

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

LEWIS C. DAVIS)	
and)	
DENNIS G. DAVIS)	
)	
COMPLAINANTS)	
)	
VS.)	CASE NO.
)	90-061
BOONE COUNTY WATER)	
AND SEWER DISTRICT)	
)	
DEFENDANT)	

O R D E R

On March 19, 1990, Lewis G. Davis and Dennis G. Davis ("Complainants") filed a formal complaint with the Commission against the Boone County Water and Sewer District ("Boone County"). According to the Complaint, the Complainants entered into an agreement with Boone County on January 30, 1981 for the extension of an 8-inch water main to the Complainants' property. The Complainants paid \$2,700 of the costs of construction of the extension and two separate meters were installed for their use. Complainants allege that at the time of the initial discussions with Boone County, Lewis G. Davis understood that he would be reimbursed not only for each additional meter that was placed on the Davis extension, but also for any meter placed at a point beyond the Davis extension, until the cost of \$2,700 was reimbursed.

To date, Complainants have been reimbursed by Boone County in the amount of \$1,280.64. Complainants request that the balance of

\$1,419.36 be refunded to them "since the possibility of another meter on the 180 foot extension seems extremely unlikely, and there has now been an extension of this water main south. . .to a new 1500 family development."¹ Complainants apparently wish to be reimbursed up to \$1,419.36 for additional customers connected to the subsequent extension.

On April 12, 1990, the Commission granted Boone County's request for an extension of time in which to respond to the Complaint. Boone County filed its Answer to the Complaint on April 19, 1990, denying the allegation that Lewis G. Davis was told by Boone County that he would be reimbursed for any meter placed beyond the extension until his \$2,700 contribution was refunded. Boone County also denied that the Davis extension was 180 feet in length, and alleged that the actual extension was 220 feet. It is Boone County's position that it has followed Public Service Commission regulations relating to water extensions, and that the Complainants have received the maximum allowable reimbursement to date in accordance with 807 KAR 5:066, Section 12(2)(a-b).

Both parties attached to their pleadings copies of correspondence and other documents relating to this matter.

Though there is some dispute regarding the exact length of the Davis extension, the material controversy in this case is

¹ Complaint, p. 2.

whether the Complainants were advised by Boone County that they would be reimbursed for meters placed beyond the Davis extension. There is no written agreement filed in the record which indicates that this was a term of the agreement. At the time of the agreement, January 30, 1981, Boone County's tariff on file with the Commission, which is attached hereto as Appendix A and incorporated herein, did not contain a water extension policy with respect to refunds for contributed property. Therefore, Boone County is deemed to have adopted the water extension policy set out in 807 KAR 5:066, Section 12(2)(a-b), which, indeed, Boone County avers to be its policy.

807 KAR 5:066, Section 12(2)(a)(b) provides as follows:

(a) When an extension of the utility's main to serve an applicant or a group of applicants amounts to more than fifty (50) feet per applicant, the utility may if not inconsistent with its filed tariff require the total cost of the excessive footage over fifty (50) feet per customer to be deposited with the utility by the applicant or the applicants, based on the average estimated cost per foot of the total extension.

(b) Each customer receiving service under such extension will be reimbursed under the following plan: Each year for a period of no less than ten (10) years, which for the purpose of this rule shall be the refund period, the utility shall refund to the customer or customers who paid for the excessive footage the cost of fifty (50) feet of the extension in place for each additional customer connected during the year whose service line is directly connected to the extension installed and not to extensions or laterals therefrom, but in no case shall the total amount refunded exceed the amount paid the utility. . . .(Emphasis added.)

By its terms, the above regulation does not authorize a utility to reimburse applicants when additional customers connect to subsequent extensions. Although 807 KAR 5:066, Section 12(4), allows utilities to make extensions under different arrangements if prior approval has been obtained from the Commission, there is no evidence in the record that Commission approval to deviate from the regulation was sought or obtained.

In short, there is no evidence in the record to support Complainants' contention that Lewis G. Davis was orally advised that he would be reimbursed for meters placed beyond the Davis extension. Even assuming the allegation is true and oral representations were made that he would receive refunds from meters placed beyond his extension, such an agreement would not be valid absent prior approval of the Commission.

The following is Boone County's summary of costs associated with the Davis extension: A total of 220 feet of pipe was laid from beginning to end. The total cost of construction of the extension was \$4,459.86. This results in a per foot cost of \$20.27 ($\$4,459.86 \div 220$ feet). Since each applicant for an extension is entitled to 50 feet of pipe free of cost, the two Complainants were entitled to an initial contribution by Boone County of \$1,013.50 each (50 feet x \$20.27), for a total of \$2,027. Complainants deposited \$2,700 with Boone County for construction of the extension. In a letter written to Dennis G. Davis on April 20, 1987, Boone County acknowledged that a Mr. Withers had tapped onto the Davis extension. Thus, another \$1,013.50 refund became due the Complainants as a result of the

Withers connection, bringing to a total of \$3,040.50 the amount Boone County was required to contribute to the cost of construction (\$1,013.50 x 3). This left \$1,419.36 which the Complainants were responsible for contributing to the cost of construction, subject of course to refund should additional connections be made. As previously stated, the Complainants deposited \$2,700 initially for the cost of construction. Boone County has refunded to them \$1,280.64 (\$2,700 - \$1,419.36).

Having considered the evidence of record and being otherwise sufficiently advised, the Commission finds that:

1. The water extension/refund policy in effect for Boone County at the time of construction of the Davis extension was that contained in 807 KAR 5:066, Section 12(2)(a-b).

2. Complainants have submitted no evidence to contradict Boone County's calculations of the costs associated with the Davis extension. These calculations are accurate and the Complainants have currently been refunded the amount to which they are entitled in accordance with 807 KAR 5:066, Section 12(2)(a-b).

3. Complainants are entitled to up to \$1,419.36 in additional reimbursement in the event additional customers connect to the Davis extension within the 10-year period prescribed by 807 KAR 5:066, Section 12(2)(a-b).

4. 807 KAR 5:066, Section 12(2)(a-b), does not authorize Boone County to reimburse applicants for connections to subsequent extensions.

5. Even if Complainants' allegation that Boone County agreed to reimburse them for connections beyond the Davis

extension is true, Boone County is not authorized to make reimbursements contrary to 807 KAR 5:066, Section 12(2)(a-b), without prior Commission approval. (807 KAR 5:066, Section 12(4).)

6. Complainants have submitted no evidence indicating that Boone County has violated Commission statutes or regulations.

7. The Complainants have failed to state a claim upon which the Commission may grant relief.

8. A hearing in this matter is not necessary in the public interest or for the protection of substantial rights, and therefore this Complaint should be dismissed without a hearing.


IT IS THEREFORE ORDERED that the Complaint herein be and it hereby is dismissed.

Done at Frankfort, Kentucky, this 8th day of June, 1990.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director