

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

CHARLES T. LATKO, JR.)	
AND LOIS G. LATKO)	
)	
COMPLAINANTS)	
v.)	CASE NO. 2003-00395
)	
TAYLOR COUNTY RURAL ELECTRIC)	
COOPERATIVE CORPORATION)	
)	
DEFENDANT)	

O R D E R

On October 3, 2003, Complainants Charles Latko, Jr. and Lois G. Latko, husband and wife, filed with the Commission a formal complaint against Taylor County Rural Electric Cooperative Corporation (“Taylor”). The Complainants allege that the current pole configuration proximately located to their former residence is unsafe—causing damage to their property. Their complaint also states that the guy wire configuration for the pole constitutes a trespass upon their former property.¹ The

Complainants request the following relief:

- That Taylor move the pole (a.k.a. “the creek pole”) back from the edge of a creek bank and reconfigure other poles around their house.
- Proof of an easement for the guy wires that are attached to their property and that the guy wires be removed.

¹ Complainants conveyed this property to Jennifer and Joseph Dotson on August 5, 2004.

- Installation of additional ground wires on all poles upon which they are required.
- That Taylor install a new, less “electrified” pole from which the Complainants may receive their electricity, telephone, and cable service.
- Reimbursement for property damage, loss of use and/or diminished use of the property, and the attorney’s fees incurred.

BACKGROUND

The property in dispute is in Mannsville, Taylor County, Kentucky. The property is bordered on one side by a road and on another by Robinson Creek. Located on the opposite side of the creek, approximately 38 to 40 inches back from the bank, is a Taylor creek pole from which the Complainants receive their electric, telephone, and cable service. Five guy wires from the creek pole cross the creek and are located on the property. Two other poles complete the configuration and are, Complainants allege, responsible for misleading motorists that follow the electric lines, causing drivers to steer vehicles off the road.

Both parties agree that the creek bank is eroding which may eventually require the relocation of the creek pole. The parties disagree about the length of time until erosion necessitates the relocation of the creek pole. Relocation of the creek pole would require moving the creek pole onto the property of a third party. The Complainants and Taylor have requested permission from the third party to relocate the creek pole onto his property and he refuses to grant permission.

Taylor claims that the creek pole has been located in approximately the same place since 1946, being relocated in 1983 due to erosion of the bank, at which point it was moved six feet back from the creek bank. Taylor claims the guy wires have always

been anchored on the Complainants' former property. The Complainants claim that when they purchased the property no guy wires were located on it.

The Complainants allege that they have experienced numerous electrical problems due to the current configuration of Taylor's electric poles. The first such incident occurred in July 2002 when lightning struck one of the poles near the Complainants' house. Taylor claims that it struck the pole adjacent to the creek pole and the Complainants claim the lightning struck the creek pole. The lightning strike created a "huge mushroom" of electricity from the creek pole and allegedly destroyed over \$600 worth of the Complainants' personal property. The Complainants allege that the lightning strike destroyed the floodlight in their yard, two light bulbs, and the sump pump in their basement. The Complainants claim they were taking shelter in their storm cellar when lightning struck the pole and a blue streak of electricity shot out from the wall of the storm cellar and up Mr. Latko's arm, destroying his watch. The Complainants claim that because they were afraid to continue to use their storm cellar, they sold their residence in Mannville and moved to another residence in Knifely, Kentucky.

During a light rain on September 22, 2003, the Complainants observed sparks emitting from the creek pole and heard a loud humming. The Complainants then lost electric service. Taylor, after inspecting the pole, informed the Complainants that a faulty insulator caused the outage. Taylor replaced the insulator and installed additional ground rods around the creek pole.

The location of the creek pole guy wires allegedly deprived the Complainants of the use of the back acreage of their property, making it impossible to move a tractor

between the house and the creek bank. Some of the guy wires are owned by the telephone and cable companies who have co-located their wires on the creek pole. Taylor, in response to a request from the Complainants, was unable to provide proof of an easement to anchor the guy wires on the Complainants' former property.

Mrs. Latko claims that her worry about the creek pole has caused her Post-Traumatic Stress Disorder ("PTSD"). The PTSD allegedly has affected her memory and, consequently, she is unable to recall many events from the mid-90s until the present, including whether the guy wires were always located on Complainants' property. Mrs. Latko claims that the creek pole "not only took my memory, it took my health, my finances and took every damn thing I own."²

John Land, former electrical inspector for the Commission, conducted an inspection of the creek pole on February 12, 2003 prior to the initiation of formal proceedings before the Commission. Mr. Land concluded that the creek pole did not present imminent harm to Complainants' property or others and no safety violations were noted in Mr. Land's report dated March 6, 2003.

