new CCN.

**IT IS THEREFORE ORDERED THAT:**

1. The *Petition of Kentucky Utilities Company* as amended by Kentucky Utilities Company on May 16, 2019, is granted.
2. A new Certificate of Convenience and Necessity shall be requested in the event that Kentucky Utilities Company seeks to provide service in Tennessee in the future.
3. Any person who is aggrieved by the Commission's decision in this matter may file a Petition for Reconsideration with the Commission within fifteen (15) days from the date of this Order.
4. Any person who is aggrieved by the Commission's decision in this matter has the right to judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty (60) days from the date of this Order.

**Vice Chair Kenneth C. Hill, Commissioner Herbert H. Hilliard, and Commissioner John Hie concur.**

**ATTEST:**



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**Earl R. Taylor, Executive Director**