Paul E. Patton, Governor

Ronald B. McCloud, Secretary
Public Protection and
Regulation Cabinet

Thomas M. Dorman
Executive Director
Public Service Commission

COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION
211 SOWER BOULEVARD
POST OFFICE BOX 615
FRANKFORT, KENTUCKY 40602-0615
www.psc.state.ky.us
(502) 564-3940
Fax (502) 564-3460

Martin J. Huelsmann
Chairman

Edward J. Holmes
Vice Chairman

Gary W. Gillis
Commissioner

March 14, 2001

Mr. Dixie Casey
Caldwell County Water District
1018-B West Main Street
Princeton, Kentucky 42445

Dear Mr. Casey:

This letter is in response to your telephone inquiry of March 12, 2001 regarding a landlord's liability for charges incurred for utility service rendered to a tenant.

Commission regulations are silent on a landlord's obligation to pay charges for utility service rendered to a tenant. KRS 278.030(2), however, provides that a utility "may establish reasonable rules governing the conduct of its business and the conditions under which it shall be required to render service." A utility may require a landlord's agreement to assume liability for any unpaid charges for service to his tenants as a condition for serving the rental property. Such a condition must be reasonable and must clearly be stated in the utility's tariff. See 807 KAR 5:006, Section 5(2).

Please note that the Commission has previously rejected a water utility's attempt to make landlords and their tenants jointly liable for the payment of water service charges. See Hardin County Water District No. 1, Case No. 9383 (Ky.PSC Aug. 26, 1985). On the other hand, the Attorney General has found that such conditions are reasonable and lawful. See OAG 73-520 and OAG 82-493. A copy of the Commission's decision as well as the Attorney General's Opinions are enclosed for your reference.

This letter represents Commission Staff's interpretation of the law as applied to the facts presented. This opinion is advisory in nature and not binding on the Commission should the issues herein be formally presented for Commission resolution. Questions concerning this opinion should be directed to Gerald Wuetcher, Assistant General Counsel, at (502) 564-3940, Extension 259.

Sincerely,

Thomas M. Dorman
Executive Director

Enclosures

EDUCATION PAYS

COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL
FRANKFORT

ED W. HANCOCK
ATTORNEY GENERAL

July 6, 1973

OAG 73 520
(1)

Honorable David H. Thomason
Henderson County Attorney
Courthouse
Henderson, Kentucky 42420

Dear Mr. Thomason:

This is in reply to your letter of June 29, 1973 in which you, in connection with your duties as attorney for the Henderson County Water District, request an opinion concerning the following situation:

> "The Henderson County Water District has a regulation that before a meter will be connected in the name of a new subscriber, all prior bills charged against that particular residence must be paid. Questions have been raised by certain landlords concerning the refusal of the Henderson County Water District to hookup new tenants on the landlord's property where the previous tenant owed a bill which exceeded the $25.00 deposit held by the Water District.
>
> "I would appreciate your advising me whether, in your opinion, this regulation is constitutional."

KRS 74.080 provides that a Water District Commission may establish water rates and make reasonable regulations for the disposition and consumption of water. Furthermore, in Middletown Water District v. Tucker, Ky., 284 S.W.2d 666, 667 (1955), the Court of Appeals said:

73-520
(2)

> "A water district is authorized to make reasonable regulations for the disposition and consumption of water. KRS 74.080. The common law rule is very similar. 56 Am.Jur., Section 84, pages 986-987, Waterworks. Public service corporations, such as a water district, municipality, or water company, have the right to make, and enforce, reasonable rules and regulations for the conduct of their business. Tackett v. Prestonsburg Water Co., 238 Ky. 613, 38 S.W.2d 687; Combs v. Prestonsburg Water Co., 260 Ky. 169, 84 S.W.2d 15; City of Hazard v. Minge, 263 Ky. 535, 92 S.W.2d 768."

Of course, it is not the authority to make rules and regulations that causes difficulties but it is the application of those rules and regulations that presents the problems. The most recent case we have found which is similar to the situation you have set forth is Puckett v. City of Muldraugh, Ky., 403 S.W.2d 252 (1966), where the ordinance in controversy provided that rates and charges for furnishing of water shall be billed to the owner of the premises.

