

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

BENTON F. CRUM, DERLE WALKER, MARK BOWEN)	
AND JOHN F. CRUM)	
)
COMPLAINANTS)	
v.)	CASE NO. 99-193
)
MARTIN COUNTY WATER DISTRICT)	
)
DEFENDANT)	

ORDER

Complainants have brought a formal complaint against Martin County Water District (“Martin District”) in which they seek to compel the water district to extend water service to their properties. Their complaint poses the following issue: Was Martin District’s refusal to extend water service to the Complainants consistent with Administrative Regulation 807 KAR 5:006, Section 5(2)? Finding in the negative, we direct Martin District to extend service under the conditions set forth in its filed rate schedules at the time the Complainants applied for water service.

PROCEDURE

On May 5, 1999, the Complainants brought a formal complaint against Martin District in which they sought an order from the Commission directing Martin District to provide water service to their property. Martin District submitted its Answer on June 24,

1999. The Commission held a hearing on the complaint on September 18, 1999 at its offices in Frankfort, Kentucky.¹

STATEMENT OF THE CASE

Martin District is a water district organized pursuant to KRS Chapter 74. It provides water service to approximately 3,120 customers in Martin County, Kentucky. Martin District was formed in 1996 when Martin County Water District No. 1 and Martin County Water District No. 2 merged.²

Eden West L.L.C. (“Eden West”), a Kentucky limited liability corporation, owns a 110 acre tract in Martin County, Kentucky. State Route 645, a four-lane highway, directly borders the east side of this tract. State Route 40 is situated approximately 1.25 miles to the south of the entrance to this tract.³ State Route 3 runs parallel to that segment of State Route 645 that borders the tract. The tract is located in the area that Martin County Water District No. 1 served.⁴

John F. Crum and Derle Walker, the principal shareholders of Eden West,⁵ have plans to develop the tract into a 111-lot residential subdivision. They have prepared a preliminary subdivision plat for this tract but have yet to record any plat with the Martin

¹ At this hearing, the following persons testified: Benton F. Crum, John Crum, Craig Justice, Niles Cumbo, and Derle Walker. Mark Bowen did not appear personally or through counsel at the hearing in this matter.

² See Case No. 99-358, The Application of Martin County Water District No. 1 and Martin County Water District 2 for Approval of Merger (August 22, 1996).

³ Transcript (“Tr.”) at 41.

⁴ Id. at 178.

⁵ Id. at 197.

who reside on the west side of State Route 645.⁷ The Inez Water Storage Tank, which is located approximately 1-mile southeast of the entrance to Eden West's development, supplies water to this main.⁸ This tank has an elevation of 830 feet.⁹ Martin District also has a six-inch water main that runs west to east along State Route 40. The Marcus Wells Water Storage Tank, which is located north-by-northwest of the proposed development and which has an elevation of 1,215 feet,¹⁰ feeds this water main.

In 1998 John Crum requested that Martin District's engineering consultants study the feasibility of providing water service to the proposed development. They recommended that the proposed development be served from a six-inch water main directly connected to the Marcus Wells Water Storage Tank. They found that the elevation of certain lots within the proposed development exceeded the elevation of the Inez Water Storage Tank. Water service, therefore, could not be provided to the entire development at an acceptable pressure level if provided from the State Route 3 water main. These consultants estimated the cost of water main extension and related improvements to serve the proposed development at \$211,000.¹¹

Lacking the funds to construct the a water main from the Marcus Wells Storage Tank, Eden West constructed a three-inch water main, from the eastern portion of the proposed development under State Route 645 to within 200 feet of Martin District's

⁷ Tr. at 84.

⁸ Id. at 85.

⁹ Id. at 174.

¹⁰ Id. at 39.

¹¹ Id. at 91.

Route 3 water main. This three-inch main lies over Eden West's 25-foot wide easement. Eden West holds an easement for the remaining 200 feet necessary to connect the water main to Martin District's Route 3 water main.¹² It has offered to donate the water main and these easements to Martin District. Complainants assert that Martin District has the responsibility for constructing the remaining portion of the water main extension since its filed rate schedules require the water district to contribute the cost of 50 feet of main extension for each applicant for water service.

