

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

STEPHANIE LYNN TAYLOR)	
)	
COMPLAINANT)	
)	
vs.)	CASE NO. 96-511
)	
MCCREARY COUNTY WATER)	
DISTRICT)	
)	
DEFENDANT)	

O R D E R

On November 1, 1996, Stephanie Lynn Taylor filed a formal complaint against McCreary County Water District ("McCreary Water"). The complaint alleges that McCreary Water has served her residence for eighteen years by a meter designated T-1; that McCreary Water improperly disconnected service from T-1 without informing her; that she had paid her bill on time and no final bill was sent; that she now needs the service to T-1 restored for use for an animal shelter; and that she did not request T-1 be disconnected.

On November 11, 1996, the Commission entered an Order directing McCreary Water to satisfy or answer the complaint. On November 21, 1996, McCreary Water filed an Answer with the Commission stating that McCreary Water received a complaint from Johnny Taylor, spouse of Stephanie Lynn Taylor, that their water had been contaminated through a line break caused by a third party. The Answer further stated that the meter in question (T-1) and approximately 20 feet of the service line are located on the Taylor

property and 60 feet is located on the property of an adjoining land owner. McCreary Water admitted that it had no written easement or water user agreement from any party concerning T-1. McCreary Water further stated that, pursuant to its water user agreement with Johnny Taylor, a service connection and meter had been set and service is now furnished to the premises of the complainant by a meter referred to as T-2. McCreary Water also stated it had no record of a user fee paid for T-1 and denied complainant a refund on T-1. McCreary Water further states that no request was made for a second meter or continued service by T-1 until this complaint was filed and that McCreary Water would set a second meter if requested pursuant to McCreary Water rules and regulations. As to the disconnection, McCreary Water's pleading indicated that it was required to remove the line from the adjoining land and referred to a legal opinion McCreary Water sought from the Commission.¹

A hearing was held on April 22, 1997 and testimony was taken from Johnny Taylor and Stephanie Lynn Taylor for the complainant and Steve Owens for McCreary Water.²

FINDINGS OF FACT

Stephanie Taylor and her husband Johnny Taylor purchased in 1978 a portion of what had been the L. J. Anderson property. The Anderson property had originally been

¹ Answer of McCreary Water filed November 21, 1996, Exhibits A and B attached.

² The Commission Ordered the parties to file certain information with the Commission. Complainant filed interrogatories on McCreary Water which were answered and filed with the Commission. All of these documents are part of the record and evidence herein.

served by McCreary Water from a meter apparently set when McCreary Water lines were first run. Sometime in 1978 the property was divided; a portion was sold to the Taylors and a new meter was set on that portion of the property to serve that tract upon which the Taylors now reside. That meter is referred to herein as T-1. The original service was recorded in an account for L. J. Anderson. This account was later changed into the Taylors' name and they continued to be served by the T-1 meter for approximately 18 years.

Sometime in March of 1995 the service line to T-1 was severed by construction on an adjacent tract of land, which had also been a part of the original Anderson tract. Service was restored to T-1, but the Taylors, fearing contamination of the water lines, requested and obtained new service from McCreary Water. Johnny Taylor, husband of Stephanie Lynn Taylor, signed a user agreement and paid a tap fee of \$250.00. Subsequently, a new meter was set at the Taylor property line to serve the Taylor property. This meter is referred to as T-2. The old meter (T-1) remained in place and the Taylors continued to pay for minimum service billed for T-1, but apparently did not consider water from it potable.³

In January of 1996, McCreary Water received notice that the service line for T-1 crossed the property of Deloris Wood Jones and that she wanted the line removed from her property. On May 13, 1996, McCreary Water disconnected service to T-1. The meter (T-1), located upon the Taylor property, remained in place, but the Taylors were

³ A civil law suit was filed in McCreary Circuit Court No. 96-CI-00117 alleging contaminated water and naming McCreary County Water District as a party defendant.

not notified about the termination of service to meter T-1. McCreary Water stated the reason for the termination was the complaint of the adjoining property owner and the lack of an easement for the service line crossing the land of an adjoining property owner.⁴

Mr. Steve Owens, McCreary Water Manager, testified that the first he had heard of the problem was on August 1, 1995 when the customer reported an alleged contamination of the water system.⁵ After a period of discussion Johnny Taylor executed a water user agreement and service was provided from another meter located along the Josh Hill Road.⁶ Mr. Owens further testified that the account was originally in L.J. Anderson's name and that, while the records indicated that three meters were set, McCreary Water could only account for the payment of two meters.⁷ Mr. Owens, referring to Staff Exhibit 1 stated that the first meter was set in front of what is now the Express Mart and the second was set on the side which is the circled meter.⁸ Mr. Owens further testified that after a transfer of property to the Taylors, a change of account numbers occurred and another meter was placed upon the property that was acquired by the Taylors.⁹ He also testified that it is the rule of McCreary Water that if

⁴ Answer of McCreary Water filed November 21, 1996. McCreary Water acknowledged it did not have an easement for the water line.

⁵ T.E. at 70-71, McCreary Water Exhibit 1-2

⁶ Defendant's Exhibit 5.

⁷ T.E. at 73.

⁸ T.E. at 74, Staff Exhibit 1.

⁹ T.E. at 75-76, Staff Exhibit 1.

a meter is required to be moved to serve a customer, there is no new tap-on fee charged the customer.¹⁰

CONCLUSIONS OF LAW

Water districts are required to provide reasonable service to customers, if certain pre-determined conditions are met by the customer.¹¹ These terms and conditions are contained in the Commission's regulations and the tariff filed by the utility.