The Court concluded that a city operating a water system may treat the owner of property as the consumer and require him to pay the water bill. Thus, in the exercise of its statutory power concerning the operation and maintenance of a water system, the operator of the water system may enact a provision requiring the owner of real estate to pay for water services furnished to his premises. At pages 255-256 of its Opinion in the Puckett case, supra, the Court of Appeals said:

> ". . . The water service is furnished to the property owner. He primarily benefits from this service even though the ultimate consumer is one of his tenants. He is the consumer to the extent water is supplied to and used on his premises. If he requests this

73-520
(3)

> service or accepts it, he impliedly agrees to pay the service charge as provided in the ordinance. See Dunbar v. City of New York, 177 App.Div. 647, 164 N.Y.S. 519. There is nothing arbitrary or unreasonable about such a method of collecting water rents, it is not requiring the owner to pay the debt of another, and there is no taking of his property without due process of law. See Dunbar v, City of New York, 251 U.S. 516, 40 S.Ct. 250, 64 L.Ed. 384. As we have before pointed out, the principal case relied upon by appellant assumed that the obligation was that of another, assumed that the owner could not be liable, and assumed the regulation was arbitrary and unreasonable. None of these assumptions strikes us as justifiable."

A vigorous dissent was filed in the Puckett case, supra, with one of the allegations being that the majority opinion is unsupported by and contrary to the great weight of authority. A lengthy annotation at 19 A.L.R.3d 1215, concerning liability of premises, or their owner or occupant, for electricity, gas or water charges, irrespective of who is the user, would probably support the conclusion that the Kentucky decision is the minority view.

In comparing the Puckett case, supra, to the factual situation you have set forth, it should be emphasized that the ordinance in Puckett specifically provided that rates and charges for water service shall be billed to the owner of the premises. You have not set forth the specific regulation of the Henderson County Water District. Assuming, however, that the regulation provides that the property owner is liable directly for water service or that the property owner is liable when the tenant refuses to pay, it is our opinion that the owner of rented property may be required to pay,

13-520

pursuant to such regulation, for water furnished to his premises and used by a former tenant, before water service is furnished to a subsequent tenant.

Very truly yours,

ED W. HANCOCK
ATTORNEY GENERAL

By: Thomas R. Emerson
Assistant Attorney General

TRE/j

***5171** KY OAG 82-493
Office of the Attorney General
Commonwealth of Kentucky

OAG 82-493
September 13, 1982

Mr. Stephen R. Dunn
City Attorney
Box 368
East Main Street
Providence, Kentucky 42450

Dear Mr. Dunn:

This is in response to your letter of August 27, 1982 in which you present a number of questions concerning possible alternate methods whereby the city can protect itself from losses which have occurred when residential renters have left owing large utility bills. Utility is city owned and operated.

Your initial proposal is as follows:

"The Council received one proposal which would require any person renting property in the City of Providence, Kentucky, to which city utilities are provided, to post a utility deposit in an amount somewhat larger than utility deposits require of parties using City utilities provided to property owned by the users."

The above proposal raises a question of unjust discrimination. Referring to the case of Smith v. Kentucky Utilities Co., 233 Ky. 68, 24 S.W.2d 928 (1930), it was pointed out that whenever a utility company undertakes to furnish electrical current, for example, it cannot discriminate against persons similarly situated. However, under Section 34.97 of McQuillin Municipal Corporations, Vol. 12, the general rule is expressed to the effect that exacting from patrons or consumers payment of rental in advance, while giving credit to others, is not an unjust discrimination.

Referring to Puckett v. City of Muldraugh, 403 S.W.2d 252 (1966), we find a case involving in part the validity of an ordinance permitting a tenant to make application to pay for the utility services rendered to the facility he rents provided the applicant make a cash deposit in the sum of $100 plus $5 to turn the water on. The court held that the fee requirement was arbitrary and therefore invalid because it was excessive, but it did not hold that a reasonable cash deposit would be invalid, though it refused to name what would be reasonable. In view of the position of the court in the Puckett case, it would appear that the city could require a somewhat larger utility deposit from renters than from property owners where the renter is responsible for paying for this service.

Your next proposal is as follows:

"One proposal has suggested that the City hold the property owner who rents his property to a third party to stand liable for any utility services provided to that rental residence which remain unpaid and delinquent because the renters have failed to pay outstanding utility bills. This proposal was suggested in order that utility bills remaining unpaid be absorbed by the landlords who benefit from the services more than the general utility user in that the landlords obtain rent from the residence used by the renter."

