

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JEFFREY DAVID EVANS)	
)	
COMPLAINANT)	
)	
v.)	CASE NO. 95-372
)	
RATTLESNAKE RIDGE WATER DISTRICT)	
)	
DEFENDANT)	

O R D E R

Jeffrey David Evans filed a complaint against Rattlesnake Ridge Water District concerning water service to his property. Rattlesnake Ridge was directed by Order to Satisfy or Answer the Complaint. Although Rattlesnake Ridge in its answer alleged to have satisfied the Complaint, Mr. Evans informed the Commission that in fact the Complaint had not been satisfied. After receiving responses to a data request from both parties, a hearing was scheduled. At the hearing, Rattlesnake Ridge appeared represented by counsel and Mr. Evans appeared pro se.

FINDINGS OF FACT

The essence of Mr. Evans' complaint is that Rattlesnake Ridge treated him unfairly by refusing to extend a new water line to his property. Mr. Evans, along with 60 out of 74 other homeowners in the Horton Flats area of Elliott County, signed a petition to receive water service from Rattlesnake Ridge as part of a federally funded construction project.

While 61 homeowners originally expressed an interest in receiving water, only 46 of those 61 signed a water user contract and paid tap-fees to the District. Mr. Evans' tap-fee, which he mailed to the District November 8, 1993, was returned to him January 12, 1994. According to the District, the tap-fee was returned because it had determined that it was no longer feasible to extend the line to Mr. Evans' property due to his neighbors' lack of interest in receiving water. Two other residents at the end of Horton Flats Road who wanted service also had their tap-fees returned.

Mr. Evans complained that he had been treated unfairly. Mr. Evans based this belief to a great extent on his perception that after Rattlesnake Ridge determined it could not provide him with service and returned his tap-fee, it proceeded to extend a water line down the nearby Bear Flats Road. While Mr. Evans is not opposed to the District providing service to the residents of Bear Flats, he contended that it was discriminatory for the District to do so after returning his tap-fee, as he was part of the original project and could have been served just as easily, if not more easily, than the residents of Bear Flats.

The District explained its actions by stating that, due to the lack of actual participation in Horton Flats, it was forced to look elsewhere for potential customers for fear of losing its federal grant money. Thus the line was extended down Bear Flats because of the high percentage of positive responses received on that road.

DISCUSSION

Commission records do not correspond to the District's reasoning, nor to the belief of Mr. Evans, concerning the project in question, for the project which originally included Mr. Evans and all of Horton Flats also included Bear Flats. This is clearly stated in the

Preliminary Engineering Report of June 1993, as filed with the Commission in Case No. 94-341.¹ According to this report, a water line was to begin at SR 7 and run west on Horton Flats to serve approximately 61 customers, and a water line was to begin at SR 7 and run north on Bear Flats to serve approximately 15 customers. In the Final Engineering Report, as revised September 6, 1994, and filed with the Commission September 12, 1994, these two roads, each with the same number of projected customers as before, remained a part of the project.

At the hearing in this proceeding, Rattlesnake Ridge gave the impression that it did not have enough money to extend service to the end of Mr. Evans' road, and needed to find an area with more potential customers. While the Farmers Home Administration ("FmHA") letter of conditions did require the project to add 370 customers to Rattlesnake Ridge's existing system, the District received FmHA approval for the project despite only having 330 prospective new customers. This number continued to include Mr. Evans even though he had already had his tap-fee returned. Had the District not mailed back the tap-fees from Horton Flats, it would have had at least three more actual customers. Furthermore, while the District stated that it was not financially feasible to serve Mr. Evans, and returned his tap-fee, the District was subsequently given more money by FmHA. While Mr. Evans' tap-fee had already been returned at this point, his line had yet to be dropped from the plans.

¹ Case No. 94-341, The Application of Rattlesnake Ridge Water District, Carter, Elliott and Lawrence Counties, Kentucky, (1) For a Certificate of Public Convenience and Necessity Authorizing Construction of Major Additions and Improvements to its Water Distribution System; and (2) Seeking Approval of the Issuance of Certain Securities. Final Order issued October 3, 1994.

It is not clear to the Commission why Rattlesnake Ridge returned Mr. Evans' tap-fee when it did.

In addition, while the total estimated project cost in the Preliminary Engineering Report was \$1,466,000, this amount had increased to \$1,860,000 in the Final Engineering Report of September 1994. The FmHA amended its September 17, 1993 letter of conditions to provide for additional funding to cover these increased costs. Not only was the amount of the loan increased by \$197,000, but the amount of the grant was increased by \$197,000 as well. While FmHA thus provided financing, and in fact increased its financing, for the project which included Horton Flats and Bear Flats, Mr. Evans was not provided service. He was designated the "dead-end customer" and offered 500 feet of line pursuant to FmHA policy as interpreted by Rattlesnake Ridge. If the intent of FmHA was to extend service to the end of Horton Flats Road, as it appears to have been, then Rattlesnake Ridge did not act in keeping with that intent.

