

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

BLUE SKY, INC., a Kentucky Corporation)
2640 Bold Bidder)
P. O. Box 7036)
Lexington, Kentucky 40502,)

COMPLAINANT)

vs.)

CASE NO. 8564)

KENTUCKY-AMERICAN WATER COMPANY,)
a Kentucky Corporation)
2300 Richmond Road)
Lexington, Kentucky 40502)

DEFENDANT)

O R D E R

On July 6, 1982, Blue Sky, Inc., ("Blue Sky") filed a complaint with the Commission against Kentucky-American Water Company ("Kentucky-American"). The complaint alleges that Kentucky-American has wrongfully refused to refund a construction deposit of \$3,782.93 in violation of 807 KAR 5:066, Section 12(3). On September 2, 1982, Kentucky-American filed an answer denying Blue Sky's allegations. A hearing was held at the Commission's offices in Frankfort, Kentucky, on November 3, 1982. Both parties have responded to the Commission's requests for information, and the case is now submitted for a final determination by the Commission.

Blue Sky is engaged in the development of tracts "A" and "B" of Blue Sky Industrial Estates, a 77.61 acres industrial subdivision in Fayette County, Kentucky. In order to provide water service to the subdivision, it entered into a water main extension and deposit agreement, dated March 27, 1978, with Kentucky-American. The agreement provided that Kentucky-American would lay water mains and related facilities in the subdivision subsequent to its receipt of a \$34,869 deposit from Blue Sky. The agreement further provided that Kentucky-American was to make refunds to Blue Sky for each acre developed within the subdivision for which a water service connection was made to the water main extension. Although Kentucky-American's standard practice is to base such refunds on the number of actual water service connections, it agreed to utilize an acreage basis to avoid litigation over a previous agreement between Blue Sky and the Athens-Boonesboro Road Water District which had been acquired by Kentucky-American.

Blue Sky paid the required deposit and Kentucky-American extended the water main. (This water main extension is hereinafter referred to as "Blue Sky's main extension.") Between November 1978 and July 1979, Kentucky-American made four service connections and paid refunds to Blue Sky for the acreage developed. The present controversy concerns a parcel of land, known as lot 10, sold by Blue Sky to C. Samuel Whitehead. Mr. Whitehead utilized part of lot 10 as a building site for the Central Kentucky Supply Company and subdivided the remaining

portion for resale. Since lot 10 does not abut Blue Sky's main extension, a water line had to be constructed through another lot. Mr. Whitehead had two alternatives, either to construct at his own expense a service line which could serve only one customer or to pay Kentucky-American to construct a main extension from Blue Sky's main extension through lot 10. Mr. Whitehead chose the latter alternative (hereinafter referred to as "Mr. Whitehead's main extension") because additional water customers could connect to Mr. Whitehead's main extension and he would receive a refund of the construction cost for each such connection.

Blue Sky argues that it is entitled to a refund for each acre of land in lot 10 for which a water service connection is made. Blue Sky's water main extension and deposit agreement, at page 4, requires Kentucky-American to make refunds for each acre of property actually developed

. . . for which a future service connection shall be directly attached to the main extension herein provided [Blue Sky's main extension] between its original beginning and original terminus (not including, however, connections to further extensions or branches thereof

The service connections in lot 10 are not directly attached to Blue Sky's main extension but are attached to Mr. Whitehead's main extension. Under this circumstance Blue Sky's main extension agreement does not require any refunds.

The Commission is cognizant that this controversy is not the result of either Kentucky-American's superior bargaining position

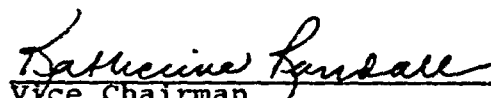
or its presentation of a standard form contract with instructions that Blue Sky "take it or leave it." Blue Sky insisted that refunds be based on an acreage basis and that is how the contract was drafted. Kentucky-American has fully complied with the terms of the contract in respect to refunds. Blue Sky's complaint is thus without merit.

IT IS THEREFORE ORDERED that the complaint of Blue Sky, Inc., against the Kentucky-American Water Company be and it hereby is dismissed.

Done at Frankfort, Kentucky, this 24th day of March, 1983.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:

Secretary