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June 24, 2010

Mr. Joe Bartley
Meade County Water District
1003 Amory Place
Brandenburg, Kentucky 40108

Dear Mr. Bartley:

PSC STAFF OPINION 2010-014

Commission Staff acknowledges receipt of your letter of May 6, 2010 in which you request an opinion regarding Meade County Water District's practice of committing to charge prospective customers a meter connection fee at current levels for future connections.

Based upon your letter and your telephone conversation with Commission Staff, Commission Staff understands the facts as follows:

Meade County Water District ("Meade District"), a water district organized pursuant to KRS Chapter 74, provides water service to 3,807 customers in Meade County, Kentucky. When the water district was organized in 1983, the members of its Board of Commissioners as a means of encouraging applications for service agreed to limit the cost of service connection to \$300 if the prospective customer placed a deposit with the water district for water service. Deposits varied from \$25 to \$100. Meade District did not enter into any written agreements regarding the guaranteed connection fee, but maintained a list of prospective customers who made deposits. Meade District has since discontinued the practice of accepting deposits to "guarantee" the level of the connection charge, but continues to assess a connection charge of only \$300 for those persons who previously made deposits under the arrangement. The current meter connection charge set forth in Meade District's filed rate schedule is \$632.¹

¹ Meade District began charging a meter connection fee of \$300 in June 1986. In March 1990 it raised the charge to \$500 and to \$632 in December 2007.

In your letter, you present the following questions: (1) May the water district honor the existing agreements to charge only \$300 in those instances where the prospective customer who placed the deposit has died and the applicant for service is an heir to the prospective customer and seeking service to the property identified in the agreement? (2) May the water district honor the existing agreements to charge only \$300 in those instances where the applicant has purchased the property in question from the prospective customer who placed the deposit or the prospective customer's estate?

Before addressing those questions, Commission Staff must first address whether Meade District has the authority to charge a fee that is not set forth in its filed rate schedule.

KRS 278.160(1) provides:

No utility shall charge, demand, collect, or receive from any person a greater or less compensation for any service rendered or to be rendered than that prescribed in its filed schedules, and no person shall receive any service from any utility for a compensation greater or less than that prescribed in such schedules.

The Commission has taken the position that KRS 278.160 limits a utility's flexibility in the rates that it may assess for service. In *Americoal Corporation v. Boone County Water and Sewer District*, Case No. 91-108 (Ky.PSC. Apr. 24, 1992), the Commission stated:

The primary effect of KRS 278.160 is to bestow upon a utility's filed rate schedule the status of law. 'The rate when published becomes established by law. It can be varied only by law, and not by act of the parties. The regulation . . . of . . . rates takes that subject out of the realm of ordinary contract in some respects, and places it upon the rigidity of a quasi-statutory enactment.' *New York N.H. & H.R. Co. v. York and Whitney*, 102 N.E. 366, 368 (Mass. 1913). While a utility may file or publish new rate schedules to change its rates pursuant to KRS 278.180, it lacks the legal authority to deviate from its filed rate schedule. It "can claim no rate as a legal right that is other than the filed rate." *Montana-Dakota Util. Co. v. Northwestern Pub. Serv. Co.*, 341 U.S. 246, 251 (1951).

Id. at 6. Simply put, a utility is limited to charging the rate set forth in its filed rate schedule and lacks the legal authority to charge a differing rate. It cannot contract with

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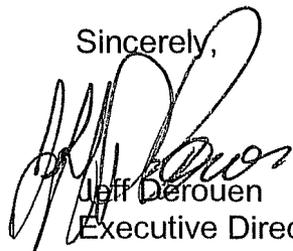
a prospective customer for a differing rate unless that contract is filed with and accepted by the Commission.

Meade District's present rate schedule prescribes a charge of \$632 for a meter connection. It makes no provision for prospective customers who previously made a deposit for such service. While the water district may enter into special contracts to provide for rates other than those in its filed rate schedules, the contracts must be filed with the Commission.² Commission records do not indicate any special contracts regarding the amount of a meter connection fee that Meade District will assess.

Commission Staff is of the opinion that, in the absence of a tariff provision that permits a lesser meter connection charge or otherwise makes special provision for those persons who made a deposit, Meade District must charge the meter connection charge set forth in its filed rate schedule. It cannot assess a meter connection charge of \$300 unless it revises its filed schedule to specify that amount. Commission Staff strongly recommends that Meade District cease its current practice of charging a meter connection fee of \$300 to those who have made a deposit and refund all remaining deposits or, if connection is imminent, apply the deposit to the current meter connection charge. As Commission Staff is of the opinion that Meade District cannot currently assess a meter connection charge lower than \$632, it responds in the negative to the two questions posed in your letter.

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/Attorney, at (502) 564-3940, Extension 259.

Sincerely,



Jeff Derouen
Executive Director

² See 807 KAR 5:011, Section 13 ("Every utility shall file true copies of all special contracts entered into governing utility service which set out rates, charges or conditions of service not included in its general tariff.")