

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

| | | |
|--------------------------------|---|-----------------|
| DIMITRI VAUGHN TAYLOR |) | |
| |) | |
| COMPLAINANT |) | |
| |) | |
| v. |) | CASE NO. 99-513 |
| |) | |
| CLARK ENERGY COOPERATIVE, INC. |) | |
| |) | |
| DEFENDANT |) | |

O R D E R

On December 21, 1999, Dimitri Vaughn Taylor (“Complainant”) filed a formal complaint against Clark Energy Cooperative, Inc. (“Clark Energy”) alleging that Clark Energy improperly refused him electrical service. Complainant alleges that prior to purchasing a plat of land on the Kentucky River, he contacted Clark Energy to inquire about extending electrical service along a set of lines and poles that at the time were out of use but did lead to Complainant’s property. Complainant alleges that Clark Energy assured him that it would extend service to the property because it had the right-of-way to extend service. Complainant also alleges that Clark Energy told him to obtain a building permit. Based upon this alleged representation, Complainant purchased the property and applied for the necessary building permit. Complainant alleges, however, that prior to approval of the building permit, Clark Energy took down the poles and wires leading to his property and informed him that in order to receive electrical service, he must build a road to the property.

Complainant requests that he receive electrical service from Clark Energy without payment for construction.

FACTS

On May 22, 1997, Complainant purchased the property in question. Complainant claims that he purchased the property after confirming that Clark Energy would provide electrical service. On the day of purchase, Complainant went to Clark Energy in Winchester and filled out a membership application form and advised Clark Energy that at one time electric service was provided to his property.

Complainant's property is located in Clark County and is bounded by steep cliffs on three sides and by the Kentucky River on the fourth side. Complainant gains access to his property by boat or by walking across his neighbor's property. No road leads to Complainant's property and he does not have an easement across any neighbor's property for access to his property. Furthermore, a topographic map of Complainant's property reveals that the cliffs surrounding his property are approximately 100 feet high. Complainant wishes to have Clark Energy extend its lines down these cliffs to his property from a Clark Energy service line located within 1000 feet of Complainant's planned point of service.¹ The existing distribution line is at the top of the cliffs and part of the line that Complainant requests would have to cross the face of the cliffs.

¹ 807 KAR 5:041, Section 11(1), provides in pertinent part:

An extension of 1,000 feet or less of single phase line shall be made by a utility to its existing distribution line without charge for a prospective customer who shall apply for and contract to use the service for one (1) year or more and provides guarantee for such service.

To support its denial of service, Clark Energy relies upon 807 KAR 5:006, Section 14(c).² Clark Energy argues that unless Complainant builds a road to his property, upon which Clark Energy's trucks, equipment, and lines may travel, it is under no duty to extend electrical service to Complainant.³ Without such access, Clark Energy claims that it would be difficult if not impossible to repair downed lines, set poles, string lines, and read Complainant's meter.

In regard to the existing line and poles on Complainant's property, Clark Energy claims that the line has been long abandoned and that no part of the old line is intact or can be used to extend service to Complainant's property. Clark Energy claims that it was unaware of the existence of the line until informed by the Complainant. Upon learning of the line, and following an inspection, Clark Energy retired the line because it believed that the line posed a hazard to hikers. Clark Energy claims that the old line consists of wires, poles, and a transformer of a type that Clark Energy no longer uses.

² 807 KAR 5:006, Section 14(c), provides:

When a customer refuses or neglects to provide reasonable access to the premises for installation, operation, meter reading, maintenance or removal of utility property, the utility may terminate or refuse service. Such action shall be taken only when corrective action negotiated between the utility and customer has failed to resolve the situation and after the customer has been given at least ten (10) days' written notice of termination pursuant to Section 13(5) of this administrative regulation.

³ Section 18 of the Rules and Regulations of Clark County's Tariff provides in pertinent part:

The cooperative may refuse or terminate service to an applicant or member, after proper notice for failure to comply with the cooperative tariffed rules and regulations; Commission regulations; outstanding indebtedness; noncompliance with state, local or other codes; refusal to permit access; or refusal to pay bills.

Furthermore, the retired line and transformer reflected outdated electrical characteristics that do not reflect modern electrical usage.