On September 18, 1998, John Crum met with Craig Justice, Martin District's Operations Manager, and requested water service to the six lots in question. He tendered personal checks for \$2,100 on behalf of himself, Benton Crum and Derle Walker, to cover the connection fee of \$350 for each lot.¹³ Justice accepted the checks. On January 25, 1999, Justice returned the checks and advised John Crum that no water mains were available in the area for the applicants to tap.¹⁴ Crum subsequently wrote to Justice and noted that Martin District currently served 21 persons in the same area. On February 26, 1999, Justice responded that no water mains existed in the Eden West area of Martin County and invited Crum to discuss his proposed development with Martin District's Board of Commissioners.¹⁵ Complainants instead brought the matter to this Commission.

¹² Id. at 90, 96-97.

¹³ Id. at 105.

¹⁴ Defendant's Exhibit 1.

¹⁵ Complaint at 8.

DISCUSSION

The sole issue before the Commission is whether Martin District properly denied water service to the Complainants. Administrative Regulation 807 KAR 5:006, Section 5(2) provides:

A customer who has complied with commission administrative regulations shall not be denied service for failure to comply with the utility's rules which have not been made effective in the manner prescribed by the commission.

This regulation extends the provisions of KRS 278.160(1) to requests for utility service. (“[E]ach 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 [emphasis added].”)

Martin District argues that the Complainants’ failure to comply with its “Water Development Procedures” supports its refusal of water service. The record shows that Martin District’s Board of Commissioners discussed these procedures¹⁶ on March 10, 1998,¹⁷ and adopted these procedures on April 21, 1998.¹⁸ Complainants acknowledge that they did not comply with these procedures when requesting service.¹⁹

The Commission finds that Complainants’ failure to comply with these procedures does not constitute sufficient grounds for refusing service. Notwithstanding whether the procedures are applicable to the facts of this case, at the time when

¹⁶ Defendant’s Exhibit 6

¹⁷ Defendant’s Exhibit 7.

¹⁸ Defendant’s Exhibit 8.

¹⁹ Tr. at 65.

Complainants requested water service, Martin District had not amended its filed rate schedules to include these procedures.²⁰ Martin District did not file revised rate schedules that included these procedures until after the hearing in this matter.²¹ At the time of the request for service, the procedures had not been “made effective in the manner prescribed by the commission.” 807 KAR 5:006, Section 5(2).

Martin District also argues that its refusal of service was proper because the water district could not provide water service to the Complainants in accordance with the Commission’s minimum pressure standards. It asserts that the water facilities in the disputed area could not provide water service to the Complainants at 30 pounds per square inch²² and that, therefore, it could not be required to provide the requested service.

The Commission finds no basis in the record or in the law to support this argument. Martin District has not presented any conclusive evidence to demonstrate that service to the six tracts cannot be provided at 30 psig. Its superintendent conceded under cross-examination that water service could be provided to those tracts within acceptable standards.²³ Moreover, absent a provision in a water utility’s filed rate schedules that permits the utility to refuse service when the utility is unable to provide

²⁰ Id. at 124.

²¹ Martin District filed revised tariff sheets reflecting these procedures with the Commission on September 16, 1999. The Commission permitted the revisions to become effective on October 16, 1999.

²² Administrative Regulation 807 KAR 5:066, Section 5(1), provides that “[I]n no event, however, shall the pressure at the customer's service pipe under normal conditions fall below thirty (30) psig nor shall the static pressure exceed 150 psig.”

²³ Tr. at 170-171.

service at acceptable standards with existing facilities, the water utility must provide service when an applicant for service meets all existing conditions. If water pressure is inadequate, then the water utility is responsible for upgrading its facilities to provide water service at acceptable standards. Martin District has no provision in its existing filed rate schedules that authorizes its refusal of service because its facilities are inadequate or insufficient.

