

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 HOMESTEAD SUBDIVISION,)
PURSUANT TO AGREEMENT WITH BOBBY GAFFNEY,) CASE NO.
TIMOTHY THOMPSON, AND MICHAEL LAWSON,) 10164
DOING BUSINESS AS HOMESTEAD DEVELOPMENT)
COMPANY, A PARTNERSHIP)

O R D E R

By petition filed February 10, 1988, Northeast Woodford County Water District ("District") is seeking approval of its April 21, 1987 agreement with Homestead Development Company ("Developer"). Said agreement provided for construction of distribution mains for the Homestead Subdivision with all costs borne by Developer. The agreement did not mention or provide for refunds to Developer as defined by Commission regulation 807 KAR 5:066, Section 12(3). Developer has requested that said refunds be made by the District. 807 KAR 5:066, Section 12(3) 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.

District has requested that its agreement with the Developer be approved under the terms of 807 KAR 5:066, Section 12(4) which does not mention refunds.

DISCUSSION

The record shows that District and Developer entered into a contract to provide for the installation of water mains in Homestead 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 months.

The Homestead Subdivision has been developed on land with southern and western boundaries that are common with boundaries of the Stonegate Subdivision. Access to Homestead is through Stonegate by way of Quail Run and Foxtail Drive. The appearance of the two subdivisions on the plat of record in this matter is that of a single subdivision.

The contract between District and Developer has apparently been acceptable to District and to Developer since April 21, 1987. After 8 months 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 Developer 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. 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. Developer and District mutually agreed to the terms of the contract of April 21, 1987.

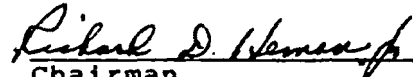
3. On the basis of the terms of the contract, District should be granted a deviation from the refund provisions of 807 KAR 5:066, Section 12(3).

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.

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 Developer for the Homestead Subdivision of Woodford County, Kentucky.

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

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:

Executive Director