

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

INTER-COUNTY RURAL ELECTRIC COOPERATIVE CORPORATION	)	
	)	
COMPLAINANT	)	
	)	
v.	)	CASE NO. 94-326
	)	
KENTUCKY UTILITIES COMPANY	)	
	)	
DEFENDANT	)	

O R D E R

BACKGROUND

On August 29, 1994, Inter-County Rural Electric Cooperative Corporation ("Inter-County") filed a complaint against Kentucky Utilities Company ("KU") alleging that KU's efforts to provide electric service to a new customer in the Lebanon-Marion County Industrial Park ("Industrial Park") will violate Inter-County's rights under the electric Territorial Boundary Act, KRS 278.016-278.018. This Act establishes exclusive service territories for each retail electric supplier regulated by the Commission and prohibits a supplier from serving any facilities within an area certified to another supplier. KRS 278.018(1).

KU filed an answer denying any violation of the Territorial Boundary Act and asserting the exclusive right to provide permanent electric service to the new customer. The new customer is Kentucky Wire and Cable Company ("Kentucky Wire"), a manufacturer of

electrical cords. Kentucky Wire intervened and participated fully in this proceeding.

An informal conference was held on October 5, 1994 in Lebanon, Kentucky in conjunction with a site visit to the Industrial Park. The parties subsequently filed a partial stipulation of facts and a hearing was held on October 5, 1995. Post-hearing briefs were filed and this case was then submitted for a decision.

#### DISCUSSION

The certified territorial boundary between Inter-County and KU bisects the Industrial Park. Both Inter-County and KU are presently providing electric service in the Industrial Park to those facilities within their respective service territories. Kentucky Wire is located on Lot 2F in the Industrial Park, a lot that is located partially in Inter-County's service territory and partially in KU's.

Kentucky Wire knew at the time Lot 2F was purchased that the property was located in two adjacent electric service territories but assumed that it had the right to choose its electric supplier. Based on its projected electric consumption and the available electric rates, Kentucky Wire's preference was KU.

Kentucky Wire subsequently learned that there was no customer choice but was led to believe that the location of a majority of its facility was the determining factor. Consequently, Kentucky Wire then attempted to site its facility so that more than 50 percent would be in KU's territory. Despite its best efforts, this siting exercise was unsuccessful. A joint survey subsequently

performed by Inter-County and KU showed 51.4 percent of the Kentucky Wire facility to be in Inter-County's territory.

Inter-County, under claim of a "majority" rule, asserted an exclusive right to provide electric service to Kentucky Wire. Consequently, for construction purposes, Kentucky Wire's contractor obtained temporary electric service from Inter-County on June 21, 1994. However, in signing a membership application the following month, Kentucky Wire inserted the qualification that service was temporary until a permanent supplier was determined.

Inter-County stated that its office personnel had not noticed the qualifying language in Kentucky Wire's application. Inter-County and Kentucky Wire or its agents had discussions and correspondence over the course of the next few months, but Inter-County stressed that there was nothing said to indicate that it would not be providing permanent service. Inter-County proceeded to obtain a transformer and, just prior to Kentucky Wire's need for permanent service in late August 1994, poured a concrete pad for the transformer and installed underground conduit and wire for the permanent service connection. Unknown to Inter-County, Kentucky Wire had renewed its discussions with KU for permanent electric service and KU determined that under the Territorial Boundary Act it was entitled to provide such service. By this time, Inter-County was scheduled to make its permanent service connection the following day.

In what Inter-County characterized as an effort to "beat it to the punch," KU sent its crew out to the Kentucky Wire facility

before dawn the next day. Consequently, by the time Inter-County's crew arrived later that morning, KU had already completed its permanent service connection to Kentucky Wire. KU defends its actions as being nothing more than an attempt to accommodate Kentucky Wire's need for permanent service that day to start equipment testing.

#### FINDINGS OF FACT

Contrary to the belief of Kentucky Wire, and apparently the belief of some KU and Inter-County personnel, when a new electric facility is located in two adjacent service territories, the factor in determining who should be the supplier is not the location of a majority of the facility. Rather, the Territorial Boundary Act provides that:

In the event that a new electric-consuming facility should locate in two or more adjacent certified territories, the Commission shall determine which retail electric supplier shall serve said facility based on criteria in KRS 278.017(3).