The answer to your second proposal is also found in Puckett, supra, which holds in effect that the city can, pursuant to an appropriate ordinance, require that the owner of the property be held responsible for the renter's utility bills. The ordinance in controversy reads in part as follows:

"The rates and charges aforesaid shall be billed to the owner of the premises except that upon application by the tenant of any premises, who is not the owner thereof, filed with the Board of Trustees of said city, an

application to have water and sewer services rendered to said tenant, renter, or party occupying premises."

The court in sustaining the right of the city to make the property owner liable for the utility bills incurred by the person renting the premises acknowledges that this method of charging and collecting utility bills is not the one customarily adopted by public utilities. The case of Cassidy v. City of Bowling Green, Ky. 368 S.W.2d 318 (1963) was cited upholding a city ordinance requiring that the owners of the property be responsible for garbage disposal services furnished in conjunction with water and sewer services. In its conclusion, the court said in the Puckett case that:

"The water service is furnished to the property owner. He primarily benefits from this service even though the ultimate consumer is one of his tenants. He is the consumer to the extent water is supplied to and used on his premises. If he requests this service or accepts it, he impliedly agrees to pay the service charge as provided in the ordinance. See Dunbar v. City of New York, 177 App.Div. 647, 164 N.Y.S. 519. There is nothing arbitrary or unreasonable about such a method of collecting water rents, it is not requiring the owner to pay the debt of another, and there is no taking of his property without due process of law. See Dunbar v. City of New York, 251 U.S. 516, 40 S.Ct. 250, 64 L.Ed. 384."

***5172** We are enclosing a copy of OAG 73-520 dealing with this question as it relates to a county water district utility service.

Your third proposal is as follows:

"The third proposal would require proposed users of utility services who rent their residence or commercial building to submit a credit application detailing past credit history and either be credited or denied utility services on the basis of the credit report or in the alternative, be required to post a smaller or larger utility deposit based on the credit record or reports obtained."

The above proposal would also involve the question of unjust discrimination, but more particularly the refusal to render any utility service whatsoever because of a poor credit rating. This we believe would be held completely arbitrary under the theory that a public service facility must furnish services to any applicant within the prescribed territory and cannot unjustly discriminate against patrons simply because they may be a poor credit risk. Of course, if they fail to pay for the service, the utilities may be shut off as held in the case of Cassidy, supra. Also see, McQuillin Municipal Corporations, Vol. 12, Sections 34.89 and 34.90.

Concerning your fourth question relative to the matter of possible liability of disconnecting utility service because of delinquent accounts, we again refer you to the Cassidy case which clearly holding the city had the right to discontinue such service for failure to pay the required service charge as may be provided in the contract. This would appear to effectively preclude any liability on the part of the city for possible damages that may occur as a result of enforcing this service contract following reasonable notice. See Huff v. Elecric Plan Bd., Ky., 299 S.W.2d 817 (1957) and KRS 96.930 to 96.943.

Sincerely,

Steven L. Beshear

Attorney General

Walter C. Herdman

Asst. Deputy Attorney General

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

* * * * *

In the Matter of:

AN INVESTIGATION INTO THE RATES AND CHARGES OF HARDIN COUNTY WATER DISTRICT NO. 1	)))	CASE NO. 9383

O R D E R

On July 1, 1985, an on-site billing inspection was performed by Public Service Commission ("Commission") staff at the offices of Hardin County Water District No. 1 ("Hardin No. 1") in Radcliffe, Kentucky. The staff report of the billing inspection raised questions as to the rates being charged Hardin No. 1's two special contract customers, Hardin County Water District No. 2 ("Hardin No. 2") and the City of Vine Grove ("City"), as well as questions concerning certain operational practices and procedures employed by Hardin No. 1.

By Order of July 12, 1985, the Commission scheduled a hearing in the matter to be held at the offices of the Commission on July 25, 1985. The staff report was made a part of the Order, and copies were mailed to each Commissioner of Hardin No. 1 and Hardin No. 2 and to the City. The hearing was held as scheduled. Representatives from Hardin No. 2 appeared at the hearing; however, there were no representatives from the City present.

After hearing considerable testimony, the Commission determined that the hearing should be continued and an informal conference should be held. A decision as to further hearing was

held in abeyance pending the outcome of the informal conference. The conference was held on August 1, 1985. The Commission has determined, based on the results of the conference, that no further hearing is necessary in this matter.

