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July 19, 2010

David L. Armstrong  
Chairman

James W. Gardner  
Vice Chairman

Charles R. Borders  
Commissioner

Mr. Martin Lashua  
Utilities, Inc.  
P.O. Box 240908  
Charlotte, NC 28217

Dear Mr. Lashua:

**PSC STAFF OPINION NO. 2010-00016**

Commission Staff is in receipt of your letter of May 3, 2010 regarding fire hydrants that Water Service Corporation of Kentucky ("Water Service Corporation") owns and operates in the Ambleside Subdivision of Bell County, Kentucky.

Commission Staff understands the facts are as follows:

Water Service Corporation, a subsidiary of Utilities, Inc., owns and operates facilities that distribute water to and for the public in and around Middlesboro, Kentucky, including the Ambleside Subdivision. Ambleside Subdivision is an unincorporated area of Bell County.

Ambleside Subdivision was initially developed in 1982. Twenty-one hydrants are located in the subdivision on county-owned and maintained roads. Water Service owns and maintains these hydrants. Three times a year it flushes and inspects the hydrants. It tests the flow and paints the hydrants every five years. Water Service Corporation is responsible for replacing damaged and inoperable hydrants.

Under the terms of its filed rate schedules, Water Service may assess a monthly fee of \$4.30 for public fire hydrants within the city of Middlesboro. It assesses this fee to the city of Middlesboro. Water Service Corporation's fire protection rate schedule provides for a monthly fee of \$19.35 for private hydrants and sprinkler systems.

Ambleside, Ltd. ("Ambleside"), a for-profit Kentucky corporation that was organized in January 1981, has assumed responsibility for the fire protection charges

associated with fire hydrants in the Ambleside Subdivision since the subdivision's inception. Ambleside was a customer in good standing through November 11, 2008. In November 2008, Ambleside, through its legal counsel, contacted Water Service Corporation and advised that Water Service Corporation's assessment of the hydrant charges was inappropriate because the hydrants were located on county maintained, public roads and should be the responsibility of Bell County. Ambleside last paid its bill from Water Service Corporation on November 11, 2008, and has an outstanding balance of \$5,873.70.

In your letter, you request "a staff opinion on the validity of our [Water Service's] charges and the customer's responsibility to pay these charges." You also requested a "recommendation on remedy for this situation as it is not practical for us to consider turning off the water to these hydrants as a matter of public protection to the residents and homeowners."

KRS 278.030(1) provides that "[e]very utility may demand, collect and receive fair, just and reasonable rates for services rendered or to be rendered by it to any person." KRS 278.160(1) requires such rates be set forth in a schedule filed with the Commission. KRS 278.160(2) 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.

Water Service Corporation's filed rate schedule currently provides for a monthly rate of \$19.35 per private hydrant. The Commission approved this rate in Case No. 2008-00563.<sup>1</sup> KRS 278.160(2) requires that Water Service Corporation charge that rate when applicable.

Commission Staff is of the opinion that Ambleside continues to be responsible for the fire hydrant charges associated with the hydrants within the Ambleside Subdivision. Ambleside initiated its utility-customer relationship in 1982 when Water Service's predecessor (Kentucky Water Service, Inc.) installed the hydrants. For 26 years, it paid the prescribed rates for the hydrants without challenge. Although the hydrants are located on county-owned and maintained roads, no evidence has been presented to suggest that Bell County Fiscal Court has assumed responsibility for the monthly hydrant fee.

Utilities seeking remedies for non-payment generally have few options. The Commission does not have the authority to award damages; therefore, any collections

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<sup>1</sup> Case No. 2008-00563, *Water Service Corporation of Kentucky* (Ky. PSC Nov. 9, 2009).

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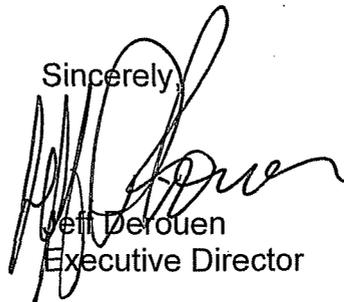
action against a non-paying customer must be resolved in the court system. Commission regulations, however, enable a utility to disconnect service for non-payment of bills. 807 KAR 5:006, Section 14(1)(f). Commission Staff recognizes that disconnection of hydrants is unique, in that several property owners benefit from the fire protection that the hydrants afford. Disconnection of the hydrants will likely result in higher insurance premiums for homeowners with the subdivision and increase the risk of catastrophic fire loss.

Nevertheless, a utility increases its expenses when it installs hydrants and provides sufficient water flow for fire protection. Water Service Corporation's rates are designed to recover those additional expenses. Failure to collect the required rates will force other utility customers who receive no benefit from the hydrants in question to absorb these costs through their rates.

