

Steven L. Beshear
Governor

Leonard K. Peters
Secretary
Energy and Environment Cabinet



Commonwealth of Kentucky
Public Service Commission
211 Sower Blvd.
P.O. Box 615
Frankfort, Kentucky 40602-0615
Telephone: (502) 564-3940
Fax: (502) 564-3460
psc.ky.gov

David L. Armstrong
Chairman

James W. Gardner
Vice Chairman

Charles R. Borders
Commissioner

February 26, 2010

Mr. Mark Davis
Purchase Public Service Corporation
Post Office Box 5100
Mayfield, Kentucky 42066

Dear Mr. Davis:

PSC STAFF OPINION 2010-005

Commission Staff acknowledges receipt of your letter of July 13, 2009 regarding Purchase Public Service Corporation's ("PPSC") use of Graves County Water District to bill for sewer services that PPSC provides. I apologize for the delay in responding.

Commission Staff understands the facts as follows: PPSC, a non-profit corporation organized pursuant to KRS Chapter 273, owns and operates four facilities that provide sewage treatment and collection services in western Kentucky. Three of these facilities are located in Graves County. PPSC has held discussions with Graves County Water District, a water district organized pursuant to KRS Chapter 74, about providing billing and collection service for these facilities.

You pose the following question: Is Public Service Commission approval required for any agreement between a private sewer utility and a water district for billing and collection services?

PPSC is a corporation that owns and operates facilities that are used for the collection and treatment of sewage for the public for compensation, that are located in a county that does not contain a city of the first class, and that are affixed to real property. It is, therefore, a utility. KRS 278.010(3)(f). Its rates and service are subject to Commission jurisdiction. Graves County Water District is also utility subject to Commission jurisdiction. See KRS 278.015.

Commission Staff is not aware of any statutory or regulatory prohibition against PPSC contracting with Graves County Water District for billing and collection services. Commission regulations, however, currently prohibit public water utilities from

discontinuing a customer's water service for delinquent sewer service bills.¹ Commission Regulation 807 KAR 5: 006, Section 14(1), states:

A utility may refuse or terminate service to a customer only under the following conditions

(f) For nonpayment of bills. A utility may terminate service at a point of delivery for nonpayment of charges incurred for utility service at that point of any customer for nonpayment of bills for any tariffed charge without first having mailed or otherwise delivered an advance termination notice which complies with the requirements of Section 13(5) of this regulation. [Emphasis added]

A utility may discontinue service only for nonpayment of charges for services which it provides. As they do not provide sewer service, water utilities may not discontinue service for nonpayment of sewer service charges.

Water utilities, however, may request a deviation from Commission Regulation 807 KAR 5:006, Section 14(1), to permit the discontinuance of water service for nonpayment of sewer service charges. In *Collection and Billing Practices of Privately-Owned Sewer Utilities*, Administrative Case No. 347 (Ky. PSC Jan. 9, 1995), the Commission encouraged agreements between water utilities and privately-owned sewer utilities and announced that it would favorably consider requests for a deviation when water utilities and privately-owned sewer utilities had entered such agreement.

In summary, any agreement between PPSC and Graves County Water District for the billing and collection of sewer service charges will not require Commission approval unless the agreement provides for the discontinuance of a customer's water service for non-payment of sewer service charges. If the agreement contains such a provision, Graves County Water District must seek a deviation from Commission Regulation 807 KAR 5:006, Section 14(1), and must revise its filed tariff to specifically provide for such terminations of service.

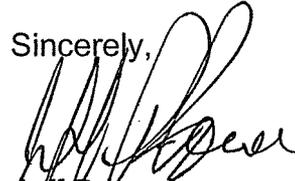
For your reference, I have enclosed a copy of the Commission's Order in Administrative Case No. 347 and Commission Regulation 807 KAR 5:006.

¹ Combined water and sewer districts are an exception to this rule. Since they provide both services, the Commission has permitted such districts to discontinue a customer's water service for failure to pay sewer service charges. See *Boone County Water and Sewer District*, Case No. 91-428 (Ky.PSC April 6, 1992).

Mr. Mark Davis
February 26, 2010
Page 3

This letter represents Commission Staff's interpretation of the law as applied to the facts presented. This opinion is advisory in nature and not binding on the Commission should the issues herein be formally presented for Commission resolution. Questions concerning this opinion should be directed to Gerald Wuetcher, Executive Advisor, at (502) 564-3940, Extension 259.

Sincerely,



Jeff Derouen
Executive Director

807 KAR 5:006. General rules.

RELATES TO: KRS Chapter 278, 49 C.F.R. Part 192

STATUTORY AUTHORITY: KRS 278.280(2), 49 C.F.R. Part 192

NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.280(2) provides that the Public Service Commission (hereinafter referred to as "commission") shall prescribe rules for the performance of any service or the furnishing of any commodity by any utility. This administrative regulation establishes general rules which apply to electric, gas, water, sewage and telephone utilities. This administrative regulation includes the substance of 807 KAR 5:008, which it repeals.

Section 1. Definitions. (1) "Utility" means a utility as defined in KRS 278.010(3).

(2) "Customer" means any person, firm, corporation or body politic applying for or receiving service from any utility.

Section 2. General Provisions. (1) The adoption of administrative regulations by the commission shall not preclude the commission from altering or amending the same in whole or in part, or from requiring any other or additional service, equipment, facility, or standards, either upon request, or upon its own motion, or upon the application of the utility. No administrative regulation of the commission shall in any way relieve a utility from any of its duties under the laws of Kentucky.

(2) Any reference to standards or codes in commission administrative regulations shall not prohibit utilities employing competent engineers from continuing or initiating experimental work and installations which tend to improve, decrease the cost of, or increase the safety of their service.

Section 3. Reports. (1) Financial and statistical reports. Every utility shall file annually a financial and statistical report upon forms to be furnished by the commission. This report shall be based upon the accounts set up in conformity with the uniform system of accounts for utilities. This report shall be filed on or before March 31, each year, for the preceding calendar year. The forms for this report are hereby incorporated by reference, and may be obtained at the commission's offices at 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky, 40602, Monday through Friday between the hours of 8 a.m. and 4:30 p.m. local time. For good cause shown, the executive director of the commission may, upon application in writing, allow a reasonable extension of time for such filing.

(2) Report of meters, customers and refunds. Every gas, electric and water utility shall make periodic reports on forms prescribed by the commission, of meter tests, number of customers and amount of refunds. These forms are hereby incorporated by reference, and may be obtained at the commission's offices at 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky, 40602, Monday through Friday between the hours of 8 a.m. and 4:30 p.m. local time.

(3) Report of terminations for nonpayment of bills. Each electric and gas utility shall report annually the number of residential accounts terminated for nonpayment. These reports shall be filed no later than August 15 and shall cover the period ending June 30.

(4) Other reports. Every utility shall make such other reports as the commission may at its discretion from time to time require.

(5) Record and report retention. All records and reports shall be retained in accordance with the uniform system of accounts unless otherwise specified.

(6) Transmittal letter. All reports shall be accompanied by two (2) copies of a transmittal letter describing the report being furnished.

Section 4. Service Information. (1) The utility shall, on request, give its customers or prospective customers such information as is reasonably possible in order that they may secure safe, efficient and continuous service. The utility shall inform its customers of any change made or proposed in the character of its service which might affect the efficiency, safety, or continuity of operation.

(2) Prior to making any substantial change in the character of the service furnished, which would affect the efficiency, adjustment, speed or operation of the equipment or appliances of any customer, the utility shall obtain the approval of the commission. The application shall show the nature of the change to be made, the number of customers affected, and the manner in which they will be affected.

