

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

NORTH MARSHALL WATER DISTRICT)
)
)
)

CASE NO. 90-252

INVESTIGATION INTO THE EXTENSION)
OF DIRECT SERVICE TO THE CUSTOMERS)
OF RONALD HINES)

O R D E R

On September 17, 1990, the Commission entered an Order directing North Marshall Water District ("North Marshall") to show cause why it should not be ordered to extend service to customers of a water distribution line owned and operated by Ron Hines in Marshall County. The Order arose out of an inquiry by the Commission regarding the Ron Hines water distribution line and upon a complaint by Ron Hines to compel North Marshall to extend service to the customers of his line.

FINDINGS OF FACT

North Marshall is a water district organized and operating in Marshall County. North Marshall owns, controls, and operates facilities used in diverting, developing, pumping, impounding, distributing and furnishing water to or for members of the public in Marshall County for compensation. It is a utility as defined by KRS 278.010(3)(d) subject to the Commission's jurisdiction. Consistent with KRS 278.160, North Marshall has on file with the Commission its tariff showing all rates and conditions for service.

Ron Hines also owns, controls or operates facilities used in distributing and furnishing water to or for members of the public for compensation. The major part of his facilities are located in Marshall County within North Marshall's service area, with a small portion extending into McCracken County. Ron Hines does not have a Certificate for Public Convenience and Necessity, and does not have a tariff on file with this Commission as required by law.

On April 5, 1979, prior to the construction of his distribution line, Ron Hines appeared before a meeting of the commissioners of North Marshall to request service to a residence he was constructing on the Oakland Church Road. The Oakland Church Road is located in the western section of Marshall County near the Marshall/McCracken County line, and runs from U.S. 68 in Marshall County slightly more than one mile to its termination point in McCracken County. The Marshall County portion of the road is within North Marshall's service area, and the residential property for which Ron Hines sought service is also located in Marshall County.

To furnish service to Ron Hines, North Marshall had two options: (1) it could either construct an extension of its lines through an adjoining subdivision; or (2) it could construct a new line along the Oakland Church Road from U.S. 68. Although the line through the subdivision would have been shorter, because of problems involving a sewage treatment plant in the subdivision, Ron Hines preferred that the line be constructed from U.S. 68. North Marshall offered to construct a four-inch line along the Oakland Church Road if Ron Hines would share the cost of

construction in accordance with the Commission's regulations.¹ Ron Hines, however, was not willing to pay for a four-inch line and instead constructed a one-inch and two-inch line along the Oakland Church Road from a North Marshall water main on U.S. 68. At their point of intersection, a two-inch meter connects the Ron Hines line to the North Marshall water main. The meter measures the volume of water delivered by North Marshall to the Ron Hines distribution system.

Apparently, Ron Hines originally intended to run a two-inch line from the North Marshall main to his residence to serve only his water needs. However, while he was getting easements along the Oakland Church Road for the construction of the line, he discovered that other residents along the road were also interested in obtaining water service. Those persons who were sufficiently interested each contributed \$567 toward the construction of the water line, and when it was completed, they were allowed to tap on to the line as customers. There are currently 11 customers served by Ron Hines: eight of whom reside in Marshall County within the service area of North Marshall, and three of whom reside in McCracken County, outside of North Marshall's service area.

Ron Hines purchases approximately 68,500 gallons of water from North Marshall each month. North Marshall bills Ron Hines for the water delivered to the water line, and Ron Hines, in turn,

¹ 807 KAR 5:066, Section 12(a), requires water utilities to bear the entire cost of construction of an extension up to 50 feet in length and the applicant for service to bear the cost of that portion of any construction that exceeds 50 feet.

bills each customer receiving water along the Oakland Church Road. Each customer is individually metered and is billed by Ron Hines in proportion to the volume used. North Marshall does not provide any service beyond the two-inch meter on U.S. 68, and Ron Hines reads each customer's water meter himself.

The Ron Hines distribution system consists of the two-inch master meter located on U.S. 68 and approximately one mile of two-inch PVC pipe and 300 feet of one-inch PVC pipe. There is no blow-off valve at the dead-end of the water line. The same type of water meters used by North Marshall are used to connect each customer's service line to the water distribution line and measure the volume of water delivered to each customer.

The Ron Hines distribution line is in good condition and appears to have no unusual maintenance problems. Tests performed on the line in September 1990 at the meter box serving Ron Hines' residence indicate that the maximum water pressure provided through the line was approximately 110 PSIG and the minimum pressure was approximately 87 PSIG. The total revenue produced by the line is approximately \$690 annually and this revenue should exceed the cost of operating the line.

