

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

NORTH MARSHALL WATER DISTRICT'S)	
PROPOSED RULES FOR WATER MAIN)	CASE NO. 99-050
EXTENSIONS TO REAL ESTATE SUBDIVISIONS)	

ORDER

North Marshall Water District (“North Marshall”) has applied for Commission approval of a water main extension arrangement that differs from those set forth in Administrative Regulation 807 KAR 5:066, Section 11. It seeks to limit its refund liability to real estate subdivision developers financing the cost of a water main extension to \$150 per customer connecting to that extension. Finding that North Marshall has failed to demonstrate good cause for the differing arrangement, we deny its application.

North Marshall, a water district organized pursuant to KRS Chapter 74, owns and operates facilities that produce and distribute water for compensation to approximately 4,672 customers in Marshall County, Kentucky. For the year ending December 31, 1998, North Marshall had net utility plant of \$4,671,135; total operating revenues of \$951,508; and net operating income of \$121,934.

North Marshall proposes to limit its refund liability to real estate subdivision developers financing the cost of a water main extension to \$150 per customer connecting to that connection. Administrative Regulation 807 KAR 5:066, Section 11(3), currently requires North Marshall to refund to a real estate subdivision developer “a sum equal to the cost of fifty (50) feet of the extension installed for each new customer connected during the year.”

North Marshall argues that its proposed revision is necessary to provide the water district with greater control over the cost of water main extensions and to ensure that refunds to subdivision developers are equitable.¹ It states that refunds to real estate subdivision developers in 1998 ranged from \$172 per customer to \$531 per customer.² This variance in the size of refunds, it asserts, is related to the number of fire hydrants placed on water main extensions and subdivision water main extensions that exceed minimum construction standards.³

The Commission finds that North Marshall's proposed revision is flawed in several respects. First, neither analyses nor studies of North Marshall's past water main extensions have been conducted; nor has any study of the proposed cap of \$150 per customer been conducted. North Marshall has provided no evidence to support the level of the proposed cap and no explanation to clarify how it established the cap's level.⁴

Second, the proposed cap bears no correlation to historic trends. The proposed limit does not equal refunds made in 1998 for the least costly water line extensions.⁵ Nor would it equal the average refund that North Marshall made for non-subdivision developer water main extensions between 1996 and 1998. The proposed cap is less

¹ Letter from B.W. Darrell, Chairman, North Marshall Water District, to Helen Helton, Executive Director, Public Service Commission at 1 (Feb. 5, 1999).

² Id.

³ North Marshall's Response to the Commission's Order of April 28, 1999, Item 2(a)(2).

⁴ North Marshall originally intended to eliminate subdivision developer refunds. See North Marshall's Response to the Commission's Order of April 28, 1999, Item 3.

⁵ See supra text accompanying note 2.

than half of the average refund made to subdivision developers between 1996 and 1998.

TABLE I

Year	Total Amount of Refunds	Total Number of Refunds	Average Refund	Total Amount of Subdivision Developer Refunds	Total Number of Subdivision Developer Refunds	Average Subdivision Developer Refund	Average Non-Subdivision Developer Refund
1996	\$5,964.50	28	\$ 213.02	\$2,646.00	11	\$ 240.55	\$ 195.21
1997	\$18,932.72	83	\$ 228.11	\$12,507.36	48	\$ 260.57	\$ 183.58
1998	\$16,983.00	51	\$ 333.00	\$15,267.00	39	\$ 391.46	\$ 143.00
Total	\$41,880.22	162	\$ 258.52	\$30,420.36	98	\$ 310.41	\$ 179.06

Source: North Marshall's Response to PSC Order of 4/29/1999, Item 1.

Third, North Marshall has failed to consider other cost control measures in lieu of the proposed revision. North Marshall's tariff currently does not require a real estate subdivision developer to advertise for bids for his proposed water main extensions or to grant the water district the right of first refusal to construct the proposed extension. It does not specify maximum construction standards or limit the water district's refund obligations when a real estate developer unreasonably exceeds the water district's minimum construction standards. It, moreover, does not confer upon North Marshall the authority to remove fire hydrants from proposed water main extensions when such hydrants are unnecessary or not feasible.⁶ Revising North Marshall's tariff to include these controls should be considered and implemented before the imposition of any refund cap.

