

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN INVESTIGATION INTO THE COLLECTION AND)
BILLING PRACTICES OF PRIVATELY-OWNED) ADMINISTRATIVE
SEWER UTILITIES) CASE NO. 347

O R D E R

Thirty sewer utilities, approximately one-third of all jurisdictional sewer utilities, have petitioned for an amendment of Commission regulations to permit agreements between water and sewer utilities for the collection of unpaid sewer service bills.¹ Their petition raises the following issue: Should sewer utilities be permitted to order the discontinuance of water service to obtain the payment of sewer service bills?

Discontinuance of utility service has long been recognized as the most effective means of bill collection.² Sewer service,

¹ B & H, Incorporated petitioned the Commission on behalf of the thirty utilities. It canvassed all sewer utilities on this issue. Twenty-nine responded favorably and authorized it to act on their behalf.

² It is the generally accepted rule in this jurisdiction that a public service company may adopt and enforce regulations providing for the discontinuance of its service to any customer who, after reasonable notice, fails to pay his bill. This principle of law is based upon a sound public policy which recognizes that it would be highly impractical to compel a utility company to resort to an infinite number of actions at law to collect small accounts against scattered consumers.

however, cannot be easily disconnected. There is no switch to pull or valve to turn to discontinue service. The delinquent customer's sewer line must be plugged or his water service must be discontinued. Plugging a sewer line is costly and not usually environmentally sound. It imposes a disproportionate hardship on the customer. Once the sewer line is dug up and plugged, his residence is rendered unfit for habitation.

Discontinuing water service is viewed as an alternative collection mechanism for sewer utilities. KRS 96.934(2) requires water utilities to discontinue water service where customers have failed to pay sewer service charges owed to a municipality. KRS 220.510(1) imposes a similar requirement when charges are owed to a sanitation district.

Kentucky courts have generally been supportive of the concept. In Rash v. Louisville and Jefferson County Metropolitan Sewer Dist., Ky., 217 S.W.2d 232 (1949), the Court of Appeals of Kentucky upheld a contract requiring the Louisville Water Company to terminate water service to customers failing to pay for sewer service charges owed to the Louisville-Jefferson County Metropolitan Sewer District. The court found "no reason why the Water Company under a contract with the Sewer board may not discontinue its service to delinquent sewer users. The use of both services is interdependent." Id. at 239. See also City of Covington v. Sanitation District No. 1 of Campbell and Kenton Counties, Ky., 301 S.W.2d 885 (1957) (citing Rash with approval).

In Cassidy v. City of Bowling Green, Ky., 368 S.W.2d 318 (1963), the City of Bowling Green enacted an ordinance requiring the termination of water service for any person failing to pay garbage and sewer disposal service charges. Several city residents challenged the ordinance. Reviewing the reasonableness of the ordinance, the Court of Appeals of Kentucky declared:

The reasonableness of discontinuing one public service for failure to pay for a related public service was recognized in Rash v. Louisville & Jefferson County Met. Sewer Dist., 309 Ky. 442, 217 S.W.2d 232, and City of Covington v. Sanitation District No. 1, Ky., 301 S.W.2d 885. We are not inclined to say that interdependence is necessarily a controlling factor. However, the record shows that garbage disposal and water supply are closely related from a sanitation standpoint and we can find nothing arbitrary or unreasonable about this method of collecting service charges.

Id. at 320. The Court allowed the ordinance to stand.

Commission regulations, however, currently prohibit jurisdictional water utilities from discontinuing a customer's water service for delinquent sewer service bills. Commission Regulation 807 KAR 5:006, Section 14(1), states:

A utility may refuse or terminate service to a customer only under the following conditions . . .

(f) For nonpayment of bills. A utility may terminate service at a point of delivery for nonpayment of charges incurred for utility service at that point of delivery; however, no utility shall terminate service to any customer for nonpayment of bills for any tariffed charge without first having mailed or otherwise delivered an advance termination notice which complies with the requirements of Section 13(5) of this regulation.

(emphasis added). It permits a utility to discontinue service only for nonpayment of charges for services which it provides. As they

do not provide sewer service, water utilities may not discontinue service for nonpayment of sewer service charges.³

Many sewer utilities claim that the lack of effective collection mechanisms undermines the financial viability of their operations. As they operate on small profit margins, any loss of revenue has a significant impact. While these utilities can employ other means to collect unpaid charges, they contend that these methods are expensive and time consuming.

To remedy this problem, petitioners propose to amend existing Commission Regulation 807 KAR 5:006, Section 14, to permit sewer utilities and water utilities to enter collection agreements which require the termination of water service for unpaid sewer service charges.

Except for anecdotal information, however, the Commission has no data on the magnitude of this problem. The Commission, therefore, finds that an administrative proceeding should be established to collect and analyze information on sewer utilities' billing and collection practices. This information will allow the Commission to determine if a problem presently exists and to explore possible solutions.