Ron Hines would like North Marshall to extend service to him and to his customers by taking over the ownership and operation of the Oakland Church Road line which he would transfer to North Marshall at no cost. While North Marshall is willing to extend service to Ron Hines and his customers, it does not want to do so with the Oakland Church Road line. Its major objection is the size of the pipe that makes up the line. Section XII(C) of its

tariff reserves to North Marshall the right to determine the size and type of pipe used in making extensions to its system, and authorizes the commissioners of the district to set the minimum sizes of such pipe. In exercising this authority, it has been North Marshall's policy that all extensions be constructed of pipe that is no less than four inches in size. The policy was adopted to allow for future extensions of the line and to assist persons on the line in obtaining lower fire insurance rates.

North Marshall is additionally concerned that if it assumes operation of the line and is required to extend service to all residents of the area, in addition to those presently being served, the existing line may not be adequate, and North Marshall will be required to replace the entire line at its own expense. At least 10 additional residents now living in the area could be served by extending the Oakland Church Road line.

North Marshall has made only one exception to its four-inch size policy. In that case, North Marshall ran a line 800 to 900 feet to serve two homes that were able to maintain 70 PSIG at the tap. North Marshall does not contemplate serving additional customers on that line. Another concern of North Marshall is that Ron Hines may not have all the easements necessary for the line. North Marshall does not want to get into a dispute with property owners along the Oakland Church Road concerning the right to operate the water distribution line.

The Oakland Church Road line is not the only water distribution system receiving water from North Marshall through a single meter. There is a small subdivision behind a church which

also receives water from North Marshall through a single meter. Although North Marshall does not have any provision in its tariff that prohibits the resale of water, Section VI(B) of its tariff requires each individual residence in North Marshall's system to have its own meter and does not allow service to more than one residence from a meter. Therefore, by providing water to several residences through one meter, the service provided to Ron Hines violates North Marshall's tariff.

CONCLUSIONS

The only issues before the Commission in this proceeding, as limited by the Commission's Order of September 17, 1990, are whether North Marshall has the ability to extend service to the customers on Ron Hines' water line and, if so, whether North Marshall should be compelled to extend service to those customers. Both North Marshall and Ron Hines are public utilities as defined in KRS 278.010(3)(d) and as such they are subject to the jurisdiction of this Commission.

The first issue raised by the Order, that of whether North Marshall has the ability to extend service to the customers on the Ron Hines water line, is not in dispute. North Marshall is clearly capable of extending service to the customers now receiving water from Ron Hines. Therefore, the only issue to be resolved by the Commission is whether North Marshall should be compelled to extend service to Ron Hines' customers by incorporating the Ron Hines water distribution system into its system.

The authority of the Commission to compel a utility to extend service is found in KRS 278.280(3). That section of the statute permits the Commission to compel a utility within its jurisdiction to make any reasonable extension. One criterion for determining whether an extension is reasonable is whether it will place an unreasonable burden upon the utility. 64 Am.Jur.2d Public Utilities §43. After considering all the circumstances, the Commission concludes that compelling North Marshall to assume operation of the Ron Hines distribution system would not impose an unreasonable burden upon North Marshall, and North Marshall should be required to assume ownership and operation of the line.

North Marshall maintains that compelling it to assume operation of the system, which was not constructed in conformity with its established policy and does not conform to specifications required of others in its system, would impose an unreasonable burden. North Marshall contends that requiring it to assume operation of the distribution line would have the effect of allowing Ron Hines to circumvent a policy complied with by all other customers of the utility. This argument lacks validity because the size policy followed by North Marshall was not properly adopted as a condition for service in its filed tariff.

KRS 278.160(1) requires each utility to file "schedules showing all rates and conditions for service established by it and collected or enforced." Although North Marshall has, in accordance with this section, included in its filed tariff a provision reserving the right to set minimum size standards, the

tariff does not specifically set forth a specific size standard for extensions to the system.

A related issue raised in this proceeding is whether North Marshall should be required to assume operation of a system not built in accordance with the Commission's regulations. 807 KAR 5:066, Section 11(2)(a), provides that the maximum length of any two-inch size pipe in a non-circulating system shall be 250 feet and the maximum of any one-inch size pipe in a non-circulating system shall be 100 feet. In this case, the two-inch section of the Ron Hines line is approximately one mile in length and the one-inch section is approximately 300 feet in length. Thus, both sections exceed the maximum length allowed by regulation.