(3) The utility shall inform each applicant for service of each type, class and character of service available at his location.

Section 5. Special Rules or Requirements. (1) No utility shall establish any special rule or requirement without

first obtaining the approval of the commission on proper application.

(2) A customer who has complied with commission administrative regulations shall not be denied service for failure to comply with the utility's rules which have not been made effective in the manner prescribed by the commission.

(3) Obtaining easements and rights-of-way necessary to extend service shall be the responsibility of the utility. No utility shall require a prospective customer to obtain easements or rights-of-way on property not owned by the prospective customer as a condition for providing service. The cost of obtaining easements or rights-of-way shall be included in the total per foot cost of an extension, and shall be apportioned among the utility and customer in accordance with the applicable extension administrative regulation.

Section 6. Billings, Meter Readings and Information. (1) Information on bills. Each bill for utility service issued periodically by a utility shall clearly show the following, if applicable: class of service; present and last preceding meter readings; date of the present reading; number of units consumed; meter constant, if any; net amount for service rendered; all taxes; any adjustments; and the gross amount of the bill. The date after which a penalty may apply to the gross amount shall be indicated. Estimated or calculated bills shall be distinctly marked as such. The rate schedule under which the bill is computed shall be furnished under one (1) of the following methods:

(a) By printing it on the bill.

(b) By publishing it in a newspaper of general circulation once each year.

(c) By mailing it to each customer once each year.

(d) By providing a place on each bill where a customer may indicate his desire for a copy of the applicable rates.

The utility shall mail the customer a copy by return first class mail.

(2) Flat rates. Flat rates for unmetered service shall approximate as closely as possible the utility's rates for metered service. The rate schedule shall clearly set out the basis upon which consumption is estimated.

(3) Bill format. Each utility shall include the billing form to be used by it, or its contents, in its tariffed rules.

(4) Meter readings. Registration of each meter shall read in the same units as used for billing unless a conversion factor is shown on the billing form.

(5) Frequency of meter reading. Each utility, except if prevented by reasons beyond its control, shall read customer meters at least quarterly, except that each utility using customer-read meter information shall read each revenue related meter on its system at least once during each calendar year. Records shall be kept by the utility to insure that this information is available to commission staff and any customer requesting this information. If, due to reasons beyond its control, a utility is unable to read a meter in accordance with this subsection, the utility shall record the date and time the attempt was made, if applicable, and the reason the utility was unable to read the meter.

Section 7. Deposits. (1) Determination of deposits. A utility may require from any customer a minimum cash deposit or other guaranty to secure payment of bills, except from those customers qualifying for service reconnection under Section 15 of this administrative regulation. The method of determining the amount of a cash deposit may differ between classes of customers, but shall be uniform for all customers within the same class. The amount of a cash deposit shall be determined by one (1) of the following methods:

(a) Calculated deposits. If actual usage data is available for the customer at the same or similar premises, the deposit amount shall be calculated using the customer's average bill for the most recent twelve (12) month period. If actual usage data is not available, the deposit amount shall be based on the average bills of similar customers and premises in the system. Deposit amounts shall not exceed two-twelfths ($2/12$) of the customer's actual or estimated annual bill where bills are rendered monthly, three-twelfths ($3/12$) where bills are rendered bimonthly, or four-twelfths ($4/12$) where bills are rendered quarterly.

(b) Equal deposits. The utility may establish an equal deposit amount for each class based on the average bill of customers in that class. Deposit amounts shall not exceed two-twelfths ($2/12$) of the average bill of customers in the class where bills are rendered monthly, three-twelfths ($3/12$) where bills are rendered bimonthly, or four-twelfths ($4/12$) where bills are rendered quarterly.

(c) Recalculation of deposits. If the utility will or may retain either an equal or calculated deposit for more than eighteen (18) months, it shall notify customers in writing that, at the customer's request, the deposit will be recalculated every eighteen (18) months based on actual usage of the customer. The notice of deposit recalculation shall be included either on the customer's application for service or on the receipt of deposit, or may be included annually with or on customer bills. The notice of deposit recalculation shall state that if the deposit on account differs by more than ten (10) dollars for residential customers, or by more than ten (10) percent for nonresidential customers, from the deposit calculated on actual usage, then the utility shall refund any over-collection and may

collect any underpayment. Refunds shall be made either by check or by credit to the customer's bill, except that a utility shall not be required to refund any excess deposit if the customer's bill is delinquent at the time of recalculation.

(2) Waiver of deposits. Deposits may be waived at the discretion of the utility in accordance with its currently effective tariff based upon a customer's showing of satisfactory credit and payment history.

(3) Additional deposit requirement. If a deposit has been waived, as allowed in subsection (2) of this section, or has been returned and the customer fails to maintain a satisfactory payment record as defined in the utility's currently effective tariff, the utility may require that a deposit be made. If substantial change in usage has occurred, the utility may require that an additional deposit be made. No additional or subsequent deposit shall be required of residential customers whose payment record is satisfactory, unless the customer's classification of service changes, except as provided in subsection (1)(c) of this section.

(4) Receipt of deposit. The utility shall issue to every customer from whom a deposit is collected a receipt of deposit. The receipt shall show the name of the customer, location of the service or customer account number, date, and amount of deposit. If the notice of recalculation described in subsection (1)(c) of this section is not included in the utility's application for service or mailed with customer bills, the receipt of deposit shall contain the notification. If deposit amounts change, the utility shall issue a new receipt of deposit to the customer.

(5) Deposits as a condition of service. Except as otherwise provided by Section 15 of this administrative regulation, customer service may be refused or discontinued pursuant to Section 14 of this administrative regulation if payment of requested deposits is not made.

(6) Interest on deposits. Interest shall accrue on all deposits at the rate prescribed by law, beginning on the date of deposit. Interest accrued shall be refunded to the customer or credited to the customer's bill on an annual basis, except that a utility shall not be required to refund or credit interest on deposits if the customer's bill is delinquent on the anniversary of the deposit date. All interest that has accrued as of the effective date of this administrative regulation shall be refunded or credited to the customer's bill on the first anniversary of the deposit date after the effective date of this administrative regulation. If interest is paid or credited to the customer's bill prior to twelve (12) months from the date of deposit, the payment or credit shall be on a prorated basis. Upon termination of service, the deposit, any principal amounts, and interest earned and owing shall be credited to the final bill with any remainder refunded to the customer.

(7) Tariff requirements. Each utility which chooses to require deposits shall establish and include in its filed tariff the deposit policy to be utilized. This policy shall include:

- (a) The method by which deposit amounts will be determined for each customer class;
- (b) Standard criteria for determining when a deposit will be required or waived;
- (c) The deposit amount for each customer class if the method in subsection (1)(b) of this section is used;
- (d) The period of time the utility will retain the deposit, or the conditions under which the utility will refund the deposit, or both if applicable;
- (e) The manner in which interest on deposits will be calculated and accrued and refunded or credited to customers' bills.

Section 8. Special Charges. (1) A utility may make special nonrecurring charges to recover customer-specific costs incurred which would otherwise result in monetary loss to the utility or increased rates to other customers to whom no benefits accrue from the service provided or action taken. Any utility desiring to establish or change any special nonrecurring charge shall apply for commission approval of such charge in accordance with the provisions of 807 KAR 5:011, Section 10.

(2) Special charges shall be included in the utility's tariff and applied uniformly throughout the area served by the utility. They shall relate directly to the service performed or action taken and shall yield only enough revenue to pay the expenses incurred in rendering the service.