Certain terms of the Commission's regulations are defined in 807 KAR 5:066, Section 1, as follows:

- (5) "Point of service" means the outlet of a customer's water meter, or valve if no meter is placed.
- (6) "Service connection" means the line from the main to the customer's point of service, and shall include the pipe fittings and valves necessary to make the connection.
- (7) "Service line" means the water line from the point of service to the place of consumption.

The regulations dealing with the placement of service connections and meters are contained in 807 KAR 5:066, Section 12:

- (1) Ownership of service.
 - (a) Utility's responsibility. The utility shall 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 may recoup this expense from the customer in accordance with KRS 278.0152.
 - (b) In areas where the distribution system follows well-defined streets and roads, the customer's point of service shall be located at that point on or near the street right-of-way or property line most accessible to the utility from its distribution system. In areas where the distribution system does

¹⁰ T.E. at 96-98

¹¹ See KRS 278.030 Rate, classifications and service of utilities to be just and reasonable; service to be adequate.

not follow streets and roads, the point of service shall be located as near the customer's property line as practicable. Prior to installation of the meter the utility shall consult with the customer as to the most practical location.

(2) Customer's responsibility. The customer shall furnish and lay the necessary pipe to make the connection from the point of service to the place of consumption and shall keep the service line in good repair and in accordance with such reasonable requirements of the utility as may be incorporated in its rules and regulations.

The regulation which pertains to easement and right-of-way for the service lines and meters is contained in 807 KAR 5:006, Section 5:

(3) Obtaining easements and rights-of-way necessary to extend service shall be the responsibility of the utility. No utility shall require a prospective customer to obtain easements or rights-of-way on property not owned by the prospective customer as a condition for providing service. The cost of obtaining easements or rights of way shall be included in the total per foot cost of an extension, and shall be apportioned among the utility and customer in accordance with the applicable extension regulation.

The regulation that deals with termination of service is contained in 807 KAR 5:006, Section 14(1), which states in part:

[N]o utility shall terminate or refuse service to any customer for non-compliance with its tariffed rules or commission regulations without first having made a reasonable effort to obtain customer compliance. After such effort by the utility, service may be terminated or refused only after the customer has been given at least ten (10) days' written termination notice. . . .

CONCLUSIONS

Based upon the above facts and regulations the Commission concludes that:

1. McCreary Water has and is furnishing reasonable service to the customer as required by KRS 278.030.

2. McCreary Water was required to notify the customer of the termination of service.

3. The Taylors were not in violation of any McCreary Water rule or regulation as to service as provided in McCreary Water's Tariff and should have been notified of the termination of service as required by 807 KAR 5:006, Section 14.

4. McCreary Water should have notified the customer of the reason service was being terminated to T-1 and ceased billing customer for the service.

5. The customer does not have the right to be served by a specific meter at a specific location, but only to reasonable service by McCreary Water in compliance with Commission regulations and McCreary Water's filed tariff.

6. McCreary Water is not required to restore service to Stephanie Lynn Taylor unless the customer agrees to sign a user agreement to have service restored.

7. It is the duty of McCreary Water to obtain necessary right-of-way or easements to provide the customer with service.¹² In this case the district was forced to disconnect service to T-1 due to the lack of an easement. In such a situation McCreary Water would move the meter; install it at a point from which service could be provided and the customer would not be charged for the meter placement or tap-on fee.

8. McCreary Water records should indicate that the customer had paid a tap-on fee to obtain the service. In this case there is some confusion in the records with the account being switched from Anderson to Taylor, but it appears that there was a tap-on

¹² 807 KAR 5:006, Section 5(3).

fee paid for the service to the Taylor property.¹³ In the normal case, the meter would be re-located and service provided to the customer's point of service without further cost. However, the procedure here is further complicated by the meter (T-1) being at a location on the Taylor property that cannot be served as originally intended and at a point that is not accessible to the McCreary Water system without an easement. Also, McCreary Water is under an injunction from the McCreary Circuit Court not to move T-1.

9. The customer is entitled to have service, but not unlimited service. The McCreary Water water user agreement which each customer is required to sign contains the clause "said meter service shall service one (1) source use per meter and separate user agreements and meters shall be required for each source use located on customers premises."¹⁴

Applying these facts to the law as contained in the regulations and the Commission being sufficiently advised, IT IS HEREBY ORDERED that:

1. McCreary Water is to restore service to Stephanie Lynn Taylor at no cost to the customer. However, restoration of service to T-1 will require a relocation of the meter (or placement of a substitute meter) to that point on or near the street right-of-way or property line, most accessible to the utility from its distribution system in conformity with 807 KAR 5:066, Section 12(a) and (b). The customer has the responsibility to connect from the meter outlet (point of service) to the place of consumption.

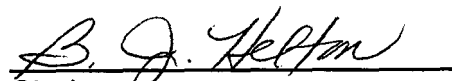
¹³ T.E. at 75-76.

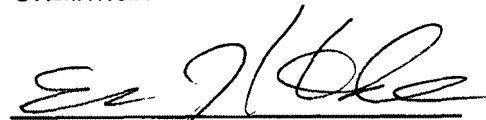
¹⁴ McCreary Water User Agreement. Exhibit 5

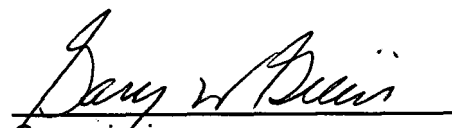
2. McCreary Water is to refund to customer all monies paid for service billed to T-1 from date of disconnect of T-1 to last billing of service to T-1.

Done at Frankfort, Kentucky, this 19th day of December, 1997.


PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director