

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

HENDERSON UNION RURAL)
ELECTRIC COOPERATIVE CORPORATION)
VS. () CASE NO. 9454
KENTUCKY UTILITIES COMPANY)

O R D E R

On November 5, 1985, Henderson-Union Rural Electric Cooperative ("Henderson-Union") filed a complaint against Kentucky Utilities Company ("KU") alleging that KU is preparing to supply electric service to a group of oil wells that have been served by Henderson-Union since 1951. Henderson-Union requests the Commission to preclude KU from serving the oil wells and to revise the certified territorial maps to reflect the existence of Henderson-Union's distribution line alleged to be omitted through oversight and inadvertence.

On December 2, 1985, KU filed an answer and counterclaim.¹ The answer alleges that KU has the exclusive right to serve the oil wells based on their location within KU's certified territory and denies that any grounds exist to justify a revision to the certified territory boundary maps.

¹ Upon Henderson-Union's motion to strike, the Commission dismissed KU's counterclaim by Order entered January 3, 1986.

A hearing was held at the Commission's offices in Frankfort, Kentucky, on January 7, 1986. The parties subsequently filed briefs and the case has been submitted for adjudication.

STATEMENT OF FACTS

Henderson-Union began providing electric service in 1951 to a cluster of approximately 19 oil wells in the area west of Sebree in Webster County, Kentucky. The number of wells served varied during the 1950's but has remained relatively constant since 1959 at 4 to 5. The present customer operating these wells, Baldwin & Baldwin, has one delivery point and meter. All of the wells are served through this one meter by Baldwin & Baldwin's own electrical distribution system.

As a result of problems created by voltage fluctuations, Baldwin & Baldwin requested Henderson-Union in the summer of 1985 to move its delivery point closer to the cluster of wells. Henderson-Union then determined that although it had been serving this load since 1951, the certified territorial boundary maps, prepared in compliance with KRS 278.017, showed this customer to be in KU's territory. Henderson-Union contacted KU in an attempt to resolve this situation but, being unable to reach an agreement, subsequently filed this formal complaint.

Henderson-Union's existing point of delivery is at the end of a three phase distribution line located almost 1100 feet within KU's territory. To solve the customer's voltage fluctuation problems, Henderson-Union proposed to extend its existing distribution line 1400 feet so the delivery point would be within the cluster of wells. KU already has in place a three phase

distribution line adjacent to the wells. KU would be able to provide sufficient electrical service by extending its line by one pole.

DISCUSSION OF ISSUES

This controversy raises issues under the 1972 statutes establishing certified territorial boundaries for electric utilities, KRS 278.016 to 278.018. Henderson-Union claims that despite the customer's location within KU's service area, KRS 278.018(4) precludes KU from extending service to the customer. KRS 278.018(4) provides that:

[N]o retail electric supplier shall furnish, make available, render or extend retail electric service to any electric-consuming facility to which such service is being lawfully furnished by another retail electric supplier on June 16, 1972, or to which retail electric service is lawfully commenced thereafter in accordance with this section by another retail electric supplier.

Henderson-Union's position is KRS 278.018(4) is an expressed legislative recognition that the continuation of existing customer relationships should take precedent over the establishment of certified territorial boundaries.

Each electric utility's territorial boundaries were established as "lines substantially equidistant between its existing distribution lines and the nearest existing distribution lines of any other retail electric supplier in every direction." KRS 278.017(1). The Commission directed the preparation of maps to show each utility's boundary so established. KRS 278.017(2). Henderson-Union claims that its certified boundary as established in 1972 was erroneous in that through oversight and inadvertence its distribution line serving Baldwin & Baldwin was omitted.

Henderson-Union seeks authority to redraw its boundary to reflect this distribution line.

KU argues that the Commission should not place a literal and narrow interpretation on KRS 278.018(4) as requested by Henderson-Union because to do so would permit the original supplying utility to construct extensive new facilities in the certified territory of another utility.

KU's position is that this controversy should be decided pursuant to KRS 278.018(3) which provides that:

The commission may, after a hearing had upon due notice, make such findings as may be supported by proof as to whether any retail electric supplier operating in a certified territory is rendering or proposes to render adequate service to an electric-consuming facility and in the event the commission finds that such retail electric supplier is not rendering or does not propose to render adequate service, the commission may enter an order specifying in what particulars such retail electric supplier has failed to render or propose to render adequate service and order that such failure be corrected within a reasonable time, such time to be fixed in such order. If the retail electric supplier so ordered to correct such failure fails to comply with such order, the commission may authorize another retail electric supplier to furnish retail electric service to such facility.

KU claims that the evidence supports the findings that Henderson-Union's existing service is inadequate and that KU can provide adequate service at a lower cost investment in new facilities than Henderson-Union.

