

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF MUHLENBERG COUNTY)	
WATER DISTRICT FOR A DEVIATION FROM)	CASE NO. 95-389
807 KAR 5:006, SECTION 14)	

O R D E R

Muhlenberg County Water District has applied for a deviation from Commission Regulation 807 KAR 5:006, Section 14, to permit the discontinuance of water service to any customer who fails to pay sanitary sewer service charges owed to Countryside Estates Homeowners Association ("Homeowners Association"). Its application poses the following issue: Should a water utility be permitted to discontinue water service for debts owed to a non-utility entity? The Commission finds in the negative and denies the application.

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Muhlenberg County Water District operates facilities for the distribution of water in Muhlenberg County. It serves approximately 5,248 customers, including the residents of the Countryside Estates Subdivision.

The Homeowners Association is a non-profit corporation which is composed of all persons owning real estate in the Countryside Estates Subdivision ("Subdivision") of Muhlenberg County, Kentucky. It operates the sewage collector system which serves the Subdivision.

In the mid-1970s, Countryside Sewer, Inc. constructed a package sewage treatment plant to serve the Subdivision. The

Subdivision was never successfully developed. Currently only 24 of its 108 lots are developed. In 1987 Countryside Sewer abandoned the plant without Commission approval. As a result, several health and environmental problems occurred.

In 1992, the Subdivision's property owners formed the Homeowners Association to remedy these problems. After obtaining funding from the Farmers Home Administration to construct a lift station and forced main to transport the subdivision's wastewater to the Greenville Utilities Commission's ("GUC") sewer systems, it entered an agreement with GUC for the wastewater's treatment.

Under this agreement, GUC agreed to take the subdivision's wastewater. The Homeowners Association agreed to pay a monthly rate of \$25 per house, to collect this rate from its members, to maintain the subdivision's sewer collection system, lift station and forced main, and to abide by GUC's rules and regulations. It also agreed to enter an agreement with Muhlenberg County Water District for the discontinuance of water service of any Homeowners Association member who failed to pay his sewer bill. In return, GUC delegated to the Homeowners Association its authority under KRS 96.932 and KRS 96.934 to direct the discontinuance of water service.

On July 27, 1992, the Homeowners Association and Muhlenberg County Water District entered into an agreement providing that the water district would terminate water service when notified by the Homeowners Association that a member had failed to pay his sewer

bill. Muhlenberg County Water District submitted this agreement to the Commission on August 17, 1995 for its review and approval.

* * * *

Discontinuance of utility service has long been recognized as the most effective means of bill collection.¹ Sewer service, 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 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.

¹ 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 customers.

Huff v. Electric Plant Bd. of Monticello, Ky., 299 S.W.2d 817, 818 (1957) (citations omitted)

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 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 Kentucky Court of Appeals 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 generally may not discontinue service for nonpayment of sewer service charges.

The Commission has made two exceptions to this rule. First, it permits combined water and sewer districts to discontinue water service for a customer's failure to pay sewer service charges. Since these districts provide both water and sewer service, the Commission has reasoned that the discontinuance of water service is for nonpayment of charges incurred for utility service and, therefore, within the regulation's terms.²

The Commission also permits a water utility to discontinue water service for sewer service charges when a municipal sewer

² Case No. 91-428, Proposed Tariff Filing of Boone County Water and Sewer District for Sewer Inspection Fee (April 6, 1992).

utility directs the discontinuance of service. In Case No. 95-231,¹ the Commission found that, KRS Chapter 96, which clearly authorizes the discontinuance of water service to those customers who fail to pay charges owed to a municipal utility for sewer service,⁴ directly conflicts with Commission Regulation 807 KAR 5:006, Section 14. As KRS Chapter 96 is the more specific statute, it controls. In light of these specific statutory provisions, the

¹ Case No. 95-231, An Agreement Between Lexington-Fayette Urban County Government and Kentucky-American Water Company for the Billing, Accounting and Collection of Sanitary Sewer Charges (June 30, 1995).

⁴ KRS 96.932 states:

In the interest of the public health, safety, and general welfare, cities may enforce collection of lawful rates and charges for the use of municipal sewer facilities by requiring that water service, whether provided publicly or privately, be discontinued until payment is made or some satisfactory arrangement is reached [emphasis added].

