

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF HENDRON WATER DISTRICT )  
FOR A DECLARATORY RULING AUTHORIZING )  
APPLICANT TO COLLECT PAYMENT OF SEWER )  
SERVICE BILLS ON BEHALF OF THE PADUCAH- ) CASE NO. 2004-00376  
MCCRACKEN COUNTY JOINT SEWER AGENCY )  
AND TO DISCONTINUE WATER SERVICE FOR )  
NON-PAYMENT )

ORDER

Hendron Water District (“Hendron District”) has presented for Commission approval its Billing Agreement with the Paducah-McCracken County Joint Sewer Agency (“JSA”) under which Hendron District will provide billing and collection services for the JSA’s sanitary sewer service operations. Hendron District has also applied for a deviation from Administrative Regulation 807 KAR 5:006, Section 14, to permit the discontinuance of water service to any customer who fails to pay sanitary sewer service charges owed to JSA.

Hendron District’s application poses the following question: May a public water utility discontinue a customer's water service for failure to pay charges for sanitary sewer services provided by a joint sewer agency utility? Finding that a public water utility may take such action and that neither the public water utility's action nor its agreement with a joint sewer agency requires Commission approval, we dismiss the application as moot.

Hendron District is a water district organized pursuant to KRS Chapter 74. It owns and operates facilities for the distribution and sale of water to 2,513 customers in McCracken and Graves counties, Kentucky. It is a utility subject to Commission jurisdiction. KRS 278.010(3)(d); KRS 278.015; KRS 278.040(1).

JSA is a joint sewer agency that the city of Paducah, Kentucky and McCracken County, Kentucky created under the authority of KRS 76.231(1). It provides sanitary sewage collection, treatment and disposal services for Paducah and sections of McCracken County. Approximately 333 residential customers and 4 commercial customers of Hendron District receive sanitary sewage services from JSA.

On August 17, 2004, Hendron District executed a Billing Agreement with JSA to perform billing and collection services for JSA. Hendron District agreed to list JSA sanitary sewer charges on its monthly bills to any Hendron District customer who receives sanitary sewer services from JSA and to act as JSA's agent to collect such charges. Hendron District further agreed to discontinue water service to any premises which JSA serves and which is delinquent in its payment of sanitary sewer services and to refuse water service to those premises until all delinquent sanitary sewer charges are paid. In return JSA agreed to compensate Hendron District for these services and to indemnify the water district for any costs or claims arising from the discontinuance of water service to collect JSA charges.

On its face, the Billing Agreement is contrary to Administrative Regulation 807 KAR 5:006, Section 14(1), which provides:

A utility may refuse or terminate service to a customer only under the following conditions . . .

(f) For nonpayment of bills. A utility may terminate service at a point of delivery for nonpayment of charges incurred for utility service at that point of delivery; however, no utility shall terminate service to any customer for nonpayment of bills for any tariffed charge without first having mailed or otherwise delivered an advance termination notice which complies with the requirements of Section 13(5) of this administrative regulation.

(emphasis added). The regulation permits a utility to discontinue service only for nonpayment of charges for services which the utility provides.

To overcome the regulation's restrictions, Hendron District requests a deviation from Administrative Regulation 807 KAR 5:006, Section 14. As KRS Chapter 76 clearly authorizes the Billing Agreement and the discontinuance of water service to those customers who fail to pay charges owed to JSA for sanitary sewer service, no deviation is required.

KRS Chapter 76 governs the creation and powers of joint sewer agencies. It authorizes any city of the second class to jointly establish with the county in which it is located "a sewer agency for the purpose of providing sewer and drainage facilities within the city and the county." KRS 76.231(1). Such agency may possess all the powers of a metropolitan sewer district to the extent that the legislative body of the city and the fiscal court of the county confer such authority in the ordinances establishing the agency. KRS 76.231(3).

