

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN AGREEMENT BETWEEN LEXINGTON-FAYETTE )  
URBAN COUNTY GOVERNMENT AND KENTUCKY- )  
AMERICAN WATER COMPANY FOR THE )  
BILLING, ACCOUNTING AND COLLECTION OF )  
SANITARY SEWER CHARGES )

CASE NO. 95-238

O R D E R

Kentucky-American Water Company ("Kentucky-American") has applied for approval of its Agreement with the Lexington-Fayette Urban County Government ("LFUCG") under which Kentucky-American will provide billing and collection services for LFUCG's sanitary sewer service operations. Kentucky-American has also applied for a deviation from Commission Regulation 807 KAR 5:006, Section 14, to permit the discontinuance of water service to any customer who fails to pay sanitary sewer service charges owed to LFUCG.

Kentucky-American's application poses the following question: May a public water utility discontinue a customer's water service for failure to pay charges for sanitary sewer services provided by a municipal utility? Finding that a public water utility may take such action and that neither the public water utility's action nor its agreement with a municipal sewer utility require Commission approval, we dismiss the application as moot.

Kentucky-American is a privately-owned Kentucky corporation which owns and operates facilities for the distribution and sale of water to more than 230,000 persons within the central Kentucky

area. Its service area includes Fayette, Woodford, Scott, Harrison, and Bourbon counties. In addition to providing retail water service, Kentucky-American also provides wholesale water service to several public and municipal water utilities.

On May 22, 1995, after extensive negotiations, Kentucky-American and LFUCG executed an Agreement for Kentucky-American to perform the billing, accounting and collection for LFUCG's sanitary sewer service customers. Under the terms of the Agreement, Kentucky-American and LFUCG will identify customers who they jointly serve. Kentucky-American will assume responsibility for billing and collecting from these customers all charges related to the provision of sanitary sewer service. Sanitary sewer charges will be listed on the same bills which are rendered for water service. In those instances where a customer fails to pay the billed sanitary sewer service charges, Kentucky-American will discontinue his water service.

On its face, the Agreement is contrary to Commission Regulation 807 KAR 5:006, Section 14(1), which provides:

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). The regulation permits a utility to discontinue only for nonpayment of charges for services which it provides.

To overcome the regulation's restrictions, Kentucky-American has requested a deviation from Commission Regulation 807 KAR 5:006, Section 14. As KRS Chapter 96 clearly authorizes Kentucky-American's agreement with LFUCG and the discontinuance of water service to those customers who fail to pay charges owed to LFUCG for sanitary sewer service, no deviation is required.

KRS 96.932 provides in part that "[i]n the interest of the public health, safety, and general welfare, cities may enforce collection of lawful rates and charges for the use of municipal sewer facilities by requiring that water service, whether provided publicly or privately, be discontinued until payment is made or some satisfactory arrangement is reach [emphasis added]."

KRS 96.934 provides that a water supplier "shall discontinue water service" to a premises for a customer's failure to pay sewer service charges when the governing body of municipal sewer facilities identifies the delinquent customer and notifies the water supplier to discontinue water service.

KRS 96.940 authorizes municipal sewer bodies and any water supplier to enter contracts "relating to any of the provisions of KRS 96.930 to 96.943."

Clearly KRS Chapter 96 and Commission Regulation 807 KAR 5:006, Section 14, are in direct conflict. In such conflict, the more specific statute prevails. Land v. Newsome, Ky., 614 S.W.2d 948, 949 (1981) (citations omitted) ("One of the established rules

of statutory construction is that when two statutes deal with the same subject matter, one in a broad, general way and the other specifically, the specific statute controls.")

KRS Chapter 96 is the more specific statute and therefore controls. KRS 278.280(2), the statute under which Commission Regulation 807 KAR 5:006 was promulgated, provides only that "[t]he Commission shall prescribe rules for the performance of any service or the furnishing of any commodity of the character furnished or supplied by the utility. . . ." Moreover, while Commission Regulation 807 KAR 5:006, Section 14, deals in general terms with the issue of discontinuance of service, KRS Chapter 96 specifically addresses that a public water utility's obligation to discontinue water service for a customer's failure to pay a municipal utility's charges for sanitary sewer service. It states in considerable detail the rights of both utilities and the procedures for the termination of water service.

Moreover, to hold that KRS Chapter 96 is not controlling would place public water utilities in an untenable position. If a public utility chooses to comply with Commission Regulation 807 KAR 5:006, Section 14, and to ignore the requests of a municipal sewer utility to discontinue water service, it is liable to the municipal sewer utility for any amount due from the delinquent sewer customer. KRS 96.943.

Our interpretation is consistent with the public policy goals embodied in KRS Chapter 96. In enacting these provisions, the General Assembly declared 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." Commission Regulation 807 KAR 5:006, Section 14, should not be used to frustrate these goals.

Based upon the above, the Commission finds that the provisions of KRS 96.930-943 control in this instance. Accordingly, Kentucky-American does not require a deviation from Commission Regulation 807 KAR 5:006, Section 14, to implement LFUCG's instructions to discontinue a customer's water service under KRS 96.934. As KRS 96.940 specifically authorizes the Agreement, no further approval is required.

IT IS THEREFORE ORDERED that:

1. Kentucky-American's application for a deviation from Commission Regulation 807 KAR 5:006, Section 14, is denied as moot.
2. Kentucky-American's application for approval of its Agreement with LFUCG is denied as moot.
3. Kentucky-American shall provide the Commission for informational purposes copies of any changes or amendments to its Agreement with LFUCG.

Done at Frankfort, Kentucky, this 30th day of June, 1995.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ATTEST:

  
Executive Director