

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JESSAMINE COUNTY WATER DISTRICT NO. 1)
REQUEST FOR DEVIATION FROM 807 KAR) CASE NO. 2012-00011
5:006, SECTION 14 (1))

ORDER

Jessamine County Water District No. 1 (“Jessamine District”) has applied for a deviation from 807 KAR 5:006, Section 14, to permit the discontinuance of water service to customers who fail to pay for sewer service that Jessamine-South Elkhorn Water District (“Jessamine-South Elkhorn District”) provides. Finding that arrangement between the two water districts fails to adequately insulate Jessamine District from liability for termination of service, we deny the application.

Jessamine District, a water district organized pursuant to KRS Chapter 74, owns and operates facilities used in connection with the distribution and furnishing of water for compensation to approximately 1,870 customers in portions of Jessamine County, Kentucky.¹

Jessamine-South Elkhorn District, a water district organized pursuant to KRS Chapter 74, owns and operates facilities used in connection with the distribution and furnishing of water for compensation to 2,584 customers in Jessamine County,

¹ Report of Jessamine County Water District No. 1 to the Kentucky Public Service Commission for the Year Ended December 31, 2011 at 5 and 27.

Kentucky.² Since 2007 it has also operated sewer collection facilities that presently serve approximately 537 customers in Jessamine County, Kentucky.³

Jessamine District provides water service in some areas in which Jessamine-South Elkhorn District provides sewer service.⁴ To enhance Jessamine-South Elkhorn District's ability to collect bills for sewer service from customers who receive water service from Jessamine District, the water districts executed an interlocal cooperation agreement on April 2, 2009 in which Jessamine District agreed to discontinue water service to any customer who fails to pay his or her bill for sewer service that Jessamine-South Elkhorn District provides upon receiving a written request for such action from Jessamine-South Elkhorn District.

Jessamine District now proposes to revise its existing regulations to implement the Interlocal Cooperation Agreement. On January 11, 2012, it filed a tariff sheet with the Commission in which it sought to add the following provision:

The District may terminate water service to any customer for non-payment of sanitary sewer services due and owing Jessamine-South Elkhorn Water District and/or its successor. Water service may be disconnected by the District only after all proper notices have been given to the customer as required by the District's then current Tariff; Public Service Commission Rules; Regulations; Kentucky Revised Statutes and/or Kentucky Administrative Regulations. The District may charge the customer the District's then current and approved disconnect and/or

² *Report of Jessamine-South Elkhorn Water District to the Kentucky Public Service Commission for the Year Ended December 31, 2010 (Water Division)* at 5 and 27.

³ *Report of Jessamine-South Elkhorn Water District to the Kentucky Public Service Commission for the Year Ended December 31, 2010 (Sewer Division)* at 1 and 12.

⁴ In its filing, Jessamine District did not explain the circumstances under which Jessamine-South Elkhorn District was providing sewer service in Jessamine District's territory. KRS 74.407 permits water districts to "acquire, develop, maintain and operate sewage disposal systems within the confines of their respective districts" but does not authorize such actions outside their territories. KRS 74.414, however, permits a water district to operate a sanitary sewer system under a contract with another water district.

reconnection charges set in the District's Tariff in the event water service is terminated.

The proposed regulation makes specific reference to the Interlocal Cooperation Agreement of April 2, 2009.

Commission Regulations currently prohibit public water utilities from discontinuing a customer's water service for delinquent sewer service bills. Section 14(1) of 807 KAR 5:006 states:

A utility may refuse or terminate service to a customer only under the following conditions except as provided in subsections (2) and (3) of this section:

(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. [Italics added].

A utility may discontinue service only for nonpayment of charges for services which it provides. As they do not provide sewer service, water utilities may not discontinue service for nonpayment of sewer service charges.⁵

In Administrative Case No. 347,⁶ the Commission examined the question of amending Section 14 to permit water utilities to discontinue water service for a customer's failure to pay bills for sewer service provided by another utility. We found that, while sewer utilities have significant problems enforcing collection of bills for

⁵ Combined water and sewer districts are an exception to this rule. Since they provide both services, the Commission has permitted such districts to discontinue a customer's water service for failure to pay sewer service charges. See, e.g., Case No. 91-428, *Proposed Tariff Filing of Boone County Water and Sewer District For Sewer Inspection Fee* (Apr. 6, 1992).

⁶ Administrative Case No. 347, *An Investigation into the Collection and Billing Practices of Privately-Owned Sewer Utilities* (Jan. 9, 1995).

service,⁷ insufficient support existed to amend that regulation to permit the discontinuance of water service for nonpayment of sewer bills. In lieu of revising the regulation, we stated that the Commission would favorably view requests for deviation from Section 14 to implement agreements between water suppliers and sewer utilities to permit the discontinuance of water service for nonpayment of sewer bills.

