



Matthew G. Bevin  
Governor

Charles G. Snavely  
Secretary  
Energy and Environment Cabinet

Commonwealth of Kentucky  
**Public Service Commission**  
211 Sower Blvd.  
P.O. Box 615  
Frankfort, Kentucky 40602-0615  
Telephone: (502) 564-3940  
Fax: (502) 564-3460  
psc.ky.gov

Michael J. Schmitt  
Chairman

Robert Cicero  
Vice Chairman

Talina R. Mathews  
Commissioner

February 15, 2019

**PSC STAFF OPINION 2019-002**

Ms. Paula Snowdon  
Powell's Valley Water District  
31 Adams Ridge Road  
P.O. Box 550  
Clay City, Kentucky 40312

Re: Powell's Valley Water District  
Request for Staff Opinion  
911 Service Fee Ordinance

Dear Ms. Snowdon,

The Commission acknowledges receipt of your April 12, 2018 letter on behalf of Powell's Valley Water District (Powell's Valley District) requesting an advisory opinion to address issues related to an ordinance passed by Estill County Fiscal Court that imposes a 911 service fee (fee) of \$4.00 per month onto water bills. This opinion represents Commission Staff's interpretation of the law as applied to the facts presented. This opinion is advisory in nature and is not binding on the Commission should the issues herein be formally presented for Commission resolution.

Commission Staff understands the facts to be as follows: Estill County Fiscal Court passed a 911 Service Fee Ordinance (Ordinance) on December 11, 2017. Although there was some discussion of the Ordinance with the Estill County Treasurer, the Ordinance was not received by Powell's Valley District until April 12, 2018. The Ordinance requires water utilities serving Estill County to collect a service fee on each customer's monthly utility bill to fund 911 emergency telephone services in Estill County Kentucky. The Ordinance imposes the fee on active water service and directs the water utilities to collect the fee calculated at \$4.00 per active water customer. The water utilities will collect the fee and remit amounts collected to Estill County Fiscal Court. The fee took effect on December 11, 2017. As of the March 12, 2018 billing cycle, Powell's Valley has 123 customers in Estill County who are affected by the Ordinance.

You specifically request a legal opinion on the following questions:

1. Whether the \$4.00 monthly fee be added to the April billing cycle.
2. Whether any back fees can be added onto one billing cycle, if Estill County requires them to be collected.
3. Whether the 911 service fee should be paid first, with the remaining payment to be applied to the customer charges, even if this would possibly subject customers to the Powell's Valley's District delinquent policy.
4. Whether a customer refusing to pay the \$4.00 fee will be subject to the Powell's Valley's District delinquent policy concerning non-payment.
5. Whether Powell's Valley District is responsible for the amount of the fee collected or the amount billed.

With regard to your third, fourth and fifth question, whether Powell's Valley District is responsible for the amount of the fee collected or the amount billed, the answer depends upon how the Ordinance is interpreted. If the Ordinance is read to impose the fee directly on customers with the utility acting as the collection agent, then the utility would only be responsible for paying the amount collected. If the Ordinance intends to impose the fee upon the utility, who then passes the expense onto the customer, then Powell's Valley would be responsible for the amount billed.

The Ordinance states in the third and fourth paragraph on page one that the 911 service fee is a service fee on active water services, which would seem to indicate that the fee is being imposed directly on the utility. However, in the second paragraph of the first page of the Ordinance, the language appears to indicate that the fee is being imposed on the customers and the utility is acting merely as a collection agent. The Ordinance also states in the first paragraph on the second page that water service cannot be discontinued for non-payment of the fee. This is only a decision the Estill County Fiscal Court could make if it determined that the fee was to be collected from customers through the utility, rather than from the utility itself. Finally, in the same paragraph, the Ordinance states that the fees are not a portion of the rate charged for water distribution but are a fee levied on the customer. This indicates definitively that any other language notwithstanding, the intent is to charge the fee to the customer and use the utility as an agent of collection only.

Under these circumstances, payment should be applied first to customer charges to prevent the customer possibly being subject to a delinquency that would result in termination of services. Customers refusing to pay the \$4.00 fee would not be subject to the utility's delinquency policy and Powell's Valley District would only be responsible for the amount collected, not the amount billed.

Regarding your first and second question, as to when the \$4.00 fee can be added onto the billing cycle and whether any back fees can be added onto a bill as a one-time non-recurring charge, the answer again lies in seeing that the Ordinance appears to state that the fee is a fee imposed directly on customers and the utility's role is one of collection. Under those circumstances, Powell's Valley District must revise its tariff before it can pass through the government imposed fee pursuant to KRS 278.160(1) and 807 KAR 5:011, which requires regulated utilities to submit a complete tariff with the Commission setting forth, among other things, the utilities rates, charges, regulations and conditions of service over which the Commission has jurisdiction.

This letter represents Commission Staff's interpretation of the law as applied to the facts presented. This opinion is advisory in nature and is not binding on the Commission should the issues herein be formally presented for Commission resolution. Questions concerning this opinion should be directed to Jenny Sanders, Staff Attorney at (502) 782-2582 or [jenny.sanders@ky.gov](mailto:jenny.sanders@ky.gov).

Sincerely,



J.E.B. Pinney  
Acting General Counsel

JS/kg