

the water district require their payment as a condition for accepting the water distribution mains or providing water service. We directed Kentucky Turnpike to immediately cease assessing its developer fee and customer participation fee for connections to the Cedar Grove Road Transmission Main.

In its petition for rehearing, Kentucky Turnpike makes three arguments. First, Kentucky Turnpike argues that the developer and customer participation fees are not compensation for services to be rendered and therefore do not fall within the requirements of KRS 278.160. [T]he developer fees and customer participation fees, it argues, are payments for the construction of water lines on behalf of the affected customers. Kentucky Turnpike s Petition at 2. The District is not rendering service by contracting others to install water lines. Id. at 2.

The Commission finds no merit in this argument. Kentucky Courts have previously rejected this reasoning. See Louisville Water Company v. Public Service Commission, Ky., 318 S.W.2d 537, 540 (1958). Clearly these fees are for access to water service and that access is a service rendered or to be rendered. They are no different than fees that a utility routinely charges for the installation of water meters and the connection of customer service lines to water distribution mains.

A significant portion of every water utility s rates for water service reflects the cost of transmission mains that transport and distribute water from the source of supply to the end-user. If Kentucky Turnpike s analysis were accepted, water utilities could decouple this component from its rate for water service and charge a construction charge to recoup the cost of its water mains. Such charge would not be subject to Commission regulation. Such result is wholly inconsistent with the existing system of

water rate regulation in this Commonwealth and with the general intent of KRS Chapter 278.

Kentucky Turnpike next argues that the fees at issue are voluntary agreements and are properly enforceable as special contracts. The record does not support this argument as it relates to Burke Realty or to Intervening Complainants John Miller and Richard Haarman. They have not agreed to the fees, but have vigorously opposed them. Moreover, voluntary agreement of the parties does not provide an adequate basis for permitting the assessment of rates not set forth in a utility's filed rate schedule or otherwise on file with the Commission. See, e.g., Americconnect, Inc., Case No. 95-220 (Ky. P.S.C. June 26, 1995).

Finally, Kentucky Turnpike argues that, because the customer participation fees were voluntarily assumed, the Commission should approve the form of customer contracts to ensure uniform treatment among all customers in the future. The Commission finds that this proceeding is not the proper forum to consider that issue. While some evidence was heard on the reasonableness of the developer and customer participation fees, it was not a central issue in this proceeding. Kentucky Turnpike recently applied for Commission approval of its Cedar Grove Road Transmission Main extension arrangement. Its arguments should be presented in the proceeding considering that application.¹

The Commission further finds that those issues related to Kentucky Turnpike's collection of customer participation fees from persons other than Burke Realty, John Miller and Richard Haarman should be transferred to another docket. In its Order of

¹ Kentucky Turnpike Water District, Case No. 99-048 (filed January 11, 1999).

September 1, 1999, the Commission directed Kentucky Turnpike to show cause why it should not be required to refund all customer participation fees collected from customers who connected to the Cedar Grove Road Transmission Main. Neither Burke Realty, Miller nor Haarman have paid such fees. Allowing this docket to remain open to consider those issues will only delay judicial review of the Order of September 1, 1999 and final resolution of the issues presented in Burke Realty's Complaint. Such transfer is in the interests of all parties and will promote judicial and administrative economy.

Alleging that the Commission inaccurately described in the Order of September 1, 1999 one of the conditions of service that Kentucky Turnpike sought to impose upon service to Dreams End Lane, Burke Realty has petitioned for rehearing. Based upon our review of the record, we find that the Order of September 1, 1999 failed to accurately reflect that Kentucky Turnpike required Burke Realty to construct only one 3-inch water main to serve Dreams End Lane. We find that this condition is not unreasonable and, for the reasons set forth in the September 1, 1999 Order, may be imposed.

IT IS THEREFORE ORDERED that:

1. Kentucky Turnpike's Petition for Rehearing is denied.
2. Burke Realty's Petition for Rehearing is granted.
3. Kentucky Turnpike may as a condition for its acceptance of the Dreams End Lane 6-inch water main require Burke Realty to construct one 3-inch water distribution main and limit the use of the existing 6-inch main to fire protection service. Kentucky Turnpike shall not, as a condition of service, require the construction of any additional 3-inch water distribution mains to serve Dreams End Lane.

4. Those provisions of the Order of September 1, 1999 that are in conflict with Ordering Paragraph 3 of this Order are vacated. All other provisions remain in full force and effect.

5. Those issues related to Kentucky Turnpike's collection of customer participation fees from persons other than Burke Realty, John Miller, and Richard Haarman are transferred to Case No. 99-423.

6. This case is closed and shall be removed from the Commission's docket.

Done at Frankfort, Kentucky, this 13th day of October, 1999.

By the Commission

ATTEST:

Executive Director