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Mark David Goss
Chairman

John W. Clay
Commissioner

May 23, 2007

Secret & Secret
210 West Main Street
Post Office Box 35
Scottsville, Kentucky 42164-0035

Re: Complaint of Caroline Hartmann

Dear Mr. Secret:

Commission Staff acknowledges receipt of your letters of April 11 and May 9, 2007, and June 5, 2006 regarding Ms. Caroline Hartmann's request for water service.

Commission Staff understands the facts as follows:

Allen County Water District ("ACWD") is a water district organized pursuant to KRS Chapter 74. It provides water to the unincorporated areas of Allen County, Kentucky.

Ms. Hartmann resides in the Swindle Carver Road Subdivision of Allen County, Kentucky. She has requested water service to her home and to 13 other homes that are located in the vicinity.

The Hartmann residence is located beyond the portion of the J.E. Carver Road that has been dedicated to and accepted by Allen County Fiscal Court for public use. The nearest water main is approximately 3300 linear feet away.

Ms. Hartmann has apparently obtained an easement for a water main from Mr. Jimmy Norris and M.M.B. Livestock along the undedicated portion of the J.E. Carver Road for Allen County Water District.

Allen County estimates the total cost of the requested extension is \$17,181.87.

Your correspondence presents the following issue: What are Allen County Water District's legal obligations to extend water service to Ms. Hartmann and other persons residing in the Swindle Carver Road Subdivision?

In Kentucky, every utility has the duty to "render adequate, efficient and reasonable service . . . within the scope or area of service provided for in its certificate of convenience and necessity." City of Bardstown v. Louisville Gas & Electric Co., 383 S.W.2d 918, 920 (Ky. 1964).¹ It can be compelled to make reasonable extensions of service. See KRS 278.280. For water districts, which are public utilities,² this duty to serve extends to all inhabitants within their territories.³

This duty to serve also requires that a public utility expand its services to meet increased customer demand. In Board of Fire Com'rs of Fire Dist. No. 3, Piscataway Tp. v. Elizabethtown Water Co., 142 A.2d 85, 87 (N.J. 1958) (citations omitted), the New Jersey Supreme Court noted that a utility's obligation extended to future demands:

The franchise thus created constituted a contract between the utility and the municipality, subject, of course, to the state regulatory power. The burden assumed thereby was a community service; it was not limited to the establishment of a system suitable only to the then current needs. Included also was the utility's duty to keep in view the probable growth of the township, both in population and in structural development, and to make gradual extensions of its mains to meet the reasonable demands that would inevitably result.

The Commission has promulgated Administrative Regulation 807 KAR 5:066, Section 11, which defines reasonable extensions of service. It provides, in relevant part:

(1) Normal extension. An extension of fifty (50) feet or less shall be made by a utility to its existing distribution main without charge for a prospective customer who shall apply for and contract to use service for one (1) year or more.

(2) Other extensions

(a) When an extension of the utility's main to serve an applicant or group of applicants amounts to more than fifty (50) feet per applicant, the utility may if not inconsistent with its filed tariff require the total cost of the excessive footage

¹ See also KRS 278.030(3); KRS 278.280

² KRS 278.015.

³ The Attorney General has opined that a "water district is under an obligation to serve all inhabitants . . . within its geographical area of service as fixed under KRS 74.010 and as defined by the certificate of convenience and necessity"

over fifty (50) feet per customer to be deposited with the utility by the applicant or the applicants, based on the average estimated cost per foot of the total extension.

(b) Each customer who paid for service under such extension shall be reimbursed under one (1) of the following plans, which shall be included in the utility's filed tariff:

1. Each year, for a refund period of not less than ten (10) years, the utility shall refund to the customer or customers who paid for the excessive footage the cost of fifty (50) feet of the extension in place for each additional customer connected during the year whose service line is directly connected to the extension installed and not to extensions or laterals therefrom. Total amount refunded shall not exceed the amount paid the utility. No refund shall be made after the refund period ends.

2. As an alternative to the refund plan outlined in subparagraph 1 of this paragraph, the utility may use the following plan: for a period of five (5) years after construction of the extension, each additional customer whose service line is directly connected to the extension installed, and not to extensions or laterals therefrom, shall be required to contribute to the cost of the extension based on a recomputation of both the utility's portion of the total cost and the amount contributed by the customers. The utility shall refund to those customers that have previously contributed to the cost of the extension that amount necessary to reduce their contribution to the currently calculated amount for each customer connected to the extension. All customers directly connected to the extension for a five (5) year period after it is placed in service shall contribute equally to the cost of construction of the extension. In addition, each customer shall pay the approved tap-on fee applicable at the time of his application for the meter connection. The tap-on fee shall not be considered part of the refundable cost of the extension and may be changed during the refund period. After the five (5) year refund period expires, any additional customer shall be connected to the extension for the amount of the approved tap-on fee only. After the five (5) year refund period expires, the utility shall be required to make refunds for an additional five (5) year period in accordance with subparagraph 1 of this paragraph.

Allen County Water District has adopted the alternative refund plan set forth in 807 KAR 5:066, Section 11(2)(b)(2). See Tariff of Allen County Water District, PSCKY No. 1, Original Sheet No. 46 (effective Sep. 12, 2001).

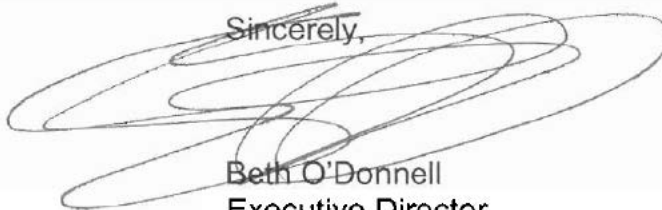
Under these rules, Allen County Water District may require the applicants for water service to the Swindle Carver Road Subdivision to deposit \$17,181.00 minus \$260.50⁴ per each applicant before commencing construction of the requested extension. For the ten years following the construction, the water district must refund to the applicants \$260.50 for each customer who subsequently connects to the water main extension. For the first five years following the water main's construction, the water district must also require any person who connects to the water main to pay a pro rata share of the water distribution main's cost.

In your correspondence, you place great reliance upon the Allen County Water District Board of Commissioners' adoption of a policy that prohibits the installation of a water main along a private road. As this policy is not set forth in Allen County Water District's rate schedules, it has no relevance. KRS 278.160(1) requires that any rule or condition of service that a public utility intends to enforce must be filed with the Commission. Administrative Regulation 807 KAR 5:006, Section 5(1), provides that "[n]o utility shall establish any special rule or requirement without first obtaining the approval of the commission on proper application." Commission Staff is unaware of any action on the Commission's part to approve this requirement.

In your correspondence, you express some uncertainty about the sufficiency of the easement that Ms. Hartmann has obtained. Please note that the water district may require that the water main extension be situated on a dedicated easement. If the applicants cannot provide such easements, Administrative Regulation 807 KAR 5:006, Section 5(3), requires the water district to obtain easements or right-of-ways on property that the applicants do not own. The cost of such easements, however, may be included in the total cost of the extension.

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, Deputy General Counsel, at (502) 564-3940, Extension 259.

Sincerely,

A handwritten signature in black ink, appearing to read "Beth O'Donnell", is written over a large, light-colored oval shape that serves as a background for the signature.

Beth O'Donnell
Executive Director

cc: Ms. Hartmann
Hon. Ed Whitfield

⁴ Total Cost of Extension ÷ Length of Extension = Cost per foot.
\$17,181 ÷ 3,300 feet = \$5.21 per foot.
50 feet x \$5.21 = \$260.50.