Finally, Martin District argues that requiring the water district to provide service to the Complainants will effectively force it to bear all of the costs for the system improvements necessary to serve the entire Eden West development. Once service is provided to the Complainants, Martin District contends, additional persons will seek service from the same water main extension as they purchase a tract of land within the proposed development. Eventually, the water main will not be capable of serving at acceptable levels and the water district will be forced to make system improvements at its own cost.

The Commission finds little merit to this argument. The Water Procedures that Martin District has filed with Commission should address this issue and should bar further development that is inconsistent or contrary to those procedures. If Martin District finds that these procedures are inadequate to protect against such cost shifting, it should make further amendments to its filed rate schedules.

While we find that Martin District improperly refused to provide water service to Complainants, we do not accept their argument that Martin District must construct the remaining 200 feet of water main extension to provide water service. Martin District's filed rate schedules presently do not require the water district to construct the remaining

portion of water main necessary to serve the Complainants. It requires only that the water district accept the donation of a main extension constructed by applicants.²⁴ Complainants should be permitted to complete this section of their extension and donate the entire water main extension to Martin District. We further find that Martin District should be afforded the opportunity to inspect the entire water main and to require the Complainants to warrant the proper operation of the water main for its first year of operation.

²⁴ Rule 22 of Martin County Water District No. 1 provides:

Any person desiring an extension to District system shall request in writing, in a form approved by the District, for such extension. Any requested extension may be provided, under one of the following options:

Option I – District shall construct water main extensions under the authority and procedure stipulated in Public Service Commission regulation 807 KAR 5:066, Section 12; A copy is attached hereto as Appendix I, any extension made under this option shall be subject to refund as outlined in said regulation.

Option II – Applicant may construct and donate to District, the extension, as a contribution in aid of construction, meeting all District's specifications and approval. District reserves right to stipulate applicable engineering, legal and administrative factors. Applicant shall pay all cost of District as a contribution in aid of construction. Any extension made under this option shall not be eligible for refund.

The applicant or group of applicants shall have the right to elect the option by which said extension shall be made. In either case, applicant must execute a contract and agreement for line extension on form approved by District.

In closing, the Commission must express its concern about the cavalier attitude that Martin District has exhibited toward compliance with its filed rate schedules. Under cross-examination at the hearing in this matter, Martin District's operations manager and superintendent admitted that the water district routinely ignored its filed rate schedules in making extensions of service.²⁵ While its filed rate schedules required the water district to assume the cost of fifty feet of a water main extension for each applicant for service, Martin District has routinely assumed a greater portion of extension costs. The portion of the cost that the water district has assumed would vary with each applicant. Martin District has not applied a uniform policy toward water main extensions. Such actions are inconsistent with KRS 278.160 and 278.170 and should cease. We caution Martin District that further disregard of its filed rate schedules may result in administrative proceedings against the water district and its officials.

SUMMARY

Having considered the evidence of record and being otherwise sufficiently advised, the Commission HEREBY ORDERS that:

1. When and if Complainants meet the conditions set forth below in Ordering Paragraph 2, Martin District shall accept donation of their water service main and shall provide direct water service to each.
2. To become eligible for water service from Martin District, Complainants shall:
 - a. extend their existing water service main to Martin District's Route 3 water main;

²⁵ Tr. at 147-149; 179-181.

b. execute all documents necessary to transfer ownership of their water service main to Martin District;

c. ensure and adequately demonstrate that their water service main meets Martin District's specifications;

d. pay all applicable fees and charges currently set forth in Martin District's filed rate schedules;

e. ensure proper easements and utility rights-of-way have been executed for their water service main; and

f. assume all costs of the water main extension.

3. Complainants shall, upon meeting the conditions set forth in Ordering Paragraph 2, notify the Commission in writing that they have met these conditions. When providing this notice to the Commission, Complainants shall serve a copy of this notice upon Martin District.

4. Within 20 days of service of Complainant's notice, Martin District shall advise the Commission in writing of the status of Complainants' water service.

5. When making water main extensions, Martin District shall henceforth strictly comply with the provisions of its filed rate schedules and shall not deviate from those schedules except upon Commission approval.

Done at Frankfort, Kentucky, this 18th day of February, 2000.

By the Commission

ATTEST:

Executive Director