

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

CHARLES BEAMS)	
)	
COMPLAINANT)	
)	
VS.)	CASE NO. 92-454
)	
LAKE VILLAGE WATER COMPANY)	
)	
DEFENDANT)	

O R D E R

On October 26, 1992, Charles Beams filed a complaint against Lake Village Water Association, Inc. ("Lake Village") to recover the cost of installing an extension to Lake Village's water distribution system. By Order of October 29, 1992, Lake Village was directed by the Commission to satisfy the matters complained of or to file a written answer to the complaint. On November 30, 1992, Lake Village filed its answer denying any liability to Beams and requesting that the complaint be dismissed.

A hearing on the complaint was held before the Commission on February 3, 1993. Both parties appeared, but only Lake Village was represented by counsel.

FINDINGS OF FACT

Lake Village, a nonprofit corporation organized under the laws of this state, owns, controls, and operates facilities used to distribute and furnish water to the public for compensation. Its principal offices are located in Burgin. Beams is a developer of

Shady Acres Estates, a residential subdivision in Mercer County, located in an area served by Lake Village.

Beams began development of Shady Acres Estates in 1986. As part of the development, Beams employed a contractor, Bob Coffman, to install a water line in the subdivision with the intention of connecting it to Lake Village's water distribution system. During its installation, the line was inspected by Frank Brown, a plumbing contractor in Burgin, to see that it met Lake Village's requirements. Because he had inspected water installation projects in the past for Lake Village, both Beams and Coffman believed that Brown was authorized to approve the water line for Lake Village. In fact, Brown was not employed by Lake Village and did not have such authority. The record does not disclose whether Beams or Coffman paid Brown for his services.

The parties dispute whether construction of the water line was ever authorized by anyone acting on behalf of Lake Village. Beams maintains that he was told by Danny Noel, Chairman of Lake Village, to proceed with the construction. Noel denies having any such conversation with Beams. Noel states that he did discuss construction of the line with Coffman, but states that he told Coffman to come before the Lake Village board to seek approval of the extension before constructing the lines.

In any case, whatever their disagreement over the actual events, Beams has never made a written request to Lake Village to connect his line to its system. Instead, Beams appeared before the board in person at its December 2, 1986 meeting. By then, the

water line had been installed in the subdivision and was ready for connection to Lake Village. Noel was not present at the meeting, but the members who were present were reluctant to accept the water line because it had not been inspected and they did not know whether it had been installed in accordance with their specifications. They were concerned that if the line was not installed properly, it might create a leakage problem for them. Despite their misgivings, however, the Lake Village board was willing to seek a solution that would allow Beams to connect the line to the system. It was with this intent that they offered, by way of a compromise, to accept, on certain conditions, the line as a contribution to the system. One of the conditions was that Beams amend the subdivision plat by adding Lake Village to the utility easement shown on the plat. As another condition, Beams was required to obtain approval of the line from the Division of Water of the Natural Resources and Environmental Protection Cabinet.

Shady Acres Subdivision consists of 22 residential lots. There is one road into the subdivision that runs east and west. Fifteen lots are on the north side of the road and seven are on the south side. The easement referred to by the board is a 15-foot wide strip adjacent to the north side of the road. The original subdivision plat did not include Lake Village on the easement, and to satisfy the board, the plat was amended to correct this oversight. Beams also satisfied the second condition by obtaining approval of the water line from the Division of Water.

After the plat was amended and approval of the Division of Water was obtained, Beams delivered the plat to Lake Village's office. At the same time, he submitted receipts totalling \$11,302.46, which he said represented the cost of constructing the line, and he requested reimbursement of those costs. This was apparently the first time Beams requested payment of his construction costs. Lake Village did not reject the request, but refused to consider it until the receipts were supported by affidavit. Since submitting his first request, Beams has requested reimbursement on other occasions and Lake Village has continued to deny them, finally culminating in this complaint.

Lake Village refuses to reimburse Beams for two reasons. The first reason is its concern over the water line itself. Over the years of this dispute, the nature of this concern has changed. Initially, the concern was that the line might not have been installed properly and might require expensive maintenance in the future. However, the line has now been connected to and operated as a part of the Lake Village system for more than six years and has presented no maintenance problems. As a result of its experience with the line, Lake Village is satisfied that it was installed properly and in accordance with its specifications.

While Lake Village is no longer concerned about the construction of the line, its operation of the line has revealed other problems that it was not aware of earlier; namely, Lake Village has discovered that the line is not installed along the utility easement shown on the plat. In one instance, the line was

found as far away as 45 feet from the easement. The failure to install the water line on the utility easement creates two problems for Lake Village.

