

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

DANNY RAY ADAMS AND)	
CALVIN VAUGHN)	
)	
COMPLAINANTS)	
)	
v.)	CASE NO. 2005-00008
)	
GARRARD COUNTY WATER)	
ASSOCIATION, INC.)	
)	
DEFENDANT)	

O R D E R

Danny Ray Adams and Calvin Vaughn filed formal complaints alleging that Garrard County Water Association, Inc. ("Garrard Water") unreasonably and improperly refused water service to Mr. Adams. On March 9, 2005, the Commission consolidated the cases into Case No. 2005-00008, set a hearing date, and issued a procedural schedule for information requests. A formal hearing was held on April 28, 2005.

At issue is whether Garrard Water unreasonably and improperly refused Mr. Adams' application for water service. We find that Garrard Water applied an unreasonable standard in its tariff and that Garrard Water should process Mr. Adams' application for water service.

BACKGROUND

Garrard Water has adopted as part of its filed tariff certain rules and regulations which govern its water service. To be eligible for service from Garrard Water, a person

has to be qualified as a “bona fide prospective customer.”¹ To be a “bona fide prospective customer,” one must be an owner or lessee of existing developed premises “having a frontage abutting on that part of a street or public highway in which there is, or is to be, located a distribution main of the Company.” Garrard Water has adopted the policy that it will not provide water service unless that customer abuts a water line along a street or public highway. There is no provision in the tariff for a customer who has an easement for a water service line or meter.

At the formal hearing Mr. Adams testified that Garrard Water refused to place a meter to serve him on an easement that Mr. Vaughn had granted for that purpose. The area involved is a tract of land located near Ky. Highway 1295 in Garrard County, Kentucky. The property was acquired by Mr. Adams in November 2003.

The property owned by Mr. Adams does not front upon a public street or road. Both Mr. Adams and Mr. Vaughn testified that Mr. Vaughn granted Mr. Adams a 20-foot-wide access easement across a private driveway on Mr. Vaughn’s land known as Vaughn Way. Vaughn Way also serves as the access road to a tract of land owned by the Garrard County Fire Department. In addition to the access easement, Mr. Vaughn granted to Mr. Adams a 20-foot-wide easement on the east side of the access easement “for the purpose of installing and maintaining a water line to the property owned by Danny Adams.”

Mr. Adams further testified that he has constructed a road to his property from Vaughn Way over the property of another resident, Mr. Rinthen, based upon an oral

¹ Garrard County Water Association, Inc., P.S.C. Ky. No. 2, Sheet No. 1, Section 2(b).

agreement with Mr. Rinthen. Mr. Adams also testified that the meter could be placed near the public road, close to the meters of Mr. Vaughn and the fire department. Wherever the meter is located on the easement, the customer service pipe would be placed on the Vaughn Way water line easement and along a new driveway for Mr. Adams, which crosses over the property of Mr. Rinthen. Mr. Adams contends that the only concern of Garrard Water should be the placement of the meter. He further contends that the placement of his customer service line is not relevant, as it is his responsibility.

Harold C. "Coby" Ward, President of Garrard Water, testified that, since Mr. Adams does not own or have a lease on property that adjoins a public road, he is ineligible for water service. Mr. Ward testified that the "bona fide prospective customer" eligibility provision was developed and adopted for good reasons. Garrard Water had previously located customer meters on the road nearest its main even if the customer's property did not have road frontage. According to Mr. Ward, Garrard Water received telephone calls about poor clean-up or burial of the customer's line when that service line crossed the property of another and about leaks in the line and damage to the service line by other property owners. He stated that Garrard Water also received complaints about installation of a service line across the property of another without permission from or notification to that property owner.

The “bona fide prospective customer” rule is Garrard Water’s response to these complaints. Since the tariff provisions have been in effect, according to Mr. Ward, Garrard Water has not received complaints regarding service lines.²

Mr. Ward testified that there are options available to Mr. Adams through which he may gain service from Garrard Water. He stated that Mr. Adams may sponsor a distribution line extension, with attendant cost, to gain service. Mr. Ward also stated that an easement from Garrard Water running from its main to Mr. Adams’ property line could be obtained over the adjoining properties, so that a meter can be placed at the edge of Mr. Adams’ property line. Mr. Ward also testified that the present policy, as incorporated in the tariff, was instituted after consultation with Commission Staff.

DISCUSSION

The issue before the Commission is whether the Garrard Water tariff provision by which water service was denied to Mr. Adams is reasonable.