While there was much debate at the hearing concerning FmHA policy, Rattlesnake Ridge policy, etc., the most significant information revealed seemed to be certain numerical data. This data primarily involved the average feet of water line per customer on various parts of Rattlesnake Ridge's system. While Rattlesnake Ridge contended that it was not economically feasible to extend the water line to Mr. Evans based on the number of feet of line that would be required to provide service to him, a comparison of the average number of miles of water line per customer in Horton Flats, on Horton Flats Road, and on Bear Flats Road does not support the District's position.

Mr. Evans lives in the Horton Flats area, which includes Horton Flats Road and a number of side roads. In the Horton Flats area the District put in 17,100 feet of water line

to serve 43 customers. The average number of feet of water line per customer in the Horton Flats area is thus 397.7. Rattlesnake Ridge attested that an average of 500 feet of water line per customer is a typical rule-of-thumb followed by rural systems. To have extended service to Mr. Evans would have required an additional 2,150 feet of line, for an average of 437.5 feet of line per customer in the Horton Flats area, still well under the rule-of-thumb average. Had the District provided service to all 46 of the Horton Flats residents who paid tap-fees, it would have had to install an additional 7,190 feet of line to serve three additional customers, which would have resulted in an average of 528 feet of line per customer in the Horton Flats area.

In comparison, Rattlesnake Ridge extended the water line down Bear Flats Road 11,180 feet to serve 11 customers directly, for an average of 1016.4 feet of line per customer. There are now 13 customers on Bear Flats Road being served by 12,010 feet of line, for an average of 923.85 feet of line per customer. Also of interest is the fact that the Phase IV project, the project that was to have provided service to Mr. Evans, included 277,735 feet of line and 348 customers, for an average of 798.1 feet of line per customer. The average feet of water line per customer on Rattlesnake Ridge's total system is 581.

The District's argument that it was not economically feasible to provide service to Mr. Evans seems without merit when these comparisons are made. If service had been provided to everyone in the Horton Flats area that wanted it, while the average number of feet of line per customer would have gone up by 130 feet, the average still would have been 270 feet less than the project's average and 53 feet less than the District's overall average. To have provided service just to Mr. Evans would have raised the average number of feet of water line in the Horton Flats area by only 40 feet.

CONCLUSIONS OF LAW

Rattlesnake Ridge should extend the water line to Mr. Evans' property line immediately pursuant to his request. KRS 278.280(3) provides that:

Any person . . . may come before the Commission and by petition ask that any utility subject to its jurisdiction be compelled to make any reasonable extension. The Commission shall hear and determine the reasonableness of the extension, and sustain or deny the petition in whole or in part.

While 807 KAR 5:066, Section 11(6) states that:

Upon complaint to and investigation by the Commission a utility may be required to construct extensions greater than fifty (50) feet upon a finding by the Commission that such extension is reasonable and that an extension of fifty (50) feet or less is unreasonable under the circumstances.

Mr. Evans' request to have the water line extended to his property is reasonable, especially in light of the fact that the FmHA already approved an extension to the end of Horton Flats Road. Rattlesnake Ridge has already extended the line 500 feet beyond its original end-point for Mr. Evans. The line, if the information supplied to the Commission is accurate, is thus some 1600 feet from Mr. Evans' property line. The water line should be extended the remaining distance, whatever that might be, to Mr. Evans' property on Horton Flats Road.

IT IS THEREFORE ORDERED that:

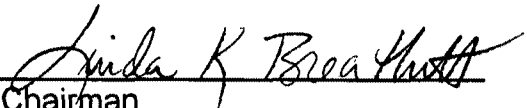
1. The relief requested by Mr. Evans is hereby granted. Rattlesnake Ridge shall, without unnecessary delay, extend the three-inch water line along Horton Flats Road to the property owned by Mr. Evans.

2. Rattlesnake Ridge shall, within 30 days from the date of this Order, file with the Commission a schedule to which it will adhere in extending the water line to Mr. Evans' property.


3. The \$350 tap-fee already paid by Mr. Evans shall be considered full payment of his tap-fee, as this was the amount of tap-fee approved by the FmHA, and subsequently by the Commission in Case No. 94-341, for Rattlesnake Ridge's Phase IV construction project.

Done at Frankfort, Kentucky, this 28th day of August, 1996.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director