Although both sections of the pipe exceed the maximum allowable lengths, the regulations states:

In the case of rural water lines, where hydraulic studies indicate they can comply with Section 6(1) and can provide adequate flow of water to serve the peak requirements of customers, the above maximum extension lengths may be extended with the approval of the commission.

The evidence does establish that the pressure in the line falls within the allowable standard of pressure in 807 KAR 5:066, Section 6(1). Therefore, North Marshall, in assuming operation of the Ron Hines distribution line, should be permitted to deviate from the size requirements of the Commission's regulations in the operation of the Ron Hines line.

Three of the current customers live in McCracken County, an adjoining county outside of North Marshall's established territorial limits. KRS 74.115 establishes a procedure for a

water district to petition the County Judge/Executive of an adjoining county for addition to its territory. The Commission finds that it is reasonable to require North Marshall to follow this procedure and to petition McCracken County Judge/Executive for authority to extend its territory into McCracken County for the purpose of serving the three existing customers residing in McCracken County. The Commission is sending a copy of this Order to the McCracken County Judge/Executive for the purpose of encouraging the approval of North Marshall's petition.

The final issue raised by this proceeding concerns the possible lack of easements to install, operate, and maintain the Ron Hines distribution line. North Marshall is concerned that Ron Hines did not obtain all the easements necessary to install, operate and maintain the line. KRS 74.090 authorizes water districts to condemn property to acquire needed rights-of-way or land. Therefore, to the extent Ron Hines has failed to acquire the necessary rights-of-way to construct and maintain his water line, upon assumption of ownership and operation of the line, North Marshall should do so and, if necessary, exercise its condemnation authority.

NOTICE

The Commission's September 17, 1990 Order directing North Marshall to appear and show cause in this proceeding required that notice of the hearing be given to all persons presently served by the Ron Hines distribution system. The notice requirement is consistent with KRS 278.260 which requires the Commission to give not less than 20 days notice to a complainant of all hearings

concerning "any regulation, measurement, practice or act affecting or relating to the service of the utility."

At the hearing in this case, only North Marshall appeared and the record does not indicate whether anyone besides North Marshall was given notice. As a consequence, Ron Hines and his customers may not have been aware that a hearing was being conducted and it should be assumed that notice was not given to them. Therefore, copies of this Order should be served upon Ron Hines and his customers and they should be allowed 20 days to file objections.

This Commission being otherwise sufficiently advised,

IT IS THEREFORE ORDERED that:

1. This Order shall be served upon Ron Hines and McCracken County Judge/Executive.

2. Ron Hines shall, within 10 days of the date of this Order, deliver a copy of this Order by certified mail, return receipt requested, to each of his customers, and upon doing so, shall certify to the Commission in writing that he has complied with this provision of the Order. Ron Hines and each of his customers shall be permitted to file any objections or exceptions they may have to the Order. If no objections or exceptions to the Order are filed within 20 days from the date the Order is entered, the Order shall become a binding and final Order of this Commission.

3. North Marshall shall, within 30 days of the date of this Order, petition the McCracken County Fiscal Court for authority to serve those customers of the Ron Hines distribution line residing in McCracken County.

4. Unless exceptions or objections are filed by Ron Hines or any of his customers to the provisions of this Order:

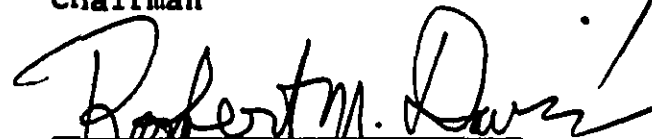
(a) Ron Hines shall, within 30 days of the date of this Order, execute and deliver to North Marshall a deed of conveyance, bill of sale and all other documents necessary to convey to North Marshall all of Ron Hines' right, title, ownership, and easements in the water distribution line that he operates on the Oakland Church Road.

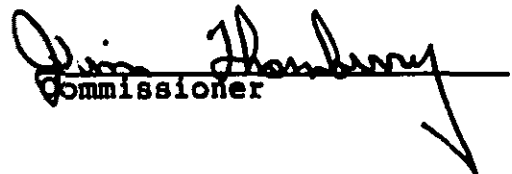
(b) North Marshall shall, upon receipt of the documents specified in subparagraph (a) herein above, assume the operation and control of the Ron Hines distribution system in the same manner and at the same rates as North Marshall now provides service to its customers.

Done at Frankfort, Kentucky, this 31st day of January, 1991.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director