First, however, we will address the issue raised by Garrard Water of the prior approval of the tariff. It is incumbent upon the Commission to examine the tariff provision in question and any other tariff provisions relevant to the issue as to whether those provisions may be just, reasonable, safe, proper, adequate, or sufficient. Even if a tariff provision has been filed with the Commission and accepted as part of a utility’s

² It is noted that two other complaints have been filed with the Commission since 2002 concerning the same tariff rule: Case No. 2002-00414, Dathan Lee Lane v. Garrard County Water Association, and Case No. 2003-00399, Donald Parker v. Garrard County Water Association. Both cases were dismissed as resolved, prior to any ruling by the Commission on the tariff issue.

tariff, that provision is subject to review when a complaint is filed challenging the reasonableness of the provision.³

The tariff provision in question states:

“Bona fide prospective customer” shall mean any owner or lessee who is to be the occupant of an existing developed premises having a frontage abutting on that part of a street or public highway in which there is, or is to be, located a distribution main of the Company, who shall file a signed application for a new street service connection and for water service to such premises to be occupied.⁴

Another section of Garrard Water’s tariff states that “[a]ny bona fide occupant of a single family dwelling or place or business . . . that has reasonable accessibility to the Association's distribution mains and has need of water service may be a member of the Association by requesting service in writing on forms supplied by the Association.”⁵

In the former tariff provision, a requirement of frontage abutting a street or public highway along a water main is imposed for consideration of service. In the latter tariff provision, service can be provided if the applicant has reasonable access to the utility’s main.

We find that the provision for service in this latter paragraph follows the Commission regulations and does not impose an unreasonable barrier to obtaining water service. Reasonable accessibility to distribution mains and completion of forms for service are all that should be required. Water districts and associations are required

³ KRS 278.260.

⁴ Garrard County Water Association, Inc., P.S.C. Ky. No. 2, Sheet No. 1, Section 2(b).

⁵ Garrard County Water Association, Inc., P.S.C. Ky. No. 2, Sheet No. 2, Section 4(a).

to provide reasonable service to persons if certain predetermined conditions are met.⁶

The regulation dealing with the placement of service connections and meters is contained in 807 KAR 5:066, Section 12(1)(b):

In areas where the distribution system follows well-defined streets and roads, the customer's point of service shall be located at that point on or near the street right-of-way or property line most accessible to the utility from its distribution system. In areas where the distribution system does not follow streets and roads, the point of service shall be located as near the customer's property line as practicable. Prior to installation of the meter the utility shall consult with the customer as to the most practical location.

Commission regulations do not require the placement of a water meter upon a customer's property.⁷ The regulations merely require that "the point of service shall be located as near the customer's property as practicable." Since Mr. Adams has presented to Garrard Water an easement, which appears valid upon its face, for the placement and maintenance of a water line, Mr. Adams' request for the placement of a meter upon that easement is reasonable.

We take note of one of the options offered by Garrard Water, which was the granting of an easement over the adjoining property owners to serve Adams. However, this easement option outlined by Garrard Water would still not make Adams a "bona fide prospective customer" under its tariff, since he would not own property "having a frontage abutting on that part of a street or public highway in which there is, or is to be, located a distribution main."

⁶ KRS 278.030.

⁷ Ernest Miller v. Hima-Sibert Water District, Case No. 1995-00228, Order dated January 16, 1996; Perkins v. Northern Kentucky Water District, Case No. 1998-00611, Order dated March 15, 1999.

The Commission finds that the position taken by Garrard Water is inconsistent with its own practices in light of the fact that the Garrard County Fire Department's meter is placed in an area not owned by the department and not abutting a public road. Garrard Water's concern about the placement of the customer service line is misplaced. According to 807 KAR 5:066, Section 12(2), it is the customer's responsibility to furnish and lay the necessary pipe to make the connection from the point of service to the place of consumption and to keep the service line in good repair in accordance with reasonable requirements of the utility.

Garrard Water's tariff contains the following requirements for a customer's service pipe:

The service pipe shall be laid below the frost line (twenty-four (24) inches below ground level) at all points and shall be placed on firm and continuous earth so as to give unyielding and permanent support, shall not be laid in driveways, nor pass through premises other than that to be supplied, and shall be installed in a trench, at least two feet in a horizontal direction from any other trench wherein are laid gas pipe, sewer pipe, or other facilities public or private.⁸

In his complaint Mr. Adams asserts that the connection of the customer's line is of no concern to the utility. However, Commission regulations provide for the utility's reasonable requirements regarding the customer's service line.

The utility may place reasonable requirements upon the customer in the installation and maintenance of the customer service line. However, the restrictions must be reasonable, not merely a convenience for the utility. The regulations recite that the utility is not responsible for leaks and other occurrences beyond the meter.

⁸ Garrard County Water Association, Inc., P.S.C. Ky. No. 2, Sheet No. 14, Section 9(i).

Accordingly, we find the provisions of Garrard Water's tariff prohibiting the customer service line from being laid in driveways, or passing through property other than that to be supplied, to be unreasonable.

IT IS THEREFORE ORDERED that:

1. Garrard Water's tariff provision as contained in Sheet No. 1, Section 2(b) entitled "Bona fide prospective customer" shall be removed from the tariff.
2. Tariff Sheet No. 14(i) shall be modified to eliminate the phrase "shall not be laid in driveways, nor pass through premises other than that to be supplied."
3. Within 20 days of the date of this Order, Garrard Water shall file revised tariff sheets reflecting the modifications prescribed in this Order.
4. When Mr. Adams meets the conditions set forth in the Service Application of the Garrard Water tariff, Garrard Water shall set his meter in accordance with the provisions of 807 KAR 5:066, Section 12.

Done at Frankfort, Kentucky, this 29th day of September, 2005.

By the Commission

ATTEST:



Executive Director