

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ORBIN AND MARGIE A. BROCK)	
)	
COMPLAINANTS)	
)	
v.)	CASE NO. 94-404
)	
WESTERN ROCKCASTLE WATER ASSOCIATION,)	
INC.)	
)	
DEFENDANT)	

O R D E R

On October 25, 1994, Orbin and Margie A. Brock submitted a complaint to the Commission against Western Rockcastle Water Association, Inc. ("Western Rockcastle") alleging that Western Rockcastle was wrongly denying them service. As the complaint failed to state a prima facie case, the Brocks, on November 22, 1994, were given 20 days to file an amended complaint. The amended complaint filed December 7, 1994, adopted the original complaint and added that by denying the Brocks water when it had provided such service to their neighbors, Western Rockcastle was in violation of KRS 278.170(1).

By Order of January 20, 1995, the Commission directed Western Rockcastle to either satisfy the matter presented in the complaint or file a written answer within 10 days of the date of service of the Order. Western Rockcastle responded to the complaint on February 7, 1995, stating that as it did not have an easement to run a water line to the Brocks' property and could not obtain

voluntary easements, it had instructed the Brocks regarding the costs of condemning such easements. If the Brocks provided the necessary funds, Western Rockcastle stated that it would fulfill its obligations to provide water service to the Brocks. A hearing scheduled for April 6, 1995, at which Western Rockcastle, represented by counsel, and the Brocks appeared, was continued at the Brocks' request to allow them to obtain legal counsel. A hearing was held on August 31, 1995, at which both parties appeared represented by counsel. Both parties have also filed memorandum in support of their respective positions.

The Brocks wish to receive water service from Western Rockcastle, and Western Rockcastle has agreed to provide water service to the Brocks. The parties disagree over who should bear the expense of providing that service. The parties also dispute the relevancy and applicability of certain existing easements.

FINDINGS OF FACT

Western Rockcastle is a water association organized pursuant to KRS Chapter 273 that owns, controls, and operates facilities used in the distribution of water to the public for compensation. It is thus a utility subject to Commission jurisdiction. KRS 278.010(3)(d); KRS 278.012; and KRS 278.040(2). Its offices are located in Brodhead, Kentucky. The Brocks are also residents of Brodhead, Kentucky, and live within the territory served by Western Rockcastle.

The Brocks own property which is about 460 feet from the end of a three-inch water line owned by Western Rockcastle.¹ That line is located on property owned by Roy Adams. Between the end of the three-inch water line and the Brocks' property line is property owned by Roy Adams, Calvin Barnett, and Ronnie Barnett, as well as a right-of-way easement owned by Dr. and Mrs. Herman Blair. In order to run the water line across these properties, Western Rockcastle must obtain easements from the property owners. While the Blairs do not object to a water line being placed across their right-of-way easement, Mr. Adams and both Barnetts refuse to grant Western Rockcastle voluntarily easements across their properties for the purpose of running a water line to the Brocks.

While the Brocks contend that Western Rockcastle already has two easements which permit it to run a water line across the properties in question to their property line,² Western Rockcastle contends that the two easements apply specifically to the water lines already installed on the properties in question.³ Therefore, as Western Rockcastle was unsuccessful in obtaining voluntary easements from the other property owners, it informed the Brocks that the cost of running the water line to their property would be \$2,433.75 for the laying of the line and \$7,500.00 for attorney fees. The attorney fees are to cover the cost of obtaining a water

¹ August 31, 1995, Transcript of Evidence, p. 23.

² Memorandum on Behalf of Complainants, p. 3.

³ Memorandum on Behalf of Defendant, p. 5.

line easement through condemnation actions, estimated to be \$2,500.00 per tract.

The Brocks are not willing to pay anything over the estimated cost of laying the line itself, and have in fact tendered a check in the amount of \$2,433.75 to Western Rockcastle for that purpose. Western Rockcastle refuses to proceed until the additional \$7,500.00 is paid. The Brocks argue that this refusal to provide water service to them is discriminatory. Western Rockcastle states that it has treated the Brocks no differently than anyone else, but is merely requiring the Brocks to pay for the cost of providing water service to them.

CONCLUSIONS OF LAW

The relevant regulations support Western Rockcastle's position. Pursuant to 807 KAR 5:006, Section 5(3):

Obtaining easements and rights-of-way necessary to extend service shall be the responsibility of the utility. No utility shall require a prospective customer to obtain easements or rights-of-way on property not owned by the prospective customer as a condition for providing service. The costs of obtaining easements or rights of way shall be included in the total per foot cost of an extension, and shall be apportioned among the utility and customer in accordance with the applicable extension regulation. (Emphasis added).

Western Rockcastle has accepted its responsibility to obtain the easements. After failing to obtain easements from Mr. Adams and the two Mr. Barnetts, Western Rockcastle sought legal counsel concerning condemnation proceedings. It is merely requiring the Brocks to pay the costs of obtaining those easements in accordance

with the applicable extension regulation. As Western Rockcastle's filed tariff does not address line extensions, and as the extension in question is in excess of 50 feet, 807 KAR 5:066, Section 11(2)(a), is clearly the applicable extension regulation. According to 807 KAR 5:066, Section 11(2)(a):

When an extension of the utility's main to serve an applicant or 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.

Under 807 KAR 5:006, Section 5(3), and 807 KAR 5:066, Section 11(2)(a), therefore, Western Rockcastle is required to include the costs of obtaining the easements in question in the total per foot cost of running a water line from its three inch line on Mr. Adams' property to the Brocks' property line. Western Rockcastle must bear only the cost of 50 feet of the average estimated cost per foot, with the cost per foot to include not only the cost to place the water line, but the cost of obtaining the easements as well. The remainder is the responsibility of the Brocks, the applicants in this instance.

While it is not clear from the record whether Western Rockcastle has taken into account its responsibility for the average estimated cost of 50 feet of the water line, it is clear that the utility has not violated KRS 278.170(1) in its refusal to provide service to the Brocks for merely the cost of placing the

water line in the ground as alleged in their complaint. KRS 278.170(1) only prohibits a utility from subjecting "any person to any unreasonable prejudice or disadvantage . . . under the same or substantially the same conditions." While the Brocks may be the only applicants for service of Western Rockcastle who have been required to pay for the costs of obtaining an easement, Charles Burton, who has been Western Rockcastle's president for 20 years, testified that this was the first time in his tenure that condemnation proceedings were required in order to obtain an easement.⁴ The Brocks are thus in a unique position.

Regarding the existing easements which the Brocks argue give Western Rockcastle the right to run a water line to their property, there is no evidence to support this reasoning. They are not blanket easements as argued by the Brocks, but specific easements for specific water lines. As such, they have no relevancy to this proceeding.

IT IS THEREFORE ORDERED that:

1. The complaint of Orbin and Margie Brock against Western Rockcastle be and hereby is dismissed.

2. Within 20 days of the date of this Order, Western Rockcastle shall recalculate for the Brocks, and file with the Commission, the cost of providing water service to them based on the average estimated cost per foot, less the cost of 50 feet which is the utility's responsibility. All calculations shall include

⁴ August 31, 1995, Transcript of Evidence, p. 89.

the estimated costs associated with placing the line itself, as well as the estimated costs of obtaining the easements.

Done at Frankfort, Kentucky, this 23rd day of February, 1996.

PUBLIC SERVICE COMMISSION

Linda K. Breathitt
Chairman

E. J. [Signature]
Vice Chairman

Robert M. Davis
Commissioner

ATTEST:

Da Mills
Executive Director