KRS 76.090(4) provides:

Whenever any such sewer rates, rentals, or charges for services rendered remains unpaid for a period of thirty (30) days after the same becomes due and payable, the [metropolitan sewer] district shall declare the property, the owner thereof, and the user of the service, delinquent until such time as all service rates, rentals, and charges are fully paid and may cut off the sewer connection and service. It is

unlawful for any delinquent to use water from any public water service or system and discharge same into a public sewer. **No public water service or system shall furnish the delinquent with water to be discharged into a public sewer** [emphasis added]. The district may enter into agreements with any public water company or public water service providing for the discontinuance of water service to delinquents.

When it created the JSA, the city of Paducah and McCracken County Fiscal Court by ordinance expressly provided that the JSA possessed the powers set forth in KRS 76.090(4). See Code of Ordinances, City of Paducah, Kentucky, §114-247(m). Therefore JSA has the power to declare a sewer service customer delinquent and to prohibit effectively all public water systems within its service area from furnishing water service to that customer.

Clearly KRS Chapter 76 and Administrative Regulation 807 KAR 5:006, Section 14, are in direct conflict. In such conflict, the more specific statute prevails. Land v. Newsome, Ky., 614 S.W.2d 948, 949 (1981) (citations omitted) (“One of the established rules of statutory construction is that when two statutes deal with the same subject matter, one in a broad, general way and the other specifically, the specific statute controls.”)

KRS Chapter 76 is the more specific statute and therefore controls. KRS 278.280(2), the statute under which Administrative Regulation 807 KAR 5:006 was promulgated, provides only that “[t]he Commission shall prescribe rules for the performance of any service or the furnishing of any commodity of the character furnished or supplied by the utility. . . .” Moreover, while Administrative Regulation 807 KAR 5:006, Section 14, deals in general terms with the issue of discontinuance of service, KRS Chapter 76 specifically addresses a public water utility's obligation to

discontinue water service for a customer's failure to pay a joint sewer agency's charges for sanitary sewer service. It states in some detail the rights of both utilities and the procedures for the termination of water service.

Moreover, to hold that KRS Chapter 76 is not controlling would place public water utilities at considerable risk. If a public water utility chooses to comply with Administrative Regulation 807 KAR 5:006, Section 14, and to ignore the requests of a joint sewer agency to discontinue water service, it is in violation of KRS 76.090(4) and may be exposed to financial liability for any losses that the joint sewer agency incurs as a result of the delinquent user's continued use of the agency's system.

Our interpretation is consistent with the public policy goals embodied in existing statutes. The General Assembly has previously declared that "the use of water in any manner tending to contaminate it, raises a correlative public duty to provide for the proper disposition thereof according to the highest public health standards, and that such public duty includes full responsibility for paying the cost of such disposition." KRS 96.930. In furtherance of this policy, it has required public water utilities to discontinue water service to persons who fail to pay sewer service charges owed to municipal sewer utilities and sanitation districts. KRS 96.932; KRS 220.510(1).<sup>1</sup>

Based upon the above, the Commission finds that the provisions of KRS Chapter 76 control in this instance. Accordingly, Hendron District does not require a deviation from Administrative Regulation 807 KAR 5:006, Section 14, to implement JSA's

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<sup>1</sup> The Commission has previously recognized this policy when addressing requests for deviations from the requirements of Administrative Regulation 807 KAR 5:006, Section 14. See, e.g., Collection and Billing Practices of Privately-Owned Sewer Utilities, Administrative Case No. 347 (Ky.PSC Jan. 9, 1995).

instructions to discontinue the water service of any customer that JSA has declared a delinquent. As KRS 76.090(4) specifically authorizes the Billing Agreement, no further approval is required.

IT IS THEREFORE ORDERED that:

1. Hendron District's application for a deviation from Administrative Regulation 807 KAR 5:006, Section 14, is denied as moot.
2. Hendron District's application for approval of its Billing Agreement with JSA is denied as moot.
3. Hendron District shall provide the Commission for informational purposes any changes or amendments to its Billing Agreement with JSA.

Done at Frankfort, Kentucky, this 17<sup>th</sup> day of December, 2004.

By the Commission

ATTEST:



Executive Director