

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

RICHARD L. MCCAULEY)	
)	
COMPLAINANT)	
)	
v.)	CASE NO. 90-107
)	
KENTUCKY TURNPIKE WATER DISTRICT)	
)	
DEFENDANT)	

O R D E R

On April 30, 1990, Richard L. McCauley ("McCauley") filed a complaint against the Kentucky Turnpike Water District ("Kentucky Turnpike") and Gerald Burke, the chairman of its board of directors, alleging that Kentucky Turnpike and Gerald Burke have refused McCauley water service to his property, and requesting that Turnpike be compelled to provide such service. By Order entered May 16, 1990, the complaint against Gerald Burke was dismissed upon a finding by the Commission that it had no jurisdiction over him and that he was not a proper party to the action. On June 8, 1990, Kentucky Turnpike filed its answer acknowledging its refusal to provide service, but stating affirmatively that it was unable to supply the McCauley property with water at adequate pressure and lacked the financial resources to obtain the equipment needed to supply service to McCauley.

FINDINGS OF FACT

Kentucky Turnpike is a water district which owns facilities used to distribute and furnish water in northern Bullitt County to the public for compensation. The facilities are operated by the Louisville Water Company ("Louisville Water") under a lease and contract with Kentucky Turnpike.

McCauley resides on a 2-acre tract in northern Bullitt County in the area served by Kentucky Turnpike. His property is located on the east side of Sandy Hill Road, just south of the Jefferson County line.

In September 1989, McCauley applied to Louisville Water, as the agent of Kentucky Turnpike, for service to his property on the Sandy Hill Road. Sandy Hill Road is a private road that runs north from the Lakeview Road. According to a plat of three parcels adjoining the road, including the parcel owned by McCauley, Sandy Hill Road is a 30 foot right-of-way which terminates at a tract owned by Thomas McCauley. The Thomas McCauley tract is adjacent to and just north of McCauley's tract. The plat was approved by the Bullitt Planning Commission on April 4, 1979 and was recorded in the Bullitt County Court Clerk's Office on April 14, 1979. A 3-inch water line, 392 feet in length, runs along the east side of the Sandy Hill Road from an 8-inch main in the Lakeview Road. It terminates at two meters that serve two customers. These two customers are the only customers presently receiving service through the 3-inch line.

Before applying for service, McCauley was advised by Kentucky Turnpike that it would be necessary for him to acquire additional

property before the 3-inch line could be extended to provide him service. Accordingly, McCauley purchased a 90 foot long strip of land immediately south of and adjacent to the 2-acre tract upon which he resides. The strip of land is 15 feet wide and comprises the east half of the Sandy Hill Road for the entire length of the strip. The termination point of the 3-inch line along Sandy Hill Road is approximately 45 feet south of the southernmost point of the 90 x 15 foot strip. In acquiring that strip, McCauley understood that Louisville Water would extend the 3-inch line the remaining distance of 45 feet to provide him with service.

After McCauley applied for service to his property, Louisville Water found that the pressure at the two meters on Sandy Hill Road was less than 30 pounds per square inch ("PSI"), the minimum pressure required by the Commission's regulations. As a result, Louisville Water advised McCauley that before he could receive service, he would have to install a pump station in the 3-inch line to raise the pressure to the required level. The cost of installing a pump station, which would consist of either a combination pump and bladder or a combination pump and tank, installed below ground, would be approximately \$18,000.

The relationship between Kentucky Turnpike and Louisville Water is governed by a lease agreement executed between them on November 15, 1968 and later modified by a settlement agreement executed in 1975. The lease agreement required Kentucky Turnpike to construct a water distribution system within its boundaries with funds procured through a bond issue and to lease the facilities to Louisville Water for term of 40 years from the date

of completion and acceptance by Louisville Water of the system. Upon payment of the original bond issue, and all bonds issued subsequent to the original issue, the agreement required Kentucky Turnpike to transfer the entire system to Louisville Water and then dissolve. During the term of the lease, Louisville Water was given the exclusive right to serve all customers within the district and made responsible for the maintenance and operation of the system.

To ensure that Kentucky Turnpike is able to meet the financial obligations associated with the bond issues, the lease agreement requires Kentucky Turnpike to establish several funds. They are a bond reserve fund, a bond service fund, a depreciation and improvement fund, and an operating fund. These funds are funded by a surcharge which is contained in Kentucky Turnpike's published tariff. The surcharge is a flat rate that ranges from \$6 per month to \$884 per month, depending upon the size of the customer's meter. Customers also pay monthly charges that are based upon their usage. The monthly charges are paid to Louisville Water as compensation for operating the system.

In addition to the surcharge and the monthly charges, Kentucky Turnpike customers also pay a connection fee. Connection fees are paid into the depreciation and improvement fund which is used for making extensions and improvements to the system.