(3) Special charges may include, but are not limited to:

(a) Turn-on charge. A turn-on charge may be assessed for a new service turn on, seasonal turn on or temporary service. A turn-on charge shall not be made for initial installation of service where a tap fee is applicable.

(b) Reconnect charge. A reconnect charge may be assessed to reconnect a service which has been terminated for nonpayment of bills or violation of the utility's rules or commission administrative regulations. Customers qualifying for service reconnection under Section 15 of this administrative regulation shall be exempt from reconnect charges.

(c) Termination or field collection charge. A charge may be assessed when a utility representative makes a trip to the premises of a customer for the purpose of terminating service. The charge may be assessed if the utility representative actually terminates service or if, in the course of the trip, the customer pays the delinquent bill to avoid

termination. The charge may also be made if the utility representative agrees to delay termination based on the customer's agreement to pay the delinquent bill by a specific date. The utility may make a field collection charge only once in any billing period.

(d) Special meter reading charge. This charge may be assessed when a customer requests that a meter be reread, and the second reading shows the original reading was correct. No charge shall be assessed if the original reading was incorrect. This charge may also be assessed when a customer who reads his own meter fails to read the meter for three (3) consecutive months, and it is necessary for a utility representative to make a trip to read the meter.

(e) Meter resetting charge. A charge may be assessed for resetting a meter if the meter has been removed at the customer's request.

(f) Meter test charge. This charge may be assessed if a customer requests the meter be tested pursuant to Section 18 of this administrative regulation, and the tests show the meter is not more than two (2) percent fast. No charge shall be made if the test shows the meter is more than two (2) percent fast.

(g) Returned check charge. A returned check charge may be assessed if a check accepted for payment of a utility bill is not honored by the customer's financial institution.

(h) Late payment penalty. A penalty may be assessed if a customer fails to pay a bill for services by the due date shown on the customer's bill. The penalty may be assessed only once on any bill for rendered services. Any payment received shall first be applied to the bill for service rendered. Additional penalty charges shall not be assessed on unpaid penalty charges.

Section 9. Customer Complaints to the Utility. Upon complaint to the utility by a customer at the utility's office, by telephone or in writing, the utility shall make a prompt and complete investigation and advise the complainant of its findings. The utility shall keep a record of all written complaints concerning its service. This record shall show the name and address of the complainant, the date and nature of the complaint, and the adjustment or disposition of the complaint. Records shall be maintained for two (2) years from the date of resolution of the complaint. If a written complaint or a complaint made in person at the utility's office is not resolved, the utility shall provide written notice to the complainant of his right to file a complaint with the commission, and shall provide him with the address and telephone number of the commission. If a telephonic complaint is not resolved, the utility shall provide at least oral notice to the complainant of his right to file a complaint with the commission and the address and telephone number of the commission.

Section 10. Bill Adjustment for Gas, Electric and Water Utilities. (1) If upon periodic test, request test, or complaint test a meter in service is found to be more than two (2) percent fast, additional tests shall be made to determine the average error of the meter. Said tests shall be made in accordance with commission administrative regulations applicable to the type of meter involved.

(2) If test results on a customer's meter show an average error greater than two (2) percent fast or slow, or if a customer has been incorrectly billed for any other reason, except in an instance where a utility has filed a verified complaint with the appropriate law enforcement agency alleging fraud or theft by a customer, the utility shall immediately determine the period during which the error has existed, and shall recompute and adjust the customer's bill to either provide a refund to the customer or collect an additional amount of revenue from the underbilled customer. The utility shall readjust the account based upon the period during which the error is known to have existed. If the period during which the error existed cannot be determined with reasonable precision, the time period shall be estimated using such data as elapsed time since the last meter test, if applicable, and historical usage data for the customer. If that data is not available, the average usage of similar customer loads shall be used for comparison purposes in calculating the time period. If the customer and the utility are unable to agree on an estimate of the time period during which the error existed, the commission shall determine the issue. In all instances of customer overbilling, the customer's account shall be credited or the overbilled amount refunded at the discretion of the customer within thirty (30) days after final meter test results. A utility shall not require customer repayment of any underbilling to be made over a period shorter than a period coextensive with the underbilling.

(3) Monitoring usage. Each utility shall monitor customers' usage at least annually according to procedures which shall be included in its tariff on file with the commission. The procedures shall be designed to draw the utility's attention to unusual deviations in a customer's usage and shall provide for reasonable means by which the utility can determine the reasons for the unusual deviation. If a customer's usage is unduly high and the deviation is not otherwise explained, the utility shall test the customer's meter to determine whether the meter shows an average error greater than two (2) percent fast or slow.

(4) Usage investigation. If the utility's procedure for monitoring usage indicates that an investigation of a

customer's usage is necessary, the utility shall notify the customer in writing either during or immediately after the investigation of the reasons for the investigation, and of the findings of the investigation. If knowledge of a serious situation requires more expeditious notice, the utility shall notify the customer by the most expedient means available.

(5) Customer notification. If a meter is tested and it is found necessary to make a refund or back bill a customer, the customer shall be notified in substantially the following form:

On _____, 19____, the meter bearing identification No. ____ installed in your building located at _____ (Street and Number) in _____ (city) was tested at _____ (on premises or elsewhere) and found to register _____ (percent fast or slow). The meter was tested on _____ (Periodic, Request, Complaint) test.

Based upon this we herewith _____ (charge or credit) with the sum of \$____, which amount has been noted on your regular bill. If you desire a cash refund, rather than a credit to your account, of any amount overbilled, you must notify this office in writing within seven (7) days of the date of this notice.

(6) Customer accounts shall be considered to be current while a dispute is pending pursuant to this section, as long as a customer continues to make payments for the disputed period in accordance with historic usage, or if that data is not available, the average usage of similar customer loads, and stays current on subsequent bills.

Section 11. Status of Customer Accounts During Billing Dispute. With respect to any billing dispute to which Section 10 of this administrative regulation does not apply, customer accounts shall be considered to be current while the dispute is pending as long as a customer continues to make undisputed payments and stays current on subsequent bills.

Section 12. Customer's Request for Termination of Service. (1) Any customer desiring service terminated or changed from one address to another shall give the utility three (3) working days' notice in person, in writing, or by telephone, provided such notice does not violate contractual obligations or tariff provisions. The customer shall not be responsible for charges for service beyond the three (3) day notice period if the customer provides reasonable access to the meter during the notice period. If the customer notifies the utility of his request for termination by telephone, the burden of proof is on the customer to prove that service termination was requested if a dispute arises.

(2) Upon request that service be reconnected at any premises subsequent to the initial installation or connection to its service lines, the utility may, subject to subsection (3) of this section, charge the applicant a reconnect fee set out in its filed tariff.

(3) Any utility desiring to establish a termination or reconnection charge under the provisions of subsection (2) of this section, shall apply for commission approval of such charge in accordance with the provisions of 807 KAR 5:011, Section 10.

Section 13. Utility Customer Relations. (1) A utility shall post and maintain regular business hours and provide representatives available to assist its customers.

(a) Available telephone numbers. Each utility shall maintain a telephone, shall publish the telephone number in all service areas, and shall permit all customers to contact the utility's designated representative without charge.

(b) Designated representatives. Each utility shall designate at least one (1) representative to be available to answer customer questions, resolve disputes and negotiate partial payment plans at the utility's office. The designated representative shall be knowledgeable of the commission's administrative regulations regarding customer bills and service and shall be authorized to negotiate and accept partial payment plans.