KRS 96.934(2) states:

If a city is not also the water supplier, then in the event of failure on the part of any sewer user to pay, when due, the bill for sewer service charges, the sewer body may, when such power has been delegated to it by the city, give notice in writing, signed by an authorized person, to the water supplier, to discontinue water service to premises designated in the notice, until notified otherwise. The notice shall identify the delinquent sewer user in such manner as reasonably to enable the water supplier to identify the water service connection which is to be cut off pursuant thereto. Upon receipt of such notice, the water supplier shall discontinue water service to the premises until notified otherwise by the sewer body.

Commission found that no deviation from that regulation was required for a public water utility to discontinue water service.⁵

* * * *

Homeowners Association argues that KRS 96.932 and KRS 96.934 require Muhlenberg County Water District to discontinue water service to any Homeowners Association member who fails to pay his sewer service charges. It notes that, in its Agreement with GUC, GUC expressly delegates its authority to direct the discontinuance of water service. If KRS 96.932 and 96.934 are applicable, then neither Commission approval of the agreement nor a deviation from Commission Regulation 807 KAR 5:006, Section 14, is required.

The provisions of KRS Chapter 96, however, are not applicable. First, these provisions apply only to customers of a municipal sewer utility. The Homeowners Association, not its individual members, is GUC's customer. GUC does not bill the individual members. If a Homeowners Association member fails to pay the rate, the Homeowners Association must pay.

Second, KRS Chapter 96 does not permit a municipal sewer utility to delegate to a private organization its authority to order the discontinuance of water service. "It is generally recognized that a municipal corporation cannot delegate any of its powers to a private individual" Kohler v. Benckart, Ky., 252 S.W.2d. 854, 857 (1952). GUC's delegation of its authority

⁵ See also Case No. 95-045, Application of South Short Water Works Company for a Deviation from 807 KAR 5:006, Section 14, To Discontinue Water Service to Customers Failing to Pay Charges for Sanitary Sewer Service Provided by the City of South Shore, Kentucky (July 14, 1995).

under KRS 96.934, therefore, is impermissible. Muhlenberg County Water District is not bound by any instructions which the Homeowners Association may give pursuant to its delegated authority.

While the Agreement does not fall within the exceptions to Commission Regulation 007 KAR 5:006, Section 14, the Commission may permit Muhlenberg County Water District to deviate from the regulation and discontinue water service for a customer's failure to pay his sewer service charges.⁶ In Administrative Case No. 347,⁷ the Commission stated that, absent unusual circumstances, it would favorably consider petitions for such deviations.

The Commission's decision in Administrative Case No. 347, however, is not applicable to this case. Its decision applied only to privately owned sewer utilities. The Homeowners Association is not a privately owned sewer utility. To the contrary, when the Homeowners Association was organized, its organizers sought and obtained an opinion from Commission Staff that the association is neither a utility nor subject to Commission regulations. While the customers of privately owned sewer utilities may complain to the Commission about the rates and the quality of their sewer service, the Homeowners Association members are without such a forum.

⁶ Commission Regulation 007 KAR 5:006, Section 27, provides: "In special cases for good cause shown, the commission may permit deviations from this regulation."

⁷ Administrative Case No. 347, An Investigation Into the Collection and Billing Practices of Privately-Owned Sewer Utilities (January 9, 1995).

Granting the deviation establishes a dangerous precedent. Generally, utilities may not discontinue service because of a collateral matter unrelated to service. In this instance, neither Muhlenberg County Water District nor any public utility provides sewer service to the Subdivision's residents. Any debt for sewer service is owed to a private, non-utility entity. If the deviation is granted, other utilities may use the Commission's action as precedent to support the discontinuance of service for other non-utility related debts. The Commission does not intend to encourage utilities to act as bill collectors for non-utility entities.

Denial of Muhlenberg County Water District's application will not leave the Homeowners Association without a means of collecting its delinquent bills. It may initiate legal action in Kentucky courts to collect any unpaid bill.

The Commission finds that good cause does not exist to grant Muhlenberg County Water District's application.

IT IS THEREFORE ORDERED that Muhlenberg County Water District's application is denied.

Done at Frankfort, Kentucky, this 22nd day of November, 1995.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director