Fourth, neither a developer nor a water utility controls all factors affecting the cost of a water main extension. A significant portion of the cost of a water main

⁶ KRS 74.415(2) permits North Marshall to eliminate fire hydrants from new or extended water lines if it determines that they are not feasible. The utility must still have rules on file with the Commission to exercise this right. See KRS 278.030; KRS 278.160.

extension is directly related to the soil composition of the area in which the water main is placed. Installing water mains in rocky terrain is more expensive than areas with loose soil. North Marshall's proposed cap makes no provision for such instances. As a result, it will discourage water main extensions to areas with rocky soil conditions.

Fifth, the evidence of record does not suggest that refunds to subdivision developers for water main extensions are out of control or represent a serious threat to the water district's financial condition. The total amount of refunds that North Marshall made to subdivision developers in 1998 represents less than 7 percent of its total utility operating income, less than 2 percent of its utility operating revenues, and less than 1 percent of its net utility plant. While the nominal amount of refunds to subdivision developers have increased in the last three years by \$12,620, this increase merely reflects that a larger portion of North Marshall's customer growth now results from subdivision development.

TABLE II

Year	Total Number of Customers	Increase In Customers	Number of New Customer from Subdivision developments	Percentage of New Customers Due to Subdivision Development
1995	4,209	-	-	-
1996	4,360	151	28	19%
1997	4,490	130	83	64%
1998	4,672	182	51	28%

*Sources: North Marshall Annual Reports for Calendar Years 1996-1998
North Marshall's Response to PSC Order of 4/29/1999, Item 1.*

Finally, the proposed revision unreasonably discriminates against real estate subdivision developers. While it argues that cost controls on water main extensions are necessary, North Marshall does not propose any limitations on refunds to non-subdivision developers. North Marshall argues that this disparate treatment is

appropriate because non-subdivision water main extensions have no profit motive⁷ and most applicants for service from such water main extensions are less capable of absorbing the cost of the water main extension.⁸

The Commission finds these arguments are without merit. The presence of a profit motive is not sufficient grounds to justify disparate treatment of customers. Moreover, as the presence of water service generally increases a property's value, it is likely a "profit motive" is also behind other non-subdivision developer water main extensions. A utility has an obligation to make reasonable extensions of service. KRS 278.280(3). The economics of subdivision developer water main extension, therefore, not its purpose, should determine whether that type of extension should be treated differently than other types. North Marshall has failed to present any evidence that subdivision developer water main extensions are more costly or financially burdensome to it than are extensions made for the benefit of persons who are not developers.

Likewise, North Marshall has presented no evidence to support its claim that persons connecting to non-subdivision developer water main extensions are less financially able to absorb the cost of an extension than are customers connecting to

⁷ See North Marshall's Response to the Commission's Order of April 28, 1999, Item 7(b) ("The reason we chose to not limit refunds to non-subdivision developers is the fact that they are not generally constructing an extension for the purpose of increasing their land value and making a profit [from] the sale of the lot.").

⁸ North Marshall's Response to the Commission's Order of April 28, 1999, Item 7(c) ("Those purchasing lots [from subdivision developers] will most likely be in better financial circumstances and better prepared to pay than non-subdivision customers. Non-subdivision customers . . . are often made up of low to middle income families.").

subdivision developer water main extensions.⁹ Assuming arguendo that such evidence had been presented, we have previously held that a customer's ability to pay is not an appropriate factor to consider in establishing utility rates. See Kentucky Power Co., Case No. 91-066 (Ky.P.S.C. Oct. 31, 1991); Louisville Gas & Electric Co., Case No. 10320 (Ky.P.S.C. Nov. 3, 1989).

Based upon the above discussion and having considered the evidence of record, the Commission finds that North Marshall has failed to demonstrate good cause for its requested water main extension arrangement and that such water main extension arrangement should be denied.

IT IS THEREFORE ORDERED that North Marshall's requested water main extension arrangement is denied.

Done at Frankfort, Kentucky, this 10th day of April, 2000

By the Commission

ATTEST:



Executive Director

⁹ See North Marshall's Response to the Commission's Order of August 19, 1999, Item 8.