

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

K. MICHAEL CRAVENS D/B/A CRAVENS)	
BUILDERS)	
and)	
HOME BUILDERS ASSOCIATION OF)	
LEXINGTON)	
)	
COMPLAINANTS)	CASE NO.
)	2001-139
v.)	
)	
KENTUCKY-AMERICAN WATER COMPANY)	
)	
DEFENDANT)	

ORDER TO SATISFY OR ANSWER

Kentucky-American Water Company ("Kentucky-American") is hereby notified that it has been named as defendant in a formal complaint filed on May 11, 2001, a copy of which is attached hereto.

Pursuant to 807 KAR 5:001, Section 12, Kentucky-American is HEREBY ORDERED to satisfy the matters complained of or file a written answer to the complaint within 10 days from the date of service of this Order.

Should documents of any kind be filed with the Commission in the course of this proceeding, the documents shall also be served on all parties of record.

Done at Frankfort, Kentucky, this 22nd day of May, 2001.

By the Commission

ATTEST:


Executive Director

COMMONWEALTH OF KENTUCKY
Before the Public Service Commission

RECEIVED

MAY 11 2001

PUBLIC SERVICE
COMMISSION

K. Michael Cravens d/b/a Cravens Builders)
and)
Home Builders Association of Lexington)
Complainants)

No. 2001-139

vs.)

Kentucky-American Water Company)
Defendant)

COMPLAINT

The complaint of K. Michael Cravens d/b/a Cravens Builders and the Home Builders Association of Lexington respectfully shows:

- (a) That K. Michael Cravens d/b/a Cravens Builders ("Cravens") is a customer of the Defendant and an individual engaged in the business of homebuilding and has as his principal office and place of business in Lexington, Fayette County, Kentucky. The mailing address of P. O. Box 22473, Lexington, Kentucky 40522.
- (b) That the Home Builders Association of Lexington ("HBAL") is a non-profit corporation, organized and existing pursuant to the laws of the state of Kentucky, as an association of corporations, partnerships, limited liability companies and individuals engaged in the business of homebuilding. HBAL has as its principal office and place of business at 3146 Custer Drive, Lexington, Kentucky 40517.
- (c) That Kentucky-American Water Company ("Kentucky-American") is a corporation organized and existing under the laws of the Commonwealth of Kentucky with its principal office and place of business in Lexington, Fayette County, Kentucky. It is engaged in the distribution and sale of water in the city of Lexington, Kentucky, and in other areas of Fayette County, Kentucky. It also provides direct service to customers in Woodford, Scott, Clark, Harrison and Bourbon Counties, along with service to a water district and a water company with mailing addresses in

Jessamine County, Kentucky. The post office address of Kentucky-American Water Company is 2300 Richmond Road, Lexington, Kentucky 40502.

- (d) This matter relates tangentially to Kentucky-American's rate request submitted April 28, 2000, PSC Case No. 2000-120 ("rate increase request").
- (e) Among other things, the rate increase request sought approval of a \$500 tapping fee for 5/8 inch residential service.
- (f) Prior to the rate request, Kentucky-American had established and historically maintained a procedure for homebuilders/homeowners to apply for a meter, meter installation and service, generally as follows:
 - (1) A developer would have previously advance to Kentucky-American the estimated construction cost of extending the service line to a new subdivision. This sum would be reimbursed to the developer over time.
 - (2) When a builder desired service at a specific location, the builder completed a request for service and submitted it to Kentucky-American.
 - (3) There was no requirement that the property be at any particular stage of completion.
 - (4) There was no requirement that a plumbing inspector approve the service line prior to the request.
 - (5) All that was necessary for the application to be honored by Kentucky-American was that the location be accurately identified.
 - (6) There was no charge for the application nor for the tap. There was no charge for the meter itself since the meter would remain the property and listed as an asset of Kentucky-American.
- (g) In early May 2000, in an effort to elicit its cooperation and to explain the impact of the rate request application on homebuilders and developers, Kentucky-American requested and received a meeting with HBAL and several of its members.
- (h) Complainant Cravens was present at the May 2000 meeting.
- (i) During the May 2000 meeting, Kentucky-American explained its press release and why it needed, and was entitled to, the \$500 tapping fee.
- (j) HBAL and Cravens expressed its concerns that a change from the status quo would

cause significant disruption in the way contracts for new construction were negotiated, and in the way developers funded extensions of water service to new developments.