On August 1, 1985, Hardin No. 1 filed revised tariff sheets and copies of its contracts with Hardin No. 2 and the City, requesting the Commission's approval of its proposed rates and contractual conditions of service. On August 15, 1985, Hardin No. 1 filed First Revised Sheet No. 1 to its tariff rules and regulations.

FINDINGS

Unauthorized Rates

After entry of the Order in its last rate case (Case No. 8173, Application of Hardin County Water District No. 1 for Approval of the Increased Water Rates to be Charged by the District, dated September 21, 1981), Hardin No. 1 increased its rates to Hardin No. 2 effective with the bill rendered on November 20, 1982, and again with the bill rendered on December 20, 1984. The rate to the City was increased effective with the bill rendered on February 24, 1983, and again with the bill rendered on January 15, 1985. The rates were determined by a formula contained in contractual agreements between Hardin No. 1 and each of these two wholesale customers. Hardin No. 2 and the City were notified of the rate increases by way of cost of production statements calculated at the end of August each year. The contracts and rates were placed into effect without approval of the Commission.

807 KAR 5:011 provides that changes in the provisions or rates in a tariff may be made by Order of the Commission upon formal application or by issuing and filing on at least 20 days' notice to the Commission and the public revised tariff sheets stating all provisions and schedules proposed to become effective. Section 13 of that regulation requires that all special contracts which set out rates, charges or conditions of service not included in the general tariff be filed with the Commission. Such contracts are subject to the regulations applicable to tariffs so far as practicable.

Hardin No. 1 failed to obtain approval of the Commission prior to placing changed rates into effect either by the filing of its special contracts, revised tariff sheets or by application as required by the regulation. However, by accident or otherwise, the rates charged were determined by a formula, agreed to by Hardin No. 1 and its customers, which reflects the cost of water production so that only the actual cost has been recovered and excess revenue has not been generated through these rates.

KRS 278.030 provides that the utility is entitled to collect fair, just and reasonable rates for its services. The Commission is of the opinion that the rates determined through application of the formula were reasonable in that they provided for cost recovery only. The Commission is of the further opinion that, under these circumstances, to require Hardin No. 1 to refund

moneys collected from the unauthorized portion of the rates would, in effect, create a situation whereby the customers of Hardin No. 1 would provide a subsidy for the customers of Hardin No. 2 and the City. Therefore, no refund should be required.

On August 1, 1985, Hardin No. 1 filed its revised tariff sheets and special contracts, along with cost justification, for Commission approval. In accordance with 807 KAR 5:011, Section 8, Hardin No. 1 should give notice to its contract customers and should file evidence of such notice with the Commission forthwith.

Operational Practices and Procedures

Hardin No. 1's current tariff contains a provision making landlords and tenants jointly responsible for water charges and requiring all customers who are not the property owner or have at least a 1-year lease to make a deposit.

Hardin No. 1's proposed tariff revision also contains a provision making landlords and tenants jointly liable for water charges. It is the opinion of the Commission that landlords and tenants cannot be held jointly liable for water charges. Rather, the person who applies for and receives the service is responsible for charges for that service. Likewise, a tenant with good credit cannot be denied service because of a prior delinquency incurred by a former tenant or the landlord at that address; nor can a landlord with good credit be denied service in the name of the landlord at their rental property because of a delinquent bill owed by a former tenant even when the new tenant is a delinquent customer of the utility.

807 KAR 5:006, Section 7, allows the utility to require a cash deposit or other guaranty to secure payment of bills not to exceed 2/12 of the customer's estimated annual bill when bills are rendered monthly, or the utility may establish an equal deposit amount for all customers of the same class of service. When the former method is chosen, the utility may develop standard criteria for determining whether or not a deposit should be required of a particular customer, and rental or ownership of property may be included in such criteria as one factor to be considered; however, the utility may not discriminate against a particular group of customers within a class, such as renters, by making this the only consideration in the deposit determination. In instances where the equal deposit option is chosen, the deposit amount may not be in excess of 2/12 of any customer's bill and must be required of all applicants for the same class of service.

Hardin No. 1's proposed tariff reflects that it will utilize the deposit option allowing an amount not to exceed 2/12 of the customer's estimated annual bill.

807 KAR 5:011, Section 12, requires that every utility provide a suitable table or desk in its office for the display of the statutes, Commission regulations, and the utility's tariffs setting out rates, rules, and regulations governing the utility's service, and a suitable placard in large print indicating that these are kept there for public inspection.