Because the issues raised concern all jurisdictional sewer and water utilities, the Commission further finds that all such utilities should be made parties to this case. For the Commission

³ Water and sewer districts are an exception to this rule. Since they provide both services, the Commission has permitted such districts to discontinue a customer's water service for failure to pay sewer service charges. See, e.g., Boone County Water and Sewer District, Case No. 91-428 (April 6, 1992).

to draw from the widest range of viewpoints, the Commission also strongly encourages the participation of municipal water utilities, city and county governments, consumer interest groups, and other interested parties.

IT IS THEREFORE ORDERED that:

1. An investigation into the billing and collection practices of sewer utilities is initiated.

2. All jurisdictional sewer and water utilities are made parties to this proceedings.

3. All jurisdictional sewer utilities shall file with the Commission, within 30 days of the date of this Order, an original and 8 copies of the information requested in Appendix A of this Order.

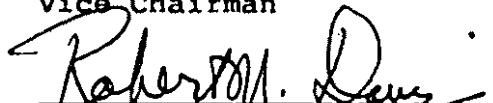
4. All jurisdictional water utilities shall file with the Commission, within 30 days of the date of this Order, an original and 8 copies of the information requested in Appendix B of this Order.

Done at Frankfort, Kentucky, this 5th day of March, 1993.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commission

ATTEST:


Executive Director

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN ADMINISTRATIVE CASE NO. 347 DATED 3/5/93

1. State the sewer utility's name.
2. Describe how the sewer utility is organized (for example, corporation, partnership, sole proprietorship).
3. Identify the sewer utility's geographical service territory.
4. For each of the 1990, 1991, 1992 calendar years, state the sewer utility's:
 - a. total number of customers.
 - b. total revenues collected.
 - c. total revenue billed.
5. State when the sewer utility began providing sewer service.
6. List all water suppliers serving the sewer utility's service area.
7. a. State how frequently the sewer utility bills for service.
 - b. (1) State whether the sewer utility performs its own billing.
 - (2) If no, identify its billing agent.
8. Describe how the sewer utility performs billing and collections.
9. Describe how the sewer utility deals with delinquent bills.

10. a. State whether the sewer utility has brought legal action to collect unpaid sewer service bills.

b. If yes, state:

(1) where action was brought (small claims court or district court).

(2) the number of actions brought.

(3) whether these actions were successful.

(4) whether the sewer utility was successful in collecting any favorable judgments.

(5) whether the use of legal action is an effective means of collecting unpaid bills. Explain.

11. State whether the sewer utility has discontinued a customer's sewer service for unpaid bills.

12. a. State whether the sewer utility has attempted to enter a contract with a water supplier for termination of a customer's water service because of unpaid sewer bills.

b. If yes,

(1) describe the results of this attempt.

(2) identify the water supplier.

13. Describe how the sewer utility's inability to terminate sewer service has affected its operations and financial condition.

14. State the impact on the sewer utility's operations if the Commission permits the termination of water service for delinquent sewer service bills.

15. List any conditions which should be a prerequisite for termination of water service for failure to pay sewer service bills.

APPENDIX B

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN ADMINISTRATIVE CASE NO. 347 DATED 3/5/93

1. State the water utility's name.
2. Describe how the water utility is organized (for example, corporation, partnership, sole proprietorship, water district).
3. State the water utility's geographical service territory.
4. State the number of customers currently served.
5. List all privately-owned sewer utilities operating within the water utility's service territory.
6. List all municipally-owned sewer utilities operating within the water utility's service territory.
7. List all sanitation districts operating within the water utility's service territory.
8. a. State whether the water utility provides billing and collection services for privately-owned sewer utilities.
 - b. If yes,
 - (1) list each utility for which this service is provided.
 - (2) state the amount charged for this service.
 - (3) list any conditions attached to the provision of this service.
 - c. If no,
 - (1) state whether any privately-owned sewer utility has requested this service.
 - (2) If yes, explain why the request was refused.

9. a. State whether the water utility provides billing and collection services for municipal sewer utilities or sanitation districts.

b. If yes,

(1) list each municipal utility or sanitation district for which this service is provided.

(2) state the amount charged for this service.

(3) list any conditions attached to the provision of this service.

10. a. State whether any privately-owned sewer utility has requested that a customer's water service be discontinued for a delinquent sewer service bill.

b. If yes, state the water utility's response.

11. a. State whether, if the Commission permits a water utility to contract with sewer utilities to discontinue water service for delinquent sewer service bills, the water utility is willing to enter such agreement.

b. If yes, state the terms under which the water utility would enter such agreement.

12. State whether the Commission, in the absence of any agreement between a water utility and sewer utility, should order a water utility to discontinue water service for delinquent sewer service bills. Explain.

13. Discuss the extent of the Commission's legal authority, in the absence of an agreement between a water utility and a sewer utility, to order a water utility to discontinue water service for

delinquent sewer service bills owed to a privately-owned sewer utility.

14. Assuming the Commission has the legal authority to order a water utility to discontinue water service for delinquent sewer service bills, where no agreement between the water utility and sewer utility exists, list any preconditions for discontinuance of water service which should be met before discontinuance of water service is ordered. Explain.