

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

TARIFF FILING OF NORTH SHELBY WATER) CASE NO. 2013-00027
COMPANY)

ORDER

North Shelby Water Company has proposed revisions to its rules and regulations regarding fire protection service. Having carefully considered the proposed revisions, the Commission finds that they should be accepted, with some modifications, and permitted to become effective.

North Shelby Water Company, a non-profit Kentucky corporation organized pursuant to KRS Chapter 273,¹ owns and operates facilities that distribute water to approximately 4,875 customers in Franklin, Henry, Oldham and Shelby Counties of Kentucky.² It does not own any water production or treatment facilities, but purchases its water requirements from the city of Shelbyville, Frankfort Plant Board, and Louisville Water Company.³

North Shelby Water Company's current rules and regulations state that the water utility provides water service solely for domestic water service purposes and that it

¹ See <https://app.sos.ky.gov/ftshow/%28S%28sf0veppftm5yrhchoxndv04u%29%29/default.aspx?path=ftsearch&id=0038371&ct=09&cs=99999> (last visited Sept. 19, 2013).

² *Annual Report of North Shelby Water Company to the Public Service Commission for the Calendar Year Ending December 31, 2012* at 5, 27.

³ *Id.* at 31.

“does not provide fire protection to its Members or to others.”⁴ Its rules further state that the fire hydrants on North Shelby Water Company’s distribution mains “are for the sole purpose of flushing the lines, or other uses by the Company necessary for proper maintenance of the lines.”⁵

Notwithstanding its current rule, North Shelby Water District currently has 103 fire hydrants installed on its water distribution system.⁶ With the exception of a small number of these hydrants, all currently meet the minimum flow requirements set forth in 807 KAR 5:066, Section 10.⁷ These hydrants are located in areas that are presently served by the following local fire departments: Bagdad, Eastwood, Franklin County, Simpsonville, Shelby County, and Shelbyville.⁸ Each of these fire departments has at some time used North Shelby Water Company’s fire hydrants for fire events or firefighting training.

North Shelby Water Company now proposes to revise its rules to permit its facilities to be used for fire protection purposes.⁹ Its proposed rule specifically provides:

⁴ North Shelby Water Company Tariff, P.S.C. Ky. No. 2, Original Sheet No. 10, Rule VI(D) effective May 16, 1988).

⁵ *Id.* Rule VI(E).

⁶ North Shelby Water Company’s Response to the Commission’s Order of January 31, 2013, Item 1 (filed Feb. 15, 2013).

⁷ *Id.* Item 2.

⁸ *Id.* Item 6.

⁹ North Shelby Water Company submitted its revised tariff sheets to the Commission on November 21, 2012. These sheets set forth an effective date of February 1, 2013. On January 31, 2013, the Commission suspended the proposed revisions for further investigation and directed the water utility to file certain information with the Commission. On March 19, 2013, a conference call was conducted in the matter. In response to requests made during the conference call, North Shelby Water Company filed additional information with the Commission on June 14, 2013. No persons requested intervention in this matter. North Shelby Water Company did not request a hearing.

The public fire hydrants and flush hydrants installed on the distribution lines of this Company are for the purpose of flushing the lines or other uses by the Company necessary for proper maintenance of the system, and **for use in fire-fighting activities.**¹⁰

While Commission regulations authorize the installation and use of hydrants on a water distribution system for fire protection purposes under certain conditions,¹¹ the proposed rule would authorize the use of utility equipment for purposes for which the equipment is not designed. Accordingly, we find that the proposed rule should be revised to clearly state that only public fire hydrants and flush hydrants that meet the requirements of 807 KAR 5:066, Section 10(2)(b), may be used in firefighting activities.

The proposed revision also places responsibility for certain fire hydrant maintenance and testing activities on fire departments.¹² North Shelby Water Company argues that placing responsibility for these activities on fire departments results in a

¹⁰ North Shelby Water Company Tariff, P.S.C. Ky. No. 2, (Proposed) First Amended Sheet No. 10.1 (filed Nov. 20, 2013) (emphasis added).

¹¹ 807 KAR 5:066, Section 10(2)(b).

¹² (Proposed) First Amended Sheet No. 10.2 states:

Maintenance of public fire hydrants is the responsibility of the Company, except that the local fire departments are responsible for maintenance of the following items: (1) lubricating the threads of the discharge caps and the operating nut of the fire hydrant; (2) maintaining accessibility and visibility; (3) ensuring the valve for each fire hydrant is in the 'open' position (fire trucks should carry valve wrenches for this purpose) unless the hydrant is being repaired; (4) painting the fire hydrant including, if desired, color-coding based upon anticipated flow rates; and (5) removing any obstructions to use or visibility of each of each fire hydrant.

Testing and inspection of public fire hydrants to ascertain they are in good operating condition and meet the desired flow rate and pressure is the sole responsibility of the fire department within whose service territory each hydrant is located. Any deficiency shall be reported in writing to the Company. Testing of public fire hydrants shall be in accordance with and subject to the penalties set forth in the Fire Department regulation of this Tariff.

better allocation of costs. It notes that fire department personnel regularly train on the use of fire hydrants, periodically test fire hydrants to ascertain their operating condition and determine their water flow and pressure rate for insurance rating purposes and map the location and capability of each hydrant to water flows to allow for prompt decision-making when a fire event occurs. If it were to assume responsibility for these activities, North Shelby Water Company argues, it would be needlessly duplicating the fire departments' activities.¹³ It further states that this allocation of responsibility is equitable and fair, as North Shelby Water Company does not assess any fee or charge to local fire departments to perform annual maintenance and inspections on the fire hydrants. It further states that the local fire departments have agreed to this allocation of responsibility.¹⁴

The Commission recognizes that other water utilities have also imposed maintenance and inspection responsibilities for fire hydrants upon local fire departments.¹⁵ While a utility may impose responsibilities on its customers, it cannot delegate its obligation to properly maintain and operate its facilities.¹⁶ It is ultimately responsible for the operation of its facilities.