KRS 278.018(1). The above-referenced criteria are as follows:

1. The proximity of existing distribution lines to such certified territory;
2. Which supplier was first furnishing retail electric service, and the age of existing facilities in the area;
3. The adequacy and dependability of existing distribution lines to provide dependable, high quality retail electric service at reasonable costs;
4. The elimination and prevention of duplication of electric lines and facilities supplying such territory.

KRS 278.017(3).

The Act contains no reference to "customer." Rather, it refers exclusively to a new "electric consuming facility," which is defined as "everything that utilizes electric energy from a central station source." KRS 278.010(8). Thus, the first issue to be addressed is KU's claim that the electric consuming facility at issue here is the Lebanon-Marion County Industrial Park, rather than the Kentucky Wire facility on Lot 2F.

KU cites Owen County Rural Electric Co-op v. Public Service Com'n., Ky.App., 689 S.W.2d 599 (1985) for the proposition that an entire industrial park can be classified as a new electric consuming facility for purposes of applying the Territorial Boundary Act. However, the facts in that case were substantially different from these. In the Owen County case, the boundary dispute arose before there were any customers in the park and before any utility was providing service to the park. Here, numerous electric customers are already located in the park and service is already being provided by both KU and Inter-County. Therefore, there is no basis to now find that the Industrial Park itself is a new electric consuming facility.

Focusing on Kentucky Wire's facility, the first statutory criteria is the proximity of existing distribution lines. Inter-County's is 40 feet away, while KU's is 365 feet away. KU argues that Inter-County's line is not a distribution line but a "feeder" line which lacks the capacity to serve Kentucky Wire. However, the Commission has previously interpreted the term "distribution line"

as used in KRS 278.017(3)(a), to mean the line which will actually serve the facility.<sup>1</sup> Thus, in this case it is reasonable to classify the Inter-County line adjacent to Lot 2F as a distribution line. In addition, at Kentucky Wire's projected operational load, the Inter-County line is sufficient to provide adequate service.

The second criteria is which supplier was first furnishing retail service and the age of existing facilities in the area. The evidence on these factors is less than definitive, but it appears that Inter-County's line was constructed in 1938 and has been serving customers on the original farm, which is now the Industrial Park, since that time. KU's lines have been serving customers on the same farm since 1937 and in the general area since the 1920's, although its line closest to Kentucky Wire was constructed in 1990.

The third criteria is the adequacy and dependability of existing distribution lines to provide dependable, high quality service at reasonable cost. Inter-County's distribution line is able to satisfy Kentucky Wire's existing load and the cost to Kentucky Wire to connect service would be just over \$100 for the underground conduit. The cost to Inter-County for one new pole, a 500 KVA transformer, metering equipment and the service connection is approximately \$11,000, although KU argues that this figure is understated by at least \$1,500 for the metering equipment.

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<sup>1</sup> Case No. 93-211, Henderson-Union Rural Electric Cooperative Corporation v. Kentucky Utilities Company, Order dated March 3, 1994.

KU's distribution line is equally adequate to provide dependable service to Kentucky Wire. The cost to Kentucky Wire to connect to KU is approximately \$1,050 or \$950 more than to Inter-County due to the greater distance from the distribution line. KU's cost to connect is \$17,300, although this includes a 750 KVA transformer which is over \$2,000 more expensive than the 500 KVA transformer proposed by Inter-County. Adjusting for this difference, KU's cost is \$15,300, whereas Inter-County's is \$11,000 to \$12,500 depending on the ultimate cost for metering equipment.

KU stresses that the reference in the third criteria to "reasonable cost," KRS 278.017(3)(c) is not limited to the cost of the service connection but includes as well an analysis of each supplier's electric rates. Only by considering the combined costs to connect and provide electric service, KU opines, will the public convenience and necessity standard be satisfied while achieving economic efficiency through minimization of both public and private costs. Inter-County rejects KU's interpretation, equating it to "customer choice," which Inter-County argues is not permissible under the territorial boundary statute.

