

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

MARK A. HENSLEY)	
)	
COMPLAINANT)	
)	
v.)	CASE NO. 98-126
)	
MCKINNEY WATER DISTRICT)	
)	
DEFENDANT)	

ORDER

On February 23, 1998, Mark A. Hensley filed a formal complaint against McKinney Water District (McKinney Water). Mr. Hensley stated that the meter serving his property is across a state highway and that the service line running from the meter to his home lies under that road. He also stated that the water main is located in his yard along with a fire hydrant. Not wanting to be responsible for a service line underneath the road, he requested that the meter be moved by McKinney Water at no expense to him.

Pursuant to the Commission s March 18, 1998 Order to satisfy or answer the complaint, McKinney Water filed an answer denying Mr. Hensley s request. In its answer to the complaint, McKinney Water contended that it was willing to install new service for Mr. Hensley at the tariffed rate of \$400.00.

On June 9, 1998, a public hearing was held at the Commission s offices. Based upon the record submitted to it, the Commission issued a final order on August 12, 1998. The Order required McKinney Water to furnish and install at its expense a

service connection from the existing tap on its distribution main to a point of service located at or near Mr. Hensley's property line. The Order gave McKinney Water the choice of installing either a new meter and meter box or relocating the existing meter. The Order also specified that Mr. Hensley was to be responsible for furnishing and laying the necessary pipe to make the connection from the point of service to the place of consumption.

On September 1, 1998, McKinney Water filed a Request for Rehearing in this case. Although McKinney Water did not raise new issues with regard to the facts of the complaint, it set forth new issues of law not previously brought to the Commission's attention. McKinney Water requested the Commission to determine whether it is permitted to charge a tapping fee pursuant to KRS 278.0152 as stated in 807 KAR 5:066, Section 12(a), Service Connections. McKinney Water also requested the Commission to consider the application of the conflicts provision established by Section 3 of its approved tariff of rates, rules, and regulations. That provision states that if there is a conflict between the utility's tariff and Commission regulations in 807 KAR Chapter 5, the latter will prevail. The Commission granted the Request for Rehearing by Order dated September 21, 1998.

As there were no new factual issues to be determined by the Commission, the September 21, 1998 Order required the parties to file comments on the issues of law raised by the Request for Rehearing in lieu of a second evidentiary hearing. Defendant's counsel filed a letter with the Commission dated November 13, 1998, in response to the request for comments. The Commission accepted the letter and the Request for Rehearing as the required comments and the case was submitted for

reconsideration on the basis of the case record, Request for Rehearing, and November 13, 1998 letter.

In accordance with KRS 278.400, the Commission has the authority to change, modify, vacate or affirm its former orders by making and entering such order as it determines is necessary. Based upon the evidence of record, Request for Rehearing, and comments filed by McKinney Water, the Commission revisits matters contained in this case and vacates its Order dated August 12, 1998.

Upon reconsideration of the case, the Commission finds that, as a matter of law, McKinney Water is entitled to charge Mr. Hensley a tapping fee pursuant to 807 KAR 5:066, Section 12(a). The regulation states that the utility shall furnish and install at its expense a service connection from its main to and including the meter and meter box. The regulation further permits a utility to recoup this expense from the customer in accordance with KRS 278.0152. Id. The statute, KRS 278.0152, specifically permits a utility to charge a tapping fee for installation of service to its customers provided it has been approved by the Commission. The fee includes charges for a service tap, meter, meter vault, and installation of the equipment. Id. McKinney Water's tariff includes such a charge. Section 31, Special Charges, Subsection F, Contribution in Aid of Construction, establishes a fee of \$400.00 for the installation of meter equipment for 5/8 X 3/4 inch meter. This charge, effective July 20, 1993, has been approved by the Commission as part of McKinney Water's Rates, Rules and Regulations for Furnishing Water Service.

Based on the evidence of record and being otherwise sufficiently advised, the Commission HEREBY ORDERS that:

1. The Commission's Order dated August 12, 1998 is vacated.
2. As a matter of law, McKinney Water has the right to charge a tapping fee to recover the cost of service installation pursuant to 807 KAR 5:066, Section 12(a) and KRS 278.0152.
3. McKinney Water is entitled to charge the Complainant, Mr. Hensley, its approved tariff charge of \$400.00 for installation of a 5/8 X 3/4 inch meter to serve his property upon proper application for service by Mr. Hensley.
4. The formal complaint filed by Mr. Hensley on February 23, 1998 is dismissed.

Done at Frankfort, Kentucky, this 11th day of January, 1999.

By the Commission

ATTEST:

Executive Director