Clark Energy also claims that it never gave Complainant an ironclad assurance that it would extend electrical service to his property. However, even if, as Complainant claims, Complainant relied upon this alleged representation, it would not bear upon the final outcome of this case. The issue presented here is whether Clark Energy's refusal of service complies with the applicable tariff provisions, regulations, and statutes, not whether Complainant relied upon Clark Energy's representation in purchasing the property.

The Commission held a formal hearing in this case on July 12, 2001. H. Howell Brady, Hearing Examiner for the Commission, presided.

DISCUSSION

Complainant complies with all applicable Commission regulations except for the issue regarding whether he is required to build a road to give Clark Energy "reasonable access" to his premises. 807 KAR 5:006, Section 14(c). Moreover, the Commission must determine whether the extension that Complainant requests is "reasonable." KRS 278.280(3) grants the Commission the authority to order an extension of service when, after a hearing, the Commission finds that such extension is "reasonable."

Complainant contends that Clark Energy can easily run a service line down the cliff to his planned home because the presence of the retired line proves Clark Energy did it once before. Clark Energy claims that its policy is to avoid situations in which an extension of service would result in part of a line being inaccessible to Clark Energy employees and equipment. Neither party disputes that running the line down the cliff

would result in a part of the line being inaccessible to Clark Energy's crew and equipment. Clark Energy claims that if Complainant does not build a road by which it may access Complainant's property, it would be forced to "hand set" the poles. This is an arduous process by which Clark Energy's crew would carry the poles down the cliffs and set them in the ground by hand. Clark Energy claims that it no longer sets poles by hand.

In his rebuttal testimony, Complainant claims that if Clark Energy does not wish to provide service by means of poles set directly on the cliff side, there exists a trail or former road that leads to his property from a neighbor's property. Complainant asserts that with minimal grading, clearing, and the installation of a culvert, Clark Energy's equipment and personnel could access his property.⁴ Complainant has neither requested nor obtained permission from his neighbor to build a road to his property.⁵ The proposed route for this road is approximately 4000 feet in length.

Complainant further asserts that, if this 4000-foot road is to be built, it is Clark Energy's responsibility to pay for the construction. Complainant relies upon Clark

⁴ Complainant does not propose that the road be paved, only that it be constructed in such a manner that it allows Clark Energy's trucks reasonable access to his property.

⁵ 807 KAR 5:006, Section 5(3), provides:

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 cost 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 administrative regulation.

Energy's standard service agreement, which provides that every Clark Energy customer give Clark Energy a perpetual easement and right of access over its lands for the maintenance and extension of service. The neighbor over whose property this alleged road would run is a Clark Energy customer. Complainant argues, therefore, that Clark Energy already has a perpetual easement over the neighbor's property and has a right and obligation to build the road.

The Commission, however, is not the proper body to decide whether Clark Energy's easement on the neighbor's property provides it with a right to construct a road in order to provide service to a prospective customer. A court of competent jurisdiction in Clark County would have to determine Clark Energy's rights under the easement.

Clark Energy states that, if Complainant pays for the construction of a 4000-foot road, then it is willing to extend electrical service to Complainant along the road. Complainant is unwilling to pay these additional costs, maintaining that he is entitled to free extension of service.

If the Commission ordered Clark Energy to extend service to Complainant by running the line down the cliffs, Complainant would pay nothing under the regulation for the extension because the extension is less than 1000 feet. However, the hazards involved in such an undertaking render this option less than reasonable. If, on the other hand, Clark Energy were required to pay all costs associated with extending service, acquiring easements, and building a road, the other Clark Energy customers would ultimately subsidize Complainant's extension.

The Commission concludes that an extension of service to Complainant's property should not lead down the cliffs. Although at one time the property received


service from a line leading down the cliffs, such a line would create a significant safety concern to Clark Energy's employees who build, maintain, and repair its lines. The Commission finds that such an extension would not be reasonable because of safety risks and the problems posed by periodic meter readings. The Commission further finds that, in order to provide reasonable access to his property, Complainant must pay the construction costs necessary to enable Clark Energy's trucks to install and maintain the necessary equipment. It is inappropriate to require other customers to subsidize the costs of such construction.

IT IS THEREFORE ORDERED that Clark Energy shall extend service to Complainant contingent upon Complainant's providing reasonable access as described above and his willingness and ability to pay for his portion of the costs of the extension, including the acquisition of easements pursuant to 807 KAR 5:041, Sections 11(1) and (2)(a).

Done at Frankfort, Kentucky, this 15th day of October, 2001.

By the Commission

ATTEST:


Deputy Executive Director