

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF U.S. 60 WATER DISTRICT OF )  
SHELBY, SPENCER AND FRANKLIN COUNTIES )  
FOR COMMISSION APPROVAL OF A SPECIAL ) CASE NO. 2000-374  
CONTRACT FOR A WATER MAIN EXTENSION )  
ALONG JEPHTHA KNOB ROAD )

ORDER

U.S. 60 Water District of Shelby, Spencer and Franklin Counties (“U.S. 60 Water District”) has submitted for Commission review and approval a contract with Donald A. Lorenz and John Dennis Lorenz of 641 Normandy Road, Taylorsville, Kentucky, for a water main extension. The proposed contract differs from the provisions of Administrative Regulation 807 KAR 5:066, Section 11. Finding that the proposed contract is reasonable and that good cause exists to permit a deviation from Administrative Regulation 807 KAR 5:066, Section 11, we approve the contract.

U.S. 60 Water District, a water district organized under KRS Chapter 74, provides retail water service to Shelby, Spencer, Franklin and Anderson counties, Kentucky. It has entered an agreement with Donald A. Lorenz and John Dennis Lorenz for a water main extension to serve the Indian Springs subdivision. The estimated cost of the extension is \$289,418.75. Of this amount, the Lorenzes will pay \$204,668.75 and the District will pay \$84,750.00. Further, the project is estimated to be 29,500 feet, of which the Lorenzes will supply 19,650 feet and the District will supply 9,850 feet.

The Lorenzes further agree to secure all easements for the proposed water main extension and to waive any right to any refund on their contribution should additional applicants for service within the Indian Springs subdivision connect to the water main extension.

The proposed agreement's provision related to refund of the Lorenzes' contribution is inconsistent with Administrative Regulation 807 KAR 5:066, Section 11(3), which provides:

An applicant desiring an extension to a proposed real estate subdivision may be required to pay the entire cost of the extension. Each year, for a refund period of not less than ten (10) years, the utility shall refund to the applicant who paid for the extension a sum equal to the cost of fifty (50) feet of the extension installed for each new customer connected during the year whose service line is directly connected to the extension installed by the developer, and not to extensions or laterals therefrom. Total amount refunded shall not exceed the amount paid to the utility. No refund shall be made after the refund period ends.

Under this regulation, U.S. 60 Water District is required to refund to the Lorenzes the cost of 50 feet of the proposed water main extension for each applicant within the subdivision that connects to that main extension. The water district's rate schedules also require such refund.<sup>1</sup>

In support of the proposed agreement, U.S. 60 Water District argues that the Lorenzes knowingly and voluntarily waived their rights to any refunds for connections within the subdivision. It has submitted a sworn affidavit from them in which they attest to their knowledge of the Commission's regulation and the water district's main extension policies and state their knowing and voluntary decision to waive their rights.

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<sup>1</sup> See U.S. 60 Water District of Shelby and Franklin Counties, PSC Ky. No. 3, Original Sheet No. 12 (issued Mar. 21, 1990).

They further state that this waiver was in part due to the water district's agreement to assume a portion of the water main extension's costs.

Proof of a voluntary, willing and knowing waiver of any right must be more than the statement of one of the parties involved. See generally 28 Am. Jur. 2d Estoppel and Waiver §225 (2000). The statements of the District and the affidavit from the Lorenzes meet the standard for a knowing waiver.

U.S. 60 Water District further argues that the Lorenzes receive a greater benefit under the proposed agreement than under Administrative Regulation 807 KAR 5:066, Section 11(3). The proposed agreement requires that U.S. 60 Water District pay \$84,750.00 of the construction costs.

The Commission notes that in similar cases where a customer receives some additional benefit from his waiver of rights under Administrative Regulation 807 KAR 5:066, Section 11, and where the likelihood of additional recovery of his contribution is small, a deviation from the requirements of that administrative regulation may be appropriate. See, e.g., West Laurel Water Association, Inc., Case No. 2000-097 (Ky. P.S.C. May 9, 2000). Given these cases and based upon the applicants' knowing and voluntary waiver of their rights to refunds under Administrative Regulation 807 KAR

5:066, Section 11(3), we find that good cause exists to permit a deviation from that regulation<sup>2</sup> and that the proposed contract should be approved.

IT IS THEREFORE ORDERED that:

1. U.S. 60 Water District is authorized to deviate from Administrative Regulation 807 KAR 5:066, Section 11(3), and to use a different arrangement to extend water service to the Indian Springs subdivision.

2. The proposed contract between U.S. 60 Water District and Donald A. Lorenz and John Dennis Lorenz is approved as of the date of this Order.

Done at Frankfort, Kentucky, this 19<sup>th</sup> day of October, 2000.

By the Commission

ATTEST:

*W. H. Fowler*  
Deputy Executive Director

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<sup>2</sup> The Commission is authorized to permit a water utility to make water main extensions under arrangements that differ from those established in Administrative Regulation 807 KAR 5:066, Section 11. Administrative Regulation 807 KAR 5:066, Section 11(4), provides:

Nothing contained herein shall be construed to prohibit the utility from making extensions under different arrangements if such arrangements have received the prior approval of the commission.

Administrative Regulation 807 KAR 5:066, Section 18, provides:

Deviations from Administrative Regulation. In special cases, for good cause shown, the commission may permit deviations from this administrative regulation.