1. Each major gas or electric utility (as defined by the Uniform System of Accounts) and each water and sewer utility having annual operating revenues of \$250,000 or more shall make the designated representative available during the utility's established working hours not fewer than seven (7) hours per day, five (5) days per week, excluding holidays.

2. Each nonmajor gas or electric utility (as defined by the Uniform System of Accounts) and each water or sewer utility having annual operating revenues of less than \$250,000 shall make the designated representative available during the utility's established working hours not fewer than seven (7) hours per day, one (1) day per week. Additionally, during the months of November through March, each previously defined nonmajor utility providing gas or electric service shall make available the designated representative during the utility's established working hours not fewer than five (5) days per week.

(c) Display of customer rights. Each utility shall prominently display in each office in which payment is received a summary, to be prepared and provided by the commission, of the customer's rights under this section and Section 15 of this administrative regulation. If a customer indicates to any utility personnel that he is experiencing difficulty in paying a current utility bill, that employee shall refer the customer to the designated representative for explanation of the customer's rights.

(d) Utility personnel training. The chief operating officer of each electric and gas utility providing service to residential customers shall be required to certify each year the training of utility personnel assigned to counsel persons presenting themselves for utility service under the provisions of this section. Training is hereby defined as an annual review of commission administrative regulations and policies regarding winter hardship and disconnect administrative regulations, Cabinet for Health and Family Services policy and programs for issuing certificates of need, and the utility's policies regarding collection, arrears repayment plans, budget billing procedures, and weather/health disconnect policies. Certification is defined as written notice to the commission by no later than October 31 of each year identifying the personnel trained, the date training occurred, and that the training met the requirements of this section.

(2) Partial payment plans. Each utility shall negotiate and accept reasonable partial payment plans at the request of residential customers who have received a termination notice for failure to pay as provided in Section 14 of this administrative regulation, except that a utility is not required to negotiate a partial payment plan with a customer who is delinquent under a previous partial payment plan. Partial payment plans shall be mutually agreed upon and subject to the conditions in this section and Section 14 of this administrative regulation. Partial payment plans which extend for a period longer than thirty (30) days shall be in writing and shall advise customers that service may be terminated without additional notice if the customer fails to meet the obligations of the plan.

(a) Budget payment plans for gas and electric utilities. Each gas and electric utility shall develop and offer to its residential customers a budget payment plan based on historical or estimated usage whereby a customer may elect to pay a fixed amount each month in lieu of monthly billings based on actual usage. Under such plans, utilities shall issue bills which adjust accounts so as to bring each participating customer current once each twelve (12) month period. The customer's account may be adjusted at the end of the twelve (12) month period or through a series of levelized adjustments on a monthly basis if usage indicates that the account will not be current upon payment of the last budget amount. Budget payment plans shall be offered to residential customers but may be extended to other classes of customers. The provisions of the budget plan shall be included in the utility's tariffed rules. The utility shall provide information to its customers regarding the availability of such budget payment plans.

(b) Partial payment plans for customers with medical certificates or certificates of need. For customers presenting certificates under the provisions of Sections 14(3) and 15 of this administrative regulation, gas and electric utilities shall negotiate partial payment plans based upon the customer's ability to pay, requiring accounts to become current not later than the following October 15. Such plans may include, but are not limited to, budget payment plans and plans that defer payment of a portion of the arrearage until after the end of the heating season through a schedule of unequal payments.

(3) Utility inspections of service conditions prior to providing service. Each electric, gas, water and sewer utility shall inspect the condition of the meter and service connections before making service connections to a new customer so that prior or fraudulent use of the facilities will not be attributed to the new customer. The new customer shall be afforded the opportunity to be present at such inspections. The utility shall not be required to render service to any customer until any defects in the customer-owned portion of the service facilities have been corrected.

(4) Prompt connection of service. Except as provided in Section 15 of this administrative regulation, the utility shall reconnect existing service within twenty-four (24) hours, and shall install and connect new service within seventy-two (72) hours, when the cause for refusal or discontinuance of service has been corrected and the utility's tariffed rules and commission administrative regulations have been met.

(5) Advance termination notice. When advance termination notice is required, the termination notice shall be mailed or otherwise delivered to the last known address of the customer. The termination notice shall be in writing, distinguishable and separate from any bill. The termination notice shall plainly state the reason for termination, that the termination date will not be affected by receipt of any subsequent bill, and that the customer has the right to dispute the reasons for termination. The termination notice shall also comply with the applicable requirements of Section 14 of this administrative regulation.

Section 14. Refusal or Termination of Service. (1) A utility may refuse or terminate service to a customer only under the following conditions except as provided in subsections (2) and (3) of this section:

(a) For noncompliance with the utility's tariffed rules or commission administrative regulations. A utility may terminate service for failure to comply with applicable tariffed rules or commission administrative regulations

pertaining to that service. However, no utility shall terminate or refuse service to any customer for noncompliance with its tariffed rules or commission administrative regulations without first having made a reasonable effort to obtain customer compliance. After such effort by the utility, service may be terminated or refused only after the customer has been given at least ten (10) days written termination notice pursuant to Section 13(5) of this administrative regulation.

(b) For dangerous conditions. If a dangerous condition relating to the utility's service which could subject any person to imminent harm or result in substantial damage to the property of the utility or others, is found to exist on the customer's premises, the service shall be refused or terminated without advance notice. The utility shall notify the customer immediately in writing and, if possible, orally of the reasons for the termination or refusal. Such notice shall be recorded by the utility and shall include the corrective action to be taken by the customer or utility before service can be restored or provided. However, if the dangerous condition, such as gas piping or a gas-fired appliance, can be effectively isolated or secured from the rest of the system, the utility need discontinue service only to the affected piping or appliance.

(c) For refusal of access. When a customer refuses or neglects to provide reasonable access to the premises for installation, operation, meter reading, maintenance or removal of utility property, the utility may terminate or refuse service. Such action shall be taken only when corrective action negotiated between the utility and customer has failed to resolve the situation and after the customer has been given at least ten (10) days' written notice of termination pursuant to Section 13(5) of this administrative regulation.

(d) For outstanding indebtedness. Except as provided in Section 15 of this administrative regulation, a utility shall not be required to furnish new service to any customer who is indebted to the utility for service furnished or other tariffed charges until that customer has paid his indebtedness.

(e) For noncompliance with state, local or other codes. A utility may refuse or terminate service to a customer if the customer does not comply with state, municipal or other codes, rules and administrative regulations applying to such service. A utility may terminate service pursuant to this subsection only after ten (10) days' written notice is provided pursuant to Section 13(5) of this administrative regulation, unless ordered to terminate immediately by a governmental official.

(f) For nonpayment of bills. A utility may terminate service at a point of delivery for nonpayment of charges incurred for utility service at that point of delivery; however, no utility shall terminate service to any customer for nonpayment of bills for any tariffed charge without first having mailed or otherwise delivered an advance termination notice which complies with the requirements of Section 13(5) of this administrative regulation.

1. Termination notice requirements for electric or gas service. Each electric or gas utility proposing to terminate customer service for nonpayment shall mail or otherwise deliver to that customer ten (10) days' written notice of intent to terminate. Under no circumstances shall service be terminated before twenty-seven (27) days after the mailing date of the original unpaid bill. The termination notice to residential customers shall include written notification to the customer of the existence of local, state and federal programs providing for the payment of utility bills under certain conditions, and of the address and telephone number of the Department for Social Insurance of the Cabinet for Health and Family Services to contact for possible assistance.

