

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

TARIFF REVISIONS OF SOUTHEAST DAVIESS)	
COUNTY WATER DISTRICT REGARDING THE)	CASE NO. 2004-00179
PROVISION OF UNMETERED PRIVATE FIRE)	
PROTECTION SERVICE)	

ORDER

Southeast Daviess County Water District (“Southeast Daviess District”) has proposed to revise its existing tariff to provide rules for unmetered private fire protection services. At issue is whether the proposed rules, as amended, are reasonable and in compliance with Administrative Regulation 807 KAR 5:095. Finding in the affirmative, we approve them with modifications.

Southeast Daviess District is a water district organized under the provisions of KRS Chapter 74. It owns and operates facilities that distribute and furnish water to approximately 5,634 customers in the southeastern portions of Daviess County, Kentucky and wholesale water service to the city of Whitesville, Kentucky, and East Daviess Water Association.¹ It is a utility subject to the Commission’s jurisdiction. KRS 278.010(3)(d); KRS 278.015; KRS 278.040.

¹ Annual Report of Southeast Daviess County Water District to the Kentucky Public Service Commission for the year ended December 31, 2003 (“Annual Report”) at 27 and 29.

Southeast Daviess District provides private fire protection services.² In calendar year 2003, it had revenues of \$6,084 from its provision of fire protection service.³ Despite providing such services, the water district's filed tariff did not contain any rules governing the provision of such service.

On April 21, 2004, Southeast Daviess District submitted proposed revisions to its tariff to establish some rules for unmetered fire protection services.⁴ Under these rules, a customer of such service would be required to install and maintain a double-acting backflow preventer and valve vault for an unmetered fire protection line. The rules specify the location of the assembly and vault installation and testing requirements for the backflow preventer. They further specify that the customer is responsible for the installation, operation, annual testing and maintenance costs of each backflow preventer assembly.

After discussions with Commission Staff, Southeast Daviess District amended its proposed revisions on December 15, 2004 to further refine these rules. More

² See Tariff of Southeast Daviess County Water District, PSC No. 1, First Revised Sheet No. 6.

³ Annual Report at 27. The record fails to indicate the exact number of customers to whom Southeast Daviess District provides private fire protection services. In a conference with Commission Staff, officials of Southeast Daviess District and West Daviess County Water District indicated that the two districts jointly had 24 customers who received fire protection service.

⁴ The record reflects the following procedural history: On May 21, 2004, the Commission ordered that the proposed revisions be suspended for a period of 5 months and this proceeding be established. On August 4, 2004, representatives from Southeast Daviess District and Commission Staff held a conference to discuss the proposed revisions. On August 12, 2004, the Commission granted the Attorney General's motion for intervention. No other persons have sought intervention in this proceeding. No party to this proceeding has requested discovery or a hearing.

specifically, the utility included in its rules the installation specifications for backflow preventers and the form that customers must use to report inspections and maintenance. It further stated specific time requirements for reporting the results of an inspection and identified persons whom the utility deems “qualified” to conduct such inspections.

The Commission finds that the proposed rules are lawful. Administrative Regulation 807 KAR 5:095, Section 7(1), provides that “[a]s a condition of service, a utility shall require a customer who connects a private fire protection system to the utility’s facilities, either directly or indirectly, to install double-acting backflow preventers.” Commission regulations further permit the utility to “have access to a customer's premises at all reasonable hours to inspect the customer's private fire protection system to ensure” the existence and proper installation of double-acting backflow preventers. 807 KAR 5:095, Section 7(2). While this Commission can find no specific regulatory authority that permits Southeast Daviess District to require the customer to make the required inspections, we are of the opinion general statutory and regulatory authority supports the propose rule.⁵

The Commission further finds that the proposed rules are reasonable. Devices such as double-acting backflow preventers have been recognized as necessary to

⁵ See KRS 278.030(2) (a utility “may establish reasonable rules governing the conduct of its business and the conditions under which it shall be required to render service”); 807 KAR 5:066, Section 10(b)(2) (“private fire protection facilities shall be installed as required by the utility”); 807 KAR 5:095, Section 8(2) (“A utility may require a customer who connects a fire sprinkler system to its water distribution system to make repairs upon or improvements to his fire sprinkler system to correct any deficiency, defect or problem noted in any report of a test or inspection required by 815 KAR 10:060”).

protect the public health and prevent contamination of the public drinking water supply. See 401 KAR 8:020, Section 2. Moreover, periodic inspection and maintenance is necessary to ensure that these devices are properly working and that the public is protected. Having long recognized that those who directly benefit from a utility service should bear the direct costs of providing such services, we find the imposition of duty and cost of performing these inspections on the customer is not unreasonable.⁶

The Commission places Southeast Daviess District on notice that, as the proposed rules involve an issue of first impression and as they currently affect only a small number of customers, the Commission may revisit this issue in the future as Southeast Daviess District acquires additional private fire protection service customers and as the Commission develops greater experience in this area.

IT IS THEREFORE ORDERED that:

1. The proposed revision, as amended, is approved as of the date of this Order.
2. Within 20 days of the date of this Order, Southeast Daviess District shall file its revised tariff sheets containing the proposed revision and signed by an officer of the utility authorized to issue tariffs.

⁶ At the conference with Commission Staff, Southeast Daviess District officials expressed their desire that the requirement for double-acting backflow preventers not be made retroactively, but apply prospectively only. As Administrative Regulation 807 KAR 5:095 required such equipment and as that regulation became effective on November 13, 2002, we find that the regulation requires the installation of such equipment for any private fire protection services installed on or after that date. To the extent that Southeast Daviess District believes that the imposition of such requirement on existing private fire protection services is unduly burdensome or unreasonable, it may apply for a deviation from the regulation. See 807 KAR 5:095, Section 10.

3. Subject to the filing of timely petition for rehearing pursuant to KRS 278.400, these proceedings are closed. The Executive Director shall place any future filings in the utility's general correspondence file or shall docket the filing as a new proceeding.

Done at Frankfort, Kentucky, this 14th day of February, 2005.

By the Commission

ATTEST:



Executive Director