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March 4, 2020

PSC STAFF OPINION 2020-008

The Hon. William H. Brammell, Sr.
Brammell & Clubb, PSC
P.O. Box 629
18 Berry Street
New Castle, Kentucky 40050-0629

Re: Fire hydrant maintenance

Dear Mr. Brammell,

Commission Staff acknowledges receipt of your letter received on September 19, 2019, on behalf of the city of Ghent (Ghent), in which you request an opinion as to whether the responsibility for the establishment and maintenance of fire hydrants within the city limits falls to Carroll County Water District #1 (Carroll District #1) or to Ghent. 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 understand the facts to be as follows: A number of fire hydrants in Ghent appear to have been originally placed there at or about the conception of Carroll District #1. As a result of damage and deterioration, at least one of these fire hydrants has been totally destroyed and another has been damaged. Carroll District #1 has indicated to Ghent that it does not have a responsibility to continue to maintain these fire hydrants, which Carroll District #1 refers to as flush hydrants.

Responsibility for maintenance of hydrants rests on the utility that owns those hydrants. Pursuant to 807 KAR 5:066, Section 26(6)(b), utilities are required to annually inspect hydrants. 807 KAR 5:066, Section 26(6)(b) states:

The utility shall annually inspect all structures pertaining to purification for their safety, physical and structural integrity, and for leaks, including sedimentation basins, filters, and clear wells; chemical feed equipment; pumping equipment and water storage facilities, including electric power wiring and controls; and hydrants, mains, meters, meter settings and valves.

The Commission held in Case No. 2013-00027¹ that “[w]hile a utility may impose responsibilities on its customers, it cannot delegate its obligation to properly maintain and operate its facilities.² It is ultimately responsible for the operation of its facilities.”³

Those sections of Carroll District #1’s tariff specifically dealing with hydrants were issued on August 18, 2003, and became effective on August 18, 2003. Under Section X, subsection 1 of Carroll District #1’s filed tariff, “[a]ll mains, *fire hydrants*, valves, crossings, and other appurtenances are and shall remain the property of the utility, whether installed by the utility or the customer.” (emphasis added). Section AB of Carroll District #1’s filed tariff cites to 807 KAR 5:066, Section 10(2)(b). 807 KAR 5:066, Section 10(2)(b) states, in relevant part:

The location, installation, and the responsibility for maintenance of fire hydrants, public and private fire protection facilities, connecting mains, and their ownership may be subject to negotiation between the utility and the applicant/customer. Fire hydrants and public and private fire protection facilities shall be installed as required by the utility and if owned by the utility shall be subject to any conditions the Public Service Commission may impose, based upon the compensation received for this service.

While 807 KAR 5:066, Section 10(2)(b)(2) states that the “ownership” of fire hydrants “may be subject to negotiation,” the Commission in Case No. 2013-00027 held that a utility may “require local fire departments to inspect and to perform certain maintenance on the fire hydrants in return for the use of 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.”⁴ No such written agreement between Carroll District #1 and a fire department located within the city of Ghent has been filed with the Commission, nor do the facts as provided to Commission Staff make it clear that such an agreement exists.

While it is not clear from the facts provided to Commission Staff that Carroll District #1 owns the hydrants in disrepair, if Carroll District #1 does own the hydrants it is responsible for their inspection and maintenance regardless of whether they are used for fire protection or as “flush hydrants.” While Carroll District #1 may negotiate written agreements whereby it requires an applicant/customer to inspect and perform certain

¹ Case No. 2013-00027, *In the Matter of: Tariff Filing of North Shelby Water Company* (Ky. PSC Sept. 20, 2013).

² *Id.* at 3. 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.”).

³ *Id.*

⁴ *Id.*

maintenance on the hydrants in exchange for the applicant/customer's use of the hydrants, Carroll District #1 cannot relinquish all its responsibility as to inspection and maintenance of the hydrants.

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 Lauren Coltrane at (502) 782-2043.

Sincerely,



J.E.B. Pinney
Acting General Counsel

LC/kg