Jessamine District's proposed regulation and the Interlocal Cooperation Agreement contain many features that clearly support a deviation. The agreement is clearly modeled upon the provisions of KRS Chapter 96⁸ that require water suppliers to discontinue water service when a municipal sewer service provider requests such action because of a customer's failure to pay his or her bills for sewer service.⁹ The Interlocal Cooperation Agreement, while noting that "no statutory authority exists for discontinuance of water service by a water district (created under KRS [C]hapter 74) as

⁷ Discontinuance of utility service has long been recognized as the most effective means of bill collection. Sewer service, however, cannot be easily disconnected. There is no switch to pull or valve to turn to discontinue service. The delinquent customer's sewer line must be plugged or his water service must be discontinued. Plugging a sewer line is costly and not usually environmentally sound. It imposes a disproportionate hardship on the customer. Once the sewer line is dug up and plugged, his residence is rendered unfit for habitation.

Id. at 1-2.

⁸ KRS 96.930- 943.

⁹ See, e.g., KRS 96.932 ("[i]n the interest of the public health, safety, and general welfare, cities may enforce collection of lawful rates and charges for the use of municipal sewer facilities by requiring that water service, whether provided publicly or privately, be discontinued until payment is made or some satisfactory arrangement is reached."); KRS 96.934 (providing that a water supplier "shall discontinue water service" to a premises for a customer's failure to pay sewer service charges when the governing body of municipal sewer facilities identifies the delinquent customer and notifies the water supplier to discontinue water service); KRS 96.940 (authorizing municipal sewer bodies and any water supplier to enter contracts "relating to any of the provisions of KRS 96.930 to 96.943").

to delinquent customers of sewage disposal service provided by a separate water district, created under KRS [C]hapter 74,” expressly refers to KRS Chapter 96.¹⁰

Notably absent from the Interlocal Cooperation Agreement and from Jessamine District’s regulation, however, is any provision addressing Jessamine District’s liability for discontinuance of water service in compliance with a written request for discontinuance of water service. KRS 96.942¹¹ expressly relieves water suppliers of most liability for any wrongful termination of water service if discontinuance of service is made at the request of the sewer service provider. While Jessamine-South Elkhorn District cannot immunize Jessamine District from liability, the lack of any requirement for Jessamine-South Elkhorn District to indemnify Jessamine District for complying with its request for discontinuance of service is a serious defect. In the absence of such provision, the Commission is of the opinion that no deviation from Section 14 should be granted to Jessamine District and that the proposed regulation should be denied.

Our action today should not be regarded as an impenetrable barrier to the implementation of the Interlocal Cooperative Agreement. In its Regular Session this year, the General Assembly enacted Senate Bill 150 which amends KRS 74.409 to provide that “[i]f a water district that provides sewer services is not the water supplier, the water district may enforce collection of delinquent sewer service charges in the manner provided in KRS 96.930 to 96.943.”¹² This Act, which will become effective on

¹⁰ Interlocal Cooperation Agreement between Jessamine County Water District No. 1 and Jessamine-South Elkhorn Water District (Apr. 2, 2009) at 1.

¹¹ KRS 96.942 provides: “No water supplier who discontinues water service pursuant to an order from the sewer body as provided in KRS 96.930 to 96.943, shall incur any liability by reason thereof, except to the extent of its own negligence or other improper conduct.”

¹² 2012 Ky. Acts Ch. 30.

July 12, 2012,¹³ gives the same statutory powers to Jessamine-South Elkhorn District as a municipal sewer service provider currently exercises. It will also relieve Jessamine District of most liability for complying with Jessamine-South Elkhorn District's request for discontinuance of water service. Upon the effective day of the Act, Jessamine District will not require any action from the Commission to terminate a customer's service for failing to pay a bill to Jessamine-South Elkhorn District for sewer service but may do so under the authority of KRS 74.409 and KRS 96.930-943.¹⁴

IT IS THEREFORE ORDERED that:

1. Jessamine District's proposed revision to its regulations to permit the discontinuance of water service to a customer who fails to pay his or her bill to Jessamine-South Elkhorn District for sewer service is denied.


2. Within 30 days of executing any change or amendment to the Interlocal Cooperative Agreement or executing any new agreement with Jessamine-South Elkhorn District regarding the termination of water service, Jessamine District shall provide the Commission, for informational purposes, a copy of such change, amendment or new agreement.

3. Any documents filed in the future pursuant to ordering paragraph 2 of this Order shall reference this case number and shall be retained in the utility's general correspondence file.

¹³ OAG 12-006 (Apr. 12, 2012).

¹⁴ See Case No. 95-238, *An Agreement Between Lexington-Fayette Urban County Government and Kentucky-American Water Co. for the Billing, Accounting, and Collection of Sanitary Sewer Charges* (Ky. PSC June 30, 1995) at 3-5.

By the Commission

ENTERED 
JUN 14 2012
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:


Executive Director

Case No. 2012-00011

Carl Waits
Chairman
Jessamine County Water District #1
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