We find that North Shelby Water Company may require local fire departments to inspect and to perform certain maintenance on the fire hydrants in return for the use of

¹³ North Shelby Water Company's Response to the Commission's Order of January 31, 2013, Item 8.

¹⁴ *Id.*

¹⁵ *See, e.g.*, NKWD Tariff, PSC No. 4, Sheet No. 24 (effective Jan. 7, 2011).

¹⁶ *See, e.g.*, Case No. 93-043, *Jackson County Rural Electric Cooperative Corporation, Inc.: Alleged Failure to Comply with Commission Regulations 807 KAR 5:006 and 807 KAR 5:041* (Ky. PSC June 27, 1996). *See also* American Water Works Association, *Installation, Field Testing and Maintenance of Fire Hydrants* ("AWWA Manual M17") (3d Ed. 1989) 28 ("Although hydrants are operated by members of the fire department, it is generally the water utility's responsibility to maintain them in working order.").

those facilities. It should, however, have a written agreement with each fire department that clearly states the fire department will perform those tasks and will provide written verification that those tasks have been performed.¹⁷ Currently, North Shelby Water Company does not require such agreement and has no written agreement with any local fire department.¹⁸ At a minimum, the lack of such agreement makes it difficult for North Shelby Water Company to ensure that proper maintenance and inspection of its fire hydrants is being performed and that all fire departments within its service area are aware of their responsibilities and have accepted them. Accordingly, North Shelby Water Company should revise its proposed rules to provide for a written agreement with local fire departments on the maintenance and inspection of fire hydrants.

We further find that, to the extent that a fire department fails to execute a written agreement regarding the maintenance and inspection of public fire hydrants, North Shelby Water Company should revise its rules to provide for a monthly fee to cover the cost of maintenance and inspection activities. Currently no fee is assessed for such services. If a local fire department is unwilling to agree to execute a written agreement containing reasonable maintenance and inspection requirements, then the water utility must perform those activities and should recover the reasonable costs associated with those activities. As a local fire department specifically benefits from the presence and

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In many small communities, especially where the water purveyor is not the same political entity as the fire department, agreements have been made with the individual fire departments to maintain and test fire hydrants. While this practice is worthwhile, it should be remembered that unless there is a verifiable agreement, the owner of the hydrant retains the responsibility for maintenance and inspection of the hydrant.

AWWA Manual M17 at 28. See also John Stubbart, *Who Controls the Fire Hydrant?*, Opflow Apr. 2006, at 8.

¹⁸ North Shelby Water Company's Response to the Commission's Order of January 31, 2013, Item 7.

use of public fire hydrants in its jurisdiction, it should bear the costs associated with maintaining and inspecting those hydrants.

IT IS THEREFORE ORDERED that:

1. North Shelby Water Company's proposed revisions, as modified by order paragraphs 2 and 3, are approved as of the date of this Order.

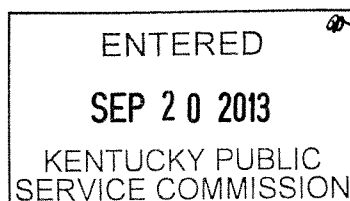
2. North Shelby Water Company shall modify proposed Sheet No. 10.1 to read:

The public fire hydrants and flush hydrants installed on the distribution lines of this Company are for the purpose of flushing the lines or other uses by the Company necessary for proper maintenance of the system and, if the hydrant meets the requirements of 807 KAR 5:066, Section 10(2)(b), for use in firefighting activities. The Company does not guarantee any particular flow rate or pressure to these hydrants or to any customer's private fire suppression system. The flow rate and pressure may vary depending upon other water demands on the system, various water facility limitations, or other circumstances, including but not limited to a closed fire hydrant or other valve, frozen fire hydrants, line break(s), low or empty water tank(s), drought or other act of God, altitude valve failure(s), telemetry failure(s), and/or power failure(s). If fire hydrants are used by fire suppression units in the performance of their duty, any damage to the Company's water system will be the liability of that unit.

3. North Shelby Water Company shall modify proposed Sheet No. 10.2 to require a local fire department to enter into a written agreement setting forth the fire department's responsibilities for maintenance and inspection of public fire hydrants that are located within the fire department's jurisdictional area, and to further modify Sheet No. 10.2 to provide for a monthly or annual fee to recover the cost of inspection and maintenance of those public fire hydrants from local fire departments that choose not to enter such written agreements.

4. No later than 30 days from the date of this Order, North Shelby Water Company shall file with the Commission, using the Commission's electronic Tariff Filing System, revised tariff sheets reflecting the modifications specified in this Order and a copy of the standard written agreement that local fire departments must execute.

By the Commission



ATTEST:


Executive Director

Honorable Donald T Prather
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