

Western Pulaski contends that it properly disconnected water service to Complainant, pursuant to 807 KAR 5:006, Section 14(a) and (g). Western Pulaski requests that the complaint be dismissed.

FACTS

On July 21, 2000, Western Pulaski allegedly found an illegal water tap at a trailer park at which Complainant is a part-time manager. Western Pulaski later obtained a warrant for Complainant, charging him with theft of services, and later sought \$2000 in restitution. Complainant pled innocent to the charge. On or about October 24, 2000, Western Pulaski disconnected service at Complainant's residence. On November 29, 2000, Western Pulaski also accused Complainant of reconnecting service by use of an illegal jumper. Pulaski County District Court dismissed both charges related to the alleged illegal tap at the trailer park, and the alleged use of a jumper, due to lack of sufficient evidence.

Western Pulaski claims it disconnected Complainant's water because Complainant allegedly attached more than one residence to a water meter and failed to discontinue this practice after being given notice. Western Pulaski also alleges that Complainant illegally reconnected his service by use of jumpers. This alleged reconnection, Western Pulaski claims, constitutes theft of service and poses a public health hazard by allowing for possible contamination from cistern water. Western

Pulaski, therefore, contends that it properly disconnected Complainant's water service, pursuant to 807 KAR 5:006, Section 14(a) and (g).¹

Complainant raises the issue that in 1997 he filed a complaint² against Western Pulaski due to Western Pulaski's refusal to reimburse Complainant for certain expenses that he incurred in the course of installing water service extensions. In Case No. 97-303, the Commission ordered Western Pulaski to reimburse Complainant \$1,454.75. Since that time, Complainant claims, bad blood³ has existed between him and Western Pulaski and that certain employees of Western Pulaski have retaliated against him.

Additionally, Complainant claims that after discovering the alleged illegal tap at the trailer park, Western Pulaski looked for any reason to disconnect service to his

¹ 807 KAR 5:006, Section 14 provides, in pertinent part:

A utility may terminate service for failure to comply with applicable tariffed rules or commission administrative regulations pertaining to that service

(g) For illegal use or theft of service. A utility may terminate service to a customer without advance notice if it has evidence that a customer has obtained unauthorized service by illegal use or theft. Within twenty-four (24) hours after such termination, the utility shall send written notification to the customer of the reasons for termination or refusal of service upon which the utility relies, and of the customer's right to challenge the termination by filing a formal complaint with the commission. This right of termination is separate from and in addition to any other legal remedies which the utility may pursue for illegal use or theft of service. The utility shall not be required to restore service until the customer has complied with all tariffed rules of the utility and laws and administrative regulations of the commission.

² Case No. 97-303, Louie Encil Dalton v. Western Pulaski County Water District, (Final Order entered June 11, 1998.)

³ Complaint at 3.

residence. Western Pulaski allegedly found that Complainant had two residences connected to his one meter and disconnected his service because this violated Western Pulaski's tariff. Complainant claims he has a separate meter for each residence, but the record does not support his claim.

Western Pulaski claims that it typically sends an employee approximately 2 weeks after a disconnection to ensure that the customer has not illegally reconnected service. Kevin Marcum, a Western Pulaski employee, inspected Complainant's meter approximately 2 weeks after Western Pulaski disconnected service. Mr. Marcum claims that when he arrived to inspect the meter, Complainant had parked his truck over the meter box, preventing Mr. Marcum from inspecting the meter. Mr. Marcum, however, drew water from a spigot near Complainant's house, tested the water, and found that it contained chlorine. Mr. Marcum claims that the presence of chlorine indicates the water was from Western Pulaski's system and, therefore, Complainant had somehow illegally reconnected service.

Complainant claims that after Western Pulaski disconnected his service, he installed an on-demand pump and a 1,000-gallon water tank and used a truck to haul water to the tank. On cross-examination, Mr. Marcum admitted that it was possible that Complainant had purchased Western Pulaski water or other similarly chlorinated water and transported it to his residence.

After Mr. Marcum drew the sample of water, Complainant allegedly exited his home armed with a firearm and asked Mr. Marcum to leave his property. Mr. Marcum then drove to a driveway near Complainant's property.

From the driveway, Mr. Marcum claims that he saw Complainant move the truck from over the meter box, open the meter box and get down into it. Mr. Marcum claims that Complainant exited the meter box carrying a white hose, and then closed and locked the meter box.

