

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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In the Matter of:

GERALD GOODLETT AND)	
BETTY GOODLETT,)	
COMPLAINANTS)	
vs.)	CASE NO. 9270
)	
SALT RIVER RURAL ELECTRIC)	
COOPERATIVE CORPORATION)	
DEFENDANT)	

O R D E R

On July 26, 1984, complainants, Gerald Goodlett and Betty Goodlett ("Goodletts") filed a civil complaint in the Circuit Court of Mercer County, Kentucky, (Case No. 84-CI-143) alleging that defendant, Salt River Rural Electric Cooperative Corporation ("Salt River") breached a contract for restoration of electric service to a house in Washington County, Kentucky, entitling complainants to: (1) specific performance of the contract or, alternatively, \$20,000 damages; (2) \$10,000 punitive damages; (3) \$5,000 consequential damages, and (4) miscellaneous out-of-pocket expenses. Complainants amended their complaint on October 19, 1984, to include the allegations that: (1) Salt River breached a contract and easement entered into in 1950 with J. L. Lambert, husband of the predecessor in title to complainants, creating a perpetual covenant to provide electric service to the house; and (2) Salt River committed fraud by failing to disclose to

complainants that the service contract they executed was merely an offer subject to acceptance by Salt River.

By Order entered October 31, 1984, the Mercer Circuit Court transferred the complaint to the Commission based on its original jurisdiction over complaints as to service of any utility (KRS 278.260(1)). The Court modified its Order on November 30, 1984, to expressly reserve complainants' claim of damages.

Pursuant to the transfer Order of the Court, the Commission established this case on February 12, 1985. A hearing was held in the Commission's offices in Frankfort, Kentucky, on May 1, 1985. The parties subsequently submitted briefs, supplemental briefs and a written stipulation of facts respecting an easement granted to Salt River. The case was submitted for adjudication on August 26, 1985.

FACTS

In February or March 1984, Goodletts purchased from Mr. and Mrs. Jessie Arnold a tract of land, consisting of 65 acres and a house, in Washington County, Kentucky. The Goodletts knew at the time of their purchase that there was no electric service to the house, although there were electrical fixtures and outlets installed therein. The house is located within the service territory of Salt River.

On January 20, 1950, J. L. Lambert, husband of Laura Watts Lambert the then record title owner, conveyed unto Salt River:

[T]he right, power, and privilege to construct, inspect, maintain, operate, rebuild, and repair a transmission or distribution line or lines for the transmission or distribution of electrical energy, along and over the land hereinafter described. . . .

Although the easement from J. L. Lambert was never recorded, Salt River did construct a distribution line to the house. Electric service was supplied from 1950 until 1962 when, at the customer's request, the meter was removed.

Salt River maintained its distribution line to the property for a period of 8 years subsequent to the customer's discontinuance of service. In 1970 Salt River upon obtaining the property owner's consent removed its distribution line, poles and the service drop. The property has had no electric service since 1962.

On June 22, 1984, the Goodletts went to Salt River's offices in Bardstown, Kentucky, to obtain electric service for their property. They spoke with Joanna Turner, a receptionist at Salt River, and requested that electric service be restored. The Goodletts signed an "Application for Membership and Electric Service" and paid a \$25 membership fee and a \$100 security deposit. Approximately 8 days later Tom McClure, staking engineer for Salt River, called the Goodletts to advise them that electric service could not be restored due to the distance between the house and Salt River's nearest distribution line unless they paid for the cost of the line extension. On July 3, 1985, the Goodletts spoke with Kenneth A. Hazelwood, General Manager of Salt River and were informed of Salt River's tariff on

extensions of distribution lines. That tariff mirrors the Commission's regulation, 807 KAR 5:041 Section 11, in requiring the utility to pay the cost of the first 1000 feet of any extension and the customer to pay any excess.

DISCUSSION

The Goodletts' original complaint arises out of Salt River's non-performance of an alleged contract to restore electric service at no cost beyond the \$25 membership fee and \$100 security deposit already paid. The Goodletts rely upon their application for service signed in Salt River's offices on June 22, 1985. Salt River contended that the service application, by its express terms, is only an offer subject to acceptance by Salt River's Board of Directors and such acceptance was never made.

At the close of the evidentiary hearing on May 1, 1985, the Goodletts' counsel conceded that no valid service contract could exist until Salt River's board had accepted the Goodletts' application. The Goodletts then chose to base their complaint solely on the contract/easement theory set forth in their amended complaint.

Under the contract/easement theory, the Goodletts argue that the 1950 easement from J. L. Lambert granting Salt River a right-of-way on the property was a perpetual easement requiring Salt River to maintain its distribution lines and poles on the property for the benefit of the property owner. The easement allegedly ran with the land and added value to it. As successors in title to the property, the Goodletts claim the right to

enforce the easement against Salt River by requiring the restoration of the electric lines at no cost to them.

Salt River argues that the easement it obtained in 1950 was not granted by the record title holder, Laura Watts Lambert, but by her spouse, and further said easement having never been recorded can neither run with nor add value to the land.

The Commission is of the opinion and hereby finds that the enforceability of the easement is an issue which need not be decided because even assuming arguendo that it is enforceable it provides the Goodletts no right to receive electric service on a basis other than that set forth in Salt River's tariffs. The easement merely grants Salt River the right to construct and maintain transmission and distribution lines in return for valuable consideration acknowledged as having been received by the grantor. The easement clearly imposes no obligation upon Salt River to construct any electric lines nor does it prohibit the removal of lines no longer in service.

Further, the Commission finds that if said easement did purport to grant electric service on some condition in conflict with the Commission's rules and regulations, said easement would be unenforceable. The legislature has delegated to the Commission the authority to modify utility contracts except those entered into with municipalities or political subdivisions (KRS 278.040). In accord: Smith v. Southern Bell Tel. and T. Co., Ky., 104 S.W.2d 961 (1937).

Salt River acted prudently in removing its distribution line subsequent to the customer's non-use of electric service for a continuous period of 8 years. Salt River's manager testified that lines and poles are not removed after a customer discontinues service if there is any reason to believe that service will be resumed. The line served only this property and was maintained and rights-of-way kept clear for 8 years before being removed. If service had been requested shortly after the line was removed there might be a question of whether Salt River acted reasonably. Here, the request for service was made 14 years after the line was removed and 22 years after service was last provided.

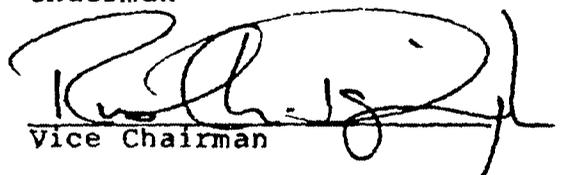
Salt River's tariff on extensions of distribution lines is a reasonable balance between the utility's obligation to serve all potential customers and the ratepayers' right to not unduly subsidize those customers who are a great distance from an electric distribution line. The Commission emphasizes that Salt River has an obligation to serve the Goodletts and at no time has that service been refused. Rather, the Goodletts object to the tariff requiring a payment of all extension costs in excess of the first 1000 feet. This requirement is reasonable and no basis has been established to grant a waiver.

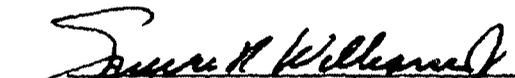
IT IS THEREFORE ORDERED that the Goodletts' complaint and amended complaint be and they hereby are dismissed and the relief requested therein denied.

Done at Frankfort, Kentucky, this 6th day of December, 1985.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:

Secretary