

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

CHARLES B. LOONEY)	
)	
COMPLAINANT)	
)	
v.)	CASE NO. 99-284
)	
HARRISON COUNTY WATER ASSOCIATION, INC.)	
)	
DEFENDANT)	

O R D E R

Charles B. Looney has brought a complaint against Harrison County Water Association ("HCWA") in which he alleges that the utility's decision to suspend water service to its bulk loading stations in June 1999 and to subsequently restore service at those stations at reduced hours of operation is unlawful and unreasonable. Finding that HCWA's actions were unreasonably discriminatory to bulk loading station customers and its lack of contingency planning constituted an unreasonable practice, we direct HCWA to refrain from such suspensions of service in the future, to develop contingency plans for water shortages, and to correct the system deficiencies that led to the suspension of service.

STATEMENT OF THE CASE

HCWA is a non-profit corporation formed for the purpose of furnishing water services to the general public. It owns and operates water distribution facilities that provide water to approximately 4,076 customers in Harrison, Bourbon, Scott and

Nicholas counties.¹ HCWA does not operate any water treatment or production facilities but purchases its total water requirements from the city of Cynthiana, Kentucky (“Cynthiana”).

In addition to its sales to residential and commercial structures, HCWA operates four bulk loading stations located throughout its general service area.² These stations provide bulk quantities of water to members of the general public. They primarily serve persons or entities that own properties that are not connected to a water distribution system and need a source of potable water. HCWA estimates that between 200 and 300 persons receive their water supply through these stations.³ Sales from these stations accounted for approximately 3.1 percent of HCWA’s sales in 1998.⁴

Charles B. Looney resides in Berry, Kentucky, a small town in Harrison County, Kentucky which is about nine miles northwest of Cynthiana, Kentucky. Looney’s residence is not located near a public water supplier. Looney instead relies upon a cistern and the bulk water loading stations for his water supply. HCWA operates a bulk loading station in Berry⁵ that serves as Looney’s primary source of water.

¹ Annual Report of Harrison County Water Association, Inc. to the Public Service Commission for the Year Ended December 31, 1998 (“Annual Report”) at 29. This number excludes HCWA’s bulk loading stations that HCWA reported as customers.

² According to its Annual Report, HCWA operates five bulk loading stations. HCWA’s manager testified that the water association currently operates only four loading stations. Transcript at 26.

³ Id. at 32.

⁴ Annual Report at 29.

⁵ HCWA’s loading stations are in the following locations in Harrison County: Berry, Buena Vista, Renaker, and Sunrise.

On Friday June 11, 1999, HCWA closed its bulk water loading stations in an effort to reduce demand upon its water distribution system and to stabilize water system pressure. HCWA experienced significant increases in customer demand as a result of drought conditions that began in May 1999.⁶ This was especially true for HCWA's bulk loading stations.⁷ On the two weekends just prior to the closure of the bulk loading stations, demand from these stations had significantly reduced the water levels of HCWA's water storage tanks. HCWA officials feared that continued or increased demand over the weekend period would prevent HCWA from maintaining adequate water levels in its water storage tanks.

Simply put, during weekend periods water was being withdrawn from HCWA's water storage tanks at a faster rate than it was being pumped into those tanks. As water storage levels fell and high demand continued, system pressure fell.⁸ HCWA officials became increasingly concerned that system pressure would fall below minimum acceptable levels and require the issuance of a boiled water advisory. Closing the bulk loading stations, HCWA officials reasoned, would reduce demand and allow HCWA's storage tanks to refill.

On June 21, 1999, after system pressure had stabilized and the water storage tanks had been refilled, HCWA reopened its bulk loading stations but at reduced hours of operation. Finding that the peak demand for water occurred during weekend periods,

⁶ See Letter from Dorothy Jo Mastin, HCWA counsel, to Helen C. Helton, Executive Director, Kentucky Public Service Commission (Sept. 29, 1999).

⁷ See Transcript, Defendant Exhibit 1.

⁸ HCWA's water supply did not play a role in these pressure problems. HCWA's water supplier, Cynthiana, did not place any restrictions upon the volume of water that HCWA could withdraw from its system.

HCWA officials limited the hours of operation of the bulk loading stations to Mondays through Thursdays from 9:00 a.m. to 1:00 p.m. They reasoned that permitting longer hours of operation would result in unacceptable system pressure levels. Prior to June 11, 1999, the bulk loading stations were open continuously. The reduced hours of operation remained in effect until October 21, 1999 when HCWA resumed normal hours of operation.⁹

Aside from the closure of the loading stations, HCWA took little action to reduce water consumption. It made public appeals for voluntary water conservation, but did not impose any restrictions upon its customers' usage. It made no request to Harrison County Fiscal Court for the imposition by county ordinance of water use restrictions. Similarly, the city of Cynthiana did not impose use restrictions on its customers.

