

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

DONALD B. AND KIMBERLY A. NIERGARTH)	
)	
COMPLAINANTS)	
)	
V.)	CASE NO. 2013-00309
)	
NORTHERN KENTUCKY WATER DISTRICT)	
)	
DEFENDANT)	

ORDER

On October 4, 2013, the Commission directed the Complainants to advise us in writing within 20 days of this Order as to whether Northern Kentucky Water District's ("Northern District") provision of water service to the Complainants' residence at 10706 Kimberly Drive, Union, Kentucky, had satisfied the Complaint. We advised the Complainants that their failure to file with the Commission a written response to our Order within the required time period would be considered as evidence that their Complaint has been satisfied. As of the date of this Order, Complainants have submitted no written response to our Order of October 4, 2013, nor have they otherwise advised the Commission as to whether the conditions to which they originally complained still exist. Accordingly, we find that the Complaint should be considered satisfied.

The Complaint, however, presents a significant question regarding Northern District's provision of service that extends beyond the Complainants in this case: If a utility requires an applicant for service to complete a standardized application form or

contract for service that contains conditions of service that are not specifically set forth in its filed schedules or requires an applicant to disclose information of which disclosure is not specifically required by the utility's filed schedules, and the standardized application form or contract has not been filed with the Commission as part of the utility's filed schedules, has the utility complied with KRS 278.160(1), even if the utility's filed schedules require the completion of the application form or contract?

Northern District, a water district organized pursuant to KRS Chapter 74,¹ owns and operates facilities that treat and distribute water to approximately 80,560 retail customers in Boone, Campbell, and Kenton counties.² It provides wholesale water service to the city of Walton, Bullock Pen Water District, and Pendleton County Water.³

Northern District's rules and regulations require that an applicant for service must apply for service and execute a contract for service. They provide:

Any prospective water customer desiring water service and the installation of a service connection, should apply at the District office. The prospective customer shall, in signing a water service connection contract, agrees [sic] to be bound by all the provisions of these Rates, Rules and Regulations as they may be amended from time to time.⁴

Northern Kentucky has two different service application forms. One form is intended for the applicants applying for residential water service. The other pertains to businesses that are applying for water service. Neither contract form is part of Northern Kentucky's

¹ Northern District is the product of the merger of Campbell County Kentucky Water District and Kenton County Water District No. 1. See Case No. 96-234, *The Joint Application of Kenton County Water District No. 1 and Campbell County Kentucky Wafer District for Authority to Merge Into Northern Kentucky Water Service District, and for Authority for the Combined District to Operate* (Ky. PSC Aug 28, 1996). Kenton County Water District No. 1 was formed pursuant to 1926 Ky. Acts Ch. 139.

² See *Annual Report of Northern Kentucky Water District to the Public Service Commission of Kentucky for the Calendar Year Ending December 31, 2012* at 5, 27.

³ *Id.* at 30.

⁴ Northern Kentucky Water District Tariff, PSC No. 4, Sheet No. 15 (effective Jan. 7, 2011).

filed schedules. Northern District, however, has placed both forms on its website and made them available for the public to view and download.⁵

To complete the application form for residential service, the applicant must provide, among other information, his or her Social Security number, date of birth, driver's license number, employer's name, e-mail address, marital status, and property-owner status. The application form also contains several agreements to which the applicant must agree. These include reimbursement of the water district's reasonable attorney's fees and court costs incurred to enforce the terms of the agreement and reimbursement of any charge by any debt-collection agency that the water district retains to recover any delinquent amounts or indebtedness that the applicant might owe to the water district. The application form further requires that the applicant's spouse agree to the application's terms and conditions and provide his or her Social Security number and employer's name. If the applicant is a renter, he or she must provide a copy of his or her rental agreement and photo identification, and his or her co-tenants must also agree to the application's terms and conditions. Finally, if an applicant will not be present when Northern District turns on water service at his or her residence, he or she must execute a release.

Northern District's rules and regulations do not address the information that an applicant must provide to obtain service. They do not contain any specific provision addressing attorney's fees or debt-collection fees. They are silent on the need of a spouse or co-tenant to sign an application form or agree to conditions of service.

⁵ For the residential service application form, see http://www.nkywater.org/customerservice/pdf/form_individual_v3_final.pdf (last visited Jan. 26, 2014). For the business service application form, see http://www.nkywater.org/customerservice/pdf/form_business_v3_final.pdf (last visited Jan. 26, 2014).

