

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PROPOSED TARIFF FILING OF BOONE COUNTY)
WATER AND SEWER DISTRICT FOR SEWER) CASE NO. 91-428
INSPECTION FEE)

O R D E R

Boone County Water and Sewer District ("Boone District") has proposed a tariff revision which, inter alia, would permit the refusal or discontinuance of water service for a customer's failure to pay sewer service fees. The issue presented is whether this proposed condition of service is lawful and reasonable. The Commission finds in the affirmative and approves the proposed tariff revision.

Boone District is a combined water and sewer district organized under the provisions of KRS Chapter 74. In addition to providing water service to certain portions of Boone County, Kentucky, it also owns and operates several package sewage treatment plants and two sewer collection lines. These collection lines transport untreated sewage to the sewage treatment facilities of Sanitation District No. 1 of Campbell and Kenton Counties.

On October 18, 1991, Boone District proposed to revise its existing tariff to include a sewer inspection fee. This fee is assessed for each sewer line connection and is intended to cover the cost of inspecting the new connection. The proposed revision

also provides that "[w]ater service to the property for which sewer service is requested will not be initiated until payment of the inspection fee." It thus conditions water service upon payment of sewer service fees. The Commission permitted the sewer inspection fee to become effective on November 2, 1991, but suspended the condition of service for further review.

KRS 278.030(2) permits utilities to "establish reasonable rules governing the conduct of its business and the conditions under which it shall be required to render service." Unless it is unreasonable or unlawful, the proposed utility rule must be accepted.

Kentucky statutes are silent on a combined water and sewer district's right to discontinue water service when a customer fails to pay sewer service fees. They do, however, address similar situations involving non-jurisdictional utilities. 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. Both statutes apply to water districts. Op. Att'y Gen. Ky. 68-510 (1968).

While the Kentucky courts have not directly addressed the issue posed by the proposed revision, they have generally been supportive of the concept. In Rash v. Louisville and Jefferson County Metropolitan Sewer Dist., 309 Ky. 442, 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 stated that it saw "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 453, 217 S.W.2d at 239. See also City of Covington v. Sanitation Dist. No. 1 of Campbell and Kenton Counties, Ky., 301 S.W.2d 885 (1957) (citing Rash with approval); Cassidy v. City of Bowling Green, Ky., 368 S.W.2d 318 (1963).

Commission regulations permit utilities to discontinue or refuse service only under certain conditions. 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 . . .

(d) For outstanding indebtedness. Except as provided in Section 15 of this 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.

. . .

(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.

. . .

The proposed revision does not conflict with this regulation.

The proposed revision, furthermore, does not conflict with prior Commission decisions. In Administrative Case No. 286,¹ the Commission ordered combined gas and electric utilities to separate a combined bill under certain circumstances. The Commission intended to permit customers of a combined utility to have the "opportunity to pay for and retain one of the services, just as do customers in areas of the Commonwealth which are not served by combined utilities."² Implied in this Order is the principle that a customer's failure to pay a bill for electric or natural gas services should not deprive that customer of the right to receive the other utility service if that account is current.

The present case is distinguishable. Electric and natural gas service are not interdependent. Water service and sewer service are. As a practical matter, sewer service cannot be provided unless water service is available. We recognized this fact by limiting our holding to combined natural gas and electric utilities.

In Administrative Case No. 306,³ the Commission authorized discontinuance of local exchange telephone service for failure to pay charges owed to an interexchange carrier. In permitting this practice, the Commission noted, inter alia, that we viewed "local,

¹ Administrative Case No. 286, Separation of Bills Rendered by Combined Utilities.

² Id., Order dated July 12, 1985, 1.

³ Administrative Case No. 306, Detariffing Billing and Collection Services.

toll and other regulated services as part of an integrated network" and that we regulated "both the local service and the intrastate services of all carriers in Kentucky."⁴

The case at bar is analogous. Boone District's water and sewer operations are interdependent and integrated. Both are subject to Commission jurisdiction. Any billing dispute involving either operation is subject to Commission review.

The Commission finds that the proposed revision represents a reasonable approach to collecting sewer charges. Discontinuance of service has long been recognized as the most effective means of bill collection.⁵ Sewer service cannot be easily disconnected. There is no switch to pull or valve to close to terminate service. Either the customer's sewer line must be dug up and plugged or water service must be discontinued. Digging up a sewer line is costly. It is not environmentally sound. Once done, the customer's residence is usually unfit for habitation.

⁴ Id., Order dated March 1, 1988, 18.

⁵ 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 collection small accounts against scattered customers.

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

Discontinuing water service avoids these problems. It presents an immediate collection mechanism. It avoids the need for legal collection actions which are expensive and time consuming. Without a swift and effective enforcement mechanism, furthermore, the appearance of unfairness and inequality is created. Non-paying customers continue to receive service while paying customers bear the additional costs.

Finally, we note that the proposed revision comports with the Commonwealth's declared policy that

the use of water in any manner tending to contaminate it, raises a correlative public duty to provide for the proper disposition thereof according to the highest public health standards, and that such public duty includes full responsibility for paying the cost of such disposition.

KRS 96.930.

After reviewing the proposed revision and being otherwise sufficiently advised, the Commission finds that the proposed revision is lawful and reasonable and should be approved.

IT IS THEREFORE ORDERED that Boone District's proposed tariff P.S.C. No. 1, Original Sheet No. 25 is approved in its entirety and shall be effective for service rendered on and after the date of this Order.

Done at Frankfort, Kentucky, this 6th day of April, 1992.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director