Later that day, Mr. Marcum returned to Complainant's property with a police officer and David Kingsley, another Western Pulaski employee. Once again, Complainant's truck was parked over the meter box, and Complainant moved the truck at the police officer's behest. Mr. Marcum claims that an inspection of the meter box revealed that the plug Western Pulaski had installed had marks on it, indicating that it had been removed and replaced, and that a pin on the meter box was positioned backwards. Mr. Marcum claims that these conditions varied from the conditions of the meter box and plug when Western Pulaski disconnected service, indicating that someone had removed and then replaced the plug. At some later date, Western Pulaski simply filled the meter box with concrete.

After Western Pulaski disconnected Complainant's service, Complainant's son, Brian Dalton, who resided in the garage apartment on Complainant's property, applied for service from Western Pulaski. Brian Dalton allegedly provided Western Pulaski with an address different from Complainant's. However, when Western Pulaski's contractor went to the location at which the meter was to be set, he discovered that it was to be set on Complainant's property. Brian Dalton allegedly told the contractor that if the contractor set the meter, he could once again run a line to Complainant's residence as well as to the garage apartment. The contractor refused to set the meter and, upon his notifying Western Pulaski, Western Pulaski declined to extend service to Brian Dalton.

DISCUSSION

Western Pulaski claims it disconnected Complainant's service because he had two residences attached to one meter, a practice that Western Pulaski's tariff expressly prohibits. Complainant, however, claims that Western Pulaski disconnected his service due to non-payment of the \$2000 bill from the alleged illegal tap at the trailer park. Complainant, furthermore, claims that he never had two residences on one meter -- a claim that the record does not support.

Western Pulaski clearly has the right to disconnect service and continue to refuse to reconnect Complainant's service as long as Complainant has, or will have if service is reconnected, two residences on one meter. Once Complainant rectifies this noncompliance, however, Western Pulaski must reconnect service.

A problem exists in that Western Pulaski now not only claims that Complainant violates its tariff, but also that, because of Complainant's alleged threatening actions towards Western Pulaski and its employees, a dangerous condition exists on Complainant's property. Western Pulaski also believes Complainant is responsible for other threats made against it.

If a dangerous condition exists on a customer's property, a utility has the right to refuse or disconnect service until the dangerous condition is remedied.⁴ By

⁴ 807 KAR 5:006, Section 14(b) states, in pertinent part:

If a dangerous condition relating to the utility's service which could subject any person to imminent harm or result in substantial damage to the property of the utility or others, is found to exist on the customer's premises, the service shall be refused or terminated without advance notice.

Complainant's own admission, bad blood⁵ has existed between him and Western Pulaski since his last complaint against Western Pulaski before the Commission.⁶ It does not seem unreasonable given the history of the relationship between Complainant and Western Pulaski, and in light of past alleged events, that Western Pulaski believes a dangerous condition exists on Complainant's property.

Nevertheless, Complainant resides in Western Pulaski's service territory and, therefore, Western Pulaski must extend him service barring the aforementioned circumstances. See KRS 278.160, 278.170. Complainant must comply with Western Pulaski's tariff. The alleged dangerous condition exists, it appears, primarily because Western Pulaski disconnected Complainant's service. Thus, if Western Pulaski reconnects service, it seems unlikely that Complainant would pose a threat to Western Pulaski. Accordingly, once Complainant complies with Western Pulaski's tariff, Western Pulaski must reconnect service. If Western Pulaski believes a dangerous condition continues to exist on Complainant's property, it may take reasonable measures, as it previously has, to protect its employees when reconnecting Complainant's service.

Complainant's original claim is that Western Pulaski disconnected his service because he refused to pay the \$2000 for the alleged illegal tap at the trailer park. Western Pulaski filed criminal charges against Complainant for theft of service, but the court dismissed the case for lack of evidence. A similar lack of evidence exists here.

⁵ Complaint at 3.

⁶ Case No. 97-303, Louie Encil Dalton v. Western Pulaski County Water District, (Final Order entered June 11, 1998.)

Therefore, Western Pulaski cannot use as a pretext to deny Complainant service, the alleged theft of service in the past.

IT IS THEREFORE ORDERED that:

1. Western Pulaski shall restore service to Complainant provided that Complainant complies with Western Pulaski's tariffed policy of limiting one residence to each meter.

2. While restoring service, Western Pulaski shall take prudent measures to ensure the safety of its employees.

3. Complainant shall remove himself from his property when Western Pulaski comes to restore service and shall return to his property once service is restored.

4. Western Pulaski shall notify the Commission by letter when it has restored service to Complainant.

5. This complaint is dismissed and is removed from the Commission's active docket.

Done at Frankfort, Kentucky, this 29th day of January, 2002.

By the Commission

ATTEST:


Executive Director