

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE CONTRACT FOR CONSTRUCTION OF EXTENSION)
OF LINES FOR NORTHEAST WOODFORD COUNTY)
WATER DISTRICT TO STONEGATE SUBDIVISION,)
PURSUANT TO AGREEMENT WITH BOBBY MATTHEWS,) CASE NO.
J. PAT WILLIAMS, TED W. HAHN, DOUGLAS) 10163
MCLONEY, AND HAROLD MULLIS, DOING BUSINESS)
AS STONEGATE SUBDIVISION, A PARTNERSHIP)

O R D E R

On February 1, 1988, a complaint was filed by the developers of Stonegate Subdivision: Bobby Matthews, J. Pat Williams, Ted W. Hahn, Douglas McLoney and Harold Mullis, a partnership doing business in the name of the subdivision ("Partnership"). The complaint requests that Northeast Woodford County Water District ("District") be required to make refunds based on Partnership's construction of water mains for the Stonegate Subdivision. The refund provisions of 807 KAR 5:066, Section 12(3) of Commission regulations were given as the basis for Partnership's request. This regulation reads as follows:

(3) An applicant desiring an extension to a proposed real estate subdivision may be required to pay the entire cost of the extension. Each year for a period of not less than ten (10) years the utility shall refund to the applicant who paid for the extension a sum equal to the cost of fifty (50) feet of the extension installed for each additional customer connected during the year but in no case shall the total amount refunded exceed the amount paid to the utility. After the end of the refund period from the completion of the extension, no refund will be required to be made.

By petition filed February 10, 1988, District is seeking approval of its November 3, 1978 contract with Partnership. Said contract provided for construction of distribution mains for the Stonegate Subdivision with all costs borne by Partnership. The contract did not mention or provide for refunds to Partnership as defined by Commission regulation 807 KAR 5:066, Section 12(3). District has requested that its contract with Partnership be approved under the terms of 807 KAR 5:066, Section 12(4) which does not mention refunds. The instant case was established to consider District's request.

By Order entered August 1, 1988, the complaint of February 1, 1988 was made a part of the record in the instant case and full intervention was granted to Partnership. On September 12, 1988, District filed a response to the February 1, 1988 complaint.

DISCUSSION

The Commission's record of water main construction for the Stonegate Subdivision is limited to that provided for the record in the instant case. Commission approval of construction was not sought nor granted. If approval had been sought for construction of water mains at \$11.28 per foot, the matter would have been severely questioned or possibly denied.

The record shows that District and Partnership entered into a contract to provide for the installation of water mains in Stonegate Subdivision. The contract provided for the installation and construction to be made at no cost to District. It is unclear from the record when the construction was complete. However,

there is no question that the construction has been completed and that service has been provided to the subdivision by District for a number of years.

The contract between District and Partnership has apparently been acceptable to District and to Partnership since November 3, 1978. Now, more than 9 years since it was fully executed, the Commission has been asked to approve the contract.

The first issue the Commission must face, is District's delay in seeking approval of the contract. Although Commission regulations,¹ pursuant to its authority under KRS 278.040(3), allow for deviations, a request for a deviation must be made prior to the implementation of the deviation; regardless of the contract of the parties involved. The regulations are clear and District should have been aware of the requirements for this procedure.

A review of District's contract with Partnership indicates that it is of the general nature and type that the Commission would normally approve under the circumstances involved in this instance. Second, because all parties to the contract agreed at the time of its execution to its terms, and because the contract was apparently fully executed and enforced the Commission is of the opinion that it should not now attempt to intercede.

The Commission, after a review of the record in this matter and being advised, is of the opinion and finds that:

¹ (1) 807 KAR 5:001, Section 14: Deviations from Rules. In special cases, for good cause shown, the Commission may permit deviations from these rules.

1. The petition filed February 10, 1988 should be considered herein as a request for a deviation from 807 KAR 5:066, Section 12(3).

2. Partnership and District mutually agreed to the terms of the contract of November 3, 1978.

3. On the basis of the terms of the contract, District should be granted a deviation from the refund provisions of 807 KAR 5:066, Section 12(3).

4. The complaint of Partnership, a part of the record herein, should be dismissed.

IT IS THEREFORE ORDERED that District be granted a deviation from the refund provision of 807 KAR 5:066, Section 12(3), for the water main extensions constructed by Partnership for the Stonegate Subdivision of Woodford County, Kentucky.

IT IS FURTHER ORDERED that Partnership's complaint be dismissed.

Done at Frankfort, Kentucky, this 9th day of November, 1988.

PUBLIC SERVICE COMMISSION

Richard D. Homan, Jr.
Chairman

Robert M. Lewis
Vice Chairman

ATTEST:

Executive Director

Spencer N. Williams
Commissioner