The closure and subsequent reduced hours of operation caused significant inconvenience to bulk loading station customers such as Looney. While the HCWA's loading stations were closed, the only available sources of water for these customers were bulk loading stations operated by the cities of Cynthiana and Falmouth, Kentucky. These customers, therefore, had to travel longer distances to purchase their water. Moreover, since the two municipal bulk load stations were now the only stations in the area, these customers experienced long waiting lines to purchase water.

The reopening of the HCWA bulk loading stations did not alleviate these inconveniences. Customers continued to experience long lines at the municipal stations and at the HCWA stations. Many remained unable to use HCWA's bulk loading stations because the reduced hours of operation coincided with their hours of employment.

⁹ See Letter from Dorothy Jo Mastin, HCWA counsel, to Gerald Wuetcher, Staff Attorney, Kentucky Public Service Commission (Mar. 16, 2000).

DISCUSSION

Looney's Complaint raises the following issue: Did HCWA act in an unlawful or unreasonable manner by reducing and suspending water service to customers who are served through its bulk loading stations while taking no action to restrict the usage of its remaining customers?¹⁰

HCWA's suspension of water service to bulk loading station customers is not unreasonable or unlawful per se. KRS 278.280(2) requires that a utility furnish the commodity or render the service set forth in its rate schedules according to the Commission's regulations "on proper demand and tender of rates." Administrative Regulation 807 KAR 5:066, Sections 4(1),¹¹ permits a utility to make emergency disruptions of service.

Based upon our review of the record, we find sufficient evidence to support HCWA's contention that the suspension of service was in response to an emergency. When bulk water service was suspended on June 11, 1999, HCWA had a reasonable

¹⁰ The Commission finds that HCWA's resumption of normal service hours for its bulk loading stations does not render Looney's Complaint moot. HCWA takes the position that the reduction and suspension of bulk water service is appropriate under water shortage conditions. As such conditions are likely to recur, this litigation is likely to recur. It thus falls within an exception to the mootness doctrine and is subject to adjudication. See Courier-Journal and Louisville Times Co. v. Meigs, Ky., 649 S.W.2d 724, 725 (1983) ("An exception to the mootness doctrine is a situation in which the litigation is likely to be repeated.").

¹¹ Emergency interruptions. Each utility shall make all reasonable efforts to prevent interruptions of service and when such interruptions occur shall endeavor to reestablish service with the shortest possible delay consistent with the safety of its consumers and the general public. If an emergency interruption of service affects service to any public fire protection device, the utility shall immediately notify the fire chief or other public official responsible for fire protection.

belief that, if reductions in demand were not made, water levels within its storage tanks would drop to dangerously low levels and a boiled water advisory would be required. HCWA's decision to temporarily suspend bulk hauling service, therefore, was permissible under Administrative Regulation 807 KAR 5:066, Section 4(1).

We find, however, that HCWA acted improperly when, after the emergency had ended and system pressure had stabilized, it significantly reduced the hours of operation of its bulk loading stations without Commission approval. Administrative Regulation 807 KAR 5:006, Section 4(2), provides that “[p]rior to making any substantial change in the character of the service furnished” a utility must obtain Commission approval. Clearly a 90 percent reduction in the hours of operation for the bulk loading stations for a four-month period constitutes a change in the character of service provided. HCWA should have requested Commission approval for reduced hours of service. In failing to seek such approval, it failed to comply with Administrative Regulation 807 KAR 5:006, Section 4(2).

By suspending and subsequently reducing the operations of the bulk loading stations but placing no restrictions upon the water consumption of HCWA's other customers, moreover, HCWA subjected its bulk loading station customers to “unreasonable prejudice or disadvantage” in disregard of KRS 278.170(1).¹² Although

¹² No utility shall, as to rates or service, give any unreasonable preference or advantage to any person or subject any person to any unreasonable prejudice or disadvantage, or establish or maintain any unreasonable difference between localities or between classes of service for doing a like and contemporaneous service under the same or substantially the same conditions.

all HCWA customer classes created the large customer demand for water, HCWA took no steps to reduce customer consumption or restrict the usage of any customer class other than bulk loading station customers. It made no attempt to impose restrictions on non-bulk loading station customers or to request that local governments implement usage restrictions. As a result, the entire burden for alleviating the system pressure problem was placed upon the shoulders of HCWA's bulk loading station customers even though other HCWA customers shared responsibility.

HCWA argues that its actions were not unreasonably discriminatory since bulk loading station customers are not "customers" of the utility. HCWA reasons that, as a bulk loading station user does not have a contract with HCWA, he or she is not a "customer" and should be given lower priority than others to whom HCWA provides water. HCWA states that the suspension of service was in the best interest of the community and was consistent with HCWA's corporate charter, which requires it to "provide potable water to the customers who have contracts with the Association."¹³

This argument conflicts with the Commission's regulations. Administrative Regulation 807 KAR 5:006, Section 1(2), defines a "customer" as "any person, firm, corporation or body politic applying for or receiving service from any utility." Administrative Regulation 807 KAR 5:066, Section 1(1), states that a "customer" includes "a person who purchases water from a utility's water loading station." The absence of a contract, therefore, is not relevant.