- (k) Kentucky-American stated that HBAL and its members were certainly entitled to challenge the rate increase by filing pleadings with the Commission. However, Kentucky-American explained that the tapping fee was a virtual inevitability.
- (l) Kentucky-American specifically stated that it would "work with builders" on the manner in which the tapping fee would be administratively handled, including the transition from current practice to practice approved by the Commission, so as to minimize the more severe aspects of the change.
- (m) Kentucky-American specifically stated that the change would not take effect until November 29, 2000.
- (n) In specific reliance on Kentucky-American's representations that it would work with HBAL and affected homebuilders on the administration and collection of the tapping fee, HBAL and Cravens declined to intervene in the rate increase application, although HBAL monitored the proceedings.
- (o) Testimony before the Commission addressed the cost of water taps. This testimony indicated that the actual cost was less than that estimated by Kentucky-American.
- (p) No testimony before the Commission addressed any aspect of the manner in which the tapping fee application would be administered.
- (q) There was no reference to administrative procedures and no description of what was described in December 2000 as a "bona fide application."
- (r) None of the briefs filed, including the brief of Kentucky-American, addressed how the tapping fee application would be processed or which applications would be subject to the new tapping fee.
- (s) On or about November 15, 2000, Kentucky-American established a written policy which it would follow to administer the tapping fee.
- (t) Kentucky-American again requested a meeting with HBAL and some of its members to discuss and explain this policy. This meeting was held on November 20, 2000 at the offices of HBAL.
- (u) Cravens was present at the November 20, 2000 meeting.

- (v) At least five representatives of Kentucky-American were present at the November 20, 2000 meeting, including Nick Rowe (Vice President of Operations), Linda Bridwell (Director of Engineering), Stan Stockton (Operations Superintendent) and Kentucky-American staff workers who would process tapping applications.
- (w) The purpose of the meeting was to clarify the November 15, 2000, written policy. Kentucky-American afforded HBAL members, staff and legal counsel to ask questions regarding the policy.
- (x) Kentucky-American informed HBAL that it would accept applications without the necessity of an application fee up to 12:01 AM on November 29, 2000 and presented the written policy to HBAL.
- (y) When specifically asked what was necessary to permit an application to be filed, Kentucky-American informed HBAL and its members that "all that was needed was an address."
- (z) The policy of accepting applications and initiating construction based on an application containing an address only was consistent with Kentucky-American's historical practice.
- (aa) The written policy was distributed to HBAL staff and members present at the meeting.
- (bb) The written policy contained seven (7) paragraphs.
- (cc) The first three paragraphs addressed the manner in which tap applications would be processed if received before 12:01 AM, November 29, 2000. These three paragraphs were consistent with the prior historical policy and reaffirmed the continuation of the practice until 12:01 AM, November 29, 2000.
- (dd) The last four paragraphs addressed the administration of tapping fee applications under the new policy beginning 12:01 AM, November 29, 2000, if approved by the Commission.
- (ee) The written policy provisions addressing the tapping fee applications under the former system stated:
 - (1) "Beginning at 12:01 am on November 29, 2000, all tap applications received at the Kentucky American will require a tap application fee, as approved by the Kentucky Public Service Commission."
 - (2) "All tap applications held by Kentucky-American Water Company prior to that

date will not require a tap fee retroactively."