KU presented extensive testimony and argument on the existence of prior territorial disputes between itself and Henderson-Union. These disputes involved questions of whether a utility is entitled to continue serving a customer whose load has migrated from within the serving utility's certified territory to

another territory. KU argues that these situations occur with some frequency and that the Commission should take this opportunity to set forth definitive guidelines to be applied to any such future controversy.

KU strenuously argues that no basis exists for the Commission to reform the 1972 territorial boundary map. KU claims that the map was jointly agreed to by Henderson-Union and KU, signed by a representative of each utility and filed with the Commission.

Further, KU claims that the ultimate purpose of preparing maps was to evidence each utility's certified boundaries, not its distribution lines. This claim is supported by the Commission's 1972 instructions to electric utilities regarding the preparation of the boundary maps. One of those instructions provided that "maps that contain agreed boundaries need not show distribution lines." KU also notes that the boundary reformation sought by Henderson-Union is based on the location of customer owned distribution lines in addition to those of Henderson-Union.

FINDINGS AND CONCLUSIONS

Based on the evidence of record and being advised, the Commission is of the opinion and hereby finds that Henderson-Union was providing service to the electric-consuming facility now owned by Baldwin & Baldwin prior to the 1972 enactment of the territorial boundary statute. Henderson-Union is granted specific authority pursuant to KRS 278.018(4) to maintain service to this facility to the exclusion of any other utility. Consequently, Henderson-Union has an unqualified right to continue serving this electric-consuming facility.

The Commission further finds that KRS 278.018(3) is not applicable to the facts of this case. KRS 278.018(3) applies only when a utility fails to comply with a Commission Order setting forth remedial measures necessary for such utility to render adequate service. Henderson-Union could not fail to comply with such a Commission Order since there has never been one. Henderson-Union has at all times proposed to render adequate service to Baldwin & Baldwin subject only to resolution of this territorial dispute by the Commission.

KU supports its request for guidelines by reciting three prior boundary disputes with Henderson-Union. All of those disputes involved situations where a customer's load migrated from one utility's service territory into another. In each case, KU and Henderson-Union were able to resolve the dispute by determining the new point of delivery and referring to the territorial boundary map. These cooperative efforts obviated the need for administrative action by the Commission.

The case now pending is dissimilar to those prior disputes. Baldwin & Baldwin's load has not migrated. The cluster of oil wells now being served has been the only cluster served for over 25 years. The wells have always been served by Henderson-Union and have always been located in KU's certified territory. Under these circumstances, there is no need to determine the customer's point of delivery since KRS 278.018(4) prohibits any retail electric supplier other than Henderson-Union from providing service to this facility.

The Commission declines KU's invitation to turn this case into a generic proceeding for the adoption of mandatory guidelines for the resolution of future territorial boundary disputes. The territorial boundary statutes have worked efficiently and reasonably since their enactment, in particular due to KRS 278.018(6) which authorizes electric utilities to allocate territories among themselves by contract. The Commission recognizes and commends the efforts of electric utilities to work together in a spirit of cooperation to achieve the statute's laudatory goals of an orderly development of retail electric service, avoiding wasteful duplication of distribution facilities, avoiding unnecessary encumbering of the landscape, preventing the waste of materials and natural resources, satisfying the public convenience and necessity and minimizing disputes between retail electric suppliers.

Even if KU had been able to demonstrate the need for guidelines to administer KRS 278.016 to 278.018, this would not be the proper forum for their adoption. The Commission has before it only 2 of 29 affected electric utilities.

The Commission further finds that Henderson-Union has failed to carry its burden of proof to justify a revision of the territorial boundary map. There is no evidence to demonstrate that Henderson-Union's distribution line serving Baldwin & Baldwin was omitted due to oversight or inadvertence. On the contrary, the authorized signature of Henderson-Union on the map, coupled with the Commission's 1972 guidelines eliminating the need for distribution lines when boundaries can be mutually agreed to,

indicates that the map accurately reflects the boundary as agreed to by Henderson-Union.

IT IS THEREFORE ORDERED that:

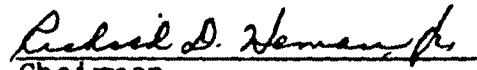
1. Henderson-Union be and it hereby is authorized to extend its distribution line to continue providing retail electric service to the electric-consuming facility owned by Baldwin & Baldwin.


2. Henderson-Union's request to revise the territorial boundary map be and it hereby is denied.

3. KU's request to render retail electric service to Baldwin & Baldwin be and it hereby is denied.

Done at Frankfort, Kentucky, this 8th day of July, 1986.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:

Secretary