For your reference, enclosed is a copy of the Commission's Order in Case No. 2007-00450<sup>2</sup> in which the Commission addressed a similar factual situation. The course of action that the affected water utility proposed to undertake may be instructive.

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 Todd Osterloh, Staff Attorney, at (502) 564-3940, Extension 439.

Sincerely,



Jeff Derouen  
Executive Director

Enclosure

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<sup>2</sup> Case No. 2007-00450, *Kentucky-American Water Co.* (Ky. PSC Feb. 28, 2008).

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PETITION OF KENTUCKY-AMERICAN	)	
WATER COMPANY FOR PERMISSION AND	)	
AUTHORIZATION TO DISCONNECT	)	CASE NO. 2007-00450
CUSTOMERS FOR NON-PAYMENT OF FIRE	)	
SERVICE CHARGES	)	

ORDER

Kentucky-American Water Company ("Kentucky-American") has petitioned for Commission authorization to disconnect certain customers who receive fire protection service for non-payment of the charges for that service. Finding that Administrative Regulation 807 KAR 5:006, Section 14, authorizes a utility to discontinue service for non-payment without specific Commission authorization, we deny the petition as moot.

Kentucky-American, a corporation organized under the laws of the Commonwealth of Kentucky,<sup>1</sup> owns and operates facilities that treat and distribute water to the public for compensation in Kentucky. It provides water service to approximately 115,575 customers in Bourbon, Clark, Fayette, Gallatin, Grant, Harrison, Jessamine, Owen, Scott, and Woodford counties, Kentucky.<sup>2</sup> It is a utility subject to Commission jurisdiction.<sup>3</sup>

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<sup>1</sup> See Online Business Database, Kentucky Secretary of State Trey Grayson <http://apps.sos.ky.gov/business/obdb/default.aspx> (last visited Feb. 17, 2008).

<sup>2</sup> Report of Kentucky-American Water Company to the Kentucky Public Service Commission for the Year Ended December 31, 2006 at 5 and 30.

<sup>3</sup> KRS 278.010(3)(d); KRS 278.040(1).

Kentucky-American requests authority to discontinue fire protection to six customers who are receiving private fire hydrant service or fire protection service and are not current in the payment of their bills. It states that the delinquency period for each of these customers "has run well beyond the minimum period for termination of service."<sup>4</sup> Kentucky-American further states that it has notified each of the customers in question of its intent to terminate service. It has also notified the local fire departments that serve these customers and Insurance Services Office.<sup>5</sup>

As a general rule, water utilities may terminate service to customers for nonpayment.<sup>6</sup> The Commission has codified this rule in 807 KAR 5:006, Section 14(f), which provides:

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

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<sup>4</sup> Application at 3. The amount of the arrears ranges from \$1,817 to \$7,384.

<sup>5</sup> Insurance Services Office (ISO) provides statistical, actuarial, and underwriting information for the property/casualty insurance and risk management industries. The company gathers premium, claim, and loss data that is filed with state regulators; the data is used to evaluate the price of insurance in each state. See [http://www.hoovers.com/iso/--ID\\_\\_59977--/free-co-profile.xhtml](http://www.hoovers.com/iso/--ID__59977--/free-co-profile.xhtml) (last visited Feb. 17, 2008)

<sup>6</sup> See 78 Am. Jur. 2d *Waterworks and Water Companies* § 65 (2007); 64 Am. Jur. 2d *Public Utilities* § 48 (2007); See also *Warfield Natural Gas Co. v. Clark Adm'x*, 257 Ky. 724, 79 S.W.2d 21 (1934) *Kentucky Utilities Co. v. Warren Ellison Café*, 231 Ky. 558, 21 S.W.2d 976 (1929).

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.

Having considered the petition and being otherwise sufficiently advised, the Commission finds a formal proceeding authorizing service disconnections in this case is not required. Kentucky-American may disconnect the service of the customers in question by complying with 807 KAR 5:006, Section 14.<sup>7</sup> We further find that Kentucky-American's efforts to notify these customers' insurers and local fire departments of its proposed action are prudent and reasonable and should be considered as the better practice for all water utilities that intend to discontinue a customer's fire protection service for nonpayment.

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<sup>7</sup> See Case No. 1993-00296, The Application of John Allen, Trustee, with Burl Wells Spurlock, Betty H. Minix and Patsy Wright, to Discontinue Service to Certain Customers (Ky. PSC Sept. 30, 1993).

IT IS THEREFORE ORDERED that:

1. Kentucky-American's petition is denied as moot.
2. This matter is closed and removed from the Commission's docket.

Done at Frankfort, Kentucky, this 28<sup>th</sup> day of February, 2008.

By the Commission

ATTEST:

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke at the end, positioned above a solid horizontal line.

Executive Director