

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF RICHWOOD)
INDUSTRIAL DEVELOPMENT)
CORPORATION FOR ELECTRIC) CASE NO. 9203
SERVICE FROM THE UNION LIGHT,)
HEAT AND POWER COMPANY)

O R D E R

Procedural Background

On October 19, 1984, Richwood Industrial Development Corporation ("Richwood") filed an application requesting the Commission determine that Richwood or Richwood's tenants be allowed to receive electric service from Union Light, Heat & Power Company ("ULH&P") pursuant to KRS 278.018(1). In order to receive the service requested, ULH&P's facilities would have to be extended into the certified territory of Owen County RECC ("Owen County"). Richwood requested that the entire 245-acre industrial park be considered an "electric consuming facility."

By Order dated November 7, 1984, the matter was held in abeyance until a final ruling of the Court of Appeals in Owen County RECC v. Public Service Commission, et al., 83-CA-1480-MR. The Commission's interpretation of "new electric consuming facilities" in another cross-boundary case was at issue therein. On January 4, 1985, the Court of Appeals affirmed the

Commission's decision to consider an entire industrial park to be an "electric consuming facility."

The Commission reactivated the case by Order dated January 14, 1985. Both Owen County and ULH&P filed answers to Richwood's application and discovery ensued. Hearings were held on April 2-3, 1985. Owen County filed its brief on May 9, 1985, while Richwood and ULH&P filed briefs on May 13, 1985. On May 17, 1985, Owen County moved to strike the briefs of Richwood and ULH&P as untimely filed. ULH&P filed a response to that motion on May 22, 1985, and Richwood filed its response on June 3, 1985.

ELECTRIC CONSUMING FACILITY

Both Richwood and ULH&P take the position that the entire 245-acre industrial park is to be considered the "electric consuming facilities" and since the boundary between ULH&P and Owen County divides the industrial park the exception specified in KRS 278.018(1) exists. KRS 278.018 provides retail electric suppliers with the exclusive right to furnish retail electric service within their certified territories with the following exception:

In the event that a new electric consuming facility should locate in two or more adjacent certified territories, the commission shall determine which retail electric supplier shall serve said facility based on criteria in KRS 278.017(3).

Owen County disagrees that the entire industrial park is an "electric consuming facility" citing the definition of "retail electric service" contained in KRS 278.010(7) which focuses upon service furnished to an ultimate consumer as opposed to a given building or industrial park.

This same argument was raised by Owen County in Owen County RECC v. PSC, Ky., 689 S.W.2d 599 (1985). In that case the Commission found a 77-acre industrial park to be an electric consuming facility. The Court of Appeals concluded that the Commission's interpretation was reasonable. The Kentucky Supreme Court denied Owen County's Motion for Discretionary Review.

There are important distinctions between the facts presented in this case and those involved in the prior determination involving Campbell County. The Campbell County industrial park consisted of only 77 acres, all owned by Campbell County. In the instant case, the entire industrial park encompasses approximately 245 acres: 20 owned by Boone County, 55 acres owned by Shorland Enterprises and the remainder owned by Richwood. Richwood intends to sell or lease its holdings.

In the Campbell County industrial park, Consolidated Foods' office building and all metering facilities were to be located in ULH&P's territory, while its manufacturing was to be located with Owen County's territory. Forty-seven of the 77 acres in the industrial park were to be leased to Consolidated Foods. In the instant case, however, the only known user in the industrial park, Duro Bag, is expected to be located wholly within Owen County's territory and metered there. The only known use of electricity that may cross the boundary in this instance is street lighting.

Furthermore, in the present case, 150 of the 245 acres, or 61 percent, lie within Owen County's certified territory, whereas 95 acres are within ULH&P's certified territory.

In light of these facts, the Commission finds that the entire 245-acre industrial park should not be considered an "electric consuming facility" and thus, KRS 278.017(3) need not be addressed. According to KRS 278.018, the certified territory established pursuant to KRS 278.016 and KRS 278.017 provides a retail electric utility with the exclusive right to serve that area. In light of the legislature's enactments, and the fact that the boundaries were required to be established equidistant between existing distribution lines of adjacent retail electric suppliers, a strong showing must be made by one who seeks to alter those boundaries. Richwood has not done so herein.

Each case must stand on its own facts. The fact that land is acquired and then described as an industrial park, which includes a segment that straddles a boundary, will not in and of itself warrant the Commission finding the entire industrial park to be an "electric consuming facility." Were the Commission to apply that sort of test, the potential for abuse by developers exists, thus undermining KRS 278.016, KRS 278.017 and KRS 278.018. Although the Commission has not considered whether that sort of gerrymandering has occurred in this case, as a policy matter, the Commission's actions should limit the potential for abuse.

Thus, the Commission finds that Duro Bag should be served by Owen County. As the tracts within the industrial park are actually put into service, the utility in whose certified territory that tract lies shall provide service therein. Tracts of land which straddle the boundary will still require a determination by this Commission at such time as service is

needed. Of course, KRS 278.018(6) permits retail electric suppliers to contract as to which entity shall serve in those cases, subject to Commission approval.

Although the Commission need not reach the issue of evaluating whether ULH&P or Owen County is best able to serve under the criteria set forth in KRS 278.017(3), extensive hearings were held which delved into facts which bear upon those criteria. Had the Commission found differently on the issue of "electric consuming facility," the Commission would have awarded the service for the entire 245-acre industrial park to Owen County based upon that record.

MOTION TO STRIKE

Owen County moved to strike the briefs of Richwood and ULH&P as untimely. According to statements at the hearing, simultaneous briefs were required within 21 days of receipt of the transcript, with 3 days allowed from the reporter's certificate of mailing. Thus, briefs were due on May 9, 1985, while ULH&P and Richwood filed briefs on May 13, 1985. ULH&P and Richwood both claim the time permitted allowed them through May 11 (21 days from the date of claimed receipt) and since May 11 was a Saturday, until May 13. Although Owen County is correct, no apparent prejudice to Owen County has resulted. Therefore, the Commission will permit the briefs to be considered "out of time."

ORDERS

Having considered the evidence of record, and in accordance with the above-stated findings:

IT IS THEREFORE ORDERED that the application of Richwood be and it hereby is denied.

IT IS FURTHER ORDERED that Owen County shall serve Duro Bag.

IT IS FURTHER ORDERED that the remaining area within the 245-acre industrial park shall be served by either ULH&P or Owen County, according to their certified territory.

IT IS FURTHER ORDERED that the briefs filed by Richwood and ULH&P shall be considered a part of the record in this proceeding, although filed "out of time."

Done at Frankfort, Kentucky, this 7th day of August, 1985.

PUBLIC SERVICE COMMISSION

Richard D. Weman Jr.
Chairman

[Signature]
Vice Chairman

did not participate
Commissioner

ATTEST:

Secretary