2. Termination notice requirements for water, sewer, or telephone service. Each water, sewer, or telephone utility proposing to terminate customer service for nonpayment shall mail or otherwise deliver to that customer five (5) days' written notice of intent to terminate. Under no circumstances shall service be terminated before twenty (20) days after the mailing date of the original unpaid bill.

3. The termination notice requirements of this subsection shall not apply if termination notice requirements to a particular customer or customers are otherwise dictated by the terms of a special contract between the utility and customer which has been approved by the commission.

(g) For illegal use or theft of service. A utility may terminate service to a customer without advance notice if it has evidence that a customer has obtained unauthorized service by illegal use or theft. Within twenty-four (24) hours after such termination, the utility shall send written notification to the customer of the reasons for termination or refusal of service upon which the utility relies, and of the customer's right to challenge the termination by filing a formal complaint with the commission. This right of termination is separate from and in addition to any other legal remedies which the utility may pursue for illegal use or theft of service. The utility shall not be required to restore service until the customer has complied with all tariffed rules of the utility and laws and administrative regulations of the commission.

(2) A utility shall not terminate service to a customer if the following conditions exist:

(a) If payment for services is made. If, following receipt of a termination notice for nonpayment but prior to the actual termination of service, there is delivered to the utility office payment of the amount in arrears, service shall not be terminated.

(b) If a payment agreement is in effect. Service shall not be terminated for nonpayment if the customer and the utility have entered into a partial payment plan in accordance with Section 13 of this administrative regulation and the customer is meeting the requirements of the plan.

(c) If a medical certificate is presented. Service shall not be terminated for thirty (30) days beyond the termination date if a physician, registered nurse or public health officer certifies in writing that termination of service will aggravate a debilitating illness or infirmity on the affected premises. A utility may refuse to grant consecutive extensions for medical certificates past the original thirty (30) days unless the certificate is accompanied by an agreed partial payment plan in accordance with Section 13 of this administrative regulation. A utility shall not require a new deposit from a customer to avoid termination of service for a thirty (30) day period who presents to the utility a medical certificate certified in writing by a physician, registered nurse or public health officer.

(3) A gas or electric utility shall not terminate service for thirty (30) days beyond the termination date if the Kentucky Cabinet for Human Resources (or its designee) certifies in writing that the customer is eligible for the cabinet's energy assistance program or household income is at or below 130 percent of the poverty level, and the customer presents such certificate to the utility. Customers eligible for such certification from the Cabinet for Human Resources shall have been issued a termination notice between November 1 and March 31. Certificates shall be presented to the utility during the initial ten (10) day termination notice period. As a condition of the thirty (30) day extension, the customer shall exhibit good faith in paying his indebtedness by making a present payment in accordance with his ability to do so. In addition, the customer shall agree to a repayment plan in accordance with Section 13 of this administrative regulation which will permit the customer to become current in the payment of his bill as soon as possible but not later than October 15. A utility shall not require a new deposit from a customer to avoid termination of service for a thirty (30) day period who presents a certificate to the utility certified by the Kentucky Cabinet for Health and Family Services (or its designee) that the customer is eligible for the cabinet's Energy Assistance Program or whose household income is at or below 130 percent of the poverty level.

Section 15. Winter Hardship Reconnection. (1) Notwithstanding the provisions of Section 13(4) of this administrative regulation to the contrary, an electric or gas utility shall reconnect service to a residential customer who has been disconnected for nonpayment of bills pursuant to Section 14(1)(f) of this administrative regulation prior to application for reconnection, and who applies for such reconnection during the months from November through March if the customer or his agent:

(a) Presents a certificate of need from the Cabinet for Health and Family Services, Department for Social Insurance, including a certification that a referral for weatherization services has been made in accordance with subsection (3) of this section;

(b) Pays one-third (1/3) of his outstanding bill or \$200, whichever is less; and

(c) Agrees to a repayment schedule which would permit the customer to become current in the payment of his electric or gas bill as soon as possible but no later than October 15. However, if, at the time of application for reconnection, the customer has an outstanding bill in excess of \$600 and agrees to a repayment plan that would pay current charges and makes a good faith reduction in the outstanding bill consistent with his ability to pay, then such plan shall be accepted. In addition to payment of current charges, repayment schedules shall provide an option to the customer to select either one (1) payment of arrearages per month or more than one (1) payment of arrearages per month.

(d) A utility shall not require a new deposit from a customer whose service is reconnected due to paragraphs (a), (b) or (c) of this subsection.

(2) Certificate of need for reconnection. Federal and statewide energy assistance programs are administered by the Kentucky Cabinet for Health and Family Services, Department for Social Insurance. A customer who is eligible for energy assistance under the department's guidelines or is certified as being in genuine financial need, which is defined as any household with gross income at or below 130 percent of the poverty level, may obtain a certificate of need from the department to be used in obtaining a service reconnection from the utility.

(3) Weatherization program. Customers obtaining a certificate of need under this administrative regulation shall agree to accept referral to and utilize weatherization services which are administered by the Cabinet for Health and Family Services. The provision and acceptance of weatherization services is contingent on the availability of funds and other program guidelines. Weatherization services include, but are not limited to, weather stripping, insulation and caulking.

(4) Customers who are current in their payment plans under subsection 1(c) of this section shall not be disconnected.

Section 16. Meter Testing. (1) All electric, gas and water utilities furnishing metered service shall provide meter

standards and test facilities, as more specifically set out under 807 KAR 5:022, 807 KAR 5:041 and 807 KAR 5:066. Before being installed for use by any customer, all electric, gas and water meters shall be tested and in good working order and shall be adjusted as close to the optimum operating tolerance as possible, as more specifically set out in 807 KAR 5:022, Section 8(3)(a), 807 KAR 5:041, Section 17(1)(a)-(c) and 807 KAR 5:066, Section 15(2)(a)-(b).

(2) A utility may have all or part of its testing of meters performed by another utility or agency approved by the commission for that purpose. Each utility having tests made by another agency or utility shall notify the commission of those arrangements in detail to include make, type and serial number of standards used to make the checks or tests.

(3) No utility shall place in service any basic measurement standard required by these rules unless the calibration has been approved by the commission. All utilities or agencies making tests or checks for utility purposes shall notify the commission promptly of the adoption or deletion of any basic standards requiring commission approval of the calibration.

(4) Each electric, gas and water utility or agency doing meter testing for a utility shall have in its employ meter testers certified by the commission. These certified meter testers shall perform tests as necessary to determine the accuracy of the utility's meters and to adjust the utility's meters to the degree of accuracy required by commission administrative regulations.

(5) A utility or agency desiring to have its employees certified as meter testers shall submit the names of applicants on the commission's form entitled "Application for Appointment of Meter Testers", and after compliance with the requirements noted in this form, the applicant may be certified as a meter tester and furnished with a card authorizing him to perform meter tests. This form is hereby incorporated by reference, and may be obtained at the commission's offices at 211 Sower Boulevard, Frankfort, Kentucky, on Monday through Friday between the hours of 8 a.m. and 4:30 p.m. local time.

(6) A utility or agency may employ apprentices in training for certification as meter testers. The apprentice period shall be a minimum of six (6) months, after which the meter tester apprentice shall comply with subsection (5) of this section. All tests performed during this period by an apprentice shall be witnessed by a certified meter tester.

