

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE DEVIATION OF NORTH SHELBY WATER)	
COMPANY FROM THE COMPANY'S REGULAR)	CASE NO. 2000-344
EXTENSION POLICY – WATCH HILL SUBDIVISION)	

ORDER

North Shelby Water Company (“North Shelby”) has submitted for Commission review and approval a contract with Watch Hill, LLC (“Applicant”) for the extension of distribution lines for a subdivision in Shelby and Oldham counties, Kentucky. The proposed contract differs from the provisions of Administrative Regulation 807 KAR 5:066, Section 11. Finding that the proposed contract is reasonable and that good cause exists to permit a deviation from Administrative Regulation 807 KAR 5:066, Section 11, we approve the contract.

North Shelby is a non-profit Kentucky corporation that provides water service to approximately 3,810 members in Franklin, Oldham, and Shelby counties, Kentucky. As a water association, it is subject to Commission jurisdiction and regulation. See KRS 278.012. Watch Hill, LLC is a limited liability company organized pursuant to KRS Chapter 275.

North Shelby has entered an agreement with the Applicant for a water main extension to serve the Watch Hill Subdivision in Oldham and Shelby counties, Kentucky. The subdivision consists of 19 lots, of which 17 are located in Oldham

County.¹ The extension is approximately 3,500 feet, all of which is within the boundaries of the subdivision development except for a road crossing to allow connection to the existing water main.² The Applicant has agreed to bear the water main extension's total cost, which North Shelby estimates at \$51,825, and to secure all necessary easements.³ It has further agreed to waive any right to refunds of its contribution for any connections to the water main extension made within the Watch Hill Subdivision.⁴

The proposed agreement's provision related to refund of the Applicant's contribution is inconsistent with Administrative Regulation 807 KAR 5:066, Section 11(3), which provides:

An applicant desiring an extension to a proposed real estate subdivision may be required to pay the entire cost of the extension. Each year, for a refund period of not less than ten (10) years, the utility shall refund to the applicant who paid for the extension a sum equal to the cost of fifty (50) feet of the extension installed for each new customer connected during the year whose service line is directly connected to the extension installed by the developer, and not to extensions or laterals therefrom. Total amount refunded shall not exceed the amount paid to the utility. No refund shall be made after the refund period ends.

Under this regulation, North Shelby is required to refund to the Applicant the cost of 50 feet of the proposed water main extension for each customer who connects to that main extension within the subdivision. Under the provisions of the proposed water main

¹ North Shelby's Response to Commission Staff's Interrogatories and Requests for Production of Documents, at Item 2.

² Id. at Item 1.

³ Extension Application at ¶ 2 and ¶ 4.

⁴ Id. at ¶13.

extension agreement, North Shelby will make such refunds only if the service is located outside of the proposed subdivision.

In support of the proposed extension arrangement, North Shelby argues that the arrangement is consistent with the practices of the Shelbyville Municipal Water and Sewer Commission and readily accepted by developers and builders in the general area.⁵ It further argues that, while the Applicant is waiving its right to refund for connections within the Watch Hill Subdivision, it retains its right to refunds for any future connections outside that subdivision.⁶ Finally, North Shelby argues that the Applicant's waiver of its right to a refund has no practical effect, as the Applicant will recover the cost of extension through the sale of subdivision lots.⁷

The Commission is not persuaded by these arguments. First, municipal utilities such as the Shelbyville Municipal Water and Sewer Commission are not subject to Commission regulation and thus operate under a different system of regulation. See, e.g., McClellan v. Louisville Water Co., Ky. 351 S.W.2d 197 (1961).⁸ Second, as virtually all of the proposed water main extension is located within the proposed Watch

⁵ North Shelby's Response to Commission Staff's Interrogatories and Requests for Production of Documents at Item 8.

⁶ Letter of Donald T. Prather, Counsel for Northern Shelby Water Company, to Martin J. Huelsmann, Executive Director, Public Service Commission (June 8, 2000).

⁷ North Shelby's Response to Commission Staff's Interrogatories and Requests for Production of Documents at Item 4.

⁸ KRS 96.539 governs water main extensions performed by municipal utilities. Whether Shelbyville Municipal Water and Sewer Commission's practice conforms to that statute is not before this Commission.

Hill Subdivision,⁹ the likelihood of refund from outside extensions is small and thus the Applicant's retained right of refund is of limited value. Third, as North Shelby readily concedes, the real estate market in the general area, not by any regulatory policy, determines the Applicant's sale price for all lots in the proposed subdivision.¹⁰

Nevertheless, having examined the proposed extension agreement and the circumstances surrounding that agreement, we find that the Applicant's waiver of its right to a refund was knowingly made and that the Applicant had sufficient capacity to understand its rights to a refund under Administrative Regulation 807 KAR 5:066, Section 11. Good cause for both the proposed agreement and the proposed deviation to Administrative Regulation 807 KAR 5:066, Section 11, exists.¹¹

The Commission notes that an investigation of water main extension practices is currently pending.¹² The results of this investigation may significantly affect our review of further requests for deviations from Administrative Regulation 807 KAR 5:066,

⁹ North Shelby's Response to Commission Staff's Interrogatories and Requests for Production of Documents at Item 1.

¹⁰ Id. at Item 6.

¹¹ The Commission is authorized to permit a water utility to make water main extensions under arrangements that differ from those established in Administrative Regulation 807 KAR 5:066, Section 11. Administrative Regulation 807 KAR 5:066, Section 11(4), provides:

Nothing contained herein shall be construed to prohibit the utility from making extensions under different arrangements if such arrangements have received the prior approval of the commission.

Administrative Regulation 807 KAR 5:066, Section 18, provides:

Deviations from Administrative Regulation. In special cases, for good cause shown, the commission may permit deviations from this administrative regulation.

¹² Administrative Case No. 386, An Examination of Existing Water Distribution Main Extension Policies.

Section 11. We therefore caution North Shelby not to rely unduly on this decision when considering differing arrangements for other water main extensions.

IT IS THEREFORE ORDERED that:

1. North Shelby is authorized to deviate from Administrative Regulation 807 KAR 5:066, Section 11(3), and to use a different arrangement as described herein to extend water service to Watch Hill, LLC and the proposed development of the Watch Hill Subdivision.

2. The proposed contract between North Shelby and the Applicant is approved as of the date of this Order.

Done at Frankfort, Kentucky, this 2nd day of March, 2001.

By the Commission

ATTEST:


Executive Director