

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE JOINT APPLICATION OF OWEN ELECTRIC	)	
COOPERATIVE, INC. AND THE CITY OF	)	CASE NO.
WILLIAMSTOWN FOR APPROVAL OF A RETAIL	)	92-265
ELECTRIC SERVICE AREA AGREEMENT	)	

O R D E R

Before the Commission is the joint application of Owen Electric Cooperative, Inc. ("Owen Electric") and the city of Williamstown, Kentucky ("Williamstown") for Commission approval of an agreement establishing their respective territory boundaries. This application presents the question of whether an agreement between a regulated electric utility and a municipal utility establishing service territories requires Commission approval. Commission answers this question in the negative and denies the joint application.

Owen Electric owns and operates facilities used to distribute electric power and furnish retail electric service to approximately 30,623 customers in the counties of Owen, Grant, Pendleton, Gallatin, Scott, Boone, Kenton, Campbell, and Carroll.

Williamstown is a city of the fifth class located in Grant County, Kentucky, and operates facilities which furnish electric service to persons within its municipal limits. Williamstown is located within Owen Electric's certified territory.

On April 13, 1992, Owen Electric and Williamstown entered into an agreement which establishes boundaries for their respective service areas and provides that neither Owen Electric nor Williamstown will solicit or serve any person in the other's designated service area. Subsequently, they submitted the agreement for our approval.

Pursuant to the Certified Territory Act,<sup>1</sup> the Commission in 1972 established certified service territories for the state's retail electric suppliers. Within its certified territory, a retail electric supplier has the exclusive right to supply retail electric service. KRS 278.018(1). These territories, however, are not carved in stone. KRS 278.018(6) permits retail electric suppliers to redraw and adjust their certified territory. It states:

Notwithstanding the effectuation of certified territories established by or pursuant to KRS 278.016 to 278.020, and the exclusive right to service within such territory, a retail electric supplier may contract with another retail electric supplier for the purpose of allocating territories and consumers between such retail electric suppliers and designating which territories and consumers are to be served by which of said retail electric suppliers. Notwithstanding any other provisions of law, a contract between retail electric suppliers as herein provided when approved by the commission shall be valid and enforceable. The commission shall approve such a contract if it finds that the contract will promote the purposes of KRS 278.016 and will provide adequate and reasonable service to all areas and consumers affected thereby.

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<sup>1</sup> Act of March 17, 1992, ch. 83, 1972 Kentucky Acts 378 (codified at KRS 278.016-.018.).

Although titled "a retail electric service area agreement," the agreement between Owen Electric and Williamstown does not come within the Certified Territory Act. KRS 278.018 applies only to agreements between retail electric suppliers. Municipal utilities, such as Williamstown, are not retail electric suppliers. KRS 278.010(4) states:

"Retail electric supplier" means any person, firm, corporation, association or cooperative corporation, excluding municipal corporations, engaged in the furnishing of retail electric service.

(Emphasis added). Accordingly, KRS 278.018 does not require Commission approval of the agreement.

The Commission further finds that the agreement should not be approved based upon our implied regulatory powers. See Pub. Serv. Comm'n v. Southgate, Ky., 268 S.W.2d 19 (1954). Because Williamstown is a municipal utility, the Commission lacks jurisdiction over it and cannot enforce its compliance with the agreement. McClellan v. Louisville Water Co., Ky., 351 S.W.2d 197 (1961). Williamstown cannot confer any authority upon the Commission by contract. See, e.g., In Re Borough of Glen Rock, 135 A.2d 506 (N.J. 1957), overruled on other grounds, City of North Wildwood v. Bd. of Commissioners of City of Wildwood, 365 A.2d 465 (N.J. 1976). If Williamstown refuses to provide service to a customer within the agreed service territory, the Commission cannot order it to provide service.

Moreover, Commission approval of the agreement would create an area without a retail electric supplier. The agreement redraws Owen Electric's certified territory to exclude Williamstown's

defined area. Since no other retail electric supplier's boundary has been adjusted to include this area, a "no man's land" exists. This result is contrary to the legislative intent of the Certified Territory Act.

This Order should not be construed as a determination of the agreement's lawfulness or reasonableness. Because of the lack of a comprehensive system of regulation for all electric utilities - public and municipal - territory disputes are likely. Agreements such as the one before us may well reduce the frequency of these disputes and prevent recurring litigation.

After reviewing the agreement and being otherwise sufficiently advised, the Commission finds that the joint application for approval of the "Retail Service Area Agreement" should be denied. The Commission further finds that the maps attached to the agreement should be accepted for filing for informational purposes only.

IT IS THEREFORE ORDERED that:

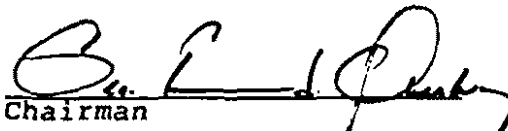
1. The joint application of Owen Electric and Williamstown is denied.

2. Owen Electric shall within 20 days of the date of this Order file a copy of its service area maps reflecting the boundaries set forth in its agreement with Williamstown. This map shall be accepted for filing for informational purposes only.

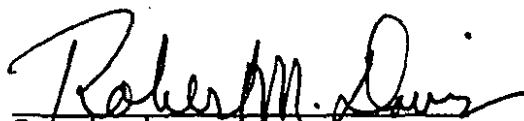
Done at Frankfort, Kentucky, this

10th day of September, 1992.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ATTEST:

  
Executive Director