Section 17. Meter Test Records. (1)(a) A complete record of all meter tests and adjustments and data sufficient to allow checking of test calculations shall be recorded by the meter tester. Such record shall include: information to identify the unit and its location; date of tests; reason for such tests; readings before and after test; statement of "as found" and "as left" accuracies sufficiently complete to permit checking of calculations employed; notations showing that all required checks have been made; statement of repairs made, if any; identifying number of the meter; type and capacity of the meter; and the meter constant.

(b) The complete record of tests of each meter shall be continuous for at least two (2) periodic test periods and shall in no case be less than two (2) years.

(2) Historical records. Each utility shall keep numerically arranged and properly classified records for each meter owned, used and inventoried by the utility. The identification number, date of purchase, name of manufacturer, serial number, type, rating, and name and address of each customer on whose premises the meter has been in service with date of installation and removal shall be included in the records. These records shall also contain condensed information concerning all tests and adjustments including dates and general results of such adjustments. The records shall reflect the date of the last test and indicate the proper date for the next periodic test required by the applicable commission administrative regulation.

(3) Sealing of meters. Upon completion of adjustment and test of any meter pursuant to commission administrative regulations, the utility shall affix to the meter a suitable seal in such a manner that adjustments or registration of the meter cannot be altered without breaking the seal.

(4) A utility may store any or all of the meter test and historical data described or required in subsections (1) and (2) of this section in a computer storage and retrieval system upon notification to the commission. If a utility elects to use a computer storage and retrieval system, a back-up copy of the identical information shall be retained.

Section 18. Request Tests. (1) Each utility shall make a test of any meter upon written request of any customer if the request is not made more frequently than once each twelve (12) months. The customer shall be given the opportunity to be present at the request tests. If the tests show that the meter was not more than two (2) percent fast, the utility may make a reasonable charge for the test. The amount of the charge shall be approved by the commission and set out in the utility's filed tariff.

(2) After having first obtained a test from the utility, any customer of the utility may request a meter test by the commission upon written application. Such request shall not be made more frequently on one (1) meter than once

each twelve (12) months.

Section 19. Access to Property. The utility shall at all reasonable hours have access to meters, service connections and other property owned by it and located on customer's premises for purposes of installation, maintenance, meter reading, operation, replacement or removal of its property at the time service is to be terminated. Any employee of the utility whose duties require him to enter the customer's premises shall wear a distinguishing uniform or other insignia, identifying him as an employee of the utility, or show a badge or other identification which will identify him as an employee of the utility.

Section 20. Pole Identification. (1) Each utility owning poles or other structures supporting its wires, shall mark every pole or structure located within a built-up community with the initials or other distinguishing mark by which the owner of every such structure can be readily determined. For the purpose of this rule the term "built-up community" shall mean urban areas and those areas immediately adjacent thereto.

(2) Identification marks may be of any type but shall be of a permanent material and shall be easily read from the ground at a distance of six (6) feet from the structure.

(3) If utilities' structures are located outside of a built-up community, at least every tenth structure shall be marked as set forth in subsection (2) of this section.

(4) All junction structures shall bear the identification mark and structure number of the owner.

(5) Poles need not be marked if they are clearly and unmistakably identifiable as the property of the utility.

(6) Each utility shall either number its structures and maintain a numbering system or use some other method of identification so that each structure in the system can be easily identified.

Section 21. Cable Television Pole Attachments and Conduit Use. (1) Each utility owning poles or other facilities supporting its wires shall permit cable television system operators who have all necessary licenses and permits to attach cables to poles and to use facilities, as customers, for transmission of signals to their patrons.

(2) The tariffs of the utility shall set forth the rates, terms and conditions under which the utility's facilities may be used.

(3) With respect to a complaint before the commission in any individual matter concerning cable television pole attachments final action shall be taken on the matter within a reasonable time, but no later than 360 days after filing of the complaint.

Section 22. System Maps and Records. (1) Each utility shall have on file at its principal office located within the state and shall file upon request with the commission a map or maps of suitable scale of the general territory it serves or holds itself ready to serve showing the following:

(a) Operating districts.

(b) Rate districts.

(c) Communities served.

(d) Location and size of transmission lines, distribution lines and service connections.

(e) Location and layout of all principal items of plant.

(f) Date of construction of all items of plant by year and month.

(2) In each division or district office there shall be available information relative to the utility's system that will enable the local representative to furnish necessary information regarding the rendering of service to existing and prospective customers.

(3) In lieu of showing the above information on maps, a card record or other suitable means may be used. For all construction the records shall also show the date of construction by month and year.

Section 23. Location of Records. All records required by commission administrative regulations shall be kept in the office of the utility and shall be made available to representatives, agents or staff of the commission upon reasonable notice at all reasonable hours.

Section 24. Safety Program. Each utility shall adopt and execute a safety program, appropriate to the size and type of its operations. At a minimum, the safety program shall:

(1) Establish a safety manual with written guidelines for safe working practices and procedures to be followed by utility employees.

(2) Instruct employees in safe methods of performing their work.

(3) Instruct employees who, in the course of their work, are subject to the hazard of electrical shock, asphyxiation

or drowning, in accepted methods of artificial respiration.

Section 25. Inspection of Systems. (1) Each utility shall adopt inspection procedures to assure safe and adequate operation of its facilities and compliance with commission rules and administrative regulations. These procedures shall be filed with the commission for review.

(2) Upon receipt of a report of a potentially hazardous condition at any utility facility made by a qualified employee, public official, or customer, the utility shall inspect all portions of the system which are the subject of the report.

(3) Appropriate records shall be kept by each utility to identify the inspection made, deficiencies found and action taken to correct the deficiencies.

(4) Electric utility inspection. Each electric utility shall make systematic inspections of its system in the manner set out below to insure that the commission's safety requirements are being met. These inspections shall be made as often as necessary but not less frequently than is set forth below for various classes of facilities and types of inspection.

(a) As a part of operating procedure, each utility shall continuously monitor and inspect all production facilities regularly operated and manned.

(b) At intervals not to exceed six (6) months, the utility shall inspect:

1. Unmanned production facilities, including peaking units not on standby status, and all monitoring devices, for any evidence of abnormality.

2. Substations where the primary voltage is sixty-nine (69) KV or greater, for damage to or deterioration of components including structures, fences, gauges monitoring devices.

3. Underground network transformers and network protectors in vaults located in buildings or under sidewalks, for leaks, condition of case, connections, temperature and overloading.

4. Electric lines operating at sixty-nine (69) KV or greater, including insulators, conductors, and supporting facilities, for damage or deterioration.

(c) At intervals not to exceed one (1) year, the utility shall inspect:

1. Production facilities maintained on a standby status. Except for remotely controlled facilities, all production facilities shall also be thoroughly inspected.

2. Substations with primary voltage of fifteen (15) to sixty-eight (68) KV.

(d) At intervals not to exceed two (2) years, the utility shall inspect electric lines operating at voltages of less than sixty-nine (69) KV, including insulators, conductors and supporting facilities.

(e) The utility shall inspect other facilities as follows.

1. Utility buildings shall be inspected for compliance with safety codes at least annually.

2. Construction equipment shall be inspected for defects, wear and operational hazards at least quarterly.

(f) Aerial inspections shall not be used as the sole basis for evidence of compliance with commission administrative regulations.

(5) Gas utility inspection. Each gas utility shall make systematic inspections of its system to insure that the commission's safety requirements are being met. These inspections shall be made as often as necessary but not less frequently than is prescribed or recommended by the Department of Transportation, 49 CFR Part 192 Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards, for the various classes of facilities.

