

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.<sup>1</sup> Sewer service,

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<sup>1</sup> 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.

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.<sup>2</sup>

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

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<sup>2</sup> 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.<sup>3</sup> 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

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<sup>3</sup> "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.

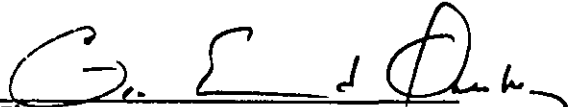


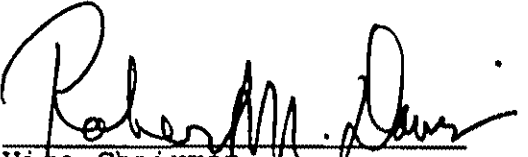
IT IS THEREFORE ORDERED that:

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