The Commission held a formal hearing on April 13, 2004, at which all parties appeared. Subsequent to the filing of post-hearing briefs, Taylor filed with the Commission a motion to dismiss the complaint for lack of jurisdiction. Taylor argued that the Complainants had transferred title of their property and, therefore, lacked standing to pursue the complaint. The Complainants filed a response arguing that dismissal for lack of jurisdiction would be inappropriate as the Commission could continue the investigation on its own pursuant to KRS 278.260.

² Transcript 10:36:58.

DISCUSSION

The only issue over which the Commission has jurisdiction relates to the safety issues of Taylor's pole configuration.

Damages

The Commission has no jurisdiction over many of Complainants' requests for relief. The Commission cannot award monetary or punitive damages. Carr v. Cincinnati Bell, Inc., Ky.App. 651 S.W.2d 126 (1983). Thus, even if the Commission were to find Taylor responsible for the damage to Complainants' property, it could not order Taylor to reimburse Complainants for the damage.

Easements

Jurisdiction regarding Taylor's easements lies with the local courts. Farmer v. Kentucky Utilities, Ky., 642 S.W.2d 579 (1982). Other utilities also have lines on the creek pole, and although not mentioned in the record, some of the guy wires likely belong to those utilities that were not parties to the case. Accordingly, regardless of the ownership of the guy wires, the Commission cannot grant Complainants' request regarding the creek pole guy wires.

Jurisdiction

Despite Complainants' conveyance of the property in dispute, if a safety issue exists, then the Commission may retain jurisdiction to issue an Order affecting the safety of the creek pole. KRS 278.260. In the case at hand, enough issues relating to the safety of the creek pole exist that the complaint should not be dismissed for want of jurisdiction.

Safety Issues

Pole Relocation. Approximately two feet of the creek bank has eroded since 1983, when the creek pole was moved, until the present. Approximately 38 to 40 inches of the bank remain between the pole and the creek. Neither Commission regulations, nor national electrical codes, nor industry standards mandate a minimum distance a pole must be placed from a creek bank. The evidence presented at hearing indicates that the rate of erosion of the creek bank has been relatively constant at about one and one-half inches a year. At that rate, it may be more than 20 years until the erosion reaches the pole. Taylor concedes that it will eventually have to move the pole, but is reluctant to do so until it is necessary.

Taylor's tariff provides, "the Cooperative's established lines shall not be relocated unless the expense for moving and relocating is paid by the member or the relocation is beneficial to the Cooperative."³ Taylor claims that the relocation of the creek pole would not be beneficial to Taylor and Taylor is reluctant to move the creek pole also because it would have to initiate eminent domain proceedings to obtain the easement upon which to place the pole.⁴ Samuel Cox, the third party upon whose property Taylor would move the creek pole, has refused to grant the necessary easement. Complainants have offered to purchase the property to which the pole would be moved and have offered to pay the cost of moving the creek pole. Mr. Cox has rejected Complainants' offer to purchase his property.

³ Taylor County Rural Electric Cooperative Corporation's P.S.C. No. 5, Sheet No. 4.

⁴ KRS 279.110(4).

The evidence does not support the conclusion that the relocation of the pole would be beneficial to Taylor; therefore, the Complainants would have to bear the cost of moving the pole and obtaining the proper easements for the relocation. Since Mr. Cox refuses to sell the property to the Complainants, and the Complainants have no method by which to compel Mr. Cox to convey the property or grant easements, the creek pole cannot be relocated. It is worth noting that in order to satisfy the Complainants, the creek pole would have to be moved back far enough that the guy wires are not on Complainants' property. This would require the creek pole being moved more than 60 feet from its present location, while any possible relocation due solely to safety concerns relating to erosion would not require the creek pole to be moved as far.

Configuration. It is unclear as to the precise nature of Complainants' request that the creek pole be less "electrified." This issue was not developed in the pre-filed testimony or at hearing. Taylor has taken some steps to enhance the safety of the creek pole by installing four additional ground rods around the pole. Taylor claims that a lightning arrestor is not necessary on the creek pole because there are transformers on surrounding poles that have lightning arrestors already installed.⁵ These steps are sufficient to address any safety concerns.

CONCLUSION

The Commission has jurisdiction only over Complainants' claims relating to the safety of the creek pole. The evidence of record does not support the conclusion that the Commission should order any action that would enhance the safety of the creek

⁵ Transcript 3:05:26.

pole. The complaint must be dismissed. The Commission, however, suggests that Taylor routinely inspect the creek pole to monitor the erosion at the creek pole's base.

IT IS THEREFORE ORDERED that this case is dismissed with prejudice and removed from the Commission's docket.

Done at Frankfort, Kentucky, this 10th day of November, 2004.

By the Commission

ATTEST:

A handwritten signature in black ink, consisting of several overlapping loops and a horizontal line at the bottom.

Executive Director