

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ROBERT HATFIELD)	
)	
COMPLAINANT)	
)	
v.)	CASE NO. 99-436
)	
BATH COUNTY WATER DISTRICT)	
)	
DEFENDANT)	

O R D E R

On October 18, 1999, Robert Hatfield ("Complainant") filed a formal complaint against the Bath County Water District ("BCWD"). Complainant requested that the Commission order BCWD to extend water service to Complainant's property and the residents therein. BCWD filed its answer on January 12, 2000 stating that it had denied Complainant's request for water service, but claiming that it had not acted wrongfully and requesting that the complaint be dismissed.

Findings of Fact

The essence of the complaint is that BCWD, in rejecting the Complainant's request for water service to his subdivision, treated Complainant unfairly in violation of the law. Complainant, at his own expense, has installed a 3-inch water line throughout the interior of the proposed subdivision. Complainant requested BCWD to connect the 3-inch line to BCWD's 4-inch mains that are contiguous to the south and east sides of

the subdivision. Complainant's purpose in constructing this line was to "loop" it with BCWD's 4-inch mains in the south and east sides of the proposed subdivision.

BCWD claims that it refused to provide service to Complainant because it was concerned that if it makes the connection it will assume ownership of the line and will be required to extend service to all future residents of the subdivision who request service. BCWD is concerned because it fears that it does not have the necessary resources to serve the future residents of the subdivision and continue to serve other residents and future residents on the system outside of the subdivision.

BCWD is concerned with its water supply and the ability to maintain the statutory minimum pressure of 30 psi in its system. BCWD must purchase the water for its system from neighboring water suppliers because it lacks a water treatment facility. In order to meet the demand on its system, BCWD has exceeded its contractual amount of water from Morehead Utility Plant Board ("Morehead") on numerous occasions. Morehead has allowed BCWD to exceed the contractual amount, but BCWD fears that the providing of service to Complainant's subdivision will require BCWD to further exceed its contractual amount and that Morehead will refuse BCWD this excess.

BCWD is also concerned that adding additional customers from Complainant's subdivision will cause the pressure in the system to fall below 30 psi, the minimum established by 807 KAR 5:066, Section 5(1). A study conducted by the BCWD engineer indicated that the system could not provide 30 psi if 60 new customers were added, but the system still could provide the minimum pressure if 30 additional customers were connected to BCWD's service. The original plat for the subdivision contained 75 individual lots, but Complainant reports that many residents are purchasing two or three

lots and placing one residence on the combined lots. Complainant estimates that a total of 45 residents will live in the subdivision. BCWD contends that if all 45 residents receive service it will make the water pressure fall below 30 psi.

Currently twenty houses have been built on Complainant's property and receive service from BCWD. Thirteen of these houses are located in the interior of the subdivision and had to run 1-inch lines 4,000 to 5,000 feet to BCWD's 4-inch main. These lines were ordered to remain uncovered by the plumbing inspector. This resulted in the pipes freezing in November, depriving the 13 residents of water service for a period of time. The Division of Water of the Natural Resources and Environmental Protection Cabinet ("Division of Water") approved the plan for Complainant's 3-inch line to connect to the 13 houses currently connected to BCWD's 4-inch main. Notwithstanding the Division of Water's approval of the 3-inch line and the advice of BCWD's engineer, BCWD still refused to connect Complainant's 3-inch line to its system.

Another concern presented by BCWD is that by extending service to the 3-inch line, the residents in the subdivision would be entitled to all the available new meter connections allowed by the Division of Water. Complainant purchased 18 additional meters in December and later, on December 15, 2000, the Division of Water instituted an extension ban. This ban extended to all meters not purchased at the time. This means that although Complainant has not placed the 18 meters yet, he may place them and receive service because he purchased them prior to the extension ban. However, this also means that no other potential customers will receive service until the extension

ban is lifted. BCWD feels that this is unfair to other potential customers. BCWD's tariff does not provide any rules for applying for service or extension of service.

Discussion

The sole issue before the Commission is whether BCWD properly denied water service to the Complainant. Administrative Regulation 807 KAR 5:006, Section 5(2), provides, in pertinent part, that a customer who has complied with Commission administrative regulations shall not be denied service for failure to comply with the utility's rules which have not been made effective in the manner prescribed by the Commission. BCWD's tariff provides for no such conditions relating to extension of service, see KRS 278.160, and it appears that Complainant has complied with all Commission regulations regarding the request of service. Even more crucial here is KRS 278.280, which provides that a utility may be "compelled to make any reasonable extension." The record indicates that the extension requested by Complainant is reasonable.

BCWD argues that its refusal of service was proper because BCWD would be unable to provide water service to more than 30 customers on Complainant's property in accordance with the Commission's minimum pressure standards. Administrative Regulation 807 KAR 5:066, Section 5(1), provides that "[I]n no event . . . shall the pressure at the customer's service pipe under normal conditions fall below 30 psig nor shall the static pressure exceed 150 psig." BCWD asserts that the water facilities in the disputed area could not provide service to all future residents at 30 pounds per square inch and that, therefore, it should not be required to provide the requested service.

BCWD also argues that requiring the water district to provide service to the Complainants will effectively force it to bear all of the costs for the system improvements necessary to serve the entire area in which Complainant's property is located. Once service is provided to the residents in the subdivision, BCWD contends, additional people will seek service from the same water main extension as they purchase land within the proposed development. Eventually the water main will not be capable of serving at acceptable levels and the water district will be forced to make system improvements at its own cost.

Finally, BCWD argues that if the extension is granted, the residents in the proposed development will obtain all available taps and the additional strain on the system will prohibit BCWD from extending service to other applicants for service outside of the proposed development. BCWD provides no legal authority to support its contention that this is an adequate reason to deny Complainant the extension.

There is no merit to any of the above arguments based upon the record that is now before us. BCWD is not faced with any emergency situation at present. Its apprehension that such a situation will arise in the future should result in plans to expand its water capacity rather than in summary refusal of service now.

Having considered the evidence on record and being otherwise sufficiently advised, the Commission HEREBY ORDERS that:

1. BCWD shall extend service to the 3-inch line located on Complainant's property.

2. Upon completion of the extension of service, BCWD shall so notify the Commission. When providing notice to the Commission, BCWD shall serve a copy of said notice upon the Complainant.

3. BCWD shall connect the current customers in the subdivision to the 3-inch line.

4. BCWD shall file with the Commission a plan to upgrade its water system within 6 months of issuance of this Order. The upgrade shall be completed no more than 5 years after submission of the plan to upgrade the system to the Commission.

5. When making this and other water extensions, BCWD shall henceforth strictly comply with the provisions of its filed rate schedules.

Done at Frankfort, Kentucky, this 22nd day of August, 2000.

By the Commission

ATTEST:


Executive Director