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June 3, 2019

PSC STAFF OPINION 2019-004

Mr. Roy Sawyers
District Manager
Mountain Water District
P.O. Box 3157
Pikeville, KY 41502

Re: Mountain Water District
Request for Staff Opinion
Billing and Collecting Fees for Pike County Solid Waste Department

Dear Mr. Sawyers,

The Commission acknowledges receipt of your March 13, 2019 letter on behalf of Mountain Water District (Mountain District) requesting an advisory opinion to address issues related to billing and collecting garbage fees on behalf of Pike County Solid Waste Department. 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: Mountain District has been approached with a request that it bill and collect the Pike County Solid Waste Department's garbage fees on behalf of the county. Mountain District believes this could entail adding an additional line item to Mountain District's bills, assessing penalties when necessary, collection and disbursement of any applicable taxes and discontinuing water services for failure to pay the garbage fees.

You specifically request a legal opinion on the following questions:

1. What penalties would be allowed for non-payment of the garbage fees?
2. What requirements for tariff revisions or submissions would be required by the Commission?

Regarding your first question as to what penalties would be allowed for non-payment of garbage fees, there was very little precedent on-point. In 2003 the Commission issued an order regarding a contract between Gallatin County Water District (Gallatin District) and the City of Warsaw (Warsaw). Gallatin District and Warsaw entered into a contract whereby Gallatin agreed to collect sewer and garbage fees for Warsaw. The Agreement allowed Gallatin to charge an administrative fee of \$2.50 per customer. The Commission noted that no regulation or law prohibited Gallatin District and Warsaw from entering into such an agreement and contracting for such an administrative fee.¹

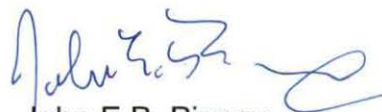
The Commission also issued a staff opinion on March 18, 1997, regarding an inquiry about whether Jackson County Water District could enter into a billing agreement with Jackson County Fiscal Court for garbage collection fees. The opinion stated, “[t]he PSC has no problem with the contractual arrangement you describe provided the PSC regulated utility files the contract for approval. At the time of filing the contract, the regulated utility should file a copy of its revised bill format to include with its tariff on file with the PSC.”²

Regarding your second question as to any tariff revisions that may be required, from your letter it appears as though the District will be acting simply as a collection agent for the Pike County Solid Waste Department. KRS 278.160(1) and 807 KAR 5:011 require a regulated utility to submit a complete tariff to the Commission setting forth, among other things, the utility’s rates, charges, regulations and conditions of service. Therefore, the District would be required to revise its tariff to provide for the pass through of the amount billed for garbage collection services.

Although not specifically included in your list of inquiries, you mention in your letter, “discontinuing water and/or sewer service for the failure to pay said fees.” If this reference is to failure to pay the line item for garbage collection on a bill issued by the Water District, you should be aware that 807 KAR 5:006 15(1)(f) permits termination of service only for nonpayment for the service that the utility provides. The District could not terminate water or sewer services for failure to pay the garbage collection fee.

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.

Sincerely,



John E.B. Pinney,
Acting General Counsel

JS/kg

¹ Case No. 2003-00276, *In the Matter of: The City of Warsaw’s Service Contract with the Gallatin County Water District*, (Ky. PSC December 10, 2003).

² *Staff Opinion for Jackson County Water District* (Ky. PSC March 18, 1997).