Utilities may impose reasonable rules and conditions of service on its customers and applicants for service. KRS 278.030(2) expressly provides:

Every utility shall furnish adequate, efficient and reasonable service, and may establish reasonable rules governing the conduct of its business and the conditions under which it shall be required to render service.

KRS 278.160(1), however, requires that such rules and conditions of service be set forth in schedules filed with the Commission. It provides:

Under rules prescribed by the commission, each utility shall file with the commission, within such time and in such form as the commission designates, schedules showing all rates and conditions for service established by it and collected or enforced.

Administrative Regulation 807 KAR 5:006, Section 6(1), further prohibits a utility from establishing “a special rule or requirement without first obtaining the approval of the commission.”

An argument may be made that a provision in a utility’s filed schedule that requires the completion of an application form for service as a condition for receiving service satisfies KRS 278.160(1) and 807 KAR 5:006, Section 6(1). In those instances in which the conditions and requirements set forth in the application form merely repeat the contents of the utility’s filed schedules, this argument has merit.

When an application form is establishing new conditions, such as the disclosure of personal information or agreement to pay attorney’s fees or collection agency fees, however, a reference to a “completed application form” in the utility’s filed schedules fails to place either the applicant or this Commission on notice as to the conditions that must be met to obtain utility service. As we have previously noted, one of the

purposes of the filed rate doctrine, the legal doctrine that KRS 278.160(1) and (2) embody, is to:

. . . preserve the Commission's 'primary jurisdiction over reasonableness of rates and . . . ensure that regulated companies charge only those rates of which the agency has been made cognizant.' *City of Cleveland, Ohio v. Federal Power Comm'n*, 525 F.2d 845, 854 (D.C. Cir. 1976). The assessment of rates which the Commission has neither seen nor reviewed represents a serious challenge to the Commission's authority over rates.⁶

Unless the application form is part of the utility's filed schedules, this Commission lacks clear notice or knowledge of the conditions or requirements set forth in the application form and is in no position to approve those conditions.

Moreover, if an application form is not part of a utility's filed schedules, the utility may amend or revise the contents of the form, and hence the conditions necessary to service, without following the procedures set forth in KRS 278.180(1).⁷ For example, rather than amend its filed schedules to add a requirement that the customer must agree to pay collection agency fees, a utility could simply revise its application form to include such provision. As the application form is not filed with the Commission, the Commission would likely not have knowledge of the revision.

⁶ Case No. 90-108, *Americoal Corporation v. Boone County Water and Sewer District* (Ky. PSC Apr. 24, 1992) at 6-7.

⁷ KRS 278.180(1) provides:

Except as provided in subsection (2) of this section, no change shall be made by any utility in any rate except upon thirty (30) days' notice to the commission, stating plainly the changes proposed to be made and the time when the changed rates will go into effect. However, the commission may, in its discretion, based upon a showing of good cause in any case, shorten the notice period from thirty (30) days to a period of not less than twenty (20) days. The commission may order a rate change only after giving an identical notice to the utility. The commission may order the utility to give notice of its proposed rate increase to that utility's customers in the manner set forth in its regulations.

Accordingly, the Commission finds that KRS 278.160 and 807 KAR 5:006, Section 6(1), require a utility to include as part of its filed schedules or tariff its standardized application form if it requires completion of that form as a condition of service. Where a utility fails to include that application form in its filed schedules, it may lack any legal basis to deny service to an applicant solely because of the applicant's failure to complete the application form.

We further find that Northern District should file its application forms as part of its filed schedules. Upon Northern District's filing of those forms, we will review the reasonableness of the conditions and requirements contained in those forms. Nothing in this Order should be construed as a finding regarding the reasonableness of any of the contents of Northern District's application forms.⁸

IT IS THEREFORE ORDERED that:

1. The Complaint is dismissed as satisfied.
2. Within 20 days of the date of this Order, Northern District shall file with the Commission as part of its tariff, using the Commission's electronic Tariff Filing System, its application for service forms.
3. This case is closed and shall be removed from the Commission's docket.

⁸ Northern District, however, should be prepared to address why its requirement for the applicant's Social Security number is not in violation of the Privacy Act. See Privacy Act § 7(a)(1) (found at 5 U.S.C. § 552a note (Disclosure of Social Security Number)) ("It shall be unlawful for any Federal, State or local government agency to deny to any individual any right, benefit, or privilege provided by law because of such individual's refusal to disclose his social security account number.").

By the Commission

ENTERED *ff*
JAN 31 2014
KENTUCKY PUBLIC
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