Under the lease agreement, Kentucky Turnpike may make extensions to the system subject to the approval of Louisville Water. Louisville Water can withhold its approval if the hydraulic capacity of the system is not adequate to serve

customers and to provide fire protection to customers on the extensions. If Louisville Water desires to extend the system, it can also do so, but only after giving written notice of its intent to Kentucky Turnpike. Kentucky Turnpike may, at its option, then elect to construct the extension proposed by Louisville Water.

In 1975, Louisville Water, Kentucky Turnpike, and the Bullitt Water Company entered into a settlement agreement to resolve several disputes that had arisen among them. The settlement agreement also modified some of the provisions of the original lease agreement and clarified others. Of particular relevance in this proceeding is a provision of the settlement agreement reaffirming that all main extensions to the system shall be made by Kentucky Turnpike at its discretion, subject only to veto by Louisville Water in the event of hydraulic incapacity to adequately serve customers and provide fire protection through the proposed extension. The settlement agreement makes no provision for construction of extensions by Louisville Water.

The settlement agreement also gave Kentucky Turnpike the option to purchase the leased facilities from Louisville Water, presumably after the bonded indebtedness has been paid and the property has been transferred to Louisville Water. The price for such a purchase is fixed at an amount equal to Louisville Water's capital investment in the facilities, less depreciation.

CONCLUSIONS OF LAW

Kentucky Turnpike is a public utility as defined by KRS 278.010(3)(d). As a public utility, Kentucky Turnpike, pursuant to the authority of KRS 278.015, is under the jurisdiction of this

Commission and is required by KRS 278.030 to render adequate, efficient and reasonable service to all customers within the scope of its area of service. As a utility subject to the jurisdiction of this Commission, Kentucky Turnpike can be compelled by KRS 278.280(3) to make any reasonable extension of its service. City of Bardstown v. Louisville Gas and Electric Company, Ky., 383 S.W.2d 918 (1964). A reasonable extension is one that does not place an unreasonable burden upon a utility. 64 Am.Jur.2d Public Utilities §43 and 44. Therefore, the issue presented by this complaint is whether extending service to McCauley places an unreasonable burden upon Kentucky Turnpike. Under the circumstances of this case, the Commission concludes that it would not.

The existing water line on the Sandy Hill Road is not in compliance with Commission regulations. 807 KAR 5:066, Section 6, requires water utilities to maintain a minimum pressure of 30 pounds per square inch pressure at each customer's service pipe. When the pressure was measured at each of the two customers presently on the Sandy Hill Road, it was less than the minimum pressure required by this regulation. Therefore, even without an extension of service to the McCauley property, Kentucky Turnpike must upgrade the line to bring it into compliance with the Commission's regulations. Kentucky Turnpike cannot avoid this duty by relying upon its agreement with Louisville Water or by asserting that it does not have sufficient funds to make necessary improvements. Its obligations under the law to customers of its service override its contractual obligations to Louisville Water.

If it were otherwise, a utility would be able to remove itself from this Commission's jurisdiction by contract.

In order to comply with Commission regulations, Kentucky Turnpike will be required to make improvements that will increase its pressure to its existing customers along the Sandy Hill Road. Kentucky Turnpike can as easily design and install improvements that will serve everyone's needs along the Sandy Hill Road as it can design and install improvements that will serve the needs of the two existing customers. Kentucky Turnpike should, therefore, be required, within 90 days, to bring the Sandy Hill Road line into compliance with the Commission regulations and make such improvements to the line that are necessary to extend service to McCauley and to other property owners along the Sandy Hill Road that it might reasonably be expected to serve.

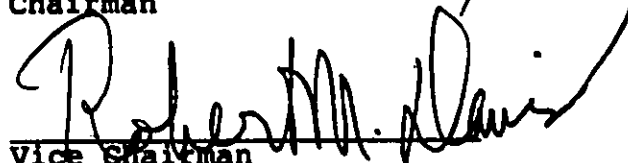
DECISION

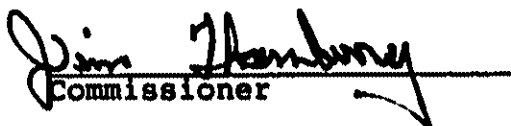
Based upon the foregoing Findings of Fact and Conclusions of Law and upon the entire record, it is HEREBY ORDERED that Kentucky Turnpike shall, within 90 days of the date of this Order, bring the Sandy Hill Road into compliance with Commission regulations and make such improvements to the line that are necessary to extend service to McCauley and to other property owners along the Sandy Hill Road that it might reasonably be expected to serve.

Done at Frankfort, Kentucky, this 26th day of December, 1990.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director