- (3) "All tap applications received prior to that date [12:01 am on November 29, 2000] will not require a tap fee. This includes applications postmarked prior to November 29, received in the office until the close of business on November 28, or all applications faxed prior to midnight on the 28th.
- (ff) A copy of this written policy is attached as Exhibit "A".
- (gg) Kentucky-American encouraged HBAL to inform its members of the written policy.
- (hh) In response to Kentucky-American's written policy, clarified and reaffirmed by Kentucky-American during the November 20, 2000 meeting, and pursuant to Kentucky-American's encouragement that HBAL notify its membership, HBAL sent notice to all of its members urging them to immediately submit applications for taps for all projects with an address.
- (ii) A copy of HBAL's notice to its members is attached as Exhibit "B". The notice makes specific reference to the clarification offered by Kentucky-American that "if you have an address, there is no reason for delay."
- (jj) This written policy was created by Kentucky-American and is in conformity with KRS 278.030(2) and (3).
- (kk) On November 27, 2000, the Commission denied Kentucky-American's rate request, stating:
- "[T]he rates proposed by Kentucky-American, are *denied*. . . . The *rates set forth in Appendix A*, which is attached hereto and incorporated herein, *are approved for service rendered on or after [November 27, 2000]*. . . . Within 20 days of the date of this Order, Kentucky-American shall file its revised tariff sheets setting forth the rates approved herein."
- Order, November 27, 2000, *In the Matter of: Notice of Adjustment of Rates of Kentucky-American Water Company*, pp.71-72 (Case No. 2000-120).
- (ll) There is nothing in Appendix A regarding tapping fees, either in terms of rates or in terms of the administration of increased tapping fees or when they are to take effect.
- (mm) While the rates contained in Appendix A would take effect on or after November 27, 2000, no such limitation applies to the tapping fee.

- (nn) However, the body of the order does state: "The Commission finds that Kentucky-American's tapping fees should be . . . \$440" for residential service through 5/8 inch conduits.
- (oo) Complainants are unaware of revised tariff sheets inconsistent with this interpretation.
- (pp) On December 12, 2000, the Commission, having found errors in its previous order, issued corrections. No correction is made relating to tapping fees. New appendices are incorporated in this order but no mention is made of tapping fees.
- (qq) The net effect of the Commission's December 12, 2000, Order is to reduce the original amount of the rate increase.
- (rr) Two days later, on December 14, 2000, Stan Stockton, on behalf of Kentucky-American, wrote to HBAL Executive Vice President John Bird. A copy of this letter is attached as Exhibit "C".
- (ss) The December 14, 2000, letter stated:

We are now in the process of reviewing the applications on file. Any tap application received on or after November 27th will be returned to the applicant. Any tap application that was received prior to the 27th that is not considered bona fide will also be returned.

- (tt) This letter, purportedly establishing a new policy is entirely inconsistent with the written and oral representations made to Complainants at the November 20, 2000 meeting referred to above.
- (uu) There was no mention of "bona fide" tap applications at any prior meeting. This letter is therefore misleading.
- (vv) The letter also made the following misrepresentation of what occurred at the November 20, 2000 meeting:

"We also discussed, for an application to be considered bona fide, the following criteria would need to be met:

The building being serviced would need to be under construction
The water main servicing the building in place
The building's water service line installed to the street

The building's service line inspected by the plumbing inspector"

Letter, December 14, 2000, Stan Stockton to John Bird (attached as Exhibit "C").

- (ww) This was not Kentucky-American's policy prior to December 14, 2000.
- (xx) This information was not provided to HBAL or Cravens or any other builder prior to December 14, 2000.
- (yy) Kentucky-American's attempt to apply its December 14, 2000 policy retroactively is unfair and unreasonable and therefore in violation of KRS 278.030(1).
- (zz) The November 15, 2000 policy is not inconsistent with the orders of this Commission.
- (aaa) The December 14, 2000 policy, to the extent it retroactively alters the previous policy on which Complainants and HBAL members relied violates KRS 278.270.

WHEREFORE, complainants respectfully request:

1. That the Commission, pursuant to KRS 278.270, enforce the fair and reasonable terms administering the tapping fee established by Kentucky-American on November 15, 2000.
2. That the Commission require that Kentucky-American accept all applications received by it prior to midnight, November 28, 2000, as valid tapping applications to which no tapping fee shall apply consistent with its published policy dated November 15, 2000.
3. Any further relief to which the Complainants appear entitled.

Dated at Lexington, Kentucky, this 30th day of April, 2001.

COMPLAINANTS:

K. Michael Cravens
D/B/A Cravens Builders
P. O. Box 22473
Lexington, Kentucky 40522



K. Michael Cravens

Home Builders Association of Lexington
3146 Custer Drive
Lexington, Kentucky 40517

By: _____

Name: John Bird

Its: Executive Vice President.