Focusing on the cost to Kentucky Wire for a service connection from KU rather than Inter-County, the difference is insignificant. Similarly, the difference in costs to Inter-County and KU to extend service is not material relative to their respective investments in facilities or revenues.

The fourth and final criteria is the elimination and prevention of duplicative electric lines and facilities in the

service territory. Inter-County's existing distribution line would have to be extended 40 feet to provide service to Kentucky Wire, whereas KU's extension was 365 feet. Thus, service from KU required an additional 325 feet of distribution line, but since both suppliers proposed underground service, there will be no detrimental encumbering of the landscape.

Applying the statutory criteria set forth in KRS 278.016-278.018, the Commission finds that KU should be entitled to serve Kentucky Wire. KU was first serving in the general vicinity and its distribution line can provide adequate service at a reasonable cost. While service by KU requires a longer extension, the cost to Kentucky Wire is relatively insignificant - just over \$900. The additional distance for KU's line is also relatively minimal and will not result in any appreciable waste of materials or natural resources or wasteful duplication of facilities.

While KU's cost to extend service is greater, ranging from \$2,800 to \$4,300, this is a one time cost to be recovered over the life of the facilities. The Commission has not traditionally given much weight to the rate levels of the adjacent electric suppliers in prior boundary dispute cases, although inevitably such evidence is introduced. Clearly, the Commission has the authority to consider each supplier's ability to provide "dependable, high quality retail electric service at reasonable costs." KRS 278.017(3)(c). Those costs encompass both the connection of service and the sale of electricity. The Commission rejects Inter-County's argument that the statute only allows verification that

each supplier's rates have been approved or filed in a tariff, thereby rendering them reasonable.

Every electric supplier is required by KRS 278.160 to have its rates on file in a tariff. Thus, Inter-County's interpretation would render meaningless the statutory criteria of "reasonable cost" since no supplier can legally charge a rate that is not "reasonable" if "reasonable" is equated to being filed in a tariff. The reference to "reasonable costs" in the Territorial Boundary Act contemplates the Commission's review and comparison of the adjacent supplier's costs to connect service and supply electricity.

In the majority of boundary dispute cases one of the adjacent suppliers had a clear advantage without consideration of electric rates. Due to the disparity of electric rates around the Commonwealth and the need to avoid gerrymandering to the extent possible, electric rates are typically given less weight than the other statutory criteria. In this case, however, the facts do not identify either supplier as having such a clear advantage. Thus, it is appropriate and necessary to recognize that service by KU will result in a lower cost to Kentucky Wire by \$5,000 annually. This fact, while not controlling, is sufficient in this case to tip the scales to KU.

Although Inter-County argues that "customer choice" is not permitted under KRS 278.016-278.018, it vigorously argues that the customer's choice of Inter-County to provide temporary electric

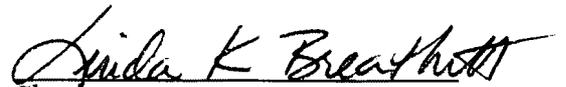
service was the "defining moment"<sup>2</sup> in determining the permanent electric supplier. That choice, however, appears to have been less than voluntary due to Kentucky Wire's immediate need for temporary electric service to avoid costly construction delays.

In any event, Inter-County and KU had ample time to bring this case to the Commission for a resolution prior to Kentucky Wire's need for permanent electric service. Inter-County, unfortunately, relied upon Kentucky Wire's "choice" of a temporary supplier until it became painfully obvious that the choice for a permanent supplier was KU. KU, unfortunately, failed to contest Inter-County's temporary service to Kentucky Wire, choosing instead to hurriedly install permanent service at the eleventh hour under cover of night. None of these actions can be condoned under the mandate in KRS 278.018(1) that the supplier be determined by the Commission.

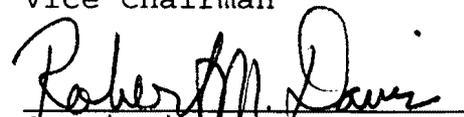
IT IS THEREFORE ORDERED that KU is entitled to continue serving Kentucky Wire and Inter-County's complaint is denied.

Done at Frankfort, Kentucky, this 14th day of March, 1996.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ATTEST:

  
Executive Director

<sup>2</sup> Inter-County Post Hearing Brief at 3.