

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

TAYLOR COUNTY RURAL ELECTRIC COOPERATIVE) CASE NO.
CORPORATION NOTICE OF TARIFF REVISION) 89-054

O R D E R

On March 27, 1989, Taylor County Rural Electric Cooperative Corporation ("Taylor County") filed a proposed revision to its tariff to permit recovery of franchise fees or taxes assessed by local governmental units.¹ Specifically the revision would allow Taylor County to bill any franchise fees or taxes on a pro rata basis to customers within the franchised territory. It would also prohibit Taylor County from paying any franchise fee or tax in excess of 3 percent of its gross revenues derived from the franchise territory.

Most jurisdictions have held that "a rate is unjust when it does not impose the burden of franchise payments on users in the community which receives the payments." Village of Maywood v. Illinois Commerce Comm'n, 178 N.E.2d 345, 348, 42 PUR3d 298, 301 (Ill. 1961). See also City of Newport News v. Chesapeake &

¹ Taylor County filed a "Notice of Tariff Revision" on March 9, 1989, but did not file the actual tariff sheet containing the proposed revision until March 27, 1989. Commission Regulation 807 KAR 5:011, Section 6(3)(b) requires that revised tariff sheet be filed at least 20 days prior to the effective date of the revision. Accordingly, the proposed revision was not properly filed until March 27, 1989.

Potomac Tel. Co., 96 S.E.2d 145, 12 PUR3d 517 (Va. 1957); Missouri ex rel City of West Plains v. Missouri Public Service Commission, 310 S.W.2d 925, 23 PUR3d 164 (Mo. 1958). The Commission is in agreement with this view. See, e.g., The Local Taxes and/or Fees Tariff Filing of General Telephone Co. of Ky., Case No. 7843 (October 6, 1980).

The rationale for this position is based on notions of equity and public policy. Franchise fees are a clearly identifiable cost of doing business only in the community which imposes it. Imposing this cost on utility customers who are located outside the community and who receive no benefit from the community services supported by such fees is discriminatory.

Insofar as Taylor County's proposed tariff revision would require franchise fees to be borne solely by the residents of the franchise territory, it is consistent with the Commission's position. The proposed tariff, however, fails to state how franchise fee charges will be disclosed to affected customers. It provides only that franchise fees will "be added to and made part of each periodic billing rendered to each affected customer-member." Customer bills should separately state the amount which is attributable to franchise fees. Gen. Tel. Co. of Ky., supra, page 2. The separate listing ensures that affected consumers will be fully aware of the local taxing authority's actions and their effects. This method of disclosure is currently required for the utility gross receipts tax. KRS 160.617.

The proposed tariff revision's limitation of the size of any franchise fee which Taylor County may pay, moreover, conflicts

with existing law. The Commission's role in the award of any franchise is limited to determining whether a demand and need for the service sought to be rendered exists. If such demand and need exist, the Commission issues a Certificate of Public Convenience and Necessity to a utility to bid on the franchise. The Commission has no other role in the process. Pub. Serv. Comm'n v. Blue Grass Natural Gas Co., 197 S.W.2d 765 (Ky. 1946). Were the Commission to approve and eventually attempt to enforce this provision, it would become involved in negotiations which should be strictly between the utility and the local government. Furthermore, instances may occur where a franchise fee of 3 percent or less is not a reasonable term for the sale of the franchise. In such instances, the tariff provision would conflict with KRS 96.010.


For these reasons, the Commission is of the opinion and finds that Taylor County's proposed tariff revision should not be approved.

IT IS THEREFORE ORDERED that:

1. Taylor County's proposed tariff revision be and it hereby is disapproved.
2. Within 30 days of the date of this Order, Taylor County shall file rules with the Commission providing for the recovery of franchise fees in a manner consistent with the terms of this Order, or request a hearing to present evidence to show why the proposed tariff revision should be accepted without modification.

Done at Frankfort, Kentucky, this 10th day of April, 1989.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:

Executive Director