Counsel for Complainants:

Glenn Acree

Acree Law Office

P. O. Box 25787

Lexington, KY 40524-5787

(859) 273-5898

fax: (859) 971-9969

email: acree@gte.net

acree@setel.net

List all addresses to me check in form to multiple taps;

FAX APFS
268-6315

email tap fees
mcclellanjm@kawc.com

phone in 268-6300
need
meeting
agreement
#1

Procedure
Receipt of Tap Fees
Kentucky-American Water Company
11/15/00

1. Beginning at 12:01 am on November 29, 2000, all tap applications received at the Kentucky-American will require a tap application fee, as approved by the Kentucky Public Service Commission.
2. All tap applications held by Kentucky-American Water Company prior to that date will not require a tap fee retroactively.
3. All tap applications received prior to that date will not require a tap fee. This includes applications postmarked prior to November 29, received in the office until the close of business on November 28, or all applications faxed prior to midnight on the 28th.
4. The payment for the tap application fee must be received prior to initiating the installation of the service. Tap applications may still be received by fax, phone or e-mail after November 29, 2000, but will be held by Kentucky-American until the fee is received.
5. The tap application fee will be deposited upon receipt, even if the actual service work is not scheduled to begin immediately.
6. The tap application fee is non-refundable.
7. If the tap application fee is received separately from the application, the fee must clearly indicate the service address to which it applies or it will be returned immediately.

Issue
 McClellan... would allow refunds to low income customers...
 the...
 [KAWC... agrees]
 "new growth helps keep all water customers rates down"

Sent to
members (fax/email)
11/22/00

Home Builders Association of Lexington
3146 Custer Drive, Lexington, Kentucky 40517
859-273-5117/Fax 271-0291
www.lexingtonhomebuilders.com

BUILDER ALERT – URGENT!

Tuesday, November 28, 2000, will be the LAST DATE you will be able to obtain a water tap-on without paying for it. Starting Wednesday, November 29, 2000, **BUILDERS WILL HAVE TO PAY** for all tap-on fees. The tap-on cost will be approximately \$500 per house. You must:

- Submit tap-on applications for **ALL NEW CONSTRUCTION** to Kentucky-American *immediately* – if you have an address, there is no reason for delay. If you delay, it will cost you \$500 per home.
- Start adding \$500 to the cost of all homes that will not have water service before November 29, 2000.

Submit tap-on requests **NOW**. You can do this by contacting Kentucky-American **BEFORE MIDNIGHT NOVEMBER 28, 2000:**

BY FAX: 859-268-6315

BY PHONE: 859-268-6300

BY EMAIL: mcclanjm@kawc.com

DON'T DELAY – OR IT WILL COST YOU

Ex. "B"



Kentucky-American Water Company

← file

2300 Richmond Road • Lexington, Kentucky 40502 • (606) 269-2386 • Fax (606) 268-6327

Mr. John Bird
Executive Vice President
Home Builders Association
3146 Custer Drive
Lexington, KY

December 14, 2000

12-20-00
Lisa will call Reg Mund-

Dear John,

I felt it was appropriate to follow-up in writing our conversation concerning tap applications.

At our last meeting on November 20th, we stated that we believed a rate order would be received from the Public Service Commission on November 29, 2000. We also advised that if any builder had a bona fide tap application, then they should submit their application before this date, otherwise a tap fee might be required.

Our prediction of when the rate order would be received was wrong. The rate order was received and also went into effect on November 27, 2000. Therefore, for any bona fide tap application not received prior to the effective date, a tap fee will be have to be paid prior to the installation of the service.

We are now in the process of reviewing the applications on file. Any tap application received on or after November 27th will be returned to the applicant. Any tap application that was received prior to the 27th that is not considered bona fide will also be returned.

As we also discussed, for an application to be considered bona fide, the following criteria would need to be met:

- The building being serviced would need to be under construction
- The water main servicing the building in place
- The building's water service line installed to the street
- The building's service line inspected by the plumbing inspector

Thank you for your time in discussing this issue with me today. If you have any further questions or I can be of assistance in anyway, please do not hesitate to call.

Sincerely,

Stan Stockton
Operations Superintendent

Ex. "C"