

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF BOONE COUNTY WATER AND)	
SEWER DISTRICT FOR DEVIATION FOR WATER)	CASE NO. 93-204
LINE EXTENSION PROJECTS)	

O R D E R

Boone County Water and Sewer District ("Boone District") has petitioned for rehearing of the Commission's Order of September 9, 1993 wherein we denied Boone District's proposed deviation from Commission Regulation 807 KAR 5:066, Section 11(4).

To encourage the expansion and enhancement of water service in Boone County, Boone District and Boone County Fiscal Court ("Fiscal Court") entered into an agreement to provide certain financial incentives for expansion. Fiscal Court agreed to contribute \$300 or 33 percent of the cost of the extension in excess of \$2,000 per property owner, whichever is greater, for designated water main extension projects. It has deposited \$650,000 into a special account to fund these contributions. Boone District agreed to provide the cost of 55 feet of water main extension for each customer. Property owners who benefit from the water main extension pay the balance of the project costs through special assessments.

Commission Regulation 807 KAR 5:066, Section 11, requires that water utilities make extensions of 50 feet or less to existing distribution mains at no charge to customers. This regulation

permits a utility to make greater extensions at its own expense "provided like free extensions are made to other customers under similar conditions." 807 KAR 5:066, Section 11(5).

In our Order of September 9, 1993, the Commission found that the proposed deviation conflicts with Commission Regulation 807 KAR 5:066, Section 11(5). Under Boone District's proposed plan, only customers in areas which Fiscal Court has designated are eligible for the extra footage. Customers in other parts of Boone District's service territory are not similarly treated.

In its petition for rehearing, Boone District contends that the proposed deviation does not violate Commission Regulation 807 KAR 5:066, Section 11(5). All persons within a pilot project area, it contends, are similarly treated.

Boone District further contends that the proposed deviation does not violate KRS 278.170 insofar as any discrimination which results from the proposed deviation is reasonable. It asserts that the purpose of the additional contribution is to promote and enhance the pilot projects so that a significant number of new customers will be added to Boone District's system in areas with existing private individual water systems. It further asserts that the cost of this enhanced contribution is minimal.

Finally, Boone District notes that the Commission has approved the proposed deviation in a previous proceeding.¹ "The Commission," Boone District insists, "would not have approved the

¹ Case No. 92-368, Application of Boone County Water and Sewer District For Deviation For a Water Line Extension Proposal (Nov. 11, 1992).

funding deviation in case number [sic] 92-368 had the District contribution violated 807 KAR 5:066." Boone District's Memorandum at 2.

Notwithstanding Boone District's arguments to the contrary, persons seeking service will be treated in a different manner depending on whether they are located in a designated area. As the proposed deviation fails to establish any eligibility criteria for a designated area and Boone District has unlimited discretion to defining such areas, this lack of any specified criteria increases the potential for discrimination between similar areas.

Second, Boone District has not articulated a reasonable basis for the proposed deviation. It contends that the proposed deviation will encourage more customers to connect to Boone District's system. It, however, fails to identify what areas will be affected by the proposed deviation, how many new customers will connect to the system as a result, or the benefits to existing customers or new customers who are ineligible for the extra footage.

Third, the extent of the disparate treatment is understated. In addition to the additional footage, persons in the pilot project areas who desire a water main extension have the use of Boone District's considerable assessment powers. Currently, a customer (or group of customers) desiring an extension must pay all costs in excess of 50 feet of water main extension. Subsequent customers connecting to this main extension do not directly pay any of these costs. Under the proposed plan, if a two-thirds majority of

persons in the pilot project area request the project, Boone District will assess all property owners in the area for the cost of the project. Individual property owners in the area thus pay less for the line because the total cost of the line is divided among total number of property owners. No property owner can refuse payment.

Finally, the Commission's earlier grant of a similar deviation does not require similar treatment in this case. The record of Case No. 92-368 indicates that the issue of unreasonable discrimination was never discussed nor addressed.

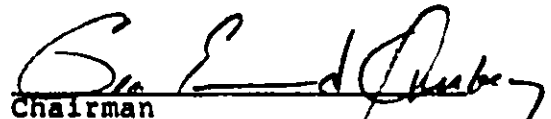
In reliance upon the Commission's holding in Case No. 92-368, Boone District has moved to amend its original application to request approval for only two projects. Its action does not alter the Commission's findings on the proposed deviation. Granting such deviations on a piecemeal fashion would be inconsistent with KRS 278.170 and Commission Regulation 807 KAR 5:066.

Accordingly, the petition for rehearing and the motion to amend should be denied.

IT IS THEREFORE ORDERED that Boone District's petition for rehearing and motion to amend are denied.

Done at Frankfort, Kentucky, this 18th day of October, 1993.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman

ATTEST:


Executive Director


Commissioner