(a) The following maximum time intervals are prescribed for certain inspections provided for in 49 CFR Part 192 Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards, with respect to which intervals are not specified, and for certain additional inspections not provided for in such code.

1. At intervals not to exceed every fifteen (15) months but at least once each calendar year, the utility shall inspect and visually examine:

a. Production wells, storage wells, and well equipment, including their exterior components.

b. Pressure limiting stations, relief devices, pressure regulating stations, and vaults.

c. Accessibility of the curb box and valve on a service line.

2. The utility shall inspect other facilities as follows:

a. Utility buildings shall be inspected for compliance with safety codes at least annually.

b. Construction equipment under the control of the utility shall be inspected for defects, wear and operational hazards at least quarterly.

(b) At intervals not to exceed the periodic meter test intervals, individual residential customer service regulators, vents and relief valve vents shall be checked for satisfactory operation.

(c) At intervals not to exceed the periodic meter test intervals, the curb box and valve on the service line shall be

inspected for operable condition.

(d) Aerial inspections shall not be used as the sole basis for evidence of compliance with commission administrative regulations.

(6) Water utility inspections. Each water utility shall make systematic inspections of its system in the manner set out below to insure that the commission's safety requirements are being met. These inspections shall be made as often as necessary but not less frequently than is set forth below for various classes of facilities and types of inspection.

(a) The utility shall annually inspect all structures pertaining to source of supply for their safety and physical and structural integrity, including dams, intakes, and traveling screens. The utility shall semiannually inspect supply wells, their motors and structures, including electric power wiring and controls for proper and safe operation.

(b) The utility shall annually inspect all structures pertaining to purification for their safety, physical and structural integrity and for leaks, including sedimentation basins, filters, and clear wells; chemical feed equipment; pumping equipment and water storage facilities, including electric power wiring and controls; hydrants, mains, and valves.

(c) The utility shall monthly inspect construction equipment and vehicles for defects, wear, operational hazards, lubrication, and safety features.

(7) Telephone utility inspection. Each telephone utility shall make systematic inspections of its system in the manner set out below to insure that the commission's safety requirements are being met. Such inspections shall be made as often as necessary but not less frequently than is set forth below for various classes of facilities and types of inspection.

(a) The utility shall inspect aerial plant for electrical hazards, proper clearance for electric facilities and climbing safety every two (2) years.

(b) The utility shall inspect underground plant for presence of gas, proper clearance from electric facilities and safe working conditions at least annually.

(c) The utility shall inspect utility-provided station equipment and connections for external electrical hazards, damaged instruments or wiring, appropriate protection from lightning and safe location of equipment and wiring when on a customer's premises.

(d) The utility shall inspect utility buildings for compliance with safety codes at least annually.

(e) The utility shall inspect construction equipment for defects, wear and operational hazards at least quarterly.

(f) Aerial inspections shall not be used as the sole basis for evidence of compliance with commission administrative regulations.

(8) Sewage utility inspection. Each sewage utility shall make systematic inspections of its system in the manner set out below to insure that the commission's safety requirements are being met. Such inspections shall be made as often as necessary but not less frequently than is set out below for the various types of inspections, or as otherwise required in 807 KAR 5:071.

(a) The utility shall annually inspect collecting sewers and manholes on a scheduled basis unless conditions warrant more frequent inspections.

(b) The utility shall weekly inspect all mechanical equipment unless otherwise authorized by the commission.

Section 26. Reporting of Accidents, Property Damage or Loss of Service. (1) Within two (2) hours following discovery each utility, other than a natural gas utility, shall notify the commission by telephone or electronic mail of any utility related accident which results in:

(a) Death; or shock or burn requiring medical treatment at a hospital or similar medical facility, or any accident requiring inpatient overnight hospitalization;

(b) Actual or potential property damage of \$25,000 or more; or

(c) Loss of service for four (4) or more hours to ten (10) percent or 500 or more of the utility's customers, whichever is less.

(2) A summary written report shall be submitted by the utility to the commission within seven (7) calendar days of the utility related accident.

(3) Natural gas utilities shall report utility related accidents in accordance with the provisions of 807 KAR 5:027.

Section 27. Deviations from Administrative Regulation. In special cases, for good cause shown, the commission may permit deviations from this administrative regulation. (8 Ky.R. 791; Am. 961; 1137; eff. 4-7-82; 9 Ky.R. 217; 473; eff. 8-25-82; 11 Ky.R. 790; 1048; eff. 1-7-85; 12 Ky.R. 967; 1343; 1510; eff. 2-4-86; 18 Ky.R. 1953; 2554; eff. 2-26-92; TAm eff. 8-9-2007.)

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN INVESTIGATION INTO THE COLLECTION AND)
BILLING PRACTICES OF PRIVATELY-OWNED) ADMINISTRATIVE
SEWER UTILITIES) CASE NO. 347

O R D E R

On March 5, 1993, the Commission initiated an investigation into the billing and collection practices of privately-owned sewer utilities. This action followed the Commission's receipt of a petition from 30 sewer utilities requesting that Commission regulations be amended to permit agreements between water and sewer utilities for the collection of unpaid sewer service bills. As part of its investigation, the Commission ordered all water and sewer utilities to complete a questionnaire on collection and billing practices. Having reviewed and considered their responses, the Commission finds that its investigation should be closed.

Background

Discontinuance of utility service has long been recognized as the most effective means of bill collection.¹ Sewer service,

¹ It is the generally accepted rule in this jurisdiction that a public service company may adopt and enforce regulations providing for the discontinuance of its service to any customer who, after reasonable notice, fails to pay his bill. This principle of law is based upon a sound public policy which recognizes that it would be highly impractical to compel a utility company to resort to an infinite number of actions at law to collect small accounts against scattered customers.

Huff v. Electric Plant Bd. of Monticello, Ky., 299 S.W.2d 817, 818 (1957) (citations omitted)

however, cannot be easily disconnected. There is no switch to pull or valve to turn to discontinue service. The delinquent customer's sewer line must be plugged or his water service must be discontinued. Plugging a sewer line is costly and not usually environmentally sound. It imposes a disproportionate hardship on the customer. Once the sewer line is dug up and plugged, his residence is rendered unfit for habitation.

The General Assembly has recognized discontinuance of water service as an alternative collection mechanism. KRS 96.934(2) requires water utilities to discontinue water service where customers have failed to pay sewer service charges owed to a municipality. KRS 220.510(1) imposes a similar requirement when charges are owed to a sanitation district.

Kentucky courts have supported this alternative. In Rash v. Louisville and Jefferson County Metropolitan Sewer Dist., Ky., 217 S.W.2d 232 (1949), the Court of Appeals upheld a contract requiring the Louisville Water Company to terminate water service to customers failing to pay for sewer service charges owed to the Louisville-Jefferson County Metropolitan Sewer District. The court found "no reason why the Water Company under a contract with the Sewer board may not discontinue its service to delinquent sewer users. The use of both services is interdependent." Id. at 239. See also City of Covington v. Sanitation District No. 1 of Campbell and Kenton Counties, Ky., 301 S.W.2d 885 (1957) (citing Rash with approval).

In Cassidy v. City of Bowling Green, Ky., 368 S.W.2d 318 (1963), the City of Bowling Green enacted an ordinance requiring the termination of water service for any person failing to pay garbage and sewer disposal service charges. Several city residents challenged the ordinance. Reviewing the reasonableness of the ordinance, the Kentucky Court of Appeals declared:

The reasonableness of discontinuing one public service for failure to pay for a related public service was recognized in Rash v. Louisville & Jefferson County Met. Sewer Dist., 309 Ky. 442, 217 S.W.2d 232, and City of Covington v. Sanitation District No. 1, Ky., 301 S.W.2d 885. We are not inclined to say that interdependence is necessarily a controlling factor. However, the record shows that garbage disposal and water supply are closely related from a sanitation standpoint and we can find nothing arbitrary or unreasonable about this method of collecting service charges.