The first problem is the difficulty Lake Village encounters every time it has to find the water line. The water pipe installed by Beams does not have any sensory device which can be used to detect the line and it can only be found by excavating the area where it is believed to be located. Because this is largely a hit or miss operation, it can be time consuming and expensive. Additionally, by not knowing the location of the line there is the possibility that a house or other structure could be built over it, or that the line could be accidentally cut or damaged during construction of an improvement in the subdivision.

The second problem involves the lots on the south side of the road. To connect these lots to the water line, Lake Village must not only cross the road, a condition it anticipated when it agreed to accept the line, but, in those instances where the line is off the easement, it must also cross the opposite lot on the north side of the road, a condition it did not anticipate. This situation creates obvious problems of access not only for Lake Village, but also for the owners of property on the south side of the road. Until both these problems are resolved, Lake Village is not willing to reimburse Beams any part of the cost of construction.

In addition to the problem concerning the location of the line, Lake Village also disputes the amount claimed by Beams as the cost of construction. The receipts Beams submitted to Lake Village

totalled \$11,302.46. At the hearing, however, some of the claimed expenditures were withdrawn or modified, and the amount requested was reduced to \$8,001.21.¹ Of that amount, Lake Village agrees that \$6,297.69 was incurred or properly allocated to the cost of constructing the line. The difference of \$1,703.52 remains in contention.

CONCLUSIONS OF LAW

Lake Village is a utility subject to the jurisdiction of this Commission. As such, its operations must conform to the provisions of KRS Chapter 278 and the regulations promulgated thereunder. These include provisions for extensions of service under 807 KAR 5:066, Section 12, in effect when Beams installed the water line.² Subsection 3 of that section provided as follows:

An applicant desiring an extension to a proposed real estate subdivision may be required to pay the entire cost of the extension. Each year, for a refund period of not less than ten (10) years, utilities shall refund to the applicant who paid for the extension a sum equal to the cost of fifty (50) feet of the extension installed for each new customer connected during the year whose service line is directly connected to the extension installed by the developer, and not to extensions or laterals therefrom. The total amount refunded shall not exceed the amount paid to the

¹ Although Beams offered to withdraw several items from consideration, it is clear from the context of the offer that the withdrawal of some of them was only made as a compromise. For the purposes of this order, those items offered to be withdrawn by way of compromise have not been excluded from the items considered in contention between the parties.

² The regulation has since been amended effective June 7, 1992. As amended, Section 12 has become Section 11.

utility. No refund shall be made after the refund period ends.

This provision of the regulation is included as an option available to developers by Lake Village in its tariff filed with the Commission. The tariff also provides as another option that developers may construct and donate extensions to Lake Village as contributions in aid of construction. In that case, the developer is not entitled to a refund of the cost of construction. However, whichever option the developer selects, the tariff requires that the developer submit a written request to connect to the system on forms provided by Lake Village. This procedure was not followed by Beams in this case and, therefore, his complaint must be dismissed.

The dismissal of the complaint does not foreclose Beams from seeking reimbursement by proceeding in the manner set forth in Lake Village's tariff. As a public utility, Lake Village has an obligation under KRS 278.280(3) to extend service provided the extension does not place an unreasonable burden upon the utility. Based on the record in this case, the extension of service to the Shady Acres Subdivision would appear to be a reasonable extension provided the concerns of Lake Village over the location of the line are satisfied. It should also be noted, however, that satisfaction of those concerns and acceptance of the line only requires reimbursement based upon the actual cost of construction. Under Lake Village's regulation, which is identical to the Commission's regulation on the same issue, a developer is only entitled to be reimbursed an amount equal to 50 feet of construction for each

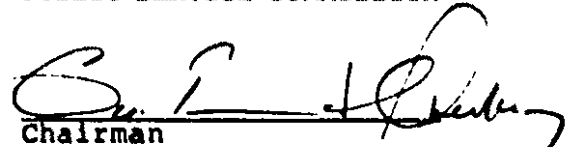
customer. Therefore, the amount a developer is entitled to be reimbursed may be less than the actual amount of construction.

This Commission being otherwise sufficiently advised,

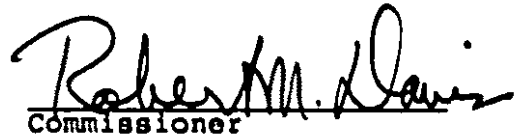
IT IS ORDERED that the complaint of Beams against Lake Village be and is hereby dismissed.

Done at Frankfort, Kentucky, this 29th day of April, 1993.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director