

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

RUBEN BARNETT)	
)	
COMPLAINANT)	
)	
v.)	CASE NO. 99-431
)	
SOUTH ANDERSON WATER DISTRICT)	
)	
DEFENDANT)	

O R D E R

On October 20, 1999, Ruben Barnett (“Complainant”) filed a formal complaint against the South Anderson Water District (“SAWD”). The gravamen of the complaint concerned the extension of service of water to Complainant’s property by SAWD. Complainant requested that the Commission stay SAWD’s water expansion project until the Commission orders SAWD to extend water to Complainant’s property and down his road. On November 17, 1999, SAWD answered the complaint, claiming it had done nothing improper in not extending its water expansion plan to Complainant’s property.

Findings of Fact

The essence of the complaint is that SAWD, while planning a water expansion project in southern Anderson County, treated Complainant unfairly by not planning to extend water service an additional 1.3 miles down Willow Creek Road (now Aaron-Barnett Road) to Complainant’s residence and the property of roughly six other people. Complainant alleges that SAWD published misleading notifications of public hearings,

upon which he reasonably relied, that all of Aaron-Barnett Road (formerly Willow Creek Road) would be served by the expansion project. Complainant refers specifically to a notice of a public meeting published in February of 1999. This notice, Complainant claims, listed several area roads that would be serviced by the expansion project. Among the roads listed was Willow Creek Road, and the notice did not mention that only parts of the roads would receive service. Complainant alleges that he reasonably relied on said notification and did not attend any other meetings or address the water board to petition for an extension, until too late, because he thought his road would be included in the project.

Complainant also alleges that SAWD could pay for the additional extension out of the “contingency” fund for the project that was partially financed by federal and state loans. Complainant states that the extension of the water line would only cost an additional \$40,000, an amount which, Complainant argues, is only a small portion of the over-\$2,000,000 budget of the expansion project. At hearing, SAWD estimated the cost of the extension at \$51,725. Complainant further alleged that it would be practical, from an engineering standpoint, to “loop” the water line down Aaron-Barnett Road and connect it with a SAWD water line leading off US Highway 62.

Furthermore, Complainant alleges that part of the expansion project will serve six Washington County residents and only one Anderson County resident on a line. Complainant alleges that this is in violation of SAWD’s legal purpose.

SAWD is a Water District incorporated under KRS Chapter 74 and therefore is subject to Commission jurisdiction. For the current expansion project, called Phase V, SAWD applied through the Department of Local Government and received a low

interest loan under the Community Development Grant Program (“CDBG”) and a grant from Rural Development of the U.S. Department of Agriculture. The total amount received by SAWD was \$1,000,000 in grant money and \$1,000,000 in a low interest loan. The Phase V expansion project allows SAWD to extend water service to 342 new customers in southern Anderson County.

In its answer, SAWD argued that it gave ample opportunity for public comment and that Complainant attended none of those meetings. Moreover, SAWD argued that the February notice was not designed to provide an opportunity for public input, but to inform the public of the possible impact on an important land resource. SAWD claimed that at the time the notice was published the size of the project had already been determined and the time for public comment had passed. Moreover, SAWD claimed to have abided by all public notice rules required by the CDBG and Rural Development in its application process.

SAWD contends that it considered extending service down the entire length of Aaron-Barnett Road (a total of 3.1 miles) but that, at the time the grant proposal was being prepared, it was economically feasible to extend service down only 1.2 miles of the road. SAWD used the 1.2 miles on Aaron-Barnett Road to apply for the CDBG grant and the Rural Development loan. SAWD later decided to extend the line an additional .6 miles down Aaron-Barnett Road and pay for the extension out of the contingency fund in the expansion project's budget. SAWD contended that at the time it presented the grant and loan proposal, there were only two possible customers at the end of Aaron-Barnett Road and that number did not support the customer density

requirements needed to apply for the loan and grant. In short, there were not enough customers at that time that would earn SAWD enough money to pay back the loan.

SAWD argues that issuing an injunction staying the construction of Phase V would greatly reduce the chances that SAWD would receive the money from either CDBG or Rural Development. SAWD claims that if the project is held up, any other water district would be eligible for the money for which SAWD had applied and that SAWD would lose the funding for the project.

SAWD has also addressed Complainant's contention that it would be practical from an engineering point of view to "loop" the extension down Aaron-Barnett Road to a SAWD line on US 62. SAWD argues that the cost of completing such a line far outweighs the possible hydraulic benefits.

Conclusions of Law

Having reviewed the evidence on record and being otherwise sufficiently advised, the Commission finds:

1. The Commission's scope of review of SAWD's expansion project is severely limited by KRS 278.023. KRS 278.023 limits the Commission's scope of review of a water district's expansion project if that water district is incorporated under KRS 74 or KRS 273 and receives funding from the U.S. Department of Agriculture or the U.S. Department of Housing and Urban Development.

2. Because the project at issue is partially funded by federal funds through the U.S. Department of Agriculture, the scope of the Commission's review of the water expansion project is limited and the Commission cannot modify or reject a portion of the

project on its own authority. See KRS 278.023(1). Accordingly, the Commission lacks jurisdiction to order SAWD to modify its current expansion project.

IT IS THEREFORE ORDERED that:

1. The Commission finds in favor of the Defendant South Anderson Water District.
2. South Anderson Water District is not required to make the requested extension to Complainant.
3. The complaint is dismissed with prejudice and removed from the Commission's docket.

Done at Frankfort, Kentucky, this 11th day of August, 2000.

By the Commission

ATTEST:



Executive Director, Acting