

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

CRISP/CANNON DEVELOPMENT CO., INC.,)	
A KENTUCKY CORPORATION)	
)	
COMPLAINANT)	
)	
v.)	CASE NO. 95-480
)	
)	
OWEN ELECTRIC COOPERATIVE, INC.)	
)	
DEFENDANT)	

O R D E R

On October 27, 1995, Crisp/Cannon Development Co., Inc. ("Crisp/Cannon"), filed a formal complaint with the Commission against Owen Electric Cooperative, Inc. ("Owen Electric"). Crisp/Cannon states that it is developing a real estate subdivision, consisting of single family residential tracts, known as Derby Estates on Long Lick Pike in Scott County, Kentucky. The subdivision lies within the electric territorial boundary of Owen Electric, which has been requested to furnish underground service from the rear property lines.

Owen Electric has allegedly refused the request for underground electric service from the rear property lines, citing a policy to provide such service from the front property lines. For its relief, Crisp/Cannon seeks an Order of the Commission directing Owen Electric to provide underground services from the rear property lines or, in the alternative, an Order modifying the

territorial boundary of Owen Electric so that the adjacent supplier, Kentucky Utilities Company, could serve the subdivisions.

After reviewing the complaint, the Commission determined that the first issue to be resolved was whether underground electric service from the front property lines rather than the rear property lines was an issue of "service" within the Commission's jurisdiction. By Order dated January 4, 1996 the parties were directed to file briefs on this issue.

Based on a review of the briefs and being otherwise sufficiently advised, the Commission finds that it lacks jurisdiction to adjudicate the issue raised in the complaint. This does not, however, leave Crisp/Cannon without a remedy for its complaint. The City of Georgetown and Scott County, through the exercise of their respective police powers, have the jurisdiction and authority to require underground electric service to be installed from the rear property lines.

The Commission is statutorily empowered with "exclusive jurisdiction over the regulation of rates and service of utilities." KRS 278.040(2). The filed complaint does not challenge Owen Electric's rates but, rather, its service. The term "service" is broadly defined in KRS Chapter 278 to include:

[A]ny practice or requirement in any way relating to the service of any utility, including the voltage of electricity. . . and in general the quality, quantity, and pressure of any commodity or product used or to be used for or in connection with the business of any utility.

KRS 278.010(11). Further, the Commission has original jurisdiction over complaints that any "practice or act affecting or relating to the service of any utility or any service in connection therewith is . . . unjustly discriminatory." KRS 278.260(1) (emphasis added) Thus, the Commission's authority to investigate claims of unjust discrimination is expressly limited to activities that affect or relate to utility service.

In the case of Benzinger v. Union Light Heat and Power Co., Ky., 120 S.W.2d 38 (1943), Kentucky's then highest court held that the Commission's jurisdiction over service did not extend to the issue of whether service lines should be located above ground or underground. Interpreting the statutory definition of service, the Court stated that:

[T]he legislature only intended for the word "service" to apply to and comprehend "quality" and "quantity" of the product to be served, and to that end for the word to also include and comprehend any part of the facility of the utility that bottle-necked the required service of quantity and quality; but did not transfer jurisdiction on the commission over other portions of facilities which did not obstruct, prevent or interfere with the quality or quantity of the furnished product.

Benzinger at 41.

Clearly, if locating electric service underground rather than overhead will have no effect on the quality or quantity of service, locating electric service at the rear of the property lines, rather than the front, will similarly have no effect on service. As noted in the complaint, the location of service lines at issue here involves questions of aesthetics and the economics and competitive

nature of real estate sales, matters that are beyond the jurisdiction of the Commission. These are presumably factors which were considered by the City of Covington when it enacted the ordinance which was upheld in Benzinger.

Crisp/Cannon cites Kentucky CATV v. Volz, Ky.App., 675 S.W.2d 393 (1983), for the proposition that the term "service," as defined in KRS 278.010(11), is broader than the mere quality or quantity of electricity as discussed in Benzinger. In upholding the Commission's jurisdiction over cable television pole attachments in the Kentucky CATV case, the court ruled that the use of utility poles for stringing television cable was a utility service provided to cable companies and the safe use and maintenance of poles were proper factors for consideration by the Commission. There was no issue in Kentucky CATV regarding the location of utility poles, just as there is no issue in the Crisp/Cannon complaint regarding the safety of non-utility personnel using utility facilities.¹

The legislation creating the Commission and establishing its jurisdiction provides as follows:

The jurisdiction of the commission shall extend to all utilities in this state. The commission shall have exclusive jurisdiction over the regulation of rates and service of utilities, but with that exception nothing in this chapter is intended to limit or restrict the police jurisdiction, contract rights or powers of cities or political subdivisions.

¹ While Crisp/Cannon references a letter from the City of Georgetown questioning the safety of ground level transformers located in front yards, this location violates no safety code or Commission regulation and is certainly less intrusive and safer than the overhead transformers and wires in the front yards of hundreds of thousands of electric customers throughout the Commonwealth.

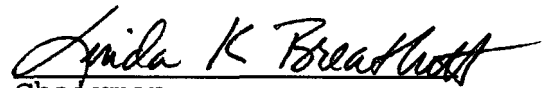
KRS 278.040(2). (emphasis added) As discussed in the Benzinger case, the Commission's authority to regulate utilities has not supplanted the police power of the City of Georgetown or Scott County. Both of those governmental entities have the authority to establish restrictions on the location of electric service in subdivisions.

The Commission further notes that the complaint is devoid of any allegation that Owen Electric is not able to provide adequate service, as that term is defined by KRS 278.010(12) as having sufficient capacity to meet customer requirements. Absent such allegations, there is no prima facie case to support a modification of the electric territorial boundary pursuant to KRS 278.018(3).

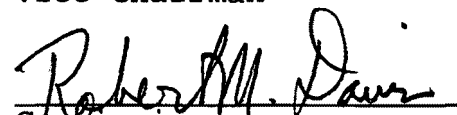
IT IS THEREFORE ORDERED that the complaint filed by Crisp/Cannon against Owen Electric hereby is dismissed.

Done at Frankfort, Kentucky, this 1st day of March, 1996.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director