At the time of the billing inspection, only a small flyer showing the residential rate schedule was available to the public, and office personnel was unable to locate copies of the utility's

tariff, Commission regulations, or the statutes, although Mr. Marvin Logsdon, Manager, later testified that these were in the files. Current statutes, Commission regulations, and utility tariffs should immediately be made available to the public as required by 807 KAR 5:011, Section 12.

In its testimony, Hardin No. 1 indicated that it was not aware that special contracts required approval of the Commission or that it was not in compliance with other regulations and policies of the Commission. The Commission cannot accept a state of unawareness as an excuse for noncompliance. Every utility has an obligation to familiarize itself with and remain current with all statutory and regulatory requirements affecting the utility and its operations. Further, that obligation extends to the training of employees who are necessarily involved in carrying out the responsibilities imposed by the statutes and regulations and disseminating information to the public.

The Commission hereby notifies Hardin No. 1 that further violations of the statutes and regulations are unacceptable and that, should such violations reoccur, appropriate action will be taken.

SUMMARY

The Commission, having reviewed the evidence of record and being advised, is of the opinion and finds that:

1. Hardin No. 1 has increased the rates to its two special contract customers without proper authorization.

2. The formula by which the rates were calculated resulted in rates which provided only recovery of costs and did not

generate additional revenue. Therefore, no refund should be required.

3. The rates of 79.14 cents and 80 cents per 1,000 gallons are fair, just, and reasonable rates to be charged Hardin No. 2 and the City, respectively, and should be approved.

4. Hardin No. 1 should give notice to its contract customers as required by 807 KAR 5:011, Section 8, and should file evidence of such notice with the Commission.

5. Hardin No. 1 should file all special contracts or amendments thereto with the required 20 days' notice to the Commission and the public prior to placing into effect any changed rate, provision, or condition of service not included in its approved tariff. Further no rate or charge made by Hardin No. 1 should be changed without proper notice and approval of the Commission.

6. Hardin No. 1's tariff pertaining to joint landlord-tenant liability should be denied and the tariff should be revised to reflect the Commission's opinions discussed at length herein.

7. Hardin No. 1's proposed deposit policy should be approved, and Hardin No. 1 should develop standard criteria for determining deposit requirements consistent with this Order.

8. Hardin No. 1 should immediately provide for a suitable display, readily available to the public, of the statutes, regulations and tariffs governing its service as provided by 807 KAR 5:011, Section 12.

IT IS THEREFORE ORDERED that First Revised Tariff Sheet No. 7 showing the rates found reasonable herein be and it hereby is approved.

IT IS FURTHER ORDERED that all special contracts containing rates, provisions, or conditions of service not included in the approved tariff and proposed changes in any rate or charge shall be filed with the required notice to the Commission and the public prior to placing them into effect in accordance with applicable statutes and regulations.

IT IS FURTHER ORDERED that Hardin No. 1 shall provide notice of the rates approved herein to Hardin No. 2 and the City in accordance with 807 KAR 5:011, Section 8, forthwith, and shall file evidence of such notice with the Commission within 20 days of the date of this Order.

IT IS FURTHER ORDERED that the proposed tariff provision holding landlords and tenants jointly liable for water charges be and it hereby is denied and that Hardin No. 1 shall file revised tariff sheets in accordance with the findings of this Order.

IT IS FURTHER ORDERED that the proposed tariff provision relating to deposit policy be and it hereby is approved and that Hardin No. 1 shall develop standard criteria to be used in deposit determination in accordance with the findings herein.

IT IS FURTHER ORDERED that Hardin No. 1 shall immediately provide for a suitable display of the statutes, regulations, and tariffs in accordance with Finding No. 8 herein.

IT IS FURTHER ORDERED that Hardin No. 1 shall cease and desist from any and all practices contrary to the statutes,

regulations, approved tariffs and Orders of this Commission and, further, shall be responsible for maintaining up-to-date knowledge and application of all such statutes, regulations, tariffs, and Orders and for dissemination of pertinent information related thereto to its employees and customers as applicable.

IT IS FURTHER ORDERED that revised tariff sheets required to be filed herein shall be filed with the Commission within 20 days of the date of this Order.

Done at Frankfort, Kentucky, this 26th day of August, 1985.

PUBLIC SERVICE COMMISSION

Chairman

Vice Chairman

Commissioner

ATTEST:

Secretary