

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

FARRIS PARKS)	
)	
COMPLAINANT)	
)	
VS.)	CASE NO.
)	91-090
CLARK RURAL ELECTRIC COOPERATIVE CORPORATION, INC.)	
)	
DEFENDANT)	

O R D E R

On March 20, 1991, Farris Parks ("Parks") filed a complaint with the Commission alleging that Clark Rural Electric Cooperative Corporation, Inc. ("Clark RECC") was in violation of 807 KAR 5:041, Section 11(1), by failing to provide a distribution line extension of up to 1,000 feet at no cost to Parks. On March 27, 1991, the Commission ordered Clark RECC to satisfy or answer the complaint. Clark RECC's answer, filed March 20, 1991, denies the applicability of the cited Commission regulation respecting distribution line extensions and further claims that granting the extension as requested by Parks would require Clark RECC to violate its currently effective tariff.

A hearing was held in the Commission's offices on July 9, 1991. At the outset of the hearing, Clark RECC moved to dismiss the complaint on the grounds that granting of the relief requested would require Clark RECC to violate KRS 278.160, the filed rate

doctrine, and KRS 278.170, the prohibition against undue preferences. The parties agreed at the hearing that the material facts were not in dispute and that the case should be submitted on the legal issues raised in Clark RECC's motion to dismiss. The parties subsequently filed memoranda in support of their respective positions.

Parks has constructed a 10-bent barn in Madison County, Kentucky, and desires electric service to be provided by Clark RECC. Upon application for electric service, Parks was advised that he would be responsible for paying in excess of \$3,000 for the cost to extend Clark RECC's distribution line approximately 1,000 feet. Parks' claim of entitlement to a 1,000 foot extension at no cost is based on the Commission's regulation, 807 KAR 5:041, Section 11(1), which provides as follows:

Normal extensions. An extension of 1,000 feet or less shall be made by a utility to its existing distribution line without charge for a prospective customer who shall apply for and contract to use the service for one year or more and provides guarantee for such service.

However, the regulation also provides, in Section 11(4), that, "Nothing contained herein shall be construed as to prohibit the utility from making extensions under different arrangements provided such arrangements have been approved by the commission."

Clark RECC has on file with the Commission a tariff providing for distribution line extensions to nonresidential facilities under the same conditions contained in the Commission's regulation governing extensions to mobile homes, 807 KAR 5:041, Section 12. The tariff states that a distribution line extension to "structures and/or facilities other than residences (houses)" will

be provided as follows: the first 150 feet for free; from 150 feet to 300 feet at \$50, refundable at the end of one year; and from 300 feet to 1,000 feet at the actual cost of the extension, refundable in equal installments over a 4 year period. Clark RECC maintains that this tariff was duly filed with the Commission as required by KRS 278.160(1), and that providing an extension at no cost to Parks would violate KRS 278.160(2), which prohibits a utility from charging or receiving less compensation for service rendered than that prescribed in its filed schedules.

Clark RECC argues that the relief requested by Parks would violate KRS 278.170(1), which provides that, "No utility shall, as to rates or service, give any unreasonable preference or advantage to any person. . . ." The crux of Clark RECC's arguments are that furnishing an extension at no cost to Parks violates Clark RECC's filed tariffs and results in an unfair advantage to Parks vis-a-vis other customers who have been required to pay for distribution line extensions to non-residential structures. In addition, Clark RECC argues that the Commission's regulation on distribution line extensions is limited to residential structures only.

Parks stresses the permanent nature of the barn at which service is requested, and the fact that it was constructed at a cost of \$40,000. Reference is made to the Commission's authority under Section 11(4) of the extension regulation which provides that nothing in said regulation shall "prohibit the utility from making extensions under different arrangements if such arrangements have been approved by the Commission." Parks argues

that this authorizes the Commission to approve the extension requested in this case without violating any statutory provisions.

Parks' states that the Commission's regulations specify the conditions for distribution line extensions to mobile homes in 807 KAR 5:041, Section 12, and the conditions for all other types of extensions in 807 KAR 5:041, Section 11. Parks argues that if the latter regulation is limited to residential customers, the Commission will have a void with respect to distribution line extensions to a barn which is neither to be used for residential purposes nor is moveable like a mobile home. Parks opines that had the Commission intended Section 11 of this regulation to be limited to residential customers, such a limitation could have simply been expressed in the regulation.

Based on a review of the record and being advised, the Commission hereby finds that KRS 278.280(3) specifically authorizes the Commission to determine the reasonableness of a request for an extension of utility service and sustain or deny the request. While Clark RECC does have on file a tariff governing distribution line extensions to non-residential facilities, the conditions set forth in that tariff mirror those established by the Commission for extensions to mobile homes.

The electric consuming facility in question here, Parks' barn, is dissimilar to a mobile home. The barn is not a building of modular design but a permanent, non-movable structure. In addition, Parks has indicated a willingness to contract for electric service for a minimum term of four years with the provision that early termination of the contract will necessitate

a non-refundable payment of the original cost of the extension. Such a guarantee by Parks will provide Clark RECC with essentially the same financial protection as its tariff for non-residential extensions.

A service extension contract as proposed by Parks will fully comport with all statutory and regulatory requirements. Such a special contract, filed pursuant to 807 KAR 5:011, Section 13, becomes a customer specific tariff, and operates prospectively in nature. Since the contract stands on an equal footing with all other duly filed tariffs, there is no violation of KRS 278.160, the filed rate doctrine. Further, there will be no undue preference given to Parks because he will be required to post adequate security to guarantee payment of the service extension. Like all non-residential extensions under Clark RECC's general tariff, if service continues uninterrupted for four years, there will be no cost for the extension; whereas termination within four years makes operable Parks' guarantee to pay any balance of the cost of the extension.


IT IS THEREFORE ORDERED that:

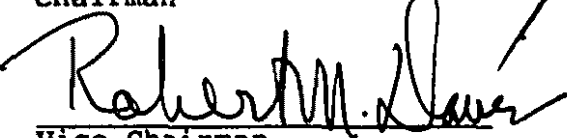
1. Parks' requests that Clark RECC extend service up to 1,000 feet to a barn upon the execution of a four year service contract, which requires the cost of extension to be paid if service is terminated early, be and it hereby is approved.

2. Clark RECC shall obtain adequate security from Parks to guarantee his obligations under the service extension contract.

Done at Frankfort, Kentucky, this 25th day of November, 1991.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman

Commissioner

ATTEST:


Executive Director