Id. at 320. The Court allowed the ordinance to stand.

Commission regulations currently prohibit public water utilities from discontinuing a customer's water service for delinquent sewer service bills. Commission Regulation 807 KAR 5:006, Section 14(1), states:

A utility may refuse or terminate service to a customer only under the following conditions . . .

(f) For nonpayment of bills. A utility may terminate service at a point of delivery for nonpayment of charges incurred for utility service at that point of delivery; however, no utility shall terminate service to any customer for nonpayment of bills for any tariffed charge without first having mailed or otherwise delivered an advance termination notice which complies with the requirements of Section 13(5) of this regulation. [Emphasis added].

A utility may discontinue service only for nonpayment of charges for services which it provides. As they do not provide sewer

service, water utilities may not discontinue service for nonpayment of sewer service charges.²

Many sewer utilities have claimed that the lack of effective collection mechanisms undermine their financial viability. As they operate on small profit margins, any loss of revenue has a significant impact. While these utilities can employ other means to collect unpaid charges, they contend that these methods are expensive and time consuming.

To remedy this problem, several sewer utilities proposed to amend existing Commission Regulation 807 KAR 5:006, Section 14, to permit sewer utilities and water utilities to enter collection agreements which require the termination of water service for unpaid sewer service charges. Lacking any data on the magnitude of this problem, the Commission initiated this proceeding to collect and analyze information on sewer utilities' billing and collection practices.

Survey Results

Sewer Utilities. On March 5, 1993, the Commission ordered all sewer utilities to respond to a short questionnaire on billing and collection issues. Although the Order was served on 105 sewer utilities, only 40 sewer utilities, or approximately 38 percent of all jurisdictional sewer utilities, responded. Four were combined

² Combined water and sewer districts are an exception to this rule. Since they provide both services, the Commission has permitted such districts to discontinue a customer's water service for failure to pay sewer service charges. See, e.g., Boone County Water and Sewer District, Case No. 91-428 (April 6, 1992).

water and sewer districts. Two were private corporations providing water and sewer service.

Thirty-eight sewer utilities stated that legal action to collect delinquent bills is not an effective means of collection. Only six sewer utilities, however, have used legal process to collect unpaid bills. Of those, two stated that legal action is an effective collection tool.

Seven of the responding utilities attempted to negotiate a contract with the local water supplier to discontinue water service. Three utilities (A-1 Builders, Burl Park Sanitation Association, and Ridgelea Investments) negotiated such agreements. The water utilities, however, refused to honor them after learning of possible conflicts with Commission regulations.

Twenty-three of the 40 sewer utilities found that their inability to terminate service for non-payment did not have a significant impact on their operations. Twenty-five utilities, however, stated that their operations would be significantly affected if the Commission permitted the discontinuance of water service for a customer's failure to pay sewer service charges.

Water Utilities. The Commission served a questionnaire upon 206 water utilities. Only 60 utilities, or approximately 29 percent, responded. Of these utilities, 11 currently provide billing and collection services for privately owned sewer utilities. Fourteen provide such services for municipal utilities or sanitation districts.

Thirty-three water utilities expressed some willingness to enter into agreements with sewer utilities for billing and collection services. Fourteen gave qualified support to a Commission regulation ordering water utilities to discontinue water service upon a sewer utility's request.

The water utilities proposed several conditions to the discontinuance of water service. Most urged that sewer utilities be required to compensate water utilities for the cost of discontinuing and restoring water service. They also sought indemnification from any liability for wrongful termination of service. Several water utilities suggested that any administrative regulation on this issue expressly relieve the water utility of liability in the same manner as KRS 96.942.³ Several were concerned that their reputation would be tarnished if they were forced to discontinue service for nonpayment of sewer service charges. Some suggested that termination of service not be mandated unless the sewer utility had a written agreement with the water utility.

Most emphasized the need for notification procedures similar to those currently in effect. Several proposed that a water utility's contract expressly state that water service could be discontinued for failure to pay sewer service charges. In this manner, customers would have full knowledge of the consequences of

³ "No water supplier who discontinues water service pursuant to an order from the sewer body as provided in KRS 96.930 to 96.943 shall incur any liability by reason thereof, except to the extent of its own negligence or other improper conduct."

their failure to pay for sewer service. One utility suggested that no disconnection be permitted until the sewer utility presented proof of customer notification. Some proposed exceptions for health and hardship be included in any administrative regulation requiring discontinuance.

Analysis

The tepid response to the Commission's Order of March 5, 1993 raises doubts about the need for change. If the problem were serious, the level of response should be higher. Moreover, of those sewer utilities making the effort to respond, fewer than half view billing and collection as a significant problem.

The survey also indicates that few sewer utilities use existing remedies to collect delinquent bills. Less than 20 percent of the responding utilities have used legal action to collect delinquent bills. Of those which did, 33 percent found legal action to be effective. The failure to use existing remedies undercuts the argument that existing remedies are ineffective.

The survey also indicates water utility opposition to changes in existing policy. Many are willing to implement such a policy change only if insulated from liability for wrongful termination of service. While indemnification agreements between sewer and water utilities may achieve this objective, most water utilities apparently prefer statutory protection to contractual protection and are unwilling to enter agreements for the discontinuance of service without such protection.

This attitude would limit the impact of any change in Commission regulations. While the Commission may amend its regulations to permit water utilities to discontinue water service for a customer's failure to pay sewer service charges, it cannot relieve water utilities from their liability for wrongful termination. Such relief can come only from the General Assembly. Without such relief, the Commission expects few water utilities voluntarily to become involved in sewer utility collections.

Given the sewer utilities' tepid response and the opposition of water utilities, the Commission is unwilling to mandate the discontinuance of water service at a sewer utility's request. Water and sewer utilities should develop an agreed approach to address this issue.

Absent a strong demand for change in the existing Commission regulation and the likelihood that such changes would have a significant impact, no attempt to amend Commission Regulation 807 KAR 5:006, Section 14, to create an industry-wide remedy should be made. Those seeking changes in current sewer billing and collection practices should focus their efforts on the General Assembly.

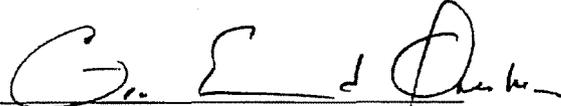
Meanwhile, those sewer and water utilities which agree to the discontinuance of water service for delinquent sewer service bills may petition the Commission for a deviation from Commission Regulation 807 KAR 5:006, Section 14. Absent unusual circumstances, the Commission will favorably consider such petitions.

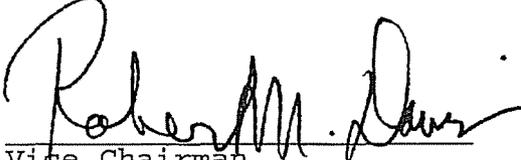
IT IS THEREFORE ORDERED that:

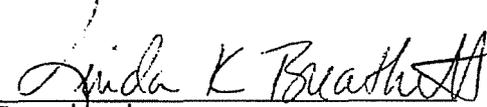
1. This investigation is concluded.
2. This case shall be removed from the Commission's docket.

Done at Frankfort, Kentucky, this 9th day of January, 1995.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director