



Andy Beshear
Governor

Rebecca W. Goodman
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

Kent A. Chandler
Chairman

Amy D. Cabbage
Vice Chairman

Marianne Butler
Commissioner

February 2, 2022

PSC STAFF OPINION 2022-002

Tim Barr
North Logan Water District
3118 Lewisburg Road
Russellville, Kentucky 42276

Re: Water Line expansion for Cates By-Pass Road and Ky Hwy 3519

Dear Mr. Barber,

Commission Staff acknowledges receipt of your letter dated January 14, 2022 on behalf of North Logan Water District (North Logan District), in which you request an opinion as to what a prospective customer may be billed for a water extension project. According to the letter, Robert Harper approached North Logan District in September 2021 about service to his new home under construction. The letter states that Mr. Harper subdivided his land on Cates Bypass Road, keeping one tract while intending to sell off the other six tracts. The plat was approved by Logan County without any mention of what utility would provide water to the tracts or how water service was to be achieved. The utility has incurred expenses for the project of at least \$14,500.00 as of the date of the letter.

This opinion represents Commission Staff's interpretation of the law as applied to the facts presented. This letter is advisory in nature, and not binding on the Commission should the issues herein be formally presented for Commission resolution. Before addressing those questions, Commission Staff must first address whether North Logan District has the authority to charge a fee that is not set forth in its filed rate schedule.

KRS 278.160(2) provides:

No utility shall charge, demand, collect, or receive from any person a greater or less compensation for any service rendered or to be rendered than that prescribed in its filed schedules, and no person shall receive any service from any

utility for a compensation greater or less than that prescribed in such schedules.

A utility must charge only its tariffed rates, no more or no less.

The primary effect of [KRS 278.160](#) is to bestow upon a utility's filed rate schedule the status of law. "The rate when published becomes established by law. It can be varied only by law, and not by act of the parties." [New York N.H. & H.R. Co. v. York and Whitney, 102 NE 366, 368 \(Mass. 1913\)](#). While a utility may file or publish new rate schedules to change its rates pursuant to [KRS 278.180](#), it lacks the legal authority to deviate from its filed rate schedule. It "can claim no rate as a legal right that is other than the filed rate." [Montana-Dakota Util. Co. v. Northwestern Pub. Serv. Co., 341 U.S. 246, 251 \(1951\)](#). Case No. 2002-00045 *In re the Matter of Randall C. Stivers Complaint v. Henry County Water District #2* (Ky. PSC June 14, 2002), Order. While a utility may file or publish new rate schedules to change its rates pursuant to KRS 278.180, it lacks the legal authority to deviate from its filed rate schedule. To determine what North Logan District may charge a customer, an examination of the filed tariff is required. North Logan District's present rate schedule prescribes a charge of \$876.43 for a meter connection. There is also a \$25.00 Connection/Turn-on Fee. Prospective customers also must make a \$110.00 deposit. While the water district may enter into special contracts to provide for rates other than those in its filed rate schedules, the contracts must be filed with the Commission. Commission records do not indicate any special contracts regarding the amount of a meter connection fee that North Logan District will assess.

North Logan District's filed tariff complies with 807 KAR 5:066 Section 11. According to the filed tariff, Section V (1), "the utility will furnish and install at its own expense for the purpose of connecting its distribution system to the customer's premises that portion of the service connection from its main to and including the meter and meter box. The utility will recoup this expense from the customer in accordance with KRS 278.0152."

According to the filed tariff, Section V (5), "The applicant/customer must furnish and lay the necessary pipe to make the connection from the point of service to the point of usage and be financially responsible for all costs associated with the installation and maintenance of his/her property beginning at the outlet side of the water meter. The service line must be kept in good repair and in accordance with utility and Public Service Commission rules and regulations."

Commission Staff is of the opinion that, in the absence of a tariff provision that permits a higher meter connection charge or otherwise makes special provision for those persons who made a deposit, North Logan District must charge the meter connection charge set forth in its filed rate schedule. It cannot assess a higher rate unless it revises its filed schedule to specify that amount. All costs are distributed as set out in Section V (1) and V (5).

However, according to the plat approved for the subdivision, there will be seven (7) lots. Beginning in Section AB, the tariff outlines specific procedures for subdivision water line extensions. Pursuant to AB (3) "An applicant desiring an extension to proposed real estate subdivision may be required to pay the entire cost of the extension. Each year, for a refund period of ten (10) years, the utility will refund to the applicant who paid for the

extension a sum equal to the cost of fifty (50) feet of the extension installed for each new customer connected during the year whose service line is directly connected to the extension installed by the developer, and not to extensions or laterals there from. Total amount refunded will not exceed the amount paid to the utility. No refund will be made after the refund period ends.” Section AC reiterates Section AB as well as sets out that the utility may negotiate and contract privately with a developer, with the approval of the Public Service Commission.

Using both the statutes and the utility’s tariff, Staff is of the opinion the utility has two options: (1) Mr. Harper may be required to pay the cost of the extension for the subdivision subject to a refund period of 10 years as set out in the tariff or (2) The utility and Mr. Harper may negotiate and contract privately with Mr. Harper to accomplish the project, subject to Commission approval.

This letter represents Commission Staffs’ 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 Moriah Tussey, at (502) 782-0818.

Sincerely,



Nancy J. Vinsel
General Counsel