The Commission further finds that HCWA's failure to develop contingency plans contributed to its decision to require bulk loading station users to bear the brunt of the

¹³ HCWA's Response to Complaint at 2.

emergency measures. HCWA's manager testified that the utility does not have a water shortage response plan or any written contingency measures for dealing with a water emergency. There is no evidence that HCWA has a plan for imposing water restrictions or requesting local governments to implement such restrictions.

The lack of such planning is troubling. This Commission has long urged water utilities to develop water curtailment plans and to plan for possible contingencies. We have strongly suggested that water utilities adopt the Model Water Shortage Response Plan that the Natural Resources and Environmental Protection Cabinet has developed.¹⁴ Given the demands placed upon the Commonwealth's water supply and the possibility of unexpected emergencies, water utilities must be prepared to deal promptly with water shortage incidents. Any water utility that fails to develop a contingency plan for dealing with such shortages engages in an unreasonable practice. Its methods of providing service must be considered inadequate and insufficient.

Accordingly, the Commission finds that HCWA should develop a contingency plan to deal with potential water shortages. Such plan should include procedures for the curtailment of water service and the imposition of water usage restrictions. It should also be designed to identify excessive use of water and include appropriate measures to identify and react to those customers using water in excess of stated levels. Any measures to physically restrict the supply of water should be applied in a nondiscriminatory manner that is consistent with the health and welfare of HCWA's system.

¹⁴ See, e.g., Letter from Public Service Commission to All Jurisdictional Water Utilities (June 29, 1988) (discussing the need for Water Shortage Response Plans).

We further find that HCWA should undertake a study to identify the system deficiencies that contributed to the situation at bar and the improvements necessary to correct these deficiencies. After completion of this study, HCWA should submit a copy of the study to the Commission and state its timetable for implementing the study's recommendations.

SUMMARY

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

1. HCWA's bulk loading stations serve 200 to 300 customers.
2. Approximately 3.1 percent of HCWA's total water sales in 1998 were derived from HCWA's bulk loading stations.
3. On June 11, 1999, HCWA suspended water service to bulk loading stations.
4. On June 21, 1999, HCWA resumed water service to its bulk loading stations but at significantly reduced hours. Prior to June 11, 1999, HCWA operated the bulk loading stations 24 hours per day. From June 21, 1999 to October 21, 1999, HCWA operated these stations only four days per week and for only four hours each day.
5. HCWA's suspension of service and subsequent resumption of service at reduced hours of operation was based upon a reasonable belief that continued operation of the bulk loading stations without restriction would impair system water pressure and require the issuance of a boiled water advisory.
6. Administrative Regulation 807 KAR 5:066, Sections 4(1), permitted HCWA's emergency interruption of service to bulk loading station customers.

7. HCWA's decision to operate its bulk loading stations at reduced hours after emergency conditions ceased was a "substantial change in the character of service provided" to bulk loading station customers and required Commission approval. 807 KAR 5:006, Section 4(2).

8. HCWA did not obtain Commission approval for the change in the nature of its bulk loading station service and thus failed to comply with Administrative Regulation 807 KAR 5:006, Section 4(2).

9. Aside from appeals for voluntary conservation, HCWA made no effort to restrict the consumption of its remaining customers or to obtain local government mandated conservation.

10. To the extent that HCWA required customers receiving water service through its bulk loading stations to assume the burden of reduced or suspended service to alleviate water pressure problems imposed by increased customer demand, HCWA unreasonably discriminated against those customers and constituted an unreasonable practice.

11. HCWA has not developed a water shortage response plan or other contingency measures to impose water restrictions or mandatory conservation measures upon its customers.

12. HCWA's existing plans for addressing water pressure problems resulting from increased consumer demand are inadequate and insufficient.

IT IS THEREFORE ORDERED that:

1. HCWA shall refrain from further suspensions or reductions in bulk loading station service without prior Commission approval unless an emergency situation exists. When an emergency situation exists, HCWA shall notify the Commission of the emergency and request its approval no later than 96 hours after the suspension or reduction of service.

2. Within 60 days of the date of this Order, HCWA shall develop and file with the Commission contingency plans for imposing water restrictions or mandatory conservation measures in the event of a system emergency or water shortage.

3. Within 60 days of the date of this Order, HCWA shall undertake a study to identify the system deficiencies that contributed to the system pressure problems that it experienced in June 1999 and to identify the improvements necessary to correct these deficiencies and shall file with the Commission a copy of this study and its plans for correcting the identified system deficiencies.

Done at Frankfort, Kentucky, this 29th day of March, 2000.

By the Commission

ATTEST:


Executive Director