

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

DONNIE E. AND DELORES A. LOWERY)	
)	
COMPLAINANTS)	CASE NO.
)	2005-00544
V.)	
)	
JESSAMINE-SOUTH ELKHORN WATER)	
DISTRICT)	
)	
DEFENDANT)	

O R D E R

This matter is before the Commission upon its own motion. At an informal conference in this matter on September 1, 2006, Defendant Jessamine-South Elkhorn Water District (“Jessamine-South Elkhorn”) raised the issue of the Commission’s authority to grant the relief requested by the Complainants, Donnie E. Lowery and Delores A. Lowery (the “Lowerys”).

The facts of this case do not appear to be in dispute. The Complainants reside in a mobile home on a parcel of land in Jessamine County, Kentucky, known as the Lowery farm. Water mains from the City of Nicholasville Water Department cross the Lowery farm and, for several years, provided water to a farmhouse located on the premises. The record also indicates that the Complainants’ residence was served by a second service line running from the service line connecting the farmhouse to the city’s water mains. At some point in the past, the city terminated water service to the

farmhouse (and the Complainants' residence as a result) due to a high loss of water along the service line and for non-payment. It is unclear to what extent the Complainants have sought to resolve these problems with the city of Nicholasville. Nonetheless, the Complainants now ask the Commission to require Jessamine-South Elkhorn to provide water service to their residence, even though the record demonstrates that their residence is outside the territorial limits of the water district.

Jessamine-South Elkhorn is a water district established pursuant to Chapter 74 of the Kentucky Revised Statutes. Jessamine-South Elkhorn is subject to the Commission's jurisdiction by operation of KRS 278.015. The territorial limits of Jessamine-South Elkhorn have been set by the Jessamine County Fiscal Court and should be respected. So long as the Complainants seek service from Jessamine-South Elkhorn in an area outside the duly determined territorial limits of the water district, Jessamine-South Elkhorn is under no obligation to serve the Complainants.¹

Territorial limits, however, are subject to change.² This Commission may order Jessamine-South Elkhorn to seek an enlargement of its territorial limits to include the Lowery farm or any portion thereof in accordance with the procedure set forth in KRS 74.110.³ To date, neither the Complainants nor Jessamine-South Elkhorn have squarely addressed whether seeking such an extension would be reasonable or advisable.

¹ See, e.g., Olson v. Preston Street Water Dist., 291 Ky. 155, 163 S.W.2d 307 (1942).

² KRS 74.110.

³ See, e.g., Christian County Water District, Case No. 1990-00220 (Ky. PSC February 20, 1991).

IT IS THEREFORE ORDERED that:

1. A hearing shall be held at 10:00 a.m., Eastern Daylight Time, on October 10, 2006 at the Commission's offices for the purposes of:

a. permitting the Complainants an opportunity to offer proof rebutting the evidence in the record which demonstrates that they seek service from Jessamine-South Elkhorn outside the water district's territorial limits; and

b. permitting both parties to offer proof and argument as to whether Jessamine-South Elkhorn should be ordered to seek an enlargement of its territory pursuant to KRS 74.110; and

c. permitting both parties to offer proof as to whether 7 U.S.C. 1926(c) prohibits any enlargement of Jessamine-South Elkhorn's territory at the expense of Nicholasville's service territory.

2. No opening statements shall be permitted at the hearing.

3. Upon the conclusion of the hearing, the matter shall stand submitted for final adjudication.

Done at Frankfort, Kentucky, this 22nd day of September, 2006.

By the Commission

ATTEST:


Executive Director